



HERBERT
SMITH
FREEHILLS

Deed

Execution Version

Metro Tunnel
Tunnel and Stations PPP

Project Agreement

The Minister for Public Transport on behalf of the
Crown in right of the State of Victoria

Cross Yarra Partnership



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Exhibit 1

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Exhibit 5

Services Solution

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Bid D&C Program

Exhibit 7

Major Projects Skills Guarantee Compliance Plan

Exhibit 8

Soil Contamination Plans

Exhibit 9

Initial Contaminated Groundwater Methodology

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Project Agreement

Date ►

Between the parties

| | |
|-------|---|
| State | The Minister for Public Transport on behalf of the Crown in right of the State of Victoria |
|-------|---|

| | |
|------------|---|
| Project Co | Cross Yarra Partnership ABN 57 956 065 885 of Level 8, 136 Exhibition St, Melbourne VIC 3000, Australia |
|------------|---|

| | |
|----------|---|
| Recitals | <ol style="list-style-type: none">1 The State has conducted a public tender process and selected Project Co as the preferred tenderer for the Project.2 This Agreement sets out the terms on which:<ol style="list-style-type: none">a Project Co agrees to deliver the Project;b Finance Co has agreed to provide financing to the Project by, amongst other things, entry into the Facility Agreement and the Receivables Purchase Deed;c the State enters into this Agreement on behalf of the Crown in right of the State of Victoria pursuant to the State's powers;d Project Co agrees to progressively undertake the Works and carry out the D&C Activities in consideration for the payment by the State to Project Co of the State Contributions and the Final D&C Phase Price;e the State agrees to grant Project Co the right to earn the Quarterly Service Payment, the State Contributions and the Final Acceptance Payment; andf the risks associated with the Project are allocated as between the State and Project Co. |
|----------|---|

This deed witnesses as follows:



Part A - General

1 Definitions

The meanings of the terms used in this Agreement are set out below.

| Term | Meaning |
|-------------------------------------|---|
| Abatement | means an amount in dollars deducted from a Quarterly Service Payment in accordance with the Payment Schedule. |
| Abatement Free Period | has the meaning given in the Services Specification. |
| Abatement Regime | means the regime for Abatement described in the Payment Schedule. |
| Aboriginal Cultural Heritage | has the meaning given in the <i>Aboriginal Heritage Act 2006 (Vic)</i> . |
| Aboriginal Persons | means persons who: <ol style="list-style-type: none">1 are descended from an Australian Aboriginal or Torres Strait Islander;2 identify as an Australian Aboriginal or Torres Strait Islander; and3 are accepted as an Australian Aboriginal or Torres Strait Islander by an Australian Aboriginal or Torres Strait Island community (as applicable). |
| Acceptance | means Provisional Acceptance and Final Acceptance (or either as the context requires). |
| Accepted Works Novation Deed | means each of: <ol style="list-style-type: none">1 the Construction Power Novation Deed; and2 the PPP Interface Works Collateral Warranty Deed. |
| Access Plan | means a plan as agreed or determined in accordance with clause 6.7 which from Final Acceptance is annexed to the Maintenance |



| Term | Meaning |
|--|---|
| | Licence. |
| Accounts and Records | has the meaning given in clause 55.1(a). |
| Accreditation | means: <ol style="list-style-type: none">1 Train Accreditation; or2 Tram Accreditation. |
| ACICA Rules | means the arbitration rules of the Australian Centre for International Commercial Arbitration. |
| Actual Debt | means the aggregate indebtedness of Group Members under the Finance Documents, excluding any indebtedness to Related Bodies Corporate that is in the nature of, or identified in the Financial Model as being, equity funding. |
| Actual TOS Costs | has the meaning given in clause 6.14(d). |
| Additional Occupation | has the meaning given in the Train Franchisee Cooperation Agreement. |
| Additional Process | has the meaning given in paragraph 18 of the definition of Compensable Extension Event. |
| [not disclosed] | [not disclosed] |
| Additional Support | has the meaning given to that term in: <ol style="list-style-type: none">1 the Train Franchisee Cooperation Agreement; or2 the Tram Franchisee Cooperation Agreement, in each case as the context requires. |
| Advance Loss of Profits Insurance | means the Insurance policy set out in Part A, section (c) of the Insurance Schedule. |
| Advanced Works | means the physical things and works which the D&C Subcontractor was required to design, supply, construct, install, produce, commission or complete pursuant to the Advanced Works Deed |



prior to the termination of the Advanced Works Deed on Financial Close.

Advanced Works Activities means all things which the D&C Subcontractor was, is, or may be, required to carry out or do:

- 1 in connection with the Advanced Works; or
- 2 to otherwise comply with its obligations under the Advanced Works Deed,

prior to the termination of the Advanced Works Deed on Financial Close.

Advanced Works Deed means the document entitled 'Metro Tunnel - Advanced Works Deed' dated 21 September 2017 between the State and the D&C Subcontractor, as it existed immediately prior to its termination.

Advertising Principles means the advertising principles set out in Section 3 of the Commercial Opportunities Schedule

Advertising Request has the meaning given to that term in clause 37.9(a).

Agent means the 'Facility Agent' under and as defined in the Facility Agreement which as at Contract Close is the party set out in item 1 of the Contract Particulars, as replaced from time to time in accordance with the Finance Documents and who is party to the Finance Direct Deed in that capacity.

Agreed Amount has the meaning given in clause 59.1(b)(1).

Agreed Commencement Time has the meaning given to that term in the Train Franchisee Cooperation Agreement.

Agreed Hand Back Time has the meaning given to that term in the Train Franchisee Cooperation Agreement.

Agreed Methodology means the construction methodology proposed or planned for undertaking the D&C Activities in respect of the relevant Potential Track Occupation as at Contract Close and set out in an agreed track occupation construction methodology to be prepared and provided by Project Co to the State within 40 Business Days after Contract Close and agreed by the parties and which must be consistent with correspondence between the parties prior to Contract Close.



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| Agreed Occupation | has the meaning given to that term (as relevant): <ol style="list-style-type: none">1 in the Train Franchisee Cooperation Agreement; or2 in the Tram Franchisee Cooperation Agreement. |
| Agreement | means this project deed and includes all schedules, exhibits, attachments and annexures to it. |
| Amended Occupation | has the meaning given in the Train Franchisee Cooperation Agreement. |
| Amended Remediation Plan | has the meaning given in clause 26.2(i). |
| Amendment | for the purposes of clause 53, has the meaning given in clause 53.1. |
| Annualised Employee Equivalent (AEE) | means the number of hours that is calculated by dividing the total number of ordinary working hours that an employee worked and was paid for over the reporting period by the total number of full-time ordinary working hours paid per annum. |
| Apprentice | means a person who: <ol style="list-style-type: none">1 an employer has undertaken to train under a Training Contract; and2 is registered with the Victorian Registration and Qualifications Authority. |
| Approval | means: <ol style="list-style-type: none">1 the Key Approvals; and2 any licence, permit, authorisation, consent, assessment, approval, determination, certificate, accreditation, registration, clearance, permission or the like (as amended or substituted from time to time) which is issued by or obtained from or is required to be issued or obtained from any Authority or any other person or in accordance with any Law, which must be obtained or satisfied in connection with the Project. |
| Approved Project | means any form of the Project that is permitted by and will comply with the Key Approvals. |
| APRA | means the Australian Prudential Regulation Authority. |



Arden Day 1 Park Area means the land generally bound by Barwise Street, Fogarty Street extension, potential future Queensberry Street extension and Lauren Street, excluding the station building and associated hardscape area, on Project Drawing Number TAS-CYP-AR-00-DRG-AUD-ARD-710200-DP Rev G.7 in the Soil Contamination Plans..

Arden Day 1 Park Area Land Use means a 'Recreation/Open space' land use as described in the 'State Environment Protection Policy (Prevention and Management of Contamination of Land)' as varied by 'Variation to the State environment protection policy (Prevention and Management of Contamination of Land) No. G39, Gazette 26 September 2013'.

Arden Day 1 Park Area Remediation Report means the report prepared in accordance with clause 7.2(e).

Arden Day 1 Park Area Remediation Requirement means:

- 1 the requirements set out in the Arden Day 1 Park Area Remediation Report; and
- 2 any additional requirements identified during the Remediation of Contamination at the Arden Day 1 Park Area which are necessary to enable the Arden Day 1 Park Area Land Use.

Arden Project Area means the land labelled 'Temporary Above Ground, MMRA / CYP in Possession and Chep in Possession' on Project Drawing Number TAS-CYP-PW-00-DRG-XLP-MMN-003610 Rev G.1 in the Soil Contamination Plans.

Arden Project Area Remediation Requirement means the higher of:

- 1 the site condition determined pursuant to the contaminated land assessment performed under clause 7.2(f)(1) prior to commencement of the D&C Activities in the Arden Project Area; and
- 2 assuming that the zoning and planning scheme overlay applicable to that area at Contract Close has not changed, the site condition required by that zoning and planning scheme overlay at the relevant time.

Artefacts means any places, fossils, bones, artefacts, coins, articles of antiquity, buildings, structures, natural features or other remains or objects or things of scientific, geological, historical, aesthetic, social, spiritual, cultural, heritage or archaeological interest including any items of cultural heritage significance under the *Aboriginal Heritage Act 2006* (Vic).

Artwork Procurement means the purchase and installation of permanent artwork for the Stations as approved in writing by the State in accordance with



clause 61C.2 including:

- 1 the design, manufacture, installation and commissioning of any artworks;
- 2 cost of curator, consultants and external advisory fees;
- 3 any base building alterations necessary to accommodate the proposed artwork (and design work concerning same); and
- 4 any additional lighting, support structures or the like necessary to accommodate the proposed artwork; and

excluding Project Co and the D&C Subcontractors' direct costs involved in:

- 5 all work relating to the selection and appointment of curators;
- 6 Project Co and D&C Subcontractor resources involved in the process for the selection and appointment of any artists; and
- 7 the maintenance of artworks.

Artwork Procurement Strategy

has the meaning given to that term in clause 61C.2(b).

As-Built Records

means the as-built information required to be provided in relation to the Works in accordance with section 1.3.5 of Part C of the PS&TR.

Asset Condition Survey

means each survey of the Maintained Assets undertaken in accordance with clause 30.2.

Asset Management Manual

has the meaning given to that term in the Services Specification.

Asset Management Plan

means the plan of that name prepared and updated by Project Co in accordance with the Services Specification.

Asset Register

has the meaning given to that term in the Services Specification.

Associate or Associates

means in relation to a person, any officer, agent, adviser, consultant, contractor or employee of that person (to the extent acting in that capacity) and:

- 1 in the case of Project Co, includes:
 - a the Project Co Representative;
 - b any Group Member or Consortium Member (other than Project Co) and their respective officers, agents, advisers, consultants, contractors and employees; and
 - c the Equity Investors, any Subcontractors (that are not Consortium Members) and their respective officers, agents,
-

- advisers, consultants, contractors and employees, each acting in connection with the Project, but does not include the State or any of its Associates, the Rail Franchisees (including in their capacities as Rail Franchisee Interface Parties), the CityLink Manager, the Metro Tunnel Package Contractors, the Delegate, the Independent Reviewer, the CityLink Consultant, any Handover Reviewer or any Escrow Agent;
- 2 in the case of the State means:
- a the Secretary;
 - b MMRA;
 - c PTV (including in its capacity as 'PTV As Counterparty');
 - d VicTrack;
 - e VicRoads;
 - f the State Representative;
 - g any other person to whom the State delegates a right, power, function or duty in accordance with this Agreement; and
 - h an officer, agent, adviser, consultant, contractor or employee of the State or a party listed in paragraphs a to g, to the extent acting in that capacity,
- each acting in connection with the Project, but does not include Project Co or its Associates, the Rail Franchisees (including in their capacity as Rail Franchisee Interface Parties), the Metro Tunnel Package Contractors (including the State in its capacity of 'participant' in the Rail Systems Alliance or the Rail Infrastructure Alliance), the Ticketing Works Contractor, the Independent Reviewer, the CityLink Consultant, any Handover Reviewer, any Escrow Agent, or an officer, agent, adviser, consultant, contractor or employee of them; and
- 3 in the case of a Returned Asset Owner, means any officer, agent, adviser, consultant, contractor or employee of the Returned Asset Owner (to the extent acting in that capacity) acting in connection with the Project.

Assumed Technological Improvement

means a Technological Improvement that Project Co is required to implement to meet its obligations under clause 28.2(a)(6), clause 39 or otherwise in accordance with the State Project Documents.

Auditor

means the State, an Associate of the State, or other third party engaged by the State, to undertake an audit of the Project Activities in accordance with clause 14.4.

Authority

means:

- 1 any government or any governmental, semi-governmental or local government authority, local council, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality and any person having jurisdiction over any part
-



of the Works or Project Activities; and

- 2 any person having jurisdiction over, or ownership of, the Utility Infrastructure Works.

| | |
|---|---|
| Bank Bill Rate | means, in a period: <ol style="list-style-type: none">1 the rate (expressed as a yield per centum per annum to maturity rounded upwards to 2 decimal places) which is the buying rate for bank accepted Bills quoted at approximately 10.10am (Melbourne time) on page 'BBSY' of the Reuters Monitor System on that day, having a term closest to that period; or2 if that rate is no longer available or if, in the reasonable opinion of the State Representative, that rate becomes an inappropriate rate to benchmark the Overdue Rate for the purposes of this Agreement or becomes incapable of application, the Bank Bill Rate means the rate reasonably determined by the State Representative to be the appropriate equivalent rate, having regard to prevailing market conditions. |
| Base Case Financial Model | has the meaning given in clause 54.1. |
| Base Case Floating Rate Debt | has the meaning given in the Payment Schedule. |
| Base Case Floating Rate Interest Payment | has the meaning given in the Payment Schedule. |
| Base Case Interest Rate | has the meaning given in the Payment Schedule. |
| Base Track Occupation Schedule (FAW) | has the meaning given in the Train Franchisee Cooperation Agreement. |
| Beneficiary | has the meaning given to that term in the relevant Coordination and Interface Deed Poll. |
| Beneficiary Assignment Notice | has the meaning given to that term in the relevant Coordination and Interface Deed Poll. |
| Beneficiary Nomination Notice | has the meaning given to that term in the relevant Coordination and Interface Deed Poll. |



Beneficiary Termination Notice has the meaning given to that term in the relevant Coordination and Interface Deed Poll.

Best D&C Practices means design, manufacturing, construction, installation commissioning and repair practices which are carried out:

- 1 with the skill, care and diligence which may reasonably be expected of a skilled professional carrying out design, manufacturing, construction, installation, commissioning and repair work similar to the D&C Activities and the Final Acceptance Works;
- 2 with due expedition and without delay;
- 3 in a manner which is safe to all people and the Environment;
- 4 with the intent of ensuring reliable, long term and safe operation of the Project Assets;
- 5 by trained and experienced personnel utilising high quality, safe and proper equipment, tools, procedures and industry standards;
- 6 with an adequate number of personnel and appropriate materials, resources and supplies;
- 7 using new and high quality fixtures, fittings, finishes and materials which are:
 - a free from defects; and
 - b appropriate for the environment in which they are intended to be used under normal conditions and reasonably anticipated abnormal conditions or which would be reasonably anticipated by a skilled professional carrying out design, manufacturing, construction, installation, commissioning and repair work similar to the D&C Activities and the Final Acceptance Works; and
- 8 in a manner which, at all times:
 - a remains consistent with the applicable rail network standards;
 - b facilitates Best Maintenance Practices and Best Operating Practices; and
 - c is in accordance with the PS&TR.

Best Industry Practices means Best D&C Practices and Best Maintenance Practices (or either as the context requires).

Best Maintenance Practices means maintenance, management, repair and refurbishment activities which are carried out:

- 1 with the skill, care and diligence which may reasonably be expected of a skilled professional carrying out maintenance, management, repair and refurbishment activities similar to the Services;
- 2 with due expedition and without delay;

- 3 in a manner which is safe to all people and the Environment;
- 4 with the intent of ensuring reliable, long term and safe operation of the Project Assets;
- 5 by trained and experienced personnel utilising high quality, safe and proper equipment, tools, procedures and industry standards;
- 6 with an adequate number of personnel and appropriate materials, resources and supplies;
- 7 using new and high quality fixtures, fittings, finishes and materials which are:
 - a free from defects
 - b appropriate for the environment in which they are intended to be used under normal conditions and reasonably anticipated abnormal conditions or which would be reasonably anticipated by a skilled professional carrying out maintenance, management, repair and refurbishment activities similar to the Services; and
 - c have a design life equal to or greater than the items being repaired or replaced;
- 8 in a manner which facilitates Best Operating Practices; and
- 9 with a commitment to continually meeting advancements in technology which Project Co must implement to enable it to comply with the requirements in the State Project Documents.

Best Operating Practices

means the practices generally required for the operation of a major rail network, similar to the Victorian Rail Network, which practices are performed:

- 1 with due care and skill and applying nationally accepted procedures;
- 2 in a manner safe to all people and the Environment;
- 3 with due expedition and without any unnecessary delay;
- 4 in accordance with all applicable Laws, quality standards and authorisations;
- 5 with the intent of ensuring reliable, long term safe and secure operation of the Victorian Rail Network;
- 6 using new and high quality fixtures, fittings, finishes and materials which are free from defects and appropriate for the environment in which they are intended to be used; and
- 7 with a commitment to continually meet advancements in technology and innovation.

Bid D&C Program

means the program for the D&C Activities and the Final Acceptance Works prepared and submitted as part of its proposal by Project Co, which is contained in Exhibit 6.

Bill

has the same meaning as 'bill of exchange' in the *Bills of Exchange Act 1909* (Cth) (but does not include a cheque or payment order)



and a reference to the drawing or acceptance of, or other dealing with, a Bill is to be interpreted in accordance with that Act.

Booking Period means in respect of each advertising format, the booking periods offered by the advertising contractor, which must:

- 1 be consistent with accepted industry practice;
- 2 be notified to the State periodically (or otherwise on request); and
- 3 not be less than 7 days (unless the State gives its consent (which consent must not be unreasonably withheld or delayed)).

Business Day means a day in Melbourne that is not:

- 1 a Saturday or Sunday; or
- 2 a public holiday for Melbourne pursuant to the *Public Holidays Act 1993 (Vic)*.

Business Hours means between 9.00 am and 5.00 pm on a Business Day.

Business Interruption Insurance means the insurance policy set out in Part C, section (c) of the Insurance Schedule.

CBD North OSD Acceptance means, in relation to the Foundation Works at the Station at CBD North, the stage when the Foundation Works are complete except for Minor Defects.

CBD North OSD Developer means the unincorporated joint venture comprising:

- 1 John Holland Nth OSD Developer Pty Ltd (ACN 623 274 564); and
- 2 Scape Little Latrobe Operator Pty Ltd (ACN 607 697 183).

CBD North OSD Interface Agreement means the agreement titled 'Melbourne Metro: PPP and OSD Interface Agreement (CBD North)' between the State, Project Co, the D&C Subcontractor and the CBD North OSD Developer dated on or about the date of this Agreement.

CBD North Shaft means a shaft constructed, or to be constructed, by the Early Works Managing Contractor pursuant to the Early Work Managing Contractor Agreement in connection with the Station at CBD North.

CBD South OSD Acceptance means, in relation to the Foundation Works at the Station at CBD South, the stage when the Foundation Works are complete except for Minor Defects.



| | |
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| CBD South OSD Developer | means Lendlease (OSD South) Pty Limited ACN 610 047 464 as trustee for the Lendlease (OSD South) Trust. |
| CBD South OSD Interface Agreement | means the agreement titled 'Melbourne Metro: PPP and OSD Interface Agreement (CBD South)' between the State, Project Co, the D&C Subcontractor and the CBD South OSD Developer dated on or about the date of this Agreement. |
| Certificate of Critical Interface Milestone / Progress Milestone Achievement | means a certificate substantially in the form required by the Schedule of Certificates and Notices certifying that a Critical Interface Milestone or Progress Milestone has been achieved. |
| Certificate of Final Acceptance | means a certificate substantially in the form required by the Schedule of Certificates and Notices certifying that Final Acceptance has been achieved. |
| Certificate of Provisional Acceptance | means a certificate substantially in the form required by the Schedule of Certificates and Notices certifying that Provisional Acceptance has been achieved. |
| Certified Payment Claim | means a payment claim of the D&C Subcontractor under the D&C Subcontract which has been certified by the Financiers' Certifier and issued by the Financiers' Certifier. |
| Certified Withdrawal Amount | has the meaning given in clause 33.3(a)(3)(A). |
| Change Compensation Event | has the meaning given in the Change Compensation Principles. |
| Change Compensation Principles | has the meaning given in Schedule 4. |
| Change in Control | means where, at any time any person or Entity alone or together with any 'Associate' or 'Associates', ceases to or commences to, directly or indirectly have Control of an Entity. For the purposes of this definition, 'Associate' or 'Associates' has the meaning given in the Corporations Act and includes a person deemed to be an associate of a designated body (within the meaning of section 12 of the Corporations Act). |
| Change in Law | means any one or more of the following: 1 a change in, or repeal of, an existing Law; |

- 2 the enactment or judicial determination of a new Law; or
 - 3 a change in the way a Law is applied or interpreted as a result of a decision of a court of competent jurisdiction,
- but does not include:
- 4 a change in the way a Law is applied or interpreted due to:
 - a the failure of Project Co or any of its Associates to comply with a Law, Standard or Approval;
 - b an illegal act or omission of Project Co or any of its Associates; or
 - c any breach of the State Project Documents by Project Co;
 - 5 a Change in Policy;
 - 6 any new Approval or change in an Approval resulting from:
 - a an act or omission of Project Co or any of its Associates (other than an act or omission of Project Co which is authorised or permitted under a State Project Document); or
 - b a change to the design or delivery methodology in relation to the Project or the Relevant Infrastructure;
 - 7 any new Law or change in existing Law relating to Taxes including the *Income Tax Assessment Act 1936* (Cth), the *Income Tax Assessment Act 1997* (Cth) and the GST Law;
 - 8 any new Law or change in any existing Law which was not in force at Contract Close but which:
 - a had been published in the Government Gazette by way of bill, draft bill or draft statutory instrument or otherwise specifically referred to prior to Contract Close;
 - b is contained or referred to in the PS&TR, Project Information provided on or prior to Contract Close, or any Project Document;
 - c a party exercising Best Industry Practices would have reasonably foreseen or anticipated prior to Contract Close; or
 - d is substantially the same as a Law in force prior to Contract Close;
 - 9 any new Law or change in existing Law relating to Part IVAA (Proportionate Liability) of the *Wrongs Act 1958* (Vic) or its application which limits or eliminates the impact of that Part or any legal risk allocation under clause 64.12, whether or not it has any application; or
 - 10 any new law or change in any existing law relating to:
 - a the Commonwealth Building Code; or
 - b the utilities regime of the Relevant Legislation.

Change in Mandatory Requirements has the meaning given in clause 38.7(a).

Change in Policy means any one or more of the following:

- 1 the introduction of a new Standard; or
- 2 a material change in a Standard,
but does not include:
 - 3 a Change in Law;
 - 4 more efficient usage of the Relevant Infrastructure;
 - 5 a new Standard or a change to a Standard, that was not in force at Contract Close but which:
 - a the State has expressly notified Project Co of prior to Contract Close;
 - b was contained or referred to in any Project Document, the PS&TR, the Services Specification, or any Project Information provided on or prior to Contract Close;
 - c a party performing activities similar to the Project Activities in accordance with Best Industry Practices would have reasonably foreseen or anticipated prior to Contract Close;
 - d is substantially the same as a Standard in force prior to Contract Close; or
 - e is substantially the same as any other requirement with which Project Co was required to comply under the State Project Documents prior to the date of the new or changed Standard, including any obligation to comply with Best Industry Practices;
 - 6 any new Standard or change in any existing Standard relating to the Commonwealth Building Code; or
 - 7 a new Standard or a change in a Standard in response to:
 - a the failure of Project Co or its Associates to comply with a Law, Standard or Approval; or
 - b any breach of the State Project Documents by Project Co.

Change Notice has the meaning given in the Change Compensation Principles.

Change Response has the meaning given in the Change Compensation Principles.

Change Saving means, if a Change Compensation Event occurring prior to the Date of Provisional Acceptance results in an amount owing from Project Co to the State, the amount owing to the State.

City of Melbourne means the local government authority for Melbourne, Victoria, Australia.

City Square Requirement means each of the requirements set out in Schedule 33.



| | |
|---|---|
| [not disclosed] | [not disclosed] |
| City Square Works | means the Works described as 'City Square Works' in the Returned Works Schedule that Project Co will Handback to the City of Melbourne. |
| CityLink | means the land declared under section 61 of the <i>Melbourne City Link Act 1995</i> (Vic) to be a road and includes any part of that land. |
| CityLink Consultant | means Golder Associates Pty Ltd ABN 64 006 107 857. |
| CityLink Consultant Agreement | means the deed entitled 'Services Agreement' entered into between the State, Project Co, the CityLink Manager and the CityLink Consultant on or about the date of this Agreement. |
| CityLink Interface Deed | means the deed entitled 'Metro Tunnel – CityLink Direct Interface Agreement' entered into between the State, Project Co and the CityLink Manager on or about the date of this Agreement. |
| CityLink Manager | means Transurban, and any subsequent entity or entities that have responsibility for the operation and maintenance of CityLink. |
| Claim | means any claim, action, demand, suit or proceeding (including by way of contribution or indemnity) made: <ol style="list-style-type: none">1 in connection with the Project Documents, the Relevant Infrastructure, the Site or the Project; or2 at Law or for specific performance, restitution, payment of money (including damages), an extension of time, or any other form of relief. |
| Commercial Development Agreement | means each of: <ol style="list-style-type: none">1 the 'CBD North Commercial Development Agreement' between the State and the CBD North OSD Developer dated on or about the date of this Agreement; and2 the 'CBD South Commercial Development Agreement' between, among others, the State and the CBD South OSD Developer dated on or about the date of this Agreement. |
| Commercial Opportunities Direct Deed | means a deed substantially in the form approved by the State pursuant to clause 37.5(a) between the State, Project Co and the relevant Commercial Opportunities Tenant. |
| Commercial | means the 'Commercial Opportunities Guiding Principles' described |



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| Opportunities Guiding Principles | in section 2 of the Commercial Opportunities Schedule. |
| Commercial Opportunities Lease | means any lease granted in accordance with clause 6.8 in connection with any of the Maintained Assets, in the form set out in Part (a) of the Property Schedule. |
| Commercial Opportunities Leased Area | means those areas: <ol style="list-style-type: none">1 within the Stations;2 owned in fee simple by VicTrack; and3 to which Project Co requires a lease tenure in order to grant Commercial Opportunities Subleases consistent with the Commercial Opportunities Guiding Principles. |
| Commercial Opportunities Management Plan | means the plan prepared and updated by Project Co, and approved by the State (acting reasonably), which describes how Project Co will satisfy the requirements of clause 37.3 in relation to the Commercial Opportunities Works. |
| Commercial Opportunities Schedule | means Schedule 28. |
| Commercial Opportunities Subcontract | means: <ol style="list-style-type: none">1 a contract entered into by Project Co; or2 a contract entered into by a Commercial Opportunities Tenant, for the performance of Commercial Opportunities Works. |
| Commercial Opportunities Subcontractor | means any person with whom Project Co or a Commercial Opportunities Tenant enters into a contract for the performance of Commercial Opportunities Works. |
| Commercial Opportunities Sublease | means any sublease or licence granted by Project Co to any Commercial Opportunities Tenant in respect of any part of: <ol style="list-style-type: none">1 the Commercial Opportunities Leased Areas; or2 the Licensed Maintenance Areas. |
| Commercial Opportunities Tenant | means any sublessee, licensee or assignee in respect of the Commercial Opportunities Leased Areas or the Licensed Maintenance Areas, other than the State, any State Associate, PTV, the Train Franchisee, a Metro Tunnel Package Contractor, the Ticketing Works Contractor and VicTrack. |



Commercial Opportunities Works means all fit-out, maintenance, servicing or refurbishment works for the sole purpose of pursuing the Permitted Commercial Opportunities.

Commissioner for Privacy and Data Protection has the meaning given to it in the Public Sector Privacy Act.

Commonwealth Building Code means each of:

- 1 the *Building Code 2013* (Cth);
- 2 the 'Supporting Guidelines' (April 2016); and
- 3 the *Code for the Tendering and Performance of Building Work 2016* (Cth); and
- 4 any other documents issued under section 34 of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth) by legislative instrument.

Community and Stakeholder Engagement Management Plan means the plan of that name prepared and updated by Project Co in accordance with the Project Management Requirements.

Compensable Extension Event means each of the following events occurring prior to the Date of Provisional Acceptance:

- 1 breach by the State of any State Project Document to which it is a party;
- 2 any act or omission of:
 - a the State in its capacity as counterparty to a State Project Document; or
 - b except to the extent Project Co has not complied with its obligations in accordance with clause 13.9 in respect of the State's Associates, any of the State's Associates, other than any such act or omission which:
 - c is authorised or permitted under a Project Document (excluding any act or omission which is permitted by clause 13.9 but which is carried out by the State's Associate in a manner that is inconsistent with the performance standards and practices that would reasonably be expected of an experienced and competent entity providing works, services, activities and functions of the same or similar nature as those to be provided by the State's Associate under clause 13.9);
 - d gives rise to a Modification; or
 - e is contemplated by clause 11.2,except where such act or omission is expressly deemed to be a Compensable Extension Event;
- 3 cessation or suspension of any part of the D&C Activities (or a

- material change in the way the D&C Activities are carried out) because of:
- a a Commonwealth or State government direction;
 - b an order of a court or tribunal of competent jurisdiction; or
 - c a requirement of Law,
- in connection with a Heritage Claim or Native Title Claim (as the case may be), in relation to the Site;
- 4 a Key Approval Event;
 - 5 industrial action in respect of the D&C Activities which directly affects the Project and which:
 - a is the direct result of an act or omission of the State or its Associates in relation to the Project not being an act or omission authorised or permitted in accordance with any Project Document; and
 - b occurs only at the Construction Areas or otherwise only in respect of the Project,but does not include industrial action which arises:
 - c solely as a result of the State's decision to proceed with the Project as a public private partnership;
 - d as a result of an act or omission of the State in its capacity as a participant in the Rail Infrastructure Alliance or the Rail Systems Alliance; or
 - e directly or indirectly in connection with the Commonwealth Building Code, including any transitional or implementation arrangements, or disallowance motion, concerning the Commonwealth Building Code.
 - 6 an instruction by the State to suspend the D&C Activities which is deemed to be a Compensable Extension Event under clause 16.7(c);
 - 7 the carrying out of Proximate State Works as a result of the State exercising its rights under clause 17.2(a), except to the extent Project Co fails to comply with its obligations in accordance with clause 17.2(b);
 - 8 where the State carries out, or directs Project Co to carry out, tests pursuant to clause 16.3 or clause 23.8(a)(1) unless:
 - a the results of the test show:
 - i the Works are not in accordance with this Agreement (other than to the extent of a Minor Defect); or
 - ii that there is a Defect in respect of the Works tested that is not a Minor Defect;
 - b the test is in respect of Work covered up or made inaccessible without the prior written approval of the State where such approval was required; or
 - c the test is upon Work undertaken to correct or overcome a Defect;
 - 9 the carrying out of Omitted Works as a result of the State exercising its rights under clause 38.5 to undertake (or procure the undertaking of) Omitted Works in connection with the D&C
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Activities;

- 10 the exercise by the State of its rights under clause 41.1 as a consequence of any Step-In Events in clauses 41.1(a)(5) or 41.1(a)(6), to the extent the relevant Step-In Event was not the result of any act or omission of Project Co or any of its Associates (other than any act or omission undertaken in accordance with the Project Documents or undertaken lawfully in connection with the performance of the Project Activities);
 - 11 a Rail Franchisee Failure Event;
 - 12 a Critical Interface Milestone Event;
 - 13 an Interface Quality Event;
 - 14 an act or omission of a Metro Tunnel Package Contractor or their Associates causes loss or damage to the Relevant Infrastructure, excluding any loss or damage described in clause 42.5;
 - 15 a collision, accident or rail safety related incident involving a train which causes damage to the Relevant Infrastructure where:
 - a the cause or occurrence of the damage was beyond the reasonable control of Project Co and its Associates;
 - b the State notifies Project Co that it requires Project Co to repair or rebuild the Relevant Infrastructure in accordance with clause 42.3(a);
 - c Project Co is complying with its obligations under clause 42.3; and
 - d the damage is not damage described in clause 42.5;
 - 16 a failure by the State to procure in accordance with clause 8.1(d):
 - a Planning Scheme Amendment No 2; and
 - b a corresponding variation to the Project Area, by the Planning Scheme Amendment No 2 Date;
 - 17 a PPP Interface Works Delay Event;
 - 18 the Minister for Planning does not approve, approve subject to conditions, or reject the Precinct Development Plan by the relevant Precinct Development Plan Approval Date due to:
 - a a Planning Minister Office Delay; or
 - b the Minister for Planning or the DPRC requiring Project Co or its Associates to provide or undertake (as applicable) any additional information, processes, peer reviews, public exhibition or consultation prior to the Minister for Planning approving a relevant Precinct Development Plan (**Additional Process**); orexcept to the extent any Planning Minister Office Delay or Additional Process is directly caused by a failure by Project Co or its Associates to ensure that the proposed Precinct Development Plan complies with Section 4.6 of the Incorporated Document (noting the parties acknowledge and agree that the 'clouding' of the entrances to the CBD South Station will not constitute a failure by Project Co to comply with
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- Section 4.6 of the Incorporated Document);
- 19 failure by the Construction Power Contractor to [not disclosed];
- 20 in respect of the Park Street Tram Works:
- a [not disclosed]; or
 - b [not disclosed];
- 21 the Train Franchisee, pursuant to clause 8.8(a) of the Train Franchisee Cooperation Agreement:
- a cancels an Agreed Occupation;
 - b fails to give Project Co an Agreed Occupation by the Agreed Commencement Time or at all; or
 - c requires Project Co to hand back the Train Franchisee Land the subject of an Agreed Occupation to the Train Franchisee prior to the Agreed Hand Back Time,
- as a result of a direction by the State or PTV to the Train Franchisee to cancel an Agreed Occupation; or
- 22 any other event expressed to be a Compensable Extension Event in this Agreement.

**Compensable
Intervening Event**

means each of the following events:

- 1 breach by the State of any State Project Document to which it is a party;
 - 2 a fraudulent, reckless, unlawful or malicious act or omission of the State or any of its Associates to the extent they are acting in connection with the Project;
 - 3 cessation or suspension of any part of the Services (or a material change in the way the Services are performed) because of:
 - a a Commonwealth or State government direction;
 - b an order of a court or tribunal of competent jurisdiction; or
 - c a requirement of Law,

in relation to a Heritage Claim or Native Title Claim (as the case may be), in relation to the Site to the extent that the cumulative cessation or suspension (or the impact of the material change in the way the Services are performed) exceeds 10 Business Days;
 - 4 a Key Approval Event;
 - 5 industrial action in respect of the Services which directly affects the Project and which:
 - a is the direct result of an act or omission of the State or any of its Associates in relation to the Project not being an act or omission authorised or permitted in accordance with any Project Document; and
 - b occurs only at the Licensed Maintenance Areas or otherwise only in respect of the Project,

but does not include industrial action which arises:

 - c solely as a result of the State's decision to proceed with the
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- Project as a public private partnership;
- d as a result of an act or omission of the State in its capacity as a participant in the Rail Infrastructure Alliance or the Rail Systems Alliance; or
 - e directly or indirectly in connection with the Commonwealth Building Code, including any transitional or implementation arrangements, or disallowance motion, concerning the Commonwealth Building Code.
- 6 an instruction by the State to suspend the Services which is deemed to be a Compensable Intervening Event under clause 16.7(c);
 - 7 the carrying out of Proximate State Works as a result of the State exercising its rights under clause 17.2(a), except to the extent Project Co fails to comply with its obligations in accordance with clause 17.2(b);
 - 8 the carrying out of Omitted Works as a result of the State exercising its rights under clause 38.5 to undertake (or procure the undertaking of) Omitted Works in connection with the Services;
 - 9 a Train Franchisee Failure Event;
 - 10 a negligent, fraudulent, reckless, unlawful or malicious act or omission of the Train Franchisee causes loss or damage to the Relevant Infrastructure, excluding any loss or damage described in clause 42.5;
 - 11 a collision, accident or rail safety related incident involving a train which causes damage to the Relevant Infrastructure where:
 - a the cause or occurrence of the damage was beyond the reasonable control of Project Co and its Associates;
 - b the State notifies Project Co that it requires Project Co to repair or rebuild the Relevant Infrastructure in accordance with clause 42.3(a);
 - c Project Co is complying with its obligations under clause 42.3; and
 - d the damage is not damage described in clause 42.5; or
 - 12 during the FAW Phase, an event which would have been a Compensable Extension Event if it had occurred prior to the Date of Provisional Acceptance, but excluding an event under paragraph 12 of the definition of Compensable Extension Event, or a Tram Franchisee Failure Event;
 - 13 the Train Franchisee, pursuant to clause 9.7(a) of the Train Franchisee Cooperation Agreement:
 - a cancels an Agreed Occupation;
 - b fails to give Project Co or a Key Subcontractor an Agreed Occupation by the Agreed Commencement Time, or at all; or
 - c requires Project Co or a Key Subcontractor to hand back the Train Franchisee Land the subject of an Agreed Occupation to the Train Franchisee prior to the Agreed Hand Back Time,
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as a result of a direction by the State or PTV to the Train Franchisee to cancel an Agreed Occupation; or

14 any other event expressed to be a Compensable Intervening Event in this Agreement.

Compensation Date has the meaning given in the Termination Payments Schedule.

Completion Schedule means Schedule 26.

Condition Precedent means a condition precedent set out in the Conditions Precedent Schedule.

Condition Precedent Deadline means in connection with a Condition Precedent, the date specified next to that Condition Precedent in the Conditions Precedent Schedule, or such other date as the parties may agree.

Condition Review Date has the meaning given in clause 32.3(a).

Conditions Precedent Schedule means Schedule 2.

Confidential Information means the:

- 1 Project Documents;
- 2 Project Information;
- 3 Security Information;
- 4 information provided by:
 - a the State or any of its Associates to Project Co or any of its Associates; or
 - b Project Co or any of its Associates to the State or any of its Associates,in accordance with this Agreement whether prior to or after Contract Close;
- 5 Project Co Material; and
- 6 other information in connection with the Project which Project Co is required to keep confidential in complying with any Privacy Principles or any applicable Law.

Confidential Information Schedule means Schedule 17.

Consortium means:



- 1 Project Co;
 - 2 the D&C Subcontractor up to the end of the D&C Phase;
 - 3 the Maintenance Subcontractor;
 - 4 the Parent Guarantor of the D&C Subcontractor providing a guarantee in favour of Project Co, up to the end of the D&C Phase;
 - 5 the Parent Guarantor of the Maintenance Subcontractor; and
 - 6 the Parent Guarantor of the D&C Subcontractor providing a guarantee in favour of the State, up to the Date of Provisional Acceptance,
- and 'Consortium Member' means any of them.

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| Construction Areas | means the Licensed Construction Areas and the Non-Licensed Construction Areas. |
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| Construction Bond | means any Performance Bond provided by the D&C Subcontractor in favour of Project Co. |
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| Construction Documentation | means the IFC Design Documentation and the documentation identified in section 10.4.1 of Part C of the PS&TR: <ol style="list-style-type: none">1 which Project Co is entitled to use for construction purposes in accordance with section 2.9 of the Design Review Schedule; and2 which meets the requirements of the PS&TR. |
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| Construction Facility | has the meaning given in the Facility Agreement. |
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| Construction Facility Commitment | means the total commitment in respect of the Construction Facility under the Facility Agreement. |
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| Construction Licence | means any licence granted in accordance with clause 6.5 in connection with any of the Works, in the form set out in Part (b) of the Property Schedule. |
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| Construction Management Plan | means the plan of that name prepared and updated by Project Co in accordance with the PS&TR. |
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| Construction Power Agreement | means the document entitled 'Metro Tunnel – Construction Power Supply Infrastructure - Engineer Procure Construct Maintain Agreement' between the State and the Construction Power Contractor dated 28 February 2017 as amended from time to time. |
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| Construction Power Connection | has the meaning given to 'Connections' in the Construction Power Agreement. |
| Construction Power Contractor | means Energy Solutions Pty Ltd ABN 32 610 914 059. |
| Construction Power Corresponding Deed Poll | means the a deed poll titled 'Metro Tunnel – Construction Power Works: Deed of Novation' executed by the Construction Power Contractor dated 27 February 2017. |
| Construction Power Novation Deed | means an instrument procured in accordance with clause 3.6(e) or clause 3.6(f) in respect of the Construction Power Works (excluding any maintenance activities). |
| Construction Power Supply Assets | has the meaning given to that term in the Construction Power Agreement. |
| Construction Power Works | means the works to be performed by the Construction Power Contractor pursuant to the Construction Power Agreement. |
| Construction Proceeds Account | has the meaning given in the Facility Agreement. |
| Construction Records | means those documents described in section 1.3 of the PS&TR. |
| Construction Site | means: <ol style="list-style-type: none">1 the Construction Areas; and2 all other areas upon which the D&C Activities or the Final Acceptance Works (other than D&C Activities and the Final Acceptance Works relating solely to design) are being carried out or materials are being prepared or stored during the D&C Phase. |
| Contaminated Land Assessor | means a person appointed jointly by Project Co and the D&C Subcontractor who must have suitable experience as a professional in assessing contamination of sites which have former and future uses similar to those of the Arden Project Area. |
| Contamination | means a condition of land, air, soil, water (including groundwater) resulting from past or present Pollution and which shares any of the characteristics of Pollution. |



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| Contamination Modification Event | means: <ol style="list-style-type: none">1 a Groundwater Contamination Modification Event; or2 a Soil Contamination Modification Event. |
| Contamination Notice | means a notice, order or direction given, or purporting to have been given, under the <i>Environment Protection Act 1970 (Vic)</i> or any other Law which requires a person to Remediate any Contamination in, on, under or emanating from the Site or any other land within the vicinity of the Site used or occupied by Project Co or its Associates for the Project. |
| Contestable Items | means goods or services the subject of this Agreement for which there are competitive international suppliers and Australian and New Zealand suppliers. The Contestable Items are identified in the LIDP as set out in the VIPP Schedule. |
| Contract Close | means the date of this Agreement. |
| Contract Particulars | means Schedule 1. |
| Contract Works Insurance (Material Damage) | means the Insurance policy set out in Part A, section (a) of the Insurance Schedule. |
| Contract Works Insurance (Public and Products Liability) | means the Insurance policy set out in Part A, section (b) of the Insurance Schedule. |
| Contract Year | means: <ol style="list-style-type: none">1 in respect of the first Contract Year, the period commencing on the Date of Provisional Acceptance and ending on the next 30 June;2 subject to paragraph 3, each subsequent 12 Month period during the FAW Phase or the Maintenance Phase commencing on 1 July and ending on 30 June; and3 in respect of the final Contract Year, the period from the end of the last full Contract Year (as defined in paragraph 2) to the Expiry Date. |
| Contribution Payment | means the amount payable by the State to Project Co on the SMPC Payment Date which is specified in the SMPC Project Co Notice approved by the State pursuant to clause 34A.2(b). |



Control means:

- 1 control of, or having the capacity to control the composition of the board or partnership committee, or decision making, directly or indirectly, in relation to the financial and operating policies;
- 2 being in a position to cast, or control the casting of, more than 20% of the maximum number of votes that may be cast at a general meeting, meeting of unitholders in a trust or partnership or similar; or
- 3 having a relevant interest (as defined in section 608 of the Corporations Act but as if a reference in that section to 'securities' were a reference to Securities as defined in this Agreement) in more than 20% of the Securities,

of an Entity (whether alone or together with any Associates). For the purposes of this definition, Associate or Associates has the meaning given in the Corporations Act and includes a person deemed to be an associate of a designated body (within the meaning of section 12 of the Corporations Act).

Controlling Entity means in relation to a Change in Control of a Consortium Member, the person or Entity to whom Control will pass.

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

- 1 controls (within the meaning of section 50AA of the Corporations Act) the trust or managed investment scheme (either directly or through one or more intermediary entities or trusts);
- 2 is in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a meeting of unit holders of the trust or managed investment scheme (either directly or through one or more intermediary entities or trusts or managed investment schemes); or
- 3 holds more than one half of the units in the trust or managed investment scheme.

Coordination and Interface Deed Poll means a deed poll titled 'Metro Tunnel - Coordination and Interface Deed Poll':

- 1 executed by Project Co, the Train Franchisee, a Metro Tunnel Package Contractor (or member of a Metro Tunnel Package Contractor), or other interface party; and
- 2 substantially in the same form as the deed poll executed by Project Co on or about the date of this Agreement in favour of, amongst others, the State, the Train Franchisee and the Metro Tunnel Package Contractors.

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



Correctly Applied means deposited in the Construction Proceeds Account or applied to pay Project Costs as specified in the Financial Model.

Cost for the purpose of clause 59, has the meaning given in clause 59.1(g).

Counterparty Details means in connection with each Group Member and each other person (other than the State, a Rail Franchisee Interface Party, Escrow Agent, the Secretary, MMRA, PTV, the CityLink Manager, the CityLink Consultant and the Independent Reviewer) who is a party to a State Project Document:

- 1 other than in the case of the Security Trustee, the Agent and the Financiers' Certifier, a certified copy of its constitution or partnership deed (or other constituent documents);
 - 2 in the case of a trustee who enters into the State Project Documents on behalf of a trust, a certified copy of the relevant trust deed;
 - 3 a certified copy of any powers of attorney under which the person executed each State Project Document; and
 - 4 other than in the case of the Security Trustee, the Agent, the Financiers' Certifier, and the Escrow Agent, a certified copy of the extract of minutes evidencing the resolutions of its board of directors or equivalent, authorising the entry into, delivery and observance of obligations in accordance with each State Project Document to which it is a party.
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Critical Interface Milestone means a milestone identified in the Critical Interface Milestone Program.

Critical Interface Milestone (Linked) means, in relation to a Critical Interface Milestone, each other Critical Interface Milestone identified in the Critical Interface Milestone Program as being part of the same 'interface definition sheet'.

Critical Interface Milestone (PPP Dependent) means a Critical Interface Milestone identified in the Critical Interface Milestone Program as:

- 1 'Rail Infrastructure Alliance responsible' and 'Project Co dependent'; or
- 2 'Rail Systems Alliance responsible' and 'Project Co dependent'.

Critical Interface Milestone (PPP Responsible) means a Critical Interface Milestone identified in the Critical Interface Milestone Program as:

- 1 'Project Co responsible' and 'Rail Infrastructure Alliance dependent'; or
- 2 'Project Co responsible' and 'Rail Systems Alliance dependent'.



Critical Interface Milestone Date means, in relation to a Critical Interface Milestone, the date set out in the Critical Interface Milestone Program as amended for:

- 1 any extension of time; or
- 2 variation pursuant to clause 21.1.

Critical Interface Milestone Event means a failure to achieve a Critical Interface Milestone (PPP Dependent) by the relevant Critical Interface Milestone Date.

Critical Interface Milestone Program means the program of Critical Interface Milestones set out in Schedule 30.

Cross Yarra Partnership means the Cross Yarra Partnership comprised of the CY Partners and constituted by the Partnership Deed.

CUB Contamination Plume means the known groundwater contamination plume associated with former industrial activities at the former Carlton and United Brewery site.

CUB Plume Mitigation System the groundwater contamination mitigation system for the CUB Contamination Plume.

Cultural Heritage Management Plan means the cultural heritage management plan procured by the State and approved under the *Aboriginal Heritage Act 2006* (Vic) for the construction of the Works.

Cure Program has the meaning given in clause 44.3(a).

CY HoldCo means:

- 1 in respect of CY Trustee 1, CY HoldCo 1 as trustee of CY Holding Trust 1;
- 2 in respect of CY Trustee 2, CY HoldCo 2 as trustee of CY Holding Trust 2;
- 3 in respect of CY Trustee 3, CY HoldCo 3 as trustee of CY Holding Trust 3; and
- 4 in respect of CY Trustee 4, CY HoldCo 4 as trustee of CY Holding Trust 4.

CY HoldCo 1 [not disclosed]

CY HoldCo 2 [not disclosed]



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| CY HoldCo 3 | [not disclosed] |
| CY HoldCo 4 | [not disclosed] |
| CY Holding Trust 1 | means the Cross Yarra Holding Trust 1 constituted under the trust deed dated 31 October 2017 executed by CY HoldCo 1. |
| CY Holding Trust 2 | means the Cross Yarra Holding Trust 2 constituted under the trust deed dated 31 October 2017 executed by CY HoldCo 2. |
| CY Holding Trust 3 | means the Cross Yarra Holding Trust 3 constituted under the trust deed dated 31 October 2017 executed by CY HoldCo 3. |
| CY Holding Trust 4 | means the John Holland (CY Holding) Trust constituted under the trust deed dated 31 October 2017 executed by CY HoldCo 4. |
| CY Partner | means each of: <ol style="list-style-type: none">1 CY Partner 1;2 CY Partner 2;3 CY Partner 3; or4 CY Partner 4. |
| CY Partner 1 | means CY Trustee 1 in its capacity as trustee of the CY Trust 1. |
| CY Partner 2 | means CY Trustee 2 in its capacity as trustee of the CY Trust 2. |
| CY Partner 3 | means CY Trustee 3 in its capacity as trustee of the CY Trust 3. |
| CY Partner 4 | means CY Trustee 4 in its capacity as trustee of the CY Trust 4. |
| CY Trust | means: <ol style="list-style-type: none">1 CY Trust 1;2 CY Trust 2;3 CY Trust 3; and4 CY Trust 4. |
| CY Trust 1 | means the Cross Yarra Trust 1 constituted under the trust deed |

dated 31 October 2017 executed by CY Trustee 1.

CY Trust 2 means the Cross Yarra Trust 2 constituted under the trust deed dated 31 October 2017 executed by CY Trustee 2.

CY Trust 3 means the Cross Yarra Trust 3 constituted under the trust deed dated 31 October 2017 executed by CY Trustee 3.

CY Trust 4 means the John Holland (CY) Trust constituted under the trust deed dated 31 October 2017 executed by CY Trustee 4.

CY Trustee means each of:

- 1 CY Trustee 1;
- 2 CY Trustee 2;
- 3 CY Trustee 3; and
- 4 CY Trustee 4.

CY Trustee 1 [not disclosed]

CY Trustee 2 [not disclosed]

CY Trustee 3 [not disclosed]

CY Trustee 4 [not disclosed]

D&C Activities means all things which Project Co is, or may be, required to carry out or do:

- 1 in connection with the Works; or
- 2 to otherwise comply with its obligations under the State Project Documents during the D&C Phase,

including the Advanced Works Activities, but excluding the provision of the Services.

D&C Direct Deed means the document entitled 'D&C Direct Deed - Metro Tunnel' between the State, Project Co, the D&C Subcontractor and each Parent Guarantor (D&C) in respect of the D&C Subcontractor.

D&C Phase means the period commencing on Contract Close and ending on the Last DLP.



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| D&C Phase Insurances | means: 1 the State D&C Phase Insurances; and 2 the Project Co D&C Phase Insurances. |
| D&C Program | means a program of the D&C Activities and the Final Acceptance Works containing the Target Critical Interface Milestone Dates and the details required by section 2.2 of Part C of the PS&TR or which the Independent Reviewer otherwise reasonably requires, as prepared and updated in accordance with this Agreement. |
| D&C Scope Change Works | has the meaning given in the Early Works Services Agreement. |
| D&C Subcontract | means the agreement between Project Co and the D&C Subcontractor to carry out the D&C Activities and the Final Acceptance Works and any other contract between Project Co and a Subcontractor to carry out the D&C Activities or the Final Acceptance Works. |
| D&C Subcontract Price | means the contract price for the delivery of the Works identified as such in the D&C Subcontract. |
| D&C Subcontractor | means as at Contract Close, the party specified in item 2 of the Contract Particulars and any person who in addition or substitution is engaged by Project Co to carry out all, or substantially all, of the D&C Activities and the Final Acceptance Works. |
| Daily Average P&S | has the meaning given in clause 26.11(a)(3). |
| Date for Acceptance | means the Date for Provisional Acceptance and the Date for Final Acceptance or, where the context requires, either one of these. |
| [not disclosed] | [not disclosed] |
| [not disclosed] | [not disclosed] |
| [not disclosed] | [not disclosed] |
| [not disclosed] | [not disclosed] |
| Date for Final | means the date that is 12 Months after the Date of Provisional |



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| Acceptance | Acceptance. |
| [not disclosed] | [not disclosed] |
| [not disclosed] | [not disclosed] |
| Date for Provisional Acceptance | means the date specified in item 4 of the Contract Particulars as adjusted (if at all) in accordance with this Agreement. |
| [not disclosed] | [not disclosed] |
| Date of Acceptance | means the Date of Provisional Acceptance and the Date of Final Acceptance (or either as the context requires). |
| Date of Final Acceptance | means the date specified in the Certificate of Final Acceptance signed by the Independent Reviewer. |
| Date of Handback | means the date specified in Project Co's notice in accordance with clause 24.4(i). |
| Date of Provisional Acceptance | means the date specified in the Certificate of Provisional Acceptance signed by the Independent Reviewer. |
| Day 1 Refund Payment | means the amount calculated in accordance with the table set out in clause 3.8 as updated by the State and Project Co immediately prior to Financial Close in accordance with the Financial Close Adjustment Protocol. |
| Day 1 Uninsurable Risk | means: <ol style="list-style-type: none">1 war, act of a public enemy (whether war is declared or not), civil war, rebellion, revolution, military usurped power, military insurrection, military commotion or other like hostilities;2 chemical, nuclear or biological contamination;3 ionising radiation or contamination by radioactivity; and4 any act of terrorism, except to the extent a declaration is made under the <i>Terrorism Insurance Act 2003</i> (Cth), save to the extent caused or contributed to by Project Co or any of its Associates. |
| Deed of Accession | means a deed substantially in the form set out in the Utilities Schedule, under which Project Co agrees to accede to a Utility |



Agreement.

Deed Poll Provider has the meaning given to that term in the Framework Coordination and Interface Principles.

Default Termination Event means the occurrence of any of the following events:

- 1 **(abandonment)**: Project Co displays an intention to wholly or substantially abandon the D&C Activities or the performance of the Services or does permanently abandon any part of the D&C Activities or the performance of the Services;
- 2 **(Project Co or Group Member Insolvency Event)**: an Insolvency Event occurs in relation to Project Co or a Group Member;
- 3 **(Insolvency Event of Consortium Member)**: an Insolvency Event occurs in relation to:
 - a one or more entities comprising the D&C Subcontractor prior to the end of the D&C Phase and:
 - i within 2 months of the Insolvency Event occurring, the remaining party or parties forming the D&C Subcontractor have not demonstrated to the State's reasonable satisfaction that they have the technical expertise and financial capacity to complete the D&C Activities and the Final Acceptance Works without replacing the entity or entities that suffered the Insolvency Event; and
 - ii to the extent that the State is not satisfied as contemplated by paragraph 3(a)(i), the entity or entities which has suffered the Insolvency Event is not replaced within 6 months of the Insolvency Event occurring, by a party approved by the State; or
 - b subject to paragraph 3(a), any Consortium Member (other than Project Co and the D&C Subcontractor) and that Consortium Member is not replaced within 6 months (or such longer period agreed in accordance with clause 44.4) by a party approved by the State;
- 4 **(assignment, transfer or disposal)**: Project Co breaches its obligations under clause 53.1(a)(1);
- 5 **(Share Capital Dealing)**: a Share Capital Dealing (which is not a Permitted Share Capital Dealing) occurs in respect of a Project Entity without the consent of the State in accordance with clause 53.4;
- 6 **(unremedied Major Default)**: a Major Default is capable of remedy and Project Co fails to remedy the Major Default within the period set out in the Major Default Notice given by the State in accordance with clause 44.2(b)(2)(A) (as extended, if at all, in accordance with clause 44.2 or 44.4);
- 7 **(Major Default not capable of remedy)**: a Major Default is not capable of remedy and Project Co fails to diligently comply with any reasonable requirements of the State to overcome the consequences of the Major Default within the period set out in the Major Default Notice given by the State in accordance with

clause 44.2(b)(2)(B) (as extended, if at all, under clause 44.2 or 44.4);

- 8 **(Major Default not capable of remedy)**: the State forms the view, acting in accordance with clause 44.5(a), that there are no reasonable requirements that can be met by Project Co to overcome the consequences of, or compensate the State for, that Major Default;
- 9 **(Service Failure)**: without limiting paragraphs 6, 7 and 8, following three Major Default Service Failures in any rolling four year period (whether or not they have been cured by Project Co), the point at which a further Major Default Notice is issued during that period in respect of a Major Default Service Failure; or
- 10 **(deemed Default Termination Event)**: any other event which is expressly deemed to be a Default Termination Event in accordance with this Agreement.

Default Termination Payment

means the Termination Payment for a Termination for a Default Termination Event calculated in accordance with the Termination Payments Schedule.

Defect

means:

- 1 any defect, damage, fault or omission (including shrinkage, expansion, fading or settlement) in:
 - a the Relevant Infrastructure;
 - b any Returned Asset, excluding any damage to a Returned Asset which occurs after Handback (other than to the extent caused or contributed to by Project Co or its Associates);
 - c any Metro Tunnel Interface Works; or
 - d any Ticketing Works,
 excluding any such things which would have been accommodated in accordance with Best Industry Practices;
- 2 any other aspect of:
 - a the Relevant Infrastructure; or
 - b any Returned Asset,
 which is not in accordance with the requirements of this Agreement; or
- 3 any other aspect of:
 - a the Metro Tunnel Interface Works which is not in accordance with the relevant Delivery Agreement; or
 - b any Ticketing Works which is not in accordance with the contractual requirements for the Ticketing Works.

Defects Liability Period

means a period referred to in clause 25.2(a).



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| Defects Retention Amount | has the meaning given in clause 25.1(j). |
| Defects Term | has the meaning given in clause 25.1(a). |
| Degraves Entrance Works | means the Works in relation to the station entrance at Degraves St on the Flinders Street Station side of the fire/flood doors that separates Flinders Street Station from the underground pedestrian link to the Station at CBD South described in Appendix A5 of Part A of the PS&TR, that will be operated and maintained by the Train Franchisee under the Train Franchisee Arrangements. |
| Delegate | means the person named as the 'Delegate' in the Delegation Agreement, or such subsequent employee of the D&C Subcontractor appointed by the State as its delegate under the Early Works Managing Contractor Agreement. |
| Delegation Agreement | means the document entitled 'Metro Tunnel: Delegation Agreement' between the State, the D&C Subcontractor, and the 'Delegate' dated on or about the date of this Agreement. |
| Delivery Agreement | has the meaning given to that term in the Framework Coordination and Interface Principles. |
| Design Development Coordinator | means the party specified in item 5 of the Contract Particulars. |
| Design Documentation | means all deliverables in respect of the design documentation (including all draft and final design standards, design reports, durability reports, drawings, specifications, manuals, designs, models, samples, patterns and calculations) in computer readable and written forms, or stored by any other means, which Project Co or any of its Associates creates, or are required to, or must necessarily, create, in carrying out the D&C Activities and the Final Acceptance Works. |
| Design Interface Party | means to the extent that the Design Interface Works: <ol style="list-style-type: none">1 are Rail Systems Alliance Works, the Rail Systems Alliance;2 are Rail Infrastructure Alliance Works, the Rail Infrastructure Alliance;3 are Ticketing Works, the Ticketing Works Contractor; and4 are the high-capacity metropolitan trains to be delivered pursuant to the High Capacity Metro Trains Project, the contractor for the High Capacity Metro Trains Project. |



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| Design Interface Works | means each part of: <ol style="list-style-type: none">1 the Rail Systems Alliance Works;2 the Rail Infrastructure Alliance Works;3 the Ticketing Works; and4 the high-capacity metropolitan trains to be delivered pursuant to the High Capacity Metro Trains Project, that Project Co must, in accordance with this Agreement, integrate with the Works. |
| Design Life | means in respect of a Design Life Asset, the period of years specified in Table 3-1 of the Design Life Requirements. |
| Design Life Asset | means the Relevant Infrastructure and each component, system and sub-system of the Relevant Infrastructure set out in Table 3-1 of the Design Life Requirements. |
| Design Life Requirements | means section 3 of Part B of the PS&TR. |
| Design Management Plan | means the plan of that name prepared and updated by Project Co in accordance with the PS&TR. |
| Design Optimisation Land | means the parcels of land highlighted either orange or green in the Design Optimisation Land and PSA2 Schedule, and includes Design Optimisation PSA 2 Land. |
| Design Optimisation Land and PSA2 Schedule | means Schedule 40. |
| Design Optimisation PSA 2 Land | means the parcels of land highlighted orange in the Design Optimisation Land and PSA2 Schedule. |
| Design Review Process | means the process for the development of the design of the Works to be implemented in accordance with the Design Review Schedule. |
| Design Review Schedule | means Schedule 25. |
| Designated Investor | means the Equity Investor specified in item 6 of the Contract Particulars. |

Direct Costs

means the reasonable and demonstrable costs which are:

- 1 incremental in nature;
- 2 directly attributable to, and would not have been incurred but for, the Train Franchisee's performance of its obligations under the Train Franchisee Cooperation Agreement;
- 3 net of any reimbursement or payment the Train Franchisee receives directly from a consultant or contractor engaged by it to perform the Train Franchisee's obligations;
- 4 net of any reimbursement or payment otherwise received by the Train Franchisee in relation to the Train Franchisee's performance of its obligations under the Train Franchise Agreement; and
- 5 net of any benefit or reimbursement the Train Franchisee receives from a third party relating to the procurement of services or materials used in connection with the Train Franchisee's performance of its obligations under the Train Franchisee Cooperation Agreement,

and includes:

- 6 any costs incurred by the Train Franchisee in repairing any physical damage caused by Project Co or its Associates,
- 7 Shared Direct Costs;
- 8 an estimate of employee leave entitlements required by law in respect of all Train Franchise Employees employed in relation to undertaking or assisting in the delivery of the Train Franchisee's obligations under the Train Franchise Agreement;
- 9 any insurance deductible payable in respect of a Train Franchisee Insurance,

but excludes:

- 10 any costs incurred as a result of:
 - a the failure by the Train Franchisee to comply with its obligations under the Train Franchisee Cooperation Agreement or the Franchise Agreement, other than where the failure was caused by an act or omission of Project Co or its Associates (not being an act or omission expressly permitted or allowed for under the Train Franchisee Cooperation Agreement);
 - b the rectification of obligations previously performed by or on behalf of the Train Franchisee under the Train Franchisee Cooperation Agreement in circumstances where the need to perform the rectification is caused or contributed to by the negligent act or omission, or default on the part of the Train Franchisee or a Train Franchisee's Associate; or
 - c any default or negligent or fraudulent act or omission on the part of the Train Franchisee, or an Associate of the Train Franchisee;
- 11 any increase or decrease in the amount of any Train Franchisee EOPR payable by or to the Train Franchisee under the Train Franchise Agreement for any adverse impacts on Passenger Services (including flow on effects) primarily caused by the Project;

- 12 any amount the Train Franchisee is required to pay under clause 19 of the Train Franchisee Cooperation Agreement;
- 13 the costs of any contractor, consultant or supplier who has not been retained on commercial/arm's length terms and conditions;
- 14 margin for profit on goods supplied, works undertaken and services performed by the Train Franchisee;
- 15 any revenue impacts associated with the implementation of the Project;
- 16 non-award based incentives or bonus payments; and
- 17 any costs recovered through other PTV or State payments.

Dispute has the meaning given in clause 46.1(a).

Distribution means without double counting, any:

- 1 dividend, return of capital, or other distribution or payment (in cash or in kind) in connection with the share capital, units or partnership interest of a Group Member or shareholder loans (or other loans in the nature of equity funding) to, or for the benefit of, a Group Member;
- 2 release by a Group Member of any actual or contingent liability of any Project Entity or any Equity Investor (or any Related Body Corporate or Related Trust Entity of an Equity Investor); or
- 3 payment, loan or transfer of any assets or provision of any other benefit by a Group Member to any Equity Investor (or any Related Body Corporate or Related Trust Entity of any Equity Investor) which is not on arm's length commercial terms.

Domain Project Area means the land within the Project Land Boundary in Domain as shown in the dashed red line on Project Drawing Number TAS-CYP-DM-00-DRG-AUD-DOM-750200-DP Rev G.4 in the Soil Contamination Plans, and extending south along St Kilda Road to the end of the Project Land Boundary (south of the Toorak Road intersection) and north along St Kilda Road to the Dorcas Street intersection, being Edmund Herring Memorial Oval.

Downstream Independent Reviewer Functions has the meaning given in the Independent Reviewer Deed of Appointment.

DPRC means the Development Plan Review Committee established by the Minister for Planning under terms of reference dated 12 July 2017.

Duration has the meaning given in the Train Franchisee Cooperation



Agreement.

Early Services Fee has the meaning given in the Early Works Services Agreement.

Early Works means the works to be performed by the Early Works Managing Contractor pursuant to the Early Works Managing Contractor Agreement, and includes the PPP Interface Works.

Early Works Managing Contractor means John Holland Pty Ltd (ABN 11 004 282 268).

Early Works Managing Contractor Agreement means the document titled 'Melbourne Metro Rail Project: Early Works Managing Contractor Agreement, General Conditions of Contract' dated 24 June 2016 between the Secretary to the Department of Economic Development, Jobs, Transport and Resources and the Early Works Managing Contractor, as amended or replaced from time to time.

Early Works Proposal means the letter entitled 'Melbourne Metro (Tunnel and Station) PPP Project: Early Works Proposal including summary of outstanding items which may have a cost impact on CYP's Proposal' dated 21 September 2017 from Capella Capital and the D&C Subcontractor to Evan Tattersall.

Early Works Risk Fee has the meaning given in the Early Works Services Agreement.

Early Works Services Agreement means the document entitled 'Metro Tunnel – Early Works Services Agreement' between the State and the D&C Subcontractor dated on or about the date of this Agreement, as amended from time to time.

Easements means those easements, restrictions on use, covenants, agreements, or other similar arrangements together with any leases, sub leases, licences, rights or privileges in each case as are granted at Contract Close.

Engineering Cadet means a person who is combining formal university training in an engineering or related discipline with practical work experience.

Entity has the meaning given in section 64A of the Corporations Act, but is also deemed to include a joint venture within the meaning of Australian Accounting Standard 131 (AASB 131).



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| Environment | means the physical factors of the surroundings of humans and other life forms, including the land, soil, plants, habitat, waters, atmosphere, climate, sounds, odours, tastes, biodiversity and the Project Area's social and aesthetic characteristics. |
| Environmental Hazard | means a state of danger to human beings or the Environment whether imminent or otherwise resulting from the location, storage, handling or release of any substance having toxic, corrosive, flammable, explosive, infectious or otherwise dangerous characteristics. |
| Environmental Management Framework | means the environmental management framework procured by the State for the construction and operation of the Works and approved by the Victorian Minister for Planning under the Incorporated Document. |
| Environmental Management Plans | means: <ol style="list-style-type: none">1 the 'Construction Environmental Management Plan';2 the 'Operations Environmental Management Plan';3 the 'Site Environment Implementation Plan';4 the 'Noise and Vibration Management Plan'; and5 the 'Urban Design Management Plan', each as: <ol style="list-style-type: none">6 defined under; and7 prepared and updated by Project Co in accordance with, the Project Management Requirements. |
| Environmental Performance Requirements | means the environmental performance requirements which form part of the Environmental Management Framework. |
| Environmental Requirements | means all Laws relating to the Environment and the conditions and requirements of any Approval relating to the Environment together with all environmental safeguards and measures necessary to avoid, reduce, minimise or mitigate the environmental impacts of the Project Activities, including those identified in section 14 of Part B of the PS&TR. |
| EPA | means the Environment Protection Authority constituted under the <i>Environment Protection Act 1970</i> (Vic). |
| EPBC Particular Manner Decision | means the decision of the Commonwealth Minister for the Environment dated 22 September 2015 that the proposed action of constructing rail tunnels, underground station, tram and train interchanges and rail tunnel entrances in relation to Metro Tunnel |

was not a controlled action under the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth).

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| Equipment | <p>means:</p> <ol style="list-style-type: none"> 1 all furniture, fittings, and equipment necessary: <ol style="list-style-type: none"> a for the Relevant Infrastructure to be Fit For Purpose; and b for Project Co to perform the Services; and 2 all other furniture, fittings, and equipment forming part of the Relevant Infrastructure, <p>excluding Temporary Equipment.</p> |
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| Equity | <p>means the equity capital to be or which has been contributed to Project Co by way of subscription for shares in each CY Trustee and units in each CY Trust as set out in the Financial Model.</p> |
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| Equity Associate | <p>has the meaning given in the Permitted Share Capital Dealing Schedule.</p> |
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| Equity Documents | <p>means each of the documents listed in the Equity Documents Schedule.</p> |
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| Equity Documents Schedule | <p>means Schedule 19.</p> |
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| Equity Investor | <p>means:</p> <ol style="list-style-type: none"> 1 a person identified in the Ownership Schedule as an Equity Investor (subject to any replacements in accordance with clause 53); 2 each other person who has provided or has agreed to provide: <ol style="list-style-type: none"> a equity funding at the times and in the amounts set out in the Financial Model (whether by way of subscription for units or shares or provision of unitholder or shareholder loans); and b any other equity, financial arrangement (other than under the On-Loan Agreement or the Interest Rate On-Swap), security or option issued by or provided to a Group Member which does not constitute a Refinancing; or 3 any person who replaces or is added, in accordance with clause 53, to the persons referred to in paragraphs 1 or 2. |
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| Equity IRR | <p>[not disclosed]</p> |
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| Escrow Agent | <p>means the escrow agent appointed pursuant to the Escrow Agreement or any replacement escrow agent appointed in</p> |
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accordance with clause 54.9.

Escrow Agreement means the document entitled 'Escrow Agreement - Metro Tunnel' between the State, Project Co and the Escrow Agent.

Existing Rail Network means the rail network and systems used by:

- 1 the Train Franchisee to undertake and deliver the train services operated by the Train Franchisee; and
- 2 the Tram Franchisee to undertake and deliver the tram services operated by the Tram Franchisee.

Expert Determination Agreement means Schedule 16.

Expiry Date has the meaning given in clause 4.2.

Explanation has the meaning given in clause 26.2(c)(1).

Extension Event means each of the following events which occurs between Financial Close and Provisional Acceptance:

- 1 a Compensable Extension Event;
- 2 a Force Majeure Event; and
- 3 an instruction to suspend the D&C Activities by the State under clause 16.7(a), to the extent the circumstances leading to the suspension were a Force Majeure Event and that Force Majeure Event or its effects are subsisting.

Facility Agreement means the document entitled 'Syndicated facility agreement – Metro Tunnel – Tunnel and Stations PPP Project' between, among others, Project Co, Finance Co, each CY Trustee in its personal capacity and as trustee for their respective CY Trust, the Agent and the Security Trustee entered into on or about the date of this Agreement.

Failure Event means an event defined as such in the Services Specification.

Failure Event Abatement means in respect of a Failure Event, an amount in dollars calculated in respect of that Failure Event in accordance with the Payment Schedule.

FAW Failure Event means an event defined as such in the Payment Schedule.



FAW Failure Event Abatement means in respect of a FAW Failure Event, an amount in dollars calculated in respect of that FAW Failure Event in accordance with the Payment Schedule.

FAW Phase means the period commencing on the Date of Provisional Acceptance and ending on the Date of Final Acceptance.

FAW Quality Failure has the meaning given to that term in the Payment Schedule.

FAW Quality Failure Abatement means in respect of a FAW Quality Failure, an amount in dollars calculated in respect of that FAW Quality Failure in accordance with the Payment Schedule.

FAW Service Failure means, during the FAW Phase, the occurrence of any of the following events:

- 1 a FAW Failure Event;
- 2 a FAW Quality Failure; or
- 3 a FAW Train Failure Event,

except to the extent that the failure is a consequence of the proper and timely implementation of a Modification or Minor Modification during the FAW Phase and is contemplated in the relevant Change Notice or agreed Minor Modification Proposal.

FAW Service Failure Abatement means:

- 1 a FAW Train Failure Event Abatement;
- 2 a FAW Failure Event Abatement; or
- 3 a FAW Quality Failure Abatement.

FAW Train Failure Event means an event defined as such in the Payment Schedule.

FAW Train Failure Event Abatement means in respect of a FAW Train Failure Event, an amount in dollars calculated in respect of that FAW Train Failure Event in accordance with the Payment Schedule.

FCA (Train) Base Track Occupation Schedule means the 'Base Track Occupation Schedule' as defined in the Train Franchisee Cooperation Agreement.

[not disclosed] 4 [not disclosed]



FFP Warranty means the warranty given by Project Co in accordance with clause 5.2.

Final Acceptance means the stage when:

- 1 the balance of the Works not completed as part of Provisional Acceptance have been completed, including:
 - a completing all Final Acceptance Works; and
 - b correcting all Defects in the Works and any Returned Asset:
 - i specified in the Certificate of Provisional Acceptance;
 - ii notified by Project Co to the State in accordance with clause 25.1(b) prior to the Date of Final Acceptance; or
 - iii notified by the State to Project Co in accordance with clause 25.1(c) prior to the Date of Final Acceptance;
- 2 all Returned Assets have achieved Handback;
- 3 all Metro Tunnel Interface Works are complete and free of Defects;
- 4 the Ticketing Works are complete and free of Defects;
- 5 the Maintained Rail Infrastructure Alliance Assets are complete and free of Defects;
- 6 the Maintained Assets, the Returned Train Works and the Returned Existing Network Works have been incorporated into the Train Infrastructure Lease; and
- 7 Project Co has done everything which this Agreement requires Project Co to do prior to or as a condition precedent to Final Acceptance, including the requirements set out in the Completion Schedule.

Final Acceptance Payment means the Final Acceptance Payment calculated in accordance with the Payment Schedule payable in accordance with clause 36.

Final Acceptance Schedule means Schedule 31.

Final Acceptance Works means the Works described in the Final Acceptance Schedule.

Final D&C Phase Modification Payment means an amount equal to the corresponding Receivables Purchase Price in respect of the Additional Receivables purchased by Finance Co from the State under the Receivables Purchase Deed resulting from a Change Compensation Event.

Final D&C Phase Payment means the amount to be paid by the State to Project Co under clause 35A.1 as adjusted (if at all) in accordance with clause 35A.1(c), which (exclusive of GST) must equal the Receivables



Purchase Price calculated under the Receivables Purchase Deed.

Final D&C Phase Price means the aggregate of:

- 1 the Final D&C Phase Payment; and
- 2 any Final D&C Phase Modification Payments,

which (exclusive of GST) must equal the Receivables Purchase Price calculated under the Receivables Purchase Deed.

Final Expiry Date means the date which is the 25th anniversary of the earlier of the Date for Provisional Acceptance and the Date of Provisional Acceptance.

Final Operational Access Plan means an Operational Access Plan

- 1 determined to be a Final Operational Access Plan in accordance with clause 6.6(d) or clause 6.6(e)(2); or
- 2 otherwise determined to be a Final Operational Access Plan pursuant to clause 46.

Finance Co means Stella MMTS Finance Pty Limited (ACN 612 094 078).

Finance Direct Deed means the document entitled 'Finance Direct Deed - Metro Tunnel' between the State, Project Co, Finance Co and the Agent and the Security Trustee on behalf of the Financiers.

Finance Documents means:

- 1 each of the documents listed in the Finance Documents Schedule;
- 2 any document entered into in relation to a Refinancing of the Actual Debt approved by the State under clause 40; and
- 3 any other document which the parties agree is a Finance Document for the purposes of this Agreement.

Finance Documents Schedule means Schedule 18.

Financial Close means when the last Condition Precedent to be satisfied (or waived in accordance with clause 3.3) has been satisfied (or waived in accordance with clause 3.3) as set out in a notice given by the State to Project Co in accordance with clause 3.2(c).

Financial Close Adjustment Protocol means the protocol to be applied at Financial Close to update the Base Case Financial Model and make amendments to this



Agreement as set out in Schedule 24.

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| Financial Close Financial Model | means the Base Case Financial Model as updated and audited in accordance with the Financial Close Adjustment Protocol. |
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| Financial Model | means the Financial Close Financial Model updated from time to time in accordance with clause 54.3. |
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| Financial Year | means each 12 Month period commencing on 1 July and ending on 30 June. |
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| Financiers | means the providers of any financing facilities, financial arrangements or accommodation to a Group Member under the Finance Documents from time to time and may, where the context permits, include any agent or trustee of such Financiers. |
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| Financiers' Certifier | means the Financiers' Certifier under and as defined in the D&C Subcontract which as at Contract Close is the party set out in item 7 of the Contract Particulars. |
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| Financing Delay Costs | has the meaning given in the Change Compensation Principles. |
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| Fit For Purpose | <p>means:</p> <ol style="list-style-type: none">1 fit for its intended purposes, functions, uses and requirements including operation by any party including the Rail Franchisees (as relevant), and including, the performance of:<ol style="list-style-type: none">a Rail Operations; andb the Services in accordance with, and so as to meet the performance standards set out in, the Final Acceptance Schedule or the Services Specification,during the FAW Phase or the Maintenance Phase (as relevant); and2 otherwise meets the requirements, as specified in, or reasonably inferred from: <ol style="list-style-type: none">3 this Agreement (including the PS&TR, the Final Acceptance Schedule and the Services Specification); and4 in the case of the Metro Tunnel Interface Works, the relevant Delivery Agreement, and, without limiting Project Co's obligations in respect of Modifications: <ol style="list-style-type: none">5 in the case of the Relevant Infrastructure (other than the Maintained Rail Infrastructure Alliance Assets and the Final Acceptance Works), determined by reference to the purposes, functions, uses and requirements which are current and apply |
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as at the Date of Provisional Acceptance;

- 6 in the case of the Metro Tunnel Interface Works (other than the Maintained Rail Infrastructure Alliance Assets) and the Final Acceptance Works, determined by reference to the purposes, functions, uses and requirements which are current and apply as at the Date of Final Acceptance;
- 7 in the case of the Maintained Rail Infrastructure Alliance Assets determined by reference to the purposes, functions, uses and requirements which are current and apply as at the relevant Rail Infrastructure Alliance Handover Date;
- 8 in the case of each Returned Asset, determined by reference to the purposes, functions, uses and requirements which are current and apply as at the relevant Date of Handback; and
- 9 in the case of the Temporary Works, determined by reference to the purposes, functions, uses and requirements which are current and apply as at completion of the relevant package of works.

Fixed Artwork Budget has the meaning given to that term in clause 61C.2(a)(1), as increased in accordance with clause 61C.2(c)(6)(B).

Fixed MM Budget has the meaning given to that term in clause 61C.1(a)(2).

Flinders Street Station Redevelopment means the State project for exterior repair works and functional upgrades to improve passenger flows and customer experience at Flinders Street Station, including the redesign of the eastern concourse which commenced in July 2016.

Floating Rate Component means each amount calculated in accordance with section 12 of the Payment Schedule.

Floating Rate Component Invoice means an invoice for payment of the Floating Rate Component in the form agreed by the parties (each acting reasonably) after Financial Close.

Force Majeure Event means each of the following events:

- 1 earthquake, tropical cyclone, natural disaster, landslide, seismic activity, tsunami or mudslide;
- 2 a flood which might, at Contract Close, be expected to occur less frequently than once in every 100 years;
- 3 war, act of a public enemy (whether war is declared or not), civil war, rebellion, revolution, military usurped power, military insurrection, military commotion or other like hostilities;
- 4 chemical, nuclear or biological contamination;
- 5 ionising radiation or contamination by radioactivity;



- 6 explosion caused by events referred to in paragraphs 1 or 3; or
 - 7 an act of terrorism,
- which occurs at or directly in the vicinity of the Construction Areas or the Maintenance Areas and:
- 8 prevents Project Co from carrying out all or a material part of the Project Activities or prevents the State from carrying out all or a material part of its obligations under the State Project Documents;
 - 9 prevents any or all of the State, the State's Associates, a Metro Tunnel Package Contractor, or a Rail Franchisee Interface Party from carrying out all or a material part of their obligations under any Project Document; or
 - 10 which entitles a Rail Franchisee Interface Party to cancel, fail to give, delay or reduce an Agreed Occupation as a result of a Force Majeure Event (Franchisee).

Force Majeure Event (Franchisee)

has the meaning given to that term in (as relevant):

- 1 the Train Franchisee Cooperation Agreement; or
- 2 the Tram Franchisee Cooperation Agreement.

Force Majeure Termination Event

means a Force Majeure Event which prevents Project Co from carrying out all or a material part of the Project Activities or prevents the State from carrying out all or a material part of its obligations under the State Project Documents for a continuous period exceeding 6 months, or any event expressly deemed to be a Force Majeure Termination Event in accordance with this Agreement.

Force Majeure Termination Payment

means the Termination Payment for a Termination for a Force Majeure Event in accordance with the Termination Payments Schedule.

Forecast Maintenance and Refurbishment Program

has the meaning given in the Services Specification.

Forecast Payment Claim

means for each Month, the amount set out in the State Construction Contribution Schedule for that Month.

Foundation Works

means in relation to:

- 1 the Station at CBD North; or
- 2 the Station at CBD South,

the Works that Project Co must provide to the relevant over-site developer to enable the commencement of the relevant Oversight Development Works.



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| Framework Coordination and Interface Principles | means the framework coordination and interface principles set out in Attachment D to the Coordination and Interface Deed Poll executed by Project Co. |
| Franchisee Interface Management Plan | has the meaning given to 'Interface Management Plan' in (as relevant): <ol style="list-style-type: none">1 the Train Franchisee Cooperation Agreement; or2 the Tram Franchisee Cooperation Agreement. |
| Franchisee Non-Compliance Comments | has the meaning given in clause 38.9(d). |
| [not disclosed] | 3 [not disclosed] |
| FRC Commencement Date | has the meaning given to that term in the Payment Schedule. |
| General Change in Law | means a Change in Law that is not a Project Specific Change in Law. |
| Government Gazette | means the Commonwealth of Australia Gazette or the Victoria Government Gazette, as the case may be. |
| Government Party or Parties | means all and any of the State and any Authority. |
| Government Rail Insurance Program | means an insurance program effected by the State for the purpose of insuring multiple State assets, including the 'Government Rail Insurance Program' which is in effect at the date of this Agreement. |
| [not disclosed] | 4 [not disclosed] |
| Groundwater Contamination | means Contamination of groundwater. |
| Groundwater Contamination Modification Event | means where, during the D&C Phase, Project Co is required under clause 7.2(b)(1), clause 7.3, clause 7.4(c) or otherwise under this Agreement to Remediate Groundwater Contamination (or any part of a mass of Groundwater Contamination) that Project Co or its Associates: <ol style="list-style-type: none">1 would not otherwise physically encounter in the carrying out of |



the Project Activities;

- 2 have not caused or contributed to, other than to the extent the Groundwater Contamination is an inherent consequence of performing the Project Activities in accordance with this Agreement, the Environmental Management Plans or the Initial Contaminated Groundwater Methodology; and
- 3 would not otherwise be required to Remediate in performing:
 - a the Project Activities in accordance with the Initial Contaminated Groundwater Methodology; and
 - b the Project Activities referred to in the Initial Contaminated Groundwater Methodology in accordance with Best D&C Practices as determined at Contract Close.

Group means each Project Entity, each CY Trustee, each CY Trust, each Holding Entity and any wholly owned subsidiary company or trust of any of them, and **Group Member** means any of them.

Group Training Organisation means an organisation that employs Apprentices and Trainees and hosts them out to other businesses to undertake relevant on the job experience.

GST has the meaning given in the GST Act and where appropriate includes Notional GST.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

GST Law has the meaning given in the GST Act.

Handback means where Project Co has done everything that this Agreement requires to enable Project Co to hand back the relevant Returned Asset to the State or Returned Asset Owner in accordance with clause 24.4.

Handover means the stage when Project Co has done everything that this Agreement requires to enable Project Co to handover the Relevant Infrastructure to the State (or its nominee) in the Handover Condition in accordance with clause 32.10.

Handover Bond means a Performance Bond provided by Project Co in favour of the State in accordance with clause 32.7(a)(2).

Handover Condition has the meaning given in clause 32.10(a).



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| Handover Escrow Account | has the meaning given in clause 32.7(a)(1). |
| Handover Package | means the package of documents relating to Handover prepared and updated by Project Co in accordance with the Services Specification. |
| Handover Refurbishment Works | has the meaning given in clause 32.3(b)(1). |
| Handover Reviewer | means a person with suitable expertise and experience appointed as the independent reviewer for Handover in accordance with clause 32.1(a). |
| Hazardous Substance | means any substance which would or might reasonably be expected to cause damage or injury to any person, any property or the Environment. |
| Health and Safety Incident | means any incident that: <ol style="list-style-type: none">1 is required to be notified to an Authority under any OHS Legislation;2 results or could potentially result in injury, illness or disease requiring a person to miss more than one day of work (for the avoidance of doubt, this includes 'near misses');3 results in an injury that requires treatment by a medical practitioner;4 results in, or could potentially result, in injury, illness or disease to a member of the public (for the avoidance of doubt, this includes 'near misses'); or5 results, or could potentially result, in damage to the Relevant Infrastructure or other property, plant or equipment. |
| Health and Safety Management Plan | means the plan of that name prepared and updated by Project Co in accordance with the Project Management Requirements. |
| Health Privacy Principles | means the Health Privacy Principles set out in the <i>Health Records Act 2001</i> (Vic). |
| Heritage Bond | means: <ol style="list-style-type: none">1 an unconditional bank guarantee given in favour of the Heritage Council of Victoria (ABN 87 967 501 331) pursuant to the Heritage Permit No. P25650 granted under section 74 of the <i>Heritage Act 1995</i>, in respect of the reinstatement of trees, the liability for which is[not disclosed] for the reinstatement of the |

trees;

- 2 an unconditional bank guarantee or insurance bond given in favour of the Heritage Council of Victoria (ABN 87 967 501 331) pursuant to Heritage Permit No. P25649 granted under section 74 of the *Heritage Act 1995*, in respect of the replacement of removed trees, the liability for which is [not disclosed] for the replacement of 18 trees;
- 3 an unconditional bank guarantee or insurance bond given in favour of the Heritage Council of Victoria (ABN 87 967 501 331) pursuant to Heritage Permit No. P24393 granted under section 74 of the *Heritage Act 1995*, in respect of the reinstatement of the South African Soldiers Memorial and the John Cockbill Drinking Fountain and the replacement of removed trees at 29A Albert Road, Melbourne, the liability for which is:
 - a [not disclosed] for the replacement of two removed trees; and
 - b [not disclosed] for the reinstatement of the South African Soldiers Memorial and the John Cockbill Drinking Fountain; and
- 4 the bank guarantee given in favour of the Heritage Council of Victoria (ABN 87 967 501 33) pursuant to the Heritage Permit No. P26851 granted under section 74 of the *Heritage Act 1995*, in respect of the removal of the substation and all associated infrastructure and the reinstatement of the Edmund Herring Oval, the liability for which is [not disclosed].

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| Heritage Bond Beneficiary | means, in relation to each Heritage Bond, the beneficiary of that Heritage Bond. |
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| Heritage Claim | means a claim made in connection with a requirement under any Law for the protection, preservation or removal of any Artefact. |
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| High Capacity Metro Trains Project | means the State project for the procurement of 65 high-capacity metropolitan trains and a new depot. |
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| Holding Entity | means in the case of: <ol style="list-style-type: none"> 1 Project Co, each CY HoldCo; and 2 each CY Trustee and each CY Trust, the CY HoldCo which directly or indirectly holds all of the issued shares or units in that CY Trustee or CY Trust, as set out in the Ownership Schedule. |
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| ICN | means Industry Capability Network Victoria (ABN 20 007 058 120). |
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| IFC Design Documentation | means design documentation issued for construction in accordance with: |
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- 1 section 7.5.4 of Part C of the PS&TR; and
- 2 the Design Review Schedule.

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| Incident | <p>means any event which:</p> <ol style="list-style-type: none"> 1 involves personal injury, death or significant damage to or destruction of the Relevant Infrastructure or other property in connection with delivery of the Project; 2 poses a serious risk to: <ol style="list-style-type: none"> a the health or safety of any person; b the Environment; c the Site; or d the structural integrity of any part of the Relevant Infrastructure; 3 poses a serious risk of damaging or destroying the Relevant Infrastructure or any other property; 4 prevents or hinders the Tunnel and Stations or any part of them from being open for the safe, continuous and efficient passage of Users and Rolling Stock; or 5 requires an urgent response to prevent any occurrence which could: <ol style="list-style-type: none"> a cause personal injury or significant damage to or destruction of the Relevant Infrastructure or other property; or b compromise the health or safety of any person or property. |
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| Incorporated Document | <p>means the document titled 'Melbourne Metro Rail Project Incorporated Document, December 2016' inserted into the Planning Schemes on 5 January 2017 pursuant to Section 6(2)(j) of the <i>Planning and Environment Act 1987 (Vic)</i>, as amended on 8 June 2017 titled 'Melbourne Metro Rail Project Incorporated Document, May 2017', as amended or replaced in accordance with Planning Scheme Amendment No 2.</p> |
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| Indemnified Persons | <p>has the meaning given in Intellectual Property Schedule.</p> |
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| Independent Contamination Auditor | <p>means an auditor engaged jointly by Project Co and the D&C Subcontractor who must be:</p> <ol style="list-style-type: none"> 1 an auditor authorised by the EPA to be an 'environmental auditor' for the purposes of the <i>Environmental Protection Act 1970 (Vic)</i>; and 2 independent of the Contaminated Land Assessor. |
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| Independent Environmental Auditor | <p>means an auditor appointed jointly by Project Co and the D&C Subcontractor in connection with the Environmental Management Framework or the Environmental Requirements.</p> |
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Independent Reviewer means the entity appointed as the Independent Reviewer under the Independent Reviewer Deed of Appointment, as replaced (if at all) under clause 11.9.

Independent Reviewer Deed of Appointment means the document entitled 'Independent Reviewer Deed of Appointment - Metro Tunnel' between the State, Project Co, each Rail Franchisee Interface Party, and the Independent Reviewer in the form set out in Schedule 13.

Independent Reviewer Deed of Appointment (Advanced Works) means the document entitled 'Independent Reviewer Deed of Appointment - Metro Tunnel (Advanced Works)' entered into in respect of the Advanced Works between the State, the D&C Subcontractor, each Rail Franchisee Interface Party, and the Independent Reviewer.

Independent Safety Auditor means an auditor appointed by Project Co for the purpose of auditing compliance with Project Co's health and safety obligations.

Index means each index set out in the Indexes Schedule.

Indexed means the relevant amount is to be indexed in accordance with the Indexes Schedule.

Indexes Schedule means Schedule 22.

Indirect or Consequential Loss means any:

- 1 loss of opportunity, profit, anticipated profit, business, business opportunities, revenue or any failure to realise anticipated savings;
- 2 penalties payable by the State or any of its Associates under agreements other than this Agreement; or
- 3 penalties payable by Project Co or any of its Associates under agreements other than this Agreement.

Industrial Action means labour matters and industrial relations matters affecting the Site, the Project Activities or the Relevant Infrastructure, including:

- 1 a strike, lockout, demarcation, ban, limitation on work, industrial dispute or any other action that meets the definition of industrial action in section 19 of the *Fair Work Act 2009* (Cth);
- 2 any claim relating to labour or industrial arrangements applicable to any Associate of Project Co; and
- 3 any besetting or obstruction of the Site.



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| Industrial Relations Laws | means all workplace, employment or industrial relations related Laws, as amended from time to time. |
| Industrial Special Risks Insurance | means the Insurance policy set out in Part C, section (a) of the Insurance Schedule. |
| Industrial Waste | means any waste arising from commercial, industrial or trade activities and any waste containing substances or materials which are potentially harmful to human beings, any property or the Environment. |
| Information Privacy Principles | means the Information Privacy Principles set out in the <i>Information Privacy Act 2000</i> (Vic) or the <i>Privacy and Data Protection Act 2014</i> (Vic) (as in force from time to time). |
| Initial Commercial Opportunity Tenant | means a Commercial Opportunities Tenant in respect of an Initial Permitted Commercial Opportunity. |
| Initial Contaminated Groundwater Methodology | means Exhibit 9, and includes the measures comprising the CUB Plume Mitigation System as at the date of Contract Close. |
| Initial Permitted Commercial Opportunities | <p>means:</p> <ol style="list-style-type: none">1 the conduct of advertising:<ol style="list-style-type: none">a in accordance with the Advertising Principles; andb in the locations shown as being locations for 'Advertising' in the 'signage placement plan' for the relevant Station in the Technical Solution (or locations reasonably consistent with those set out in the signage placement plan provided that the number of locations remains the same); and2 a commercial purpose which:<ol style="list-style-type: none">a is entered into with a Commercial Opportunities Tenant of comparable quality (including in respect of fit-out) to the relevant 'Example Commercial Opportunities Tenants'; andb where the 'Location' or the proportion of the 'Plan Area' allocated to that 'Example of Initial Permitted Commercial Opportunities Purpose' is as set out in the Commercial Opportunities Schedule or is changed from that set out in the Commercial Opportunities Schedule but in each case the 'Location' remains within the relevant Station, <p>as described in the Commercial Opportunities Schedule.</p> |
| Initial State D&C Phase Insurances | the form of the State D&C Phase Insurances contained in the Insurance Schedule, as amended from time to time with the consent of the State and Project Co. |

Insolvency Event

means the occurrence of any of the following events:

- 1 subject to paragraph 2 in the case of a trust, in relation to an Entity:
 - a **(liquidator, administrator or receiver appointed)**: a liquidator, administrator, trustee in bankruptcy, receiver or receiver and manager or similar officer is appointed in respect of the Entity or any asset of the Entity;
 - b **(distress or execution)**: a distress, attachment or other execution is levied or enforced upon or against any assets of the Entity and in the case of a writ of execution or other order or process requiring payment, it is not withdrawn or dismissed within 10 Business Days;
 - c **(winding up)**: an order is made for the administration, dissolution or winding up of the Entity, or an application to the courts is made (and is not stayed or dismissed within 20 Business Days after being made) or a resolution is passed for the administration, dissolution or winding up of the Entity other than for the purposes of a Solvent reconstruction or amalgamation on terms approved by the State Representative;
 - d **(cessation of business)**: the Entity ceases, or threatens to cease, to carry on its business or payment of its debts generally, other than for the purposes of a Solvent reconstruction or amalgamation on terms approved by the State Representative;
 - e **(arrangement or compensation)**: the Entity enters, or resolves to enter into any scheme of arrangement or composition with its creditors generally, or any class of its creditors, other than for the purposes of a Solvent reconstruction or amalgamation on terms approved by the State Representative;
 - f **(inspector)**: an inspector is appointed under any companies legislation to investigate all or any part of the affairs of the Entity in relation to a possible contravention by the Entity of that legislation and the appointment:
 - i is not withdrawn within 10 Business Days; and
 - ii in the reasonable opinion of the State Representative, may have a material adverse effect;
 - g **(insolvency)**: the Entity is unable to pay its debts when they fall due, or is deemed unable to pay its debts under any applicable Law (other than as a result of a failure to pay a debt or claim which is the subject of a good faith dispute); or
 - h **(deregistration)**: for a registered corporation under the Corporations Act, a step taken under section 601AA, 601AB or 601AC of the Corporations Act to cancel its registration; and
 - 2 in relation to a trust:
 - a **(application to court)**: an application or order is sought or made (and is not stayed or dismissed within 20 Business Days after being sought or made) in any court for the property of the trust to be brought into court or administered by the court or brought under its control; or
 - b **(assets insufficient)**: the assets of the trust are not
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sufficient to satisfy the trustee's debts as and when they become due and payable in respect of which it has a right to be indemnified out of the assets of the trust.

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| Installation Subcontract | means a Subcontract for the installation of equipment designed, constructed, procured, or supplied by: <ol style="list-style-type: none">1 the Rail Systems Alliance;2 the Rail Infrastructure Alliance; or3 VicTrack, and includes an Installation Subcontract (PSD). |
| Installation Subcontract (PSD) | means a Subcontract for the installation of the Platform Screen Doors. |
| Installation Subcontractor (PSD) | means the entity selected as part of the tender process being conducted by the Rail Systems Alliance in consultation with Project Co for the Installation Subcontract (PSD). |
| Insurance Claims Protocol | means the document titled 'Metro Tunnel Project - Third Party Claims Protocol' between Project Co and VMIA dated on or about the date of this Agreement, in the form of Schedule 39 as amended from time to time. |
| Insurance Proceeds Account | means the account established and maintained in accordance with clause 43.12. |
| Insurance Schedule | means Schedule 11. |
| Insurances | means the insurances required to be effected and maintained in accordance with this Agreement. |
| Insured | means any person entitled to coverage under any of the Insurances as referred to in the Insurance Schedule. |
| Intellectual Property Rights | includes any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future, including rights of any kind in: <ol style="list-style-type: none">1 inventions, discoveries and novel designs, whether or not registered or registrable as patents, innovation patents or designs, including developments or improvements of equipment, technology, processes, methods or techniques;2 literary works, dramatic works, musical works, artistic works, cinematograph films, television broadcasts, sound broadcasts, |



published editions of works and any other subject matter in which copyright (including future copyright and rights in the nature of or analogous to copyright) may, or may upon creation of the subject matter, subsist anywhere in the world;

- 3 registered and unregistered trade marks and service marks, including goodwill in the business concerned in the relevant goods and/or services;
- 4 trade, business or company names;
- 5 internet domain names; and
- 6 proprietary rights under the *Circuit Layouts Act 1989* (Cth), whether created or in existence before or after Contract Close.

Intellectual Property Schedule

means Schedule 12.

Interest Period

has the meaning given to it in the Facility Agreement or any corresponding period under any agreement that replaces the Facility Agreement upon any Refinancing.

Interest Rate Cap Option

[not disclosed]

Interest Rate Cap Option Gain

[not disclosed]

Interest Rate On-Swap

means the interest rate swap between Finance Co and Project Co.

Interface Definition Sheets

means the Interface Definition Sheets set out in Appendix A3 of Part A of the PS&TR which include all Interface Steps (but not the dates by which such Interface Steps must be performed).

Interface Party or Interface Parties

has the meaning given in clause 13.9(a).

Interface Quality Event

means:

- 1 where any part of the Metro Tunnel Interface Works or the Design Interface Works are not Fit For Purpose (which, notwithstanding paragraphs 6 and 7 of the definition of Fit For Purpose, will be determined by reference to the purposes, functions, uses and requirements which are current and apply at the time of completing or integrating the relevant Metro Tunnel Interface Works or the Design Interface Works with the Works); or
 - 2 where the design of any part of the Design Interface Works is
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not compatible with the IFC Design Documentation.

Interface Step means an activity, deliverable or milestone associated with interfacing works set out in the Interface Definition Sheets but excluding the Critical Interface Milestones.

Interface Step Date means in respect of an Interface Step, the date:

- 1 agreed between Project Co and the Rail Systems Alliance or the State (as relevant) pursuant to clause 12.5(b); or
- 2 determined by the Independent Reviewer pursuant to clause 12.5(c),

as varied in accordance with this Agreement.

Intervening Event means each of the following events that occur during the period from Provisional Acceptance to the Expiry Date:

- 1 a Compensable Intervening Event;
- 2 where Project Co is unable to respond to or rectify a Failure Event due to a specific instruction given by the Train Franchisee pursuant to:
 - a clause 10.1 or 14.1 of the Train Franchisee Cooperation Agreement; or
 - b section 2.2.2(a)(iii) or parts AM07-AM10 or AM 12 of section 4.3 of the Services Specification,which:
 - c is not given in accordance with the Operations and Maintenance Protocol to the extent the Operations and Maintenance Protocol sets out requirements in respect of instructions given by the Franchisee pursuant to the provisions referred to in paragraphs a and b; and
 - d as an inevitable consequence delays the response or rectification;
- 3 an instruction to suspend the Services by the State under clause 16.7(a), to the extent the circumstances leading to the suspension were a Force Majeure Event and that Force Majeure Event or its effects are subsisting;
- 4 the exercise by the State of its rights under clause 41.1 as a consequence of any Step-In Events under clause 41.1(a)(5) or clause 41.1(a)(6), to the extent the relevant Step-In Event was not the result of any act or omission of Project Co or any of its Associates (other than any act or omission undertaken in accordance with the Project Documents or undertaken lawfully in connection with the performance of the Services);
- 5 a Force Majeure Event; and
- 6 during the FAW Phase, an event which would have been an Extension Event if it had occurred prior to the Date of Provisional Acceptance.



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| Investigative Authority | means any Authority having a statutory right to investigate the Project Activities or the Project. |
| JCC Modification | means a Modification as a result of a decision of the Joint Coordination Committee, a JCC Subcommittee or the JCC Systems Integration Team pursuant to the Framework Coordination and Interface Principles. |
| JCC Subcommittee | has the meaning given to 'Subcommittee' in the Framework Coordination and Interface Principles. |
| JCC Systems Integration Team | has the meaning given to 'SIT' in the Framework Coordination and Interface Principles. |
| Joint Coordination Committee | means the 'joint coordination committee' established pursuant to the Framework Coordination and Interface Principles. |
| Key Approval | means each of the following Approvals procured by the State in relation to the Project: <ol style="list-style-type: none">1 the Environmental Management Framework;2 the EPBC Particular Manner Decision;3 the Planning Scheme Amendment No 1;4 on and from the Planning Scheme Amendment No 2 Date, Planning Scheme Amendment No 2; and5 the Cultural Heritage Management Plan. |
| Key Approval Event | means: <ol style="list-style-type: none">1 legal action being taken in connection with a Key Approval;2 any review or revocation of, alteration, amendment, variation, or change to, a Key Approval; or3 any review or revocation of, alteration, amendment, variation, or change to, an Approval (other than a Key Approval) consequent on the circumstances specified in paragraph 1 or paragraph 2, but does not include legal action being taken, or any review or revocation of, or change to:<ol style="list-style-type: none">4 a Key Approval for any breach or alleged breach (which is later established to be a breach) of a Key Approval by Project Co or any of its Associates;5 any further or secondary Approval that relates to or forms part of a Key Approval (other than as contemplated in paragraph 3) or any amendment to a Key Approval of a type referred to in clause 8.2(d);6 a Key Approval or any further or secondary Approval due to:<ol style="list-style-type: none">a any act or omission of Project Co or any of its Associates, |



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| | <p>including a change to the design or delivery methodology in relation to the Project or the Relevant Infrastructure; or</p> <p>b a failure by Project Co or any of its Associates to comply with any Approval or Law; or</p> <p>7 the Incorporated Document, or Planning Scheme Amendment No1, to reflect Planning Scheme Amendment No 2.</p> |
| Key D&C Phase Insurances | has the meaning given in clause 43.21. |
| Key Milestone Program | has the meaning given to that term in the Framework Coordination and Interface Principles. |
| Key People | means the people specified in item 8 of the Contract Particulars as replaced (if at all) in accordance with clause 13.1(d). |
| Key Subcontract | means each of: <ol style="list-style-type: none">1 the D&C Subcontract;2 the Maintenance Subcontract; and3 any Subcontract in respect of the Project Activities as specified in item 9 of the Contract Particulars, as replaced in accordance with clause 13.1(d). |
| Key Subcontractor | means each of: <ol style="list-style-type: none">1 the D&C Subcontractor;2 the Maintenance Subcontractor; and3 any Subcontractor who is engaged to perform the Project Activities as specified in item 10 of the Contract Particulars, as replaced in accordance with clause 13.1(d). |
| Key Subcontractor Interface Deed | means the document entitled 'Key Subcontractor Interface Deed' between Project Co, the D&C Subcontractor and the Maintenance Subcontractor entered into on or about the date of this Agreement. |
| Land Arrangements | means any easements, restrictions on use, contracts, deeds, covenants, agreements (including building or strata management statements) and other arrangements entered into by the State or its Associates for the purpose of granting the Maintenance Licence. |
| Land Availability Date | means in respect of a parcel of land referred to in the Land Availability Plans (as relevant): |



- 1 the Temporary Land Availability Date; or
 - 2 the Permanent Land Availability Date.
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Land Availability Plans means the land availability plans set out in Part (d) of the Property Schedule, as amended from time to time in accordance with clause 6.3.

Last DLP means the date of the expiry of the last Defects Liability Period.

Law means:

- 1 those principles of common law and equity established by decisions of courts;
- 2 all other statutes, regulations, by laws, ordinances and subordinate legislation of the Commonwealth, the State or an Authority; and
- 3 Approvals (including any conditions or requirements under them).

Level Crossing Removal Project means the State project for the removal of 50 dangerous and congested level crossings across Melbourne.

Liability means any debt, obligation, claim, action, cost, (including legal costs, deductibles or increased premiums), expense, loss (whether direct or indirect), damage, compensation, charge or liability of any kind (including fines or penalties), whether it is:

- 1 actual, prospective or contingent; or
- 2 currently ascertainable or not,

and whether under this Agreement, any other Project Document, the Advanced Works Deed, or arising at Law.

Licence Fee means the Licence Fee (as defined in the Maintenance Licence).

Licence Fee Payment Schedule means the Licence Fee Payment Schedule (as defined in the Maintenance Licence).

Licensed Construction Area Plan has the meaning given in the Construction Licence.

Licensed Construction Areas means that part of the subdivided stratum (which may be limited in height and depth) which is:

- 1 included in the Land Availability Plans; and
- 2 identified in the Licensed Construction Area Plan as amended



from time to time in accordance with a Construction Licence.

Licensed Maintenance Areas means those areas:

- 1 within the Licensed Construction Areas; and
- 2 to which Project Co requires access in order to perform the Services,

which from the Date of Final Acceptance will be areas identified in the Access Plan.

LIDP means the Local Industry Development Plan set out in the VIPP Schedule.

LIDP Monitoring Table means the table included in the VIPP Schedule.

Liquidated Damages means, in respect of each Critical Interface Milestone (PPP Responsible), [not disclosed] per day.

Liquidated Damages Cap means, [not disclosed].

Local Content (ANZ) means the cost of goods and services sourced from within Australia or New Zealand, excluding the cost of any imported components. For the purposes of this definition, items imported into New Zealand and used for, or incorporated into, goods and services sourced from New Zealand, will be deemed to be imported components.

Local Content Requirement means the requirement to utilise Local Content (ANZ) for the carrying out of the D&C Activities so that the aggregate of Local Content (ANZ) to all goods and services utilised in the D&C Activities is [not disclosed].

Lost Commercial Opportunities Revenue has the meaning given in the Change Compensation Principles.

LUAA means a land use activity agreement entered into in accordance with the TOS Act.

Maintained Assets means each of:

- 1 the Tunnel;
- 2 the Stations;
- 3 on and from the relevant Rail Infrastructure Alliance Handover



- Date, the Maintained Rail Infrastructure Alliance Assets; and
- 4 all structures, buildings, plant, machinery, equipment, fixtures, furniture, fittings, landscaping, spare parts and other improvements on or in the Licensed Maintenance Areas:
 - a existing at the Date of Final Acceptance; or
 - b completed by Project Co under this Agreement after the Date of Final Acceptance,

to be called 'Metro Tunnel' or such other name as agreed by the State but excluding:

- 5 Temporary Works;
- 6 Returned Works;
- 7 Ticketing Works;
- 8 Commercial Opportunities Works; and
- 9 Metro Tunnel Interface Works (other than the Maintained Rail Infrastructure Alliance Assets on and from the relevant Rail Infrastructure Alliance Handover Date).

Maintained Rail Infrastructure Alliance Assets

means all permanent works associated with the cut and cover tunnels delivered by the Rail Infrastructure Alliance.

Maintenance Areas

means:

- 1 the Licensed Maintenance Areas;
 - 2 the Commercial Opportunities Leased Areas; and
 - 3 the Non-Licensed Maintenance Areas.
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Maintenance Direct Deed

means the document entitled 'Maintenance Direct Deed - Metro Tunnel' between the State, Project Co, the Maintenance Subcontractor and the Parent Guarantor in respect of the Maintenance Subcontractor.

Maintenance Licence

means any licence granted in accordance with clause 6.9 in connection with any of the Maintained Assets, in the form set out in Part (c) of the Property Schedule.

Maintenance Manuals

means each of:

- 1 the Asset Management Manual; and
 - 2 the O&M Manual.
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Maintenance Phase

means the period commencing on the Date of Final Acceptance and ending on the Expiry Date.



Maintenance Phase Documentation means:

- 1 the Maintenance Manuals;
- 2 the Forecast Maintenance and Refurbishment Program;
- 3 each 'Maintenance Management Plan' described in the Services Specification, including the Asset Management Plan; and
- 4 the Asset Register,

as reviewed, amended and updated in accordance with the Review Procedures and otherwise in accordance with this Agreement.

Maintenance Phase Insurance (Public and Products Liability) means the Insurance policy set out in Part C, section (b) of the Insurance Schedule.

Maintenance Phase Insurances means:

- 1 the State Maintenance Phase Insurances; and
- 2 the Project Co Maintenance Phase Insurances.

Maintenance Phase OSD/PPP Principles [not disclosed]

Maintenance Phase Utility Agreement has the meaning given to that term in clause 16.5(a)(3).

Maintenance Service Failure means, during the Maintenance Phase, the occurrence of any of the following events:

- 1 a System Failure Event;
- 2 a Failure Event;
- 3 a Reliability Adjustment; or
- 4 a Quality Failure,

except to the extent that:

- 5 the failure is a direct and intended consequence of the carrying out of any planned maintenance or refurbishment of the Maintained Assets as set out in the Asset Management Plan provided that if the failure lasts for more than the planned duration of the planned maintenance or refurbishment, a Maintenance Service Failure will be deemed to have occurred at the end of the planned period for planned maintenance or refurbishment; or
- 6 the failure is a consequence of the proper and timely implementation of a Modification or Minor Modification during the Maintenance Phase and is contemplated in the relevant Change Notice or agreed Minor Modification Proposal.



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| Maintenance Service Failure Abatement | means: <ol style="list-style-type: none">1 a System Failure Event Abatement;2 a Failure Event Abatement;3 a Reliability Adjustment Abatement; or4 a Quality Failure Abatement. |
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| Maintenance Services | means all things and tasks which Project Co is required to carry out during the Maintenance Phase to discharge its maintenance and repair obligations in accordance with the State Project Documents and the Services Specification, including the maintenance and repair of the Maintained Assets but excluding the removal of graffiti from the portal, decline structures and other physical assets located in immediate proximity to the portal and forming part of the Maintained Assets. |
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| Maintenance Site | means: <ol style="list-style-type: none">1 the Maintenance Areas; and2 all other areas upon which the Project Activities are being carried out or materials are being prepared or stored during the Maintenance Phase. |
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| Maintenance Subcontract | means the agreement between Project Co and the Maintenance Subcontractor to carry out the Maintenance Services and any other contract between Project Co and a Subcontractor to perform the Maintenance Services. |
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| Maintenance Subcontractor | means as at Contract Close the party specified in item 11 of the Contract Particulars and any person who, in addition or substitution, is engaged by Project Co to carry out all, or substantially all, of the Maintenance Services. |
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| Major Default | means any of the following events: <ol style="list-style-type: none">1 (Service Failure): there are Service Failures and, under the Abatement Regime (whether or not Project Co has actually been abated), Project Co has accumulated:<ol style="list-style-type: none">a Service Failure Abatements:<ol style="list-style-type: none">i of greater than [not disclosed] of the Quarterly Service Payments (prior to Abatement) in each of two Quarters in any three consecutive Quarters; orii of greater than [not disclosed] of the Quarterly Service Payments (prior to Abatement) in any Quarter;b [not disclosed] Quality Failure Points in any Quarter; orc [not disclosed] Quality Failure Points or more in aggregate over any three consecutive Quarters. <p>provided that, if any Major Default occurs under this paragraph 1, then for the purposes of this paragraph 1 only, Project Co's</p> |
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- accumulated Service Failure Abatements and Quality Failure Points will be deemed to reset to zero from the date of the relevant Major Default Notice;
- 2 **(fraud)**: Project Co or any of its Associates engages in fraud, collusion or dishonest conduct in carrying out their obligations under the Project Documents or in relation to the Project;
 - 3 **(Independent Reviewer Notice)**: the Independent Reviewer notifies the State and Project Co:
 - a an Amended Remediation Plan does not satisfactorily address the requirements of clause 26.2(f) under clause 26.2(k)(1);
 - b that Project Co is not diligently pursuing a Remediation Plan or an Amended Remediation Plan under clause 26.2(k)(2); or
 - c that Project Co will not be able to achieve Provisional Acceptance by the date that is 24 months after the Date for Provisional Acceptance under clause 26.2(k)(3);
 - 4 **(failure to achieve Provisional Acceptance)**: Project Co fails to achieve Provisional Acceptance by the Date for Provisional Acceptance;
 - 5 not used;
 - 6 **(failure to achieve Critical Interface Milestone (PPP Responsible))**: Project Co fails to achieve a Critical Interface Milestone (PPP Responsible) by the relevant Critical Interface Milestone Date and the failure is deemed to be a Major Default pursuant to clause 21.5(b);
 - 7 **(failure to provide Explanation or Remediation Plan)**: Project Co fails to provide an Explanation or Remediation Plan in accordance with clause 26.2(c) within 10 Business Days of receipt of the Independent Reviewer's notice under clause 26.2(b);
 - 8 **(failure to provide a Remediation Plan)**: Project Co fails to provide a Remediation Plan in accordance with clause 26.2(e) within 10 Business Days of receipt of the Independent Reviewer's notice under clause 26.2(d);
 - 9 **(failure to provide an Amended Remediation Plan)**: Project Co fails to provide an Amended Remediation Plan in accordance with clause 26.2(i) within 5 Business Days of receipt of the Independent Reviewer's notice;
 - 10 **(Finance Documents)**: any event that would restrict or cancel, or entitle a Financier to restrict or cancel, Project Co's or Finance Co's ability to obtain or to have available finance in accordance with the Finance Documents;
 - 11 **(default not cured)**: any breach of any State Project Document by a Project Entity or any of its Associates (other than a Service Failure) which has not been cured within 20 Business Days of the State giving Project Co a notice which contains details of the breach;
 - 12 **(breaches of obligations)**: Project Co or any of its Associates breaches an obligation under:
 - a clause 9, 10, 13.1 to 13.6, 13.9 or 53 whether or not due to an act or omission by Project Co or any of its Associates;
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- b clause 62.1(b)(2), in relation to a Probity Event; or
 - c clauses 33.4(b) or 34.4, in relation to a State Contribution;
- 13 (**Share Capital Dealing**): a Share Capital Dealing (which is not a Permitted Share Capital Dealing) occurs in respect of a Group Member (other than Project Co) without the consent of the State in accordance with clause 53.4;
- 14 (**insurance breach**): a material breach by Project Co of its obligations under with clauses 43.2, 43.3, 43.8 or 43.18;
- 15 (**Insolvency Event**): an Insolvency Event occurs in relation to a Consortium Member (excluding Project Co or a Group Member);
- 16 (**default by Project Entity**): a Project Entity defaults:
- a in a material respect; or
 - b in a persistent or repeated fashion,
- in the due observance and performance of:
- c subject to paragraph d, any of its obligations under this Agreement (other than an obligation referred to in paragraphs 1-15 or paragraph 18 of this definition, or an obligation to which the Abatement Regime applies), or any other Project Document; or
 - d any of its obligations under any Finance Document or Equity Document to the extent such default constitutes an event of default under the relevant Finance Document or Equity Document (provided that such default is in relation to a material obligation and has not been waived or is not in the process of being remedied or otherwise overcome in accordance with the applicable regime contemplated by the Finance Document or Equity Document);
- 17 (**material breach by Project Co's Associates**): any breach by any of Project Co's Associates of a Project Document (other than this Agreement, a Finance Document or an Equity Document) which has a material adverse effect on Project Co's ability to deliver the Project; or
- 18 (**Refinancing**): a failure by Project Co to inform the State of, or obtain the prior consent of the State to, (as the case may be) of a Refinancing or to distribute the State Share of Refinancing Gain in accordance with clause 40.

Major Default Notice has the meaning given in clause 44.2(b).

Major Default Service Failure means an event described in paragraph 1 of the definition of Major Default.

Major Projects Skills Guarantee means the Victorian Government policy applicable from 1 January 2016 titled 'Major Projects Skills Guarantee' which requires that a minimum of 10% of the total labour hours for the Works be performed by Apprentices, Trainees and Engineering Cadets.



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| Major Projects Skills Guarantee Compliance Plan or Compliance Plan | means the plan set out in Exhibit 7. |
| Major Projects Skills Guarantee Final Report | has the meaning given in clause 61.2. |
| Major Projects Skills Guarantee Performance Report | has the meaning given in clause 61.2. |
| Management Plans | means, each management plan and sub-plan required to be prepared and updated by Project Co in accordance with the Project Management Requirements. |
| Management Services Agreement | means the agreement of that name between Finance Co, Project Co and Capella Management Services Pty Limited ABN 80 127 727 842 dated on or about the date of this Agreement. |
| Marine Transit (TBM) (Delay in Start Up) Insurance | means the Insurance policy set out in Part A, section (e) of the Insurance Schedule. |
| Marine Transit (TBM) Insurance | means the Insurance policy set out in Part A, section (d) of the Insurance Schedule. |
| Material Subcontract | means any: <ol style="list-style-type: none">1 Subcontract for all or part of the D&C Activities or the Final Acceptance Works:<ol style="list-style-type: none">a the value of the works under which exceeds [not disclosed]; orb which, when aggregated with the value of the works under each other Subcontract for the D&C Activities or the Final Acceptance Works previously entered into by the same Subcontractor (other than the D&C Subcontract under the preceding sub-paragraph), will result in the total value of those contracts exceeding [not disclosed];2 Subcontract for all or part of the Maintenance Services:<ol style="list-style-type: none">a the annual value of which exceeds [not disclosed] (Indexed); orb which, when aggregated with the annual value of each other Subcontract for Maintenance Services previously entered into by the same Subcontractor (other than the Maintenance Subcontract in accordance with the preceding sub-paragraph), will result in the total annual value of those |



contracts exceeding [not disclosed] (Indexed);

- 3 Installation Subcontract; or
- 4 Subcontract for the provision of architectural design services, whether or not Project Co is a party.

Material Subcontractor means:

- 1 as at Contract Close, the Subcontractors who are engaged by a Key Subcontractor under a Material Subcontract; and
- 2 all persons who, in addition or substitution, are engaged by a Key Subcontractor to carry out work under a Material Subcontract,

and **Material Subcontractor** means each of them.

Meanwhile Metro Scope means the preliminary scope for Temporary Works comprising creative strategies, activities and artwork to be delivered during the D&C Phase, indicatively described in Schedule 37 and agreed by the parties in accordance with clause 61C.1:

- 1 including consultants and external advisory fees; and
- 2 excluding Project Co and D&C Subcontractor resources involved in the process for determining those Temporary Works.

Melbourne Market Site has the meaning given in clause 6.3A(a).

Metro Tunnel means the twin nine-kilometre rail tunnels from Kensington to South Yarra and five underground Stations, as part of the new Sunbury to Cranbourne / Pakenham line including all enabling and complementary works or services associated with them.

Metro Tunnel Interface Works means the works to be performed by a Metro Tunnel Package Contractor, pursuant to a Delivery Agreement including:

- 1 the Rail Systems Alliance Works; and
- 2 the Rail Infrastructure Alliance Works.

Metro Tunnel Package Contractor has the meaning given to 'Package Contractor' in the Framework Coordination and Interface Principles but excludes:

- 1 Project Co; and
- 2 the Early Works Managing Contractor in respect of the PPP Interface Works.

Minor Defect means a Defect:

- 1 which will not prevent those Works or those Metro Tunnel

Interface Works being Fit For Purpose:

- a in relation to the Works (other than the Returned Works and the Foundation Works) and the Metro Tunnel Interface Works, at the Date of Provisional Acceptance;
 - b in relation to the Returned Works, at the relevant Date of Handback; and
 - c in relation to the Foundation Works, at CBD South OSD Acceptance or CBD North OSD Acceptance (as relevant);
- 2 which the Independent Reviewer determines Project Co or the relevant Metro Tunnel Package Contractor has reasonable grounds for not promptly rectifying; and
- 3 the existence and making good of which will not inconvenience or adversely affect:
- a in relation to any Works (other than the Returned Works and the Foundation Works) or any Metro Tunnel Interface Works the State, the Train Franchisee Interface Party, a relevant Utility Infrastructure owner or operator, or a Metro Tunnel Package Contractor;
 - b in relation to any Returned Works, the relevant Returned Asset Owner; and
 - c in relation to any Foundation Works, the CBD South OSD Developer or CBD North OSD Developer (as relevant),
- having regard to the obligation that the Works and the Metro Tunnel Interface Works be Fit For Purpose in accordance with paragraph 1.

Minor Modification

means a Modification:

- 1 in respect of which:
 - a Project Co would not be entitled to an extension of time to a Critical Interface Milestone Date, a Progress Milestone Date or the Date for Provisional Acceptance if it occurs prior to Provisional Acceptance;
 - b Project Co or its Associates will not incur, in the aggregate, more than [not disclosed] (Indexed); and
 - c the warranty in clause 5.2 could not reasonably be expected to be impacted; or
- 2 which the parties agree is a Minor Modification.

Minor Modification Proposal

means a proposal for the implementation of one or more Minor Modifications in the form, and containing the information, agreed by the parties.

MM Strategy

has the meaning given to that term in clause 61C.1(b).

MMRA

means the Melbourne Metro Rail Authority established as an administrative office of the Department of Economic Development,

Jobs, Transport and Resources.

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| Model Output Schedule | means the work sheets in the Financial Close Financial Model identified as the Model Output Schedule, a printout of which is signed or initialled by the State Representative and Project Co (amongst others) on or before Financial Close. |
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| Model Variation Event | has the meaning given in clause 54.3. |
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| Modification | <p>1 means any change to:</p> <ul style="list-style-type: none"> a the Relevant Infrastructure; or b the Project Activities, <p>including any addition, increase, decrease, omission, deletion, demolition or removal to or from the Relevant Infrastructure, or the Project Activities or any change to or from them.</p> <p>2 in respect of each Station, any change to:</p> <ul style="list-style-type: none"> a a location shown as being a location for 'Advertising' in the 'signage placement plan' in the Technical Solution for each advertising format; or b the retail area as shown in the Technical Solution, <p>and, in each case:</p> <ul style="list-style-type: none"> c the impact of the change cannot be avoided by the allocation of an equivalent "location" or "area"; d the change is not as a result of normal design development including in in relation to spatial planning, engineering services design development, structural design development or passenger circulation and queuing; e without limiting d above, the change is not necessarily or strictly required in order to meet the requirements of this Agreement (including the PS&TR); f Project Co has notified the State prior to incorporating the change into the design, and the State has directed Project Co to proceed to incorporate the change; and g the change will have a material adverse impact on Project Co's ability to derive revenue from the relevant Permitted Commercial Opportunity in accordance with the forecast set out in the Financial Model. |
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| Modification Estimate | has the meaning given in clause 38.3(b)(1). |
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| Modification Order | means a direction issued by the State under clause 38.1 which requires Project Co to proceed with a Modification. |
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| Modification Proposal | has the meaning given in clause 38.6(a). |
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Modification Quote means the quote prepared by Project Co in accordance with clause 38.3(b).

Modification Request has the meaning given in clause 38.2.

Month means a calendar month, and 'Monthly' has a corresponding meaning.

Monthly D&C Phase Progress Report means the Monthly progress report to be provided by Project Co during the D&C Phase in accordance with section 1.4 of Part C of the PS&TR.

Monthly FAW Performance Report has the meaning given in the Final Acceptance Schedule.

Monthly Maintenance Schedule has the meaning given to that term in the Services Specification.

Monthly Performance Report means:

- 1 during the FAW Phase, the Monthly FAW Performance Report; and
- 2 during the Maintenance Phase, has the meaning given in the Services Specification.

Motor Vehicle Insurance means the Insurance policies for motor vehicles:

- 1 in respect of the D&C Phase, set out in Part B, section (g); and
- 2 in respect of the Maintenance Phase, set out in Part D, section (c),

of the Insurance Schedule.

National Police Certificate means a certificate issued by Victoria Police or such other organisation from time to time authorised to issue such certificates containing details of a person's criminal history.

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

New WHS Regulations means any work health and safety regulations replacing or amending the *Occupational Health and Safety Regulations 2007* (Vic) in line with the model Work Health and Safety Regulations as endorsed by the Workplace Relations Ministerial Council (Cth) in



December 2009.

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| Non-Licensed Construction Area | means any land on which the Works are required to be undertaken and which is not a Licensed Construction Area. |
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| Non-Licensed Maintenance Areas | means any land on which the Maintenance Services are required to be performed and which is not a Commercial Opportunities Leased Area or a Licensed Maintenance Area. |
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| Notional GST | means where, in relation to the Intergovernmental Agreement on the Reform of <i>Commonwealth-State Financial Relations and the National Taxation Reform (Consequential Provisions) Act 2000</i> (Vic) (NTR Act) or a direction given under section 6 of the NTR Act, the supplier is obliged to make voluntary or notional GST payments, in which case Notional GST those voluntary or notional payments. For the avoidance of doubt, Notional GST amounts will be calculated as if the GST Act applies to the relevant supplies. |
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| Number | has the meaning given in the Train Franchisee Cooperation Agreement. |
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| Number of Days Early | has the meaning given in clause 26.11(a)(1). |
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| Number of EOT Days | has the meaning given in clause 26.11(a)(2). |
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| O&M Manual | has the meaning given to that term in the Services Specification. |
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| Obsolescence | <p>occurs if:</p> <ol style="list-style-type: none">1 any:<ol style="list-style-type: none">h spare or component part of the Relevant Infrastructure:<ol style="list-style-type: none">i is no longer manufactured by its original manufacturer; orii is no longer generally available; ori consumable required to support the maintenance, repair or overhaul of any spare or component part of the Relevant Infrastructure is no longer generally available, and the lack of availability of the relevant spare, component or consumable cannot be managed through holding additional spares, components or consumables for the remaining Design Life of the Relevant Infrastructure; or2 any software required to use, operate or maintain the Relevant Infrastructure, is no longer supported by its supplier, and Obsolete has an equivalent meaning. |
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| Occupancy Permit | means an occupancy permit issued in respect of a part of the Commercial Opportunities Leased Area for the purposes of the <i>Building Act 1993</i> (Vic) (or if occupancy permits are no longer issued, such other certificates required by Law as may serve a similar purpose). |
| OHS Accreditation Scheme | means the Australian Government Building and Construction OHS Accreditation Scheme established by the <i>Fair Work (Building Industry) Act 2012</i> (Cth). |
| OHS Legislation | means all safety related Laws relevant and applicable to any part of the Project Activities and includes the <i>Occupational Health and Safety Act 2004</i> (Vic), the <i>Electricity Safety Act 1998</i> (Vic), the Rail Safety National Law, the Tram Safety Act, the <i>Heavy Vehicle National Law Application Act 2013</i> (Vic) and associated regulations. |
| OHS Regulations | means the <i>Occupational Health and Safety Regulations 2017</i> (Vic). |
| Omitted Works | has the meaning given in clause 38.5(a). |
| On-Loan Agreement | means the loan agreement between Project Co and Finance Co dated on or about the date of this Agreement. |
| Operational Access Plan | has the meaning given in clause 6.6(a). |
| Operations and Maintenance Protocol | has the meaning given in the Train Franchisee Cooperation Agreement. |
| Original Date for Final Acceptance | means the date that is 12 Months after the Original Date for Provisional Acceptance. |
| Original Date for Provisional Acceptance | means the date for Provisional Acceptance as set out in item 4 of the Contract Particulars. |
| OSD Entity | means: <ol style="list-style-type: none">1 in respect of CBD North, the owner of the relevant completed Oversight Development Works; and2 in respect of CBD South, the 'Tenant', being the lessee under the 'Commercial Lease' to be granted by the State in accordance with the relevant Commercial Development Agreement. |



Other GRIP Insured means, in respect of any State Procured Insurance that has been procured as part of the broader Government Rail Insurance Program, any person or entity that is entitled to cover under that State Procured Insurance, including the Train Franchisee (notwithstanding its inclusion as an Insured), other than an Insured in its capacity in connection with the Project.

Outstanding Matters Report has the meaning given in clause 32.3(b).

Overdue Rate means 2% per annum above the Bank Bill Rate.

Oversite Development Works means any works, services or activities required to be undertaken by:

- 1 the CBD North OSD Developer, in relation to the oversite development at the Station at CBD North; or
- 2 the CBD South OSD Developer, in relation to the oversite development at the Station at CBD South.

Ownership Schedule means Schedule 20.

Package Contractor has the meaning given to that term in the Framework Coordination and Interface Principles.

Parent Guarantee means the guarantee:

- 1 given by the Parent Guarantor of any D&C Subcontractor to Project Co in connection with the obligations of the relevant D&C Subcontractor to Project Co under a D&C Subcontract;
- 2 given by the Parent Guarantor of any Maintenance Subcontractor to Project Co in connection with the obligations of the relevant Maintenance Subcontractor to Project Co under a Maintenance Subcontract; and
- 3 given by the Parent Guarantor of any D&C Subcontractor to the State in connection with a guarantee referred to in paragraph 1.

Parent Guarantor means each person giving a Parent Guarantee, which as at Contract Close are the parties specified in item 12 of the Contract Particulars.

Parent Guarantor (D&C) means each person giving a Parent Guarantee in favour of Project Co, which as at Contract Close are the parties specified in item 12 of the Contract Particulars.

Park Street Tram means the works to be performed by Yarra Trams pursuant to the



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| Works | development plan titled 'Park Street Tram Stop' dated September 2017 which interface with Project Co's Agreed Occupation on St Kilda Road. |
| Partnership Deed | means the deed constituting the Cross Yarra Partnership dated 22 November 2017 between CY Partner 1, CY Partner 2, CY Partner 3 and CY Partner 4. |
| Payment Claim | means a payment claim submitted by Project Co in accordance with clause 35.4(a) in the form reasonably required by the State. |
| Payment Directions Deed | means the document so entitled between the State, Finance Co, Project Co and the Agent dated on or about the date of this Agreement. |
| Payment Schedule | means Schedule 3. |
| Payment Statement | has the meaning given in clause 35.4(b). |
| Performance Audit Notice | has the meaning given in clause 35.9(f)(2). |
| Performance Auditor | has the meaning given in clause 35.9(f)(3)(A). |
| Performance Bond | means a bond or bank guarantee which: <ol style="list-style-type: none">1 is unconditional, irrevocable and payable on demand;2 is issued by a financial institution that is the holder of a current licence issued by APRA and has the Required Rating; and3 specifies a location within Melbourne where demand is to be given and payment made, without further confirmation from the issuer, on any Business Day. |
| Performance Data | means the Monthly Performance Report, the Quarterly Performance Report and the source information, documentation and data required for, created, procured or prepared in accordance with: <ol style="list-style-type: none">1 during the FAW Phase, the Final Acceptance Schedule; and2 during the Maintenance Phase, the Performance Monitoring Plan. |
| Performance Monitoring Plan | has the meaning given to that term in the Services Specification. |



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| Performance Report | means the Monthly Performance Report or the Quarterly Performance Report (as the case may be). |
| Performance Source Data | means all data and information from which the Performance Data is derived. |
| Permanent Land Availability Date | means in respect of a parcel of land referred to in the Land Availability Plans, the date specified as the 'Permanent Land Availability Date' for that parcel of land in the Land Availability Plans. |
| Permitted Commercial Opportunities | means: <ol style="list-style-type: none">1 the Initial Permitted Commercial Opportunities; and2 those commercial purposes which are consistent with the Commercial Opportunities Guiding Principles and which have been approved by the State Representative in writing (in its sole and absolute discretion). |
| Permitted Share Capital Dealing | means a Share Capital Dealing specified in the Permitted Share Capital Dealing Schedule. |
| Permitted Share Capital Dealing Schedule | means Schedule 21. |
| Planned Preventative Maintenance | has the meaning given in the Services Specification. |
| Planning Minister Office Delay | means: <ol style="list-style-type: none">1 MMRA agrees to a variation of the timing for submission of the draft Precinct Development Plans to the DPRC;2 the DPRC fails to comply with the timing requirements specified in the terms of reference establishing the DPRC (as updated); or3 the Minister for Planning takes more than one month to consider and approve a Precinct Development Plan. |
| Planning Scheme Amendment No 1 | means the amendment of the Planning Schemes by Planning Scheme Amendment GC45 which, amongst other things, incorporates the Incorporated Document. |
| Planning Scheme Amendment No 2 | means the amendment of Planning Scheme Amendment No 1 to provide for the additional land to be used for the Project as indicatively shown outside the red Project Area boundary in the |



Design Optimisation Land and PSA2 Schedule and adjusted in accordance with clause 6.3B.

Planning Scheme Amendment No 2 Date means [not disclosed].

Planning Schemes means each of:

- 1 the 'Melbourne Planning Scheme';
- 2 the 'Maribyrnong Planning Scheme';
- 3 the 'Port Phillip Planning Scheme'; and
- 4 the 'Stonnington Planning Scheme'.

Plant means all plant, machinery and equipment and other items (including fixtures and fittings) which:

- 1 is necessary to ensure the Relevant Infrastructure is Fit For Purpose;
- 2 is referred to in the PS&TR or Services Specification; or
- 3 without limiting 1 or 2, Project Co or any of its Subcontractors or any other person acting on their behalf installs, constructs or places on the Site and which is, or becomes part of the Relevant Infrastructure, or which is used exclusively for operating or maintaining the Relevant Infrastructure or performing the Services,

but excludes any Equipment or Temporary Equipment.

Platform Screen Doors has the meaning given to that term in the PS&TR.

Pollution includes any solid, liquid, gas, odour, heat, sound, vibration, radiation or substance present in any segment of the Environment (other than those naturally present in a given segment of the Environment) which alone or in combination makes or may make the Environment:

- 1 unsafe or unfit for habitation or occupation by persons or animals;
- 2 degraded in its capacity to support plant life;
- 3 contaminated; or
- 4 otherwise environmentally degraded.

Potential Base Track Occupations Schedule means the Potential Base Track Occupation Schedule set out in Schedule 41, as updated in accordance with clause 6.12(d).

Potential Track means those Track Occupations which are set out in the Potential Base Track Occupations Schedule which are not also set out in the

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| Occupations | FCA (Train) Base Track Occupation Schedule. |
| PPP Interface Works | means the works performed, or to be performed, by the Early Works Managing Contractor which interface with the Works (as identified as 'PPP Interface Works' in the Early Works Managing Contractor Agreement). |
| PPP Interface Works Collateral Warranty Deed | means the agreement between the D&C Subcontractor and the Early Works Managing Contractor titled 'Melbourne Tunnel – Managing Contractor Agreement – Collateral Warranty Deed' to be entered into on or prior to completion of the PPP Interface Works. |
| PPP Interface Works Delay Event | <p>means where the works of the Early Works Managing Contractor (excluding any D&C Scope Change Works) are delayed as the result of:</p> <ol style="list-style-type: none"> 1 any of: <ol style="list-style-type: none"> a a 'Principal-caused Delay'; a a 'Neutral Adjustment Event'; or b a 'Variation' (excluding a 'Variation' arising out of a direction of the Delegate), <p>(each as defined in the Early Works Managing Contractor Agreement); or</p> 2 an Authority issues a clean-up notice (or equivalent) to the Early Works Managing Contractor, or a binding direction or notice to the Early Works Managing Contractor to stop work (or where the direction has the effect of stopping work) in respect of the construction of the CBD North Shaft as a consequence of: <ol style="list-style-type: none"> a the mobilisation of the CUB Contamination Plume; or b the discovery of Contamination within a shaft or a location proximate to a CBD North Shaft, <p>except to the extent such circumstances arise as a consequence of:</p> <ol style="list-style-type: none"> c the Delegate failing to perform its contractual or management duties; d the Early Works Managing Contractor or the D&C Subcontractor failing to comply with the Initial Ground Water Contamination Methodology; or e any failures in the operation of the CUB Plume Mitigation System arising out of its design. 3 the State unreasonably withholding or delaying its consent to the exercise by the Delegate of any delegated function of the 'Principal's Representative' (including directing a Variation) (each as defined in the Early Works Managing Contractor Agreement) in breach of the Delegation Agreement. |



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| PPSA | means the <i>Personal Property Securities Act 2009</i> (Cth). |
| Pre-Agreed Modification | means each Pre-Agreed Modification set out in the Pre-Agreed Modifications Schedule. |
| Pre-Agreed Modification Cost | means in relation to a Pre-Agreed Modification (unless a Pre-Agreed Modification Saving is indicated), the cost set out in the Pre-Agreed Modifications Schedule. |
| Pre-Agreed Modification Election Date | means in relation to a Pre-Agreed Modification, the 'Pre-Agreed Modification Election Date' set out in the Pre-Agreed Modifications Schedule, as adjusted by the agreement of the parties. |
| Pre-Agreed Modification Request | means a request issued by the State to Project Co in accordance with clause 38.13(a). |
| Pre-Agreed Modification Saving | means in relation to a Pre-Agreed Modification (unless a Pre-Agreed Modification Cost is indicated), the saving set out in the Pre-Agreed Modifications Schedule. |
| Pre-Agreed Modifications Schedule | means Schedule 35. |
| Precinct Development Plan | [not disclosed] |
| Precinct Development Plan Approval Date | [not disclosed] |
| Principal Contractor | has the meaning given in the OHS Legislation, or if the New WHS Regulations supersede the OHS Regulations, the meaning given in the New WHS Regulations. |
| Priority Jobseekers | means persons designated, in accordance with the 'Jobs Victoria Employment Network Program Guidelines' dated May 2016, as falling within any of the following priority target groups: <ol style="list-style-type: none">1 long term unemployed;2 living with a disability;3 living with a mental illness;4 retrenched workers including workers retrenched from the automotive manufacturing and supply chain industry; |



- 5 Aboriginal Persons;
- 6 refugees or asylum seekers;
- 7 young people in out-of-home care;
- 8 young people who are disengaged from education, training and employment;
- 9 youth justice clients; or
- 10 ex-offenders.

Priority Jobseekers' Requirements means the requirement that at least 10% of the Project Co D&C Phase Workforce will be Priority Jobseekers undertaking D&C Activities in Victoria, calculated as an Annualised Employee Equivalent against the Project Co D&C Phase Workforce.

Privacy Code means a code of practice defined in, and approved under, the *Information Privacy Act 2000 (Vic)* or the *Privacy and Data Protection Act 2014 (Vic)* (as in force from time to time).

Privacy Principles means each of:

- 1 the Health Privacy Principles; and
- 2 the Information Privacy Principles.

Probity Event includes any event or thing which occurs before or after Contract Close and which:

- 1 has or may have a material adverse effect on, or on the perception of, the character, integrity or honesty of a Group Member, Consortium Member or a Relevant Person;
- 2 relates to a Group Member, Consortium Member or a Relevant Person and has or may have a material adverse effect on the public interest, or public confidence, in the Project; or
- 3 without limiting paragraphs 1 and 2, involves a material failure of a Group Member, Consortium Member or a Relevant Person to achieve or maintain:
 - a reasonable standards of ethical behaviour;
 - b the avoidance of conflicts of interest which will have a material adverse effect on the ability of the Group Member, Consortium Member or Relevant Person to carry out and observe its obligations in connection with the Project; or
 - c other standards of conduct that would otherwise be expected of a party involved in a State government project.

Probity Investigation means any probity or criminal investigations to report on the character, integrity or honesty of a person or Entity, including:

- 1 investigations into commercial structure, business and credit history, prior contract compliance or any criminal records or



pending charges; and

- 2 interviews of any person or research into any relevant activity that is or might reasonably be expected to be the subject of criminal or other regulatory investigation.

Professional Indemnity Insurance

means the Insurance policies for professional indemnity:

- 1 in respect of the D&C Phase, set out in Part B, section (e); and
- 2 in respect of the Maintenance Phase, set out in Part D, section (a),

of the Insurance Schedule.

Progress Milestone

[not disclosed]

Progress Milestone Date

[not disclosed]

Project

means the:

- 1 financing and undertaking of the Works;
- 2 financing and carrying out of the Project Activities;
- 3 Handback of the Returned Assets to the relevant Returned Asset Owner; and
- 4 Handover of the Maintained Assets to the State,

and the performance of all other obligations in accordance with or as contemplated by any Project Document or incidental thereto.

Project Activities

means all things that Project Co is, or may be, required to do to comply with its obligations under the State Project Documents, including the D&C Activities and the Services.

Project Area

means the project area designated by the Victorian Minister for Planning under the Relevant Legislation for Metro Tunnel, including any variations to that project area in accordance with the Relevant Legislation.

Project Assets

means each of:

- 1 the Maintained Assets; and
- 2 the Returned Assets.

Project Co D&C Phase Insurances

means the Insurances referred to in Part B of the Insurance Schedule.



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| Project Co D&C Phase Workforce | means the workforce employed or otherwise engaged by Project Co or any Subcontractor undertaking all or any part of the D&C Activities in Australia or New Zealand during the D&C Phase and includes persons performing a head office, corporate or governance role to the extent such role is in connection with the Project, provided that to the extent a person undertakes multiple roles in connection with the Project, that person may not be counted more than once. |
| Project Co Interface Step | means an Interface Step for which Project Co is responsible for completing the relevant activity, deliverable or milestone. |
| Project Co Maintenance Phase Insurances | means the Insurances referred to in Part D of the Insurance Schedule. |
| Project Co Material | means each of: <ol style="list-style-type: none">1 the Design Documentation;2 the Construction Documentation;3 the Construction Records;4 the As-Built Records;5 the Project Strategies, the Management Plans and the Maintenance Manuals;6 the Forecast Maintenance and Refurbishment Program;7 all other documentation, information (including data bases and drafts), models, systems and technology in which Intellectual Property Rights are capable of subsisting which Project Co or any of its Associates prepare or use in carrying out the Project Activities, but does not include software tools which are:<ol style="list-style-type: none">a used internally by Project Co or any of its Associates to create, but which are not incorporated into, the materials described in paragraphs 1 to 5 of this definition; orb generally commercially available; and8 any other deliverables required to be delivered by Project Co or any of its Associates to the State in accordance with the State Project Documents. |
| Project Co Preferred Tenant | a proposed Commercial Opportunities Tenant notified to the State pursuant to clause 37.5(g)(3). |
| Project Co Procured Insurance | means each of the: <ol style="list-style-type: none">1 Project Co D&C Phase Insurances; and2 Project Co Maintenance Phase Insurances. |



Project Co Proposed Modification means a Modification proposed by Project Co under clause 38.6.

Project Co Representative means the person or persons specified in item 13 in the Contract Particulars subject to replacement, termination or delegation in accordance with clause 11.3.

Project Control Group means the group referred to in clause 11.4(a).

Project Costs means the actual costs properly and reasonably incurred by or on behalf of Project Co or Finance Co directly attributable to the implementation of the Project in accordance with this Agreement, which does not include Distributions to an Equity Investor other than as a payment to a Key Subcontractor under and in accordance with a Key Subcontract.

Project Debt means at any time the lesser of:

- 1 the Actual Debt at that time; and
- 2 the amount forecast in the Financial Model to be owing to the Financiers at that time.

Project Documents means each of:

- 1 this Agreement;
- 2 a Construction Licence;
- 3 a Commercial Opportunities Lease;
- 4 a Maintenance Licence;
- 5 the Finance Direct Deed;
- 6 the State Security;
- 7 the D&C Subcontract;
- 8 the Maintenance Subcontract;
- 9 the D&C Direct Deed;
- 10 the Maintenance Direct Deed;
- 11 the Key Subcontractor Interface Deed;
- 12 the Accepted Works Novation Deeds;
- 13 the Parent Guarantees;
- 14 the Equity Documents;
- 15 the Finance Documents;
- 16 the Independent Reviewer Deed of Appointment;
- 17 the Construction Bond;
- 18 the Coordination and Interface Deed Poll executed by Project Co;

- 19 the CityLink Interface Deed;
- 20 the CityLink Consultant Agreement;
- 21 each Subcontractor Direct Deed;
- 22 each Subcontract Novation Deed;
- 23 the Escrow Agreement;
- 24 each Utility Agreement;
- 25 each Deed of Accession;
- 26 the Train Franchisee Cooperation Agreement;
- 27 the Train Franchisee Cooperation Agreement Direct Deed;
- 28 the Train Franchisee Cooperation Agreement PTV Direct Agreement;
- 29 the Tram Franchisee Cooperation Agreement;
- 30 the Tram Franchisee Cooperation Agreement Direct Deed;
- 31 the Tram Franchisee Cooperation Agreement PTV Direct Agreement;
- 32 the CBD North OSD Interface Agreement;
- 33 the CBD South OSD Interface Agreement;
- 34 the Receivables Purchase Deed;
- 35 the Payment Directions Deed;
- 36 the On-Loan Agreement;
- 37 the Interest Rate On-Swap;
- 38 the Management Services Agreement; and
- 39 any other document the parties agree is a Project Document.

Project Entity means each of Project Co and Finance Co.

Project Information means all documents and information provided by the State and its Associates to Project Co in connection with the Project:

- 1 prior to Contract Close, which are not incorporated into this Agreement;
- 2 after Contract Close, which the State is not required by this Agreement to provide to Project Co; and
- 3 without limiting paragraph 1, the Site Information Reports.

Project Management Requirements means:

- 1 during the D&C Phase, Part C (*Project Management Requirements*) of the PS&TR; and
- 2 during the Maintenance Phase, the Services Specification.

Project Requirements is comprised of the following parts:

- 1 the PS&TR;
- 2 the Technical Solution;
- 3 the Services Specification; and
- 4 the Services Solution.

**Project Specific
Change in Law**

means:

- 1 any Change in Law which expressly and exclusively applies to:
 - a the Project, the Relevant Infrastructure, the Licensed Construction Areas, the Commercial Opportunities Leased Areas, or the Licensed Maintenance Areas;
 - b Project Co, but only in its capacity as the Entity contracting with the State to implement the Project; or
 - c Project Co and other Entities which are undertaking projects under the Partnerships Victoria framework, or any replacement or substitute policies relating to public private partnership arrangements for the provision of public infrastructure in the State of Victoria, in each case only as it applies to them in that capacity;
- 2 conditions are set out in the Incorporated Document pursuant to Planning Scheme Amendment No 2 which:
 - a are more onerous or different than the conditions previously set out in the Incorporated Document pursuant to Planning Scheme Amendment No 1; and
 - b could not have reasonably been foreseen or anticipated prior to Contractual Close by an experienced and competent contractor practising Best D&C Practices;
- 3 the St Kilda Road precinct (including its tree lined boulevard) is temporarily or permanently included on the 'National Heritage List' and Project Co is required to carry out the Project Activities in the St Kilda Road precinct in accordance with a plan for managing the place in accordance with section 324X of the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth);
- 4 conditions are set out in the approval by the Minister for Planning of a Precinct Development Plan which:
 - a require a change to the Technical Solution or which will have the effect of delaying the commencement of construction in accordance with the D&C Program; and
 - b could not have reasonably been foreseen or anticipated prior to Contract Close by an experienced and competent contractor practising Best D&C Practices and in the context of the PS&TR; or
- 5 if, during the Maintenance Phase, there is a change to the Train Franchisee Rail Safety Requirements and such change has or will have a material, sustained and unavoidable impact on Project Co's performance of the Maintenance Services in accordance with the Services Solution, the Train Franchisee Cooperation Agreement and the remainder of this Agreement (including in relation to the cost of, and timing for performing the Maintenance Services and Project Co's potential liability for



Abatement).

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| Project Strategies | means each project strategy prepared and submitted as part of its proposal by Project Co, which is contained in Exhibit 2. |
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| Prolongation Costs | has the meaning given in the Change Compensation Principles. |
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| Proof Engineer | means the proof engineer jointly engaged by Project Co and the D&C Subcontractor to amongst other things, comply with the requirements of the 'Proof Engineer' set out in the State Project Documents. |
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| Property Committee | has the meaning given in clause 6.1. |
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| Property Schedule | means Schedule 9 as amended in accordance with clause 6.3. |
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| Protective Data Security Plan | has the meaning given to it in the Public Sector Privacy Act. |
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| Provisional Acceptance | means the stage when: <ol style="list-style-type: none">1 the Works, other than the Final Acceptance Works, are complete except for Minor Defects;2 Project Co has done everything which this Agreement requires Project Co to do prior to or as a condition precedent to Provisional Acceptance, including the requirements set out in the Completion Schedule;3 all Returned Works (other than the Returned Train Works and Returned VicTrack Works) have been completed in accordance with clause 24.4(b); and4 Project Co has done all things reasonably required as part of the Project Activities to facilitate the incorporation of the Returned Existing Network Works into the Train Infrastructure Lease. |
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| Proximate State Work | means where the State elects to do or procure one or more of the following: <ol style="list-style-type: none">1 construct, operate, maintain, alter, upgrade or repair any:<ol style="list-style-type: none">a part of the Victorian Rail Network;b road or other means of vehicle, public transport, pedestrian or bicycle access; orc Utility Infrastructure or any other infrastructure or improvements: located (in whole or in part) under, on, above or adjacent to the |
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- Construction Areas or Maintenance Areas (including any consequential changes to the Relevant Infrastructure); or
- 2 connect any:
 - a track, road or other means of vehicle, public transport, pedestrian or bicycle access to the Relevant Infrastructure or to any other structures; or
 - b Utility Infrastructure or any other infrastructure or improvement,
 to the Construction Areas or Maintenance Areas; or
 - 3 carry out any other work, services or activities, located (in whole or in part) under, on, above or adjacent to the Construction Areas or Maintenance Areas,

including any works, services or activities undertaken by the Rail Franchisees to comply with their obligations under the relevant Rail Franchisee Projects Agreement in relation to a 'State Project', 'Franchisee Project' or 'Third Party Project' (each as defined under the relevant Rail Franchisee Projects Agreement), but excluding:

 - 4 the Works;
 - 5 Metro Tunnel Interface Works;
 - 6 Early Works;
 - 7 Construction Power Works;
 - 8 Rail Franchisee Interface Works;
 - 9 Related State Project Works;
 - 10 Oversight Development Works;
 - 11 any other works, services or activities undertaken by the Rail Franchisees;
 - 12 Rail Operations; and
 - 13 the operation and maintenance of CityLink.

PS&TR means the project scope and technical requirements set out in Exhibit 1 including all appendices, annexures, attachments and exhibits to it.

PSA Variation has the meaning given in clause 6.3B(a).

PTV or Public Transport Victoria means the Public Transport Development Authority established under the *Transport Integration Act 2010* (Vic).

PTV As Counterparty means PTV in its capacity as counterparty to:

- 1 the Train Franchisee Cooperation Agreement PTV Direct Agreement; or
- 2 the Tram Franchisee Cooperation Agreement PTV Direct Agreement.



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| Public Disclosure Obligations | has the meaning given in clause 57.1(a). |
| Public Sector Agency | has the meaning given to it in the Public Sector Privacy Act. |
| Public Sector Data | means 'Public Sector Data', as defined in the Public Sector Privacy Act, to the extent such data is collected, held, managed, used, disclosed or transferred by Project Co under or in connection with this Agreement |
| Public Sector Data Incident | any actual or potential: <ol style="list-style-type: none">1 collection, holding, management, use, disclosure or transfer of Public Sector Data not authorised by this Agreement;2 breach of clause 58.2;3 request, complaint or enquiry made by the Commissioner for Privacy and Data Protection or any other regulatory authority in relation to collection, holding, management, use, disclosure or transfer of Public Sector Data under or in connection with this Agreement; or4 requirement of Law which conflicts with Project Co's obligations under clause 58.2. |
| Public Sector Data Systems | has the meaning given to it in the Public Sector Privacy Act. |
| Public Sector Privacy Act | the <i>Privacy and Data Protection Act 2014</i> (Vic). |
| Purchase Date | has the meaning given in the Receivables Purchase Deed. |
| Quality Failure | has the meaning given to that term in the Services Specification. |
| Quality Failure Abatement | means in respect of a Quality Failure, an amount in dollars calculated in respect of that Quality Failure in accordance with the Payment Schedule. |
| Quality Failure Points | means in respect of a Quality Failure, the number of points attributed to that Quality Failure, as set out in the Services Specification or otherwise in this Agreement. |
| Quality Failure Remedy Period | has the meaning given to it in the Services Specification. |



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| Quarter | means each 3 Month period commencing on a Quarterly Date, except that: <ol style="list-style-type: none">1 the first Quarter of the FAW Phase will be the period from the Date of Provisional Acceptance until the day before the first Quarterly Date during the FAW Phase;2 the last Quarter of the FAW Phase will be the period from the last Quarterly Date during the FAW Phase to the Date of Final Acceptance;3 the first Quarter of the Maintenance Phase will be the period from the Date of Final Acceptance until the day before the first Quarterly Date during the Maintenance Phase; and4 the last Quarter of the Maintenance Phase will be the period from the last Quarterly Date during the Maintenance Phase to the Expiry Date. |
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| Quarterly Date | means every 1 January, 1 April, 1 July and 1 October during the FAW Phase or the Maintenance Phase. |
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| Quarterly FAW Performance Report | has the meaning given in the Final Acceptance Schedule. |
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| Quarterly Performance Report | means: <ol style="list-style-type: none">1 during the FAW Phase, the Quarterly FAW Performance Report; and2 during the Maintenance Phase, has the meaning given to that term in Services Specification. |
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| Quarterly Service Fee | means: <ol style="list-style-type: none">1 during the FAW Phase, the 'Final Acceptance Works Fee' calculated in accordance with section 3.2 of Part C of the Payment Schedule; and2 during the Maintenance Phase, the 'Quarterly Maintenance Fee' calculated in accordance with section 6 of Part D the Payment Schedule. |
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| Quarterly Service Payment | means: <ol style="list-style-type: none">1 during the FAW Phase, the 'Final Acceptance Works Payments' calculated in accordance with section 3.1 of Part C of the Payment Schedule; and2 during the Maintenance Phase, the 'Maintenance Phase Payments' calculated in accordance with section 5 of Part D of the Payment Schedule. |
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| Radiation Act | means the <i>Radiation Act 2005 (Vic)</i> . |
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| Radiation Licence Holder | means a 'licence holder' (as defined in the Radiation Act). |
| Rail Franchisee | means: <ol style="list-style-type: none">1 a Train Franchisee; or2 a Tram Franchisee. |
| Rail Franchisee Arrangements | means: <ol style="list-style-type: none">1 the Train Franchisee Arrangements; and2 the Tram Franchisee Arrangements. |
| Rail Franchisee Cooperation Agreement | means: <ol style="list-style-type: none">1 the Train Franchisee Cooperation Agreement; or2 the Tram Franchisee Cooperation Agreement. |
| Rail Franchisee Failure Event | means: <ol style="list-style-type: none">1 a Train Franchisee Failure Event; or2 a Tram Franchisee Failure Event. |
| Rail Franchisee Interface Parties | means: <ol style="list-style-type: none">1 the Train Franchisee Interface Party; and2 the Tram Franchisee Interface Party. |
| Rail Franchisee Interface Works | means any works, services or activities required to be undertaken by a Rail Franchisee pursuant to the relevant Rail Franchisee Cooperation Agreement. |
| Rail Franchisee Projects Agreement | means: <ol style="list-style-type: none">1 the Train Franchisee Projects Agreement; or2 the Tram Franchisee Projects Agreement. |
| Rail Franchisee's Access Rules | has the meaning given to: <ol style="list-style-type: none">1 'Franchisee's Access Rules' in the Train Franchisee Cooperation Agreement; and2 'Franchisee's Access Rules' in the Tram Franchisee Cooperation Agreement. |
| Rail Infrastructure | means: |



- 1 Train Infrastructure; or
 - 2 Tram Infrastructure.
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Rail Infrastructure Alliance means the alliance appointed to perform the rail infrastructure works for the Metro Tunnel under the document titled 'Project Alliance Agreement – Metro Tunnel Project – Rail Infrastructure Alliance'.

Rail Infrastructure Alliance Handover Date means:

- 1 in respect of the Maintained Rail Infrastructure Alliance Assets at the western portal, the date set out in a Certificate of Critical Interface Milestone / Progress Milestone Achievement as the date on which the Rail Infrastructure Alliance achieved the Critical Interface Milestone to handover the completed cut & cover tunnel to Project Co at the western portal; and
- 2 in respect of the Maintained Rail Infrastructure Alliance Assets at the eastern portal, the date set out in a Certificate of Critical Interface Milestone / Progress Milestone Achievement as the date on which the Rail Infrastructure Alliance achieved the Critical Interface Milestone to handover the completed cut & cover tunnel to Project Co at the eastern portal.

Rail Infrastructure Alliance Works means the works to be performed by the Rail Infrastructure Alliance.

Rail Infrastructure Manager has the meaning given in the Rail Safety National Law.

Rail Operations means:

- 1 Train Operations; or
- 2 Tram Operations.

Rail Safety National Law has the meaning specified in the *Rail Safety National Law Application Act 2013* (Vic).

Rail Safety National Regulations means the national regulations as defined under the Rail Safety National Law.

Rail Systems Alliance means the alliance appointed to perform the rail infrastructure works for the Metro Tunnel under the document titled 'Project Alliance Agreement – Metro Tunnel Project – Rail Systems Alliance'.



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| Rail Systems Alliance Works | means the works to be performed by the Rail Systems Alliance. |
| Rail Transport Operator | has the meaning given: <ol style="list-style-type: none">1 in the Rail Safety National Law, in respect of Train Operations; and2 in the Tram Safety Act, in respect of Tram Operations. |
| Railway Operations | has the meaning given in the Rail Safety National Law. |
| Rates | means all municipal rates, water rates, sewerage rates, drainage rates and other rates payable to any Authority in connection with the Site, but does not include any portion of such rates as relates to the connection of the Site to Utilities or rates or charges for the usage of Utilities. |
| Receivables | has the meaning given in the Receivables Purchase Deed. |
| Receivables Purchase Deed | means the document so entitled between the State, Project Co and Finance Co to be dated on or about the date of this Agreement under which the State agrees to assign to Finance Co the Licence Fee payable under the Maintenance Licence. |
| Receivables Purchase Price | has the meaning given in the Receivables Purchase Deed. |
| Receivables Refund Payment | has the meaning given to it in the Receivables Purchase Deed. |
| Recipient | has the meaning given in clause 59.1(b)(2). |
| Reference Documents | has the meaning given in the PS&TR. |
| Refinancing | means: <ol style="list-style-type: none">1 any amendment, novation, supplement or replacement of any Finance Document;2 the exercise of any right, or the grant of any waiver or consent, in accordance with any Finance Document;3 the disposition of any rights or interests in, or the creation of any rights of participation in connection with the Finance Documents or the creation or granting of any other form of benefit or interest in either the Finance Documents or the |

contracts, revenues or assets of the Group whether by way of security or otherwise;

- 4 any new financing arrangements entered into by a Group Member which has the effect of restructuring the then current financing arrangements; or
- 5 any other step or arrangement that has an effect which is similar to any of the actions referred to in paragraphs 1 to 4 of this definition,

which is likely to:

- 6 give rise to a Refinancing Gain;
- 7 change the type, amount, pricing, tenor, terms for payment or repayment, hedging or financial covenants of any financial accommodation connected with the Project;
- 8 adversely affect any of the State's rights, obligations or liabilities in accordance with the State Project Documents to which it is a party,

and any change in the timing or manner of payment of a State Contribution, but does not include:

- 9 entering into derivative transactions contemplated by the Finance Documents to be entered into on or before Financial Close;
- 10 the syndication or subscription of any debt in accordance with the Finance Documents that is contemplated at Financial Close; or
- 11 the change in control or sell down of any bonds in an arm's length transaction at market value.

Refinancing Event means an event set out in paragraphs 1 to 5 of the definition of Refinancing and any change in the timing or manner of payment of a State Contribution, but excludes an event set out in paragraphs 9 to 11 of the definition of Refinancing.

Refinancing Gain has the meaning given in clause 40.4(a).

Refurbishment Works means the periodic refurbishment or replacement of all elements comprising the Maintained Assets in accordance with the Asset Management Plan or otherwise as necessary to ensure that the Maintained Assets:

- 1 are Fit For Purpose;
- 2 otherwise comply with the Services Specification; and
- 3 otherwise comply with all relevant Laws, Approvals and Standards.

Registered Education and Training Organisation means a person or body registered under Part 4.3 of the *Education and Training Reform Act 2006 (Vic)* to deliver an accredited course or award or issue a registered qualification.



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| Regulator | has the meaning given in the Rail Safety National Law. |
| Related Body Corporate | has the meaning given in the Corporations Act. |
| Related State Project Works | means any works, services or activities required to be undertaken in relation to: <ol style="list-style-type: none">1 the Level Crossing Removal Project;2 the High Capacity Metro Trains Project;3 Western Distributor; and4 the Flinders Street Station Redevelopment. |
| Related Trust Entity | means with respect to an entity which is a trustee, manager or Responsible Entity of a trust or a managed investment scheme: <ol style="list-style-type: none">1 any Related Body Corporate of the trustee, manager or Responsible Entity;2 any other trustee, manager or Responsible Entity of the trust or managed investment scheme (or Related Body Corporate) of such entity; or3 any Controlling Unit Holder of the trust or managed investment scheme (or Related Body Corporate) of such an entity. |
| Relevant Infrastructure | means: <ol style="list-style-type: none">1 during the D&C Phase, the Works, excluding any Returned Assets which have achieved Handback; and2 during the Maintenance Phase, the Maintained Assets. |
| Relevant Legislation | means the <i>Major Transport Projects Facilitation Act 2009 (Vic)</i> . |
| Relevant Person | means: <ol style="list-style-type: none">1 a director, secretary or partner representative of a Consortium Member; or2 any officer or employee, consultant, contractor or agent of a Consortium Member who:<ol style="list-style-type: none">a has the ability to exercise influence or control in relation to the Consortium Member, or in matters relating to the Project;b works in any role in connection with the Project Activities, including undertaking any task for the purpose of this Agreement; orc as access to Confidential Information in connection with the Project or Users. |



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| Relevant Stakeholder (PSA2) | means any owner or occupier of land situated above the Design Optimisation Land. |
| Relevant Utility Infrastructure | means any part of the supply, distribution or reticulation network owned, operated or controlled by a Relevant Utility Provider, including poles, pipes, cables, wires, conduits and tunnels excluding the Construction Power Supply Assets. |
| Relevant Utility Provider | means an entity (whether publicly or privately owned) that provides, or intends to provide, water, sewerage, drainage, gas, electricity or other like services under the authority of any State legislation. |
| Reliability Adjustment | has the meaning given in the Payment Schedule. |
| Reliability Adjustment Abatement | means in respect of a Reliability Adjustment, an amount in dollars calculated in respect of that Reliability Adjustment in accordance with the Payment Schedule. |
| Relief Event | <p>an event which entitles Project Co to:</p> <ol style="list-style-type: none">1 an extension of time;2 a Modification;3 compensation;4 relief or suspension from carrying out any of the Project Activities; or5 bring any other Claim against the State, <p>in accordance with this Agreement.</p> |
| Remediate or Remediation | means to remove, disperse, abate, destroy, dispose of, neutralise, remediate, treat, cap, contain, excavate, manage or otherwise test, monitor or assess (as applicable). |
| Remediation Plan | means a 'Remediation Plan' under clause 26.2(c)(2) as updated pursuant to clause 26.2(h)(2). |
| Representatives | has the meaning given in clause 46.2(a). |
| Reputable Insurer | <p>means:</p> <ol style="list-style-type: none">1 VMIA, to the extent that VMIA is authorised:<ol style="list-style-type: none">a pursuant to a declaration by the Minister for Finance under section 25A of the <i>Victorian Managed Insurance Authority Act 1996</i> (Vic); orb otherwise, provided that VMIA continues to benefit from a |



guarantee from the Government of Victoria on terms no less favourable to VMIA than set out in section 27 of the *Victorian Managed Insurance Authority Act 1996* (Vic),

to provide the relevant Insurance, but VMIA will not be a Reputable Insurer in respect of liabilities declared in writing by VMIA before they were incurred to be liabilities that are not guaranteed by the Government of Victoria (pursuant to section 27(2) of the *Victorian Managed Insurance Authority Act 1996* (Vic)); or

2 an insurance company having the Required Rating.

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| Required Rating | means a credit rating of at least A- by Standard and Poor's (Australia) Pty Limited or A3 by Moody's Investors Service, Inc. |
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| Residual Life | means in respect of a Design Life Asset, the period of years specified in the Design Life Requirements, and Residual Lives has the corresponding meaning. |
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| Responsible Entity | has the meaning given in the Corporations Act. |
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| Responsible Minister for VIPP | means the Minister with responsibility for administering the <i>Victorian Industry Participation Policy Act 2003</i> (Vic). |
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| Returned Asset | means any discrete part of the Returned Works to be completed and handed back in accordance with the State Project Documents. |
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| Returned Asset Owner | means the owner of, entity entitled to exercise control with respect to, or entity entitled to Handback of a Returned Asset, and includes, where applicable, the City of Melbourne, City of Port Phillip, City of Stonnington, City of Maribyrnong, Melbourne University, VicRoads, the Train Franchisee, the Tram Franchisee and VicTrack. |
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| Returned Existing Network Works | means the Works: <ol style="list-style-type: none">1 performed on the existing rail network;2 which do not form part of the Tunnel and Stations; and3 will be operated and maintained by the Train Franchisee under the Train Franchisee Arrangements, including the Degrares Entrance Works. |
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| Returned Train Works | means the Works described as 'Returned Train Works' in the Returned Works Schedule that will be operated and maintained by the Train Franchisee under the Train Franchisee Arrangements, but does not include the Returned Existing Network Works. |
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Returned Tram Works means the Works described as 'Returned Tram Works' in the Returned Works Schedule that will be operated and maintained by the Tram Franchisee under the Tram Franchisee Arrangements.

Returned VicTrack Works means the Works described as 'Returned VicTrack Works' in the Returned Works Schedule that will be operated and maintained by the VicTrack.

Returned Works means the:

- 1 City Square Works;
- 2 Utility Infrastructure Works;
- 3 Returned Tram Works;
- 4 Returned Train Works;
- 5 Returned VicTrack Works;
- 6 Returned Existing Network Works;
- 7 the Works the subject of a Progress Milestone (excluding the Foundation Works); and
- 8 any other discrete part of the Works to be maintained by a party other than Project Co; and

including any Modification to those Works.

Returned Works Schedule means Schedule 32.

Revenue for the purposes of clause 59 has the meaning given in clause 59.1(f).

Review Procedures means Schedule 7.

Reviewable Services has the meaning given to that term in the Services Specification.

Reviewable Services Schedule means Schedule 29.

Reviewable Services Term means each period of 5 years commencing on the Date of Final Acceptance.

Revised Compliance Plan has the meaning given in clause 61.6.



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| Revised LIDP | has the meaning given in clause 60.2(a). |
| Road Management Act | means the <i>Road Management Act 2004</i> (Vic). |
| Road Safety Act | means the <i>Road Safety Act 1986</i> (Vic). |
| Rolling Stock | means, in accordance with section 3(1) of the <i>Rail Management Act 1996</i> (Vic), a vehicle that operates on or uses a railway track or tramway track, and includes a locomotive, carriage, rail car, rail motor, light rail vehicle, train, tram, light inspection vehicle, road/rail vehicle, trolley, wagon or monorail vehicle. |
| Rolling Stock Operator | has the meaning given in the Rail Safety National Law. |
| RSA Equipment | means the equipment to be procured by Project Co and provided to the Rail Systems Alliance set out in part D3 of the Technical Solution at: <ol style="list-style-type: none">1 Table 2: Provisions for cabling and termination equipment;2 Table 4: Intranet material estimate;3 Table 5: PA and AFILS material estimate;4 Table 6: Customer Help Point and emergency phone material estimate;5 Table 8: Security and access control; or6 Table 9: PIDS and electronic signage material take off. |
| RSA Equipment Limit | means the RSA Equipment Limit set out in Schedule 34. |
| RSA Equipment Quantity | means a quantity of RSA Equipment set out in part D3 of the Technical Solution at: <ol style="list-style-type: none">1 Table 2: Provisions for cabling and termination equipment;2 Table 4: Intranet material estimate;3 Table 5: PA and AFILS material estimate;4 Table 6: Customer Help Point and emergency phone material estimate;5 Table 8: Security and access control; or6 Table 9: PIDS and electronic signage material take off. |
| RSA Equipment Unit Cost | means in respect of an item of RSA Equipment, the unit cost approved by the State in accordance with clause 61A(b). |



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| Safety Director | has the meaning given in the Tram Safety Act. |
| Safety Duties | means: <ol style="list-style-type: none">1 in relation to the Train Franchisee, has the meaning given in the Rail Safety National Law; and2 in relation to the Tram Franchisee, means a duty imposed under Division 2 of Part 3 of the Tram Safety Act. |
| Savings | has the meaning given in the Change Compensation Principles. |
| SCC Project Costs | has the meaning given in clause 33.4(b). |
| Schedule of Certificates and Notices | means Schedule 8. |
| Scheduled Acceptance Date | has the meaning given in clause 26.2(f)(1). |
| Secretary | means the Secretary of the Department of Economic Development, Jobs, Transport and Resources. |
| Secured Area | means each part of the Maintained Assets which may only be accessed with a Security Key or other security checks. |
| Securities | means shares, units, interests in a partnership, and any other interests which would constitute 'securities' as defined under the Corporations Act. |
| Securitisation Structure | means the securitisation structure relating to the Licence Fees contained in clause 35A, the Receivables Purchase Deed and the Payment Directions Deed and associated concepts, definitions and provisions in the Project Documents. |
| Security Information | means information: <ol style="list-style-type: none">1 relating in any way to the security of the Maintained Assets; or2 which a Consortium Member or Associate is required to keep confidential in complying with clause 57, the Security Management Plan and Best Industry Practice. |
| Security Interest | has the meaning given to that term in section 12 of the <i>Personal</i> |



Properties Securities Act 2009 (Cth).

Security Key means any key or other similar means of providing access which, if lost or duplicated, could jeopardise the security of the Maintained Assets.

Security Management Plan means each plan of that name prepared and updated by Project Co in accordance with the Project Management Requirements.

Security of Payment Act means the *Building and Construction Industry Security of Payment Act 2002* (Vic).

Security Risk Profile Assessment a security risk profile assessment prepared, developed and updated in accordance with section 89 of the Public Sector Privacy Act.

Security Trust Deed means the document entitled 'Metro Tunnel - Security Trust Deed' dated on or about Contract Close, between amongst others, Project Co and the Security Trustee.

Security Trustee means the Security Trustee under and as defined in the Security Trust Deed which as at Contract Close is the party specified in item 14 of the Contract Particulars, as replaced from time to time in accordance with the Security Trust Deed and who is party to the Finance Direct Deed in that capacity.

Service Failure means, as the context requires,:

- 1 a FAW Service Failure; or
- 2 a Maintenance Service Failure.

Service Failure Abatement means:

- 1 a FAW Service Failure Abatement; or
- 2 a Maintenance Service Failure Abatement.

Services means:

- 1 during the FAW Phase, the Final Acceptance Works; and
- 2 during the Maintenance Phase, the Maintenance Services.

Services Solution means Exhibit 5.



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| Services Specification | means Exhibit 4. |
| Share Capital Dealing | has the meaning given in clause 53.4. |
| Shared Direct Costs | <p>means the Direct Costs for nominated resources shared across all state and third party projects that the Train Franchisee is supporting during the relevant period and which are over and above the costs of the core business of the Train Franchisee in operating the Train Franchise Business and includes:</p> <ol style="list-style-type: none">1 the staff of the relevant project management office; and2 any other expenses associated with the staff of the relevant project management office such as stationary, printing, telephones and training, <p>but excludes the cost of an alliance project that has its own project management office function.</p> |
| Site | <p>means the area comprising:</p> <ol style="list-style-type: none">1 during the D&C Phase, the Construction Site; and2 during the Maintenance Phase, the Maintenance Site, <p>(as the context requires) and includes any part of such area or land.</p> |
| Site Access and Interface Protocols | means the plan of that name which sets out the procedures and protocols for accessing the Construction Site during the D&C Phase. |
| Site Conditions | <p>means any physical conditions on, under, or over the surface, or in the vicinity of the Site, including:</p> <ol style="list-style-type: none">1 (water): ground water, ground water hydrology, the existence of any wells and the effects of any de-watering;2 (physical structures): physical and structural conditions above, upon and below the ground including any infrastructure, partially completed structures, Artefacts or in ground works;3 (vegetation): pastures, grasses or other vegetation on the Site;4 (topography): topography, ground surface and sub-surface conditions and geology including rock or other materials;5 (climate): climatic and weather conditions, rain, surface water run-off and drainage, water seepage, wind, wind-blown dust and sand seasons, mud and other effects of climatic and weather conditions;6 (Contamination): any Contamination;7 (Pollution): any Pollution;8 (physical conditions): all other physical conditions and characteristics of or in the vicinity of the Site, on or below the surface which may affect Project Co's ability to carry out its |



obligations in accordance with this Agreement; and

9 **(easements)**: all Easements over or in connection with the Site, whether or not they were in existence or known to Project Co before Contract Close.

Site Information Report means any report provided by the State, any of the State's Associates in relation to any core sample, geotechnical or site information.

SMPC Adjustment Protocol means the protocol set out in Schedule 36 to be applied by Project Co in accordance with clause 34A.2 to update the Financial Model for the payment of the State Maintenance Phase Contribution.

SMPC Payment Date has the meaning given in clause 34A.2(b)(8).

SMPC Project Co Notice has the meaning given in clause 34A.2(b).

SMPC Receivables has the meaning given in the Receivables Purchase Deed.

SMPC State Notice has the meaning given in clause 34A.2(a).

Soil Contamination means Contamination existing in soil but excluding Groundwater Contamination.

Soil Contamination Plans means Exhibit 8.

Soil Contamination Modification Event means where, during the D&C Phase, Project Co is required under clause 7.2(b)(1), clause 7.3, clause 7.4(c) or otherwise under this Agreement to Remediate Soil Contamination (or any part of a mass of Soil Contamination) that Project Co and its Associates:

- 1 have not caused or contributed to; and
- 2 would:
 - a not otherwise physically encounter in the carrying out of the Project Activities, that is;
 - i within the Arden Project Area;
 - ii within the Domain Project Area; or
 - iii outside the Temporary Occupied Footprint (excluding the Arden Project Area and the Domain Project Area); or
 - b physically encounter in the carrying out of the Project



Activities, that is:

- i within the Arden Day 1 Park Area, to the extent that Project Co's obligation to Remediate exceeds the Arden Day 1 Park Area Remediation Requirement; or
- ii within the Arden Project Area (excluding the Arden Day 1 Park Area) to the extent that Project Co's obligation to Remediate exceeds the Arden Project Area Remediation Requirement.

Solvent has the meaning given in the Corporations Act.

Special Designated Events has the meaning given in the Train Franchisee Cooperation Agreement.

[not disclosed] 3 [not disclosed]

Standards means all standards, codes, specifications, policies and requirements to be complied with in accordance with, and subject to, the terms of this Agreement and include:

- 1 the standards, policies, instructions and other procedures specified in or reasonably inferred from the PS&TR (including the Reference Documents); and
- 2 any other policy, guideline, standard, procedure or requirement, which applies in connection with the Project:
 - a which is notified to Project Co;
 - b which is publicly available or otherwise available to Project Co;
 - c with which Project Co is expressly required by the terms of this Agreement, by Law or by direction of the State to comply; or
 - d which Best Industry Practices would dictate would apply to the Project,unless the State (in its absolute discretion) gives notice to Project Co that such policy, guideline, standard, procedure or requirement does not constitute a Standard for the purpose of this Agreement,

as may be amended or updated from time to time.

State means the Crown in right of the State of Victoria.

State BTOS Costs has the meaning given in clauses 6.14(b).

State Capital Contribution means the financial contribution of the State to Project Co in an amount equal to \$1,500,000,000 and payable in accordance with



clause 34 and includes any part of such contribution retained by the State as a Defects Retention Amount.

**State Capital
Contribution Bridge
Facility**

has the meaning given in the Facility Agreement.

**State Capital
Contribution
Conditions**

has the meaning given in clause 34.2.

**State Capital
Contribution Notice**

means the notice delivered by Project Co under clause 34.3(a).

**State Capital
Contribution Payment
Date**

means the date which is 20 Business Days after the delivery of the State Capital Contribution Satisfaction Notice or such earlier date determined by the State.

**State Capital
Contribution
Satisfaction Notice**

has the meaning given in clause 34.3(a)(1).

**State Construction
Contribution**

means the financial contribution of the State to Project Co in the forecast amounts set out in the State Construction Contribution Schedule and payable in accordance with clause 33.

**State Construction
Contribution Actual
Amount**

means for each Month, the State Construction Contribution Forecast Amount for that Month minus any State Construction Contribution Adjustment for that Month.

**State Construction
Contribution
Adjustment**

means for each Month, an amount equal to the Forecast Payment Claim for that Month minus the Certified Payment Claim for that Month with the result multiplied by the State Construction Contribution Funding Percentage for that Month. For the avoidance of doubt, the State Construction Contribution Adjustment may be a positive or negative amount.

**State Construction
Contribution Forecast
Amount**

means for each Month, the amount set out in the State Construction Contribution Schedule for that Month.

**State Construction
Contribution Funding
Percentage**

means for each Month, the percentage set out in the State Construction Contribution Schedule for that Month.



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| State Construction Contribution Notice | has the meaning given in clause 33.3(a). |
| State Construction Contribution Payment Date | means for each payment under clause 33.4, the date which is the later of: <ol style="list-style-type: none">1 7 Business Days after receipt by the State of a valid State Construction Contribution Notice; and2 the payment date specified in the State Construction Contribution Notice. |
| State Construction Contribution Schedule | means Schedule 6. |
| State Contribution | means the State Construction Contribution and the State Capital Contribution (or either of them as the context requires). |
| State D&C Phase Insurance | means the Insurances referred to in Part A of the Insurance Schedule, the initial form of which is attached to the Insurance Schedule. |
| State Maintenance Phase Contribution | means the aggregate of: <ol style="list-style-type: none">1 the Receivables Refund Payment; and2 the Contribution Payment. |
| State Maintenance Phase Insurance | means the Insurances referred to in Part C of the Insurance Schedule. |
| State Preferred Tenant | a Commercial Opportunities Tenant nominated by the State pursuant to clause 37.5(h)(2). |
| State Procured Insurance | means each of the: <ol style="list-style-type: none">1 the State D&C Phase Insurances; and2 the State Maintenance Phase Insurances. |
| State Project Documents | means those Project Documents to which the State or PTV As Counterparty is a party. |
| State Representative | means the person or persons specified in item 15 of the Contract Particulars subject to replacement, termination or delegation in accordance with clause 11.3. |



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| State Securities | has the meaning given in the Finance Direct Deed. |
| State Security | means the document entitled 'State Security - Metro Tunnel' between the State, Finance Co and Project Co. |
| State Share of Refinancing Gain | has the meaning given in clause 40.4(b). |
| Station Land Management Agreement | a land management agreement contemplated to regulate the use, maintenance and costs associated with the specific services and structures which are shared across the Stations at CBD North or CBD South and the relevant completed Oversight Development Works. |
| Stations | means the underground train stations to be constructed as part of the Works at: <ol style="list-style-type: none">1 Domain;2 CBD North;3 CBD South;4 Parkville; and5 Arden. |
| Step-In Event | has the meaning given in clause 41.1(a). |
| Steps Plan Schedule | means Schedule 38. |
| Subcontract | means an agreement which: <ol style="list-style-type: none">1 Project Co enters into with a Subcontractor; or2 a Subcontractor enters into with another Subcontractor, in connection with the Project Activities. |
| Subcontract Novation Deed | means a document titled 'Novation Deed – Metro Tunnel – Tunnel and Stations PPP' between the State, a Material Subcontractor and a Key Subcontractor substantially in the form set out in Schedule 15. |
| Subcontractor | means: <ol style="list-style-type: none">1 for the purposes of:<ol style="list-style-type: none">a the definitions of Associate and TP Claim;b clauses 13.2(a) to 13.2(d), 13.6(a)(2), 13.6(b), 13.6(c), 16.1, |

and 16.3; and

c the Insurances,

means any person who enters into a contract in connection with the Project Activities with Project Co or another Consortium Member or whose subcontract is in connection with the Project Activities and is in a chain of contracts where the ultimate contract is with Project Co or another Consortium Member;

2 for the purposes of clauses 13.3 and 13.4, excludes any Utility Provider; and

3 subject to paragraphs 1 and 2 and the Insurance Schedule, for the purposes of this Agreement, means any person who enters into a contract in connection with the Project Activities with Project Co or another Consortium Member, but does not include the CityLink Manager, the CityLink Consultant, the CBD North OSD Developer, the CBD South OSD Developer, the Financiers, the Independent Reviewer, the Escrow Agent, or the Rail Franchisee Interface Parties.

Subcontractor Direct Deed

means a deed:

1 between the State, Project Co and a relevant Key Subcontractor; or

2 between the State, the D&C Subcontractor and the relevant Key Subcontractor,

substantially in the form of Schedule 14 (amended as required to reflect the relevant counterparty to the Key Subcontract).

Submitted Document

means each document, data or other information which Project Co is required to provide to the State or Independent Reviewer for review in accordance with the Review Procedures.

Supplier

for the purpose of clause 59, has the meaning given in clause 59.1(b).

Supplier Code of Conduct

means the document titled 'Procurement - Supplier Code of Conduct' issued by the State (as amended from time to time) and, as at the date of this Agreement, available at <http://www.procurement.vic.gov.au/Suppliers/Supplier-Code-of-Conduct> .

Survey Plan

has the meaning given in clause 6.7.

System Failure Event

has the meaning given to that term in the Services Specification.

System Failure Event Abatement

means in respect of a System Failure Event, an amount in dollars calculated in respect of that System Failure Event in accordance



with the Payment Schedule.

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| Systems Engineering Standard | means AS/NZS ISO/IEC 15288: 2015. |
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| Target Critical Interface Milestone Date | means, in relation to a Critical Interface Milestone, the date identified as the 'target' date in the D&C Program to achieve that Critical Interface Milestone, as amended pursuant to this Agreement. |
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| Target Critical Interface Milestone (PPP Responsible) Date | means, in relation to a Critical Interface Milestone (PPP Responsible), the date identified as the 'target' date in the D&C Program to achieve that Critical Interface Milestone (PPP Responsible), as amended pursuant to this Agreement. |
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| Tax or Taxes | means any present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature, imposed or levied by an Authority, together with any interest, penalty, charge, fee or other amount imposed or made on, or in connection with, any of the foregoing, but excluding any Rates. |
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| Tax Invoice | has the meaning given in the GST Law. |
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| Taxable Supply | has the meaning given in the GST Law, excluding section 84-5 of the GST Act. |
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| Technical Solution | means Exhibit 3. |
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| Technological Improvement | means technological improvements with performance, efficiency, sustainability or durability characteristics materially better than those required under the State Project Documents. |
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| Temporary Equipment | means all plant, machinery and equipment and other items used by Project Co or its Subcontractors solely for the purpose of enabling or facilitating delivery of the Works which: <ol style="list-style-type: none">1 does not and will not become part of the Project Assets; and2 will not be used by Project Co for performing the Maintenance Services. |
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| Temporary Land Availability Date | means in respect of a parcel of land referred to in the Land Availability Plans, the date specified as the 'Temporary Land Availability Date' for that parcel of land in the Land Availability Plans. |
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| Temporary Land Exit Date | means in respect of a parcel of land referred to in the Land Availability Plans, the date specified as the 'Temporary Land Exit Date' for that parcel of land in the Land Availability Plans. |
| Temporary Occupied Footprint | means, at the relevant time, that part of the Site: <ol style="list-style-type: none">1 which is occupied or controlled by Project Co or its Associates; and2 on which Project Co or its Associates are performing the Works or Services, to the extent involving the disturbance of soil. |
| Temporary Works | means the temporary physical works which Project Co must design, supply, construct, install, produce or complete for the purpose of carrying out the D&C Activities and the Final Acceptance Works including access, ingress, egress and laydown requirements. |
| Term | means the term of this Agreement: <ol style="list-style-type: none">1 subject to clause 3.1, commencing on the date of Financial Close; and2 ending on the Expiry Date. |
| Termination for a Default Termination Event | means termination of this Agreement in accordance with clause 45.4. |
| Termination for a Force Majeure Termination Event | means termination of this Agreement in accordance with clause 45.3. |
| Termination Payment | means a termination payment calculated in accordance with the Termination Payments Schedule. |
| Termination Payment Date | means 20 Business Days after the later of: <ol style="list-style-type: none">1 the Expiry Date;2 the date on which the amount of the relevant Termination Payment is agreed by the State and Project Co or, failing agreement, is determined by an independent expert in accordance with the Termination Payments Schedule or clauses 46 to 47; and3 in the case of a Default Termination Payment, the Compensation Date, or such other date as may be specified in the Termination Payments Schedule for payment of a Termination Payment. |



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| Termination Payments Schedule | means Schedule 5. |
| Test | means: <ol style="list-style-type: none">1 all tests necessary to ensure that the requirements of this Agreement, the PS&TR, the Final Acceptance Schedule, the Completion Schedule and the Systems Engineering Standard are met, as set out in the Testing and Commissioning Management Plan; and2 any additional test which Project Co is directed to carry out under clause 23.8(a). |
| Test Procedure | means a detailed procedure for the conduct of a Test to be developed by Project Co in accordance with clause 23 and the Management Plans. |
| Test Report | means a report on the conduct of a Test, including supporting documentation showing the results or other output of the Test. |
| Testing and Commissioning Management Plan | means each plan relating to testing and commissioning prepared and updated by Project Co in accordance with the PS&TR. |
| The Paddock | has the meaning given in clause 6.3B(b). |
| Third Party Intellectual Property Rights | has the meaning given in the Intellectual Property Schedule. |
| Threshold Amount | has the meaning given in clause 32.7(a). |
| Ticketing Works | means the physical works which the Ticketing Works Contractor must design, supply, construct, install, produce and complete for the purpose of installing, operating and maintaining ticketing barriers, ticketing machines and other ticketing equipment in the Stations. |
| Ticketing Works Contractor | means provider of the public transport ticketing system for the Victorian metropolitan public transport network which at the date of this Agreement is NTT Data Victorian Ticketing System Pty Ltd ABN 39 114 334 600. |
| TOS Act | means the <i>Traditional Owner Settlement Act 2010 (Vic)</i> . |



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| TP Claim | means a claim by a third party excluding: <ol style="list-style-type: none">1 a claim by a Metro Tunnel Package Contractor;2 a claim by a party to a Project Document; or3 a claim by a Subcontractor. |
| Track Occupation | means: <ol style="list-style-type: none">1 a Train Track Occupation; and2 a Tram Track Occupation. |
| Track Occupation Schedule (FAW) | has the meaning given in the Train Franchisee Cooperation Agreement. |
| Train Accreditation | means accreditation under Part 3, Division 4 of the Rail Safety National Law. |
| Train Franchise Agreement | means an agreement for the operation of railway passenger services on the Melbourne metropolitan rail network (or part thereof), including any new, replacement or additional agreement entered into during the Term. As at Contract Close, this is the agreement between the Public Transport Development Authority and Metro Trains Melbourne Pty Ltd titled 'Franchise Agreement - Train' dated 2 October 2017 and includes all modules to it, as amended from time to time. |
| Train Franchise Business | has the meaning given to 'Franchise Business' in the Train Franchisee Cooperation Agreement. |
| Train Franchise Employee | means an employee of: <ol style="list-style-type: none">1 the Train Franchisee; or2 a Related Body Corporate of the Train Franchisee where the employee is employed in the Train Franchise Business. |
| Train Franchise EOPR | means any amounts which are payable by or to the Train Franchisee under the operational performance regime established under the Train Franchise Agreement. |
| Train Franchise Insurance | has the meaning given to 'Franchise Insurance' in the Train Franchisee Cooperation Agreement. |
| Train Franchisee | means a franchisee for the Melbourne metropolitan rail network (or part thereof) and counterparty to a Train Franchise Agreement, including any entity that enters into a new, replacement or additional Train Franchise Agreement during the Term. As at |



Contract Close, this is Metro Trains Melbourne Pty Ltd (ACN 136 429 948).

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| Train Franchisee Arrangements | means the Train Franchise Agreement, the Train Infrastructure Lease and the Train Franchisee Projects Agreement. |
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| Train Franchisee Cooperation Agreement | means the document entitled 'Franchisee Cooperation Agreement (Train) – Metro Tunnel' between Project Co and the Train Franchisee. |
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| Train Franchisee Cooperation Agreement Direct Deed | means the document entitled 'FCA Direct Deed (Train)' between the State, Project Co and the Train Franchisee. |
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| Train Franchisee Cooperation Agreement PTV Direct Agreement | means the document entitled 'Direct Agreement –Franchisee MMR Agreements - Train' between PTV and Project Co. |
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| Train Franchisee Failure Event | <p>means any of the following events:</p> <p>1 where:</p> <ul style="list-style-type: none">a the Train Franchisee Interface Party refuses or fails to perform any material obligations under the Train Franchisee Cooperation Agreement;b Project Co demonstrates, to the satisfaction of the State (acting reasonably), that Project Co has used all reasonable endeavours to compel the Train Franchisee Interface Party to perform those obligations; andc either:<ul style="list-style-type: none">i the 'Senior Representatives' (as defined under the Train Franchisee Cooperation Agreement) agree that the Train Franchisee Interface Party has failed, or refused, to perform those obligations under the Train Franchisee Cooperation Agreement; orii following expiry of the period for negotiation referred to in clause 30(c) of the Train Franchisee Cooperation Agreement, an expert has determined under the Train Franchisee Cooperation Agreement that the Train Franchisee Interface Party has failed, or refused, to perform those obligations under the Train Franchisee Cooperation Agreement, <p>and such failure or refusal of the Train Franchisee Interface Party is subsisting or its effects are subsisting;</p> <p>2 where:</p> <ul style="list-style-type: none">a a new or replacement Train Franchisee has been appointed by the State or a State Associate to provide Train Services |
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- in respect of the Melbourne metropolitan rail network; or
- b the State has terminated the Train Franchisee Arrangements and either itself or a State Associate is providing Train Services in respect of the Melbourne metropolitan rail network,
- and the new or replacement Train Franchisee or the State or relevant State Associate acting as the provider of Train Services fails to enter into a Train Franchisee Cooperation Agreement in sufficient time so as to avoid any delay or disruption to the Project Activities;
- 3 fraud or Wilful Default of the Train Franchisee Interface Party;
- 4 the modification, suspension or revocation of the Train Franchisee's Accreditation during the FAW Phase or the Maintenance Phase and such modification, suspension or revocation is not due to an unlawful, fraudulent or malicious act or omission, breach, negligence or recklessness of Project Co or its Associates; or
- 5 where:
- a the testing and commissioning process in respect of the Works during the FAW Phase; or
- b the rectification of a Defect in the Maintained Assets during the Maintenance Phase,
- is not capable of being performed at the relevant time in accordance with the terms of the Train Accreditation of the Train Franchisee Interface Party, except to the extent due to an unlawful, fraudulent or malicious act or omission, breach, negligence or recklessness of Project Co or its Associates,
- but does not include a Force Majeure Event described in paragraph 9 or paragraph 10 of the definition of Force Majeure Event.

Train Franchisee Input Documents

has the meaning given to 'Franchisee Input Documents' in the Train Franchisee Cooperation Agreement.

Train Franchisee Interface Party

means the Train Franchisee in its capacity as a counterparty to:

- 1 the Train Franchisee Cooperation Agreement; or
- 2 the Train Franchisee Cooperation Agreement Direct Deed.

Train Franchisee Land

means the land and infrastructure that is leased to the Train Franchisee under the Train Infrastructure Lease including:

- 1 on and from the relevant Date of Handback, the Returned Existing Network Works; and
- 2 on and from the Date of Final Acceptance:
 - a the Maintained Assets other than the land and infrastructure included in the Commercial Opportunities Lease; and
 - b the Returned Train Works.



Train Franchisee Projects Agreement means the agreement between Public Transport Development Authority and Metro Trains Melbourne Pty Ltd titled 'Projects Agreement - Train' dated 31 August 2009 as amended from time to time and any new or replacement projects agreement between Public Transport Victoria (or its successor) and any successor Train Franchisee that forms part of the Melbourne metropolitan rail franchise arrangements.

Train Franchisee Rail Safety Requirements has the meaning given to 'Franchisee Rail Safety Requirements' in the Train Franchisee Cooperation Agreement.

Train Franchisee Representative means the party specified in item 16 of the Contract Particulars.

Train Franchisee's Margin [not disclosed]

Train Infrastructure has the meaning given to 'rail infrastructure' in the Rail Safety National Law.

Train Infrastructure Lease means the lease between the Public Transport Development Authority, Metro Trains Melbourne Pty Ltd and Victorian Rail Track titled 'Infrastructure Lease - Train' dated 31 August 2009 as amended from time to time and includes any new or replacement lease between the Public Transport Development Authority (or its successor) and any successor Train Franchisee that forms part of the Melbourne metropolitan rail franchise arrangements.

Train Operations means each of:

- 1 provision, maintenance, movement, shunting, storage, fuelling, loading and unloading of Rolling Stock for Train Services;
- 2 provision of Train Infrastructure to enable Train Services;
- 3 maintenance, storage, building, rebuilding, servicing, replacing and repairing of Train Infrastructure and Rolling Stock; and
- 4 conduct of the business of providing Train Services.

Train Safety Interface Agreement has the meaning given to the term 'Interface Agreement' in the Rail Safety National Law.

Train Safety Management System has the meaning given in the Rail Safety National Law.

Train Services means the handling, storing or transport of freight or passengers by rail, but excludes Tram Services.



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| Train Track Occupation | has the meaning given to 'Track Occupation' as defined in the Train Franchisee Cooperation Agreement. |
| Trainee | means a person who: <ol style="list-style-type: none">1 is employed under a Training Contract; and2 is registered with the Victorian Registration and Qualifications Authority, but excludes an Apprentice. |
| Training Contract | has the meaning given in the <i>Education and Training Reform Act 2006</i> (Vic). |
| Tram Accreditation | means accreditation under Part 5 of the Tram Safety Act. |
| Tram Franchise Agreement | means an agreement for the operation of tramway passenger services on the Melbourne metropolitan tram network (or part thereof), including any new, replacement or additional agreement entered into during the Term. As at Contract Close, this is the agreement between the Public Transport Development Authority and KDR Victoria Pty Ltd ACN 138 066 074 titled 'Franchise Agreement – Tram' dated 2 October 2017 as amended and restated and includes all modules to it, as amended from time to time. |
| Tram Franchise Business | means the delivery of Tram Operations pursuant to the Tram Franchisee Arrangements. |
| Tram Franchisee | means a franchisee for the Melbourne metropolitan tram network (or part thereof) and counterparty to a Tram Franchise Agreement, including any entity that enters into a new, replacement or additional Tram Franchise Agreement during the Term. As at Contract Close, this is KDR Victoria Pty Ltd ABN 42 138 066 074, in its capacity as the franchise operator of Melbourne's tram network, Yarra Trams. |
| Tram Franchisee Arrangements | means the Tram Franchise Agreement, the Tram Infrastructure Lease and the Tram Franchisee Projects Agreement. |
| Tram Franchisee Cooperation Agreement | means the document entitled 'Franchisee Cooperation Agreement (Tram)' between Project Co and the Tram Franchisee. |
| Tram Franchisee Cooperation Agreement Direct | means the document entitled 'FCA Direct Deed (Tram)' between the State, Project Co and the Tram Franchisee. |

Deed

**Tram Franchisee
Cooperation
Agreement PTV Direct
Agreement**

means the document entitled 'Direct Agreement – Franchisee MMR Agreements – Tram' between PTV and Project Co.

**Tram Franchisee
Failure Event**

means any of the following events:

- 1 where:
 - a the Tram Franchisee Interface Party refuses or fails to perform any material obligations under the Tram Franchisee Cooperation Agreement;
 - b Project Co demonstrates, to the satisfaction of the State (acting reasonably), that Project Co has used all reasonable endeavours to compel the Tram Franchisee Interface Party to perform those obligations; and
 - c either:
 - i the 'Senior Representatives' (as defined under the Tram Franchisee Cooperation Agreement) agree that the Tram Franchisee Interface Party has failed, or refused, to perform those obligations under the Tram Franchisee Cooperation Agreement; or
 - ii following expiry of the period for negotiation referred to in clause 25(d) of the Tram Franchisee Cooperation Agreement, an expert has determined under the Tram Franchisee Cooperation Agreement that the Tram Franchisee Interface Party has failed, or refused, to perform those obligations under the Tram Franchisee Cooperation Agreement,

and such failure or refusal of the Tram Franchisee Interface Party is subsisting or its effects are subsisting;

- 2 where:
 - a a new or replacement Tram Franchisee has been appointed by the State or a State Associate to provide Tram Services in respect of the Melbourne metropolitan tram network; or
 - b the State has terminated the Tram Franchisee Arrangements and either itself or a State Associate is providing Tram Services in respect of the Melbourne metropolitan tram network,

and the new or replacement Tram Franchisee or the State or relevant State Associate acting as the provider of Tram Services fails to enter into a Tram Franchisee Cooperation Agreement in sufficient time so as to avoid any delay or disruption to the Project Activities;

- 3 fraud or Wilful Default of the Tram Franchisee Interface Party; or
 - 4 the modification, suspension or revocation of the Tram Franchisee's Accreditation and such modification, suspension or revocation is not due to an unlawful, fraudulent or malicious act or omission, breach, negligence or recklessness of Project
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Co or its Associates,

but does not include a Force Majeure Event described in paragraph 9 or paragraph 10 of the definition of Force Majeure Event.

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| Tram Franchisee Input Document | has the meaning given to 'Franchisee Input Documents' in the Tram Franchisee Cooperation Agreement. |
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| Tram Franchisee Interface Party | means the Tram Franchisee in its capacity as a counterparty to: <ol style="list-style-type: none">1 the Tram Franchisee Cooperation Agreement; or2 the Tram Franchisee Cooperation Agreement Direct Deed. |
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| Tram Franchisee Land | means the land and infrastructure that is leased to the Tram Franchisee under the Tram Infrastructure Lease including, on and from the relevant Date of Handback, the Returned Tram Works. |
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| Tram Franchisee Projects Agreement | means the agreement between Public Transport Development Authority and KDR Victoria Pty Ltd ABN 42 138 066 074 titled 'Projects Agreement – Tram' dated 31 August 2009 as amended from time to time and any subsequent projects agreement between Public Transport Victoria (or its successor) and any successor franchisee that forms part of the metropolitan tram franchise arrangements. |
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| Tram Franchisee Rail Safety Requirements | has the meaning given to 'Franchisee Rail Safety Requirements' in the Tram Franchisee Cooperation Agreement. |
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| Tram Infrastructure | has the meaning given to 'rail infrastructure' in the Tram Safety Act. |
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| Tram Infrastructure Lease | means the lease between the Public Transport Development Authority, KDR Victoria Pty Ltd ABN 42 138 066 074 and Victorian Rail Track titled 'Infrastructure Lease - Tram' dated 31 August 2009 as amended from time to time and includes any new or replacement lease between the Public Transport Development Authority (or its successor) and any successor Tram Franchisee that forms part of the metropolitan tram franchise arrangements. |
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| Tram Operations | means each of: <ol style="list-style-type: none">1 provision, maintenance, movement, shunting, storage, fuelling, loading and unloading of Rolling Stock for Tram Services;2 provision of Tram Infrastructure to enable Tram Services;3 maintenance, storage, building, rebuilding, servicing, replacing and repairing of Tram Infrastructure and Rolling Stock; and4 the conduct of the business of providing Tram Services. |
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| Tram Safety Act | means the <i>Rail Safety (Local Operations) Act 2006 (Vic)</i> . |
| Tram Safety Interface Agreement | has the meaning given to the term 'Interface Agreement' in the Tram Safety Act. |
| Tram Safety Management System | has the meaning given to the term 'safety management system' in the Tram Safety Act. |
| Tram Safety Regulations | means the <i>Rail Safety (Local Operations) Regulations 2006 (Vic)</i> and any other regulations made under the Tram Safety Act. |
| Tram Services | means the transport of passengers by tram. |
| Tram Track Occupation | has the meaning given to 'Track Occupation' as defined in the Tram Franchisee Cooperation Agreement. |
| Tram Works | has the meaning given in the Tram Franchisee Cooperation Agreement. |
| Transport Management Plans | means: <ol style="list-style-type: none">1 the 'Transport Management Plan';2 the 'Traffic Management Plan'; and3 the 'Worksite Traffic Management Plan', each as: <ol style="list-style-type: none">4 defined under; and5 prepared and updated by Project Co in accordance with, the Project Management Requirements. |
| Transurban | means Transurban Infrastructure Management Limited ABN 27 098 147 678 and CityLink Melbourne Limited ABN 65 070 810 678 together as concessionaires of CityLink. |
| Trust Property | means all present and future undertaking, assets and rights of a CY Trust. |
| Trustee's Indemnity | means, in relation to a CY Trustee and a CY Trust, the present and future right and interest of the CY Trustee in respect of: <ol style="list-style-type: none">1 the administration of that CY Trust;2 that CY Trustee's right of indemnity from the Trust Property of that CY Trust or from any beneficiary of that CY Trust; and |



3 the Trustee's Lien of that CY Trustee in respect of that CY Trust,

and all moneys paid or payable under or in respect of any such right or interest.

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| Trustee's Lien | means, in relation to a CY Trustee and a CY Trust, any equitable lien or other security interest held by or granted to that CY Trustee securing the Trustee's Indemnity or any other present or future interest of that CY Trustee in respect of the Trust Property, the CY Trust or any beneficiary of that CY Trust. |
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| Tunnel | means the twin nine-kilometre rail tunnels from Kensington to South Yarra as part of the new Sunbury to Cranbourne / Pakenham line. |
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| Type | has the meaning given in the Train Franchisee Cooperation Agreement. |
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| Uncleared Personnel | has the meaning given in clause 62.5(c). |
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| Uninsurable Risk | <p>means a risk that is required to be insured in accordance with this Agreement and is insurable at Contract Close but during the Term:</p> <ol style="list-style-type: none">1 insurance becomes unavailable in the recognised international insurance market in connection with that risk by Reputable Insurers; or2 the insurance premium payable for insuring that risk with a Reputable Insurer or the terms and conditions of the relevant insurance are such that the risk is no longer generally being insured against by private sector providers of infrastructure similar to the Relevant Infrastructure or the Project or services similar to the Project Activities in Australia or in the United Kingdom, <p>provided that the uninsurability referred to in paragraphs 1 and 2 is not caused by any act or omission of Project Co or any of its Associates.</p> |
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| Union Official | means any officer, official or employee of an employee organisation registered under Industrial Relations Laws. |
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| Unplanned Rail Disruption | means any disruption to Rail Operations caused by or arising from an act or omission of Project Co or its Associates in connection with the Project, other than any disruption that occurs during any track occupation or period of track access permitted by a Rail Franchisee (but only to the extent permitted by that agreed track occupation or agreed period of track access). |
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| User | means any member of the public who is entitled to use any part of the Stations, but does not include the Train Franchisee, Project Co, the State, the Metro Tunnel Package Contractors, the Independent Reviewer, any Handover Reviewer, any Escrow Agent, or their Associates. |
| Utilities Schedule | means Schedule 10. |
| Utility | means any utility service, including water, sewerage, drainage, gas, electricity, telephone, telecommunications, fuel or other like services. |
| Utility Agreement | means an agreement referred to in Part 7 of the Relevant Legislation entered into between the State and any Relevant Utility Provider in relation to the D&C Activities and includes an approved utility agreement as defined in Part 7 of the Relevant Legislation. |
| Utility Infrastructure | means any part of the supply, distribution or reticulation network owned, operated or controlled by a Utility Provider, including poles, pipes, pipeline, cables, wires, conduits, tunnels, aqueduct, electrical installation, telecommunications plant, water channel, and railway and electronic communications systems but not including communications systems and railway provided as part of the Works and includes the Relevant Utility Infrastructure. |
| Utility Infrastructure Works | means the physical things and works which Project Co must design, supply, construct, install, produce, commission or complete in connection with the construction, modification or relocation of Utility Infrastructure and handover to the State, to an Authority or to another person in accordance with this Agreement other than Utility Infrastructure to be handed over as part of the Maintained Assets. |
| Utility Provider | means an entity (whether publicly or privately owned) that provides a Utility under the authority of State or Commonwealth legislation and includes all Relevant Utility Providers. |
| [not disclosed] | [not disclosed] |
| [not disclosed] | [not disclosed] |
| [not disclosed] | [not disclosed]. |
| VicRoads | means the Roads Corporation established under the <i>Transport Act 1983</i> (Vic) and continued under the <i>Transport Integration Act 2010</i> (Vic). |



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| Victorian Rail Network | means the entire Victorian rail network including the Melbourne metropolitan train and tram network. |
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| Victorian Registration and Qualifications Authority | means the statutory body established under Chapter 4 of the <i>Education and Training Reform Act 2006</i> (Vic) whose functions include the registration and regulation of apprenticeships and traineeships, and administering legislation including but not limited to the <i>Education and Training Reform Act 2006</i> (Vic) and the <i>Education and Training Reform Regulations 2007</i> (Vic). |
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| VicTrack | means the statutory corporation established under section 8 of the <i>Rail Corporations Act 1996</i> (Vic) and continued under section 116 of the <i>Transport Integration Act 2010</i> (Vic). |
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| VIPP | means the Victorian Industry Participation Policy made pursuant to section 4 of the <i>Victorian Industry Participation Policy Act 2003</i> (Vic). |
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| VIPP Schedule | means Schedule 23. |
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| VMIA | the 'Victorian Managed Insurance Authority' established pursuant to the <i>Victorian Managed Insurance Authority Act 1996</i> (Vic). |
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| Voluntary Termination | means termination of this Agreement in accordance with clause 45.2. |
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| Voluntary Termination Payment | means the Termination Payment for a Voluntary Termination in accordance with the Termination Payments Schedule. |
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| Western Distributor | means the State project for widening the West Gate Freeway and connecting it to the Port of Melbourne, CityLink and the Melbourne CBD via a new road tunnel under Yarraville and a bridge over the Maribyrnong River. |
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| Wilful Default | means any breach, act or omission done or omitted to be done with deliberate or reckless disregard for the foreseeable, harmful and avoidable consequences of the breach, act or omission. |
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| Work Readiness Procedure | means the work readiness procedure prepared by the Train Franchisee that applies to track occupations, as amended from time to time, and includes any replacement procedure. |
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**Workers'
Compensation
Insurance**

means the Insurance policy for workers' compensation insurance:

- 1 in respect of the D&C Phase, as set out in Part B section (f);
and
- 2 in respect of the Maintenance Phase, as set out in Part D
section (b),

of the Insurance Schedule.

Works

means the physical things and works which Project Co must design, supply, construct, install, produce, commission or complete in accordance with this Agreement, including:

- 1 the Maintained Assets;
- 2 the Final Acceptance Works;
- 3 the Returned Works;
- 4 the Temporary Works; and
- 5 the Advanced Works,

and any Modifications and rectification of Defects in such physical things and works, but excluding:

- 6 the Metro Tunnel Interface Works;
 - 7 the Ticketing Works; and
 - 8 the Commercial Opportunities Works.
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2 General rules of interpretation

2.1 Interpretation

In this Agreement:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa and a word indicating a gender includes every other gender;

- (c) **(Agreement and Schedule references)**: a reference to:

- (1) a party, clause, Schedule or Exhibit is a reference to a party, clause, Schedule or Exhibit of or to this Agreement; and
- (2) a section is a reference to a section of a Schedule;

- (d) **(Agreement as amended)**: without limiting clause 2.7, a reference to this Agreement or to any other deed, agreement, document or instrument includes a reference to this Agreement or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;



- (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **(‘includes’)**: ‘includes’ will be read as if followed by the phrase ‘(without limitation)’;
- (j) **(‘or’)**: the meaning of ‘or’ will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) **(‘\$’)**: a reference to ‘\$’, AUD or dollar is to Australian currency;
- (m) **(time)**: a reference to time is a reference to time in Melbourne, Australia;
- (n) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (o) **(obligations and liabilities)**: a reference to an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (p) **(‘may’)**: the term ‘may’, when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;
- (q) **(Independent Reviewer)**: references to the Independent Reviewer will be interpreted only to the extent of the Independent Reviewer's role under the Independent Reviewer Deed of Appointment (including the term of such appointment). To the extent that any reference to the Independent Reviewer would require the Independent Reviewer to exercise a right or carry out an obligation under this Agreement outside the term of its appointment, the State will be required to exercise such right on a similar basis as the Independent Reviewer would have, acting in accordance with the Independent Reviewer Deed of Appointment. Any such exercise of a right or carrying out of such an obligation by the State will be a decision or determination of the State and not a decision or determination of the Independent Reviewer for the purpose of clauses 11.8, 46 and 47;
- (r) **(Authorities)**: where there is a reference to an Authority, institute or association or other body referred to in this Agreement which:
 - (1) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Agreement is deemed to refer to that other entity; or

- (2) ceases to exist, this Agreement is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (s) **(remedy)**: the use of the words 'remedy', 'cure' or any form of such words in this Agreement means that the event to be remedied or cured must be remedied or cured or its effects overcome;
- (t) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision; and
- (u) **(critical path)**: a reference to the critical path contained in the D&C Program is a reference to:
 - (1) in respect of delay to a Progress Milestone, the relevant critical path to that Progress Milestone; and
 - (2) otherwise, the critical path to Provisional Acceptance.

2.2 Composition of Agreement and order of precedence

- (a) **(Agreement composition)**: This Agreement comprises as at Contract Close:
 - (1) clause 1 to clause 64;
 - (2) Schedule 1 to Schedule 41; and
 - (3) Exhibit 1 to Exhibit 9.
- (b) **(State obligations)**: Project Co agrees that, except in relation to PTV's obligations under the Train Franchisee Cooperation Agreement PTV Direct Agreement or the Tram Franchisee Cooperation Agreement PTV Direct Agreement:
 - (1) to the extent that an Exhibit (other than the PS&TR or the Services Specification) or the D&C Program seeks to impose any obligations on the State, such obligations will not be legally binding on the State (unless a corresponding obligation is expressly imposed on the State or its Associates in a clause or a Schedule and then subject to clause 2.2(b)(2)); and
 - (2) Project Co is not entitled to make any Claim against the State for any Liabilities incurred by Project Co in connection with any Exhibit (other than the PS&TR or the Services Specification) or the D&C Program unless such Liabilities are also incurred by Project Co as a consequence of a breach of a corresponding obligation imposed on the State in a clause or a Schedule.
- (c) **(Order of precedence)**: Subject to clause 2.2(d), the following order of precedence applies in the event of any inconsistency, ambiguity or discrepancy between the various documents comprising this Agreement:
 - (1) clauses 1 to 64;
 - (2) Schedule 1 to Schedule 41;
 - (3) the PS&TR;
 - (4) the Services Specification; and
 - (5) subject to clause 2.2(b), the remaining Exhibits.
- (d) **(Greater requirement)**: To the extent that any part of any document comprising this Agreement imposes a greater or higher requirement, standard, quality, level



of service, quantum or scope on Project Co than any other part of any document comprising this Agreement, unless the context otherwise expressly requires, that greater or higher requirement, standard, quality, level of service, quantum or scope prevails.

2.3 Inconsistency between State Project Documents

Where there is an inconsistency, ambiguity or discrepancy between this Agreement and any other State Project Documents, or between any of the State Project Documents (excluding this Agreement), then the following order of precedence applies:

- (a) the Finance Direct Deed;
- (b) this Agreement; and
- (c) the remaining State Project Documents.

2.4 Inconsistencies within or between Project Requirements

- (a) **(Inconsistency of technical documents):** If there is any inconsistency, ambiguity or discrepancy:
 - (1) between:
 - (A) the PS&TR; and
 - (B) the Technical Solution,then the PS&TR will prevail, subject only to the extent that the Technical Solution provides a greater or higher requirement, standard, quality, level of service, quantum or scope, in which case the Technical Solution will apply to that extent; and
 - (2) within the PS&TR then the greater or higher requirement, standard, quality, level of service, quantum or scope as determined by the State will prevail; or
 - (3) within the Technical Solution then:
 - (A) a forward note to a document comprising part of the Technical Solution will prevail over the body of that document; and
 - (B) otherwise, the greater or higher requirement, standard, quality, level of service, quantum or scope as determined by the State will prevail.
- (b) **(Inconsistency of services documents):** If there is any inconsistency, ambiguity or discrepancy:
 - (1) between the Services Specification and the Services Solution, then the Services Specification will prevail, subject only to the extent that the Services Solution provides a greater or higher requirement, standard, quality, level of service, quantum, scope or outcome, in which case the Services Solution will apply to that extent; or
 - (2) within:
 - (A) the Services Specification; or
 - (B) the Services Solution,then the greater or higher requirement, standard, quality, level of service, quantum or scope as determined by the State will prevail.



- (c) **(Inconsistency of Project Requirements):** If there is any inconsistency, ambiguity or discrepancy between:
 - (1) the PS&TR and the Services Specification; or
 - (2) the Technical Solution and the Services Solution,then the greater or higher requirement, standard, quality, level of service, quantum or scope as determined by the State will prevail.
- (d) **(Inconsistency of Reference Documents):** If there is any inconsistency, ambiguity or discrepancy between the Reference Documents, section 2 of Part A of the PS&TR will apply.
- (e) **(Inconsistency of Standards):** If there is any inconsistency, ambiguity or discrepancy between or within the Standards, then the greater or higher requirement, standard, quality, level of service, quantum or scope as determined by the State will prevail.

2.5 Notification of inconsistency, ambiguity or discrepancy

- (a) **(Notification of ambiguity):** If either party identifies any inconsistency, ambiguity or discrepancy within or between any of the State Project Documents, then that party must notify the other party of the inconsistency, ambiguity or discrepancy as soon as possible and, in any case, no later than 5 Business Days after becoming aware of the inconsistency, ambiguity or discrepancy.
- (b) **(No further action):** If Project Co issues a notice in accordance with clause 2.5(a), it must not take any further action in connection with the ambiguity, discrepancy or inconsistency until a notice is received from the State in accordance with clause 2.5(c) or, if no notice is received, for 5 Business Days after the date Project Co issues its notice in accordance with clause 2.5(a).
- (c) **(Resolution of ambiguity):** Within 5 Business Days of the notice in accordance with clause 2.5(a), the State will direct Project Co as to how to resolve any ambiguity, discrepancy or inconsistency the subject of the notice in accordance with:
 - (1) in the case of an ambiguity, discrepancy or inconsistency within this Agreement:
 - (A) the greater requirement in clause 2.2(d); or
 - (B) if the ambiguity, discrepancy or inconsistency cannot be resolved under clause 2.5(c)(1)(A), the order of precedence in clause 2.2(c); or
 - (2) in the case of an ambiguity, discrepancy or inconsistency:
 - (A) between this Agreement and any other State Project Document; or
 - (B) between any of the State Project Documents (excluding this Agreement),
the order of precedence in clause 2.3; or
 - (3) if the relevant inconsistency, ambiguity or discrepancy cannot be resolved in accordance with clauses 2.5(c)(1) to 2.5(c)(2) in accordance with any process for resolving such inconsistencies, ambiguities and discrepancies contained in the relevant document or documents; or



- (4) if the relevant inconsistency, ambiguity or discrepancy cannot be resolved in accordance with clauses 2.5(c)(1) to 2.5(c)(3), as determined by the State acting reasonably.

2.6 Business Day

If the day on or by which anything is to be done in accordance with this Agreement is not a Business Day, that thing must be done no later than the next Business Day.

2.7 Review Procedures

Where Project Co is required to comply with a document that has been submitted for review in accordance with the Review Procedures (including pending resolution of any Dispute), Project Co must comply with the version of the document as set out in section 4.1(d) of the Review Procedures.

2.8 Approvals, directions and notices in writing

Unless otherwise expressly provided in this Agreement or agreed between the parties, all approvals, consents, directions, requirements, requests, Claims, notices, agreements and demands must be given in writing.

2.9 Prior approval or consent

Where Project Co is required by this Agreement to obtain the State's or the State Representative's consent or approval to an action, document or thing, unless otherwise expressly stated, that consent or approval must be obtained prior to the actions, document or thing occurring or coming into effect.

2.10 Action without delay

Unless there is a provision in this Agreement which specifies a period of time in which something must be done by the parties, all things must be done without undue delay.

2.11 Provisions limiting or excluding Liability, rights or obligations

- (a) A right of the State or an obligation of Project Co under this Agreement will not limit or exclude any other right of the State or obligation of Project Co under this Agreement unless expressly stated.
- (b) Any provision of this Agreement which seeks, either expressly or by implication, to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.

2.12 Relationship of the parties

Unless otherwise expressly provided, nothing in this Agreement or any other Project Document:

- (a) **(no additional relationship)**: creates a partnership, joint venture, fiduciary, employment or agency relationship between the State and a Project Entity; or
- (b) **(no good faith)**: imposes any duty of good faith on the State.



2.13 State's executive rights and duties

- (a) **(State's own interests)**: Unless otherwise expressly provided in the State Project Documents, nothing in the State Project Documents gives rise to any duty on the part of the State to consider interests other than its own interests when exercising any of its rights or carrying out any of its obligations in accordance with the State Project Documents.
- (b) **(State's rights)**: Notwithstanding anything expressly provided or implied in the State Project Documents to the contrary, the parties agree that:
 - (1) the State is not obliged to exercise any executive or statutory right or duty, or to influence, over-ride, interfere with or direct any other Government Party in the proper exercise and performance of any of its executive or statutory rights or duties; and
 - (2) nothing expressly provided or implied in the State Project Documents has the effect of constraining the State or placing any fetter on the State's discretion to exercise or not to exercise any of its executive or statutory rights or duties.
- (c) **(No Claim)**: Subject to clause 2.13(d), Project Co will not be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its executive or statutory rights or duties.
- (d) **(Liability for breach)**: Clauses 2.13(a) to 2.13(c), and clause 17.1(a) do not limit any Liability which the State would have had to Project Co under any State Project Document as a result of a breach by the State of a term of any State Project Document to which it is a party but for these clauses.

2.14 Reasonable endeavours of State

Any statement in a State Project Document providing that the State will use or exercise 'reasonable endeavours' or 'act reasonably' in relation to an outcome, means that the State:

- (a) **(relevant steps)**: will take steps to bring about the relevant outcome so far as it is reasonably able to do so, having regard to its resources and other responsibilities;
- (b) **(no guarantee)**: cannot guarantee the relevant outcome; and
- (c) **(no obligation)**: is not required to:
 - (1) exercise a right of any Government Party, or to influence, over-ride, interfere with or direct any other Government Party in the proper exercise and performance of its legal, statutory or executive duties and functions;
 - (2) exercise a power or discretion in a manner that the State regards as not in the public interest;
 - (3) develop or implement new policy;
 - (4) procure legislation; or
 - (5) act in any way that the State regards as not in the public interest.

2.15 Reduction in State liability for Relief Events

The State's Liability and Project Co's entitlements in connection with any Relief Event will be reduced:

- (a) **(caused by Project Co)**: to the extent that the Relief Event is caused or contributed to by:
- (1) any breach of this Agreement by Project Co;
 - (2) any breach of any other Project Document by Project Co or any of its Associates who is a counterparty to the Project Document;
 - (3) any act or omission by Project Co or any of its Associates other than to the extent any such act or omission is authorised or permitted under a Project Document;
 - (4) any act or omission by the Delegate; or
 - (5) in relation to a PPP Interface Works Delay Event, any act or omission by the Early Works Managing Contractor other than to the extent any such act or omission is authorised or permitted under the Early Works Managing Contractor Agreement.
- (b) **(failure to mitigate)**: to the extent Project Co, any of its Associates or the Delegate, fails to:
- (1) use all reasonable endeavours to mitigate, minimise or avoid the effects, consequences or duration of:
 - (A) any event giving rise to a Relief Event; or
 - (B) circumstances giving rise to a Relief Event,
(including by putting in place temporary measures reasonably required by the State); or
 - (2) take all reasonable steps which a prudent, competent and experienced contractor in the circumstances of Project Co or the relevant Associate of Project Co would have taken to mitigate, minimise or avoid the effects, consequences or duration of the event or circumstances giving rise to a Relief Event; and
- (c) **(insurance proceeds)**: by the greater of any insurance proceeds:
- (1) payable to:
 - (A) Project Co or any of its Associates under any Insurances; or
 - (B) the Delegate under any insurance required pursuant to the Delegation Agreement,
for such Relief Event in respect of the event or circumstances giving rise to a Relief Event; and
 - (2) which would have been payable to:
 - (A) Project Co or any of its Associates under any Insurance; or
 - (B) the Delegate under any insurance required pursuant to the Delegation Agreement,
for such Relief Event in respect of the event or circumstances giving rise to a Relief Event but for a failure by Project Co to comply with this Agreement, a failure by the Delegate to comply with the Delegation Agreement, or a failure by Project Co or any of its Associates to comply with the terms of those insurances.



2.16 No State liability for review

- (a) **(No obligation):** Except as otherwise expressly provided in the Independent Reviewer Deed of Appointment, the State and the Independent Reviewer do not owe any duty of care to Project Co to:
- (1) review (or when reviewing) the Project Co Material submitted by Project Co (even where submitted in accordance with the Review Procedures); or
 - (2) inspect or review the Project Activities, the Relevant Infrastructure, the Metro Tunnel Interface Works, or the Ticketing Works, for Defects, other errors or omissions or for compliance with the State Project Documents or any Laws.
- (b) **(No relief):** No:
- (1) review of, comments upon, acceptance, approval or certification of any Project Co Material by (or on behalf of) the State;
 - (2) inspection or review of the Project Activities or the Relevant Infrastructure by (or on behalf of) the State; or
 - (3) failure by (or on behalf of) the State, to detect any non-compliance by Project Co with its obligations in accordance with the State Project Documents or any Laws,
- will:
- (4) relieve Project Co from, or alter or affect, its Liabilities, obligations or responsibilities whether in accordance with the State Project Documents or otherwise according to Law;
 - (5) prejudice the State's rights against Project Co whether under the State Project Documents or otherwise according to Law; or
 - (6) constitute an approval by the State of Project Co's performance of its obligations in accordance with the State Project Documents.
- (c) **(State Contributions and Final Acceptance Payment):** The payment of a State Contribution or the Final Acceptance Payment does not constitute an approval by the State of the completion or acceptance of the D&C Activities or the Final Acceptance Works in accordance with this Agreement, or evidence that the Project Assets are Fit For Purpose or constitute evidence that all or any other obligations of Project Co under the State Project Documents have been satisfied.

2.17 Indexation

- (a) **(Indexed amounts):** All amounts required to be adjusted in accordance with this Agreement by an Index will be Indexed in accordance with the Indexes Schedule.
- (b) **(Changes to indexes):** Any changes to Indexes will be determined in accordance with the Indexes Schedule.

2.18 Cost of carrying out obligations

Each party must carry out its obligations in accordance with this Agreement at its own cost, unless expressly provided otherwise.



2.19 Project Co and Associates

Any obligation of Project Co under the State Project Documents is deemed to include an obligation on Project Co to ensure that each of its Associates assumes and complies with the corresponding obligation to the extent that the obligation is applicable to that Associate of Project Co under a Project Document.

2.20 The Cross Yarra Partnership

- (a) **(Jointly and severally)**: The obligations, undertakings, representations, warranties, indemnities and Liabilities of Project Co under the Project Documents bind all the CY Partners jointly and severally as partners.
- (b) **(Change in membership)**: Without prejudice to anything else contained in this Agreement or any other Project Document, if the membership of the Cross Yarra Partnership changes from the CY Partners for any reason whatsoever the Project Documents continue to bind each former partner and each current partner of the Cross Yarra Partnership in respect of any accrued Liabilities that were incurred by Project Co during the period that the former partner was a member of the Cross Yarra Partnership.
- (c) **(Ceases business)**: Without prejudice to anything else contained in this Agreement or any other Project Document, if Project Co for any reason at any time ceases business, each Project Document continues to bind:
 - (1) the CY Partners; and
 - (2) any former partners of the Cross Yarra Partnership in respect of any accrued Liabilities that were incurred by Project Co during the period that the former partner was a member of the Cross Yarra Partnership.

2.21 CY Trustee's limitation of liability

- (a) **(Capacity)**: The parties acknowledge that the obligations of each CY Trustee under the Project Documents are incurred by it solely in its capacity as trustee of the relevant CY Trust other than where expressly provided otherwise, including as contemplated by paragraph 2.21(c)(1) below.
- (b) **(Limited liability)**: Subject to clause 2.21(c), each CY Trustee will:
 - (1) not be liable to pay or satisfy any of its obligations or liabilities under the Project Documents in relation to the relevant CY Trust out of any assets held by it personally;
 - (2) only be liable to pay or satisfy any of its obligations or liabilities under the Project Documents in relation to the relevant CY Trust out of the assets of that CY Trust out of which it is actually indemnified;
 - (3) not be liable to pay or satisfy any of its obligations or liabilities under the Project Documents in its personal capacity out of any asset held by it personally (other than out of the property the subject of the State Securities); and
 - (4) only be liable to pay or satisfy any of its obligations or liabilities under the Project Documents in its personal capacity out of the property the subject of the State Securities held by it personally.
- (c) **(Circumstances where a CY Trustee is personally liable)**:
 - (1) Each CY Trustee will be personally liable under the Project Documents for any loss or damage which the State may suffer as a

result of a breach of that Project Document by that CY Trustee where such breach is caused by:

- (A) fraud of that CY Trustee;
- (B) wilful default of that CY Trustee;
- (C) that CY Trustee having committed a breach of trust;
- (D) that CY Trustee having been negligent in the performance of its duties as trustee of the relevant CY Trust;
- (E) a representation or warranty given by that CY Trustee under a Project Document in respect of itself (in any capacity) or the relevant CY Trust being untrue, incorrect or misleading when made or repeated; or
- (F) a breach of any undertaking (other than an undertaking to pay) of that CY Trustee given under a Project Document.

(2) The State may:

- (A) do anything necessary to enforce its rights in connection with any representation or warranty (with respect to the relevant CY Trustee or the relevant CY Trust) or undertaking (other than an undertaking to pay) given by any CY Trustee under the Project Documents;
- (B) do anything necessary to enforce its rights under each State Security;
- (C) take proceedings to obtain an injunction or other order to restrain any breach of the Project Documents by any CY Trustee or declaratory relief or other similar judgment or order as to the obligations of any CY Trustee under the Project Documents; and
- (D) prove in any insolvency proceedings in respect of any CY Trustee only in order to protect and enforce its rights in respect of the property of the relevant CY Trust and the Trustee's Indemnity.

(3) Nothing in this clause 2.21 prevents the State obtaining any injunctive relief, order for specific performance, declaration or similar relief against any CY Trustee.

(d) **(Limited recourse):** The State must not, except to the extent a CY Trustee is personally liable under clause 2.21(c)(1) and subject to clauses 2.21(c)(2) and 2.21(e):

- (1) bring any proceeding for the winding up or liquidation of a CY Trustee;
- (2) appoint, or seek the appointment of, a receiver or receiver and manager or other controller (as defined in the Corporations Act) to a CY Trustee or its assets or the assets of a CY Trust other than one appointed over any property secured by the State Securities;
- (3) incur, or permit any receiver, receiver and manager appointed under a State Security, attorney appointed under a State Security or any other person to incur, any obligation binding on a CY Trustee unless the obligation is limited in accordance with this clause 2.21;
- (4) take any action to obtain a judgment against a CY Trustee or to enforce a judgment against a CY Trustee other than:



- (A) a judgment required to prove the amount of any Secured Moneys (as defined in the State Security);
- (B) a counterclaim in any proceedings commenced by a CY Trustee; or
- (C) as permitted by clause 2.21(c)(3); or
- (5) levy or enforce a levy or distress or other execution upon or against any assets of a CY Trustee other than any property secured by the State Securities or the assets of the relevant CY Trustee or CY Trust.
- (e) **(No limitation on enforcement of security provided under the State Securities):** This clause 2.21 does not limit or affect in any way the enforcement of the State Securities and, for the avoidance of doubt, it is acknowledged and agreed by each CY Trustee (in its personal capacity and as trustee for the relevant CY Trust) that the security granted under the State Securities by it constitutes a Security Interest over all of the Trust Property and all of its Trustee's Indemnity.
- (f) **(CY Trustee as Partner):** A reference to a CY Trustee includes a reference to the relevant CY Partner as a partner in the Cross Yarra Partnership.

3 Conditions Precedent

3.1 Commencement

This Agreement will not commence until each of the Conditions Precedent has been satisfied (or waived in accordance with clause 3.3), except for the provisions contained in:

- (a) clause 1 (*Definitions*);
- (b) clause 2.1 (*Interpretation*);
- (c) clause 2.12 (*Relationship of the parties*);
- (d) clause 2.13 (*State's executive rights and duties*);
- (e) clause 2.14 (*Reasonable endeavours of State*);
- (f) clause 2.15 (*Reduction in State liability for Relief Events*);
- (g) this clause 3 (*Conditions Precedent*);
- (h) clause 4 (*Term*);
- (i) clause 5.3 (*All risks*);
- (j) clause 8.1 (*Key Approvals to be obtained by the State*);
- (k) clause 11.3 (*Parties' representatives*);
- (l) clause 15 (*Health and safety*);
- (m) clause 37 (*Commercial opportunities and revenue*);
- (n) clauses 42.8 (*Indemnity for Project Co breach*) to 42.15 (*Liability for Indirect or Consequential Loss*);
- (o) clause 43 (*Insurance*);
- (p) clause 46 (*Dispute Resolution*);
- (q) clause 47 (*Arbitration*);



- (r) clause 48 (*Representations and warranties*);
- (s) clause 49 (*Benefits held on trust for its Associates*);
- (t) clause 50 (*Project Co to inform itself*);
- (u) clause 51 (*Restrictions on Project Co*);
- (v) clause 53 (*Assignment, amendments and change in ownership*);
- (w) clause 54.1 (*Provision of the Base Case Financial Model*);
- (x) clause 56 (*Intellectual Property Rights*);
- (y) clause 57 (*Confidential Information and disclosure*);
- (z) clause 62 (*Probity Events and Probity Investigations*);
- (aa) clause 63 (*Notices and bar to Claims*); and
- (bb) clause 64 (*Miscellaneous*),

which will commence on Contract Close.

3.2 Satisfaction of Conditions Precedent

- (a) **(State to use reasonable endeavours)**: The State must use reasonable endeavours to satisfy each Condition Precedent which is expressed to be included for the benefit of Project Co (or Project Co and the State) by the relevant Condition Precedent Deadline and must notify Project Co as such Conditions Precedent are satisfied.
- (b) **(Project Co to satisfy)**: Project Co must satisfy each Condition Precedent which is expressed to be included for the benefit of the State (or Project Co and the State) other than Condition Precedent 12 (*Nomination as a State Project*), by the relevant Condition Precedent Deadline and must notify the State as such Conditions Precedent are satisfied.
- (c) **(Notice at Financial Close)**: When the last of the Conditions Precedent to be satisfied has been satisfied or waived, the State Representative must confirm that all of the Conditions Precedent have been satisfied or waived and the date upon which the last of the Conditions Precedent was satisfied or waived.

3.3 Waiver of Conditions Precedent

- (a) **(Conditions Precedent Schedule)**: The Conditions Precedent Schedule sets out which party benefits from the satisfaction of each Condition Precedent.
- (b) **(Waiver)**: A Condition Precedent is only waived if:
 - (1) where the Condition Precedent is included for the benefit of a particular party as set out in the Conditions Precedent Schedule, that party gives notice of the waiver of the Condition Precedent to the other party; and
 - (2) where the Condition Precedent is included for the benefit of both parties, both parties agree to waive the Condition Precedent.

3.4 Failure to satisfy Condition Precedent Deadline

If the Conditions Precedent are not satisfied (or waived in accordance with clause 3.3) by the relevant Condition Precedent Deadline, then:



- (a) **(State option to terminate)**: the State may, at its option terminate this Agreement upon the State giving not less than 5 Business Days' notice to Project Co; and
- (b) **(State Project Documents terminated)**: each of the State Project Documents will be taken to have been terminated at the time this Agreement is terminated and will be of no further force or effect.

3.5 Model Output Schedule

- (a) **(Model Output Schedule)**: The parties acknowledge that the Financial Close Financial Model will contain the Model Output Schedule.
- (b) **(Conformed Copy)**: As soon as practicable after Financial Close, the parties will prepare conformed copies of the Project Documents incorporating relevant data derived from the Model Output Schedule.

3.6 Accepted Works Novation Deeds

- (a) Project Co agrees that on and from the date that the Construction Power Works (excluding any maintenance activities) are completed in accordance with the Construction Power Agreement, the Construction Power Works will form part of:
 - (1) the Works; and
 - (2) the works required to be performed by the D&C Subcontractor pursuant to the D&C Subcontract.
- (b) Project Co agrees that on and from the date that the PPP Interface Works are completed in accordance with the Early Works Managing Contractor Agreement, the PPP Interface Works will form part of:
 - (1) the Works; and
 - (2) the works required to be performed by the D&C Subcontractor pursuant to the D&C Subcontract.
- (c) Project Co indemnifies the State against all Claims by, and Liability to, the D&C Subcontractor in respect of the Accepted Works Novation Deeds.
- (d) As between Project Co and the State, any Liability in connection with the Accepted Works Novation Deeds will be determined pursuant to the terms of this Agreement.
- (e) Subject to clause 3.6(f), the State will use its best endeavours to procure the novation of the Construction Power Agreement from the State to the D&C Subcontractor on completion of the Construction Power Works (excluding any maintenance activities).
- (f) If the State cannot procure a novation in accordance with clause 3.6(e), the State will provide such assurances, or procure such instruments, as necessary:
 - (1) to demonstrate to Project Co (acting reasonably) that it has discharged its obligations to the Construction Power Contractor (excluding in relation to any maintenance activities); and
 - (2) to give the D&C Subcontractor rights against the Construction Power Contractor (as if the novation contemplated by clause 3.6(e) had occurred).



3.7 Advanced Works Deed

- (a) The parties acknowledge and agree that the Advanced Works Activities form part of the Works to be delivered by Project Co under this Agreement.
- (b) The parties acknowledge and agree that each determination of the Independent Reviewer pursuant to the Independent Reviewer Deed of Appointment (Advanced Works) will be binding on the parties as if it were a determination by the Independent Reviewer under the Independent Reviewer Deed of Appointment.
- (c) The parties acknowledge that the Advanced Works Activities:
 - (1) are subsumed within the scope of the D&C Subcontract; and
 - (2) form part of the “works” as defined under the D&C Subcontract.
- (d) Project Co:
 - (1) acknowledges that the Advanced Works Deed has been terminated in accordance with its terms;
 - (2) accepts all Liabilities of the D&C Subcontractor accrued under or in connection with the Advanced Works Deed as such Liabilities existed immediately prior to termination of the Advanced Works Deed, as if Project Co had originally been named in the Advanced Works Deed as a party instead of the D&C Subcontractor;
 - (3) agrees that any obligation or Liability of the State, including in respect of payment, arising under or in connection with the Advanced Works Deed is satisfied and discharged by the State at the time of Financial Close; and
 - (4) agrees that Project Co has no Claim against the State in relation to any matter arising under or in connection with the Advanced Works Deed.

3.8 Early Works Proposal and payments on Financial Close

- (a) Project Co must pay to the State the Day 1 Refund Payment on Financial Close.
- (b) The parties acknowledge and agree that:
 - (1) the amounts and calculations set out in the table in this clause 3.8 are correct as at Contract Close;
 - (2) to the extent necessary, Project Co will provide to the State an updated table in the form of this clause 3.8 prior to Financial Close (and otherwise in accordance with specific timing agreed by the parties taking into account the forecast date of Financial Close) which must contain:
 - (A) details of any updated amounts; and
 - (B) the reason for any such changes; and
 - (3) they will confer in good faith to agree any changes to the amounts in the table in this clause 3.8.

Table: Calculation of Day 1 Refund Payment

[not disclosed]



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- (4) the sum of:
 - (A) all amounts paid by the State to the D&C Subcontractor under the Advanced Works Deed;
 - (B) [not disclosed] of the amounts paid by the State to the Independent Reviewer under the Independent Reviewer Deed of Appointment (Advanced Works); and
 - (C) the Early Services Fee paid by the State prior to Financial Close,

represent consideration for a taxable supply for GST purposes by the State to Project Co. The State will issue a Tax Invoice to Project Co on or before Financial Close in respect of the amounts [not disclosed] in the table in this clause 3.8(b); and
- (5) the Early Works Risk Fee and the Early Services Fee represent consideration for a taxable supply for GST purposes by Project Co to the State and Project Co will issue a Tax Invoice to the State on or before Financial Close in respect of the amounts C + D in the table in this clause 3.8(b).
- (c) Project Co agrees that any obligation or Liability of the State existing at the date of Financial Close in respect of payment arising under or in connection with the Early Works Proposal, the Early Works Services Agreement and the Delegation Agreement is satisfied and discharged by the State at the time of Financial Close.

4 Term

4.1 Commencement date

Subject to clause 3.1, this Agreement commences on the date of Financial Close.



4.2 Expiry Date

This Agreement will terminate on the Final Expiry Date unless terminated earlier, in which case this Agreement will expire on the date of such earlier termination (in each case the **Expiry Date**).

5 Overarching obligations

5.1 Project Co's primary obligations

- (a) **(Deliver the Project)**: Project Co must carry out the Project Activities in accordance with:
 - (1) the State Project Documents;
 - (2) the PS&TR and the Technical Solution;
 - (3) all applicable Laws;
 - (4) Best Industry Practices; and
 - (5) all applicable Standards.
- (b) **(Comply with directions)**: Project Co must comply with:
 - (1) all Modification Orders and its obligations with respect to Minor Modification Proposals; and
 - (2) all directions or determinations given in accordance with the State Project Documents by the State or their delegates, the State Representative or its delegates, or the Independent Reviewer.

5.2 Fit For Purpose Warranty

Project Co warrants that:

- (a) **(Relevant Infrastructure)** at all times on and from the Date of Provisional Acceptance until the Date of Final Acceptance, the Relevant Infrastructure (other than the Maintained Rail Infrastructure Alliance Assets, the Returned Train Works and the Returned VicTrack Works) will:
 - (1) be Fit For Purpose; and
 - (2) comply with:
 - (A) all applicable Laws; and
 - (B) all applicable Standards;
- (b) **(Maintained Assets)** at all times on and from the Date of Final Acceptance, and at all times throughout the Term, the Maintained Assets (other than the Maintained Rail Infrastructure Alliance Assets) will:
 - (1) be Fit For Purpose; and
 - (2) comply with:
 - (A) all applicable Laws; and
 - (B) all applicable Standards; and



- (c) **(Returned Assets)**: on the Date of Handback, the relevant Returned Assets will:
- (1) be Fit For Purpose; and
 - (2) comply with:
 - (A) all applicable Laws; and
 - (B) all applicable Standards; and
 - (3) be capable of remaining Fit For Purpose through the Term, provided that each Returned Asset is operated and maintained in accordance with Best Maintenance Practices and Best Operating Practices following the relevant Date of Handback,
- (each a **FFP Warranty**).

5.3 All risks

- (a) [not disclosed]
- (b) **(State liability)**: Clause 5.3(a) does not exclude or limit:
- (1) any Liability the State or its Associates may have to Project Co or any of its Associates under the State Project Documents or at Law in respect of Project Co's or its Associates' Liability to a third party in respect of death, personal injury or damage to property, to the extent that the Liability of Project Co or its Associates is a consequence of a fraudulent, reckless, unlawful or malicious act or omission of the State or of a State Associate; or
 - (2) Project Co's rights to raise any defence in relation to a Claim made by the State or the State's Associates.
- (c) **(Project Co acknowledgement)**: Project Co acknowledges and agrees that its sole financial entitlement and the State's sole financial Liability:
- (1) for delay, disruption, disturbance to the progress of any part of the D&C Activities, including by reason of an Extension Event, is limited to the amount payable by the State to Project Co in accordance with clauses 26.9(b), 26.10, 26.11, 26.18, 26.19, 38.1, 43.19 and 43.20 and the Change Compensation Principles; and
 - (2) arising out of or in connection with an Intervening Event is limited to the amount payable by the State to Project Co in accordance with clauses 31.4(b), 31.5(c), 31.6(b), 43.19 and 43.20 and the Change Compensation Principles.

5.4 All Risks (Project Requirements)

- (a) **(Project Co acknowledgement)**: Project Co acknowledges and agrees that:
- (1) the State and its Associates have not made and make no representation, and give no warranty or guarantee and owe no duty of care; and
 - (2) Project Co bears the entire risk of, and will not make any Claim against the State for, any Liability,
- in connection with:
- (3) whether, if Project Co:

- (A) during the D&C Phase, designs, manufactures, constructs, installs and commissions the Works (other than the Maintained Rail Infrastructure Alliance Assets); and
 - (B) during the Maintenance Phase, maintains the Maintained Assets,
- in accordance with the Project Requirements, the Project Assets will meet the requirements in the Project Requirements and the State Project Documents; and
- (4) whether carrying out the Project Activities (including preparation of the Project Co Material) in accordance with the Project Requirements will ensure that Project Co can sufficiently discharge its obligations under the State Project Documents.
- (b) **(Additional measures)**: Project Co must:
- (1) make its own determination of whether the requirements of the State Project Documents will be satisfied if Project Co:
 - (A) during the D&C Phase, designs, manufactures, constructs, installs and commissions the Works (other than the Maintained Rail Infrastructure Alliance Assets); and
 - (B) during the Maintenance Phase, maintains the Maintained Assets,

in compliance with the Reference Documents and whether any additional or varied measures are required to enable Project Co to comply with the State Project Documents; and
 - (2) incorporate all additional or varied measures necessary to enable Project Co to comply with the State Project Documents.

6 Land, access and track occupations

6.1 Property Committee

In order to coordinate and facilitate the land issues for the Project, the State and Project Co will form a consultative committee (**Property Committee**) comprising:

- (a) at least 2 representatives from the State; and
- (b) one representative from Project Co,

which will conduct its proceedings in the manner agreed between the State and Project Co.

6.2 Land Availability Plans

- (a) **(State to make available)**: Subject to clauses 6.3(g), 6.3(h) and 6.3B, the State will make each relevant parcel of land specified in the Land Availability Plans available to Project Co (subject to the terms set out therein):
 - (1) in respect of Temporary Works, for the period:
 - (A) commencing on the Temporary Land Availability Date; and
 - (B) ending on the Temporary Land Exit Date,



- (2) in respect of Works other than Temporary Works, commencing on the Permanent Land Availability Date,
- in each case as specified for that parcel of land in the Land Availability Plans and otherwise in accordance with the terms of this Agreement, by either of the following processes:
- (3) by granting, or procuring the grant of, a Construction Licence in accordance with clause 6.5; or
- (4) by an alternative process determined by the State, which process may involve sections 167 or 170 of the Relevant Legislation, or section 75 of the *Land Acquisition and Compensation Act 1986* (Vic) (as amended by section 119 of the Relevant Legislation).
- (b) **(No other rights)**: Except as provided for in this clause 6, the State has no obligation to provide Project Co with any rights identified in the Land Availability Plans relating to land.
- (c) **(Adjustment of Land Availability Plans)**: The Land Availability Plans may only be adjusted in accordance with clause 6.3.

6.3 Adjustment of Land Availability Plans

- (a) **(Project Co may request)**: Project Co may, subject to clauses 6.3(g), 6.3(h) and 6.3B, submit a notice to the State for review in accordance with the Review Procedures, requesting that the Land Availability Plans be amended to:
- (1) include additional parcels of land;
- (2) amend the Land Availability Date or the Temporary Land Exit Date of an existing parcel of land referred to in the Land Availability Plans; or
- (3) in respect of a parcel of land identified as having a Permanent Land Availability Date, amend the Permanent Land Availability Date to a Temporary Land Availability Date and add a Temporary Land Exit Date.
- (b) **(Project Co's Notice)**: Project Co's notice under clause 6.3(a) must include details of:
- (1) in connection with an additional parcel of land:
- (A) the additional parcel of land (including height and depth) required by Project Co;
- (B) the purpose for which Project Co requires that additional parcel of land;
- (C) the period which Project Co reasonably anticipates it requires access to the additional parcel of land; and
- (D) any consequential amendments required to the Land Availability Plans; and
- (2) in connection with an existing parcel of land (as relevant):
- (A) the proposed Land Availability Date;
- (B) the proposed Temporary Land Exit Date; and
- (C) the reasons why Project Co requires access to the relevant parcel of land for a different period.



- (c) **(State may exercise powers):** Within a reasonable period following receipt of a notice under:
- (1) clause 6.3(a)(1), if the State has the power under the Relevant Legislation (or any equivalent legislation) enabling it to do so; or
 - (2) clause 6.3(a)(2) and 6.3(a)(3), if the State is reasonably able to make the parcel of land available (as relevant):
 - (A) by the proposed Land Availability Date; or
 - (B) until the proposed Temporary Land Exit Date,the State may, subject to clause 6.3(i):
 - (3) agree to amend the Land Availability Plans under clause 6.3(f); or
 - (4) advise Project Co that it will not accede to the request made by Project Co under clause 6.3(a).
- (d) **(Project Co accepts all risks):** Subject to clause 6.3(i), Project Co accepts all risks under this clause 6.3, including:
- (1) the risk of any unavailability or delay in making a parcel of land available, where the State exercises its powers under clause 6.3(c)(3);
 - (2) any risk arising as a result of compliance with the conditions imposed by the State under clause 6.3(c)(3);
 - (3) all costs incurred by the State (including land acquisition costs), where the State exercises its powers under clause 6.3(c)(3), which will be a debt due and payable by Project Co to the State, however Project Co will not be liable for costs incurred by the State where the State exercises its powers under clause 6.3(c)(3) in connection with a notice under clause 6.3(a)(3); and
 - (4) the risk that the State does not accede to a request in accordance with clause 6.3(c)(4).
- (e) **(Payment as a condition of exercise of power):** The State may, as a condition of exercising its powers under clause 6.3(c)(3), require Project Co to deposit sufficient funds into its nominated bank account in order to meet all costs that the State reasonably anticipates that it will incur as a result of the exercise of its powers, except where the State must agree to amend a Temporary Land Exit Date in accordance with clause 6.3(i).
- (f) **(Adjustment of the Land Availability Plans):** If the State agrees to amend the Land Availability Plans under clause 6.3(c)(3), then the Land Availability Plans will be amended by the State to reflect:
- (1) the additional parcel of land to be made available by the State and the Land Availability Date for that land, having regard to the date advised by Project Co under clause 6.3(b)(1)(C) and the exercise of the State's powers to make the parcel available; or
 - (2) the amended Land Availability Date or Temporary Land Exit Date (as relevant) of an existing parcel of land,
- (as the case may be), including any consequential amendments required to remove Land Availability Plans, as a result of the inclusion of an additional parcel of land.
- (g) **(Temporary Land Exit Dates):** If Project Co requires an extension of a Temporary Land Exit Date it must submit a notice under clause 6.3(a)(2) no

later than 3 months' prior to the current Temporary Land Exit Date for that parcel of land.

- (h) **(Unspecified information and Approvals):** Project Co must:
- (1) by the earlier of:
 - (A) the time specified for a parcel of land in the 'Land Description and Qualifications' section of the Land Availability Plans; and
 - (B) the time specified for an action which relates to a parcel of land (which may be a road) in the Steps Plan Schedule; and
 - (2) prior to the actual or proposed Land Availability Date for that parcel of land,
- where:
- (3) the Steps Plan Schedule identifies a deliverable or obligation that is required in connection with procuring access to that parcel of land, do all things necessary to satisfy that deliverable or obligation (as relevant) and provide evidence to the State;
 - (4) the Land Availability Plan identifies in the 'Land Description' or 'Land Availability and Qualifications' section that a 'Plan' is required to be supplied in respect of a parcel of land, submit with a notice under clause 6.3(a)(1) a high quality cadastral survey plan identifying the area of land that it requires the State to make available; and
 - (5) the Land Availability Plan does not specify a Land Availability Date or a Temporary Land Exit Date in respect of a parcel of land, submit a notice under clause 6.3(a)(2) specifying the proposed Land Availability Date or Temporary Land Exit Date (as relevant).
- (i) **(Mandatory changes):** The State must agree to:
- (1) amend a Temporary Land Exit Date pursuant to clause 6.3(c) where an Extension Event or a Modification Order requires that Project Co access the relevant parcel of land for a longer period, for the number of days that Project Co is entitled to an extension of time; and
 - (2) amend a Land Availability Date and a Temporary Land Exit Date pursuant to clause 6.3(c) where a failure by Project Co to comply with clause 6.3(h) causes delay to the State making that parcel of land available to Project Co, for the number of days that Project Co delays that parcel from being made available.
- (j) **(Reduced entitlement):** Without limiting clause 2.15, the State's Liability and Project Co's entitlements in connection with a failure by the State to make a parcel of Land available to Project Co will be reduced to the extent caused or contributed to by:
- (1) any breach of this Agreement by Project Co, including a breach of clause 6.3(h); and
 - (2) any act or omission by Project Co or any of its Associates other than to the extent any such act or omission is authorised or permitted under a Project Document.
- (k) **(Planning Scheme Amendment No 2):** The State must diligently and expeditiously use reasonable endeavours to:
- (1) obtain Planning Scheme Amendment No 2 ahead of the Planning Scheme Amendment No 2 Date; and



- (2) if the Planning Scheme Amendment No 2 is obtained ahead of the Planning Scheme Amendment No 2 Date, make available to Project Co the land the subject of Planning Scheme Amendment No 2 ahead of the dates for such land set out in the Land Availability Plans.

6.3A Construction Laydown Areas

- (a) The State will make available to Project Co land within the 'Old Melbourne Fruit and Vegetable Market' located off Dynon Road, West Melbourne and controlled by VicTrack, as specified in the Land Availability Plans for the purposes of construction laydown, assembly and storage.
- (b) Until 30 May 2018, the State will use reasonable endeavours (which does not require the use of any statutory process) to make available to Project Co 'The Paddock' from 30 October 2018, being the land located in the south eastern corner of the Federation Square adjacent to the railway lines for the purposes of construction laydown, assembly and storage (**The Paddock**).
- (c) If the State is unable to make available to Project Co The Paddock in accordance with clause 6.3A(b), the State will make available to Project Co one or more parcels of land for construction laydown, assembly and storage purposes from 30 October 2018 until Provisional Acceptance which:
 - (1) is reasonably equivalent in size, proximity to the associated Construction Area, and utility to The Paddock; and
 - (2) will:
 - (A) not cause Project Co to incur any additional costs (including attendance costs);
 - (B) following consultation with the State's traffic and transport working group, provide acceptable performance for truck marshalling purposes; and
 - (C) not give rise to any additional material community concerns or stakeholder issues,in each case, in comparison to the use of The Paddock for equivalent purposes.

6.3B Design Optimisation Land

- (a) (**Acknowledgement**): Project Co acknowledges that, as part of the process for obtaining Planning Scheme Amendment No 2, objections may be received from Relevant Stakeholders (PSA2) and as a consequence the Minister for Planning may:
 - (1) not include some or all of the Design Optimisation PSA2 Land as part of Planning Scheme Amendment No 2; or
 - (2) impose additional conditions on a Key Approval,(each a **PSA Variation**).
- (b) (**Mitigation**): The State agrees that:
 - (1) it will promptly provide information regarding any objections received from Relevant Stakeholders (PSA2) to Project Co and allow Project Co an opportunity to propose additional mitigations, or amendments, to address the concerns raised by the Relevant Stakeholder (PSA2); and



- (2) upon receipt of a written request from Project Co, it will not commence or continue the process for acquiring one or more parcels of the Design Optimisation PSA2 Land.
- (c) **(No breach)**: The State will not be in breach of this Agreement, and the State will have no liability to Project Co, and Project Co will not be entitled to relief (including for any Project Specific Change in Law), as a result of a PSA Variation.
- (d) **(Cost of Design Optimisation Land)**: Project Co must reimburse the State for all third party costs reasonably and properly incurred by the State (including land acquisition costs) in making Design Optimisation Land available to Project Co, and such amounts will be a debt due and payable by Project Co to the State.

6.4 Permitted use

Project Co must not use or permit the use of the Licensed Construction Areas, the Commercial Opportunities Leased Areas, or the Licensed Maintenance Areas for any purpose other than as permitted under this Agreement, the Construction Licence, the Commercial Opportunities Lease, or the Maintenance Licence.

6.5 Construction Licence

Subject to section 6.2(a)(4) and the other provisions of this Agreement affecting access or granting rights in relation to land, the State will grant, or procure the grant, to Project Co of a non-exclusive licence under section 173 of the Relevant Legislation or other means:

- (a) in respect of each part of the Licensed Construction Areas;
- (b) commencing on or prior to:
 - (1) the Land Availability Date; or
 - (2) the date otherwise agreed between the parties,for that part of the Licensed Construction Areas;
- (c) substantially in the form of, and on the terms and for the purposes specified in, the Construction Licence and the PS&TR; and
- (d) otherwise on such other terms imposed by the State (acting reasonably):
 - (1) having regard to any obligations owed by the State to the relevant landowner in respect of that part of the Licensed Construction Areas;
 - (2) having regard to the nature, location, hours and mode of construction of the Works for which the Construction Licence is granted; and
 - (3) in consultation with the Property Committee.

6.6 Operational Access Plans

- (a) **(Operational Access Plans)**: Prior to the earlier of:
 - (1) the Date of Handback of a Returned Asset; and
 - (2) the Date of Provisional Acceptance,

Project Co must submit to the State a plan describing any access rights over the relevant Returned Asset(s):



- (3) which are necessary for:
 - (A) Project Co to perform the remaining D&C Activities and the Services (other than in respect of Returned Train Works and Returned VicTrack Works);
 - (B) the Train Franchisee to perform Train Operations (other than in respect of Returned Train Works and Returned VicTrack Works); or
 - (C) the Tram Franchisee to perform Tram Operations (other than in respect of Returned Tram Works);
- (4) which are consistent with the requirements of the relevant Returned Asset Owner; and
- (5) which the State is legally capable of granting under its existing tenure of the relevant Returned Asset,
(an **Operational Access Plan**).
- (b) (**Plan information**): If required by the State, Project Co must make available the appropriate personnel to explain an Operational Access Plan and to provide information in relation to an Operational Access Plan, in such form and substance as the State requests.
- (c) (**State Approval**): Project Co must allow the State a reasonable time, which must be not less than 40 Business Days, within which to:
 - (1) approve an Operational Access Plan; or
 - (2) submit to Project Co amendments to an Operational Access Plan.
- (d) (**Approval of Operational Access Plans**): If the State:
 - (1) approves an Operational Access Plan submitted by Project Co under clause 6.6(a); or
 - (2) fails to approve or submit amendments to an Operational Access Plan under clause 6.6(c),then the Operational Access Plan will be a Final Operational Access Plan.
- (e) (**Amendments to Operational Access Plan**): If the State submits amendments to an Operational Access Plan under clause 6.6(c)(2), then:
 - (1) the State and Project Co must consult in good faith, and use their reasonable endeavours, to establish the amendments required to the Operational Access Plan, having regard to the State's requirement that the Construction Licence and the Maintenance Licence must only encompass that land reasonably necessary (limited as to height and depth) for Project Co to comply with its obligations under this Agreement; and
 - (2) if, and to the extent that, amendments are agreed the revised Operational Access Plan agreed by the State and Project Co will be a Final Operational Access Plan.
- (f) (**Dispute**): Handback of each Returned Asset and Provisional Acceptance will not occur until the Operational Access Plan for the relevant Returned Asset has been:
 - (1) determined to be a Final Operational Access Plan in accordance with clause 6.6(d) or clause 6.6(e)(2); or



- (2) referred by the parties for resolution under clause 46 and determined to be a Final Operational Access Plan.
- (g) **(Final Operational Access Plan)**: On and from the Date of Handback of a Returned Asset, the State is not required to provide Project Co with access to any part of the Returned Asset unless that part of the Returned Asset is subject to an access right described in the Final Operational Access Plan for the relevant Returned Asset.

6.7 Survey Plan

- (a) **(Survey Plan)**: At least 6 months prior to the expected Date of Final Acceptance, Project Co must submit to the State:
 - (1) a survey plan of the area proposed to be the subject of the Maintenance Licence which:
 - (A) sets out the location of each proposed area (limited as to height and depth);
 - (B) encompasses only that land reasonably necessary (limited as to height and depth) for Project Co to comply with its obligations under this Agreement;
 - (C) identifies the location and purpose of any easements reasonably necessary for Project Co to have, in order for Project Co to perform its obligations under this Agreement, any Maintenance Licence or any Commercial Opportunities Lease;
 - (D) identifies any land which is not proposed to be a Commercial Opportunities Leased Area or a Licensed Maintenance Area, but which is reasonably necessary for Project Co to perform its obligations under this Agreement; and
 - (E) complies with the PS&TR; and
 - (2) a certificate which certifies that the Maintained Assets are, or will be, wholly located within the area comprised of the Licensed Maintenance Areas and the Commercial Opportunities Leased Areas, signed by a licensed surveyor,
(Survey Plan).
- (b) **(Plan information)**: If required by the State, Project Co must make available the appropriate personnel to explain the Survey Plan and to provide information in relation to the Survey Plan, in such form and substance as the State requests.
- (c) **(State Approval)**: Project Co must allow the State a reasonable time, which must be not less than 40 Business Days, within which to:
 - (1) approve the Survey Plan; or
 - (2) submit to Project Co amendments to the Survey Plan.
- (d) **(Approval of Survey Plan)**: If the State:
 - (1) approves the Survey Plan submitted by Project Co under clause 6.7(a); or
 - (2) fails to approve or submit amendments to the Survey Plan under clause 6.7(c),



then the Survey Plan will be the Access Plan.

- (e) **(Amendments to Survey Plan):** If the State submits amendments to the Survey Plan under clause 6.7(c)(2), then:
- (1) the State and Project Co must consult in good faith, and use their reasonable endeavours, to establish the amendments required to the Survey Plan, having regard to the State's requirement that the Access Plan must only encompass that land reasonably necessary (limited as to height and depth) for Project Co to comply with its obligations under this Agreement and the Maintenance Licence; and
 - (2) if, and to the extent that, amendments are agreed, the revised Survey Plan agreed by the State and Project Co will be the Access Plan.
- (f) **(Dispute):** If the State and Project Co do not agree on the amendments required to the Survey Plan within 10 Business Days (or such longer period agreed by the parties) after the commencement of the consultation under clause 6.7(e), then:
- (1) until otherwise determined in accordance with clause 6.7(f)(2), the State's amendments to the Survey Plan submitted under clause 6.7(c)(2) will be deemed to be incorporated into the Access Plan and the Maintenance Licence (as relevant); and
 - (2) the parties must refer the matter for resolution under clause 46.

6.8 Commercial Opportunities Lease

- (a) **(Commercial Opportunities Lease Term):** Within the 3 Months prior to Final Acceptance, on completion of the Works in respect of the proposed Commercial Opportunities Leased Areas, the State will grant or will procure the grant of the Commercial Opportunities Lease to Project Co:
- (1) for the duration of the Maintenance Phase;
 - (2) substantially in the form of the Commercial Opportunities Lease;
 - (3) for the purpose of the Permitted Commercial Opportunities; and
 - (4) otherwise on such other terms imposed by the State (acting reasonably):
 - (A) having regard to the nature and location of Project Co's obligations in relation to the Maintained Assets;
 - (B) having regard to the Commercial Opportunities Guiding Principles; and
 - (C) having regard to the Services Specification.
- (b) **(Delivery):** Project Co must prepare and deliver to the State 3 counterparts of the Commercial Opportunities Lease which are:
- (1) executed by Project Co; and
 - (2) complete, except for those matters that the State is authorised to complete under clause 6.8(c).
- (c) **(Authority to complete):** Project Co authorises the State to complete the Commercial Opportunities Lease by inserting:
- (1) the commencement date of the Commercial Opportunities Lease;



- (2) the areas required for the purpose of the Permitted Commercial Opportunities, as an annexure to the Commercial Opportunities Lease; and
- (3) any other particulars necessary to complete the Commercial Opportunities Lease.
- (d) **(Execution):** The State will complete the counterparts of the Commercial Opportunities Lease delivered by Project Co, execute each counterpart and return one of the completed and executed counterparts to Project Co.
- (e) **(Commercial Opportunities Lease to have effect from Date of Final Acceptance):** On the Date of Final Acceptance, whether or not the Commercial Opportunities Lease has been executed by both parties by the Date of Final Acceptance, each party will be bound by the Commercial Opportunities Lease as if the Commercial Opportunities Lease had been fully completed and executed.

6.9 Maintenance Licence

- (a) **(Maintenance Licence):** Subject to Provisional Acceptance having occurred, the State will grant, or procure the grant to, Project Co of a non-exclusive licence under section 173 of the Relevant Legislation or other means:
 - (1) in respect of the Licensed Maintenance Areas;
 - (2) from Date of Provisional Acceptance until the Expiry Date;
 - (3) substantially in the form of, and on the terms and for the purposes specified in the Maintenance Licence, the PS&TR and the Services Specification; and
 - (4) otherwise on such other terms imposed by the State (acting reasonably):
 - (A) having regard to the nature and location of Project Co's obligations in relation to the Maintained Assets; and
 - (B) having regard to the Services Specification.
- (b) **(Land Arrangements):** Project Co:
 - (1) acknowledges and agrees that Land Arrangements will apply to the Licensed Maintenance Area; and
 - (2) agrees to comply with the terms and conditions of any Land Arrangements that apply to the Licensed Maintenance Area.

6.10 All risks (access and make good obligations)

- (a) **(Project Co bears risk of obtaining access):** Project Co bears all risks in relation to, and is responsible for, gaining access to and from the Site, including any failure to gain, or delay in gaining, access to the Site (other than to the extent arising out of a failure by the State to comply with its obligations under clauses 6.2, 6.5, 6.8, and 6.9).
- (b) **(Progressive removal of materials and make good):** Project Co must:
 - (1) as soon as practicable after completion of any Project Activities;
 - (2) as a condition precedent to:
 - (A) Final Acceptance, in respect of any Construction Areas;

- (B) Handback, in respect of each Returned Asset; and
- (C) Handover, in respect of any Maintenance Areas; and
- (3) in accordance with:
 - (A) the terms of the Construction Licence, the Maintenance Licence and the Commercial Opportunities Lease (as relevant); and
 - (B) the requirements of all relevant Authorities and other relevant persons,

remove all Temporary Equipment, facilities and vehicles and make good all damage or Contamination caused by Project Co's use and occupation of that part of the Construction Areas or Maintenance Areas (as the case may be), including removing all rubbish and debris, unless Project Co is expressly not required to do so by the State Project Documents.

- (c) **(Project Co to comply with the Fences Act 1968 (Vic)):** Project Co must comply with any notice issued by an occupier of any adjoining land to the Project Area under the *Fences Act 1968* (Vic).

6.11 Termination of this Agreement

If this Agreement is terminated prior to Provisional Acceptance, Project Co:

- (a) **(no entitlement):** ceases to have any entitlement to call for the grant of any licence or lease in connection with any land within the Project Area; and
- (b) **(no right or interest):** has no right, interest or entitlement (whether legal or equitable) in or to any part of the Project Area.

6.12 Track occupations and network access

- (a) **(Procuring access):** Subject to this clause 6.12 and clause 6.14, Project Co must procure for itself and at its own cost any Track Occupations and other access to the Existing Rail Network that are required to carry out the Project Activities.
- (b) **(Rail Franchisee requirements):** Project Co must comply with any requirements of:
 - (1) the Train Franchisee under the Train Franchisee Cooperation Agreement (including the Work Readiness Procedure) in procuring access to, and while accessing, any part of the Train Franchisee Land; and
 - (2) the Tram Franchisee in procuring access to, and while accessing, any part of the Tram Franchisee Land,
 including in relation to Track Occupations.
- (ba) **(Maintenance Phase):** Project Co must use best endeavours to perform Planned Preventative Maintenance so as to minimise the requirement for and cost of Track Occupations and the level of disruption caused by Track Occupations, in each case having regard to the Services Solution (including in relation to the cost of, and timing for performing Planned Preventative Maintenance).
- (c) **(Minimise costs and disruption):**
 - (1) Project Co must:

- (A) use best endeavours to perform the D&C Activities and the Final Acceptance Works; and
 - (B) in relation to each Potential Track Occupation, participate in the Train Franchisee's risk assessment processes and procedures as notified by the Train Franchisee to Project Co from time to time) and in doing so use best endeavours to procure the Train Franchisee waives the requirement for Train Track Occupations that would otherwise apply to the relevant access requirement,
so as to minimise the requirement for and cost of Track Occupations and the level of disruption caused by Track Occupations.
- (2) Project Co must perform its obligations under clause 6.12(c)(1) in a timely manner so as to enable to the extent reasonably practicable the cancellation of any scheduled Track Occupations to minimise disruption and cost incurred by the relevant Rail Franchisee or the State.
- (d) **(Project Co to notify):** Project Co must:
- (1) promptly notify the Train Franchisee and the State if it becomes aware that a Potential Track Occupation will not be required; and
 - (2) in so doing must provide an updated Potential Base Track Occupations Schedule. No other changes may be made to the Potential Base Track Occupations Schedule.
- (e) **(Potential Track Occupation Required):** Subject to clause 6.12(h), if Project Co requires a Train Track Occupation that is a Potential Track Occupation, Project Co must request the Potential Track Occupation as an Additional Occupation under clause 8.6 of the Train Franchisee Cooperation Agreement.
- (f) **(Train Franchisee unable to provide Additional Occupations or Amended Occupations):** The State acknowledges that under clause 8.6(d) of the Train Franchisee Cooperation Agreement, the Train Franchisee may, in response to a request from Project Co for an Additional Occupation or an Amended Occupation, notify Project Co that the Train Franchisee reasonably considers that the Additional Occupation or Amended Occupation (as applicable) requested by Project Co:
- (1) cannot be provided due to constraints caused by Track Occupations required for other projects, or maintenance activities required to ensure that the Train Franchisee is able to comply with its obligations under the Train Franchise Arrangements; or
 - (2) would cause a significant or sustained level of disruption to passenger services,
- and the Train Franchisee may request a direction by the State as to whether the Train Franchisee is obliged to provide the Additional Occupation or Amended Occupation (as applicable).
- (g) **(Parties to consult):** Following notice from the Train Franchisee in accordance with clause 8.6(d) of the Train Franchisee Cooperation Agreement, if:
- (1) Project Co has complied with its obligations under clause 8.4 of the Train Franchisee Cooperation Agreement; and
 - (2) the Train Franchisee's inability to provide the Additional Occupation or Amended Occupation (as applicable) will delay the critical path to



Provisional Acceptance or otherwise materially impact the performance of the D&C Activities,

unless the State has directed the Train Franchisee to provide the Additional Occupation or Amended Occupation (as applicable), Project Co and the State must work together (including the chief executive officer of MMRA (or that person's delegate, or person to whom the chief executive officer reports) and other senior executives of the State) in good faith to seek to schedule the Additional Occupation or proposed Amended Occupation (as applicable) so as to avoid the impact on the critical path in the D&C Program or on the performance of the D&C Activities (or, if avoidance cannot be achieved, minimise the impact), including, where applicable, giving consideration to rescheduling the works the subject of the Additional Occupation or proposed Amended Occupation (as applicable) within alternative Train Track Occupations, including Train Track Occupations of a different Number, Type or Duration to the Train Track Occupation proposed by Project Co and the State must, in any event, direct the Train Franchisee to schedule the Additional Occupation or Amended Occupation (as applicable) as soon as reasonably practicable (having regard to the State's other priorities).

- (h) **(Potential Track Occupations required in 2018):** The parties agree that if Project Co requires an Additional Occupation in 2018 which is a Potential Track Occupation:
- (1) Project Co is not required to follow the process set out in clause 8.6(a) of the Train Franchisee Cooperation Agreement but must instead provide notice to the Train Franchisee and the State as soon as it becomes aware of the requirement for the Additional Occupation; and
 - (2) unless the State has directed the Train Franchisee to provide the Additional Occupation, Project Co and the Train Franchisee must work together with the State (including the chief executive officer of MMRA (or that person's delegate, or person to whom the chief executive officer reports) and other senior executives of the State) in good faith to seek to schedule the Additional Occupation so as to avoid the impact on the critical path contained in the D&C Program or on the performance of the D&C Activities (or, if avoidance cannot be achieved, minimise the impact), including, where applicable, giving consideration to rescheduling the works the subject of the Additional Occupation within alternative Track Occupations, including Track Occupations of a different Number, Type or Duration to the Track Occupation proposed by Project Co and the State must, in any event, direct the Train Franchisee to schedule the Additional Occupation as soon as reasonably practicable (having regard to the State's other priorities).
- (i) **(State acknowledgement):** In complying with its good faith obligations under clause 6.12(g) and 6.12(h), the State will reasonably consider, amongst other things:
- (1) the potential impact on Project Co and the D&C Activities if the requested Additional Occupation or Amended Occupation (as applicable) is not provided; and
 - (2) the potential impact on other projects, the Train Franchisee's maintenance activities under the Train Franchise Agreement and disruption to passenger services if the requested Additional Occupation or Amended Occupation (as applicable) is provided.



- (j) **(Application to Date of Final Acceptance only):** The parties agree that clauses 6.12(c) to 6.12(i) and clause 6.12(k) apply to Track Occupations up to the Date of Final Acceptance only.
- (k) **(Consultation):** The parties agree that if Project Co and the Train Franchisee cannot agree:
- (1) the Base Track Occupation Schedule (FAW);
 - (2) a Track Occupation Schedule (FAW); or
 - (3) an Additional Change or an Amended Occupation requested under clause 8A.2(e) of the Train Franchisee Cooperation Agreement,
- in the circumstances set out in clause 8A.2(f) of the Train Franchisee Cooperation Agreement, Project Co and the Train Franchisee must work together with the State in good faith to seek to:
- (4) agree the Base Track Occupation Schedule (FAW);
 - (5) agree the updated Track Occupation Schedule (FAW); or
 - (6) schedule the Additional Change or Amended Occupation,
- as applicable, so as to avoid the impact on the critical path contained in the D&C Program or on the performance of the D&C Activities and the Final Acceptance Works (or, if avoidance cannot be achieved, minimise the impact), including, where applicable, giving consideration to rescheduling the works the subject of the Additional Occupation or Amended Occupation within alternative Track Occupations, including Track Occupations of a different Number, Type or Duration to the Track Occupation proposed by Project Co and the State must, in any event, direct the Train Franchisee to schedule the Additional Occupation or Amended Occupation (as applicable) to be provided to Project Co as soon as reasonably practicable (having regard to the State's other priorities).

6.13 Liability for Unplanned Rail Disruption

Project Co indemnifies and holds harmless the State and its Associates in connection with any Liability incurred by the State or its Associates arising out of or in connection with any Unplanned Rail Disruption, except to the extent such Unplanned Rail Disruption is a consequence of a Relief Event.

6.14 Payment for Track Occupations during the FAW Phase and Maintenance Phase

- (a) **(Payment to Train Franchisee):** Project Co and the State acknowledge and agree that the State will reimburse the Train Franchisee, in accordance with the Project Agreement – Train, for its Direct Costs plus Train Franchisee's Margin incurred in providing Project Co with Track Occupations:
- (1) prior to Provisional Acceptance;
 - (2) during the FAW Phase; and
 - (3) during the Maintenance Phase.
- (b) **(Costs borne by the State):** The State will bear:
- (1) the amount of the Direct Costs plus Train Franchisee's Margin actually incurred in providing Project Co, prior to Provisional Acceptance, with:
 - (A) the Number, Type and Duration of Train Track Occupations specified in the FCA (Train) Base Track Occupation

Schedule at the time such Train Track Occupations are specified in the FCA (Train) Base Track Occupation Schedule;

- (B) the Number, Type and Duration of Potential Track Occupations at the time such Train Track Occupations are specified in the Potential Base Track Occupation Schedule except to the extent the Train Track Occupation is required as a direct result of a change to the Agreed Methodology and provided that Project Co has complied with its obligations under clause 8.4(c) of the Train Franchisee Cooperation Agreement; and
 - (C) any replacement Train Track Occupation or Train Track Occupations provided by the Train Franchisee in accordance with clause 8.8(b)(5) of the Train Franchisee Cooperation Agreement as a result of an event described in clauses 8.8(a) of the Train Franchisee Cooperation Agreement (other than as a result of an event described in clause 8.8(a)(5) or 8.8(a)(7));
- (2) if Project Co and the Train Franchisee agree to change the Type, Duration or timing of a Train Track Occupation in the FCA (Train) Base Track Occupation Schedule, the costs equivalent to those which the State would have borne in relation to the original FCA (Train) Base Track Occupation Schedule in accordance with clause 6.14(b)(1)(A); and
 - (3) if the Train Franchisee provides a Train Track Occupation in substitution for a Potential Track Occupation (because the Potential Track Occupation on the Potential Base Track Occupations Schedule is not available), costs equivalent to those which the State would have borne in relation to the original Potential Track Occupation in accordance with clause 6.14(b)(1)(B),

(State BTOS Costs).

- (c) Not used.
- (d) **(Train Franchisee to advise of costs):** The State and Project Co acknowledge that the Train Franchisee will provide:
 - (1) Quarterly reports from the date of the first Train Track Occupation provided until the Date of Provisional Acceptance; and
 - (2) a final statement within 3 calendar months of the last Train Track Occupation provided prior to the Date of Provisional Acceptance, setting out the cumulative total of its Direct Costs plus Train Franchisee's Margin:
 - (3) actually incurred in providing Project Co with Train Track Occupations;
 - (4) actually incurred as a result of Project Co or its Associates failing to hand back an Agreed Occupation by the Agreed Hand Back Time (as defined in the Train Franchisee Cooperation Agreement); and
 - (5) incurred as a result of a cancellation of an Agreed Occupation by Project Co,

(Actual TOS Costs).

- (e) **(Project Co to bear costs):** Subject to clause 6.13, Project Co must pay to the State the amount of any Actual TOS Costs in excess of the State BTOS Costs



and such amount will be payable by Project Co to the State as a debt due and payable on the date 20 Business Days after the Date of Provisional Acceptance.

- (f) **(No double counting):** No amounts payable by the State in accordance with 6.14(b) and Project Co in accordance with clause 6.14(e) will be double counted.

7 Site Conditions

7.1 Project Co to inform itself

Project Co:

- (a) **(Suitability and risk assessment):** warrants that it has, and it will be deemed to have, done everything (including all assessments tests or studies of the Project Area and its surroundings) that would be expected of a prudent, competent and experienced contractor in the position of Project Co:
- (1) in assessing the risks regarding the Site Conditions;
 - (2) in ensuring that this Agreement contains allowances to protect it against any risks regarding the Site Conditions eventuating; and
 - (3) in order to determine the suitability of the Project Area and its surroundings for the Project; and
- (b) **(Sufficient access):** acknowledges and agrees that:
- (1) it has had sufficient access to the Project Area prior to Financial Close; and
 - (2) it has had the opportunity to carry out all assessments, tests and studies necessary,
- to determine the suitability of the Project Area and its surroundings for the Project and to familiarise itself with the Site Conditions.

7.2 Environmental issues

Project Co must:

- (a) **(no industrial waste or hazardous substance):** during any period where Project Co is entitled to use or occupy the Site, not use or allow it to be used, such that:
- (1) any spoil, Industrial Waste or Hazardous Substance is abandoned or dumped on the Site;
 - (2) any Industrial Waste or Hazardous Substance is handled, disposed of, disturbed, discharged or released in a manner which is likely to cause or contribute to an Environmental Hazard; or
 - (3) any other substance is handled, disposed of, disturbed, discharged, released, deposited to, or emanated from, the Site such that a state of Contamination occurs other than as permitted by Law or an Approval (other than to the extent the Contamination is Groundwater Contamination, and is an inherent consequence of performing the Project Activities in accordance with this Agreement, the



Environmental Management Plans or the Initial Contaminated Groundwater Methodology);

- (b) **(environmental responsibility)**: at all times carry out the Project Activities:
- (1) in accordance with the Environmental Requirements;
 - (2) in accordance with the Environmental Management Plans (including the Initial Contaminated Groundwater Methodology to the extent adopted by Project Co in any Environmental Management Plan);
 - (3) in an environmentally responsible manner; and
 - (4) in accordance with Best D&C Practices,
- so as to protect the Environment and take all reasonable and practicable measures to prevent or minimise adverse impacts on the Environment;
- (c) **(Appointments)**: jointly engage with the D&C Subcontractor:
- (1) an Independent Environmental Auditor;
 - (2) a Contaminated Land Assessor; and
 - (3) an Independent Contamination Auditor,
- in each case approved by the State (acting reasonably);
- (d) **(Independent Environmental Auditor)**: procure that the Independent Environmental Auditor undertake audits of the Project Activities to verify Project Co's compliance with the Environmental Management Plans, Environmental Performance Requirements and Environmental Management Framework in accordance with section 3.5 of Part C of the PS&TR;
- (e) **(Arden Day 1 Park Area Remediation Report)**: prior to commencing Works (other than the assessments required by this clause 7.2(e)) within the Arden Day 1 Park Area, procure that:
- (1) the Contaminated Land Assessor prepares; and
 - (2) the Independent Contamination Auditor approves,
- an independent assessment report addressing the land condition of the Arden Day 1 Park Area, including:
- (3) an assessment of any Soil Contamination and Groundwater Contamination to determine whether any contaminant poses an unacceptable risk to protected 'beneficial uses' of land in the Arden Day 1 Park Area Land Use (as described in the 'State Environment Protection Policy (Prevention and Management of Contamination of Land)' as varied by 'Variation to the State environment protection policy (Prevention and Management of Contamination of Land) No. G39, Gazette 26 September 2013'); and
 - (4) an assessment of:
 - (A) whether any clean-up is required to the Arden Day 1 Park Area; and
 - (B) if any Remediation is necessary, any recommendations relating to the carrying out of the Remediation,to enable the Arden Day 1 Park Area Land Use,
- (Arden Day 1 Park Area Remediation Report)**.



- (f) **(Arden Project Area contaminated site assessment)**: procure that the Contaminated Land Assessor performs a contaminated site assessment (which must as a minimum be compliant with AS4482.1) in respect of the Arden Project Area (excluding the Arden Day 1 Park Area):
 - (1) prior to the commencement; and
 - (2) following completion,of the D&C Activities within the Arden Project Area;
- (g) **(notification)**: immediately notify the State of any:
 - (1) breach or alleged or potential breach of; or
 - (2) non compliance, or alleged or potential non compliance, with,the conditions or requirements of any Environmental Requirements or the Environmental Management Plans;
- (h) **(reports)**: promptly provide to the State copies of all reports, surveys, audits and monitoring results in respect of the Environmental Requirements or the Environmental Management Plans when they are obtained;
- (i) **(manage waste disposal)**: manage and be responsible for the handling and proper disposal or removal of all waste, rubbish, debris, redundant materials, spoil and Industrial Waste produced by the Project Activities in accordance with Best D&C Practices, all relevant Approvals and this Agreement;
- (j) **(directions)**: comply with all directions by the State regarding the removal from the Project Area and disposal of any Industrial Waste or Hazardous Substance; and
- (k) **(Pollution and Contamination)**: not cause or contribute to any Pollution or Contamination, other than to the extent the Contamination is Groundwater Contamination, and is an inherent consequence of performing the Project Activities in accordance with:
 - (1) this Agreement;
 - (2) the Environmental Management Plans; or
 - (3) the Initial Contaminated Groundwater Methodology, and would not have been prevented by performing those Project Activities referred to in the Initial Contaminated Groundwater Methodology in accordance with Best D&C Practices.
- (l) **(Arden Station box)**: Project Co is not entitled to make any Claim for a Soil Contamination Modification Event for excavating the Station box in Arden (noting excavation does not include soil treatment management or disposal).

7.3 Contamination

- (a) **(Contamination caused or contributed to)**: Project Co must Remediate, to the standard required by and in accordance with, the Law and the Environmental Requirements, any Contamination which is caused or contributed to in the carrying out of the Project Activities.
- (b) **(Contamination disturbed, exacerbated or interfered with)**: Project Co must Remediate, to the standard required by and in accordance with, the Law and the Environmental Requirements, any Contamination which is on, in, over, under or which has emanated or is emanating from or to the Site and which is disturbed, exacerbated or interfered with in the carrying out of the Project Activities.



7.4 Contamination notification requirements

- (a) **(Notification):** If Project Co discovers any Contamination on, in, over, under or emanating from or to the Site (whether or not Project Co has caused or contributed to that Contamination), it must notify the State as soon as practicable, but nevertheless within 5 Business Days after the discovery of the Contamination.
- (b) **(Notification requirements):** Project Co's notice under clause 7.4(a) must contain all relevant details in relation to the Contamination, including:
- (1) the type of Contamination;
 - (2) the location of the Contamination; and
 - (3) the nature and extent of the Contamination,
- to the extent such details are known at the time the notification is provided.
- (c) **(Contamination Notice):** Project Co must, at all times during the Term, comply, and ensure that all of its Associates comply, with any Contamination Notice relating to Contamination on, in, over, under, or that emanated or is emanating from or to, the Site, regardless of whether:
- (1) the Contamination Notice is addressed to the State, Project Co or some other person; and
 - (2) the Contamination occurred before or after Project Co or any other person was given access to the Site.
- (d) **(Disputing a Contamination Notice):** Without limiting Project Co's obligation under this clause 7.4, nothing in this clause 7.4 prevents Project Co from disputing the issue of a Contamination Notice with the EPA or other relevant Authority, or taking action against a third party with respect to the Contamination.
- (e) **(Parties not to cause service of Contamination Notice):** Subject to their respective obligations at Law, and the functions and powers of the EPA and other relevant Authorities, none of the State, Project Co, or any of Project Co's Associates will do anything with the intent, directly or indirectly, of causing or being likely to cause the issue or service of a Contamination Notice.
- (f) **(Indemnity):** Project Co must indemnify the State against any Claim arising out of or in connection with any:
- (1) Contamination that Project Co is required to Remediate under clause 7.3(a) and which is not otherwise a Contamination Modification Event;
 - (2) Contamination that would have been prevented or minimised by a prudent, experienced and competent contractor in the circumstances (other than to the extent the Contamination is Groundwater Contamination, and is an inherent consequence of performing the Project Activities in accordance with this Agreement, the Environmental Management Plans or the Initial Contaminated Groundwater Methodology); or
 - (3) failure of Project Co to comply with any obligation under this Agreement in connection with Contamination.
- (g) **(Initial Contaminated Groundwater Methodology):** Project Co represents and warrants that the Initial Contaminated Groundwater Methodology has been prepared in accordance with Best D&C Practices.



7.5 Native Title Claims and Heritage Claims

- (a) **(Native Title):** As between the State and Project Co, the State is responsible for:
- (1) dealing with any Native Title Claim in connection with any part of the Project Area and undertaking any action that may be required in accordance with the TOS Act or required under any LUAA in connection with Project;
 - (2) the payment of any compensation or other moneys required to be paid to the native title holders of any part of the Project Area as a consequence of a successful Native Title Claim; and
 - (3) the payment of any compensation or other moneys required to be paid as a result of the application of the TOS Act or a LUAA applicable to the Project.
- (b) **(Artefacts):** As between the State and Project Co, if an Artefact is discovered on or under the surface of the Project Area:
- (1) it will be the absolute property of the State; and
 - (2) Project Co must:
 - (A) immediately notify the State of the discovery;
 - (B) permit the State to watch or examine any excavation on the Project Area; and
 - (C) take every reasonable precaution in carrying out the Project Activities so as to prevent Artefacts being damaged or removed until appropriate arrangements for dealing with, or removing, the Artefacts have been made.
- (c) **(Project Co must continue to carry out):** If there is a:
- (1) Native Title Claim or Heritage Claim in connection with; or
 - (2) discovery of Artefacts in,
- any part of the Project Area, Project Co must:
- (3) continue to carry out its obligations in accordance with this Agreement, except to the extent otherwise:
 - (A) directed by the State or the Commonwealth;
 - (B) ordered by a court or tribunal of competent jurisdiction; or
 - (C) required by Law; and
 - (4) provide all reasonable assistance to the State in connection with dealing with the Native Title Claim, Heritage Claim or Artefact discovery.
- (d) **(Project Co's obligations in connection with the Cultural Heritage Management Plan):** Project Co must:
- (1) comply with:
 - (A) the provisions and procedures of the Cultural Heritage Management Plan; and
 - (B) all reasonable directions of the State concerning Artefacts and the protection of Aboriginal Cultural Heritage; and



- (2) immediately notify the State of any:
 - (A) breach or alleged or potential breach of; or
 - (B) non compliance, or alleged or potential non compliance, with,the conditions or requirements of the Cultural Heritage Management Plan.

7.5A Heritage Bonds

- (a) **(Reinstatement obligations):** Project Co acknowledges and agrees that its obligations under the PS&TR includes the reinstatement of certain items of heritage significance.
- (b) **(Heritage Bonds):** On or before the date of Financial Close, Project Co must provide, and Project Co confirms that it has provided:
 - (1) to each Heritage Bond Beneficiary, the relevant Heritage Bond; and
 - (2) to the State, a copy of the relevant Heritage Bond.
- (c) **(Monitor credit rating):** Project Co must monitor the credit rating of the current issuer of each Heritage Bond.
- (d) **(Required Rating downgrade):** If at any time an issuer of a Heritage Bond provided by Project Co in accordance with this Agreement:
 - (1) ceases to have the Required Rating or ceases to have a current licence issued by the Australian Prudential Regulation Authority (or both); or
 - (2) ceases to have the Required Rating or ceases to have a current licence issued by the Australian Prudential Regulation Authority (or both) and at that time three out of the four Major Australian Banks do not have the Required Rating,Project Co must:
 - (3) if clause 7.5A(d)(1) applies, provide a replacement Heritage Bond which meets the Required Rating and the other requirements of this Agreement; or
 - (4) if clause 7.5A(d)(2) applies, provide a replacement Heritage Bond which is from an issuer which has a rating equal to or higher than the second highest rated Major Australian Bank and otherwise complies with the requirements of this Agreement,within 15 Business Days after the date of such event occurring.
- (e) **(Replacement Heritage Bond):** Where clause 7.5A(d)(4) applies, Project Co must monitor the credit rating of the Major Australian Banks and provide a replacement Heritage Bond from an issuer which has the Required Rating, within 30 Business Days after any three of the Major Australian Banks regains a rating equal to or greater than the Required Rating.
- (f) **(Substitution):** Subject to clause 7.5A(g), Project Co may, at any time, provide to a Heritage Bond Beneficiary a replacement Heritage Bond for any one or more Heritage Bonds in circumstances where Project Co wishes to change the identity of the issuer of the Heritage Bond.
- (g) **(Replacement):** Any replacement Heritage Bond must comply in all respects with the requirements of this Agreement.



- (h) **(Notice):** Project Co must give the relevant Heritage Bond Provider and the State at least 10 Business Days' prior notice of the time when it proposes to provide a replacement Heritage Bond.
- (i) **(General):** Project Co must, no later than 50 Business Days before the expiry of a Heritage Bond provide a replacement Heritage Bond in favour of the relevant Heritage Bond Beneficiary, in the form and for the amount of the Heritage Bond it is replacing and which otherwise complies in all respects with the requirements of this Agreement.
- (j) **(Compliance with clause 7.5A(i)):** Project Co must repeat compliance with clause 7.5A(i) at all times until the earlier of the Date of Handback of the Returned Works to which the relevant Heritage Bond relates.

7.6 Interference, obstruction and nuisance

- (a) **(Project Co's obligations):** Without limiting Project Co's other obligations in accordance with this Agreement, in undertaking the Works or carrying out the Project Activities, Project Co must:
 - (1) avoid or ensure minimal:
 - (A) interference with the passage of people and vehicles;
 - (B) obstruction to any property; and
 - (C) disruption to operations carried out in the vicinity of the Site;
 - (2) not cause any Unplanned Rail Disruption;
 - (3) prevent or minimise nuisance including any nuisance caused by Pollution, noise, dust, light emission, vibration, electromagnetic interference or disturbance, air pollution, odour on or adjacent to the Site;
 - (4) ensure the safety of people and property in accordance with Best Industry Practices; and
 - (5) on completion of any D&C Activities or any Final Acceptance Works, remove all temporary protection or other structures or equipment erected in connection with those D&C Activities or Final Acceptance Works as soon as practicable, and in accordance with Best D&C Practices.
- (b) **(Unreasonable levels of nuisance or interference):** If, in the reasonable opinion of the State or the Independent Reviewer, the levels of nuisance or interference arising from Project Co undertaking the Works or carrying out the Project Activities:
 - (1) are not reasonable (having regard to the requirements of clause 7.6(a));
 - (2) are not in the interests of the safety of persons on the Site or any other areas adjacent to the Site; or
 - (3) do not meet a condition or requirement of any Approval,Project Co must comply with any reasonable direction of the State or the Independent Reviewer to:
 - (4) stop or change the manner of undertaking the Works or carrying out of the Project Activities; and

- (5) amend the Construction Management Plan and any other relevant Management Plan to remedy the nuisance or interference and submit it to the State for review in accordance with the Review Procedures,

provided that if any such direction of the State or the Independent Reviewer is in respect of clause 7.6(b)(1) in circumstances where Project Co is complying with all relevant Approvals, Environmental Requirements, Management Plans, sections of the PS&TR, and requirements of this Agreement (excluding this clause 7.6(b)), the State must issue a Modification Request in accordance with clause 38.2 in relation to the direction.

8 Approvals

8.1 Key Approvals to be obtained by the State

- (a) **(Key Approvals):** Subject to clause 8.1(d), the State has obtained, or will obtain, the Key Approvals and will, subject to the provision of all required information and assistance from Project Co, ensure that Project Co has the benefit of such Key Approvals as required to perform the Project Activities.
- (b) **(Key Approval Event):** If there is a Key Approval Event, Project Co must:
- (1) continue to carry out its obligations under this Agreement, except to the extent Project Co is otherwise prevented from carrying out its obligations as a result of the Key Approval Event, including to the extent Project Co is required to suspend, cease or alter the carrying out of its obligations in accordance with:
 - (A) a direction of the State;
 - (B) applicable Law; or
 - (C) an order of a court or tribunal of competent jurisdiction; and
 - (2) subject to clause 8.1(c), at the request of the State, provide all reasonable assistance in connection with dealing with the Key Approval Event.
- (c) **(Responsibility for Key Approval Event):** As between the State and Project Co, the State may deal with a Key Approval Event as it sees fit (including, where appropriate, conducting any legal challenge in the name of Project Co).
- (d) **(Planning Scheme Amendment No 2 and amendments to Project Area):** The State has obtained, or will obtain:
- (1) Planning Scheme Amendment No 2; and
 - (2) a corresponding variation to the Project Area,
- by the Planning Scheme Amendment No 2 Date.

8.2 Approvals to be obtained by Project Co

- (a) **(Project Co to obtain Approvals (other than Key Approvals)):** Project Co:
- (1) must apply for and obtain from each relevant Authority in a timely manner:
 - (A) all Approvals (other than the Key Approvals); and

- (B) any amendments to any Approvals (other than the Key Approvals); and
- (2) bears all risks associated with obtaining any Approvals or amendments to Approvals that Project Co is required to obtain under clause 8.2(a)(1).
- (b) **(Project Co to obtain secondary approvals):** If any aspect of a Key Approval requires a secondary consent, verification or other supplementary action or information (whether as a condition of the Key Approval taking effect or otherwise), those further matters will be the responsibility of Project Co.
- (c) **(Deviations from the Approved Project):** Without limiting clauses 8.2(a) and 8.3, if the Project as proposed or undertaken by Project Co deviates from the Approved Project, Project Co must obtain and comply with any further Approvals required as a result of such deviation.
- (d) **(Amendments to Key Approvals):** To the extent that any amendment is required to a Key Approval, Project Co is responsible for:
 - (1) preparing all necessary documentation and information for consideration by:
 - (A) the State; and
 - (B) to the extent that any amendment can only be applied for by the Secretary as the project authority under the Relevant Legislation with the consent of the Victorian Minister for Planning, the Secretary,
ahead of submission to the relevant applicable law decision maker or the Victorian Minister for Planning; and
 - (2) providing all necessary assistance as is required by the State and the Secretary (as relevant) to:
 - (A) seek and obtain the consent of the Victorian Minister for Planning to apply for such amendment (as relevant);
 - (B) make application to the relevant applicable law decision maker for amendment to the Key Approval; and
 - (C) pursue the amendment application with the applicable law decision maker.
- (e) **(Project Co risk):** Project Co bears all risks associated with obtaining any further Approvals under clause 8.2(c) and any amendments to the Key Approvals required under clause 8.2(d), except to the extent to which Project Co is expressly entitled to relief under clauses 26 or 31 in connection with that deviation.
- (f) **(State initiated Modifications):** Notwithstanding clauses 8.2(a) to 8.2(e):
 - (1) any changes to a Key Approval required as a consequence of a Modification Order issued by the State, will be the responsibility of the State (excluding a Modification Order issued by the State in respect of a Modification Proposal); and
 - (2) any:
 - (A) changes to any other Approval (excluding a Key Approval) and procuring any further Approval required as a consequence of a Modification Order issued by the State; and

- (B) changes to a Key Approval required as a consequence of a Modification Order issued by the State in respect of Modification Proposal,

will be the risk and responsibility of Project Co.

8.3 Compliance with Approvals

- (a) **(Compliance by Project Co):** Project Co must, in carrying out the Project Activities, comply with:
 - (1) all conditions and requirements of all Approvals (including paying all fees, procuring all bonds, procuring all insurances (other than State Procured Insurance) and executing any documents or agreements required by any relevant Authority in relation to any Approval); and
 - (2) the Environmental Requirements including, to the extent consistent, the Environmental Management Plans developed to implement the Environmental Requirements,and take no action that will prevent the State from complying with, to the extent relevant, any conditions or requirements of any Approval.
- (b) **(Conditional Approvals):** Without limiting clause 19.3 and notwithstanding clause 38, to the extent that the design of the Works (whether incorporated in the Technical Solution, any other part of the State Project Documents or prepared under this Agreement), the Project Activities or the Works do not comply with the requirements set out in clause 8.3(a):
 - (1) Project Co must amend the design of the Works, the Project Activities or the Works in order to conform with the:
 - (A) requirements of all Approvals; and
 - (B) Environmental Requirements, including, to the extent consistent, the Environmental Management Plans developed to implement the Environmental Requirements; and
 - (2) such amendments will not constitute a Modification Order or entitle Project Co to bring any Claim against the State, except as otherwise specifically provided in this Agreement.
- (c) **(Copies of Approvals):** Project Co must promptly provide to the State:
 - (1) not later than 10 Business Days prior to submitting an application for an Approval, copies of all documentation and information to be submitted for the purpose of that application;
 - (2) copies of all Approvals when they are obtained, amended or renewed; or
 - (3) upon request, evidence that any conditions or requirements of all Approvals have been complied with.
- (d) **(Condition Precedent):** Project Co must, as a condition precedent to each of Provisional Acceptance and Final Acceptance, ensure that it has:
 - (1) obtained all Approvals it is required to obtain under this Agreement with respect to that stage of the Works; and
 - (2) complied with, carried out and fulfilled all conditions and requirements of all Approvals relevant to that stage of the Works.



- (e) **(Cooperation):** Project Co must cooperate, and ensure the cooperation of its Associates, with the State in the discharge of any obligations of the State in connection with the Project and any Approval or Environmental Requirement, and must:
- (1) comply with all reasonable requests of the State to assist it to discharge its obligations;
 - (2) refrain from doing anything that may impede the State in discharging its obligations;
 - (3) immediately notify the State of any:
 - (A) breach or alleged or potential breach of; or
 - (B) non compliance, or alleged or potential non compliance, with,
the conditions or requirements of any Approval or Environmental Requirement.
 - (4) require that all Subcontracts contain clauses equivalent to clauses 8.3(e)(1) to 8.3(e)(3).

8.4 Compliance with Investigative Authorities

Project Co must ensure that it and its Associates:

- (a) **(Provide access and information):** promptly give all Investigative Authorities such access to premises and information as any Investigative Authority requests, within the time requested;
- (b) **(Cooperation):** cooperate with and respond to any lawful requests made by any Investigative Authority, within the time requested; and
- (c) **(No delay):** do not hinder or delay any Investigative Authority in carrying out its duties.

8.5 Critical infrastructure

Project Co:

- (a) acknowledges and agrees that the Melbourne metropolitan rail network is critical infrastructure; and
- (b) must carry out the Project Activities:
 - (1) on the basis that the Maintained Assets are assessed as 'vital critical infrastructure' under the *Emergency Management Act 2013* (Vic);
 - (2) in accordance with:
 - (A) all relevant State and Federal guidelines and strategies relating to critical infrastructure; and
 - (B) Best Industry Practice in respect of critical infrastructure.

8.6 Supplier Code of Conduct

Project Co acknowledges and agrees that:

- (a) the Supplier Code of Conduct is an important part of the State's approach to procurement and describes the State's minimum expectations regarding the conduct of its suppliers;



- (b) it has read and aspires to comply with the Supplier Code of Conduct; and
- (c) the expectations set out in the Supplier Code of Conduct are not intended to reduce, alter or supersede any other obligations which may be imposed on the supplier, whether under this Agreement or at Law.

9 Rail Safety (Train)

9.1 Acknowledgement

The parties acknowledge and agree that:

- (a) **(Project Co's Accreditation)**: subject to clauses 9.1(c), 9.1(d) and 9.1(e), Project Co must hold, or must ensure that a Key Subcontractor holds, Train Accreditation to the extent required by Law in respect of the Project Activities which comprise Train Operations.
- (b) **(Train Franchisee Accreditation)**: the Train Franchisee will be the accredited Rail Transport Operator in relation to the operation of the Maintained Assets.
- (c) **(Rolling Stock)**: the testing and commissioning process in respect of the Works may be required to be performed under the Accreditation of both a Rail Infrastructure Manager and a Rolling Stock Operator and Project Co and the Train Franchisee may agree from time to time whether such testing and commissioning will be undertaken in accordance with the Train Accreditation of the Train Franchisee or Project Co (or one of its Key Subcontractors (as applicable)) or both and in accordance with the relevant Safety Interface Agreement entered into between the Franchise and Project Co or one of its Key Subcontractors (as applicable);
- (d) **(Maintenance Services)**: subject to clause 9.1(f), the Train Franchisee is the accredited Rail Transport Operator in respect of the Maintenance Services to the extent they comprise Railway Operations;
- (e) **(Returned Existing Network Works)**: subject to clause 9.1(f), the Train Franchisee is the accredited Rail Transport Operator in respect of the Returned Existing Network Works to the extent they comprise Railway Operations; and
- (f) **(Other activities)**: Project Co and the Train Franchisee may agree from time to time whether any activities in the nature of rectification and repair of the Maintained Assets which occur during the Maintenance Phase will be undertaken in accordance with the Train Accreditation of Project Co or one of its Key Subcontractors (as applicable).

9.2 Compliance with Rail Safety National Law

Project Co must:

- (a) make itself aware of;
- (b) itself comply with;
- (c) ensure that its Associates comply with; and
- (d) provide any evidence requested by the State of its and its Associates' compliance with,

all duties, obligations and requirements under the Rail Safety National Law.



9.3 Assistance relating to Rail Safety National Law

Project Co must ensure that it and its Associates:

- (a) **(Provide access, information or assistance)**: within the time requested (which must be reasonable having regard to the circumstances), provide:
- (1) the Train Franchisee Interface Party;
 - (2) Subcontractors; and
 - (3) any other party at the State's request,
- with such access to premises, information or assistance as the party may reasonably require in relation to:
- (4) that party's Train Accreditation; or
 - (5) any duties, obligations, or requirements that party may have under the Rail Safety National Law,
- in relation to any work or services arising under or in connection with the Project Activities;
- (b) **(Train Accreditation and Rail Safety National Law)**: except as required by Law, do not do, or omit to do, anything which may cause:
- (1) the Regulator to provide the Train Franchisee with a notice of non-conformance in relation to its Train Accreditation;
 - (2) the Regulator to provide the Train Franchisee with a statutory notice, infringement notice, notice imposing conditions on the Train Franchisee's Train Accreditation or a notice requiring amendments to the Train Franchisee's Train Safety Management System;
 - (3) the Train Accreditation of a Train Franchisee to be suspended or cancelled; or
 - (4) a Train Franchisee to breach a term or condition of its Train Accreditation or the Rail Safety National Law; and
- (c) **(Train Franchisee Interface Party direction)**: comply with and procure that all its Associates comply with any direction given by the Train Franchisee Interface Party:
- (1) where the direction is given as the party holding the Train Accreditation required for the relevant Project Activities; or
 - (2) in accordance with clause 11 of the Train Franchisee Cooperation Agreement.

9.4 Third Party Train Accreditation

Without limiting clause 8 or clause 9.1, Project Co must ensure that:

- (a) **(Train Accreditation held before work commences)**: prior to the commencement of any work arising under or in connection with the Project Activities for which Train Accreditation is required by Law, the party carrying out such work either holds Train Accreditation to the extent required by Law, or carries out that work on behalf of a party that holds the Train Accreditation that is required by Law for that work; and
- (b) **(Compliance with Train Accreditation)**: the relevant parties referred to in clause 9.4(a) either:



- (1) maintain and comply with the terms and conditions of their Train Accreditation; or
- (2) comply with all conditions of the relevant Train Accreditation and all obligations of accredited persons under the Rail Safety National Law to the extent relevant to that party.

9.5 Train Safety Management System

- (a) **(Train Safety Management System and Train Safety Interface Agreements):** Without limiting clauses 9.1 to 9.4, Project Co, and any Key Subcontractor holding Train Accreditation, must, to the extent required by the Rail Safety National Law:
 - (1) develop, implement and maintain a Train Safety Management System; and
 - (2) seek to enter, and if entered into, comply with, any Train Safety Interface Agreements,in a timely manner and in accordance with:
 - (3) this Agreement (including as required under clause 9.1(b)), and
 - (4) the Rail Safety National Law.
- (b) **(Copies provided to the State):** Project Co and any Key Subcontractor holding Train Accreditation, must promptly provide the State with a copy of the Train Safety Management System and Train Safety Interface Agreements referred to in this clause 9.5.

9.6 Assistance relating to Train Safety Management Systems

Without limiting clauses 9.1 to 9.5, Project Co must itself, and must ensure that its Associates:

- (a) **(All things necessary):** do all things necessary to assist the Train Franchisee Interface Party (including all things reasonably required by the State) to:
 - (1) prepare changes to its Train Safety Management System in relation to the Works and the Project Activities;
 - (2) manage changes associated with the Works and the Project Activities as relevant to the Train Safety Management System; and
 - (3) obtain any variation to its Train Accreditation that is required as a consequence of the Works and the Project Activities;
- (b) **(Provide support):** do all things necessary to provide information, documentation, advice and other support in relation to the Works and the Project Activities as required by the Train Franchisee Interface Party for the purpose of amending its Train Safety Management System or obtaining a variation to its Train Accreditation; and
- (c) **(Make personnel available):** make available all personnel who have assisted or are assisting in the preparation of changes to the Train Safety Management System of a Train Franchisee or obtaining a variation to a Train Franchisee's Accreditation to attend Train Safety Management System meetings or workshops as may be arranged from time to time by the State.



9.7 Safety Policies

- (a) **(Project Co's procedures):** Without limiting the generality of clauses 9.1 to 9.6, prior to commencing the Project Activities, and during the carrying out of the Project Activities, Project Co is required to have in place its own procedures, or ensure that procedures are in place, for:
- (1) alcohol and drugs testing;
 - (2) fatigue management;
 - (3) health surveillance; and
 - (4) conducting the relevant risk assessments required to complete health assessments,
- which procedures must comply with the Rail Safety National Law.
- (b) **(Evidence of procedures):** Project Co must promptly provide documentation or information as evidence of the above requirements, as may be reasonably required by the State from time to time.

9.8 Notices

Project Co must provide the State with a copy of any notice, report or other correspondence given or received by:

- (a) **(Rail Safety National Law or Train Accreditation):** Project Co, its Associates or the Train Franchisee Interface Party under or in connection with:
- (1) the Rail Safety National Law;
 - (2) the Rail Safety National Regulations; or
 - (3) any Train Accreditation held by Project Co or its Associates,
- in connection with the Project Activities; or
- (b) **(Adverse effect on Project Activities):** Project Co, its Associates, or the Train Franchisee Interface Party which may adversely affect the ability of Project Co or its Associates to carry out the Project Activities,

as soon as possible, but in any event no later than 5 Business Days after such notice, report or other correspondence is given or received by Project Co, its Associates or the Train Franchisee Interface Party.

9.9 Staff

Without limiting clauses 5.1(a)(2) or 8.3(a), Project Co must ensure that all persons engaged in, or in connection, with the Project Activities:

- (a) **(Competent):** are competent to carry out the work for which they are engaged for the purposes of the Rail Safety National Law; and
- (b) **(Compliance Rail Safety National Law):** comply with their obligations under the Rail Safety National Law.

9.10 Compliance with Train Accreditation requirements

Compliance by Project Co with its obligations under this clause 9:

- (a) **(No discharge of obligations):** does not discharge or excuse Project Co from complying with its other obligations under the Agreement; and



- (b) **(No evidence of compliance)**: is not evidence of compliance by Project Co with its other obligations under the Agreement.

10 Rail Safety (Tram)

10.1 Acknowledgement

The parties acknowledge and agree that:

- (a) **(Tram Franchisee holds Accreditation)**: the Tram Franchisee is the accredited Rail Transport Operator to the extent required by Law in respect of the Project Activities comprising Tram Operations.
- (b) **(Tram Franchisee Accreditation)**: the Tram Franchisee is the accredited Rail Transport Operator in relation to the operation of the Tram Franchise Business.

10.2 Compliance with Tram Safety Act

Project Co must:

- (a) make itself aware of;
- (b) itself comply with;
- (c) ensure that its Associates comply with; and
- (d) provide any evidence requested by the State of its and its Associates' compliance with,

all duties, obligations and requirements under the Tram Safety Act.

10.3 Assistance relating to Tram Safety Act

Project Co must ensure that it and its Associates:

- (a) **(Provide access, information or assistance)**: within the time requested (which must be reasonable having regard to the circumstances), provide:
- (1) the Tram Franchisee Interface Party;
- (2) Subcontractors; and
- (3) any other party at the State's request,
- with such access to premises, information or assistance as the party may reasonably require in relation to:
- (4) that party's Tram Accreditation; or
- (5) any duties, obligations, or requirements that party may have under the Tram Safety Act,
- in relation to any work or services arising under or in connection with the Project Activities;
- (b) **(Tram Accreditation and Tram Safety Act)**: except as required by Law, do not do, or omit to do, anything which may cause:
- (1) the Tram Accreditation of a Tram Franchisee to be suspended or cancelled; or



- (2) a Tram Franchisee to breach a term or condition of its Tram Accreditation or the Tram Safety Act; and
- (c) **(Tram Franchisee Interface Party direction)**: comply with and procure that all its Associates comply with any direction given by the Tram Franchisee Interface Party given in accordance with clause 9 of the Tram Franchisee Cooperation Agreement.

10.4 Tram Safety Management System

- (a) **(Tram Safety Management System and Tram Safety Interface Agreements)**: Without limiting clauses 10.1 to 10.3, Project Co, and any Key Subcontractor holding Tram Accreditation, must, to the extent required by the Tram Safety Act:
 - (1) develop, implement and maintain a Tram Safety Management System; and
 - (2) seek to enter, and if entered into, comply with, any Tram Safety Interface Agreements,in a timely manner and in accordance with:
 - (3) this Agreement (including as required under clause 10.1(b)), and
 - (4) the Tram Safety Act.
- (b) **(Copies provided to the State)**: Project Co and any Key Subcontractor holding Tram Accreditation, must promptly provide the State with a copy of the Tram Safety Management System and Tram Safety Interface Agreements referred to in this clause 10.4.

10.5 Assistance relating to Tram Safety Management Systems

Without limiting clauses 10.1 to 10.4, Project Co must itself, and must ensure that its Associates:

- (a) **(All things necessary)**: do all things necessary to assist the Tram Franchisee Interface Party (including all things reasonably required by the State) to:
 - (1) prepare changes to its Tram Safety Management System in relation to the Project Activities;
 - (2) manage changes associated with the Project Activities as relevant to the Tram Safety Management System; and
 - (3) obtain any variation to its Tram Accreditation that is required as a consequence of the Project Activities;
- (b) **(Provide support)**: do all things necessary to provide information, documentation, advice and other assistance and support in relation to the Project Activities as required by the Tram Franchisee Interface Party for the purpose of amending its Tram Safety Management System or obtaining a variation to its Tram Accreditation; and
- (c) **(Make personnel available)**: make available all personnel who have assisted or are assisting in the preparation of changes to the Tram Safety Management System of a Tram Franchisee or obtaining a variation to a Tram Franchisee's Accreditation to attend Tram Safety Management System meetings or workshops as may be arranged from time to time by the State.

10.6 Safety Policies

- (a) **(Project Co's procedures):** Without limiting the generality of clauses 10.1 to 10.5, prior to commencing the Project Activities, and during the carrying out of the Project Activities, Project Co is required to have in place its own procedures, or ensure that procedures are in place, for:
- (1) alcohol and drugs testing;
 - (2) fatigue management;
 - (3) health surveillance; and
 - (4) conducting the relevant risk assessments required to complete health assessments,
- which procedures must comply with the Tram Safety Act.
- (b) **(Evidence of procedures):** Project Co must promptly provide documentation or information as evidence of the above requirements, as may be reasonably required by the State from time to time.

10.7 Notices

Project Co must provide the State with a copy of any notice, report or other correspondence given or received by:

- (a) **(Tram Safety Act or Tram Accreditation):** Project Co, its Associates or the Tram Franchisee Interface Party under or in connection with:
- (1) the Tram Safety Act; or
 - (2) the Tram Safety Regulations,
- in connection with the Project Activities; or
- (b) **(Adverse effect on Project Activities):** Project Co, its Associates, or the Tram Franchisee Interface Party which may adversely affect the ability of Project Co or its Associates to carry out the Project Activities,

as soon as possible, but in any event no later than 5 Business Days after such notice, report or other correspondence is given or received by Project Co, its Associates or the Tram Franchisee Interface Party.

10.8 Staff

Without limiting clauses 5.1(a)(2) or 8.3(a), Project Co must ensure that all persons engaged in, or in connection, with the Project Activities:

- (a) **(Competent):** are competent to carry out the work for which they are engaged for the purposes of the Tram Safety Act; and
- (b) **(Compliance Tram Safety Act):** comply with their obligations under the Tram Safety Act.

10.9 Compliance with Tram Accreditation requirements

Compliance by Project Co with its obligations under this clause 10:

- (a) **(No discharge of obligations):** does not discharge or excuse Project Co from complying with its other obligations under the Agreement; and

- (b) **(No evidence of compliance)**: is not evidence of compliance by Project Co with its other obligations under the Agreement.

11 Parties and personnel

11.1 Secretary

- (a) **(Appointment)**: The State has appointed the Secretary to exercise the rights and carry out the obligations set out in the *Transport Integration Act 2010* (Vic) and the Relevant Legislation with respect to the Project.
- (b) **(No limitation)**: The appointment of the Secretary (or any authority appointed to replace the Secretary under clause 11.1(c)) does not limit the rights or obligations of the State under the State Project Documents.
- (c) **(Replacement)**: The State, at any time by notice to Project Co, may appoint another Authority to exercise similar rights and carry out similar obligations to that of the Secretary under clause 11.1(a) relevant to the Project.

11.2 Authorities

Project Co acknowledges and agrees that:

- (a) **(jurisdiction of Authorities)**: there are Authorities with jurisdiction over aspects of the Project Activities and the Site; and
- (b) **(exercise of functions)**: such Authorities may, from time to time and at any time, exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the Project Activities.

11.3 Parties' representatives

- (a) **(Parties' representatives)**: The parties may exercise any of their rights or carry out any of their obligations in accordance with this Agreement through their respective representatives identified in the Contract Particulars.
- (b) **(Agent)**: Each party's representative must be a natural person and will act as the agent of its respective party.
- (c) **(State Representative)**: The State Representative will exercise the rights and carry out the obligations of the State as set out in the State Project Documents, including its ability to give and receive directions and notices.
- (d) **(Project Co Representative)**: The Project Co Representative will exercise those rights and carry out those obligations which it is authorised to perform as notified to the State, including providing a copy of the relevant instrument of appointment to the State, and Project Co must ensure that the Project Co Representative has the proper authority and skill to perform its rights and carry out its obligations.
- (e) **(Delegation)**: Subject to clause 13.1, each party may:
- (1) vary or terminate the duties of its representative identified in the Contract Particulars as it sees fit, including delegating its representative's duties to a new representative; and



- (2) from time to time appoint further representatives to act as its representative concurrently, and may remove any such additional representative at any time.
- (f) **(Notice):** Where a party varies, terminates or delegates the duties of its representatives, or where a party appoints or removes a further representative, in accordance with clause 11.3(e), that party will promptly notify the other of the variation, termination, delegation, appointment or removal, including the identity of any new representative and the new representative's duties (with Project Co also providing a copy of the relevant instrument of delegation) (if applicable) and of any further variation, termination, delegation, appointment or removal.
- (g) **(Project Co not to act):** Except as otherwise required by Law, or expressly provided in a Rail Franchisee Cooperation Agreement, Project Co must not accept or act upon directions in connection with the Project Activities from an employee or agent of the State other than the State Representative or a delegate appointed in accordance with clause 11.3(e) acting in accordance with this Agreement.

11.4 Project Control Group

- (a) **(Establishment):** The parties will establish a group consisting of:
 - (1) the State Representative;
 - (2) 2 or more other representatives of the State notified by the State from time to time;
 - (3) the Project Co Representative;
 - (4) during the D&C Phase, the Independent Reviewer;
 - (5) the Train Franchisee Representative;
 - (6) 2 or more other persons nominated by Project Co who must be members of the senior management of Project Co, the D&C Subcontractor or the Maintenance Subcontractor with a sound knowledge of the Project and must be authorised to make commitments on behalf of Project Co, the D&C Subcontractor and the Maintenance Subcontractor, respectively, provided that Project Co must nominate at least one person from:
 - (A) during the D&C Phase, each of the D&C Subcontractor and the Maintenance Subcontractor; and
 - (B) during the Maintenance Phase, the Maintenance Subcontractor;
 - (7) an independent chair agreed by the State and Project Co (or in the absence of agreement, appointed by the Secretary; and
 - (8) such other members as the State determines or the parties may agree from time to time,(together the **Project Control Group**).
- (b) **(Replacement of delegates):** The members of the Project Control Group may, by notice to the other members of the Project Control Group, appoint replacement delegates who hold the same or similar position to:
 - (1) attend Project Control Group meetings in their absence; and
 - (2) otherwise discharge their responsibilities in accordance with this clause 11.4.



- (c) **(Functions):** The functions of the Project Control Group will be to:
- (1) monitor the overall progress of the Project Activities and compliance with the State Project Documents;
 - (2) assist in the resolution of any matters referred to the Project Control Group by a party;
 - (3) review any matters concerning passenger services operated by a Rail Franchisee and complaints resolution (to the extent relevant to the Project Activities);
 - (4) review any matters concerning any Unplanned Rail Disruption;
 - (5) review all reports and plans provided by Project Co, its Subcontractors and the Independent Reviewer during the Term;
 - (6) review any matters relating to the provision of the Services and all of the matters referred to in the Final Acceptance Schedule and Services Specification;
 - (7) any matters arising out of the Monthly Performance Reports;
 - (8) review and discuss matters relating to the Permitted Commercial Opportunities;
 - (9) review and discuss matters relating to safety; and
 - (10) discuss and address such other matters as may arise from time to time in connection with the Project.
- (d) **(Cost):** The State and Project Co will share equally in the costs of the independent chair agreed or appointed in accordance with clause 11.4(a)(4).
- (e) **(Meetings):** The Project Control Group must:
- (1) meet:
 - (A) Monthly during the Term (or as otherwise agreed by the State Representative and the Project Co Representative); or
 - (B) when otherwise called to meet on 10 Business Days' notice by the State Representative or the Project Co Representative (or on such other notice as otherwise agreed by them); and
 - (2) conduct its meetings in the manner agreed from time to time or as otherwise directed by the independent chair.
- (f) **(Meeting agendas):** The State will determine the agenda for each meeting, and in determining each agenda:
- (1) will seek input from the Project Co Representative;
 - (2) subject to clause 11.4(f)(3), must include any items notified to it by any other member received no later than 2 Business Days prior to the date of the meeting; and
 - (3) will not include any item if the item does not fall within the functions of the Project Control Group unless its inclusion is agreed to by the State.
- (g) **(Reports):** Project Co must, no later than 10 Business Days after the end of each Month, give each member of the Project Control Group and the Independent Reviewer:



- (1) prior to the Date of Final Acceptance, a Monthly D&C Phase Progress Report for the previous Month prepared and updated in accordance with the PS&TR; and
- (2) from the Date of Provisional Acceptance to the Expiry Date:
 - (A) a Monthly Performance Report for the previous Month; and
 - (B) the current Monthly Maintenance Schedule,
prepared and updated in accordance with the Final Acceptance Schedule or the Services Specification (as relevant).
- (h) **(Minutes)**: Project Co must take minutes of each Project Control Group meeting and distribute such minutes not later than 10 Business Days after the Project Control Group meeting.
- (i) **(Other attendees)**: The State may:
 - (1) require any Metro Tunnel Package Contractor or any Interface Party to attend any meeting of the Project Control Group; and
 - (2) direct Project Co to procure the attendance of senior representatives of any of the Subcontractors (not forming part of the Project Control Group), Financiers or any of their respective Associates at any meeting of the Project Control Group.

11.5 No liability of representative groups

- (a) **(Liability of Project Control Group)**: The Project Control Group:
 - (1) is advisory only and its decisions or recommendations are not binding on the parties; and
 - (2) does not have any legal responsibilities, Liability or right to require any of the parties to act or refrain from acting in any way.
- (b) **(No limitation)**: The parties' involvement in the Project Control Group does not affect their respective rights and obligations in accordance with this Agreement.
- (c) **(Further information)**: The State Representative may require Project Co to provide information on matters discussed at any Project Control Group meeting and Project Co must provide that information in a timely manner.
- (d) **(No reliance or Claim)**: Neither the State nor Project Co will be entitled to:
 - (1) rely on any statement, opinion, advice, representation, warranty, promise or undertaking made or given by or on behalf of or any member of the Project Control Group (in its capacity as a member); or
 - (2) make any Claim against any such group or committee or any member of the Project Control Group (in its capacity as a member),
arising in connection with anything which any such member does or fails to do in its capacity as a member of the Project Control Group.
- (e) **(Project Co conduct at meetings)**: Project Co and its Associates must freely and openly discuss the Project Activities at all meetings (including the Project Control Group) conducted with the State and Project Co and must procure that its Associates fully respond to any questions which the State Representative may ask Project Co at any meetings conducted in accordance with this Agreement within 5 Business Days.

11.6 Appointment of Independent Reviewer

The State will appoint, and the State and Project Co must jointly engage, the Independent Reviewer to act as Independent Reviewer:

- (a) **(appointment terms)**: in accordance with the terms of this Agreement and the Independent Reviewer Deed of Appointment; and
- (b) **(not agent)**: independently and not as agent of either party.

11.7 Other Project roles of Independent Reviewer

- (a) **(No ability to act for Financiers)**: Project Co must ensure that the Financiers do not appoint the Independent Reviewer to act in any role in connection with the Finance Documents, without the prior consent of the State.
- (b) **(Costs)**: Subject to clause 11.7(e), the costs and expenses of the Independent Reviewer (including the Independent Reviewer's professional fees and any costs incurred in exercising or purporting to perform its obligations under the Independent Reviewer Deed of Appointment but not including any payments due to the Independent Reviewer in respect of any Downstream Independent Reviewer Functions) will be paid to the Independent Reviewer by the State.
- (c) **(Payment of costs)**: Subject to clauses 11.7(d) and clause 11.7(e)(1), Project Co must pay to the State on demand, from time to time 50% of the costs and expenses of the Independent Reviewer paid by the State under clause 11.7(b).
- (d) **(Proportionate payment of costs)**: To the extent that the Independent Reviewer considers that the parties (as a result of their respective conduct) have a proportionate responsibility for the costs and expenses of the Independent Reviewer paid by the State under clause 11.7(b) which differs from the proportions stated in clause 11.7(c), Project Co must pay to the State on demand the relevant proportion of the costs and expenses of the Independent Reviewer paid by the State under clause 11.7(b) as stated in a notice from the Independent Reviewer to the parties.
- (e) **(Costs for reports)**: Where the Independent Reviewer prepares a report not otherwise required by this Agreement or the Independent Reviewer Deed of Appointment, but requested by the State or Project Co:
 - (1) the costs of the Independent Reviewer of preparing such an additional report will be paid directly by the party requesting the report; and
 - (2) a copy of that additional report must be provided by the Independent Reviewer to the party that did not request the report.

11.8 Determinations of Independent Reviewer

Determinations of the Independent Reviewer will be final and binding on the State and Project Co except:

- (a) **(manifest error)**: in the case of manifest error on the face of the Independent Reviewer's determination; or
- (b) **(express provision)**: if there is an express provision in this Agreement to the contrary.

11.9 Replacement of Independent Reviewer

- (a) **(Appointment and replacement)**: If:



- (1) the Independent Reviewer Deed of Appointment is terminated in accordance with its terms; or
- (2) the Independent Reviewer ceases to act as the Independent Reviewer for the purposes of the State Project Documents,

the State will appoint, and the State and Project Co must jointly engage, another person to act as the Independent Reviewer on substantially the same terms as the Independent Reviewer Deed of Appointment, provided that the Independent Reviewer to be engaged must:

- (3) be reasonably acceptable to the State and Project Co;
 - (4) have appropriate qualifications and experience; and
 - (5) have no interest or duty which conflicts or may conflict with its functions as an Independent Reviewer.
- (b) **(Decisions binding)**: The new Independent Reviewer appointed in accordance with clause 11.9(a) is bound by the exercise of any functions or decisions made by the previous Independent Reviewer which would have been binding on the previous Independent Reviewer, the State and Project Co.

11.10 Proof Engineer

- (a) **(Appointment)**: Project Co must:
- (1) with the D&C Subcontractor, jointly engage the Proof Engineer; and
 - (2) ensure that, where the engagement of the Proof Engineer is terminated or otherwise ceases, it engages another person to act as Proof Engineer.
- (b) **(Approval)**: Any Proof Engineer appointed by Project Co under clause 11.10(a) must:
- (1) be reasonably acceptable to the State;
 - (2) have appropriate qualifications and experience; and
 - (3) be engaged on terms reasonably acceptable to the State.
- (c) **(Obligations)**: Project Co must ensure that the Proof Engineer:
- (1) complies with the requirements of the Proof Engineer set out in the State Project Documents; and
 - (2) provides such information, assistance and documentation to the Independent Reviewer and gives such access to the Independent Reviewer (and any person authorised by the Independent Reviewer) as may be reasonably required by the Independent Reviewer (and any person authorised by the Independent Reviewer) for the purpose of performing its role and functions under this Agreement and the Independent Reviewer Deed of Appointment.

12 Coordination and Interface Deed Poll

12.1 Co-ordination and Interface Deed Poll

Project Co must, until Final Acceptance, comply with the Coordination and Interface Deed Poll.

12.2 Coordination obligations

In performing the Works, Project Co must:

- (a) comply with the Framework Coordination and Interface Principles;
- (b) plan, coordinate, program and integrate the performance of the Works with the Metro Tunnel Interface Works, and for this purpose Project Co must (without limitation, and in accordance with the Coordination and Interface Deed Poll where relevant):
 - (1) cooperate with contractors carrying out the Metro Tunnel Interface Works to facilitate the execution of the Metro Tunnel Interface Works;
 - (2) permit contractors carrying out Metro Tunnel Interface Works on the relevant part of the Site at the same time as Project Co and its Associates are performing the Works and for this purpose ensure those contractors have safe, unobstructed access to and from those parts of the Site (to which Project Co has access) required by them for the purpose of carrying out the Metro Tunnel Interface Works;
 - (3) prepare joint programs, method statements, and coordination drawings with contractors carrying out Metro Tunnel Interface Works;
 - (4) monitor the progress of Metro Tunnel Interface Works and notify the State of any interference or sequence of activities that may affect the commencement, progress or completion of any of the Works or Metro Tunnel Interface Works; and
 - (5) perform the Works so as to minimise interfering with, disrupting or delaying the work of Metro Tunnel Interface Parties and their Associates carrying out Metro Tunnel Interface Works; and
- (c) attend all co-ordination meetings (either pursuant or in addition to those required under the Coordination and Interface Deed Poll), to plan, review and determine coordinated activities of the management of interfaces (including access) between the Works and the Metro Tunnel Interface Works.

12.3 Accuracy of information

- (a) Project Co will ensure the accuracy and suitability of information which it provides to any Metro Tunnel Package Contractor or any Rail Transport Operator.
- (b) If Project Co discovers any errors or omissions in information that Project Co has provided relating to the Metro Tunnel Interface Works, as soon as practicable Project Co must give written notice of such errors or omissions to those to whom Project Co provided the information.

12.4 Framework Co-ordination and Interface Principles

- (a) Without limiting Project Co's obligations under this clause 12, Project Co acknowledges and accepts that:
 - (1) the Works and Metro Tunnel Interface Works are interrelated and interdependent and the interface between the Works and certain of the Metro Tunnel Interface Works are governed by the Framework Coordination and Interface Principles; and
 - (2) Project Co will bear the costs of complying with:

- (A) the Coordination and Interface Deed Poll;
 - (B) the Framework Coordination and Interface Principles; and
 - (C) any determination of the Joint Coordination Committee, the JCC Systems Integration Team or a JCC Subcommittee pursuant to the Framework Coordination and Interface Principles,
- other than to the extent that the State issues a Modification Order in respect of a JCC Modification pursuant to clause 38.8(c) or clause 38.8(e).
- (b) As soon as reasonably practicable after the date of this Agreement, Project Co must provide the State with all of the details required for MMRA or the Secretary to complete each Beneficiary Nomination Notice.
 - (c) The State agrees to procure that MMRA and the Secretary (as relevant):
 - (1) comply with their obligations as set out in the Framework Coordination and Interface Principles;
 - (2) in circumstances where any Deed Poll Provider (other than Project Co):
 - (A) has not already entered into a deed poll in the form of the Coordination and Interface Deed Poll as at the date of this Agreement, to procure that each Deed Poll Provider enters into such a deed poll in favour of Project Co in the form of the Coordination and Interface Deed Poll prior to or at the same time as executing its relevant Delivery Agreement; or
 - (B) has already entered into a deed poll in the form of the Coordination and Interface Deed Poll as at the date of this Agreement and subject to Project Co complying with clause 12.4(b), deliver as soon as reasonably practicable after the date of this Agreement, a Beneficiary Nomination Notice on each Deed Poll Provider (who has already executed such a deed poll) nominating Project Co as a Beneficiary under such deed poll;
 - (3) in circumstances where Project Co has provided a Coordination and Interface Deed Poll in favour of a Beneficiary, and such Beneficiary:
 - (A) has assigned or novated its Delivery Agreement (or in the case of a Rail Transport Operator, the Train Franchisee Arrangements) in accordance with its terms, to deliver, as soon as reasonably practicable after the assignment or novation, as applicable, a Beneficiary Assignment Notice and any associated Coordination and Interface Deed Poll to Project Co; and
 - (B) has had its Delivery Agreement terminated in accordance with its terms, as soon as reasonably practicable, deliver a Beneficiary Termination Notice to Project Co; and
 - (4) use reasonable endeavours to procure that the Train Franchisee complies with its obligations as a Rail Transport Operator (rather than as a Metro Tunnel Package Contractor) as set out in the Framework Coordination and Interface Principles.
 - (d) Project Co's obligations and liabilities under this Agreement remain unaffected notwithstanding:

- (1) any information, data, representation, statement or document made, or provided to Project Co, by the State, the Secretary or MMRA in relation to the Works as part of the Key Milestone Program and any other documents prepared or supplied by or on behalf of the State, the Secretary or MMRA pursuant to obligations under the Framework Coordination and Interface Principles; or
- (2) any act or omission of the State, the Secretary or MMRA in respect of the Framework Coordination and Interface Principles.

12.5 Interface Definition Sheets and Interface Steps

- (a) **(Acknowledgements):** The parties acknowledge and agree the Interface Definition Sheets:
 - (1) do not include the dates by which the Interface Steps must be performed; and
 - (2) will not be updated to include the dates by which the Interface Steps must be performed, on the basis that such information will be ultimately included in the D&C Program and the Key Milestone Program in accordance with the process set out in this clause 12.5.
- (b) **(Interface Step dates):** As soon as possible following Financial Close, Project Co must:
 - (1) work with the Rail Systems Alliance to agree a timetable and process for agreeing by 28 February 2018, the dates for completion of the Interface Steps (which relate to the Rail Systems Alliance);
 - (2) work with the State to agree a timetable and process for agreeing by 28 February 2018, the dates for completion of the Interface Steps which relate to the Rail Infrastructure Alliance; and
 - (3) negotiate in good faith with:
 - (A) the Rail Systems Alliance to agree the dates for completion of the Interface Steps which relate to the Rail Systems Alliance; and
 - (B) the State to agree the dates for completion of the Interface Steps which relate to the Rail Infrastructure Alliance.
- (c) **(Failure to agree Interface Step dates):** To the extent Project Co fails to agree with the Rail Systems Alliance or the State (as relevant) the dates for completion of the Interface Steps which relate to the Rail Systems Alliance or the Rail Infrastructure Alliance (as relevant) by 28 February 2018, the Independent Reviewer will determine those dates (such dates to be reasonable having regard to what is reasonably achievable in light of the D&C Program and the Rail Systems Alliance's program or the Rail Infrastructure Alliance's program (as applicable)).
- (d) **(Agreed Interface Step dates):** The agreed dates for completion of the Interface Steps (or if applicable, the dates determined by the Independent Reviewer) will be included in the D&C Program and the Key Milestone Program.
- (e) **(Notice of delay):** If Project Co becomes aware that it may not achieve a Project Co Interface Step by the relevant Interface Step Date as a result of critical or non-critical delay to the Project, Project Co must:
 - (1) notify the Joint Coordination Committee of the likely delay (including the impact of any extension of time granted pursuant to clause 26) at

timeframes reasonably agreed by the parties (taking into account the timing for Project Co's obligation to update the D&C Program);

- (2) consult with the appropriate committee under the Coordination and Interface Deed Poll in respect of the delay; and
 - (3) use reasonable endeavours to achieve the Project Co Interface Step by the earliest possible date (having regard to the nature and duration of the likely delay).
- (f) **(Variations):** If Project Co has complied and continues to comply with clause 12.5(e), Project Co:
- (1) may vary a Project Co Interface Step Date to the earliest possible date that the relevant Project Co Interface Step can be achieved (having regard to the nature and duration of the likely delay); and
 - (2) must notify the Joint Coordination Committee in writing of the variation (which it may do by providing "an annotated" copy of a D&C Program which has been updated in accordance with the timeframes set out in clause 18.2).

For the avoidance of doubt, Project Co may vary a Project Co Interface Step Date without the consent of the State or the Rail Systems Alliance provided it has complied and continues to comply with clauses 12.5(e) and 12.5(f).

- (g) **(Determination):** If the State reasonably believes that a Project Co proposed variation of a Project Co Interface Step Date issued in accordance with clause 12.5(f) is not the earliest possible date that the relevant Project Co Interface Step can be achieved (having regard to the nature and duration of the likely delay) it may refer the matter for determination by the Independent Reviewer.
- (h) **(Consequences of failure to achieve dates):** The parties acknowledge and agree that any:
 - (1) failure to achieve an Interface Step by the relevant Interface Step Date; or
 - (2) variation to an Interface Step Date in accordance with this Agreement, the Framework Coordination and Interface Principles or a Delivery Agreement,

will not be a breach of this Agreement, a Major Default, a Default Termination Event or a breach, or Wilful Default, of the Coordination and Interface Deed Poll, but the Independent Reviewer may take such failure or variation into account in making a determination on an extension of time in respect of a related or consequential Critical Interface Milestone Event.

13 Subcontracting and third party arrangements

13.1 Key People and Key Subcontractors

Project Co must:

- (a) ensure that the Key People and Key Subcontractors are employed or engaged in the roles specified in the Contract Particulars;
- (b) procure from each Key Subcontractor an executed direct deed:



- (1) in respect of the D&C Subcontractor, in the form of the D&C Direct Deed;
 - (2) in respect of the Maintenance Subcontractor, in the form of the Maintenance Direct Deed; and
 - (3) otherwise, in the form of the Subcontractor Direct Deed;
- (c) procure that the Key Subcontractors procure from their Material Subcontractors, an executed Subcontract Novation Deed;
- (d) subject to clause 13.1(e), not replace the Key People or Key Subcontractors without the State's prior consent; and
- (e) if any of the Key People die, become seriously ill or resign from the employment of Project Co or any Subcontractor or receive a promotion, promptly replace the relevant Key People with persons approved by the State (not to be unreasonably withheld) of at least equivalent qualification, experience, ability and expertise.

13.2 Subcontracting

Project Co:

- (a) **(no relief)**: is not relieved from any or all of its obligations or Liabilities in accordance with the State Project Documents as a result of subcontracting any of those obligations or Liabilities;
- (b) **(Project Co responsible)**: will be responsible for the acts and omissions of any Subcontractor and their respective Associates in carrying out the Project Activities as if such acts or omissions were the acts or omissions of Project Co;
- (c) **(Wrongs Act)**: for the purposes of Part IVAA of the *Wrongs Act 1958* (Vic), is entirely responsible for any failure to take reasonable care on the part of any Subcontractor or their Associates;
- (d) **(access to Subcontracts)**: must if the State requires, give the State access to (or copies of, upon request) any proposed or executed Subcontract (regardless of whether Project Co is a party to that contract) and all plans, specifications and drawings relating to that Subcontract; and
- (e) **(Utility Providers)**: must use its best endeavours to engage all Utility Providers (as required by the State Project Documents) on the best commercial terms reasonably available from the relevant Utility Provider at the time of engagement.

13.3 Requirements for Subcontracting

A Subcontractor must not be engaged in connection with the Project Activities unless:

- (a) **(Probity Investigation)**: if the State requires Probity Investigations to be carried out in respect of the Subcontractor, the State's probity requirements as described in clause 62 are satisfied;
- (b) **(relevant capacity)**: the proposed Subcontractor has the financial capacity, experience and capability to perform the obligations of Project Co to be Subcontracted to at least the standards required by this Agreement; and
- (c) **(relevant provisions)**: where the proposed Subcontract is a Material Subcontract or Key Subcontract, the Subcontract contains further provisions expressly recognising and permitting the exercise by the State of its rights under and contains all relevant provisions prescribed by (if applicable), clauses



11.4(i), 13.1, 13.4, 13.6, 15.2(c)(1) to 15.2(c)(3), 16.3(a), 17, 19.3(d), 41, 43, 44, 45, 48, 52.2, 53, 57 and 62.

13.4 Key Subcontracts and Material Subcontracts

- (a) **(Restrictions on Subcontracts):** Project Co:
- (1) must not itself and must not allow at any time the entering into, amendment, termination, rescission, novation or assignment of any Key Subcontract or Material Subcontract without the State's prior consent (which will not be unreasonably withheld or delayed, and in the case of the Installation Subcontractor (PSD) in relation to an Installation Subcontract (PSD) will be deemed to have been given); and
 - (2) must procure that any Installation Subcontract (PSD) is entered into with the Installation Subcontractor (PSD) (unless the State gives its written consent to engage a party other than the Installation Subcontractor (PSD)).
- (b) **(Prescribed terms):** Project Co must ensure that each Key Subcontract and Material Subcontract includes a clause which provides that, if this Agreement is terminated in accordance with clause 45:
- (1) in respect of each Key Subcontract:
 - (A) subject to the terms of the D&C Direct Deed or Maintenance Direct Deed (as the case may be), any party to the Key Subcontract may terminate the relevant contract;
 - (B) if the termination of this Agreement is not a Voluntary Termination pursuant to clause 45.2, Project Co will pay to the relevant Key Subcontractor, an early termination amount which is no greater than the aggregate of:
 - (i) the contract value of the work or services properly executed in accordance with the Key Subcontract up to the date of termination;
 - (ii) reasonable costs and expenses properly incurred up to the date of termination in expectation of completing the work or services under the Key Subcontract; and
 - (iii) Liabilities to third parties (excluding any Related Body Corporate of the Key Subcontractor, other than a Related Body Corporate that is a counterparty to a Subcontract that was entered into on an arm's length basis and is on commercial terms) arising directly as a consequence of the termination of the Key Subcontract,

which amounts are due and payable under the relevant Key Subcontract but remain unpaid at the date of termination of the Key Subcontract; and
 - (C) if the termination of this Agreement is a Voluntary Termination pursuant to clause 45.2, the amount calculated in accordance with Item M of Section 5 of the Termination Payments Schedule; and



- (2) in respect of each Material Subcontract, subject to the terms of the relevant Subcontract Novation Deed, if the Material Subcontract is terminated, the relevant Key Subcontractor will pay to the Material Subcontractor, an early termination amount which is no greater than the aggregate of:
- (A) the contract value of the work or services properly executed in accordance with the Material Subcontract up to the date of termination;
 - (B) reasonable costs and expenses properly incurred up to the date of termination in expectation of completing the work or services under the Material Subcontract; and
 - (C) Liabilities to third parties (excluding any Related Body Corporate of the Material Subcontractor, other than a Related Body Corporate that is a counterparty to a Material Subcontract that was entered into on an arm's length basis and is on commercial terms) arising directly as a consequence of the termination of the Material Subcontract,
- which amounts are due and payable under the relevant Material Subcontract but remain unpaid at the date of termination of the Material Subcontract.

13.5 Competence

- (a) **(Project Co to ensure competence):** Project Co must ensure that all persons employed or engaged on the Project Activities:
- (1) hold appropriate qualifications and have received appropriate training; and
 - (2) have a reasonable knowledge and understanding of the requirements of any Laws, Approvals, Environmental Requirements and Management Plans applicable to the Project Activities,
- for their intended duties, and provide evidence of such qualifications and training to the State as reasonably requested.
- (b) **(Incompetence):** If the State notifies Project Co of any person employed or engaged on the Project Activities who, in the State's reasonable opinion, is incompetent, does not meet the standard required by clause 13.5(a), or is negligent, dishonest or guilty of misconduct, then Project Co must promptly:
- (1) remove the person or ensure that such person is promptly removed from working on the Project Activities;
 - (2) replace the person or ensure that such person is promptly replaced; and
 - (3) ensure that the person is not again employed or engaged on the Project Activities.

13.6 Payment of amounts owed to Subcontractors

- (a) **(Payments):** Project Co must ensure that:
- (1) Subcontractors are paid in accordance with the terms of their Subcontracts; and



- (2) each Subcontract contains an equivalent provision to clause 13.6(a)(1) in relation to that Subcontract and Subcontractor.
- (b) **(Copies of notices under Security of Payment Act):** Project Co must ensure that within:
 - (1) 2 Business Days after any notice under the Security of Payment Act (excluding any 'payment claim' or 'payment schedule' as those terms are defined under the Security of Payment Act) is given to, or received by, Project Co from any Subcontractor; or
 - (2) one Business Day after notice of a Subcontractor's intention to suspend work under a Subcontract in accordance with the Security of Payment Act is given to, or received by, Project Co from any of its Subcontractors,a copy of that notice is given to the State.
- (c) **(Suspension under Security of Payment Act):** If the State reasonably considers that a Subcontractor has become entitled to suspend work under a Subcontract in accordance with the Security of Payment Act because of a failure by Project Co or any of its Associates to pay moneys due and payable to the Subcontractor, without limiting clause 5.6 of the Finance Direct Deed, the State may pay to the Subcontractor the amount owing to the Subcontractor in connection with that work, and any amount paid by the State will be a debt due and payable by Project Co to the State.
- (d) **(State may pay Subcontractors):** Notwithstanding clause 13.6(c), if any amount is:
 - (1) certified as payable; or
 - (2) otherwise due and payable,to a Subcontractor under a Subcontract, and Project Co or its relevant Associate does not pay such amount to that Subcontractor in accordance with that Subcontract, then, without limiting clause 5.6 of the Finance Direct Deed, the State may pay such amount to that Subcontractor provided it has given Project Co 5 Business Days' notice of its intention to do so, and any amount paid by the State will be a debt due and payable by Project Co to the State.

13.7 Rail Franchisee Cooperation Agreements

- (a) **(Comply with Rail Franchisee Cooperation Agreements):** Project Co must comply with its obligations under the Rail Franchisee Cooperation Agreements.
- (b) **(Payments):** Project Co must ensure that each Rail Franchisee is paid in accordance with the terms of its Rail Franchisee Cooperation Agreement.
- (c) **(Access to documents):** Project Co must, if the State requires, give the State access to (or copies of) all documents, plans, specifications and drawings relating to the Rail Franchisee Cooperation Agreements.
- (d) **(No termination without consent):** Project Co must not allow at any time the amendment, termination, rescission, replacement, novation or assignment of a Rail Franchisee Cooperation Agreement without the State's prior consent.
- (e) **(State may pay Rail Franchisees):** If any amount is due and payable to a Rail Franchisee under its Rail Franchisee Cooperation Agreement, and Project Co does not pay such amount to that Rail Franchisee in accordance with that Rail Franchisee Cooperation Agreement, the State may pay such amount to that Rail Franchisee provided it has given Project Co 5 Business Days' notice of its

intention to do so, and any amount paid by the State will be a debt due and payable by Project Co to the State.

13.8 CityLink Interface Deed

Project Co must comply with all of its obligations under the CityLink Interface Deed.

13.9 General interface requirements

(a) **(Coordination)**: Project Co acknowledges that the State, any of its Associates, the Train Franchisee, the Tram Franchisee, the Ticketing Works Contractor and any other person authorised by the State (together, the **Interface Parties**), may carry out:

- (1) Rail Operations; or
- (2) work, services, activities and functions:
 - (A) in connection with the Relevant Infrastructure or the Metro Tunnel;
 - (B) otherwise in connection with the Project Activities; or
 - (C) adjacent to or in the vicinity of the Works, the Relevant Infrastructure or the Metro Tunnel, the Site or the Victorian Rail Network,

simultaneously with Project Co's performance of the Project Activities.

(b) **(Co-operation)**: Except to the extent Project Co is expressly entitled to relief as a Compensable Intervening Event or Compensable Extension Event, Project Co bears all risk in respect of the Interface Parties and must:

- (1) permit the Interface Parties to undertake their work, services, activities and functions;
- (2) fully co-operate with the Interface Parties;
- (3) carefully co-ordinate and interface the Project Activities with the work, services, activities and functions carried out or to be carried out by the Interface Parties;
- (4) carry out the Project Activities so as to minimise interference, disruption or delay to the work, services, activities and functions of the Interface Parties; and
- (5) notify the State of any problems which the undertaking or intended undertaking of any works, services, activities or functions of the Interface Parties may have on the carrying out of the Project Activities as soon as possible after becoming aware of such problems.

13.10 Notification of claims and disputes

Project Co must notify the State Representative of the existence of any Claims or disputes that have arisen under:

- (a) a Rail Franchisee Cooperation Agreement;
- (b) the CityLink Interface Deed;
- (c) the Coordination and Interface Deed; or



- (d) any Subcontract (regardless of whether Project Co is a party to that contract), where the claims process or dispute resolution process under that Subcontract has been activated by any party to it.

13.11 Obligations as to Claims made on pass-through basis

Project Co must, in circumstances where it makes any Claim against the State as a consequence of a Claim that has been made by a Subcontractor against Project Co, take reasonable steps to ensure that any such Claim made by the Subcontractor is bona fide, prior to making any related Claim against the State and must notify the State of the steps it has taken prior to or at the same time it makes the Claim against the State.

13.12 Interface with Ticketing Works

Without limiting clause 13.9:

- (a) **(Acknowledgement):** Project Co acknowledges that:
- (1) the Project Activities interface with the Ticketing Works;
 - (2) the Ticketing Works Contractor will be carrying out the Ticketing Works on the Site at the same time as Project Co is carrying out the Project Activities; and
 - (3) delays in carrying out the Project Activities or a failure to comply with its other obligations under this Agreement may impact on, interfere with or delay, the design, construction and commissioning of the Ticketing Works by the Ticketing Works Contractor; and
- (b) **(Ticketing Works):** Project Co must:
- (1) permit the Ticketing Works Contractor to design, construct and commission the Ticketing Works on the Site at the same time as Project Co is carrying out the Project Activities;
 - (2) provide the Ticketing Works Contractor with safe, clean and clear access to those parts of the Site where the Ticketing Works are being carried out;
 - (3) interface and coordinate the Project Activities with the design, construction and commissioning of the Ticketing Works by the Ticketing Works Contractor and cooperate with the Ticketing Works Contractor to enable the Ticketing Works Contractor to design, construct and commission the Ticketing Works;
 - (4) take all reasonable precautions to ensure that the Works are protected from accidental damage by the Ticketing Works Contractor;
 - (5) carry out the Project Activities so as to minimise any disruption, interference or delay to the Ticketing Works; and
 - (6) provide to the Ticketing Works Contractor all information reasonably requested by the Ticketing Works Contractor within a reasonable period to enable the Ticketing Works Contractor to design, construct and commission the Ticketing Works.

14 Management Plans

14.1 Preparation of Management Plans

- (a) **(Submission):** Project Co must:
 - (1) prepare, finalise, implement and update the Management Plans in accordance with the Project Management Requirements so that compliance with the Management Plans will enable Project Co to carry out the Project Activities in accordance with this Agreement; and
 - (2) submit the Management Plans to the State and the Independent Reviewer for review in accordance with the Review Procedures.
- (b) **(Staged submission)** If a Management Plan is submitted later than as required by the D&C Program, PS&TR or Services Specification (as relevant), Project Co must:
 - (1) have regard to the resources of the State and the Independent Reviewer; and
 - (2) stage the submission of the Management Plans,
so as not to impede the ability of the State and the Independent Reviewer to carry out a review in accordance with the Review Procedures.
- (c) **(Additional information):** Project Co must provide any additional information in connection with the Management Plans at any time as reasonably requested by the State or the Independent Reviewer.
- (d) **(Delivery):** Unless otherwise agreed by the State, Project Co must carry out the Project Activities in accordance with the Management Plans.

14.2 Management Plan requirements

- (a) **(Bid Project Strategies):** Exhibit 2 contains the Project Strategies.
- (b) **(Content of Management Plans):** The Management Plans must:
 - (1) include an introduction and overview of the Management Plan;
 - (2) when first submitted pursuant to clause 14.1(a)(2), be consistent with the Project Strategies;
 - (3) set out the processes and procedures for the management of the Project Activities applicable to that Management Plan and demonstrate to the State and the Independent Reviewer how Project Co will meet its relevant obligations under the State Project Documents; and
 - (4) describe the interfaces that the relevant Management Plan has with other Management Plans.
- (c) **(Integrated approach):** Project Co must use an integrated approach to producing the Management Plans to avoid a large set of individual Management Plans with overlapping content.
- (d) **(Combined Management Plans):** Project Co may combine any Management Plan with the State's approval. In any combined Management Plan, Project Co must clearly identify:
 - (1) which process contained in the Systems Engineering Standard the Management Plan relates to; and

- (2) that the requirements set out in the Project Management Requirements have been addressed in the combined Management Plan.

14.3 Updates and revisions of Management Plans

- (a) **(Review frequency):** Each Management Plan must be reviewed and, where necessary updated, by Project Co to take into account events or circumstances which will, or may reasonably be expected to, affect the manner in which Project Co carries out the Project Activities, including:
 - (1) where any Modification has been implemented;
 - (2) where any change in Law or Change in Mandatory Requirements with which Project Co must comply has occurred;
 - (3) where any relevant change in Best Industry Practice has occurred;
 - (4) where any additional Approvals have been obtained or existing Approvals varied;
 - (5) where the current Management Plan:
 - (A) does not adequately address the matters it is intended to address; or
 - (B) does not allow performance to be accurately measured under the Payment Schedule or Services Specification (as relevant);
 - (6) where a finding of an Asset Condition Survey or a performance audit required under clause 35.9(f) requires that Management Plan to be updated;
 - (7) where any correction of a Defect or the identification of a non-conformance occurs which will, or may reasonably be expected to, affect the manner in which the Project Activities are carried out;
 - (8) where an Incident has occurred;
 - (9) where Site Conditions have significantly changed from those contemplated at Contract Close;
 - (10) to take account of relevant changes in technology and work methods, particularly processes which affect the safety and the efficiency of the Project Activities and Relevant Infrastructure;
 - (11) to take account of continuous improvement in the carrying out of the Project Activities;
 - (12) as required by the Project Management Requirements; or
 - (13) at the State's request in accordance with clause 14.3(b).
- (b) **(State requested reviews):** If at any time, Project Co has not updated any Management Plan in accordance with the requirements of this clause 14.3, the State may by notice request that the relevant Management Plan is amended or updated specifying:
 - (1) the reasons why the Management Plan is required to be updated; and
 - (2) the time within which such amendment or updating must occur (which must be reasonable having regard to the amount of work required).



- (c) **(Project Co response):** Upon receipt of a notice under clause 14.3(b), Project Co must:
 - (1) amend or update the Management Plan as requested by the State; and
 - (2) submit the amended or updated Management Plan to the State and the Independent Reviewer for review in accordance with the Review Procedures within the time specified in the State's notice.
- (d) **(Notice of changes):** Other than where clause 14.3(b) applies, Project Co must immediately notify the State and the Independent Reviewer of any proposed change to a Management Plan and the amended Management Plan must be submitted to the State and the Independent Reviewer within 20 Business Days of such notice for review in accordance with the Review Procedures.

14.4 Audits

- (a) **(Audit for compliance):** At any time during the Term, the State may undertake (or engage an Associate of the State or a third party to undertake) an audit of the Project Activities to verify Project Co's compliance with and performance of its obligations under the Project Management Requirements and the Management Plans.
- (b) **(Project Co obligations):** Project Co must:
 - (1) provide all Project Co Material requested by the Auditor that is relevant to the conduct of the audit; and
 - (2) meet with, and arrange for any of Project Co's Associates to meet with, the Auditor.
- (c) **(Report):** The State:
 - (1) must provide a copy of any report prepared as a consequence of the audit undertaken in accordance with clause 14.4(a) to Project Co; and
 - (2) may require Project Co and its Associates to attend a meeting to discuss the audit report.
- (d) **(Remedy of failures):** If an audit report reveals any failure on the part of Project Co or any of its Associates to comply with any of its obligations under the Project Management Requirements or the Management Plans, then, without limiting the State's rights under this Agreement, Project Co must at its own cost, promptly take such steps as are necessary to remedy or mitigate the effect of those failures and provide evidence of those steps to the State.
- (e) **(Costs):** Project Co will not be liable for any costs incurred by the State in performing audits in accordance with this clause 14.4, unless an audit establishes that Project Co is in material breach of this Agreement, or has acted negligently or fraudulently in any of the Project Activities, in which case Project Co must pay, on demand, the State's costs of carrying out such audit.

14.5 Franchisee Interface Management Plans

Project Co must submit each Franchisee Interface Management Plan (including each update) to the State for review in accordance with the Review Procedures and, where applicable, the D&C Program.

15 Health and safety

15.1 State's objectives and overarching requirements

- (a) **(State requirements):** The State requires:
- (1) the Project Activities to be completed with safety as the paramount consideration;
 - (2) the management of safety during the planning and carrying out of the Project Activities to be of the highest priority; and
 - (3) all health and safety risks to be either eliminated or controlled so far as reasonably practicable.
- (b) **(Project Co acknowledgement):** Project Co acknowledges and agrees that:
- (1) safety is a core value for the Project and the carrying out of the Project Activities;
 - (2) it must aspire to achieve that all people will have the highest level of protection during the carrying out of the Project Activities to ensure, so far as is reasonably practicable, that no harm to individuals arises;
 - (3) effective engagement and consultation with relevant stakeholders regarding health and safety matters is necessary at all stages of the carrying out of the Project Activities; and
 - (4) in carrying out the Project Activities, it must promote a culture where employees and contractors are encouraged to identify, address and prevent risks and unsafe behaviour.

15.2 Project Co's general health and safety obligations

Project Co:

- (a) **(general health and safety):** accepts that it is responsible for all aspects of health and safety relating to the Relevant Infrastructure, the Site and the Project Activities from Financial Close until the Expiry Date:
- (1) except in relation to the obligations of any Principal Contractor under the OHS Legislation appointed in accordance with this clause 15;
 - (2) subject to the Train Franchisee's requirements in respect of any Works carried out, or Services performed, on Train Franchisee Land; and
 - (3) subject to the Tram Franchisee's requirements in respect of any Works carried out on Tram Franchisee Land,
- and it cannot delegate or assign this responsibility to a third party without the prior approval of the State;
- (b) **(access and egress):** accepts that it is responsible for ensuring that at all times the Site is secure and that access and egress to the Site is controlled, including during non-work times, and does not pose a risk to the health and safety of any person (to avoid doubt, where responsibility for access and egress is shared, Project Co is required to consult with other parties to ensure that the requirements of this clause 15 are met);
- (c) **(cooperation):** must cooperate, and ensure the cooperation of its Associates, with the State in respect of the discharge of any occupational health and safety



obligations of the State in connection with the Project under the OHS Legislation, and must:

- (1) comply with all reasonable requests of the State to assist it to discharge its obligations;
 - (2) refrain from doing anything that may impede the State in discharging its obligations;
 - (3) notify the State immediately of any non-compliance or potential non-compliance in connection with the OHS Legislation or any other Health and Safety Incident that occurs in connection with the Relevant Infrastructure, the Site or the Project Activities; and
 - (4) require that all Subcontracts contain clauses equivalent to clauses 15.2(c)(1) to 15.2(c)(4);
- (d) **(Safety culture)**: must demonstrate the implementation of a positive safety culture through the Management Plans and by implementing programs to support a positive safety culture for all Project Activities;
- (e) **(Subcontractors)**: must ensure that all Subcontractors carry out the Project Activities in accordance with:
- (1) a safety management system independently certified to AS4801-2001 by a JAS-ANZ accredited certification body maintained for the duration of the Project Activities;
 - (2) the Health and Safety Management Plan; and
 - (3) the Security Management Plan;
- (f) **(Health and Safety Management Plan)**: must ensure that a copy of the current Health and Safety Management Plan is retained at each workplace comprising the Site and available for inspection by the State at all times;
- (g) **(Health and safety professionals)**: must ensure that an adequate number of health and safety professionals are appointed to ensure that the Project Activities are carried out safely and without risk to health. For the purpose of this clause 15.2(g), a health and safety professional must:
- (1) be employed in a full time capacity as a safety professional;
 - (2) as a minimum, have had suitable experience as a safety professional in construction safety on a full time basis for at least 3 years and possess the required technical skills and knowledge to perform the role, which may include the attainment of a recognised certificate, degree or post graduate qualification in a safety or occupational health and safety risk management discipline; and
 - (3) be able to demonstrate competence, experience and training in safety in road, civil or rail construction environments;
- (h) **(Occupational Health and Safety Manager)**: must ensure that a suitably experienced and qualified person be appointed as 'Occupational Health and Safety Manager' for the Project to, without limiting any obligation of Project Co, be responsible for:
- (1) compliance with this clause 15.2; and
 - (2) the implementation of the Health and Safety Management Plan;
- (i) **(Independent Safety Auditor)**: must:
- (1) engage an Independent Safety Auditor to undertake audits of the Project Activities to verify; and



- (2) provide to the State, within 30 Business Days of 1 January and 1 July each year during the D&C Phase, an audit report, prepared by the Independent Safety Auditor in respect of,
Project Co's compliance with its obligations in respect of health and safety including in respect of the Health and Safety Management Plan;
- (j) **(Health and Safety Management Plan audit)**: must, prior to submitting the Health and Safety Management Plan for review in accordance with clause 14.1(a):
 - (1) engage an Independent Safety Auditor to undertake an audit of the Health and Safety Management Plan; and
 - (2) provide to the State an audit report, prepared by the Independent Safety Auditor, in respect of the Health and Safety Management Plan; and
- (k) **(Implement audit findings)**: must, if an audit report prepared by the Independent Safety Auditor reveals any non conformances or areas for safety improvement, promptly (and in any event, in the timeframes specified in the audit report) take such steps as are necessary to resolve those non conformances and provide evidence of those steps to the State.

15.3 Principal Contractor

- (a) **(Appointment of Principal Contractor)**: The State will:
 - (1) appoint one entity comprising the D&C Subcontractor as Principal Contractor in respect of the Licensed Construction Areas, upon Financial Close and up to and including the Date of Provisional Acceptance, in connection with the D&C Activities; and
 - (2) authorise the entity appointed as Principal Contractor under clause 15.3(a)(1) to manage or control the Licensed Construction Areas to the extent necessary to discharge the duties of a Principal Contractor under the OHS Legislation;
- (b) **(Procure consent – FAW Phase)**: Project Co must procure that one entity comprising the D&C Subcontractor consents to being appointed as Principal Contractor in respect of the Licensed Construction Areas, Licensed Maintenance Areas and the Commercial Opportunities Leased Areas (as relevant) during the FAW Phase, to the extent:
 - (1) requested by the owner of that land; and
 - (2) that the Subcontractor will be carrying out 'construction work' within the meaning of regulation 5.12 of the OHS Regulations.
- (c) **(Procure consent – Maintenance Phase)**: Project Co must procure that an entity comprising the Maintenance Subcontractor consents to being appointed as Principal Contractor in respect of the Licensed Maintenance Areas and the Commercial Opportunities Leased Areas (as relevant) during the Maintenance Phase, to the extent:
 - (1) requested by the owner of that land; and
 - (2) that the Subcontractor will be carrying out 'construction work' within the meaning of regulation 5.12 of the OHS Regulations.
- (d) **(Obligations of Principal Contractor)**: Project Co must ensure that each entity comprising the D&C Subcontractor or the Maintenance Subcontractor referred to in clause 15.3(a) to 15.3(c) (as the case may be):



- (1) accepts the appointment as, and complies with the obligations of, a Principal Contractor under the OHS Legislation;
 - (2) accepts any revised appointment as Principal Contractor that may be necessary as a result of a Change in Mandatory Requirements which occurs after Contract Close; and
 - (3) is able to discharge the obligations required of a Principal Contractor.
- (e) **(Project Co to assist):** Project Co must do all things necessary to assist, and refrain from doing anything that may impede, each relevant Key Subcontractor entity in discharging its Principal Contractor obligations under OHS Legislation.

15.4 New WHS Regulations

If the New WHS Regulations are enacted in Victoria and supersede the OHS Regulations and the State determines that it is necessary to appoint a Principal Contractor for any of the Relevant Infrastructure, the Site or the Project Activities in accordance with the New WHS Regulations, then:

- (a) **(appointment under New WHS Regulations):** the State will appoint:
- (1) the D&C Subcontractor as Principal Contractor for the D&C Activities and the Works; and
 - (2) the Maintenance Subcontractor as Principal Contractor for all works undertaken and activities carried out during the Maintenance Phase in connection with the Maintenance Services and the Maintained Assets; and
- (b) **(Project Co to procure):** Project Co must procure that the D&C Subcontractor and the Maintenance Subcontractor accept appointment as Principal Contractor for the purposes of clauses 15.4(a)(1) and 15.4(a)(2) under the New WHS Regulations on terms that are the same as those specified in clause 15.3 and on other such terms as are prescribed in the New WHS Regulations for a Principal Contractor.

15.5 Notification

- (a) **(Occurrence of Health and Safety Incidents):** Project Co must (and must ensure that all Subcontractors), upon the occurrence of a Health and Safety Incident:
- (1) comply with any requirements under the OHS Legislation to notify any relevant Authority of the Health and Safety Incident;
 - (2) notify the State of the Health and Safety Incident:
 - (A) in the case of a Health and Safety Incident involving:
 - (i) an incident which is actually or potentially life threatening or life altering;
 - (ii) a workplace accident which is actually or potentially of a serious nature; or
 - (iii) an actual or potential injury to a member of the public,immediately when it is safe to do so by phone and confirmed by facsimile or email within 2 hours; and

- (B) in all other cases, within 24 hours after the occurrence of the Health and Safety Incident;
- (3) in relation to any Health and Safety Incident promptly provide to the State:
 - (A) a copy of any incident and investigation report;
 - (B) a copy of any notification to an Authority;
 - (C) the details of the potential or actual incident or issue;
 - (D) the actions taken and proposed to be taken (including both short term and long term actions);
 - (E) where requested, the key personnel or key organisations involved in taking those actions and their contact details;
 - (F) where requested, the proposed media response and approach to managing and dealing with the media;
 - (G) any entry reports and notices received from an Authority or its representative or any other person acting pursuant to the OHS Legislation, which arise out of or in connection with the Relevant Infrastructure, Site or Project Activities;
 - (H) updates of any material developments and status of completion of any corrective actions;
 - (I) as soon as practicable after the Health and Safety Incident has occurred, provide the State with evidence that the hazards or risks giving rise to the Health and Safety Incident have been appropriately identified and controlled to prevent the recurrence of the same or a similar Health and Safety Incident; and
 - (J) all other information reasonably requested by the State.
- (b) **(Reporting):** If requested by the State in respect of a Health and Safety Incident, or a repeated occurrence of a non compliance with OHS Legislation, Project Co must:
 - (1) provide the State with a written health and safety alert, which summarises the facts and circumstances surrounding a Health and Safety Incident and which the State can circulate (in amended or un-amended form) to other persons in order to facilitate Project-wide safety learning; and
 - (2) provide a briefing to the State regarding the Health and Safety Incident and response, and ensure that the briefing is attended by those senior representatives of Project Co or the D&C Subcontractor who are nominated by the State (acting reasonably).

15.6 OHS Accreditation Scheme

Project Co:

- (a) **(OHS accreditation):** warrants that the D&C Subcontractor is accredited under the OHS Accreditation Scheme; and
- (b) **(Subcontractor requirements):** while building work (as defined in section 4 of the *Fair Work (Building Industry) Act 2012* (Cth)) is carried out, must ensure that the D&C Subcontractor and the Maintenance Subcontractor (as relevant):



- (1) subject to the exclusions specified in the *Fair Work (Building Industry - Accreditation Scheme) Regulations 2005* (Cth), maintains accreditation under the OHS Accreditation Scheme; and
- (2) complies with all conditions of the OHS Accreditation Scheme accreditation.

16 Site issues

16.1 Industrial issues

Project Co:

- (a) **(sole responsibility)**: has sole responsibility for and must manage all aspects of industrial relations in connection with:
 - (1) the Project Activities; and
 - (2) the Relevant Infrastructure;
- (b) **(information and updates)**: must:
 - (1) keep the State fully and immediately informed of; and
 - (2) provide regular updates to the State in respect of,
any:
 - (3) actual, potential or threatened Industrial Action which affects or is likely to affect the carrying out of the Project Activities or the Relevant Infrastructure; and
 - (4) actions or measures (including settlements) Project Co has taken or proposes to take to overcome the effects of actual, potential or threatened Industrial Action;
- (c) **(Union Official entries)**: must manage entry to the Site to ensure that entries by Union Officials comply with Industrial Relations Laws;
- (d) **(notification)**: immediately notify the State of any:
 - (1) breach, or alleged or potential breach of; or
 - (2) non compliance, or alleged or potential non compliance, with,
Industrial Relations Laws; and
- (e) **(Commonwealth Building Code)**: notwithstanding any other provision of this Agreement, acknowledges and agrees that:
 - (1) it accepts the risk of the existence of, and any new Law, or change in, or disallowance or repeal of, any existing Law, relating to the Commonwealth Building Code;
 - (2) it may not bring any claim under this Agreement for compensation, time, costs, expenses, reimbursement, modification or otherwise as a result of the existence, disallowance, application to any person, or any obligation to comply with, directly or indirectly, the Commonwealth Building Code; and
 - (3) any industrial action directly or indirectly arising in connection with the Commonwealth Building Code, including industrial action:

- (A) in respect of any transitional or implementation arrangements concerning the Commonwealth Building Code;
 - (B) in respect of any allowance or disallowance, or terms of allowance or disallowance, of or in relation to the Commonwealth Building Code; or
 - (C) arising as a direct or indirect consequence of interactions between any person and the State (or its Associates), or an act or omission of the State, concerning the Commonwealth Building Code (including any disallowance motions in respect of the Commonwealth Building Code),
- will not be considered to be the result of any act or omission of the State or its Associates.

16.2 Traffic management

- (a) **(Traffic Management):** Subject to the Road Management Act, the Relevant Legislation and the powers and functions of any relevant road authority under the Road Management Act, Project Co must, during the carrying out of the D&C Activities and the Final Acceptance Works, control, direct, manage and protect all traffic in the Construction Site to ensure:
 - (1) the safe, efficient and continuous movement of traffic;
 - (2) that any traffic congestion, delays, noise or disruptions to Roads, public transport, pedestrians, cyclists, or any shared use path are minimised; and
 - (3) that Project Co otherwise complies with this Agreement.
- (b) **(Compliance):** Project Co must:
 - (1) at all times comply with the Transport Management Plans, Road Management Act, Relevant Legislation, Road Safety Act and this Agreement in connection with traffic management; and
 - (2) comply with the directions of the Secretary and any relevant road authority under the Road Management Act in connection with the management of traffic.

16.3 State's right to enter, inspect and test

- (a) **(Right of entry):** Subject to clause 16.3(c), the State, any of its Associates and any other person authorised by the State (including the Independent Reviewer) may during Business Hours or upon giving reasonable notice to Project Co (except in the case of an emergency when no notice is required) enter the Site or the offices of Project Co to:
 - (1) inspect, observe or test any part of the Relevant Infrastructure or the Project Activities (whether or not such inspections, observations or tests are otherwise required in accordance with this Agreement);
 - (2) exercise any right (including any step-in right) or carry out any obligation which the State has in accordance with any State Project Document;
 - (3) take such other action as the State considers necessary to exercise its rights in accordance with any State Project Document and to discharge its executive or statutory rights or duties; or



- (4) examine and make copies of the records, reports and all documents reasonably requested of Project Co or any Subcontractor in connection with the Project.
- (b) **(Acknowledgement):** Project Co acknowledges that there are no restrictions on the State's access to any part of the Site not controlled by Project Co.
- (c) **(Conditions of access):** When entering the Site in accordance with clause 16.3(a) or otherwise, the State must and must ensure its Associates and any authorised person:
 - (1) comply with the Site Access and Interface Protocols and any generally applicable safety and security requirements of Project Co;
 - (2) do not unnecessarily interfere with the carrying out of the Project Activities; and
 - (3) do not damage the Relevant Infrastructure or the Site.
- (d) **(Project Co to assist):** If requested by the State, Project Co must assist the State in connection with any inspection or testing in accordance with this clause 16.3, including:
 - (1) providing access to such part of the Relevant Infrastructure and all Project Co Materials as may be required by the State;
 - (2) preparing samples of materials used in connection with the Relevant Infrastructure as required by the State;
 - (3) forwarding the samples prepared in accordance with clause 16.3(d)(2) to the State or such other place or person notified by the State; and
 - (4) if requested by the State, carrying out any tests (including tests not otherwise required by this Agreement) and providing the results of those tests to the State.
- (e) **(Relevant Infrastructure not to be covered up):**
 - (1) The State may direct that any part of the Relevant Infrastructure must not be covered up or made inaccessible without the State's prior approval, which will not be unreasonably withheld or delayed.
 - (2) Where a direction has been given under clause 16.3(e)(1) and a part of the Relevant Infrastructure has been covered up or made inaccessible without the State's prior approval and the State wishes to inspect or test that part of the Relevant Infrastructure, Project Co must uncover or make accessible such part of the Relevant Infrastructure and all costs associated with uncovering or making accessible such part of the Relevant Infrastructure must be borne by Project Co.
- (f) **(Costs of inspection or testing):** The State will bear the reasonable costs incurred by it and Project Co in connection with any inspection or test conducted at the State's direction in accordance with this clause 16.3, unless:
 - (1) the inspection or test reveals any Defect in the Relevant Infrastructure or Returned Works or is in connection with work undertaken to correct or overcome a Defect in the Relevant Infrastructure or Returned Works;
 - (2) the test is in connection with Relevant Infrastructure covered up or made inaccessible without the State's prior approval where such approval was required; or



- (3) the inspection or test was otherwise required by this Agreement to be carried out by Project Co or should have been carried out by Project Co in accordance with Best Industry Practices,

in which case Project Co will be responsible for:

- (4) its own costs; and
 - (5) all reasonable costs incurred by the State, which will be a debt due and payable from Project Co to the State.
- (g) **(Certifications):** If, prior to Provisional Acceptance, the results of any inspection or test demonstrate that work which has been certified as compliant with the requirements of this Agreement is actually not compliant:
- (1) the relevant certifications will be void to the extent of the non-compliance; and
 - (2) the process for the issue of the relevant certifications will reapply.

16.4 Security

- (a) **(Project Co to comply):** Project Co must:
- (1) without limiting anything in the PS&TR or Services Specification, provide reasonable security measures in accordance with Best Industry Practices or otherwise as are provided for on similar rail or rolling stock projects in Australia for the protection and security of the Relevant Infrastructure against theft, vandalism, unauthorised entry into the Site and any other unlawful acts; and
 - (2) comply with the Security Management Plan at all times.
- (b) **(Secured Area Access):** In addition to the requirements of clauses 12 or 62, no Project Co Associate nor any person engaged by Project Co in the delivery of the Works or Services will be permitted to access the Secured Areas for any purpose, unless such person:
- (1) is in possession of the necessary identification and security clearance required for that purpose by Project Co in accordance with the Security Management Plan; or
 - (2) is accompanied by a security escort,
- in accordance with the Security Management Plan.

16.5 Utilities

- (a) **(State obligations):** The State must:
- (1) procure from each relevant network service provider the rights necessary to enable the Construction Power Supply Assets to be connected at the relevant Construction Power Connections;
 - (2) reimburse Project Co the reasonable costs of any Utilities paid for during the FAW Phase;
 - (3) at all times during the Maintenance Phase ensure agreements are in place with Utility Providers for the supply of all Utilities required for the performance of the Maintenance Services and the Permitted Commercial Opportunities (**Maintenance Phase Utility Agreements**);



- (4) allow Project Co to use, at no charge, Utilities purchased pursuant to the Maintenance Phase Utility Agreements during the Maintenance Phase;
 - (5) comply with its obligations under each Maintenance Phase Utility Agreement; and
 - (6) provide any consents reasonably requested by Project Co which are required for Utilities to be sold and supplied for the performance of the Maintenance Services and the Permitted Commercial Opportunities.
- (b) **(Project Co obligations):** Project Co must:
- (1) do all things reasonably necessary to enable the State and the Secretary to comply with their obligations under the Relevant Legislation and each Utility Agreement in connection with Relevant Utility Infrastructure, including:
 - (A) preparing all required notices to Relevant Utility Providers under the Relevant Legislation and submitting the required notices to the State and the Secretary;
 - (B) providing with each required notice submitted to the State and the Secretary, such information and documentation to enable the Secretary to provide the required notice to each Relevant Utility Provider;
 - (C) immediately notifying the State and the Secretary whenever it discovers Relevant Utility Infrastructure within the Construction Site;
 - (D) giving the State and the Secretary reasonable notice prior to the removal, relocation or carrying out of works to any Relevant Utility Infrastructure; and
 - (E) immediately notifying the State and the Secretary whenever it causes damage to any Relevant Utility Infrastructure;
 - (2) ensure that it does not, in connection with Relevant Utility Infrastructure, cause the State or the Secretary to be in breach of:
 - (A) any of their obligations under the Relevant Legislation; or
 - (B) a provision of any Utility Agreement; and
 - (3) upon request, provide any information or supporting documentation the State or the Secretary may reasonably require in relation to Relevant Utility Infrastructure.
- (c) **(Project Co's risks):** Project Co:
- (1) must obtain and pay for:
 - (A) any Utility Infrastructure; and
 - (B) subject to clause 16.5(a), all connections for all Utility Infrastructure it needs to carry out its obligations under the State Project Documents;
 - (2) must investigate, protect, relocate, modify and provide for all Utility Infrastructure necessary for it to comply with its obligations under the State Project Documents;
 - (3) subject to clause 16.5(a), assumes the risk of the existence, location, condition and availability of Utility Infrastructure in connection with the Project Activities;



- (4) must:
 - (A) make all relevant Utilities available to any Commercial Opportunities Tenant with which Project Co enters into any Commercial Opportunities Sublease; and
 - (B) ensure that the Utilities for each Commercial Opportunities Sublease are separately metered;
- (5) must indemnify the State and the Secretary against any Claim or Liability arising in connection with:
 - (A) any disruption or damage to any Utility Infrastructure; and
 - (B) the removal, relocation or carrying out of works to Utility Infrastructure,arising in connection with the Project excluding:
 - (C) a Compensable Extension Event;
 - (D) a Compensable Intervening Event; and
 - (E) disruption, damage, removal, relocation to Utility Infrastructure which is a Returned Asset for which Handback has been Achieved,where Project Co would not otherwise be liable for the disruption, damage, removal, relocation pursuant to this Agreement; and
- (6) must indemnify the State and the Secretary against any Claim or Liability arising in connection with a failure by Project Co to comply with any obligation under:
 - (A) the State Project Documents with respect to Utility Infrastructure or the Utility Infrastructure Works, including Project Co's obligations under the PS&TR; and
 - (B) any Utility Agreement or the Relevant Legislation with respect to Relevant Utility Infrastructure or the relevant Utility Infrastructure Works.
- (d) **(State not liable):** Neither the State nor the Secretary will be liable to Project Co in connection with any Claim arising in connection with any Utility Infrastructure or any Utility, except to the extent that such a Claim is caused by:
 - (1) a breach of any State Project Document by the State; or
 - (2) a fraudulent, reckless, unlawful or malicious act or omission of the State.
- (e) **(Consultation):** Project Co must:
 - (1) consult with Utility Providers and any other persons having an interest (such as a licence, or the benefit of an Easement) in land included in the Construction Site, with such consultation to be undertaken in accordance with the requirements of section 10.12 of Part C and section 13 of Part B of the PS&TR; and
 - (2) minimise any disruption to, costs incurred by, and revenue forgone by, all such persons as a result of the undertaking of the Works.
- (f) **(Utility Agreements):** Project Co:
 - (1) must use all reasonable endeavours to negotiate the terms of Utility Agreements required by the Relevant Legislation:

- (A) in a similar form to that set out in the Utilities Schedule; or
 - (B) in any other form provided that the rights and obligations of the Secretary and Project Co as set out in the Utilities Schedule are not materially adversely affected,
- and to the extent that any Utility Agreement is in a form other than the Utilities Schedule, any changes must be first approved by the State and the Secretary;
- (2) must submit to the Secretary the agreed terms of each Utility Agreement as negotiated with the Relevant Utility Provider for review and approval in accordance with the Review Procedures and, if approved, execution of the Utility Agreement by the Secretary;
 - (3) must, in the event that any changes to the form of the Utility Agreement set out in the Utilities Schedule are not approved by the Secretary, renegotiate those changes with the Relevant Utility Provider to the satisfaction of the Secretary (which approval must not be unreasonably withheld or delayed);
 - (4) must, in the event that a Utility Agreement with a Relevant Utility Provider has not been entered into as set out in the Relevant Legislation, participate in the dispute resolution process set out in Part 7, Division 4 of the Relevant Legislation, including by:
 - (A) seeking to agree with the Relevant Utility Provider on a suitable expert to be appointed by the 'Project Minister' (as defined in the Relevant Legislation) to determine the dispute;
 - (B) preparing and making submissions to the expert on the matters in dispute;
 - (C) providing such information, documentation and assistance as is sought by the Secretary to ensure that the procedures determined by the expert for resolving the dispute are complied with; and
 - (D) being liable for the costs of any expert appointed under clause 16.5(f)(4)(A);
 - (5) must by no later than 5 Business Days after a determination of the expert under the Part 7, Division 4 of the Relevant Legislation, notify the Secretary if:
 - (A) the determination contains an error of law that, in the opinion of Project Co, ought to be appealed to the Supreme Court; or
 - (B) compliance with the determination would place Project Co in breach of its obligations under the State Project Documents;
 - (6) must provide such information, documentation and assistance as is sought by the Secretary to institute any appeal against the expert's determination or as is considered by the Secretary, in consultation with Project Co, to be warranted or necessary to participate in any appeal instituted by the Relevant Utility Provider;
 - (7) must:
 - (A) if requested by either the State or the Secretary, execute a Deed of Accession within 10 Business Days of being requested to do so; and



- (B) comply with its obligations under the Utility Agreements to which it accedes under clause 16.5(f)(7)(A); and
- (8) subject to clause 16.5(d), acknowledges that none of:
 - (A) the terms of any Utility Agreement (whether entered into before or after Contract Close);
 - (B) any delay by the Secretary in entering into any Utility Agreement; or
 - (C) any act or omission of any Relevant Utility Provider, the State or the Secretary under or arising in connection with any Utility Agreement or proposed Utility Agreement,will:
 - (D) relieve Project Co from, or alter or affect, its Liabilities, obligations or responsibilities whether under the State Project Documents or otherwise according to Law;
 - (E) prejudice the State's rights against Project Co whether under the State Project Documents or otherwise according to Law; or
 - (F) entitle Project Co to make any Claim against the State or the Secretary.

16.6 Schedule of Certificates and Notices

Project Co must provide to the State and, where applicable, the Independent Reviewer, the certificates required by the Schedule of Certificates and Notices in accordance with the terms of the Schedule of Certificates and Notices.

16.7 State right to suspend

- (a) **(Suspension):** The State:
 - (1) may instruct Project Co to suspend and, after a suspension has been instructed, to recommence, the carrying out of all or a part of the Works or the Project Activities; and
 - (2) is not required to exercise its power under clause 16.7(a)(1) for the benefit of Project Co.
- (b) **(No Claims against the State):** Subject to clause 16.7(c) and clause 16.7(d), Project Co will not be entitled to make any Claim against the State arising in connection with any suspension under clause 16.7(a).
- (c) **(Result of suspension):** An instruction to suspend the carrying out of all or part of the Project Activities by the State under clause 16.7(a) will be deemed to be a Compensable Extension Event or Compensable Intervening Event (as applicable) except to the extent the circumstances leading to the suspension:
 - (1) were caused or contributed to:
 - (A) by a breach of a Project Document by Project Co or any of its Associates; or
 - (B) any fraudulent, reckless, unlawful, negligent or malicious act or omission of Project Co or any of its Associates; or
 - (2) were a Force Majeure Event.



- (d) **(Force Majeure Event):** To the extent the circumstances leading to the suspension were a Force Majeure Event, an instruction to suspend the carrying out of all or a part of the Project Activities (while that Force Majeure Event or its effects are subsisting) by the State under clause 16.7(a) will be deemed to be an Extension Event or Intervening Event (as applicable).

16.8 Salvaged materials

Subject to clause 7.5(b), as between the State and Project Co, any salvaged materials in respect of the Works will be the absolute property of Project Co unless otherwise specified in or reasonably inferred from the PS&TR, including, for the avoidance of doubt, the Construction Power Supply Assets to the extent they are Temporary Works.

16.9 Radiation Act

- (a) **(Radiation Act obligations):** Project Co acknowledges and agrees that the obligations of Radiation Licence Holders may be affected by the Project Activities.
- (b) **(Implement changes):** Project Co must, in preparing the Design Documentation:
- (1) consult with any relevant Radiation Licence Holder in respect of the impact of the Project Activities on the Radiation Licence Holder's obligations under the Radiation Act; and
 - (2) implement measures or changes requested by a Radiation Licence Holder in order to satisfy any of the Radiation Licence Holder's obligations under the Radiation Act.
- (c) **(Reimbursement of costs):** If a request by a Radiation Licence Holder in accordance with clause 16.9(b)(2) constitutes or involves a Modification, clause 38.9 will apply as if the request was a direction of the State.

17 Interaction with transport network

17.1 No restrictions

- (a) **(No restriction on changes to transport network):** Nothing in the Project Documents will restrict, or require the exercise of, any right of the State, directly or through any Authority, to develop, manage or change Victoria's transport network.
- (b) **(Examples):** Without limiting clause 17.1(a), the State and all Authorities may on their own account exercise or not exercise (and may authorise others to exercise or not exercise) any right they would otherwise have had including to:
- (1) construct new rail infrastructure;
 - (2) extend, alter or upgrade existing transport infrastructure;
 - (3) introduce or construct new public transport routes or services;
 - (4) extend, alter or upgrade existing public transport routes or services;
 - (5) otherwise implement government transport policies; or



- (6) otherwise do anything which, subject to this Agreement, they are empowered to do by Law.
- (c) **(Project Co's risk):** Subject to clause 17.2 and any entitlement to relief as a Compensable Extension Event, Compensable Intervening Event or Modification, Project Co will have no Claim against the State arising in connection with any consequence of the State or any other Authority exercising, or not exercising, any right of a type referred to in this clause 17.1 or clause 17.2.
- (d) **(Project Co participation):** Project Co must participate as reasonably required by the State in the development and implementation of transport planning. This participation may include:
 - (1) attending meetings, consultation forums and other similar events;
 - (2) reviewing and contributing to the development of proposals and strategies put forward by the State or other stakeholders; and
 - (3) providing comments on the impact of proposals and strategies on the Project Activities and the Relevant Infrastructure.

17.2 Proximate State Work

- (a) **(State may undertake Proximate State Work):** The State or any person authorised by the State may, at any time during the Term undertake Proximate State Work.
- (b) **(Proximate State Works obligation):** If the State notifies Project Co of any Proximate State Work to be undertaken, then in respect of the Proximate State Work:
 - (1) Project Co must:
 - (A) comply with its obligations under clause 12 and clauses 13.7 to 13.9;
 - (B) give the State, its Associates and any person authorised by the State sufficient access to the Construction Areas or Maintenance Areas to enable the State to plan, design, investigate or undertake the Proximate State Work;
 - (C) fully co-operate with the State, its Associates and any person authorised by the State to facilitate the implementation of the Proximate State Work;
 - (D) use its best endeavours to minimise any interference with, or disruption or delay to, the activities associated with the Proximate State Work;
 - (E) use its best endeavours and act in accordance with Best Industry Practice to ensure that the Relevant Infrastructure is protected from accidental damage by the State, its Associates and any person authorised by the State;
 - (F) not damage any Proximate State Work or the plant or equipment of a party investigating or undertaking Proximate State Work;
 - (G) be responsible for co-ordinating the Project Activities, including work sequencing, construction methods, safety and industrial relations matters, with those affecting and



- influenced by any of the personnel and work of the State, its Associates and any person authorised by the State;
- (H) attend any coordination meetings called by the State, its Associates or any person authorised by the State that relate to Proximate State Work; and
 - (I) promptly advise the State if Project Co becomes aware of any matter arising out of Proximate State Work that has an adverse effect upon the Project Activities or the safety of any persons; and
- (2) the State must:
- (A) use its reasonable endeavours to co-ordinate and interface all activities associated with the Proximate State Work with the Project Activities;
 - (B) minimise any interference with, or disruption or delay to, the Project Activities;
 - (C) ensure that its Associates and any person authorised by the State comply with the requirements of this clause 17.2(b)(2); and
 - (D) ensure that the entity undertaking the Proximate State Work has an obligation to fully cooperate with Project Co and its Associates to facilitate the implementation of the Project.
- (c) **(Maintenance responsibility):** If the State constructs any Proximate State Work upon the Construction Areas or the Maintenance Areas (or authorises another person to do so), the State may at any time issue to Project Co a Modification Order in accordance with clause 38.1 or Modification Request in accordance with clause 38.2, in relation to the maintenance and repair of that Proximate State Work, in which case the procedures in clause 38 will apply.
- (d) **(Construction Power Works):** Project Co must comply with the requirements of this clause 17 in respect of the Construction Power Works as if those works were Proximate State Works.

Part B - D&C Phase Obligations

18 D&C Program

18.1 Submission of the D&C Program

- (a) **(Submission):** Project Co must submit to the State and the Independent Reviewer the D&C Program for review in accordance with the Review Procedures by the times set out in the PS&TR and as required by clause 18.2.
- (b) **(Compliance):** The initial D&C Program submitted in accordance with clause 18.1(a) must be consistent with:
- (1) the Bid D&C Program;
 - (2) each Critical Interface Milestone Date; and
 - (3) each Progress Milestone Date,
- and comply with the requirements set out in the PS&TR.
- (c) **(Departure):** Project Co:
- (1) acknowledges and agrees that the D&C Program does not form part of this Agreement; and
 - (2) subject to complying with clause 18.1(d), and without limiting its obligations in accordance with clause 26, may depart from the D&C Program in accordance with clause 12.5(f) or clause 21.6, or if it is necessary to do so to comply with this Agreement, save that any such departure will not relieve Project Co from its obligations to:
 - (A) achieve Provisional Acceptance by the Date for Provisional Acceptance;
 - (B) achieve each Critical Interface Milestone (PPP Responsible) by the relevant Critical Interface Milestone Date; or
 - (C) use reasonable endeavours to achieve each Progress Milestone by the relevant Progress Milestone Date.
- (d) **(Notice of departure):** Project Co must give notice to the State and the Independent Reviewer:
- (1) promptly (and not more than monthly) upon becoming aware of any proposed or likely material departure from the D&C Program; or
 - (2) in any event before materially departing from the D&C Program. The Parties acknowledge that any departure from the D&C Program that affects the then current critical path in the D&C Program is a material departure,
- together with the reasons why it is necessary to do so to comply with this Agreement.
- (e) **(Updated D&C Program):** A notice under clause 18.1(d) must include a D&C Program updated and submitted for review in accordance with the Review Procedures. All updates of the D&C Program must comply with clause 18.2 and the requirements set out in the PS&TR.



- (f) **(Assessing Claims):** Neither the State nor the Independent Reviewer is required to use the D&C Program for any purpose, including for the purpose of assessing any Claim made by Project Co, but may do so in their sole and absolute discretion.

18.2 Updates to the D&C Program

Project Co must update and submit to the State and the Independent Reviewer for review in accordance with the Review Procedures updates of the D&C Program (including all sub-programs and associated reports) to accurately reflect the progress of the D&C Activities and the Final Acceptance Works at the following intervals:

- (a) **(Financial Close):** by 31 January 2018 to reflect the date of Financial Close, the Date for Provisional Acceptance and the Date for Final Acceptance;
- (b) **(Monthly):** at least monthly (no later than 10 Business Days after the end of each Month), to accurately reflect the status and any change in the progress of the D&C Activities and the Final Acceptance Works (including any delays which have or may have occurred in respect of the progress of the D&C Activities or the Final Acceptance Works) or any other changes to the activities, times, durations or other information contained in the D&C Program and any sub-programs to accurately reflect the actual status and progress of the D&C Activities and the Final Acceptance Works;
- (c) **(Extension, acceleration or Modification):** within 10 Business Days of Project Co being:
 - (1) granted an extension of time to a Critical Interface Milestone Date, a Progress Milestone Date or the Date for Provisional Acceptance in accordance with this Agreement;
 - (2) instructed to accelerate the D&C Activities in accordance with clauses 26.14 or 26.16; or
 - (3) directed to carry out a Modification in accordance with clause 38; and
- (d) **(Material changes):** within 5 Business Days of Project Co deciding to make any material changes to the information contained in the D&C Program,

and such updates must comply with the requirements set out in the PS&TR and must not adjust a Critical Interface Milestone Date, a Progress Milestone Date or the Date for Provisional Acceptance (unless an extension of time has been granted in accordance with this Agreement).

19 Design

19.1 Design

Project Co must:

- (a) **(FFP Warranty):** design the Works (other than the Maintained Rail Infrastructure Alliance Assets) so that the Project Assets (excluding the Maintained Rail Infrastructure Alliance Assets), when constructed in accordance with the Construction Documentation, will:
 - (1) satisfy the FFP Warranty; and
 - (2) the Works will otherwise be able to comply with clauses 19.4(a) and 20.1(b);



- (b) **(Design Documentation)**: prepare the Design Documentation in consultation with:
- (1) the Maintenance Subcontractor to ensure that it addresses, as far as practicable, all of the Maintenance Subcontractor's requirements in relation to delivering the Maintenance Services;
 - (2) each Design Interface Party to ensure that it addresses all of requirements that need to be satisfied in order to integrate the relevant Design Interface Works;
 - (3) subject to clause 38.9, the Train Franchisee Interface Party to ensure that it addresses any requirements that need to be satisfied by the Train Franchisee to comply with the Train Franchisee Arrangements, the Train Franchisee's Accreditation and the Rail Safety National Law;
 - (4) the Tram Franchisee Interface Party to ensure that it addresses any requirements that need to be satisfied by the Tram Franchisee to comply with the Tram Franchisee Arrangements, the Tram Franchisee's Accreditation and the Tram Safety Act; and
 - (5) all Utility Providers to ensure that it addresses the requirements of the Utility Provider.

19.2 Design Interface Works

- (a) Subject to clause 19.2(b), if a change to the IFC Design Documentation results in a change to the Design Interface Works, Project Co must indemnify the State and its Associates against any Claim or Liability by a Design Interface Party in connection with the change to the IFC Design Documentation.
- (b) Project Co is not required to indemnify the State or its Associates in accordance with clause 19.2(a) to the extent the relevant change to the IFC Design Documentation is the consequence of:
- (1) a Modification (excluding a Project Co Proposed Modification);
 - (2) a Project Co Proposed Modification where:
 - (A) the Modification was directed by the chief executive officer of a Rail Franchisee Interface Party in accordance with the relevant Rail Franchisee Cooperation Agreement; and
 - (B) Project Co did not cause or contribute to the requirement for that Modification; or
 - (3) a Compensable Extension Event.

19.3 Design Review Process

- (a) **(Project Co agrees)**: Project Co agrees that:
- (1) Project Co must comply with the Design Review Process in developing the Design Documentation; and
 - (2) the conduct of the Design Review Process itself does not constitute a Modification or otherwise enable Project Co to make any Claim against the State, any of the State's Associates or any Rail Franchisee for any Liabilities incurred by Project Co in connection with the conduct of the Design Review Process.
- (b) **(Design Review Process)**: Project Co must conduct and manage all aspects of the Design Review Process in accordance with:



- (1) the Design Review Schedule;
 - (2) the approved Design Management Plan; and
 - (3) Best D&C Practices,
- and as otherwise required under this Agreement.
- (c) **(Submission)**: Project Co must submit the Design Documentation to the State and the Independent Reviewer in accordance with the Design Review Schedule.
 - (d) **(Independent Reviewer review)**: The Independent Reviewer and the State will review the Design Documentation submitted or resubmitted by Project Co in accordance with the Design Review Schedule.
 - (e) **(Design Development Coordinator)**: Project Co must appoint a suitably experienced and qualified person to be the Design Development Coordinator for the Project, which person will, without limiting any obligation of Project Co, be responsible for managing:
 - (1) the design of the Works; and
 - (2) the implementation of the approved Design Management Plan,in accordance with the Design Review Schedule.

19.4 Design life

- (a) **(Fit For Purpose)**: Project Co represents and warrants that each Design Life Asset will be designed, manufactured and constructed so that:
 - (1) where the Design Life Asset is (or is part of) the Returned Assets, at the Date of Handback for that Returned Asset it is capable of being Fit For Purpose at all times during its Design Life, provided that after the Date of Handback it is operated in accordance with Best Operating Practices and maintained in accordance with Best Maintenance Practices; and
 - (2) where the Design Life Asset is (or is part of) the Maintained Assets, at the Final Expiry Date it is capable of being Fit For Purpose at all times during its Residual Life, provided that after the Expiry Date it is operated in accordance with Best Operating Practices and maintained in accordance with Best Maintenance Practices.
- (b) **(Representations and warranties)**: The representations and warranties made by Project Co under clause 19.4(a) are made, and will be deemed to have been made, in respect of each Design Life Asset:
 - (1) where the Design Life Asset is (or is part of) the Returned Assets, on the Date of Handback; and
 - (2) where the Design Life Asset is (or is part of) the Maintained Assets, on the Expiry Date.
- (c) **(Survival)**: Clauses 19.4(a) and 19.4(b) will survive the rescission, termination or expiration of this Agreement.

19.5 [not disclosed]

- (a) [not disclosed]



19.6 Victorian Tunnelling Centre

Project Co will work with the State, and will procure that the D&C Subcontractor works with the State, in good faith to discuss the potential establishment of a 'Victorian Tunnelling Centre'.

20 Construction

20.1 Construction

Project Co must undertake the Works:

- (a) in accordance with:
 - (1) its obligations in clause 5.1; and
 - (2) the Construction Documentation; and
- (b) so that:
 - (1) the Project Assets satisfy the FFP Warranty;
 - (2) any Temporary Works are Fit For Purpose;
 - (3) the Maintained Assets and the Returned Assets are located within the Licensed Construction Areas; and
 - (4) the Maintained Assets are wholly located within the area identified in the Commercial Opportunities Leased Areas and the Licensed Maintenance Areas.

20.2 Commencement of construction

Project Co must not commence construction of the Works except as set out in the PS&TR, the Approvals and the Design Review Schedule.

20.3 Allowances

Project Co:

- (a) **(allowance for delay)**: is deemed to have allowed in its D&C Program for all delays and disruptions arising in connection with the review of the Design Documentation in accordance with the Design Review Schedule and the construction review process in clause 26.2, even where the Independent Reviewer's opinion as to any matter may not be correct having regard to the requirements of the State Project Documents; and
- (b) **(no Claim)**: will not be entitled to make any Claim against the State arising in connection with any such delay or disruption.

21 Critical Interface Milestones and Progress Milestones

21.1 Variation to Critical Interface Milestones

- (a) **(Agreed variations):** Project Co may vary a Critical Interface Milestone Date with the consent of:
- (1) the party identified in respect of that Critical Interface Milestone as being 'responsible' or 'dependent' in the Critical Interface Milestone Program; and
 - (2) the State,
- if the variation will not delay Provisional Acceptance from being achieved by the Date for Provisional Acceptance.
- (b) **(Critical Interface Milestone (Linked)):** Without limiting Project Co's entitlement to extensions of time under clause 26, if a Critical Interface Milestone is achieved after the relevant Critical Interface Milestone Date (according to the Certificate of Critical Interface Milestone Achievement), each subsequent Critical Interface Milestone (Linked) will be extended by:
- (1) subject to clause 21.1(b)(2), the number of days (according to the Certificate of Critical Interface Milestone Achievement) by which the Critical Interface Milestone was achieved after the relevant Critical Interface Milestone Date; or
 - (2) where the party identified as being 'responsible' in the Critical Interface Milestone Program in respect of the next Critical Interface Milestone (Linked) gives notice to the State of its intention to accelerate its works within 5 Business Days of the issue of the Certificate of Critical Interface Milestone Achievement, the number of days by which the 'responsible' party notifies the State that it will achieve that next Critical Interface Milestone (Linked) after the then current Critical Interface Milestone Date in respect of that next Critical Interface Milestone (Linked).
- (c) **(Ongoing obligations):** Project Co acknowledges and agrees that a variation of a Critical Interface Milestone Date under clause 21.1(a) or 21.1(b) does not in any way limit or affect Project Co's obligation to:
- (1) commence and regularly, expeditiously and diligently carry out and progress the D&C Activities;
 - (2) achieve Provisional Acceptance by the Date for Provisional Acceptance;
 - (3) use reasonable endeavours to achieve each Progress Milestone by the relevant Progress Milestone Date; or
 - (4) from the Date of Provisional Acceptance, expeditiously and diligently progress the Works to achieve Final Acceptance.

21.2 Certificate of Critical Interface Milestone/Progress Milestone Achievement

- (a) **(Notice by Project Co):** When Project Co considers that a Critical Interface Milestone or Progress Milestone has been achieved, Project Co must:
- (1) notify the State and the Independent Reviewer of its opinion;



- (2) request the Independent Reviewer to issue a Certificate of Critical Interface Milestone/Progress Milestone Achievement; and
 - (3) provide the State and the Independent Reviewer with a detailed list of any Minor Defects relevant to the Works and the Metro Tunnel Interface Works the subject of the relevant Critical Interface Milestone or Progress Milestone.
- (b) **(Notice by State):** Notwithstanding that Project Co may not have issued a notice under clause 21.2(a), when the State considers that a Critical Interface Milestone or Progress Milestone has been achieved, the State may:
 - (1) notify Project Co and the Independent Reviewer of its opinion; and
 - (2) request the Independent Reviewer to issue a Certificate of Critical Interface Milestone/Progress Milestone Achievement.
- (c) **(Independent Reviewer to make determination):** As soon as reasonably practicable and, in any event, within 15 Business Days of Project Co complying with clause 21.2(a) or the State giving notice under clause 21.2(b), the Independent Reviewer is required to determine whether the relevant Critical Interface Milestone or Progress Milestone has been achieved and either:
 - (1) if the relevant Critical Interface Milestone or Progress Milestone has been achieved, issue a Certificate of Critical Interface Milestone/Progress Milestone Achievement to the State and Project Co:
 - (A) certifying that the relevant Critical Interface Milestone or Progress Milestone has been achieved;
 - (B) stating the date on which the relevant Critical Interface Milestone or Progress Milestone was achieved; and
 - (C) listing any Minor Defects in the Works and the Metro Tunnel Interface Works the subject of the relevant Critical Interface Milestone or Progress Milestone; or
 - (2) if the relevant Critical Interface Milestone or Progress Milestone has not been achieved, issue a notice to the State and Project Co:
 - (A) listing the work remaining to be undertaken to achieve the relevant Critical Interface Milestone or Progress Milestone; or
 - (B) stating that the relevant Critical Interface Milestone or Progress Milestone is so far from being achieved that it is not practicable to provide a list of the type referred to in clause 21.2(c)(2)(A),

after which Project Co must continue to expeditiously and diligently progress the D&C Activities to achieve the relevant Critical Interface Milestone or Progress Milestone.
- (d) **(Further notice by Project Co):** Project Co must give notice to the State and the Independent Reviewer when the work listed in a notice issued by the Independent Reviewer under clause 21.2(c)(2)(A) has been completed.
- (e) **(Resubmission):** Clause 21.2(c) will apply in connection with Project Co's notice under clause 21.2(d) in the same way as if it were the original notice given under clause 21.2(a).



- (f) **(No restriction on Independent Reviewer):** The Independent Reviewer, in making its determination as to whether a Critical Interface Milestone or Progress Milestone has been achieved will:
- (1) not be restricted by any notice, list or opinion which it previously provided to Project Co under clause 21.2(c); and
 - (2) be entitled to raise any other items of work as a ground for determining that a Critical Interface Milestone or Progress Milestone has not been achieved.
- (g) **(Progress Milestones and Returned Works):** Where the Independent Reviewer has given notice pursuant to clause 24.4(d)(1) in respect of all Returned Works comprising a Progress Milestone, the Independent Reviewer's determinations pursuant to clause 21.2(c) must be consistent with each notice issued in respect of those Returned Works under clause 24.4(d)(1).

21.3 Liquidated Damages

- (a) **(Liquidated Damages payable):** Subject to clause 21.3(b), Project Co will be liable to pay to the State (without the requirement for any further notice, certificate or demand by the State) Liquidated Damages in relation to each Critical Interface Milestone (PPP Responsible) for every day:
- (1) from the relevant Critical Interface Milestone Date; to
 - (2) the date on which the relevant Critical Interface Milestone (PPP Responsible) is achieved (as set out in the Certificate of Critical Interface Milestone/Progress Milestone Achievement).
- (b) **(Liquidated Damages Cap):** Notwithstanding clause 21.3(a), Project Co will cease to be liable to pay Liquidated Damages in accordance with this clause 21 once the aggregate Liquidated Damages paid in respect of all Critical Interface Milestones (PPP Responsible) has reached the Liquidated Damages Cap.
- (c) **(Sole remedy):** Subject to clause 21.5(b) and clause 35.3(c), the payment of Liquidated Damages will be the State's sole and exclusive monetary remedy for delay in relation to a Critical Interface Milestone (PPP Responsible).
- (d) **(Debt due and payable):** Any amount of Liquidated Damages payable will be cumulative, will accrue daily and will be payable by Project Co to the State as a debt due and payable.

21.4 Repayment of Liquidated Damages

Where:

- (a) Liquidated Damages have been paid by Project Co or deducted from Project Co under clause 35.8 in relation to a Critical Interface Milestone (PPP Responsible); and
- (b) the relevant Critical Interface Milestone Date is subsequently varied or extended in accordance with this Agreement,

the State must repay to Project Co any Liquidated Damages paid or deducted in respect of the period up to and including the new Critical Interface Milestone Date and such amount will be a debt due and payable from the State to Project Co on receipt by the State of a written demand from Project Co for payment.



21.5 Genuine pre-estimate of loss

- (a) **(Genuine pre-estimate of loss):** The parties acknowledge and agree that:
- (1) the Liquidated Damages have been agreed by the parties in good faith and are a genuine pre-estimate of the anticipated or actual diminished value to the State if a Critical Interface Milestone (PPP Responsible) is not achieved by the relevant Critical Interface Milestone Date;
 - (2) each party wishes to avoid the difficulties of proof of damages in connection with a failure to achieve a Critical Interface Milestone (PPP Responsible) by the relevant Critical Interface Milestone Date; and
 - (3) the Liquidated Damages are reasonable and are not intended as a penalty.
- (b) **(Common law damages):** To the extent that all or any part of this clause 21 is found for any reason to be void, invalid, unenforceable or otherwise inoperative so as to disentitle the State from receiving Liquidated Damages:
- (1) the State will be entitled to Claim from Project Co any Liability suffered or incurred by the State due to the failure by Project Co to achieve any Critical Interface Milestone (PPP Responsible) by the relevant Critical Interface Milestone Date up to the daily rate of Liquidated Damages and the Liquidated Damages Cap; and
 - (2) the failure to achieve the Critical Interface Milestone (PPP Responsible) by the relevant Critical Interface Milestone Date will be deemed to be a Major Default.

21.6 Target Critical Interface Milestone (PPP Responsible) Date

- (a) **(Notice of delay):** If Project Co becomes aware that it may not achieve a Critical Interface Milestone (PPP Responsible) by the relevant Target Critical Interface Milestone (PPP Responsible) Date as a result of critical or non-critical delay to the Project, Project Co must:
- (1) notify the Joint Coordination Committee of the likely delay (including the impact of any extension of time granted pursuant to clause 26) at timeframes reasonably agreed by the parties (taking into account the timing for Project Co's obligation to update the D&C Program);
 - (2) consult with the appropriate committee under the Coordination and Interface Deed Poll in respect of the delay; and
 - (3) use reasonable endeavours to achieve the Critical Interface Milestone (PPP Responsible) by the earliest possible date (having regard to the nature and duration of the likely delay).
- (b) **(Variations):** If Project Co has complied with clause 21.6(a), Project Co:
- (1) may vary a Target Critical Interface Milestone (PPP Responsible) Date to the earliest possible date that the Critical Interface Milestone (PPP Responsible) can be achieved (having regard to the nature and duration of the likely delay), which must be no later than the corresponding Critical Interface Milestone Date for that Critical Interface Milestone (PPP Responsible) (unless Project Co has failed to achieve that Critical Interface Milestone Date); and
 - (2) must notify the Joint Coordination Committee in writing of the variation to the Target Critical Interface Milestone (PPP Responsible) Date

(which it may do by providing an annotated copy of a D&C Program which has been updated in accordance with the timeframes set out in clause 18.2).

For the avoidance of doubt, Project Co may vary a Target Critical Interface Milestone (PPP Responsible) Date without the consent of the State or the relevant Package Contractor provided it has complied and continues to comply with this clause 21.6.

- (c) **(Determination):** If the State reasonably believes that a Project Co proposed variation of a Target Critical Interface Milestone (PPP Responsible) Date issued in accordance with clause 21.6(b) is not the earliest possible date that the relevant Critical Interface Milestone (PPP Responsible) can be achieved (having regard to the nature and duration of the likely delay) it may refer the matter for determination by the Independent Reviewer.
- (d) **(Consequences of failure to achieve dates):** The parties acknowledge and agree that any failure to achieve a Critical Interface Milestone by the relevant Target Critical Interface Milestone Date, will not be a breach of this Agreement, a Major Default, a Default Termination Event or a breach, or Wilful Default, of the Coordination and Interface Deed Poll.

22 Preparation for Maintenance Phase interface between Stations and OSD

- (a) The parties acknowledge and agree that each Commercial Development Agreement contemplates the State, the relevant OSD Entity, the Train Franchisee and Project Co entering into a Station Land Management Agreement (on the basis of principles set out in the Commercial Development Agreement) on or about Final Acceptance to govern the relationship between the relevant Station and the relevant completed Oversight Development Works.
- (b) The Parties will exercise best endeavours to facilitate the agreement of each Station Land Management Agreement which incorporates the relevant Maintenance Phase OSD/PPP Principles.

23 Testing and Commissioning

23.1 Testing and Commissioning Management Plan

- (a) **(Tests):** Project Co must carry out the Tests in accordance with this Agreement, the PS&TR, the Testing and Commissioning Management Plan, the Completion Schedule and the Systems Engineering Standard.
- (b) **(Testing and Commissioning Management Plan):** The State agrees that to the extent Project Co considers and substantiates to the reasonable satisfaction of the State, that an adjustment to the timing and location of the Tests set out in the Testing and Commissioning Management Plan would allow Project Co to:
 - (1) recover any delay to the D&C Activities or the Final Acceptance Works; or
 - (2) reduce the likelihood of incurring further delays,



Project Co may update and resubmit the Testing and Commissioning Management Plan in accordance with clause 14, and the State and the Independent Reviewer will review the updated Testing and Commissioning Management Plan with the intent of allowing Project Co the opportunity to recover any delays or reduce the likelihood of further delays.

23.2 Test Procedures

- (a) **(Preparation and submission):** For each Test, Project Co must:
- (1) prepare a Test Procedure which complies with this Agreement, the Testing and Commissioning Management Plan, the Completion Schedule and the Systems Engineering Standard; and
 - (2) submit the Test Procedure to the State and the Independent Reviewer at least 60 Business Days prior to the date on which Project Co proposes to conduct the Test.
- (b) **(Review and certification):** The Independent Reviewer must, and the State may, within 20 Business Days of the date on which the Test Procedure is received under clause 23.2(a) review each Test Procedure in accordance with the Review Procedures and when the Independent Reviewer is satisfied that the Test Procedure meets the requirements of this Agreement, the PS&TR, the Testing and Commissioning Management Plan, the Completion Schedule and the Systems Engineering Standard, certify the Test Procedure by providing to Project Co and the State a certificate in the form set out in the Schedule of Certificates and Notices.
- (c) **(No Tests before certification):** Project Co must not conduct a Test until the Test Procedure for that Test has been certified by the Independent Reviewer.
- (d) **(Revised Test Procedure):** If Project Co submits a revised Test Procedure to the State and the Independent Reviewer (except to the extent a Test Procedure is updated in accordance with clause 23.4(b)):
- (1) in accordance with the Review Procedures; or
 - (2) at its election,
- the provisions of this clause 23.2 will reapply save that the reference in:
- (3) clause 23.2(a)(2) to '60 Business Days' will be read as '30 Business Days'; and
 - (4) clause 23.2(b) to '20 Business Days' will be read as '10 Business Days'.

23.3 Notice of Tests

- (a) **(Test details):** Project Co must give the State and the Independent Reviewer at least 10 Business Days' notice of the date, time and place for the conduct of each Test.
- (b) **(Postponement):** Project Co may postpone a Test in respect of which it has given the State and the Independent Reviewer notice in accordance with clause 23.3(a).
- (c) **(Notice of reschedule):** If Project Co postpones a Test in accordance with clause 23.3(b), Project Co must give the State and the Independent Reviewer at least 5 Business Days' notice of the rescheduled date, time and place for the conduct of that Test.



- (d) **(Delivery Program extracts):** Project Co must give the State and the Independent Reviewer:
 - (1) an extract from the D&C Program that specifies the date, time and place for the conduct of each Test to be conducted for the following 25 Business Day period; and
 - (2) an updated extract from the D&C Program each week during the period that Project Co is carrying out Tests.
- (e) **(Deemed failure):** Unless otherwise agreed by the State, Project Co will be deemed to have failed a Test if it fails to give the State and the Independent Reviewer the required notice of when the Test will be conducted and clause 23.3(a) will re-apply.

23.4 Conduct of Tests

- (a) **(Requirements):** Project Co must conduct all Tests in accordance with:
 - (1) subject to clause 23.4(b), the relevant Test Procedure, as certified by the Independent Reviewer in accordance with clause 23.2; and
 - (2) the other requirements of this Agreement, the PS&TR, the Testing and Commissioning Management Plan, the Completion Schedule and the Systems Engineering Standard.
- (b) **(Amendment of Tests during conduct of Test):** The Independent Reviewer and the State may approve amendments to a Test Procedure proposed by Project Co during the conduct of the relevant Test to account for any circumstances that arise during the Test, in which case Project Co must conduct the Test in accordance with the approved amended Test Procedure.
- (c) **(Witnessing Tests):** The State (and its nominees) and the Independent Reviewer may (but are not obliged to) attend and witness the conduct of all Tests.

23.5 Test Reports

- (a) **(Submission irrespective of results):** Project Co must, within 10 Business Days of carrying out a Test, submit a Test Report to the Independent Reviewer and the State for that Test, irrespective of the result of the Test.
- (b) **(Compliance):** Each Test Report must comply with and be submitted in accordance with the requirements of the relevant sections of the PS&TR, the Completion Schedule and the Testing and Commissioning Management Plan.
- (c) **(Certification):** The Independent Reviewer must, within 10 Business Days of the date on which it receives the Test Report:
 - (1) certify that the Test has been passed in accordance with the Test Procedure by issuing a certificate in the form set out in the Schedule of Certificates and Notices; or
 - (2) notify Project Co and the State that:
 - (A) the Test has been failed; or
 - (B) the Test Report does not comply with the requirements of this Agreement.



23.6 Failure of Test

If the Independent Reviewer notifies Project Co that a Test has been failed, Project Co must:

- (a) **(Rectification work)**: carry out all necessary rectification work; and
- (b) **(Notice of completion)**: when it believes it has completed all necessary rectification work, give a further notice in accordance with clause 23.3(a) whereupon clauses 23.4 and 23.5 will re-apply.

23.7 Non-compliant Test Report

Without limiting clause 23.6, if the Independent Reviewer notifies Project Co that a Test Report is non-compliant, Project Co must amend and re-submit the Test Report whereupon clause 23.5 will re-apply.

23.8 Additional testing

- (a) **(State directions)**: At any time up to the date that is one month before the relevant Date of Acceptance for performing a Test, in addition to the State's rights under clause 16.3, the State may direct Project Co to carry out:
 - (1) additional tests in respect of the Relevant Infrastructure; and
 - (2) tests required by this Agreement, the PS&TR, the Testing and Commissioning Management Plan, the Completion Schedule or the Systems Engineering Standard that the Independent Reviewer confirms have not been carried out as required or in accordance with Best Industry Practices,

and Project Co must comply with any such direction within the time period required by the State (acting reasonably).

- (b) **(Submission of results)**: Results of tests carried out by Project Co under this clause 23.8 must be submitted to the State in accordance with clause 23.5(a).
- (c) **(Costs of inspection or testing)**: The State will bear the reasonable costs incurred by it and Project Co in connection with any Test conducted at the State's direction in accordance with this clause 23.8, unless:
 - (1) the Test reveals any Defect in the Relevant Infrastructure or Returned Works or is in connection with work undertaken to correct or overcome a Defect in the Relevant Infrastructure or Returned Works;
 - (2) the Test is in connection with Relevant Infrastructure covered up or made inaccessible without the State's prior approval where such approval was required; or
 - (3) the Test was otherwise required by this Agreement to be carried out by Project Co or should have been carried out by Project Co in accordance with Best Industry Practices,in which case Project Co will be responsible for:
 - (4) its own costs; and
 - (5) all reasonable costs incurred by the State, which will be a debt due and payable from Project Co to the State.

24 Acceptance

24.1 Acceptance obligations

Project Co must achieve:

- (a) Handback in relation to each Returned Asset;
- (b) Provisional Acceptance; and
- (c) Final Acceptance.

24.2 Notice before Provisional Acceptance

- (a) **(Notice):** Project Co must give the State (with a copy to the Independent Reviewer) separate notices:
 - (1) 60 Business Days; and
 - (2) 20 Business Days,prior to the date upon which it reasonably expects to achieve Provisional Acceptance.
- (b) **(Revised date):** If, after Project Co gives the State and the Independent Reviewer a notice in accordance with clause 24.2(a), the expected date upon which Project Co reasonably expects to achieve Provisional Acceptance changes, Project Co must notify the State and the Independent Reviewer promptly of the revised date.

24.3 Provisional Acceptance

- (a) **(Notice by Project Co):** When Project Co considers that it has achieved Provisional Acceptance, Project Co must:
 - (1) notify the State and the Independent Reviewer of its opinion;
 - (2) request the Independent Reviewer to issue a Certificate of Provisional Acceptance; and
 - (3) provide the State and the Independent Reviewer with a detailed list of the work (including Minor Defect correction, and any Final Acceptance Works) remaining to be undertaken in its opinion to achieve Final Acceptance.
- (b) **(Notice by State):** Notwithstanding that Project Co may not have issued a notice under clause 24.3(a), when the State considers that Project Co has achieved Provisional Acceptance, the State may:
 - (1) notify Project Co and the Independent Reviewer of its opinion; and
 - (2) request the Independent Reviewer to issue a Certificate of Provisional Acceptance.
- (c) **(Independent Reviewer to make determination):** As soon as reasonably practicable and, in any event, within 15 Business Days of Project Co complying with clause 24.3(a) or the State giving notice under clause 24.3(b), the Independent Reviewer is required to determine whether Provisional Acceptance has been achieved and either:
 - (1) if Provisional Acceptance has been achieved, issue a Certificate of Provisional Acceptance to the State and Project Co:



- (A) certifying that Provisional Acceptance has been achieved;
 - (B) stating the Date of Provisional Acceptance;
 - (C) listing any Minor Defects in the Relevant Infrastructure and Returned Works; and
 - (D) setting out details of the Independent Reviewer's opinion of the work remaining to be undertaken to achieve Final Acceptance, including any Final Acceptance Works; or
- (2) if Provisional Acceptance has not been achieved, issue a notice to the State and Project Co:
 - (A) listing the work remaining to be undertaken to achieve Provisional Acceptance; or
 - (B) stating that Provisional Acceptance is so far from being achieved that it is not practicable to provide a list of the type referred to in clause 24.3(c)(2)(A),
after which Project Co must continue to expeditiously and diligently progress the D&C Activities to achieve Provisional Acceptance.
- (d) **(Correction of Defects which did not prevent Provisional Acceptance):** Without limiting Project Co's other obligations under this Agreement (including in connection with Defects), immediately upon receipt of a Certificate of Provisional Acceptance, Project Co must expeditiously and diligently correct all of the Defects in the Relevant Infrastructure and Returned Works specified in the Certificate of Provisional Acceptance.
- (e) **(Further notice by Project Co):** Project Co must give notice to the State and the Independent Reviewer when the work listed in a notice issued by the Independent Reviewer under clause 24.3(c)(2)(A) has been completed.
- (f) **(Resubmission):** Clauses 24.3(c) and 24.3(d) will apply in connection with Project Co's notice under clause 24.3(e) in the same way as if it were the original notice given under clause 24.3(a).
- (g) **(No restriction on Independent Reviewer):** The Independent Reviewer, in making its determination as to whether Provisional Acceptance has been achieved, will:
 - (1) not be restricted by any notice, list or opinion which it previously provided to Project Co under clause 24.3(c); and
 - (2) be entitled to raise any other items of work (other than Minor Defects in the Relevant Infrastructure and Returned Works) as a ground for determining that Provisional Acceptance has not been achieved.

24.4 Completion and Handback of Returned Works

- (a) **(General obligations):** Project Co must progressively complete the Returned Works to achieve Handback of each Returned Asset (other than the Returned Train Works and Returned VicTrack Works) to the relevant Returned Asset Owner as soon as possible, so as to ensure that:
 - (1) any loss of amenity and inconvenience to the relevant Returned Asset Owner is minimised;
 - (2) the completion of the Returned Works in relation to each Returned Asset occurs in a smooth and orderly manner (rather than in a

compressed period immediately prior to Provisional Acceptance) which:

- (A) is consistent with the D&C Program; and
 - (B) in any event will provide the Independent Reviewer with sufficient time to progressively inspect the Returned Works, consider whether the Returned Works have been completed in accordance with the State Project Documents and carry out any reinspection or other activities required by this Agreement or the Independent Reviewer Deed of Appointment to be carried out by the Independent Reviewer in a smooth and orderly manner; and
- (3) completion of the Returned Works (other than the Returned Train Works and Returned VicTrack Works) is achieved by the Date for Provisional Acceptance.
- (b) **(Handback of Returned Works):** Handback of each Returned Asset to the relevant Returned Asset Owner will not be achieved until:
- (1) the Returned Asset has been completed in accordance with the State Project Documents subject only to Minor Defects;
 - (2) a Final Operational Access Plan for the Returned Asset exists;
 - (3) Project Co has issued a notice in the form required by the Schedule of Certificates and Notices to the State, the Independent Reviewer and the relevant Returned Asset Owner which:
 - (A) states that it considers that the Returned Asset has been completed in accordance with the State Project Documents; and
 - (B) lists any Defects of the kind referred to in clause 24.4(b)(1);
 - (4) Project Co, the Independent Reviewer and the Returned Asset Owner have had the opportunity to jointly inspect the Returned Asset at a time agreed (or in the absence of agreement determined by the Independent Reviewer) which will be no more than 5 Business Days after receipt of Project Co's notice under clause 24.4(b)(3);
 - (5) in the case of the Returned Train Works and Returned VicTrack Works, the requirements of the definition of Final Acceptance have been satisfied (other than to the extent those requirements cannot be achieved prior to Handback of the Returned Train Works and the Returned VicTrack Works); and
 - (6) the Independent Reviewer has issued to the State and Project Co a notice under clause 24.4(d)(1).
- (c) **(Independent Reviewer to consider comments of Returned Asset Owner):** In determining whether or not to issue a notice under clause 24.4(d), the Independent Reviewer will consider any reasonable comments of the relevant Returned Asset Owner provided within 5 Business Days after the time of the inspection under clause 24.4(b)(4).
- (d) **(Independent Reviewer to make determination):** As soon as reasonably practicable following the inspection under clause 24.4(b)(4), the Independent Reviewer is required to determine whether the Returned Asset has been completed in accordance with the State Project Documents (subject only to Defects of the kind referred to in clause 24.4(b)(1)) and issue to the State and Project Co either:



- (1) a notice in the form required by the Schedule of Certificates and Notices confirming that the Returned Asset has been completed (subject only to Defects of the kind referred to in clause 24.4(b)(1)); or
- (2) a notice either:
 - (A) listing the work remaining to be undertaken in order to complete the Returned Asset in accordance with the State Project Documents (subject only to Defects of the kind referred to in clause 24.4(b)(1)); or
 - (B) stating that the Returned Asset is so far from being completed in accordance with the State Project Documents that it is not practicable to provide a list of the type referred to in clause 24.4(d)(2)(A),

after which Project Co must continue to expeditiously and diligently progress the D&C Activities or the Final Acceptance Works (as relevant) to complete the Returned Asset in accordance with the State Project Documents.
- (e) Not used
- (f) **(Further notice by Project Co):** Project Co must give notice to the State, the Returned Asset Owner and the Independent Reviewer when the work listed in a notice issued by the Independent Reviewer under clause 24.4(d)(2)(A) has been completed.
- (g) **(Resubmission):** Clause 24.4(c) will apply in connection with Project Co's notice under clause 24.4(f) in the same way as if it were the original notice given under clause 24.4(b)(2).
- (h) **(No restriction on Independent Reviewer):** The Independent Reviewer, in making its determination as to whether the Returned Asset has been completed in accordance with the State Project Documents (subject only to Defects of the kind referred to in clause 24.4(b)(1)), will:
 - (1) not be restricted by any notice, list or opinion which it previously provided to Project Co under clause 24.4(d)(2); and
 - (2) be entitled to raise any other items of work (other than the Defects of the kind referred to in clause 24.4(b)(1)) as a ground for determining that the Returned Asset has not been completed in accordance with the State Project Documents.
- (i) **(Project Co's Handback obligations):** Upon receipt of a notice from the Independent Reviewer under clause 24.4(d)(1), Project Co must:
 - (1) notify the Returned Asset Owner of the date upon which Handback of the Returned Asset will occur (which date must not be fewer than 5 Business Days from the notice under this clause 24.4(i)(1));
 - (2) continue to maintain and repair the Returned Asset until Handback is achieved; and
 - (3) provide the State and the relevant Returned Asset Owner with all such assistance as may be reasonably required in relation to achieving Handback of the relevant Returned Asset.
- (j) **(Correction of Defects which did not prevent Handback):** Without limiting Project Co's other obligations under this Agreement (including in connection with Defects), Project Co must immediately upon receipt of the Independent Reviewer's notice under clause 24.4(d)(1), expeditiously and diligently correct all of the Defects specified in the Independent Reviewer's notice.



- (k) **(Assistance in securing continuity)**: Project Co must do all things reasonably required by the State to ensure the smooth and orderly Handback of each Returned Asset to the relevant Returned Asset Owner.

24.5 Final Acceptance

- (a) **(Progression)**: Project Co must expeditiously and diligently undertake the balance of the Works required to achieve Final Acceptance.
- (b) **(Independent Reviewer to make determination)**: When the Independent Reviewer considers that Final Acceptance has been achieved, as soon as reasonably practicable, the Independent Reviewer is required to issue a Certificate of Final Acceptance to the State and Project Co:
- (1) certifying that Final Acceptance has been achieved; and
 - (2) stating the Date of Final Acceptance.
- (c) **(No restriction by Independent Reviewer)**: The Independent Reviewer, in making a determination as to whether Final Acceptance has been achieved:
- (1) will not be restricted by any:
 - (A) Certificate of Provisional Acceptance, notice, list or opinion already provided in accordance with this Agreement; or
 - (B) obligation of Project Co under this Agreement to correct any Defects; and
 - (2) will be entitled to raise any items of work as a ground for determining that Final Acceptance has not been achieved.
- (d) **(Assistance in securing continuity)**: Project Co must do all things reasonably required by the State to ensure the smooth and orderly commencement of Train Operations at the Maintained Assets.

25 Defects

25.1 Defects

- (a) **(All Defects)**: Project Co must rectify:
- (1) all Defects in the Maintained Assets (other than the Maintained Rail Infrastructure Alliance Assets) which arise during the Term;
 - (2) all Defects in the Maintained Rail Infrastructure Alliance Assets from the relevant Rail Infrastructure Alliance Handover Date for the remainder of the Term; and
 - (3) all Defects in the Returned Assets from the Date of Handback until the end of the Defects Liability Period as referred to in clause 25.2(a),
(respectively the **Defects Term**).
- (b) **(Notification by Project Co)**: If Project Co identifies a Defect in the Maintained Assets or the Returned Assets at any time during the relevant Defects Term, Project Co must:
- (1) notify the State and the Independent Reviewer in accordance with the procedure for notification of Defects identified by the State; and



- (2) expeditiously and diligently progress rectification of that Defect.
- (c) **(Notification by the State):** If the State or the Independent Reviewer believes there is a Defect in the Maintained Assets or the Returned Assets at any time during the relevant Defects Term, the State or the Independent Reviewer may give notice to Project Co specifying:
 - (1) that Defect; and
 - (2) the reasonable period of time within which Project Co must rectify that Defect (which in the case of a Defect originally notified by Project Co under clause 25.1(b), will commence on the date that Project Co identified the relevant Defect).
- (d) **(Dispute):** If Project Co disagrees with:
 - (1) any notice given by the State or the Independent Reviewer in accordance with clause 25.1(c); or
 - (2) any Independent Reviewer's determination in accordance with clause 24.4(d) that there are Defects in a Returned Asset,then:
 - (3) it must, within 5 Business Days of receipt of the notice given in accordance with clause 25.1(c) or determination in accordance with clause 24.4(d), give notice of its disagreement to the State including such supporting documentation to the reasonable satisfaction of the State;
 - (4) the State and Project Co must use reasonable endeavours to resolve the matter the subject of the disagreement; and
 - (5) if the matter is not resolved within 10 Business Days after the date of the notice given in accordance with clause 25.1(d)(3), either party may, by notice to the other and the Independent Reviewer, refer the matter to resolution in accordance with clauses 46.3 to 46.9, except the expert must make a determination as to the matter and notify the parties of its determination and reasons within 10 Business Days after it is appointed by the parties to determine the matter.
- (e) **(Compliance with State notice):** Upon receipt of a notice from the State or the Independent Reviewer under clause 25.1(c), Project Co must, except where the expert determines in accordance with clause 25.1(d)(5), that a Defect does not exist, rectify the Defect:
 - (1) expeditiously and diligently and in any event within the time specified in the notice under clause 25.1(c) or as determined by the expert in accordance with clause 25.1(d)(5);
 - (2) so as to minimise any disruption to the Franchisee Interface Party, including any Unplanned Rail Disruption; and
 - (3) so as to minimise the inconvenience to Users.
- (f) **(Returned Works):** Where the Defect relates to any Returned Works, Project Co must rectify the Defect:
 - (1) at times agreed with the Returned Asset Owner and in accordance with the requirements of any other relevant Authority or the relevant Returned Asset Owner; and
 - (2) so as to minimise any adverse effect on any relevant Returned Asset Owner or Authority.



(g) **(State reimbursement):** If a Defect the subject of a notice given in accordance with clause 25.1(b) or 25.1(c):

- (1) was directly caused by a wrongful act or omission of:
 - (A) the State, or an Associate of the State; or
 - (B) any relevant Returned Asset Owner, or Associate of the Returned Asset Owner (in the case of a Returned Asset); or
- (2) was directly caused by an Interface Quality Event; or
- (3) on and from the relevant Rail Infrastructure Alliance Handover Date, is a Defect in the Maintained Rail Infrastructure Alliance Assets which Project Co has given the State reasonable opportunity to procure the rectification of,

then (and in respect of a Defect referred to in clause 25.1(g)(3), to the extent that the Defect was not caused or contributed to by a Defect in the Maintenance Services):

- (4) the direct costs properly and reasonably incurred by Project Co in rectifying that Defect; and
- (5) any Abatement amount in respect of any Service Failure caused by the Defect or its rectification,

will be a debt due and payable from the State to Project Co, provided that, in respect of a Defect referred to in clause 25.1(g)(3), the direct costs referred to in clause 25.1(g)(4) shall only be a debt due and payable from the State to Project Co if the State or the Rail Infrastructure Alliance fails or refuses to rectify the Defect.

(h) **(Notice of rectification):** Project Co must give notice to:

- (1) the State and the Independent Reviewer; and
- (2) where the Defect relates to any Returned Works, the relevant Returned Asset Owner,

that a Defect has been rectified promptly after its rectification by Project Co, which notice must describe the rectification works undertaken.

(i) **(Rights of State):** If, in the reasonable opinion of the State, rectification of a Defect:

- (1) the subject of a notice given in accordance with clause 25.1(b), or described in clauses 24.3(d) or 24.4(j), is not being expeditiously and diligently progressed by Project Co; or
- (2) the subject of a notice given in accordance with clause 25.1(c) has not been achieved within the time specified in the notice, as adjusted by any determination in accordance with clause 25.1(d)(5),

the State may:

- (3) issue a notice to the Independent Reviewer and Project Co requiring the Independent Reviewer to determine the cost necessary to rectify the relevant Defect, in which case within 10 Business Days of the State's notice, the Independent Reviewer must issue a notice to the State and Project Co setting out the determined cost;
- (4) elect to accept the relevant Defect and notify Project Co to:
 - (A) pay the State an amount certified by the Independent Reviewer as being the greater of:



- (i) the costs necessary to rectify that Defect as determined by the Independent Reviewer; and
 - (ii) the diminution in value of the Relevant Rail Infrastructure as a consequence of that Defect; or
 - (B) comply with the requirements nominated by the State (including as to the payment of any money, provided that the amount of that payment cannot be greater than the amount that would have been payable in accordance with clause 25.1(i)(4)(A)),
in which case, the moneys payable to the State will be a debt due and payable from Project Co to the State; and
 - (5) subject to giving Project Co prior notice of its intention to do so, rectify the relevant Defect itself or engage others to rectify that Defect, in which case the costs incurred by the State will be a debt due and payable from Project Co to the State; and the State may:
 - (A) use the applicable Defects Retention Amount (if any); and
 - (B) exercise its rights of set off or deduction under clause 35.8, to reimburse the State for the costs (including any Liability) incurred in undertaking the work referred to in this clause 25.1(i)(5).
- (j) **(Defects in Returned Works):** If a Defect referred to in clause 25.1(i) is in respect of a Returned Work the State:
- (1) may retain from any moneys due to Project Co (including Quarterly Service Payments and any State Capital Contribution):
 - (A) 120% of the amount set out in the Independent Reviewer's notice in accordance with clause 25.1(i)(3); or
 - (B) such lesser amount as the State may determine, until that Defect is rectified, or the State elects to accept the Defect pursuant to clause 25.1(i)(4) (**Defects Retention Amount**); and
 - (2) within 10 Business Days of that Defect being rectified or the State electing to accept the Defect pursuant to clause 25.1(i)(4), Project Co will be entitled to payment of the Defects Retention Amount less:
 - (A) any amount payable by Project Co under clauses 25.1(i)(4) or 25.1(i)(5);
 - (B) the amount of any Abatement under clause 35.2 to the extent applicable to the Defects Retention Amount; and
 - (C) any other amount the State may set-off or deduct under clause 35.8,
 - (3) is not obliged to pay Project Co interest on the Defects Retention Amount;
 - (4) does not hold the Defects Retention Amount on trust; and
 - (5) if the Defect is not rectified before this Agreement is terminated, will be absolutely entitled to the Defects Retention Amount, subject to payment of any Termination Payment payable to Project Co.
- (k) **(Defects in Maintained Assets):** If a Defect referred to in clause 25.1(c) is in respect of the Maintained Assets (other than the Maintained Rail Infrastructure Alliance Assets):



- (1) occurs after the Date of Final Acceptance; and
- (2) would not otherwise constitute a Service Failure (but for this clause 25.1(k)),

the Defect will be deemed to be:

- (3) a Quality Failure:
 - (A) in respect of which Project Co may accumulate five Quality Failure Points; and
 - (B) which has a Quality Failure Remedy Period which is the same as the time period for rectification specified in the notice referred to in clause 25.1(c)(2); and
- (4) a default.

25.2 Defects Liability Periods for Returned Assets

- (a) **(Defects Liability Period):** Each Returned Asset has a Defects Liability Period which:
 - (1) commences on the Date of Handback relating to that Returned Asset; and
 - (2) expires on the later of:
 - (A) 24 months after:
 - (i) in the case of a Returned Asset which is not Returned Train Works or Returned VicTrack Works, the relevant Date of Handback; or
 - (ii) in the case of Returned Train Works or Returned VicTrack Works, the Date of Final Acceptance; and
 - (B) in the case of a part of a Returned Asset affected by a Defect or Defects notified by Project Co pursuant to clause 25.1(b) or by the State or the Independent Reviewer pursuant to clause 25.1(c) prior to the date referred to in clause 25.2(a)(2)(A), 12 months after rectification, to the satisfaction of the Independent Reviewer, of the relevant Defects or Defects.
- (b) **(Project Co's obligation limited):** Project Co's obligation to rectify Defects in each Returned Asset ends at the end of the relevant Defects Liability Period.

25.3 Service Failure

The parties acknowledge and agree that if a Defect also constitutes a Service Failure, this Clause 25 does not limit the State's rights under the Payment Schedule, the Service Specification or this Agreement in respect of such Service Failure.

25.4 Defects register

Project Co must maintain and update a register of all Defects in the Relevant Infrastructure and Returned Works.



26 Time

26.1 Primary obligation

Project Co must:

- (a) **(Progress the D&C Activities)**: commence and regularly, expeditiously and diligently carry out and progress the D&C Activities;
- (b) **(Provisional Acceptance)**: achieve Provisional Acceptance by the Date for Provisional Acceptance;
- (c) **(Progress Milestones)**: use reasonable endeavours to achieve each Progress Milestone by the relevant Progress Milestone Date; and
- (d) **(Final Acceptance)**: from the Date of Provisional Acceptance, expeditiously and diligently progress the Works to achieve Final Acceptance.

26.2 Independent Reviewer's review of progress

- (a) **(Review of Project Activities)**: Project Co acknowledges and agrees that the Independent Reviewer will continually review (by general overview, reasonable checking, and visiting the Site to inspect the progress of the Works, including where requested by the State), the carrying out of the D&C Activities and the Final Acceptance Works to ensure that:
 - (1) the obligations of Project Co under the State Project Documents relating to the D&C Activities and the Final Acceptance Works are being complied with;
 - (2) Provisional Acceptance will be achieved by the Date for Provisional Acceptance;
 - (3) each Critical Interface Milestone (PPP Responsible) will be achieved by the relevant Critical Interface Milestone Date;
 - (4) not used;
 - (5) from the Date of Provisional Acceptance, Project Co is expeditiously and diligently progressing the Works to achieve Final Acceptance; and
 - (6) the D&C Program accurately reflects the actual progress of the Works in all material respects.
- (b) **(Notice of non-compliance)**: If the Independent Reviewer is of the opinion that:
 - (1) the obligations of Project Co under the State Project Documents relating to the D&C Activities and the Final Acceptance Works are not being complied with;
 - (2) the D&C Program does not accurately reflect the actual progress of the Works in all material respects;
 - (3) a Critical Interface Milestone (PPP Responsible) will not be achieved by the relevant Critical Interface Milestone Date;
 - (4) not used;
 - (5) Provisional Acceptance will not be achieved by the Date for Provisional Acceptance; or



- (6) from the Date of Provisional Acceptance, Project Co is not expeditiously and diligently progressing the Works to achieve Final Acceptance,

the Independent Reviewer may give notice to the State and Project Co of its opinion, together with its reasons for forming that opinion.

- (c) **(Project Co's response):** Within 10 Business Days of receipt of the Independent Reviewer's notice in accordance with clause 26.2(b), Project Co must:

- (1) notify the State and the Independent Reviewer of any matters in connection with which it disagrees with the Independent Reviewer's opinion, together with its reasons for doing so (**Explanation**); and
- (2) to the extent it does not disagree, provide to the State and the Independent Reviewer a plan and a program for the rectification of any non-compliance in accordance with clause 26.2(f) (**Remediation Plan**),

for review in accordance with the Review Procedures.

- (d) **(Explanation):** Within 10 Business Days of receipt of an Explanation, the Independent Reviewer must give notice to the State and Project Co of its opinion as to whether or not the Explanation satisfactorily addresses its concerns together with its reasons for forming that opinion.

- (e) **(Satisfactory/Unsatisfactory Explanation):** If the Independent Reviewer notifies Project Co and the State that, in its opinion:

- (1) the Explanation is satisfactory and that:
- (A) the obligations of Project Co under the State Project Documents relating to the D&C Activities and the Final Acceptance Works (as relevant) are being complied with;
- (B) the D&C Program accurately reflects the actual progress of the Works in all material respects;
- (C) not used;
- (D) Provisional Acceptance will be achieved by the Date for Provisional Acceptance; or
- (E) Project Co is expeditiously and diligently progressing the Works to achieve Final Acceptance,

no further action is required from Project Co in connection with the notice issued by the Independent Reviewer under clause 26.2(b); or

- (2) the Explanation is not satisfactory, Project Co will have 10 Business Days from the date it receives the Independent Reviewer's notification within which to provide a Remediation Plan in accordance with clause 26.2(f) for review in accordance with the Review Procedures.

- (f) **(Remediation Plan requirements):** To the extent that a Remediation Plan has been prepared in response to a notice issued under clause 26.2(b) or clause 26.2(e)(2), a Remediation Plan will not be considered satisfactory unless at a minimum:

- (1) it identifies the date on which Provisional Acceptance will be achieved, which date must be as early as reasonably practicable in the circumstances and otherwise within 24 months after the Date for Provisional Acceptance (**Scheduled Acceptance Date**);



- (2) it contains a program for remedying the issues set out in the Independent Reviewer's notice referred to in clause 26.2(b) or clause 26.2(e)(2), which must include:
 - (A) each task to be undertaken, the date by which each task is to be completed and the additional resources and personnel (if applicable) to be applied to the remediation; and
 - (B) any temporary measures that will be undertaken to ameliorate the impact of the delay;
 - (3) it contains any further information reasonably required by the Independent Reviewer; and
 - (4) if it sets out a date by which Provisional Acceptance will be achieved that is after the Date for Provisional Acceptance, it contains evidence satisfactory to the Independent Reviewer (acting reasonably) that the date is the earliest date by which Provisional Acceptance can be achieved if Project Co takes those steps which an experienced and competent contractor exercising Best D&C Practices would reasonably be expected to undertake to achieve Provisional Acceptance by the Date for Provisional Acceptance (including a reasonable expenditure of money).
- (g) **(Review of Remediation Plan):** The Independent Reviewer and the State will review a Remediation Plan prepared by Project Co in accordance with the Review Procedures.
- (h) **(Progress):** If the Independent Reviewer notifies the State and Project Co that a Remediation Plan is satisfactory, Project Co must:
 - (1) diligently pursue the Remediation Plan; and
 - (2) update the Remediation Plan on a Monthly basis to reflect actual progress and submit it to the Independent Reviewer and the State for review in accordance with the Review Procedures.
- (i) **(Amended Remediation Plan):** If the Independent Reviewer notifies the State and Project Co that, in its opinion, a Remediation Plan does not satisfactorily address the requirements of clause 26.2(f), Project Co may, within 5 Business Days of the date of receipt of the Independent Reviewer's notice, submit an amended Remediation Plan to the Independent Reviewer for review in accordance with the Review Procedures (**Amended Remediation Plan**).
- (j) **(Outcome of Amended Remediation Plan):** If the Independent Reviewer notifies the State and Project Co that, in its opinion, an Amended Remediation Plan satisfactorily addresses the requirements of clause 26.2(f), Project Co must:
 - (1) diligently pursue the Amended Remediation Plan; and
 - (2) update the Amended Remediation Plan quarterly to reflect actual progress and submit it to the Independent Reviewer and the State for review in accordance with the Review Procedures.
- (k) **(Deemed Major Default):** If the Independent Reviewer notifies the State and Project Co that, in its opinion:
 - (1) an Amended Remediation Plan does not satisfactorily address the requirements of clause 26.2(f);
 - (2) Project Co is not diligently pursuing a Remediation Plan or an Amended Remediation Plan (as applicable); or



- (3) Project Co will not be able to achieve Provisional Acceptance by the date that is 24 months after the Date for Provisional Acceptance,

then a Major Default will be deemed to have occurred. The Independent Reviewer may provide notification to the State and Project Co under clause 26.2(k)(2) or clause 26.2(k)(3) at any time after receipt of the relevant Remediation Plan or Amended Remediation Plan under clause 26.2(c)(2) or clause 26.2(i) (as applicable).

- (l) **(Subsequent reviews):** While Project Co is diligently pursuing a Remediation Plan in accordance with clause 26.2(h), or an Amended Remediation Plan in accordance with clause 26.2(j), any subsequent review under clause 26.2(a) must take into consideration that Remediation Plan or Amended Remediation Plan (as applicable).

26.3 Notification of delay to Acceptance

If Project Co becomes aware of any matter which will, or is likely to, give rise to a delay in achieving Provisional Acceptance, a Critical Interface Milestone, or a Progress Milestone Date, it must promptly give the State and the Independent Reviewer notice of that matter.

26.4 Delay entitling Claim

Subject to clause 26.5, if Project Co will be delayed by:

- (a) an Extension Event, in a manner which will delay Project Co in achieving Provisional Acceptance or a Progress Milestone, Project Co may claim an extension of time to the Date for Provisional Acceptance and any relevant Progress Milestone Date for the period of delay in accordance with this clause 26; and
- (b) a Compensable Extension Event, in a manner which will delay Project Co in achieving a Critical Interface Milestone, Project Co may claim an extension of time to any relevant Critical Interface Milestone Date for the period of delay in accordance with this clause 26.

26.5 Modifications

If a delay in achieving Provisional Acceptance, a Critical Interface Milestone, or a Progress Milestone is caused by an event which is the subject of a Modification Order, then:

- (a) **(application of Modifications clause):** Project Co's entitlement to an extension of time and any compensation for any such extension of time will be determined in accordance with clause 38 and the Change Compensation Principles and not this clause 26; and
- (b) **(extension of time):** the Date for Provisional Acceptance, any relevant Critical Interface Milestone Date, and any relevant Progress Milestone Date will be extended by the period of time set out in a Modification Order issued in accordance with clause 38.1.

26.6 Change Notice

To claim an extension of time to the Date for Provisional Acceptance, the relevant Critical Interface Milestone Date or the relevant Progress Milestone Date, Project Co:

- (a) **(submission of Change Notice):** must, within 15 Business Days from the date Project Co became aware, or ought reasonably to have become aware, of a



delay of the type referred to in clause 26.4, submit a Change Notice to the State and the Independent Reviewer which:

- (1) complies with the Change Compensation Principles;
 - (2) sets out detailed particulars of the delay or likely delay and the occurrence causing the delay;
 - (3) sets out the number of days of extension of time claimed, together with the basis of calculating that period, including evidence that it will be delayed in achieving Provisional Acceptance, a Critical Interface Milestone or a Progress Milestone in the manner set out in clause 26.4;
 - (4) describes the action Project Co has taken and proposes to take to avoid or minimise the consequences of the Extension Event;
 - (5) where the Extension Event is a Compensable Extension Event, contains details of any amount, calculated in accordance with the Change Compensation Principles, to which Project Co considers it is entitled;
 - (6) attach any comments provided by the Train Franchisee where the relevant Change Notice relates to or may give rise to:
 - (A) a change to the PS&TR or the Services Specification; or
 - (B) a Change in Law in relation to rail safety,and the attaching of those comments will be sufficient to satisfy Project Co's obligation to incorporate those comments in the relevant Change Notice in the first instance; and
 - (7) contains any other information reasonably required by the State; and
- (b) **(updated Change Notice)**: must, if the effects of the delay continue beyond the date on which the Change Notice is submitted under clause 26.6(a), and Project Co wishes to claim an additional extension of time in connection with the further delay, submit an updated Change Notice to the State:
- (1) every 15 Business Days after the first Change Notice until 5 Business Days after the end of the delay caused by the Extension Event; and
 - (2) containing the information required by clause 26.6(a).

26.7 Conditions precedent to extension

Subject to clause 26.9, it is a condition precedent to Project Co's entitlement to an extension of time that:

- (a) **(submission of Change Notice)**: Project Co submits its Change Notice, and in respect of any further delay an updated Change Notice, in the manner required by clause 26.6;
- (b) **(beyond Project Co control)**: the cause of the delay was beyond the reasonable control of Project Co and its Associates;
- (c) **(effect of delay)**: Project Co can demonstrate to the Independent Reviewer's satisfaction that:
 - (1) it has actually been or will be delayed in achieving (as relevant):
 - (A) Provisional Acceptance or a relevant Progress Milestone by an Extension Event; or



- (B) a relevant Critical Interface Milestone by a Compensable Extension Event; and
 - (2) the Extension Event has caused or will cause activities on the critical path contained in the then current D&C Program to be delayed (except if the extension of time claim relates only to a Critical Interface Milestone, in which case Project Co is not required to demonstrate delay to the critical path contained in the then current D&C Program); and
- (d) **(compliance with updated program)**: Project Co, at the time it submits the relevant Change Notice and any updated Change Notice:
 - (1) is, taking into account the impact of the Extension Event in connection with which an extension of time is being claimed, fully complying with its obligations in connection with the D&C Program in accordance with clause 18; or
 - (2) has remedied any outstanding breach of clauses 18.1(d) or 18.1(e) by providing an updated D&C Program at the time of submission of the relevant Change Notice or updated Change Notice.

26.8 Extension of Time determined by Independent Reviewer

- (a) **(State right to provide information)**: The State may provide any evidence to the Independent Reviewer it considers relevant to the Independent Reviewer's consideration of Project Co's Change Notice under clause 26.6.
- (b) **(Extension of time)**: If the conditions precedent in clause 26.7 have been satisfied, the Independent Reviewer will extend the relevant Date for Provisional Acceptance, any relevant Critical Interface Milestone Date, and any relevant Progress Milestone Date by a reasonable period determined by the Independent Reviewer and in doing so:
 - (1) subject to clause 26.8(b)(2) must take into account all relevant evidence presented by the parties; and
 - (2) is not bound by the D&C Program.
- (c) **(Critical Interface Milestone (Linked))**: Notwithstanding clause 21.1(b), if the Independent Reviewer extends a Critical Interface Milestone Date under clause 26.8(b), the Critical Interface Milestone Date for each Critical Interface Milestone (Linked) will be extended by the same period.
- (d) **(Critical Interface Milestone Event)**: Notwithstanding clause 21.1(b), in the case of a Critical Interface Milestone Event, Project Co acknowledges and agrees that an extension of time to the Date for Provisional Acceptance, any relevant Critical Interface Milestone Date and any relevant Progress Milestone Date must not exceed the number of days between:
 - (1) the Critical Interface Milestone Date the subject of the Critical Interface Milestone Event; and
 - (2) the date on which the relevant Critical Interface Milestone (PPP Dependent) was achieved (as set out in the Certificate of Critical Interface Milestone Achievement),and a Target Critical Interface Milestone Date may not be extended by a greater number of days than the corresponding Critical Interface Milestone Date.
- (e) **(Dispute)**: Where a party does not agree with the extension of time as determined by the Independent Reviewer under clause 26.8(b), that party may



refer the matter by notice to the other party within 20 Business Days of the Independent Reviewer's determination to expert determination in accordance with clauses 46.3 to 46.9.

26.9 Unilateral extensions

- (a) **(Unilateral extensions):** Whether or not Project Co has made, or is entitled to make, a Claim for an extension of time in accordance with this clause 26, the State may, in its absolute discretion, at any time and from time to time, by notice to Project Co, unilaterally extend any Date for Provisional Acceptance, any relevant Critical Interface Milestone Date, and any relevant Progress Milestone Date for the impact of an Extension Event, a Project Co Proposed Modification or a Minor Modification.
- (b) **(Compensation):** In circumstances where the State exercises its power under clause 26.9(a) in respect of a Compensable Extension Event or Force Majeure Event for which Project Co would otherwise be entitled to an extension of time having satisfied the conditions precedent in clause 26.7, Project Co will be entitled to payment for that Compensable Extension Event or Force Majeure Event in accordance with clause 26.10 or clause 26.19 (as applicable).
- (c) **(Acknowledgements):** The parties acknowledge that:
 - (1) the State is not required to exercise the State's discretion under clause 26.9(a) for the benefit of Project Co;
 - (2) other than the extent set out in clause 26.9(b), an extension under this clause 26.9 is not a Compensable Extension Event; and
 - (3) the exercise or failure to exercise the State's discretion under this clause 26.9 is not capable of being the subject of a dispute for the purposes of clauses 46 to 47 or otherwise subject to review.

26.10 Entitlement to Financing Delay Costs and Prolongation Costs

To the extent that Project Co is granted an extension of time under clause 26.8 (or pursuant to the exercise by the State of its discretion under clause 26.9(a)) for a Compensable Extension Event (except where the extension of time relates only to Critical Interface Milestone Dates or Progress Milestone Dates), Project Co will be entitled to payment of:

- (a) Financing Delay Costs; and
- (b) Prolongation Costs,

each as calculated in accordance with the Change Compensation Principles.

26.11 Share of Savings

If Project Co achieves Provisional Acceptance earlier than the Date for Provisional Acceptance and Project Co has been granted or is entitled to an extension of time for a Change Compensation Event, then:

- (a) **(report of savings):** within 10 Business Days after the Date of Provisional Acceptance, Project Co must provide the State Representative with a report setting out:
 - (1) the number of working days by which Provisional Acceptance was achieved earlier than the Date for Provisional Acceptance (**Number of Days Early**);



- (2) the number of working days granted as an extension of time under this clause 26 for a Compensable Extension Event (**Number of EOT Days**); and
- (3) the aggregate amount of any Prolongation Costs to which Project Co would have been entitled under clause 26.10 for the Number of Days Early divided by the Number of EOT Days (**Daily Average P&S**); and
- (b) (**sharing of savings**): an amount calculated using the following formula will be a debt due and payable from Project Co to the State:

(Daily Average P&S) x (Number of Days Early up to a maximum of the Number of EOT Days) x 50%.

26.12 Concurrent delays

Other than where the claim is in respect of a delay to Provisional Acceptance caused by a Modification directed by the State under clause 38.1(a), clause 38.7(c), clause 38.9(e) or a Pre-Agreed Modification Request, Project Co is not entitled to claim:

- (a) an extension of time under clause 26.8;
- (b) an extension of time in respect of a Contamination Modification Event; or
- (c) (if applicable) Financing Delay Costs, Prolongation Costs or Lost Commercial Opportunities Revenue calculated in accordance with the Change Compensation Principles,

in respect of a delay to Provisional Acceptance caused by an Extension Event or a Modification to the extent that any period of that delay is contemporaneous with a delay to Provisional Acceptance caused by an event which is not an Extension Event or a Modification.

26.13 Acceleration by Project Co

If Project Co chooses to compress the D&C Activities or otherwise accelerate progress:

- (a) (**no State action**): the State will not be obliged to take any action to assist or enable Project Co to achieve any particular sequencing or rate of progress of the Project Activities; and
- (b) (**State obligations not affected**): the time for the carrying out of the State's obligations will not be affected.

26.14 Project Co's obligations not affected

Project Co's obligations and Liabilities under this Agreement, including under clause 26.1 will not be affected, and the State's rights, obligations and Liabilities under this Agreement are not affected by Project Co accelerating under clause 26.13.

26.15 Acceleration Notice

Whether or not Project Co makes a claim for an extension of time in accordance with this Agreement, if:

- (a) (**D&C Activities delayed**): any part or the whole of the D&C Activities are delayed by:
 - (1) an Extension Event, or



- (2) a Modification or a Change in Mandatory Requirements the subject of a Modification Order (as applicable); and
- (b) **(Entitled to extension of time)**: Project Co would have been entitled to an extension of time to the Date for Provisional Acceptance, a Critical Interface Milestone Date or a Progress Milestone Date for the cause of delay in accordance with this Agreement,

the State may direct Project Co to submit a Change Notice setting out the estimated time and cost consequences of accelerating any part or the whole of the D&C Activities to overcome the delay (or include such information in a Change Notice submitted under clauses 26 or a Modification Quote submitted under 38.3).

26.16 Reasonably achievable

- (a) **(Achievability of acceleration)**: In any Change Notice submitted in response to clause 26.15, Project Co must identify whether, and to what extent, the acceleration is reasonably achievable in the circumstances.
- (b) **(State direction)**: If the acceleration is reasonably achievable in the circumstances, the State may give to Project Co a Change Response directing the acceleration.
- (c) **(Acceleration not achievable)**: If some or all of the acceleration is not reasonably achievable in the circumstances, the State must not direct the acceleration.

26.17 Partial acceleration

If the State gives Project Co a Change Response to accelerate the D&C Activities to overcome a delay and the acceleration will only overcome part of the delay, any entitlement to an extension of time Project Co would have had but for the acceleration will only be reduced to the extent to which the acceleration will, if implemented in accordance with Best D&C Practices, overcome the delay.

26.18 Acceleration

If the State gives Project Co a Change Response to accelerate the D&C Activities under clause 26.16:

- (a) **(Acceleration of Project Co)**: Project Co must accelerate the relevant part or the whole of the D&C Activities to overcome or minimise the extent and effect of some or all of the delay as instructed including, if required, in order to achieve (as relevant):
 - (1) Provisional Acceptance by the Date for Provisional Acceptance; and
 - (2) each Critical Interface Milestone by the relevant Critical Interface Milestone Date; and
 - (3) each Progress Milestone by the relevant Progress Milestone Date.
- (b) **(Payment of costs by State)**: if Project Co would, but for the instruction, have been entitled to an extension of time to the Date for Provisional Acceptance, a Critical Interface Milestone Date or a Progress Milestone Date for the cause of the delay, the State must pay Project Co the extra actual costs properly and reasonably incurred by Project Co and directly attributable to accelerating the relevant part or the whole of the D&C Activities calculated in accordance with the Change Compensation Principles.



26.19 Force Majeure

- (a) **(Obligations to be suspended):** Where:
- (1) the Extension Event to which a Claim under clause 26 relates is a Force Majeure Event; or
 - (2) a Force Majeure Event occurs which affects the State's obligations under this Agreement (other than obligations that relate to the Services) and the State gives Project Co a notice in writing to this effect,

then without limiting the parties' other obligations under this Agreement with respect to the Force Majeure Event, the obligations of each party in accordance with this Agreement which are affected by the Force Majeure Event will be suspended, but only to the extent that, and for so long as, the Force Majeure Event prevents that party from meeting its relevant obligations in accordance with this Agreement.

- (b) **(Party not in breach):** A party's failure to carry out its obligations in accordance with this Agreement which are suspended under clause 26.19(a) will not be a breach of this Agreement by that party, a Major Default or Default Termination Event during the period of suspension under clause 26.19(a).

- (c) **(Payment during an uninsurable Force Majeure Event):** Subject to clause 26.19(d), if:

- (1) the suspension of Project Co's obligations in accordance with clause 26.19(a) results in the Date for Provisional Acceptance being extended to such an extent that Project Co is not able to fully pay its scheduled repayments of principal and interest in accordance with its Project Debt obligations (including payment under any hedging agreement) from the Quarterly Service Payments; and
- (2) the Force Majeure Event is not a risk which:
 - (A) a prudent owner and operator of works and services similar to the Works and the Project Activities would customarily insure; or
 - (B) is, or is required to be, insured by Project Co in accordance with this Agreement,

then subject to clause 26.19(d), Project Co will be entitled to payment of an amount calculated in accordance with the Change Compensation Principles in respect of the duration of the extension provided that Project Co is satisfying the conditions precedent set out in clause 26.7.

- (d) **(Exceptions):** If the Force Majeure Event is also:
- (1) an Uninsurable Risk (as agreed or determined in accordance with clause 43.16); or
 - (2) a Day 1 Uninsurable Risk,
clause 43.17 will apply.

26.20 Progress Milestone delay

If Project Co becomes aware that it may not achieve a Progress Milestone by the relevant Progress Milestone Date, Project Co must provide to the State in writing:



- (a) an explanation setting out the reasons why it will not achieve the Progress Milestone by the relevant Progress Milestone Date; and
- (b) the steps that Project Co proposes to undertake to mitigate and minimise the delay to achieving the Progress Milestone.

27 State right to require Project Co to call on Construction Bond

Without limiting the State's rights under this Agreement or at Law, the State may require Project Co to call on any Construction Bond that it holds and is entitled to call upon to satisfy any debt due and payable by Project Co to the State which has not been paid within 10 Business Days of receipt of the demand:

- (a) which is referable to the D&C Activities or the Final Acceptance Works; or
- (b) which is in relation to a Default Termination Event caused by any Key Subcontractor carrying out D&C Activities or the Final Acceptance Works;

up to an amount no greater than:

- (c) prior to Provisional Acceptance, [not disclosed] of the D&C Subcontract Price; and
- (d) after Provisional Acceptance and for the remainder of the D&C Phase, [not disclosed] of the D&C Subcontract Price.

Part C – FAW Phase and Maintenance Phase Obligations

28 Maintenance Phase

28.1 Commencement of Train Services

Project Co must provide all reasonable assistance to the Train Franchisee and the State to make available the Maintained Assets for the provision of Train Services as soon as practicable after the Date of Final Acceptance.

28.2 Provide Maintenance Services

- (a) **(General obligation):** Project Co must provide the Maintenance Services throughout the Maintenance Phase:
- (1) in accordance with the Services Specification;
 - (2) in accordance with the Maintenance Phase Documentation;
 - (3) so that the Maintained Assets are in a condition which meets the FFP Warranty;
 - (4) so that no Refurbishment Works are required to be undertaken during the first 5 years after the end of the Term, other than:
 - (A) where required due to any loss, damage, Modification, Change in Policy or Change in Law after the end of the Term; or
 - (B) where the relevant Refurbishment Works relate to a component of the Maintained Assets which, despite being selected consistent with Best Maintenance Practices, have a design life of less than 5 years;
 - (5) so that all Defects in the Relevant Infrastructure and Returned Works are corrected expeditiously and diligently and otherwise as required in accordance with this Agreement;
 - (6) in accordance with:
 - (A) Best Maintenance Practices; and
 - (B) where applicable, Best D&C Practices and Best Operating Practices;
 - (7) in accordance with all applicable Laws and Standards; and
 - (8) so that if, in performing the Maintenance Services, it is required to replace or repair any part of the Maintained Assets or carry out Refurbishment Works, the replacement, repair or Refurbishment Works (as relevant) will be:
 - (A) performed using parts of at least equal quality to those parts being repaired or replaced;
 - (B) performed in accordance with Best Maintenance Practices and where applicable, Best D&C Practices and Best Operating Practices; and



- (C) Fit For Purpose.
- (b) **(Minimum disruption):** Without limiting clause 28.2(a), Project Co must, in performing the Maintenance Services:
- (1) comply with the Train Franchisee Cooperation Agreement;
 - (2) perform the Maintenance Services in a timely and expeditious manner;
 - (3) subject to clause 28.4, take all possible steps (including rescheduling Maintenance Services) to minimise:
 - (A) any disruption or risk to Train Operations; or
 - (B) any disruption, inconvenience, or risk to Users;
 - (4) not cause any Unplanned Rail Disruption;
 - (5) give priority to and minimise the impact on the safety of Train Operations, persons (including Users) or property; and
 - (6) on completion of any Maintenance Services, remove all temporary protection or other structures or equipment erected in connection with those Maintenance Services as soon as practicable, and in accordance with Best Maintenance Practices and, where applicable, Best D&C Practices and Best Operating Practices.
- (c) **(Minimum Requirements):** Without limiting Project Co's obligations in accordance with clause 28.2(a), the standards, tasks, obligations and other provisions contained or referred to in the Services Specification represent the minimum requirements which Project Co must satisfy for the purposes of fulfilling the obligations in clause 28.2(a).

28.3 Project Co to provide, comply with and update the Maintenance Phase Documentation

- (a) **(Submit):** Project Co must prepare and submit the Maintenance Phase Documentation to the State Representative for review in accordance with the Review Procedures and in accordance with the Services Specification, and otherwise in accordance with this Agreement.
- (b) **(Update):** Project Co must update the Maintenance Phase Documentation and submit the updated Maintenance Phase Documentation to the State Representative for review in accordance with the Review Procedures and in accordance with the Services Specification as applicable, and otherwise in accordance with this Agreement.
- (c) **(Additional information):** Project Co must provide any additional information in relation to the Maintenance Phase Documentation reasonably requested in writing by the State Representative.

28.4 Deferral of Refurbishment Works

- (a) Subject to clause 28.4(b), Project Co may only defer Refurbishment Works in accordance with this clause 28.4 if notwithstanding such deferral:
- (1) the Maintained Assets will continue to:
 - (A) meet the Services Specification;
 - (B) be Fit For Purpose; and



- (C) comply with all relevant Laws, Approvals and Standards;
and
 - (2) Project Co will comply with clause 28.2(a); and
 - (3) those Refurbishment Works will not be deferred beyond the end of the Term.
- (b) Project Co must not defer any Refurbishment Works scheduled to take place during the last five years of the Term unless the State has consented to the deferral.
- (c) Where Project Co proposes to defer any Refurbishment Works, it must identify in the updated Maintenance Phase Documentation submitted for review in accordance with the Review Procedures:
 - (1) details of the deferral;
 - (2) the period of time of deferral; and
 - (3) when such deferral would result in a breach of clause 28.2(a).
- (d) The State may reject any Maintenance Phase Documentation updated in accordance with clause 28.4(c) and the deferral of any Refurbishment Works:
 - (1) in accordance with the Review Procedures;
 - (2) where the State is of the view, acting reasonably, that such Maintenance Phase Documentation, or the deferral of the Refurbishment Works will not enable Project Co to meet the requirements of clauses 28.4(a) and 28.4(b); or
 - (3) when such deferral would result in a breach of clause 28.2(a).

28.5 Incidents

Project Co must:

- (a) **(respond to Incidents)**: respond to all Incidents in accordance with this Agreement; and
- (b) **(objectives of rectifying)**: without limiting clause 28.5(a), immediately (and, where applicable, within the Abatement Free Period stated in respect of the Incident) respond to and rectify all Incidents so that (to the maximum extent possible):
 - (1) the Maintained Assets satisfy the FFP Warranty throughout the Maintenance Phase;
 - (2) loss of, damage to, destruction of or any other adverse effect on the Relevant Infrastructure is avoided;
 - (3) personal injury and the safety of persons and property is otherwise fully protected;
 - (4) any Contamination or Environmental Hazard is avoided;
 - (5) Project Co is able to continue to perform the Maintenance Services;
and
 - (6) without limiting clause 28.2(b)(3)(B), any disruption to Train Operations is minimised.

29 Repricing Reviewable Services

29.1 General principles

- (a) **(Reviewable Services Schedule):** The parties agree that the Reviewable Services Schedule sets out the basis on which Project Co has priced the Reviewable Services for the first Reviewable Services Term.
- (b) **(Repricing):** For each Reviewable Services Term after the first Reviewable Services Term, Project Co must:
 - (1) price the provision of each Reviewable Service in accordance this clause 29; and
 - (2) update the Reviewable Services Schedule accordingly.

29.2 Project Co offer to reprice

- (a) **(Project Co offer):** At least 9 months prior to expiry of a Reviewable Services Term, Project Co must submit an offer to the State to provide the relevant Reviewable Service which:
 - (1) is priced:
 - (A) at the same margin set out in the then current Reviewable Services Schedule; and
 - (B) assuming the same risk allocation between Project Co, the Maintenance Subcontractor and any other Subcontractor;
 - (2) contains an explanation and details of any proposed changes to the provision of each Reviewable Service (including changes in respect of pricing); and
 - (3) includes a proposed updated Reviewable Services Schedule which:
 - (A) is in the same form as the current Reviewable Services Schedule;
 - (B) is priced in accordance with clause 29.2(a)(1);
 - (C) does not increase the number of full time equivalent employees involved in management and administration roles compared to the then current Reviewable Services Schedule;
 - (D) does not change the sharing of resources between two or more Maintenance Services; and
 - (E) clearly identifies the allocation of responsibilities between Subcontractors where such obligations may be provided pursuant to two or more Subcontracts.
- (b) **(State to consider Project Co offer):** Within 3 months of an offer under clause 29.2(a) the State:
 - (1) may negotiate with Project Co for the provision of the Reviewable Service; and
 - (2) must notify Project Co that:
 - (A) the State accepts Project Co's initial offer;



- (B) the State accepts Project Co's offer as negotiated pursuant to clause 29.2(b)(1); or
 - (C) the State requires a competitive tender to be conducted under clause 29.4 in relation to the Reviewable Service.
- (c) **(Project Co offer remains open):** Notwithstanding the State's notice under clause 29.2(b)(2)(C), Project Co's offer under clause 29.2(a) must remain open until 3 months after the relevant expiring Reviewable Services Term.

29.3 No offer made

If Project Co does not make an offer under clause 29.2(a) in respect of any Reviewable Service, Project Co must continue to provide that Reviewable Service at the current terms and pricing for the subsequent Reviewable Services Term.

29.4 Competitive tender

- (a) **(Project Co to conduct tender process):** If:
- (1) notified by the State pursuant to clause 29.2(b)(2)(C); or
 - (2) Project Co does not make an offer under clause 29.2(a) in respect of a Reviewable Service,
- Project Co:
- (3) must conduct a competitive tender in accordance with this clause 29.4; and
 - (4) must not subcontract or otherwise delegate any aspect of the competitive tender process without prior written approval from the State.
- (b) **(State to review proposed request for tender):** Project Co must:
- (1) prepare proposed request for tender documents for the performance of the Reviewable Services for the subsequent Reviewable Services Term; and
 - (2) submit the request for tender documents to the State for review in accordance with the Review Procedures.
- (c) **(Terms of request for tender):** The proposed request for tender must:
- (1) provide tenderers with sufficient information to be fully informed of the opportunity tendered;
 - (2) impose a duty of confidentiality on tenderers;
 - (3) require tenders to be conforming, and irrevocable until one month after the current Reviewable Services Term;
 - (4) require tenderers and their Associates to consent to Probity Investigations;
 - (5) attach a draft Subcontract:
 - (A) substantially on the same terms (other than price and term) as the current Subcontract in respect of the Reviewable Services;
 - (B) which provides for the review of those Reviewable Services in accordance with the terms of this clause 29; and



- (C) which satisfies Project Co's obligations under clause 13, and require tenderers to accept the terms of the draft Subcontract;
- (6) enable Project Co to prepare a proposed updated Reviewable Services Schedule in accordance with the principles set out in clause 29.2(a)(1); and
- (7) include any other information reasonably requested by the State.
- (d) **(Minimum number of tenderers):** Project Co must obtain offers in response to the request for tender from at least three experienced and capable service providers (in addition to the Maintenance Subcontractor (if applicable)) which must not include:
 - (1) any other Project Co Associate;
 - (2) any Related Body Corporate of the other service providers asked by Project Co to submit an offer; or
 - (3) any service provider which has not been previously approved by the State (such consent not to be unreasonably withheld).
- (e) **(Requirements of offers):** Each offer obtained under clause 29.4(d) must:
 - (1) set out the contract price, which must reflect a competitive pricing of that Reviewable Service in the then current market including any premium payable in connection with abatement risk;
 - (2) set out the service provider's current capacity and capability to carry out the relevant Reviewable Service in accordance with the Services Specification for the Reviewable Services Term, including current workload and resources plans, key people, subcontractors and consultants;
 - (3) set out the service provider's previous performance of services similar to the relevant Reviewable Service;
 - (4) set out the service provider's financial capacity;
 - (5) demonstrate that Project Co is able to continue to meet the relevant Services Specification; and
 - (6) demonstrate value for money to the State.

29.5 Outcome of tender process

Within three months of the notice from the State under clause 29.2(b)(2)(C), Project Co must provide to the State:

- (a) copies of all offers it has been given pursuant to the competitive tender conducted in accordance with clause 29.4;
- (b) Project Co's evaluation report in respect of each offer in relation to each relevant Reviewable Service;
- (c) Project Co's recommendation as to the preferred tenderer in relation to each relevant Reviewable Service;
- (d) any further details reasonably requested by the State in relation to the conduct of the tender and the offers;
- (e) an offer to the State to provide each relevant Reviewable Service for the ensuing Reviewable Services Term on the basis of:



- (1) the offer obtained from the preferred tenderer for each Reviewable Service; and
 - (2) the principles set out in clause 29.2(a)(1); and
- (f) a proposed Reviewable Services Schedule which is consistent with the material provided to the State pursuant to clauses 29.5(a) to 29.5(e).

29.6 Consultation

Following provision of the information under clause 29.5, Project Co must consult with the State to attempt to reach agreement on the appointment of a tenderer as Subcontractor for each relevant Reviewable Service for the subsequent Reviewable Services Term having regard to:

- (a) the experience and capability of each tenderer;
- (b) the demonstrated value for money to the State of each tenderer; and
- (c) the demonstrated ability for Project Co to continue to meet the relevant Services Specification, and otherwise comply with this Agreement.

29.7 Probity Investigations

- (a) The State may require Probity Investigations to be carried out in respect of any tender process conducted pursuant to this clause 29.
- (b) Project Co must:
 - (1) provide all assistance and information required by the State; and
 - (2) comply with all directions of the State,in respect of a Probity Investigation under clause 29.7(a).

29.8 Failure to agree

If Project Co and the State do not agree on the appointment of a tenderer as Subcontractor for a Reviewable Service under clause 29.6 the State may:

- (a) accept the offer made by Project Co under clause 29.2(a);
- (b) issue a Modification Order under clause 38 deeming the relevant Reviewable Services to be Omitted Works; or
- (c) to the extent that the failure of the parties to agree on an appointment is due to a failure to agree that a criteria set out in clause 29.6 has been satisfied in respect of a tenderer, refer the matter for determination by an expert in accordance with clauses 46.3 to 46.9, except the expert must make a determination as to the matter and notify the parties of its determination and reasons within 10 Business Days after it is appointed by the parties to determine the matter.

29.9 Appointment

- (a) **(Subcontract):** Project Co must:
 - (1) enter into; or
 - (2) ensure that the Maintenance Subcontractor enters into,



a subcontract substantially in the form provided to tenderers under clause 29.4(c)(5) for the provision of the relevant Reviewable Service for the ensuing Reviewable Services Term, with each tenderer:

- (3) agreed with the State under clause 29.6; or
 - (4) appointed to reflect the outcome of a determination under clause 29.8(c).
- (b) **(Updated Reviewable Services Schedule):** The Reviewable Services Schedule will be updated to reflect:
- (1) where the State accepts an offer under clause 29.2(b)(2)(A) or 29.2(b)(2)(B), the updated Reviewable Services Schedule proposed pursuant to clause 29.2(a)(3) (as amended as a result of negotiations (if any) pursuant to clause 29.2(b)(2)(B)); and
 - (2) where the parties agree on a proposed tenderer pursuant to clause 29.6, the updated Reviewable Services Schedule proposed pursuant to clause 29.5(f); and
 - (3) where the proposed tenderer is appointed to reflect the outcome of a determination under clause 29.8(c), the updated Reviewable Services Schedule proposed pursuant to clause 29.5(f) (as amended to reflect the outcome of the expert determination).

29.10 Continued provision of Reviewable Services

- (a) Without limiting the State's rights under this Agreement, including its rights in respect of any breach of this Agreement by Project Co, where:
- (1) an offer is made by Project Co under clause 29.2(a) or 29.2(b)(1);
 - (2) the State does not accept Project Co's offer pursuant to clause 29.2(b)(2)(A) or 29.2(b)(2)(B); and
 - (3) the Reviewable Service has not yet been omitted in accordance with clause 29.8(b) or a Subcontractor has not yet been appointed under clause 29.9,
- then, Project Co must continue to provide the relevant Reviewable Service on the same terms and pricing as for the relevant expiring Reviewable Services Term and in accordance with the Services Specification until 3 months after the relevant expiring Reviewable Services Term.
- (b) Project Co must, and must procure that the Maintenance Subcontractor, facilitates in all respects the transfer of each relevant Reviewable Service to:
- (1) a contractor appointed in respect of those Reviewable Services pursuant to this clause 29; and
 - (2) where those Reviewable Services have been deemed to be Omitted Works, a contractor appointed by the State in respect of those Reviewable Services.
- (c) Where a Subcontractor has been appointed under clause 29.9(a), Project Co must continue to provide the relevant Reviewable Service on the same terms and pricing as for the relevant expiring Reviewable Services Term and in accordance with the Services Specification until the Subcontractor appointed under clause 29.9(a) commences provision of those Reviewable Services.



30 Asset Condition Surveys

30.1 Condition of Maintained Assets

- (a) **(Condition of Maintained Assets):** Project Co must maintain the Maintained Assets:
- (1) so that the Maintained Assets meet the FFP Warranty;
 - (2) so that the Maintained Assets meet the relevant Handover Condition; and
 - (3) so that the Maintained Assets are capable of being operated as anticipated by the PS&TR and Services Specification and in accordance with Best Operating Practices,
- for the duration of the Maintenance Phase.
- (b) **(Additional requirements for condition of Maintained Assets):** Project Co must maintain the Maintained Assets in accordance with:
- (1) the Asset Management Plan;
 - (2) Best Industry Practices; and
 - (3) its other obligations under this Agreement,
- for the duration of the Maintenance Phase.

30.2 Asset Condition Survey

At any time during the Maintenance Phase, but not more frequently than every 5 years, the State may undertake (or engage an Associate of the State or third party to undertake) an Asset Condition Survey to assess whether:

- (a) **(Condition of Relevant Infrastructure):** Project Co is maintaining the Maintained Assets in accordance with the requirements of clause 28.2; and
- (b) **(Best Industry Practices):** the Maintenance Phase Documentation, and Project Co's processes for reviewing the quality of the assets comprising the Maintained Assets reflect Best Industry Practices.

30.3 Notification

The State will consult with and then notify Project Co in writing a minimum of 30 Business Days in advance of the date on which it wishes to carry out or have carried out each Asset Condition Survey.

30.4 Parties' obligations

- (a) **(Minimum disruption):** Where the State carries out or procures the carrying out of an Asset Condition Survey, the State will use reasonable endeavours to minimise any disruption caused to the performance of the Maintenance Services.
- (b) **(Provision of information):** Project Co must provide the State or any person carrying out the Asset Condition Survey with all information and other reasonable assistance required by the State during the carrying out of the Asset Condition Survey.



30.5 Results of Asset Condition Survey

- (a) **(Copy of report):** The State will provide Project Co with a copy of the Asset Condition Survey report.
- (b) **(Remediation plan):** If requested by the State, Project Co will provide a remediation plan to the State within 10 Business Days of Project Co being provided with the Asset Condition Survey that addresses any actions required to rectify a failure to meet the requirements set out in clause 28.2 that has been identified in the Asset Condition Survey report.
- (c) **(Project Control Group response):** Within 20 Business Days of Project Co being provided with the Asset Condition Survey report, the Project Control Group must meet to discuss the contents of the Asset Condition Survey report provided in accordance with clause 30.5(a) and the remediation plan provided by Project Co in accordance with clause 30.5(b) and seek to agree:
 - (1) any action Project Co must undertake to ensure that it meets the requirements set out in clause 28.2; and
 - (2) the time within which any such action must be undertaken.
- (d) **(Direction by the State):** To the extent that the parties are unable to reach an agreement in accordance with clause 30.5(c), the State may (acting reasonably and in accordance with the findings of the Asset Condition Survey report) direct Project Co as to:
 - (1) any action Project Co must undertake to meet the requirements referred to in clause 28.2; and
 - (2) the time within which any such action must be undertaken by Project Co.

30.6 Failure to carry out work

If Project Co fails to undertake any action agreed or directed by the State in accordance with clause 30.5, the State shall be entitled to undertake, or to procure the undertaking of, such action and to recover all costs incurred by it (including administration costs) in doing so from Project Co as a debt due and payable by Project Co to the State.

30.7 Costs of Asset Condition Surveys

The State shall pay its own costs of carrying out any Asset Condition Survey except to the extent that the Asset Condition Survey shows:

- (a) **(Conditions not met):** that Project Co is not maintaining the Maintained Assets substantially in accordance with the requirements of clause 28.2; or
- (b) **(Best Industry Practices not met):** that the Asset Management Plan and Project Co's processes for reviewing the quality of the assets comprising the Maintained Assets do not reflect Best Industry Practices and the failure to reflect Best Industry Practices is of a material nature,

in which case Project Co must pay, on demand, the State's costs of carrying out such Asset Condition Survey.

31 Intervening Events

31.1 Intervening Events entitling Change Notice

- (a) **(Intervening Event Change Notice):** If Project Co believes an Intervening Event has occurred which:
- (1) has prevented or delayed; or
 - (2) will prevent or delay,
- its performance of:
- (3) the Final Acceptance Works or other obligations under this Agreement during the FAW Phase; or
 - (4) the Maintenance Services or other obligations under this Agreement during the Maintenance Phase (that are not D&C Activities),
- Project Co must promptly notify the State of the relevant Intervening Event and its then current effect.
- (b) **(Submission of Change Notice):** To claim relief under this clause 31.1, Project Co must, within 15 Business Days from the date it became aware, or ought reasonably to have become aware, of an Intervening Event, submit a Change Notice to the State and the Independent Reviewer which:
- (1) complies with the Change Compensation Principles;
 - (2) sets out detailed particulars of the nature of the Intervening Event and the basis on which Project Co has formed the opinion that the event constitutes an Intervening Event;
 - (3) sets out the obligations affected by the Intervening Event and an estimate of the time (if any) during which Project Co will be prevented from carrying out or is delayed in carrying out the affected obligation;
 - (4) describes the action Project Co has taken and proposes to take to avoid or minimise the consequences of the Intervening Event;
 - (5) sets out any damage caused by the Intervening Event;
 - (6) where the Intervening Event is a Compensable Intervening Event, contains details of any amount, calculated in accordance with the Change Compensation Principles, to which Project Co considers it is entitled; and
 - (7) sets out any other information required by the State.
- (c) **(Updated Notice):** If the Intervening Event continues beyond the date on which the Change Notice is submitted under clause 31.1(b) or Project Co was unable to provide full particulars of its Claim in respect of the Intervening Event in its initial Change Notice, Project Co must provide a further updated Change Notice to the State every 15 Business Days for the duration of the Intervening Event or its consequences.

31.2 Condition Precedent to relief

It is a condition precedent to any relief or entitlement in connection with an Intervening Event being granted in accordance with this Agreement that Project Co submits its Change Notice and any updated Change Notice in accordance with clause 31.1.



31.3 Obligations suspended and no breach

To the extent that an Intervening Event prevents or delays Project Co from performing:

- (a) the Final Acceptance Works or other obligations under this Agreement during the FAW Phase; or
- (b) the Maintenance Services or otherwise meeting its obligations during the Maintenance Phase (that are not D&C Activities),

in accordance with this Agreement then:

- (c) the relevant obligation of Project Co will be suspended, but only until the later of the date:
 - (1) the Intervening Event; and
 - (2) the consequences of the Intervening Event,cease to prevent or delay Project Co from carrying out the relevant obligations; and
- (d) the failure to carry out such suspended obligations:
 - (1) will not be a breach of this Agreement by Project Co, a Major Default or a Default Termination Event; and
 - (2) in the case of a Force Majeure Event, may be the subject of Abatement under clause 31.5(a).

31.4 Payment continues for Intervening Events other than Force Majeure Events

- (a) **(Continuation of Quarterly Service Payment):** Except where the Intervening Event is a Force Majeure Event to which clause 31.5 applies, notwithstanding that Project Co's obligations to perform the Services or other obligations affected by any Intervening Event are suspended:
 - (1) the State will continue to pay Project Co the Quarterly Service Payment in connection with the Services or other obligations affected by the Intervening Event for the period of suspension;
 - (2) the Quarterly Service Payment will not be subject to Abatement in connection with the Intervening Event; and
 - (3) the State will deduct from the Quarterly Service Payment the amounts of any recurrent and other costs of Project Co which are not being incurred by Project Co during the period because the obligation to perform the relevant Services or other obligations have been suspended for the period of suspension under clause 31.3.
- (b) **(Compensation for costs):** If Project Co's obligations are suspended in accordance with clause 31.3 because of a Compensable Intervening Event then the State will, in addition to the amounts referred to in clause 31.4(a), pay Project Co an amount calculated in accordance with the Change Compensation Principles, other than the costs of repairing and rebuilding the Maintained Assets which will be determined under clause 42 provided that Project Co has complied and continues to comply with clause 31.2.



31.5 Intervening Event which is a Force Majeure Event

- (a) **(Abatement of Quarterly Service Payment):** The Quarterly Service Payment will be subject to Abatement to the extent that the Services are not being performed as a result of an Intervening Event in respect of which Project Co is entitled to relief under this clause 31 which is a Force Majeure Event.
- (b) **(Abatement not to constitute Major Default or Default Termination Event):** Any Abatement of the Quarterly Service Payment in accordance with clause 31.5(a), will not be included in the calculation of Abatement for a Major Default under paragraph 1 of the definition of the Major Default or a Default Termination Event under paragraph 9 of the definition of Default Termination Event, provided that Project Co is complying with its obligations under clause 31.2.
- (c) **(Repayment of Project Debt for Force Majeure):** If any Abatement of the Quarterly Service Payment in accordance with clause 31.5(a) is in respect of a Force Majeure Event which is also an Uninsurable Risk (as agreed or determined in accordance with clause 43.16) or a Day 1 Uninsurable Risk:
 - (1) gives rise to loss or damage to the Maintained Assets, clause 43.17 will apply; or
 - (2) does not give rise to loss or damage to the Maintained Assets, but results in:
 - (A) a Project Entity not being able to fully pay its scheduled repayments of principal and interest in accordance with its Project Debt obligations (including payment under any hedging agreement) from the Quarterly Service Payments; or
 - (B) not receiving the amount of the Quarterly Service Payment referable to the Services that Project Co continues to carry out under this Agreement notwithstanding the Force Majeure Event,

Project Co will be entitled to payment of an amount calculated in accordance with the Change Compensation Principles provided that Project Co is complying with its obligations under clause 31.2.

31.6 Alternative arrangements

- (a) **(Alternative arrangements):** Without limiting clause 41, during the period of suspension of any Services for an Intervening Event, the State may:
 - (1) make alternative arrangements for the performance of those Services at no cost to Project Co and without the State incurring any Liability to Project Co in respect of those alternative arrangements; or
 - (2) direct Project Co to perform those Services by an alternative method or 'work around' from that contemplated in the Final Acceptance Schedule or Services Specification (as relevant) to the extent that it is reasonably possible for Project Co to do so.
- (b) **(Costs):** If the State Representative requires Project Co to perform those Services by an alternative method or 'work around' in accordance with clause 31.6(a), the State must pay Project Co an amount calculated in accordance with the Change Compensation Principles in respect of such alternative method or 'work around'.



31.7 Cessation of Intervening Event

- (a) **(Notice):** Project Co must:
- (1) notify the State immediately; and
 - (2) immediately recommence carrying out all obligations suspended as a result of the Intervening Event,
after it ceases to be prevented from or delayed in carrying out any of its obligations in accordance with this Agreement as a result of an Intervening Event or its consequences.
- (b) **(State rights):** Once Project Co recommences carrying out the obligations suspended as a result of an Intervening Event, the State may no longer exercise its rights in accordance with this clause 31 in connection with the relevant Intervening Event.

32 Handover

32.1 Appointment of Handover Reviewer

- (a) **(Handover Reviewer):** No later than 12 months before the first Condition Review Date, Project Co and the State must meet to determine the identity of a Handover Reviewer to be appointed jointly by Project Co and the State to carry out the tasks identified in this clause 32.1, including to undertake joint inspections of the Maintained Assets at each Condition Review Date to assess whether the Maintained Assets meets the Handover Condition.
- (b) **(Dispute):** If Project Co and the State are unable to agree on the appointment of the Handover Reviewer on the date 9 Months before the first Condition Review Date, the Handover Reviewer will be appointed using the process set out in clause 32.1(c) through 32.1(e) for the appointment of the Handover Reviewer.
- (c) **(Project Co nominations):** Following initial consultation with the State in relation to the number and identity of appropriate firms from which to seek tenders, Project Co must, no later than 6 Months before the first Condition Review Date, nominate at least 3 firms that have submitted tenders to Project Co from which the State will select the Handover Reviewer, each of which must:
- (1) have appropriate qualifications and experience;
 - (2) have no interest or duty which may conflict with the role of the Handover Reviewer under this Agreement;
 - (3) indicate its willingness to execute a deed of appointment on substantially the same terms as the Independent Reviewer Deed of Appointment without substantial amendment;
 - (4) have professional indemnity insurance in accordance with the requirements of the deed of appointment; and
 - (5) provide such information in relation to fees and other matters as the State reasonably requires.
- (d) **(State's rights):** The State may request additional information from Project Co in respect of the shortlisted firms and may conduct interviews, jointly with Project Co, with any of the firms nominated by Project Co.



- (e) **(Appointment):** The State may nominate one of the firm's selected by Project Co as the Handover Reviewer and the State and Project Co must then jointly engage that firm to act as the Handover Reviewer under this Agreement.
- (f) **(Independent):** The Handover Reviewer is appointed jointly by the parties and will act independently and not as an agent of either party.
- (g) **(Further nominations required):** If the State, acting reasonably, refuses to select one of the 3 firms nominated by Project Co within 10 Business Days of Project Co's nomination, Project Co must, within 15 Business Days of receiving notice from the State of that refusal, nominate 3 other firms in accordance with clause 32.1(c) and the process in clauses 32.1(c) to 32.1(e) will apply again.
- (h) **(Termination):** If the Handover Reviewer deed of appointment is terminated upon its terms, Project Co must, within 15 Business Days of termination of the Handover Reviewer deed of appointment, nominate 3 other firms in accordance with clause 32.1(c) and the process in clauses 32.1(d) and 32.1(e) will apply again.
- (i) **(Costs paid by State):** Subject to clause 32.1(l)(1), the costs and expenses of the Handover Reviewer (including the Handover Reviewer's professional fees and any costs incurred in exercising or purporting to perform its obligations under the Handover Reviewer deed of appointment) will be paid to the Handover Reviewer by the State.
- (j) **(Costs paid by Project Co):** Subject to clauses 32.1(k) and 32.1(l)(1), Project Co must pay to the State on demand, from time to time, 50% of the costs and expenses of the Handover Reviewer paid by the State under clause 32.1(i).
- (k) **(Proportionate responsibility):** To the extent that the Handover Reviewer considers that the parties (as a result of their respective conduct) have a proportionate responsibility for the costs and expenses of the Handover Reviewer paid by the State under clause 32.1(i) which differs from the proportions stated in clause 32.1(j), Project Co must pay to the State on demand the relevant proportion of the costs and expenses of the Handover Reviewer paid by the State under clause 32.1(i) as stated in a notice from the Handover Reviewer to the parties.
- (l) **(Costs for reports):** Where the Handover Reviewer prepares a report not otherwise required by this Agreement or the Handover Reviewer deed of appointment, but requested by the State or Project Co:
 - (1) the costs of the Handover Reviewer of preparing such an additional report will be paid directly by the party requesting the report; and
 - (2) a copy of that additional report must be provided by the Handover Reviewer to the party not requesting the report.

32.2 Handover Package

Project Co shall prepare and submit the Handover Package to the State for review in accordance with the Services Specification.

32.3 Handover Reviewer

- (a) **(Joint inspection):** Project Co, the State and the Handover Reviewer appointed under clause 32.1(a) must carry out joint inspections of the Relevant Infrastructure:
 - (1) at least:



- (A) 5 years before the Final Expiry Date; and
 - (B) every 6 months after that initial inspection until the end of the Maintenance Phase; or
 - (2) where this Agreement is terminated earlier than the Final Expiry Date, within such shorter period before the date of termination as is required by the State,
- (each a **Condition Review Date**).
- (b) **(Program to achieve proper Handover)**: Following each inspection undertaken in accordance with clause 32.3(a), the Handover Reviewer must give to the State and Project Co a report (**Outstanding Matters Report**) specifying:
 - (1) the details of the maintenance and repair work required to be carried out by Project Co to meet the Handover Condition and a program for undertaking such works (**Handover Refurbishment Works**); and
 - (2) an estimate of the total costs of undertaking those works in accordance with this Agreement.
- (c) **(Dispute)**: If Project Co or the State do not agree with any aspect of the Outstanding Matters Report:
 - (1) they must give details of such objections to the other party and the Handover Reviewer, within 10 Business Days of receipt of that report; and
 - (2) the parties must confer in good faith with each other and the Handover Reviewer to reach agreement on the relevant aspects of the Outstanding Matters Report,and if the parties cannot reach agreement on the relevant aspect of the Outstanding Matters Report within a further 10 Business Days of the date on which the details of the objections are provided under clause 32.3(c)(1), the Dispute may be referred by either party by notice to the other party within 30 Business Days of the provision of the Handover Reviewer's Outstanding Matters Report to expert determination in accordance with clauses 46.3 to 46.9.
- (d) **(Update of Outstanding Matters Report)**: The Handover Reviewer must give to the State and Project Co an updated Outstanding Matters Report after each Condition Review Date subsequent to the first one, which includes details of:
 - (1) the Handover Refurbishment Works that have been completed;
 - (2) the Handover Refurbishment Works still to be completed; and
 - (3) an itemised estimate of the cost of carrying out the remaining Handover Refurbishment Works at that point in time.

32.4 State election

- (a) **(Adjustment of Condition Review Date)**: Notwithstanding the terms of this clause 32, the State Representative may by notice to Project Co:
 - (1) adjust a Condition Review Date under clause 32.3(a)(1) to an alternative date which may not be earlier than 5 years before the Final Expiry Date;
 - (2) elect to relieve Project Co from any obligation to undertake any of the Handover Refurbishment Works in any Contract Year; or



- (3) acting reasonably, increase the number of times and frequency with which the Handover Reviewer, the State and Project Co must inspect and assess the condition of the Relevant Infrastructure, assess any Handover Refurbishment Works or prepare the Outstanding Matters Report.
- (b) **(Effect of Adjustment of Condition Review Date):** If the State Representative exercises its rights in accordance with clause 32.4(a)(1) or 32.4(a)(2):
 - (1) the PS&TR, the Services Specification and any other relevant parts of the State Project Documents will be varied to the extent agreed by the parties or, where not agreed, as determined by the Handover Reviewer; and
 - (2) the amount by which any subsequent Quarterly Service Payment must be reduced must be calculated in accordance with the Change Compensation Principles.

32.5 Implementing Handover Refurbishment Works

- (a) **(Implement program):** Without limiting Project Co's obligations in accordance with this Agreement, Project Co must undertake the Handover Refurbishment Works and implement the program agreed or resolved in accordance with clause 32.3(b) or 32.3(c).
- (b) **(Completion of works by the State):** Upon or prior to the Expiry Date, the State may exercise its rights of step-in under clause 41 to undertake and complete any Handover Refurbishment Works which have not been completed by Project Co to the satisfaction of the Handover Reviewer in accordance with the program agreed or resolved under clause 32.3(b) or 32.3(c).

32.6 Maintenance Phase Documentation update

Within one month of the delivery of each Outstanding Matters Report, Project Co must:

- (a) amend the Maintenance Phase Documentation to include details of the Handover Refurbishment Works agreed or resolved in accordance with clause 32.3(b) or 32.3(c); and
- (b) submit the updated Maintenance Phase Documentation to the State Representative for review in accordance with the Review Procedures.

32.7 Project Co election

- (a) At any time after a Condition Review Date, if the aggregate of the remaining Quarterly Service Payments is equal to or less than 120% of the estimated total cost of the remaining Handover Refurbishment Works (as agreed or determined in accordance with clause 32.3(b)) (**Threshold Amount**), Project Co must, within 5 Business Days of the Condition Review Date either elect to:
 - (1) allow the State to deposit into an interest bearing bank account opened by the State in the State's name (**Handover Escrow Account**) each subsequent Quarterly Service Payment until the balance of the Handover Escrow Account equals or exceeds the Threshold Amount; or
 - (2) provide to the State a Performance Bond having a face value equal to the Threshold Amount (**Handover Bond**),as security for the performance of Project Co's obligations under this clause 32.



- (b) **(Project Co makes no election):** If Project Co fails to make an election in accordance with clause 32.7(a) within 5 Business Days of the Condition Review Date, Project Co will be deemed to have elected that clause 32.7(a)(1) will apply.

32.8 Handover Escrow Account

- (a) **(Payments out of the Handover Escrow Account):** To the extent that the option described in clause 32.7(a)(1) applies:
- (1) interest earned on money in the Handover Escrow Account must be deposited into the Handover Escrow Account;
 - (2) Project Co is entitled, on request, to receive copies of the statements of account for the Handover Escrow Account;
 - (3) the State may draw upon the Handover Escrow Account to fund or refund any costs incurred by it in undertaking any Handover Refurbishment Works in accordance with clause 32.5(b);
 - (4) the State must draw upon the Handover Escrow Account to pay Project Co:
 - (A) the estimated cost of the Handover Refurbishment Works, as calculated in accordance with clause 32.3(b), undertaken by Project Co where the Handover Reviewer determines (following a review) that the Handover Refurbishment Works required to be undertaken by Project Co at the date of the review have been satisfactorily undertaken, provided that after drawing such amount, the balance of the Handover Escrow Account equals or exceeds the then current Threshold Amount; and
 - (B) the balance of the Handover Escrow Account to Project Co no later than 20 Business Days after completion of all Handover Refurbishment Works,
after deducting any amounts payable to the State in accordance with clause 32.8(a)(3); and
 - (5) if at any time the balance of the Handover Escrow Account exceeds the then current Threshold Amount, then the excess will be a debt due and payable from the State to Project Co and will be added to the next Quarterly Service Payment.

32.9 Handover Bond

- (a) **(Expiry date):** Any Handover Bond, including any replacement Handover Bond provided under clause 32.9(c) or 32.9(d), must have an expiry date no earlier than one year after the end of the Term.
- (b) **(State right to call on Handover Bond):** The State:
- (1) may make demands under any Handover Bond to make payments in accordance with clause 32.8(a)(3); and
 - (2) must return the Handover Bond to Project Co no later than 20 Business Days after completion of all Handover Refurbishment Works.
- (c) **(Replacement of Handover Escrow Account by Handover Bond):**



- (1) Project Co may elect at any time to replace any payment into the Handover Escrow Account with a Handover Bond which has a face value which is no less than the amount of the payment or balance it is to replace.
 - (2) Once the State has received the Handover Bond in accordance with clause 32.7(a)(2) or 32.9(c)(1), it must draw upon the Handover Escrow Account to pay Project Co the value of the Handover Bond provided, on the condition that the Handover Escrow Account is not overdrawn.
- (d) **(Replacement of Handover Bond):** If the issuer of any Handover Bond ceases to have the Required Rating, Project Co must:
- (1) promptly notify the State of that circumstance; and
 - (2) within 20 Business Days of being requested to do so, procure the issue to the State of a replacement Handover Bond from an issuer with the Required Rating,
- and the State must surrender the original Handover Bond following receipt of the replacement Handover Bond.
- (e) **(Failure to replace Handover Bond):** If Project Co fails to provide a replacement Handover Bond in accordance with clause 32.9(d), the State may draw on any Handover Bond up to the Threshold Amount and deposit that amount in the Handover Escrow Account.

32.10 Handover

Without limiting clause 32.11, on the Expiry Date, Project Co must:

- (a) **(handover of Relevant Infrastructure and Site):** handover the Relevant Infrastructure and the Construction Areas and Maintenance Areas (as applicable) (including all rights and interest in them) to the State or its nominee free from any encumbrances and in the following condition:
- (1) if Handover of the Relevant Infrastructure is to occur prior to Provisional Acceptance, in the condition that the Relevant Infrastructure and the Construction Sites should be if Project Co had complied with all of its obligations in connection with the Relevant Infrastructure and the Construction Site in accordance with this Agreement having regard to the time and circumstances of the termination;
 - (2) if Handover of the Relevant Infrastructure occurs after the Date of Provisional Acceptance, and before the date which is 2 years before the Final Expiry Date, in the condition that the Relevant Infrastructure and the Maintenance Site would be if Project Co had complied with all of its obligations in connection with this Agreement up to the time of termination having regard to the time and circumstances of the termination; or
 - (3) if Handover of the Relevant Infrastructure occurs on or after the date which is 2 years prior to the Final Expiry Date, in the condition that the Relevant Infrastructure and the Maintenance Site would be in as at that date if Project Co had satisfied all relevant obligations in accordance with this Agreement,
- (Handover Condition);**



- (b) **(transfer of rights)**: to the extent that it has not already been transferred, transfer to the State or its nominee all rights, title and interest in Plant and Equipment required to allow the State or its nominee to operate, maintain and repair the Relevant Infrastructure to the standards required of Project Co in accordance with this Agreement free from any encumbrances;
- (c) **(warranties and guarantees)** without limiting clause 19, procure that all warranties and guarantees in respect of the Relevant Infrastructure or any maintenance work carried out on the Relevant Infrastructure that remain in force at the Expiry Date are capable of assignment and, upon the Expiry Date shall assign to the State (or to such other person(s) as the State shall nominate), the benefit free from any encumbrances of all such warranties and guarantees;
- (d) **(delivery of information)**: update and deliver to the State or its nominee all Project Co Material, records, plans and other information under the control of Project Co which are relevant to the Project;
- (e) **(procurement of novations)**: procure the novation or, if such novation cannot be procured, the assignment to the State or its nominee of:
 - (1) such Subcontracts as the State may nominate;
 - (2) the Train Franchisee Cooperation Agreement, the Tram Franchisee Cooperation Agreement, the Train Franchisee Cooperation Agreement Direct Deed and the Tram Franchisee Cooperation Agreement Direct Deed, as the State may nominate; and
 - (3) any leases, subleases and licences agreed to by the State;
- (f) **(grant of Intellectual Property)**: grant or procure the grant to the State or its nominee of such Intellectual Property Rights as will enable the State or its nominee to deliver the Project and operate, maintain and repair the Relevant Infrastructure to the standards specified in this Agreement;
- (g) **(payment of insurance proceeds)**: pay to the State or its nominee any insurance proceeds from any Insurances for the repair and reinstatement of the Relevant Infrastructure to the extent not already repaired or rebuilt, and assign to the State any rights available to Project Co under the Insurances;
- (h) **(technology)**: provide to the State, software, hardware, equipment, materials and documentation necessary or desirable in order for the State or its nominee to deliver the Project and fully operate, maintain and repair the Relevant Infrastructure;
- (i) **(software licences)**: procure for the State an assignment or sublicense of all licences relating to any software belonging to any third party used in connection with the Services or any other aspect of the Maintained Assets in accordance with the Intellectual Property Schedule;
- (j) **(transfer of approvals)**: do all acts and things necessary to enable the State (or its nominee) to have transferred or obtain all Approvals necessary to deliver the Project;
- (k) **(delivery of project)**: do all other acts and things to enable the State or its nominee to be in a position to deliver the Project to the standards specified in this Agreement, with minimum disruption; and
- (l) **(training of personnel)**: in the final 3 months before the Final Expiry Date (or such other period required by the State where the Expiry Date occurs earlier than the Final Expiry Date), train personnel nominated by the State in all aspects of the operation, maintenance and repair of the Relevant Infrastructure to a level of competency that will allow those personnel to operate, maintain and



repair the Relevant Infrastructure to the standards required of Project Co under this Agreement from the relevant Expiry Date.

32.11 Assistance in securing continuity

Without limiting Project Co's other obligations in respect of Handover in accordance with this clause 32, Project Co must, before the Expiry Date, do all things reasonably required by the State to ensure the smooth and orderly transfer of responsibility for delivering the Project to the State or its nominee, including:

- (a) **(meetings)**: meeting with the State and such other persons notified by the State to discuss the Project;
- (b) **(access)**: providing access to its operations for managers and supervisors of the State or its nominee for the purpose of familiarisation; and
- (c) **(information)**: providing sufficient information to the State or its nominee to determine the status and condition of the Project and any works program in place at the time.

32.12 Power of attorney

Project Co irrevocably:

- (a) **(attorney appointment)**: appoints the State, and the State's nominees from time to time, jointly and severally, as its attorney with full power and authority:
 - (1) with effect from the end of the Maintenance Phase, to execute any agreement or novation contemplated by clause 32.10(e);
 - (2) to exercise the State's rights in accordance with clause 41; and
 - (3) to undertake Project Co's obligations in accordance with clause 45.6; and
- (b) **(ratification)**: ratifies and confirms whatever action is taken by the attorney appointed by Project Co under clause 32.12(a).

Part D – Payment

33 State Construction Contribution during construction

33.1 State Construction Contribution

In consideration for Project Co undertaking the Works and carrying out the D&C Activities, the State agrees to pay or procure the payment to or at the direction of Project Co of:

- (a) the State Construction Contribution in accordance with this clause 33;
- (b) the State Capital Contribution in accordance with clause 34; and
- (c) the Final D&C Phase Price in accordance with clause 35A.

33.2 State Construction Contribution conditions

- (a) **(State Construction Contribution commencement):** The State's obligation to make any payment under clause 33.4 is subject to clause 33.2(b) and will only commence from the date on which:
 - (1) the Agent has confirmed to the State that an amount equal to 100% of Equity agreed to be contributed in accordance with the Equity Documents has been deposited in the Construction Proceeds Account, utilising:
 - (A) Equity contributed in accordance with the Equity Documents; or
 - (B) where Equity contributions are deferred, other sources of funds, provided that any such deferred Equity is the subject of commitments to subscribe under deferred Equity commitment deeds (including the Subscription Agreement (as defined in the Facility Agreement)) and is supported by letters of credit which satisfy the requirements of the Facility Agreement, unless the State otherwise consents,or a combination of the two; and
 - (2) the Agent has confirmed to the State that an amount equal to or greater than 80% of the Construction Facility Commitment (as at Financial Close) (disregarding any amounts used to fund deferred Equity requirements under clause 33.2(a)(1)(B)) has been drawn down and Correctly Applied (or will have been drawn down and Correctly Applied following application of the proceeds of the drawdown under the Construction Facility for that Month).
- (b) **(Other State Construction Contribution conditions):** The State will only be obliged to make a payment under clause 33.4 if:
 - (1) the Agent has confirmed that all previous payments under clause 33.4 (if any), have been or will be Correctly Applied on or before the relevant State Construction Contribution Payment Date;



- (2) the Agent has confirmed that all previous amounts drawn down by Project Co or Finance Co under the Finance Documents have been or will be Correctly Applied on or before the relevant State Construction Contribution Payment Date;
- (3) no breach by Project Co, Finance Co, the Agent or the Security Trustee (as applicable) of clauses 11.2 or 11.3 of the Finance Direct Deed is subsisting and the conditions to withdrawal of Actual Debt are also satisfied as contemplated in clause 11.3 of the Finance Direct Deed;
- (4) Project Co has submitted a valid State Construction Contribution Notice in accordance with clause 33.3(a); and
- (5) the aggregate of the State Construction Contribution Actual Amount specified in the relevant State Construction Contribution Notice and each State Construction Contribution previously made will be no greater than the aggregate State Construction Contribution Forecast Amount set out in the State Construction Contribution Schedule up to and including the relevant payment date specified in the State Construction Contribution Schedule.

33.3 State Construction Contribution Notice

- (a) **(State Construction Contribution Notice):** Subject to clause 33.2, in respect of a proposed payment of a State Construction Contribution, Project Co must give the State a notice (**State Construction Contribution Notice**), in the form of a valid Tax Invoice and otherwise in a form reasonably satisfactory to the State, stating the proposed State Construction Contribution Actual Amount to be paid and the proposed State Construction Contribution Payment Date, together with the following:
 - (1) a copy of the last 'Drawdown Notice' (as defined in the Facility Agreement) given to the Agent in respect of a draw down under the Construction Facility;
 - (2) confirmation of the aggregate amount drawn down under the Construction Facility up to the date of the current State Construction Contribution Notice;
 - (3) a copy of the 'Withdrawal Notice' (as defined in the Facility Agreement) given to the Agent in respect of the withdrawal from the Construction Proceeds Account to be made on the State Construction Contribution Payment Date, together with confirmation:
 - (A) of the amount of the withdrawal which Project Co has requested from the Construction Proceeds Account on that date (**Certified Withdrawal Amount**); and
 - (B) that the Certified Withdrawal Amount is equal to the Certified Payment Claim for that Month plus any other SCC Project Costs due and payable;
 - (4) all documentary evidence relating to the Certified Payment Claim to be paid using the amount withdrawn from the Construction Proceeds Account as described in clause 33.3(a)(3);
 - (5) all documentary evidence relating to the satisfaction of the Cost To Complete Test (as defined in the Facility Agreement), and a copy of all other certifications provided by the Financiers' Certifier, as required under the Facility Agreement as a condition precedent to the

withdrawal from the Construction Proceeds Account as described in clause 33.3(a)(3);

- (6) if requested by the State, documentary evidence relating to amounts previously withdrawn to pay SCC Project Costs (other than Certified Payment Claims in respect of which the State has already received documentary evidence under clause 33.3(a)(4)) to enable the State to verify compliance with clause 33.4(b); and
 - (7) documentary evidence of any relevant confirmations given by the Agent required under this clause 33.
- (b) **(Limit on withdrawals):** Project Co must not give the State a State Construction Contribution Notice more than once each Month.

33.4 Payment of State Construction Contributions

- (a) **(Timing of contribution by the State):** Subject to clause 33.2 and compliance by the Agent, Project Co and Finance Co with clauses 11.2 and 11.3 of the Finance Direct Deed, the State will pay the State Construction Contribution Actual Amount specified in the relevant State Construction Contribution Notice into the Construction Proceeds Account on or before the State Construction Contribution Payment Date.
- (b) **(Application of State Construction Contributions):** Project Co must ensure that all amounts withdrawn from the Construction Proceeds Account, are only applied to pay:
 - (1) Project Costs, excluding:
 - (A) the funding of any debt service reserve account earlier or in a greater amount than as is reflected in the Financial Model; and
 - (B) principal, interest, prepayment and other fees, charges or hedge break costs under the Finance Documents other than as provided for in the Financial Model,**(SCC Project Costs);** or
 - (2) GST related to SCC Project Costs.

33.5 No set off

Notwithstanding clause 35.8, the State may not set off any amount due and payable to the State under a State Project Document against any State Construction Contribution.

34 State Capital Contribution after Provisional Acceptance

34.1 State Capital Contribution

- (a) **(Consideration):** In consideration for Project Co progressively undertaking the Works and carrying out the D&C Activities, the State agrees to pay the State Capital Contribution in accordance with this clause 34.
- (b) **(State Capital Contribution Conditions):** If each of the State Capital Contribution Conditions is at that time satisfied, the State will, subject to clause



34.3, pay the State Capital Contribution to Project Co on the State Capital Contribution Payment Date in accordance with this clause 34.

- (c) **(State discretion)**: The State may, notwithstanding that the State Capital Contribution Conditions are not at that time satisfied, pay all or any part of the State Capital Contribution to Project Co at any time.

34.2 State Capital Contribution Conditions

The conditions to be satisfied or waived in order for the State Capital Contribution to become payable are that:

- (a) **(Provisional Acceptance)**: Provisional Acceptance has occurred; and
- (b) **(No outstanding Default or Termination Events)**: there is no subsisting Major Default or Default Termination Event,

(together the **State Capital Contribution Conditions**).

34.3 Notices in respect of satisfaction of State Capital Contribution Conditions

- (a) **(Project Co notice)**: Once Project Co considers that it has satisfied all of the State Capital Contribution Conditions that have not otherwise been waived by the State, Project Co must give to the State a notice (**State Capital Contribution Notice**) in the form of a valid Tax Invoice and otherwise in a form reasonably satisfactory to the State that:

- (1) states that Project Co considers that all of the State Capital Contribution Conditions that have not otherwise been waived by the State have been satisfied; and
- (2) sets out details of the account into which the State Capital Contribution is to be deposited and the amount of the State Capital Contribution that Project Co considers it is entitled to be paid.

- (b) **(State notice)**: Within 10 Business Days after receiving a State Capital Contribution Notice the State must give to Project Co either:

- (1) notice that the State agrees that the State Capital Contribution Conditions have been satisfied or waived (**State Capital Contribution Satisfaction Notice**), in which case the State will make payment in accordance with clause 34.1(b); or
- (2) notice that the State does not agree that the State Capital Contribution Conditions have been satisfied or waived and the reasons for the State's determination, in which case Project Co must:
- (A) use its best endeavours to procure the satisfaction of the outstanding State Capital Contribution Conditions; and
- (B) once it considers that the State Capital Contribution Conditions have been satisfied or waived, re-submit its notice to the State under clause 34.3(a),

and this clause 34.3(b) will apply to the re-submitted notice.

34.4 Application of funds

Project Co must apply or procure the application of the State Capital Contribution (including any portion of the State Capital Contribution retained by the State as a Defects



Retention Amount which subsequently becomes payable by the State in accordance with clause 25.1(j)) towards repayment of:

- (a) Actual Debt; and
- (b) [not disclosed]

34A State Maintenance Phase Contribution

34A.1 State Maintenance Phase Contribution

- (a) The State may, subject to this clause 34A and in accordance with the Receivables Purchase Deed, elect to pay the State Maintenance Phase Contribution to Finance Co and Project Co:
 - (1) on the last day of an Interest Period ending between 3 to 5 years after the Original Date for Final Acceptance; and
 - (2) in order to reduce Project Debt to [not disclosed].
- (b) The State Maintenance Phase Contribution is comprised of the Receivables Refund Payment and the Contribution Payment.
- (c) The Receivables Refund Payment is to be paid to Finance Co to repurchase the SMPC Receivables on the SMPC Payment Date.
- (d) The Contribution Payment is to be paid to Project Co on the SMPC Payment Date in consideration for performing the Services.

34A.2 Notices in relation to the State Maintenance Phase Contribution

- (a) If the State wishes to exercise its discretion to pay the State Maintenance Phase Contribution pursuant to clause 34A.1(a), the State must give Project Co and Finance Co a written notice at least 60 Business Days in advance of the forecast SMPC Payment Date stating the forecast SMPC Payment Date (the **SMPC State Notice**).
- (b) Notwithstanding clause 54.5, within 25 Business Days of receipt of the SMPC State Notice, Project Co must submit to the State for approval in accordance with the Review Procedures a notice, in the form of a draft Tax Invoice, which includes:
 - (1) a draft Financial Model updated in accordance with the SMPC Adjustment Protocol to reflect:
 - (A) the State Maintenance Phase Contribution, Receivables Refund Payment and Contribution Payment; and
 - (B) Project Debt of [not disclosed].
 - (2) a draft Licence Fee Payment Schedule updated to reflect the draft Financial Model submitted pursuant to clause 34A.2(b)(1);
 - (3) a draft Payment Schedule (including the Base Case Floating Rate Debt) updated to reflect the draft Financial Model submitted pursuant to clause 34A.2(b)(1);
 - (4) details of any changes required to the Project Documents as a result of changes to the work sheets in the draft Financial Model identified as the 'Model Output Schedule';

- (5) the amount of the Receivables Refund Payment;
- (6) the amount of the Contribution Payment;
- (7) the amount of the State Maintenance Phase Contribution; and
- (8) the date for payment of the State Maintenance Phase Contribution which is:
 - (A) the last day of an Interest Period ending between 3 to 5 years after the Original Date for Final Acceptance; and
 - (B) at least 35 Business Days after the date of that SMPC Project Co Notice,

(SMPC Payment Date),

(the SMPC Project Co Notice).
- (c) Following approval by the State of a SMPC Project Co Notice in accordance with clause 34A.2(b):
 - (1) Project Co must promptly:
 - (A) provide a final Tax Invoice which reflects the approved SMPC Project Co Notice; and
 - (B) amend the Financial Model, the Licence Fee Payment Schedule and the Payment Schedule accordingly;
 - (2) as soon as practicable, the parties will prepare conformed copies of the Project Documents incorporating relevant data derived from the 'Model Output Schedule' provided with the approved SMPC Project Co Notice;
 - (3) the State will pay the State Maintenance Phase Contribution on the SMPC Payment Date (provided that, prior to approval of a SMPC Project Co Notice, on request by the State, Project Co must amend the SMPC Project Co Notice to reflect a SMPC Payment Date requested by the State, on the condition that the requested SMPC Payment Date satisfies the requirements of clause 34A.2(b)(8)(A) and clause 34A.2(b)(8)(B); and
 - (4) any conformed Project Documents prepared in accordance with 34A.2(c)(2) will be effective from the SMPC Payment Date.

34A.3 Application of funds

Project Co must apply or procure the application of the State Maintenance Phase Contribution towards repayment of Actual Debt.

35 Payments and Abatements

35.1 Quarterly Service Payments

- (a) **(Quarterly Service Payments):** The State will pay Project Co the Quarterly Service Payments:
 - (1) calculated in accordance with the Payment Schedule and this Agreement; and



- (2) in arrears,
during the period from the Date of Provisional Acceptance to the Expiry Date.
- (b) **(Other payments):** Other than the Quarterly Service Payments, the State will pay any payment that is due and payable to Project Co, and Project Co will pay any payment that is due and payable to the State, at the time specified in this Agreement or the relevant State Project Documents for the particular payment.
- (c) **(Time for payment):** If no time is specified for the payment of the relevant amount in accordance with clause 35.1(b), the payment will be made within 20 Business Days of a demand being made after the occurrence of the circumstance giving rise to the Liability.

35.2 Abatement

- (a) **(Basis of calculation of Quarterly Service Payments):** Each Quarterly Service Fee under the Payment Schedule has been calculated on the basis that during the relevant Quarter:
 - (1) each component of the Services has been fully performed in accordance with the Services Specification and this Agreement; and
 - (2) there are no Service Failures.
- (b) **(Abatement):** Each Quarterly Service Payment payable to Project Co may be reduced in accordance with the Abatement Regime.
- (c) **(Deduction of abatement liability):** If a Quarterly Service Payment may be reduced in accordance with 35.2(b), but that amount is not deducted at all or in full from the Quarterly Service Payment for that Quarter, the State may deduct the amount from any subsequent Quarterly Service Payment.

35.3 Abatement as only monetary compensation

- (a) **(Effect on other rights):** Subject to clauses 35.3(c) and 35.9(h), reduction of the Quarterly Service Payments by the application of the Abatement Regime will be the only monetary compensation payable by Project Co to the State for Service Failures.
- (b) **(Sole remedy for delay):** Subject to clauses 21 and 35.3(c), the State and its Associates' sole financial remedy and monetary compensation for a delay by Project Co in achieving Provisional Acceptance by the Date for Provisional Acceptance is limited to:
 - (1) delay by the State in paying the State Contribution that would otherwise have been payable;
 - (2) delay by the State in paying a Quarterly Service Payment that would otherwise have been payable; and
 - (3) the State not being required to pay a Quarterly Service Payment that would otherwise have been payable,(as applicable).
- (c) **(Claims by the State):** Clauses 21.3(c), 35.3(a), 35.3(b), 60.4(e) and 61.3(e) does not limit or exclude:
 - (1) Project Co's Liability to the State:
 - (A) under clause 6.13 for an Unplanned Rail Disruption;



- (B) under clause 21.3(a) to pay Liquidated Damages in respect of future Critical Interface Milestones (PPP Responsible);
 - (C) under clause 25.1(i) for any cost or expenses incurred by the State in engaging a party to rectify a Defect under clause 25.1(i)(5);
 - (D) under clause 41.4(a), on exercise of the State's step-in rights in connection with a Service Failure; or
 - (E) to indemnify the State or any of its Associates under clause 42.9 to the extent that the State has not already been fully compensated for any such Liability by the amount of any Abatement under clause 35.2(b);
- (2) the State's rights under clause 32 or Project Co's obligation to repair and rebuild the Relevant Infrastructure under clause 42.3;
 - (3) the State's or any of its Associate's entitlement to a Claim under this Agreement or at Law in respect of:
 - (A) any third party damage; or
 - (B) any personal injury or death,for which Project Co or any of its Associates are liable;
 - (4) the State's or any of its Associate's entitlement to recover any costs or expenses incurred by the State as a consequence of exercising its rights under clauses 41, 44 and 45;
 - (5) the State's rights under this Agreement or any other State Project Document other than for monetary compensation in respect of the event that caused or contributed to the Service Failure, to the extent that the State has not already been fully compensated for any such Liability by the amount of any Abatement under clause 35.2(b);
 - (6) any Termination Payment; or
 - (7) any other right under this Agreement or at Law in relation to any non-monetary compensation.

35.4 Quarterly Service Payments

- (a) **(Payment Claims):** Within 5 Business Days after the date Project Co delivers the Quarterly Performance Report for a Quarter, Project Co must prepare and provide to the State a Payment Claim for the Quarterly Service Payment for that Quarter, calculated in accordance with the Payment Schedule, and any other amounts then due and payable by the State or by Project Co in accordance with this Agreement.
- (b) **(Payment Statement):** The State will, within the later of:
 - (1) 5 Business Days after receipt by the State of a Payment Claim; and
 - (2) 8 Business Days after receipt by the State of the relevant Quarterly Performance Report,

provide to Project Co a statement (**Payment Statement**) stating the amount payable to or by Project Co (which may be more or less than the amount set out in the Payment Claim) and the reasons for any difference in the amount in the Payment Claim.



- (c) **(No Payment Claim):** If Project Co does not issue a Payment Claim or Quarterly Performance Report the State may still issue a Payment Statement setting out the amount payable to or by Project Co.
- (d) **(Tax Invoice):** Without limiting Project Co's right to dispute the amount for payment stated in the Payment Statement, Project Co will provide to the State a Tax Invoice in connection with any supplies the subject of the Payment Statement for the amount stated in the Payment Statement within 3 Business Days of receipt of the Payment Statement.
- (e) **(Timing of payment):** Subject to clause 35.8, payment of the amount stated to be payable to or by Project Co in the Payment Statement will be made by the State to Project Co or by Project Co to the State (as the case may be) within 15 Business Days of receipt of the Tax Invoice provided in accordance with clause 35.4(d).
- (f) **(Payment not evidence of proper performance):** The payment of Quarterly Service Payments by the State to Project Co and the issuing of any Payment Statement is not evidence that the Services have been carried out by Project Co in accordance with the Final Acceptance Schedule or the Services Specification (as relevant), or an admission of Liability, and is only to be taken as payment on account.
- (g) **(Correction of previous Payment Statement):** The State:
 - (1) may, in any Payment Statement, correct any error in any previous Payment Statement issued by the State; and
 - (2) must, in any Payment Statement, correct any error in any previous Payment Statement issued by the State where it is subsequently agreed or determined that an Abatement has been made in respect of an incident for which the State is not entitled to make any such Abatement under the Payment Schedule.

35.5 Floating Rate Component Invoices

- (a) **(Floating Rate Component):** The Floating Rate Component will be payable with effect from the first Interest Period from the FRC Commencement Date.
- (b) **(Notice):** Within 5 Business Days of each Floating Rate Component being able to be calculated, Project Co must provide a notice to the State setting out the amount of the Floating Rate Component for the Interest Period to which the Floating Rate Component relates.
- (c) **(Invoice):** Within 5 Business Days of receipt of a notice given in accordance with 35.5(b), either:
 - (1) the State must provide a Floating Rate Component Invoice to Project Co (if the Floating Rate Component is negative); or
 - (2) Project Co must provide a Floating Rate Component Invoice to the State (if the Floating Rate Component is positive),for the amount of the Floating Rate Component.
- (d) **(Timing of payment):** Project Co or the State (as the case may be) must pay the amount of a Floating Rate Component Invoice on or before the last day of the relevant Interest Period.



35.6 Interest

- (a) **(Interest):** Subject to clause 35.6(b), if a party fails to pay any amount payable by that party to the other party within the time required in accordance with this Agreement, then it must pay interest on that amount:
- (1) from the date on which payment was due and payable until the date on which payment is made;
 - (2) calculated on daily balances at the Overdue Rate; and
 - (3) capitalised monthly.
- (b) **(Sole entitlement):** The amount specified in this clause 35.6 will be a party's sole entitlement to interest including damages for loss of use of, or the cost of borrowing, money.

35.7 Refund

- (a) **(Agreed overpayments):** If:
- (1) **(payment):** the State pays Project Co, or Project Co pays the State any amount under clause 35.4(e) or otherwise (including any State Contribution); and
 - (2) **(no entitlement):** it is subsequently agreed or determined for any reason that the recipient was not entitled to that payment, in whole or in part, under this Agreement,
- the recipient will immediately refund that payment (or such part as constitutes an overpayment) to the party which made the payment.
- (b) **(Interest on overpayments):** If the State pays any part of a State Contribution to Project Co and it is subsequently agreed or determined for any reason:
- (1) that the State Construction Contribution has not been provided in accordance with clause 33;
 - (2) that the State Capital Contribution has not been provided in accordance with clause 34; or
 - (3) the State has paid Project Co a greater amount than Project Co was entitled to receive,
- Project Co must immediately refund to the State the amount of the overpayment of the State Contribution, plus interest on that amount:
- (4) from the date on which the overpayment was made until the date on which the overpayment was refunded;
 - (5) calculated at the Overdue Rate; and
 - (6) capitalised Monthly.
- (c) **(Sole entitlement to interest):** The amount of interest calculated in accordance with clause 35.7(b) will be the State's sole entitlement to interest including damages for the loss of use of, or the cost of borrowing, the amount of the overpayment of the State Contribution.

35.8 Set-off

- (a) **(State's payments):** Without limiting the State's rights under this Agreement or at Law and as described in the Termination Payments Schedule, the State may



deduct from any moneys due and payable to Project Co under the State Project Documents or otherwise at Law:

- (1) Liquidated Damages which have accrued daily as a debt due to the State under clause 21.3(a);
 - (2) any moneys due and payable by any Group Member to the State; and
 - (3) any Claim that the State may have against any Group Member.
- (b) **(Details of set-off):** The State Representative must provide Project Co with reasonable details of the basis on which it is setting off any amount in accordance with clause 35.8(a).
- (c) **(Project Co's payments):** Project Co must make all payments to the State free from any set-off or counterclaim and without deduction or withholding for or on account of any present or future Tax, unless Project Co is compelled by Law to make such a deduction or withholding.
- (d) **(Deduction or withholding):** If a party is compelled by Law to make a deduction or withholding for the benefit of an Authority, it must:
- (1) remit the deducted or withheld amount to the relevant Authority within the time required by Law; and
 - (2) provide to the other party all information and documentation relating to that deduction or withholding, including any information or documentation required to obtain a credit for or repayment of the deducted or withheld amount from an Authority.

35.9 Performance assessment and reporting

- (a) **(Performance reporting):** Project Co must implement an automated, electronic system which:
- (1) can be accessed online by the State, any Government Parties and any person authorised or permitted by the State;
 - (2) is acceptable to the State;
 - (3) accurately measures and records all Service Failures; and
 - (4) contains the Performance Data.
- (b) **(Assessment of performance):** Project Co must prepare and submit to the State:
- (1) during the FAW Phase:
 - (A) the Monthly FAW Performance Report, within 10 Business Days following the end of each Month; and
 - (B) the Quarterly FAW Performance Report, within 10 Business Days following the end of each Quarter,in accordance with the Final Acceptance Schedule; and
 - (2) during the Maintenance Phase:
 - (A) the Monthly Maintenance Performance Report, within 10 Business Days following the end of each Month; and
 - (B) the Quarterly Maintenance Performance Report, within 10 Business Days following the end of each Quarter,in accordance with the Services Specification.



- (c) **(Certification):** Project Co warrants that the Performance Data will, at all times, be accurate, complete and correct, and must certify that each Performance Report is accurate, complete and correct.
- (d) **(Performance Data):** Project Co must:
- (1) on request by the State, and subject to the State providing reasonable prior notice, give:
 - (A) the State;
 - (B) where directed by the State, Associates of the State; and
 - (C) the Train Franchisee,
access to (for the purposes of review) the Performance Data, the Performance Source Data, the Performance Reports and any information related to the operation of the Abatement Regime:
 - (D) at all reasonable times; and
 - (E) if requested by the State, via an online portal;
 - (2) ensure the availability and continuous integrity of the Performance Data and the Performance Source Data;
 - (3) ensure that all Performance Data and the Performance Source Data is not amended or deleted without the State's consent;
 - (4) ensure that the Performance Data and the Performance Source Data is accurate; and
 - (5) keep a copy of all Performance Data and the Performance Source Data for 7 years.
- (e) **(Other information):** Project Co must, in addition to the other requirements of this clause 35.9, maintain (in electronic format) a log for recording the start and end times and any other information requested by the State from time to time, in connection with all Service Failures in a form that can be audited by the State.
- (f) **(Audit):**
- (1) Project Co must provide to the State, within 30 Business Days of the end of each Financial Year after the Date of Provisional Acceptance, an audit report, prepared by an independent and reputable auditor, who has audited the Performance Data and the Performance Reports for that Financial Year.
 - (2) At any time up to 36 months after the end of any Contract Year, the State may give notice to Project Co requiring an audit of the Performance Data, the Performance Reports or the operation of the Abatement Regime (or any of them) in connection with that Contract Year to verify their accuracy (**Performance Audit Notice**).
 - (3) If the State gives Project Co a Performance Audit Notice:
 - (A) the State will appoint and notify Project Co of a person to conduct the audit (**Performance Auditor**), at the State's cost and on terms reasonably determined by the State; and
 - (B) Project Co must, within a reasonable period, make the Performance Data, the Performance Reports and any information related to the operation of the Abatement Regime available, and provide all necessary assistance (including access to senior management and personnel as

reasonably required by the Performance Auditor), to the Performance Auditor.

- (g) **(Inaccurate Performance Data or Performance Report):** If:
- (1) a report provided to the State under clause 35.9(f)(1);
 - (2) the report prepared by the Performance Auditor under clause 35.9(f)(3); or
 - (3) any review of the Performance Data, the Performance Reports or information related to the Abatement Regime by the State under clause 35.9(f)(2),
- reveals that the Performance Data or a Performance Report is not accurate, Project Co must:
- (4) fix the inaccuracy and reissue the relevant data or report to the State within 20 Business Days;
 - (5) reassess the occurrence or extent of any Service Failure including the Service Failure Abatement originally applied (or which would have been originally applied) in connection with a Service Failure;
 - (6) reduce the amount of the next Payment Claim by any positive amount equal to:
 - (A) the reassessed Service Failure Abatement for the relevant Service Failure(s) calculated under the Payment Schedule,
 less:
 - (B) the Service Failure Abatement for the relevant Service Failure(s) originally applied; and
 - (7) pay the costs of the Performance Auditor, or reimburse the State on demand for any costs of the Performance Auditor paid by the State; and
 - (8) update any processes or practices as required to ensure the prevention of future inaccuracies.
- (h) **(Abatements for Service Failures):** Project Co acknowledges and agrees that:
- (1) it is difficult, and in some instances impossible, to calculate with precision the diminution in value the State may suffer in connection with each Service Failure;
 - (2) notwithstanding clause 35.9(h)(1), the application and escalation of the Abatement Regime associated with each Service Failure reflects a genuine pre-estimate of the diminution in value of the Services to the State in connection with such Service Failures;
 - (3) both the State and Project Co require a formula for calculation of that diminished value that is able to be readily applied without unnecessary administrative costs, delay or difficulty;
 - (4) it is in the economic interests of both parties that a formula of the nature referred to in clause 35.9(h)(3) be adopted and the Abatement Regime meets the requirements of such a formula;
 - (5) the State has entered into this Agreement on the basis of and in reliance on the acknowledgements given by Project Co in this clause 35.9(h);
 - (6) to the extent permissible:

- (A) it excludes and waives any right to the benefit of the application of any legal rule or norm, including under statute, equity and common law, relating to the enforceability of the Abatement Regime or any related provision of this Agreement; and
- (B) it will not raise or allege in any dispute or proceedings (including a Claim by the State under or relating to the Abatement Regime), any argument or defence relating to the enforceability of the Abatement Regime or any related provision of this Agreement; and
- (7) to the extent the Abatement Regime (or any part thereof) is held to be void or unenforceable for any reason, clause 35.3 will not limit Project Co's Liability to the State in accordance with this Agreement or otherwise at Law for any Liability suffered by the State as a consequence of any Service Failures.

35A. Securitisation Structure

35A.1 Final D&C Phase Payment

- (a) **(Consideration):** Subject to clause 35A.1(b), in consideration for Project Co progressively undertaking the Works and carrying out the D&C Activities, the State agrees to pay the Final D&C Phase Price to Project Co (or as Project Co directs) on the Date of Provisional Acceptance.
- (b) **(No obligation):** The State has no obligation to pay the Final D&C Phase Payment unless and to the extent that the State receives the Receivables Purchase Price from Finance Co under the Receivables Purchase Deed.
- (c) **(Adjustments):** The Final D&C Phase Price and the Receivables Purchase Price may only be adjusted:
 - (1) to reflect a Change Compensation Event prior to the Date of Provisional Acceptance in respect of which finance has been provided under the Finance Documents calculated in accordance with the Change Compensation Principles;
 - (2) as contemplated in clause 35A.3, to reflect a Change Saving prior to the Date of Provisional Acceptance where the Quarterly Service Payment is reduced and there is a corresponding reduction in the debt finance procured by Finance Co and reflected in the Securitisation Structure; and
 - (3) by written agreement between the parties prior to the Date of Provisional Acceptance,provided that the Final D&C Phase Price and the Receivables Purchase Price will be of equal amounts and that no adjustment to the Final D&C Phase Price or the Receivables Purchase Price will affect the limitation referred to in clause 35A.1(b).
- (d) **(Set off):** Notwithstanding any other clause of any Project Document, the State may not set off any amount due and payable by Project Co or Finance Co to the State under the Project Documents against the Final D&C Phase Payment.



- (e) **(Right, title and interest):** All right, title and interest in the Works remains with the State at all times.
- (f) **(Adjustment to Licence Fees):** If the Final D&C Phase Price and the Receivables Purchase Price are adjusted in accordance with clause 35A.1(c) or 35A.2, the State and Project Co agree to adjust the Licence Fees payable under the Maintenance Licence as appropriate to reflect the adjustment made to the Final D&C Phase Price and the Receivables Purchase Price in accordance with clause 35A.1(c) or 35A.2 (as the case may be).
- (g) **(Remedy for non-payment):** Notwithstanding anything else in the Project Documents, the State acknowledges that if it does not receive the Receivables Purchase Price in full or at all from Finance Co under the Receivables Purchase Deed, the State's only right or remedy in respect of such non-payment is the relief from payment to, or at the direction of, Project Co of the Final D&C Phase Payment under clause 35A.1(a).

35A.2 Final D&C Phase Modification Payment

- (a) **(Final D&C Phase Modification Payment):** If:
 - (1) a Change Compensation Event occurs prior to the Date of Provisional Acceptance;
 - (2) the State determines that the capital cost component of any payment associated with the Change Compensation Event should be compensated by way of an adjustment to the Quarterly Service Payments in accordance with section 4.2(a) of Part A of the Change Compensation Principles; and
 - (3) the State requests that Project Co (via Finance Co), and Project Co and Finance Co agree to, provide financing for that Change Compensation Event,the State must pay a Final D&C Phase Modification Payment to Project Co on the Purchase Date.
- (b) **(No obligation):** The State has no obligation to pay a Final D&C Phase Modification Payment unless, and its obligation is limited to the extent that, it receives the corresponding Receivables Purchase Price for the relevant Additional Receivables from Finance Co under the Receivables Purchase Deed in relation to that Change Compensation Event.
- (c) **(Set off):** Notwithstanding any other clause of any Project Document, the State may not set-off any amount due and payable by Project Co or Finance Co to the State under the Project Documents against a Final D&C Phase Modification Payment.
- (d) **(Remedy for non-payment):** Notwithstanding anything else in the Project Documents, the State acknowledges that, if the Receivables Purchase Price for the relevant Additional Receivable is not received in full or at all under the Receivables Purchase Deed, the State's only right or remedy in respect of such non-payment is the relief from payment of the corresponding Final D&C Phase Modification Payment under clause 35A.2(a).



35A.3 Reduction in Quarterly Service Payment

Where, due to a Change Saving, the Final D&C Phase Payment and therefore the Quarterly Service Payment is reduced and there is a corresponding reduction in the debt finance procured by Finance Co and reflected in the Securitisation Structure:

- (a) the Final D&C Phase Payment will be reduced by an amount reflecting the capital component of the Change Saving;
- (b) the Receivables Purchase Price payable by Finance Co under the Receivables Purchase Deed will be reduced by the same amount as calculated at clause 35A.3(a); and
- (c) the Licence Fees payable by Project Co under the Maintenance Licence will be adjusted to reflect, as appropriate, the reduction in the Final D&C Phase Payment.

36 Final Acceptance Payment

The State will pay to or at the direction of Project Co, the Final Acceptance Payment within 20 Business Days of the Date of Final Acceptance.

Part E - Commercial Opportunities

37 Commercial opportunities and revenue

37.1 Revenue

- (a) **(Project Co's revenue):** Without limiting clause 52.1(a), Project Co may only derive revenue or other returns from:
- (1) Quarterly Service Payments, State Contributions, Floating Rate Components, any Final Acceptance Payment and any other amounts expressly provided for under the State Project Documents;
 - (2) Permitted Commercial Opportunities;
 - (3) interest or other returns on moneys held by or on behalf of Project Co under this Agreement or any other Project Document; and
 - (4) other activities approved by the State where such approval may be subject to any conditions the State thinks fit, including a State determined share of net revenues.
- (b) **(Obligations in relation to Associates):** Project Co must ensure that, after Contract Close, none of its Associates (excluding consultants and advisers) derive revenue or other returns in connection with the Maintained Assets other than revenue or returns derived:
- (1) directly or indirectly from payments made by Project Co; or
 - (2) under arm's length commercial arrangements approved by the State.

37.2 Grant of rights

- (a) Subject to the terms of this Agreement, the Maintenance Licence and the Commercial Opportunities Lease, Project Co must pursue Permitted Commercial Opportunities in accordance with this clause 37 and the Commercial Opportunities Schedule.
- (b) Project Co must not use, and must ensure that no other person uses, any area within the Commercial Opportunities Leased Areas or the Licensed Maintenance Areas for a commercial purpose other than a Permitted Commercial Opportunity.

37.3 Commercial Opportunities Works

Project Co must:

- (a) provide or procure that any Commercial Opportunities Subcontractor provides everything (including labour, materials and plant) necessary for its Commercial Opportunities Works;
- (b) ensure that any Commercial Opportunities Subcontractor carrying out Commercial Opportunities Works does so:
- (1) diligently;



- (2) in a sound and workmanlike manner, with due care and skill and in accordance with good engineering, construction, maintenance and management practice;
 - (3) to the level required to satisfy any Approval, Law or Standard applicable to:
 - (A) the Commercial Opportunities Works; and
 - (B) the Commercial Opportunities Leased Areas or Licensed Maintenance Areas (as relevant);
 - (4) without:
 - (A) any disruption or risk to the Services or Train Operations;
 - (B) any risk to Users;
 - (5) so as to minimise any disruption and inconvenience to Users,
 - (6) using fixtures, fittings, finishes and materials which are free from defects and of a high quality;
 - (7) in accordance with the designs and finishes submitted to the State for review pursuant to clause 37.5(b)(2); and
 - (8) in a way which does not otherwise adversely affect the passage of Users, or the carrying out of any of the Services or the Train Operations;
- (c) prepare, finalise, implement and update the Commercial Opportunities Management Plan;
- (d) ensure that all Commercial Opportunities Subcontractors carrying out the Commercial Opportunities Works:
- (1) comply with all reasonable requirements of:
 - (A) Project Co and the D&C Subcontractor, when accessing the Construction Site; and
 - (B) the Train Franchisee and the Maintenance Subcontractor when accessing the Maintenance Site;
 - (2) prevent nuisance and noise, dust, air pollution, odour and vibration, and any disturbance to the Site and any adjacent or surrounding areas, at levels which exceed those stipulated under the Commercial Opportunities Management Plan or any such lower levels as may be stipulated by the State (acting reasonably) from time to time;
 - (3) comply with any reasonable request by the State to amend the Commercial Opportunities Management Plan; and
 - (4) keep the Commercial Opportunities Leased Areas and Licensed Maintenance Areas (as relevant) secure and safe and free from all unauthorised access during the carrying out of the Commercial Opportunities Works;
- (e) subject to clause 37.3(b), ensure that:
- (1) the design and construction of all Commercial Opportunities Works (including works undertaken in any common areas forming part of the Commercial Opportunities Leased Areas or Licensed Maintenance Areas (as relevant)):
 - (A) applies design standards and qualities; and



- (B) includes fixtures, fittings, finishes and materials which are new, and free from defects; and

which are of a similar or higher standard or quality to those which apply to the design or construction of the Works, having regard to the nature and use of the Commercial Opportunities Works; and
 - (2) the aesthetics of any Commercial Opportunities Works (including works undertaken in those common areas) complement and are consistent with those of the Works and any other Commercial Opportunities Works;
- (f) design and construct each part and the whole of the Commercial Opportunities Works so that they:
 - (1) meet each of the purposes, functions and requirements set out in, or which can reasonably be inferred from, any requirement in this Agreement;
 - (2) do not impair the undertaking of the Services or Train Operations; and
 - (3) comply with all Laws, Approvals and Standards as at the date on which the relevant Commercial Opportunities Works are performed; and
- (g) not use or occupy any part of the Commercial Opportunities Leased Areas or Licensed Maintenance Areas for the purpose of Permitted Commercial Opportunities until an Occupancy Permit has been issued under the *Building Act 1973* (Vic) in respect of that part of the Commercial Opportunities Leased Areas or Licensed Maintenance Areas.

37.4 State direction

In addition to any other remedies available to the State under clause 44, the State may, after the State provides reasonable prior notice to Project Co, do all things necessary to rectify any failure by Project Co in the performance of its obligations under clauses 37.3(b)(7), 37.3(c) and 37.3(d) and the reasonable costs incurred by the State in doing so will be a debt due and payable by Project Co to the State.

37.5 Principles applicable to Commercial Opportunities Subleases

- (a) **(State Review):**
 - (1) Prior to entering into the first Commercial Opportunities Sublease Project Co must submit to the State for approval:
 - (A) a proposed pro forma Commercial Opportunities Sublease; and
 - (B) a proposed pro forma Commercial Opportunities Direct Deed,

in a form which complies with and is in accordance with the requirements of this Agreement and the Commercial Opportunities Schedule.
 - (2) Subject to clauses 37.5(g) and 37.5(h), prior to entering into a Commercial Opportunities Sublease, Project Co must submit to the State for review in accordance with the Review Procedures:
 - (A) the proposed Commercial Opportunities Sublease; and



- (B) if required by the State pursuant to clause 37.6(k), the proposed Commercial Opportunities Direct Deed,
- in the form of the relevant proforma reviewed by the State under clause 37.5(a), as amended by such other terms agreed between Project Co and the proposed Commercial Opportunities Tenant.
- (b) **(Commercial Opportunities Sublease):** Each Commercial Opportunities Sublease:
- (1) must:
- (A) comply with the requirements of this clause 37;
- (B) preclude or minimise Project Co's exposure to break costs or payments on voluntary termination; and
- (C) provide that the relevant Commercial Opportunities Sublease will terminate upon the termination of this Agreement unless the State provides notice to the Commercial Opportunities Tenant otherwise;
- (2) must include details of:
- (A) the proposed Commercial Opportunities Tenant;
- (B) the proposed use of the relevant part of the Commercial Opportunities Leased Area; and
- (C) the design and construction of the Commercial Opportunities Works to be undertaken, including the intended nature and location of promotional or other advertising signage; and
- (3) must clearly identify in mark up all amendments to the proforma reviewed by the State under clause 37.5(a).
- (c) **(Commercial Opportunities Direct Deed):** Each Commercial Opportunities Direct Deed must provide that the relevant Commercial Opportunities Sublease will terminate upon the termination of this Agreement unless the State provides notice to the Commercial Opportunities Tenant otherwise.
- (d) **(Commercial Opportunities Works):** The State may comment on or reject a Commercial Opportunities Sublease where the proposed Commercial Opportunities Works (including its design) or the quality of the fixtures, fittings, finishes or materials which are to be used in relation to the Commercial Opportunities Sublease are inconsistent with the Commercial Opportunities Guiding Principles or the requirements of clause 37.3.
- (e) **(Commercial Opportunities Tenant):** Subject to clauses 37.5(g) and 37.5(h), each Commercial Opportunities Tenant must have the financial capacity, experience and capability to perform its obligations under the proposed Commercial Opportunities Sublease.
- (f) **(Change of details):** As soon practicable, Project Co must provide to the State for review in accordance with the Review Procedures, any proposed change in relation to a Commercial Opportunities Sublease including changes in relation to:
- (1) the final form of the Commercial Opportunities Sublease;
- (2) the identity of any Commercial Opportunities Tenant;
- (3) any Commercial Opportunities Tenant's proposed use of the relevant part of the Commercial Opportunities Leased Area; or



- (4) the Commercial Opportunities Works to be undertaken by or on behalf of that Commercial Opportunities Tenant.
- (g) **(Tender for Commercial Opportunities Sublease)**: Subject to clause 37.5(i), prior to submitting a Commercial Opportunities Sublease to the State pursuant to 37.5(a)(2) Project Co must:
- (1) notify the State of its intention to tender the Commercial Opportunities Sublease at least 10 Business Days prior to the time of the tender; and
 - (2) invite a tender for each such Commercial Opportunities Sublease from any person nominated in writing by the State before the expiry of that 10 Business Day period, provided that person satisfies the requirement of clause 37.5(e); and
 - (3) on completion of the tender, notify the State of its preferred tenderer (**Project Co Preferred Tenant**).
- (h) **(State Preferred Tenant)**: Subject to clause 37.5(i), following notice of Project Co's preferred tenderer pursuant to clause 37.5(g)(3), the State may:
- (1) reject a Project Co Preferred Tenant; and
 - (2) require Project Co to enter into the relevant Commercial Opportunities Sublease with another tenderer (**State Preferred Tenant**),
- and if:
- (3) the net rent that would have been payable by the Project Co Preferred Tenant; exceeds
 - (4) the net rent payable by the State Preferred Tenant,
- the State will pay the difference to Project Co monthly in advance until expiry of any initial term (including the period of any extension pursuant to the exercise by the State Preferred Tenant of an option to renew under the relevant Commercial Opportunities Sublease) under, or termination of, the Commercial Opportunities Sublease entered into by the State Preferred Tenant.
- (i) **(Initial Commercial Opportunities Tenant)**: Subject to the relevant Commercial Opportunities Sublease and the Commercial Opportunities Direct Deed complying with the requirements of clauses 37.5(a) to 37.5(d), the parties acknowledge and agree that:
- (1) the Initial Commercial Opportunities Tenants are approved by the State for the relevant Initial Permitted Commercial Opportunity; and
 - (2) Project Co's obligations under clauses 37.5(g) and 37.5(h) do not apply in relation to the Initial Commercial Opportunities Tenants.

37.6 Other requirements

Project Co must ensure that:

- (a) **(Commercial Opportunities Schedule)**: each Commercial Opportunities Tenant complies with the requirements of this clause 37 and the Commercial Opportunities Schedule;
- (b) **(Laws, Approvals and Standards)**: the carrying out of any Permitted Commercial Opportunity complies with all Laws, Approvals and Standards;
- (c) **(Services and Accreditation)**: the carrying out of any Permitted Commercial Opportunity does not in any way hinder or obstruct:



- (1) the performance of the Services or Rail Operations; or
 - (2) the ability to obtain, maintain or comply with any Accreditation;
- (d) **(Insurance)**: each Commercial Opportunities Tenant procures and maintains insurance cover for any reasonably insurable risk of loss, damage or liability arising out of, as a result of or in connection with the relevant Permitted Commercial Opportunity and Commercial Opportunities Works, including:
 - (1) public and product liability;
 - (2) professional indemnity (if relevant); and
 - (3) workers' compensation insurance,on such terms and from such insurers as a prudent person in the position of the relevant Commercial Opportunities Tenant would arrange, taking into account:
 - (4) the nature of the relevant Permitted Commercial Opportunity;
 - (5) the terms of the Commercial Opportunities Schedule;
 - (6) the terms of the relevant Commercial Opportunities Sublease;
 - (7) any Commercial Opportunities Works undertaken by the Commercial Opportunities Tenant;
 - (8) the nature of the Maintained Assets;
 - (9) the Services; and
 - (10) the Train Operations within the Maintained Assets.
- (e) **(Make good)**: each part of the Commercial Opportunities Leased Area is made good by Project Co or the relevant Commercial Opportunities Tenant on termination or end of a Commercial Opportunities Sublease;
- (f) **(Trading requirements)**: a sufficient number of Permitted Commercial Opportunities are operational and trading on and from the opening of the Stations to properly accommodate the reasonable requirements of Users;
- (g) **(Tidiness)**: at all times, the Commercial Opportunities Leased Areas are kept clean, tidy and well-presented and are operated to a standard and a level of safety:
 - (1) in keeping with that of the Maintained Assets; and
 - (2) which does not hinder, obstruct, prevent or detrimentally affect:
 - (A) the undertaking of any of the Services or Rail Operations; or
 - (B) the ability to obtain, maintain and comply with any Laws, Approvals or Standards;
- (h) **(OH&S)**: at all times, all operations within the Commercial Opportunities Leased Areas comply with the occupational health and safety requirements of this Agreement and all applicable Standards given the nature of the operations under this Agreement in respect of the Maintained Assets;
- (i) **(Manage waste disposal)**: waste, rubbish, debris, redundant materials and spoil produced by the Permitted Commercial Opportunities and Commercial Opportunities Works:
 - (1) are managed, removed and disposed of in accordance with Best Industry Practices, all relevant Approvals and this Agreement; and
 - (2) not left outside the area occupied by the relevant Permitted Commercial Opportunity or Commercial Opportunities Works;



- (j) **(Delivery of stock and removal of waste):** all deliveries to, waste removal from, and all other servicing of any Permitted Commercial Opportunities are done via designated service delivery routes.
- (k) **(Commercial Opportunities Direct Deed):** if required by the State, it and the relevant Commercial Opportunities Tenant executes a Commercial Opportunities Direct Deed in the form reviewed by the State pursuant to clause 37.5(a)(2).

37.7 Risk

Except as otherwise expressly provided in this Agreement, Project Co:

- (a) assumes all operating risks associated with the Permitted Commercial Opportunities;
- (b) must ensure that all Rates, Taxes outgoings and other expenses which relate to the Permitted Commercial Opportunities and Commercial Opportunities Leased Areas are paid, including with respect to Utilities and waste disposal services; and
- (c) must ensure that all insurances which are required pursuant to clause 37.6 and the Commercial Opportunities Schedule have been obtained and remain in force as required by clause 37.6.

37.8 ATMs and vending machines

The State acknowledges and agrees that Project Co may operate automatic teller machines and vending machines within the Permitted Commercial Opportunities and the Site, consistent with the requirements set out in the PS&TR and the Services Specification provided that:

- (a) the State has given its prior written approval of the location of any vending machine to be located within the Site; and
- (b) the contents of the vending machine comply with the requirements set out in the PS&TR and the Services Specification.

37.9 Advertising

- (a) **(State request for advertising space):** The State may submit a written request to Project Co for advertising space within the Stations for use by the State which must include:
 - (1) a description of the relevant advertising campaign;
 - (2) a statement confirming that the advertising campaign complies with the Advertising Principles;
 - (3) the advertising format type;
 - (4) the relevant Stations;
 - (5) the quantity; and
 - (6) subject to clause 37.9(d), the advertising campaign duration, which:
 - (A) must not commence earlier than one week after submitting the request; and
 - (B) must not be less than one week,
- (an Advertising Request).



- (b) [not disclosed]
- (c) **(Consultation)**: Where the advertising space the subject of an Advertising Request does not satisfy the requirements of clause **Error! Reference source not found.** or clause **Error! Reference source not found.** then, without limiting Project Co's obligations under clause 37.9(b), the parties will meet and attempt to agree amendments to the Advertising Request.
- (d) **(Commencement date)**: The parties agree that the commencement date and the end date for an advertising campaign set out in an Advertising Request will be deemed to be shifted to the day of the week that Project Co's advertising contractor changes over advertising space.
- (e) **(Reasonable assistance)**: Where Project Co is required to provide advertising space for use by the State pursuant to clause 37.9(b), Project Co must:
 - (1) provide all reasonable assistance to the State to implement the relevant advertising campaign within the Stations; and
 - (2) if requested by the State, require that Project Co's advertising contractor prints, produces, installs or implements (in each case as applicable) the advertising campaign on the best contractual terms provided to Project Co or its Associates at that time for those services.
- (f) **(Project Co advertising contractor arrangements)**: The parties acknowledge and agree, for the purposes of clause 37.9(e), that it is likely that Project Co's advertising contractor will impose reasonable conditions on Project Co in respect of the use and handling of certain devices and equipment (including equipment which displays digital media) which will be installed in the Stations for the purpose of displaying advertising in the Stations.

Part F - Change in Circumstances

38 Modifications

38.1 Modification Orders

- (a) **(Directing a Modification):** At any time, whether or not it has issued a Modification Request, the State may direct Project Co to undertake a Modification by issuing a Modification Order.
- (b) **(Mandatory Modification Orders):** Notwithstanding this clause 38.1, and without limiting the State's rights under clauses 38.4(b)(3) and 38.4(b)(4), the State must issue a Modification Order for:
- (1) a Change in Mandatory Requirements referred to in clauses 38.7(a)(1), 38.7(a)(3) and 38.7(a)(4);
 - (2) the omission of part of the Relevant Infrastructure from the Project pursuant to clause 42.6(a);
 - (3) subject to clause 38.8, a JCC Modification or determination pursuant to clause 38.8(e);
 - (4) repairing or rebuilding the Relevant Infrastructure as the result of loss or damage caused by a Day 1 Uninsurable Risk or Uninsurable Risk in accordance with clause 43.17(a)(1); and
 - (5) anything else which is expressly deemed to be a Modification in accordance with this Agreement,
- provided Project Co has otherwise complied with the obligations in this Agreement relevant to the Modification.
- (c) **(No compliance if breach of Accreditation):** Notwithstanding any other provision of this Agreement, Project Co will not be required to comply with a Modification Order to the extent that the Modification Order would result in Project Co or its Associates being in breach of their relevant Accreditation referred to in clause 9.4 or result in Project Co or its Associates causing a Rail Franchisee to breach its Accreditation.
- (d) **(Contents of Modification Order):** A Modification Order issued by the State must include the terms on which the Modification is required to be undertaken and completed including:
- (1) the amount payable for the Modification, calculated in accordance with the Change Compensation Principles;
 - (2) the time for completion of the Modification (including whether the Modification is required to be completed prior to Acceptance);
 - (3) during the D&C Phase, if:
 - (A) the Modification will cause activities on the critical path contained in the then current D&C Program to be delayed (other than to the extent that the Modification will cause delay to Critical Interface Milestones only); and
 - (B) the delay is beyond the reasonable control of Project Co and its Associates,



an extension to the Date for Provisional Acceptance, any relevant Critical Interface Milestone Date or any relevant Progress Milestone Date by the period of time the Modification will cause Project Co to be delayed in achieving Provisional Acceptance, relevant Critical Interface Milestone, or relevant Progress Milestone;

- (4) any amendments required to the Relevant Infrastructure, Project Activities, State Project Documents or Project Co Material, any variations to any existing Approval or any new Approval to take into account the Modification; and
- (5) any amendments to any relevant warranty given by Project Co under this Agreement,

which will be determined having regard to the procedures in this clause 38 or otherwise by the State acting reasonably.

- (e) **(Project Co to implement):** If the State issues a Modification Order, subject to clause 38.1(c), then:
 - (1) Project Co must undertake the Modification on the terms set out in the Modification Order;
 - (2) Project Co will be entitled to payment of the amount for undertaking the Modification set out in the Modification Order;
 - (3) the State Project Documents will be deemed to be amended in accordance with the relevant amendments set out in the Modification Order; and
 - (4) Project Co must carry out its obligations under the State Project Documents as amended in accordance with clause 38.1(e)(3),unless and until determined otherwise as a result of Project Co exercising its rights under clause 38.1(f).
- (f) **(Dispute):** If Project Co disputes all or any part of the State's Modification Order, Project Co must, in the interim, continue to undertake the Modification (including the works or services the subject matter of any dispute) in accordance with the Modification Order, but may refer the matter for resolution under clauses 46 to 47.
- (g) **(No implementation without order):** Subject to clauses 38.7 and 38.8, Project Co must not begin any work or incur any cost, and will not have any entitlement to make any Claim in respect of a Modification unless:
 - (1) the State is obliged to issue a Modification Order in accordance with this clause 38 and has not done so; or
 - (2) a Modification Order has been issued by the State in accordance with this clause 38.

38.2 Modification Request by the State

The State may, at any time, request Project Co to submit a Modification Quote for a proposed Modification which includes details of:

- (a) **(Modification):** the proposed Modification;
- (b) **(preferred financing):** the State's preferred financing for the proposed Modification in accordance with the Change Compensation Principles (where the Modification will result in an increase in the cost of the Relevant Infrastructure or the performance of the Project Activities);



- (c) **(Additional Support)**: any Additional Support required from a Rail Franchisee in relation to the Modification; and
- (d) **(other information)**: any specific information that the State requires Project Co to include in the Modification Quote or that may be relevant to the preparation of the Modification Quote,

(Modification Request).

38.3 Modification Quote

- (a) **(Submission of Modification Quote)**: Unless the State withdraws a Modification Request, Project Co must, subject to clause 38.5, submit a Modification Quote to the State:
 - (1) within 20 Business Days of receipt of the Modification Request; or
 - (2) at such later time as agreed by the State (acting reasonably, taking into account the size and complexity of the proposed Modification, the information included in the Modification Quote and Project Co's obligation, if any, to obtain the comments of the Train Franchisee under the Train Franchisee Cooperation Agreement).
- (b) **(Contents of Modification Quote)**: The Modification Quote must be prepared in accordance with the Change Compensation Principles and must:
 - (1) include details of the amount Project Co claims is payable by or to Project Co for undertaking the Modification calculated in accordance with the Change Compensation Principles (**Modification Estimate**);
 - (2) include details of the basis (if applicable) on which Project Co or Finance Co would be prepared to fund or to procure the funding of the whole or part of the Modification calculated and the cost difference if Project Co or Finance Co, rather than the State, were to fund the Modification (with such basis to be consistent with the Change Compensation Principles);
 - (3) during the D&C Phase, if:
 - (A) the Modification will cause activities on the critical path contained in the then current D&C Program to be delayed (other than to the extent that the Modification will cause delay to Critical Interface Milestones only); and
 - (B) the delay is beyond the reasonable control of Project Co and its Associates,include details of any extension requested to the Date for Provisional Acceptance, any relevant Critical Interface Milestone Date, or any relevant Progress Milestone Date required as a consequence of the Modification;
 - (4) if during the Maintenance Phase, include details of the timeframe within which the Modification will be completed;
 - (5) include details of any amendments to the Relevant Infrastructure, the Project Activities, State Project Documents, Project Co Material, any variations to any existing Approval or any new Approval required for the Modification;
 - (6) include details of any amendments to any relevant warranty given by Project Co under this Agreement;



- (7) be prepared so as to avoid or minimise:
 - (A) any delay in achieving Provisional Acceptance by the Date for Provisional Acceptance;
 - (B) any delay in achieving a Critical Interface Milestone by the relevant Critical Interface Milestone Date;
 - (C) any delay in achieving a Progress Milestone by the relevant Progress Milestone Date;
 - (D) any adverse safety impacts of the Modification on people, the Project Activities and the Relevant Infrastructure; and
 - (E) during the Maintenance Phase, disruption to Users of the Maintained Assets;
- (8) attach any comments provided by the Train Franchisee where the relevant Modification relates to or may give rise to:
 - (A) a change to the PS&TR or the Services Specification; or
 - (B) a Change in Law in relation to rail safety,and the attaching of those comments will be sufficient to satisfy Project Co's obligations to incorporate those comments in the relevant Modification Order in the first instance; and
- (9) include any other relevant information requested by the State,
(Modification Quote).
- (c) **(Further details)**: The State must provide Project Co with further details reasonably requested by Project Co to assist Project Co in preparing its Modification Quote.

38.4 State Response to Modification Quote

- (a) **(Information and changes)**: Once it has provided the State with the Modification Quote, Project Co must:
 - (1) provide the State with any additional information the State notifies that it reasonably requires to assess the Modification Quote; and
 - (2) make any changes to the Modification Quote which the State requests and with which it agrees.
- (b) **(State response to Modification Quote)**: Within 20 Business Days after receiving a Modification Quote or such longer period as the State reasonably requires given:
 - (1) the size and complexity of the proposed Modification; and
 - (2) the need for any additional information not included in the Modification Quote and the time when it is subsequently provided,the State must:
 - (3) issue a Modification Order, in accordance with clause 38.1(d), to Project Co directing Project Co to carry out the Modification on the terms set out in the Modification Quote or as reasonably determined by the State, and Project Co must implement the Modification in accordance with the Modification Order and clauses 38.1(e) to 38.1(g) will apply;



- (4) notify Project Co that it does not agree with the Modification Quote, including supporting documentation and reasons; or
 - (5) except in the case of a mandatory Modification set out in clause 38.1(b), notify Project Co that it does not wish to proceed with the proposed Modification.
- (c) **(Further information):** If the State:
- (1) requests changes to the Modification Quote in accordance with clause 38.4(a); or
 - (2) notifies Project Co that it does not agree with the Modification Quote in accordance with clause 38.4(b)(4),

Project Co must provide the State with an updated Modification Quote, addressing the issues raised by the State, within 10 Business Days of the receipt of the State's notice and this clause 38.4 will apply again to that Modification Quote.

38.5 Omission by State

The State may:

- (a) **(Omitted Works):** propose a Modification that decreases, omits, deletes or removes work from the scope of the Project Activities conducted on, over or under the area of, the Project Area (**Omitted Works**); and
- (b) **(Omitted Works contractor):** if the State issues a Modification Order in respect of the Omitted Works, undertake the Omitted Works itself or engage another person to undertake the Omitted Works on its behalf in which case Project Co must comply with the obligations in clauses 13.9 in relation to Interface Parties.

38.6 Project Co Proposed Modifications

- (a) **(Project Co may propose a Modification):** Project Co may, for its own convenience, request the State to direct a Modification by submitting a notice to the State which must:
 - (1) include the information set out in clause 38.1(d);
 - (2) include the reason(s) for the proposed Modification;
 - (3) identify the changes (if any) required to the Relevant Infrastructure, the Project Activities, the State Project Documents, the Project Co Material, any variations to any existing Approvals, or any additional Approvals to accommodate the proposed Modification;
 - (4) contain a statement confirming the extent (if any) to which the proposed Modification will affect:
 - (A) any Interface Parties; and
 - (B) the Standards, warranties and other obligations with which Project Co is required to comply under this Agreement; and
 - (5) contain any other information and supporting documentation the State requests,

(Modification Proposal).
- (b) **(State may approve or reject):** Upon receipt of a Modification Proposal:



- (1) clause 38.4 will apply as if the Modification Proposal was a Modification Quote; and
 - (2) the State will be under no obligation to issue a Modification Order for the convenience of, or to assist, Project Co except as set out in clause 38.1(b).
- (c) **(Implementation):** If the State issues a Modification Order as a result of a Modification Proposal, Project Co must undertake the Modification on the basis of the Modification Order and clauses 38.1(e) to 38.1(g) will apply.
- (d) **(Share of Savings):** The State and Project Co will each be entitled to 50% of the benefit of any Savings arising from implementation of a Modification as a result of a Modification Proposal calculated in accordance with the Change Compensation Principles.

38.7 Modifications required as a result of Change in Mandatory Requirements

- (a) **(Change in Mandatory Requirements):** Where:
- (1) a Project Specific Change in Law occurs after Contract Close;
 - (2) a Change in Policy occurs after Contract Close;
 - (3) subject to clause 38.7(a)(4), a General Change in Law occurs, on or after the Date of Final Acceptance; or
 - (4) a General Change in Law occurs in respect of disability discrimination or rail safety on or after Contract Close,
- that will have an effect on the cost of carrying out the Project Activities (in each case a **Change in Mandatory Requirements**), Project Co must, as a condition precedent to Project Co's entitlement to a Modification in respect of a Change in Mandatory Requirements:
- (5) provide a notice to the State within 5 Business Days of becoming aware of the Change in Mandatory Requirements; and
 - (6) provide a Modification Quote to the State in accordance with clause 38.3(b) within 20 Business Days of becoming aware of the Change in Mandatory Requirements (or such longer period as Project Co reasonably requires having regard to the size and nature of the required Change in Mandatory Requirements).
- (b) **(State's response):** Provided Project Co has complied with clause 38.7(a), the State must issue a Modification Order in accordance with clause 38.4 in respect of the Change in Mandatory Requirements, unless the Change in Mandatory Requirements is a Change in Policy (in which case clause 38.7(c) applies).
- (c) **(Change in Policy):** If the Change in Mandatory Requirements is a Change in Policy, the State must either issue a Modification Order in accordance with clause 38.4 for the Change in Policy or direct Project Co that it is not required to comply with the Change in Policy.
- (d) **(State may request):** If the State considers that a Change in Mandatory Requirements has occurred and Project Co has not provided a Modification Quote in accordance with clause 38.7(a)(6), the State may direct Project Co to submit a Modification Quote in respect of that Change in Mandatory Requirements in which case clauses 38.7(a) to 38.7(c) will apply.
- (e) **(Implementation):** If the State issues a Modification Order under clause 38.4(b)(3) as a result of a Modification Quote provided under this clause 38.7,



Project Co must undertake the Modification in accordance with the Modification Order and clause 38.1 will apply.

38.8 Modifications required as a result of a JCC Modification

- (a) **(JCC Modification):** Where Project Co believes that it is entitled to or may become entitled to a JCC Modification, Project Co must, as a condition precedent to Project Co's entitlement to a Modification:
 - (1) provide a notice to the State, the Joint Coordination Committee, the JCC Systems Integration Team, and any relevant JCC Subcommittee at least 10 Business Days prior to the potential decision of the Joint Coordination Committee, the JCC Systems Integration Team or JCC Subcommittee (as relevant) which may give rise to the JCC Modification; and
 - (2) provide a Modification Quote in relation to the JCC Modification to the State in accordance with clause 38.3(b) at least 5 Business Days prior to the potential decision of the Joint Coordination Committee, the JCC Systems Integration Team or JCC Subcommittee (as relevant) which may give rise to the JCC Modification.
- (b) **(Modification Quote):** Clause 38.4 will apply to each Modification Quote provided under clause 38.8(a)(2).
- (c) **(Modification Order):** Subject to clauses 38.8(a) and 38.8(b), the State will issue a Modification Order in respect of the Project Activities affected by a JCC Modification.
- (d) **(Implementation):** If the State issues a Modification Order under clause 38.4(b)(3) as a result of a Modification Quote provided under clause 38.8(a)(2), Project Co must undertake the Modification on the basis of the Modification Order and clauses 38.1(e) to 38.1(g) will apply.
- (e) **(State determination):** If:
 - (1) Project Co has fully complied with the requirements of clause 38.8(a) in respect of a potential JCC Modification which is not approved by the Joint Coordination Committee (as applicable); and
 - (2) MMRA subsequently makes a determination under clause 8(e) of the Framework Coordination and Interface Principles to proceed with that potential JCC Modification or any other Modification,

the State must issue a Modification Order in respect of the Project Activities affected by the determination, and the requirements of clauses 38.8(b) to 38.8(d) will apply as if the determination was a JCC Modification.

38.8A Contamination Modification Event

- (a) **(Contamination Modification Event):** Where a Contamination Modification Event occurs that will have an effect on the cost of carrying out the Project Activities, Project Co must, as a condition precedent to Project Co's entitlement to a Modification:
 - (1) provide a notice to the State within 5 Business Days of becoming aware of the Contamination Modification Event which includes:
 - (A) a copy of any applicable Contamination Notice;
 - (B) the information required by clause 7.4(b); and



- (C) in the case of a Groundwater Contamination Modification Event, details of the provisions in the Initial Contaminated Groundwater Methodology applicable to the Contamination; and
 - (2) provide a Modification Quote to the State in accordance with clause 38.3(b) within 20 Business Days of becoming aware of the Contamination Modification Event.
- (b) **(Modification Quote):** Clause 38.4 will apply to each Modification Quote provided under clause 38.8A(a)(2).
- (c) **(Modification Order):** Subject to clauses 38.8A(a) and 38.8A(b), the State will issue a Modification Order in respect of the Contamination Modification Event.
- (d) **(Implementation):** If the State issues a Modification Order under clause 38.4(b)(3) as a result of a Modification Quote provided under clause 38.8A(a)(2), Project Co must undertake the Modification on the basis of the Modification Order and, subject to clause 38.8A(e), clauses 38.1(e) to 38.1(g) will apply.
- (e) **(Project Co liability for Groundwater Contamination Modification Events):** In respect of a Groundwater Contamination Modification Event, Project Co will not be entitled to payment (other than the payment of Prolongation Costs and Financing Delay Costs) for undertaking the Modification set out in a Modification Order issued pursuant to clause 38.8A(c) except to the extent amounts payable to Project Co in respect of all Groundwater Contamination Modification Events (other than the payment of Prolongation Costs and Financing Delay Costs) would otherwise exceed [not disclosed] in aggregate.

38.9 Directions giving rise to Modification

- (a) **(State direction):** Without limiting clause 42.11(a)(2)(D), if a direction by the State, other than a Modification Order, constitutes or involves a Modification, Project Co must, as a condition precedent to making a Claim against the State in connection with the direction:
 - (1) within 5 Business Days of receiving the direction, give notice to the State that it considers the direction constitutes or involves a Modification; and
 - (2) within 10 Business Days after giving the notice under clause 38.9(a)(1), submit a Modification Quote to the State in respect of the direction.
- (b) **(Confirmation):** Within 5 Business Days of the State receiving a Modification Quote from Project Co under clause 38.9(a)(2) the State may elect to:
 - (1) confirm that the direction is in fact a Modification and either:
 - (A) issue a Modification Order; or
 - (B) vary the direction and confirm that the varied direction is a Modification by issuing a Modification Order,in which case Project Co must undertake the Modification on the basis of the Modification Order and clauses 38.1(e) to 38.1(g) will apply.
 - (2) withdraw the direction, in which case Project Co must not comply with the direction; or
 - (3) inform Project Co that, in the State's view, the direction is not a Modification in which case Project Co must, subject to clause 5.1(b),



comply with the direction but may refer the matter to dispute resolution in accordance with clauses 46 to 47.

- (c) **(No commencement)**: Project Co must not commence any work the subject of a direction which it believes constitutes a Modification until the State has acted under clause 38.9(b).
- (d) **(Notice Required)**: Subject to clause 38.9(i), but without limiting clause 42.11(a)(2)(D), if Project Co:
 - (1) receives comments from the Train Franchisee under clause 6.5 of the Train Franchisee Cooperation Agreement which:
 - (A) are required for the Train Franchisee's compliance with the Train Franchisee Arrangements; or
 - (B) are otherwise reasonable comments which are not also provided under clause 6.5(c)(2) or 6.5(c)(3) of the Train Franchisee Cooperation Agreement;
 - (2) receives comments or conditions on, or a rejection of a Submitted Document that is also a Train Franchisee Input Document on the grounds that implementing or proceeding with the Project Activities on the basis of that Submitted Document would prevent the Train Franchisee from being able to comply with the Train Franchisee Arrangements;
 - (3) receives comments from the Tram Franchisee under clause 6.5 of the Tram Franchisee Cooperation Agreement which:
 - (A) are required for the Tram Franchisee's compliance with the Tram Franchisee Arrangements; or
 - (B) are otherwise reasonable comments which are not also provided under clause 6.5(c)(2) or 6.5(c)(3) of the Tram Franchisee Cooperation Agreement; or
 - (4) receives comments or conditions on, or a rejection of a Submitted Document that is also a Tram Franchisee Input Document on the grounds that implementing or proceeding with the Project Activities on the basis of that Submitted Document would prevent the Tram Franchisee from being able to comply with the Tram Franchisee Arrangements.,

(Franchisee Non-Compliance Comments) and Project Co considers (acting reasonably) that amending that Submitted Document to reflect the Franchisee Non-Compliance Comments may constitute or involve a Modification, Project Co must, as a condition precedent to making a Claim against the State in connection with the amendment of the Submitted Document to reflect the Franchisee Non-Compliance Comments:

 - (5) within 5 Business Days after receiving the Franchisee Non-Compliance Comments, give notice to the State to that effect; and
 - (6) within 10 Business Days after giving the notice under clause 38.9(d)(5), submit a Modification Quote to the State in respect of the amendment to the Submitted Document to reflect the Franchisee Non-Compliance Comments.
- (e) **(Confirmation)**: Within 5 Business Days of the State receiving a Modification Quote from Project Co under clause 38.9(d)(6) the State must elect to:
 - (1) confirm that the amendment of the Submitted Document to reflect the Franchisee Non-Compliance Comments constitutes or involves a



Modification to the Relevant Infrastructure or the Project Activities and issue a Modification Order;

- (2) direct Project Co that it is not required to amend the Submitted Document to reflect the Franchisee Non-Compliance Comments; or
- (3) inform Project Co that, in the State's view, the amendment of the Submitted Document to reflect the Franchisee Non-Compliance Comments does not constitute or involve a Modification to the Relevant Infrastructure or the Project Activities in which case Project Co must, subject to clause 5.1(b), comply with the direction but may refer the matter to dispute resolution in accordance with clauses 46 to 47,

and if the State fails to make an election within the 5 Business Day period, and it is subsequently:

- (4) confirmed by the State; or
- (5) determined pursuant to dispute resolution in accordance with clauses 46 to 47,

that the amendment of the Submitted Document to reflect the Franchisee Non-Compliance Comments constitutes or involves a Modification, Project Co will be entitled to amend its Modification Quote for the number of days in the period:

- (6) commencing on the date on which the 5 Business Day period under this clause 38.9(e) expires; and
- (7) ending on the earlier of the date:
 - (A) on which the State provides confirmation to Project Co pursuant to clause 38.9(e)(4); or
 - (B) of a determination pursuant to clause 38.9(e)(5).

- (f) **(No commencement):** Except to the extent otherwise agreed between the parties, Project Co must not proceed to amend the Submitted Document to reflect the Franchisee Non-Compliance Comments which it believes constitutes a Modification until the State has acted under clause 38.9(e).
- (g) **(Safety Duties):** Notwithstanding any other provision of this clause 38.9 and for the avoidance of doubt, Project Co will not be entitled to make any Claim against the State, and the State will not be liable for any Claim under clause 38 to the extent that the comments, or conditions or rejection of a Submitted Document that is also a Train Franchisee Input Document or a Tram Franchisee Input Document (as applicable) relates to or is in connection with:
 - (1) the Train Franchisee's Safety Duties under the Rail Safety National Law; or
 - (2) to the extent the Train Franchisee Input Document relates to any rail safety management arrangements proposed by Project Co or a Key Subcontractor in relation to the Returned Existing Network Works or any Maintenance Services comprising Railway Operations, ensuring compliance with the requirements of the Train Franchisee's Train Accreditation and the Train Franchisee Rail Safety Requirements;
 - (3) the Tram Franchisee's Safety Duties under the Tram Safety Act; or
 - (4) to the extent the Tram Franchisee Input Document relates to any rail safety management arrangements proposed by Project Co or a Key Subcontractor in relation to the Tram Works, ensuring compliance with



the requirements of the Tram Franchisee's Tram Accreditation and the Tram Franchisee Rail Safety Requirements.

- (h) **(Franchisee Cooperation Agreement):** If the State directs in accordance with clause 38.9(e)(2), the State will have no Claim against Project Co in connection with the relevant Rail Franchisee's inability to comply with the relevant Rail Franchisee Arrangements as the result of the direction.
- (i) **(Conditions for Project Co Claim):** Project Co will not be entitled to make any Claim against the State in respect of a direction that gives rise to a Modification unless it has given a notice under clause 38.9(a) and otherwise complies with this clause 38.9.
- (j) **(Franchisee Accreditation):** Subject to clause 38.7(a)(4), Project Co will not be entitled to make any Claim against the State in respect of a Modification to the extent the Modification is required:
 - (1) to ensure that Project Co or its Associates do not cause the Train Franchisee to breach its Accreditation or the Rail Safety National Law;
 - (2) to ensure that Project Co or its Associates do not cause the Tram Franchisee to breach its Accreditation or the Tram Safety Act; or
 - (3) as a consequence of a direction given by:
 - (A) the Train Franchisee Interface Party under clause 11 of the Train Franchisee Cooperation Agreement; or
 - (B) the Tram Franchisee Interface Party under clause 9 of the Tram Franchisee Cooperation Agreement.
- (k) **(Limits):** If Project Co considers that a direction given by:
 - (1) the Train Franchisee Interface Party under clause 11 of the Train Franchisee Cooperation Agreement; or
 - (2) the Tram Franchisee Interface Party under clause 9 of the Tram Franchisee Cooperation Agreement,would give rise to Modification, Project Co may Claim a Modification provided that the Modification Quote must not include any Claim for:
 - (3) costs or any amounts under the Change Compensation Principles;
 - (4) an extension of time to the Date for Provisional Acceptance, a Critical Interface Milestone Date, or a Progress Milestone Date; or
 - (5) relief from Abatement,and the State's Liability and Project Co's entitlement in connection with any Relief Event will be reduced to the extent caused or contributed to by the Modification, but this clause will not operate to exclude Project Co's entitlements in respect of a Modification which arises independently from a direction given by the Train Franchisee Interface Party or the Tram Franchisee Interface Party.

38.10 Entitlement to Financing Delay Costs and Prolongation Costs

To the extent that Project Co is granted an extension of time under clause 38.1(d) (except where the extension of time relates only to Critical Interface Milestone Dates) Project Co will be entitled to payment of:

- (a) Financing Delay Costs; and
- (b) Prolongation Costs,



each as calculated in accordance with the Change Compensation Principles.

38.11 Payment for Quotes

If Project Co is required to prepare a Modification Quote in accordance with clause 38.3, 38.7, 38.8 or 38.9(d) and prior to preparing a Modification Quote, Project Co:

- (a) notifies the State that it needs to engage a third party other than any Consortium Member or Related Body Corporate of a Consortium Member to provide design, engineering or quantity surveying or other services reasonably required to be outsourced to assist in the preparation of the Modification Quote; and
- (b) provides details of the third party costs that will be incurred in preparing the Modification Quote calculated in accordance with the Change Compensation Principles,

then in respect of a Modification Quote, the State will either:

- (c) agree to pay Project Co the cost to prepare the Modification Quote calculated in accordance with the Change Compensation Principles, in which case Project Co must proceed to prepare the Modification Quote; or
- (d) withdraw the Modification Request.

38.12 Minor Modifications

- (a) **(Minor Modification Proposal):** Without limiting the State's rights under clause 38.1 or 38.2, if the State considers that a Modification which the State intends to propose is a Minor Modification, then it may issue to Project Co a Minor Modification Proposal setting out:
 - (1) an outline of the proposed Modification;
 - (2) an explanation of why the proposed Modification is a Minor Modification; and
 - (3) the streamlined process proposed by the State for agreeing the terms governing, and then implementing, the proposed Modification,**(Minor Modification Proposal).**
- (b) **(Project Co's notice):** Within 7 Business Days after receipt of a Minor Modification Proposal, Project Co must provide the State with a notice which:
 - (1) accepts the Minor Modification Proposal; or
 - (2) sets out the reasonable amendments to the Minor Modification Proposal required by Project Co.
- (c) **(Implementation):** The State and Project Co will agree the terms governing, and then implement, the Minor Modification on the following basis:
 - (1) the terms of the Minor Modification Proposal where a Minor Modification Proposal is accepted under clause 38.12(b)(1); or
 - (2) the terms agreed between the State and Project Co, as recorded in an amended Minor Modification Proposal where Project Co seeks to amend a Minor Modification Proposal under clause 38.12(b)(2).
- (d) **(Failure to agree):** If the State and Project Co fail to agree in accordance with clause 38.12(c)(2), the State may:
 - (1) issue a Modification Order under clause 38.1; or



- (2) issue a Modification Request under clause 38.2,
in order to implement the Modification.

38.13 Pre-Agreed Modifications

- (a) **(Pre-Agreed Modification Request):** The State may, at any time on or before the relevant Pre-Agreed Modification Election Date, request that Project Co submit a Modification Quote for the delivery of a Pre-Agreed Modification (**Pre-Agreed Modification Request**).
- (b) **(Modification Quote):** Project Co must prepare a Modification Quote in accordance with clause 38.3 in respect to a Pre-Agreed Modification Request received from the State under clause 38.13(a), provided that the Modification Quote must reflect the Pre-Agreed Modification Cost or Pre-Agreed Modification Saving (as applicable) for that Pre-Agreed Modification.

39 Technological Improvements and Obsolescence

39.1 Maintenance of technology

As part of maintaining and repairing the Maintained Assets during the Maintenance Phase, Project Co must maintain a level of technology in its systems that:

- (a) **(Best Maintenance Practices):** is consistent with Best Maintenance Practices; and
- (b) **(efficiency with public transport):** ensures the Maintained Assets are able to operate effectively and efficiently with the remainder of Victoria's public transport network from time to time.

39.2 Research and Development of Technological Improvements

Project Co must:

- (a) keep abreast of relevant advances in technology; and
- (b) undertake or procure access to research and development,
with the aim of readily identifying Technological Improvements.

39.3 Implementing Technological Improvements

- (a) **(Project Co notice of Technological Improvement):** Where Project Co becomes aware of a Technological Improvement, Project Co must notify the State:
- (1) of that Technological Improvement; and
- (2) whether Project Co intends to implement the Technological Improvement.
- (b) **(Project Co option to implement Technological Improvement):** If Project Co intends to implement a Technological Improvement as notified to the State under clause 39.3(a)(2) which is not an Assumed Technological Improvement, Project Co may submit a Modification Proposal in relation to the Technological Improvement.



- (c) **(State option to implement Technological Improvement):**
- (1) If Project Co:
- (A) fails to notify the State of a Technological Improvement under clause 39.3(a)(1); or
- (B) notifies the State it does not intend to implement a Technological Improvement under clause 39.3(b),
- the State may:
- (C) if it considers a Technological Improvement is not an Assumed Technological Improvement, issue a Modification Request or Modification Order for the implementation of that Technological Improvement; or
- (D) during the Maintenance Phase, if it considers that the Technological Improvement is an Assumed Technological Improvement, direct Project Co to provide the State with Project Co's planned program for implementing the Assumed Technological Improvement.
- (2) If Project Co receives a direction from the State under clause 39.3(c)(1)(D), Project Co must:
- (A) as soon as practicable after receiving the direction, notify the State of Project Co's planned program for implementing the Assumed Technological Improvement; and
- (B) after providing the notice in clause 39.3(c)(2)(A), proceed to implement the Assumed Technological Improvement.
- (d) **(Share of Savings):** The State and Project Co will each be entitled to 50% of the benefit of any Savings arising from implementation of a Technological Improvement which is not an Assumed Technological Improvement in accordance with clause 39.3(b) or 39.3(c)(1)(C) calculated in accordance with the Change Compensation Principles.

39.4 Obsolescence

- (a) **(Project Co notice of Technological Improvement):** Where Project Co becomes aware of any Obsolescence or potential Obsolescence, Project Co must:
- (1) notify the State of that Obsolescence; and
- (2) replace the item which is Obsolete with an equivalent item that is not Obsolete which ensures that Project Co will be able to continue to meet its obligations under this Agreement.
- (b) **(No excuse):** An Obsolescence or impending Obsolescence shall not excuse any failure by Project Co to comply with its obligations under this Agreement.
- (c) **(Accreditation):** Project Co must not replace any Obsolete part, component, consumable or software until any changes to a Train Franchisee's Accreditation as a result of the replacement have been made and accepted by the Regulator.



40 Refinancings

40.1 Consent to Refinancing

- (a) **(State consent):** Project Co must not enter into or implement any Refinancing without the prior consent of the State, which will (subject to clause 40.3(c)):
- (1) not be unreasonably withheld or delayed; and
 - (2) be given or withheld within 20 Business Days of receipt of the information provided by Project Co in accordance with clause 40.2(a)(2).
- (b) **(State may withhold consent):** Without limitation, it will be reasonable for the State to withhold such consent if:
- (1) the effect of the Refinancing would be an increase or adverse change in the profile of the risks or liabilities of the State under any State Project Document without adequate compensation to the State;
 - (2) the terms and conditions of the proposed Refinancing are not on arm's length commercial terms or are not in accordance with market practice at the time (including demonstrating to the reasonable satisfaction of the State that any fees or similar payments proposed to be made to any financial advisor are reasonably determined, on arm's length commercial terms and in line with current market practice);
 - (3) the terms and conditions of the proposed Refinancing (taken as a whole) are materially more onerous or disadvantageous to a Project Entity than the terms and conditions under the existing Finance Documents and the State considers that entering into the proposed Refinancing will adversely impact on a Project Entity's ability to carry out its obligations under the Project Documents;
 - (4) the financial indebtedness assumed in accordance with the proposed Refinancing will not be used solely for the Project;
 - (5) the matters referred to in clause 40.4 have not been agreed or otherwise determined; or
 - (6) in connection with the proposed Refinancing, Project Co has failed to comply with this clause 40.
- (c) **(Change in timing):** Where Project Co requests a change in the timing or manner of payment of a State Contribution, the State may give, withhold or delay its consent to such a request in its absolute discretion.

40.2 Details of Refinancing

- (a) **(Provision of details):** Project Co must:
- (1) at least 60 Business Days prior to any proposed Refinancing, consult with the State to outline the proposed refinancing strategy and to alert the State to any changes that may have a material impact on the ability of a Project Entity to meet its obligations under the Project Documents;
 - (2) promptly (and at least 30 Business Days prior to the proposed Refinancing) provide the State with full details of any proposed Refinancing consistent with the requirements of clause 54, including:



- (A) a copy of the proposed financial model relating to it;
 - (B) the basis for the assumptions used in the proposed financial model;
 - (C) a comparison with any refinancing assumed within the Financial Model;
 - (D) a certificate in terms acceptable to the State from the auditors of such financial model;
 - (E) details of any revised Base Case Floating Rate Debt, Base Case Floating Rate Interest Payment or Base Case Interest Rate for the purposes of the Payment Schedule; and
 - (F) a copy of any draft document proposed to be entered into in connection with such Refinancing; and
 - (3) at least 10 Business Days prior to the proposed Refinancing, provide the State with final execution drafts of each document proposed to be entered into in connection with such Refinancing.
- (b) **(Material changes):** The proposed financial model provided under clause 40.2(a):
- (1) must show, amongst other things:
 - (A) the material changes to Project Co's or Finance Co's obligations to its Financiers;
 - (B) projected Distributions; and
 - (C) any anticipated Refinancing Gain; and
 - (2) may include adjustments to any relevant assumptions necessary to reflect the committed financing terms under the proposed Refinancing. Any assumptions relating to the period beyond the term of the proposed Refinancing must be the same as those in the Financial Model.
- (c) **(State's unrestricted rights):** Project Co agrees that the State, whether before, during or at any time after any Refinancing, will have unrestricted rights of audit of any financial model and documentation, including formulae and calculations used in connection with the Refinancing.

40.3 Refinancing documents

- (a) **(Consent):** Project Co must not execute or amend any document in connection with a Refinancing (including by amending a Finance Document) without the prior consent of the State (such consent not to be unreasonably withheld or delayed if the relevant document is on substantially the same terms as provided to the State under clause 40.2(a)(3) and does not give rise to any grounds to withhold consent under clause 40.1(b)).
- (b) **(Documents to be delivered to State):** Project Co must, within 5 Business Days of the execution of any document in connection with a Refinancing (including by amending, restating or replacing any Finance Document), deliver to the State a certified true copy of that document.
- (c) **(Execution of Refinancing documents):** Project Co must not execute any Refinancing until any new Financiers have executed or agreed to be bound by a deed with the State substantially in the form of the Finance Direct Deed and any existing Financiers who will cease to be Financiers as a consequence of the



Refinancing have executed any document reasonably requested by the State to terminate their rights in accordance with the then current Finance Direct Deed.

40.4 Calculation and Sharing of Refinancing Gains

(a) **(Refinancing Gain calculation):** A Refinancing Gain arises where a Refinancing Event results in $A - B$ being greater than zero, where 'A' and 'B' are defined as:

A = the present value of the Distributions projected (using the Financial Model updated to reflect only the terms of the proposed Refinancing and in no other respect) at the proposed date of, and after executing, the Refinancing Event, discounted using the Equity IRR as set out or determined in the Financial Close Financial Model; and

B = the present value of the Distributions projected (using the Financial Model) immediately prior to the Refinancing Event (without taking into account the effect of the proposed Refinancing Event), discounted using the Equity IRR as set out or determined in the Financial Close Financial Model,

(Refinancing Gain).

(b) **(State's entitlement to Refinancing Gains):** The State is entitled to:

- (1) 100% of any Refinancing Gain arising from a change in the manner or timing of payment of a State Contribution; and
- (2) 50% of the benefit of any other Refinancing Gain, but only to the extent that after payment of such amount to the State under this clause 40.4, the Equity IRR over the Term as reflected in the Financial Model (taking into account the proposed Refinancing Event and all previous Refinancing Events) would be at or above the Equity IRR over the Term as reflected in the Financial Close Financial Model (without taking into account the effect of any Refinancing Events),

(State Share of Refinancing Gain).

(c) **(State's election on Refinancing Gain):** The State may, after taking into account the nature and timing of the Refinancing Gain, elect to receive the State Share of Refinancing Gain as:

- (1) a direct payment (but only to the extent a Project Entity receives its Refinancing Gain as a direct payment or to the extent that a Project Entity receives a lump sum payment or is able to pay all or part of the Refinancing Gain to another party as a lump sum payment as a result of the Refinancing (for example upon a release of funds from a reserve account));
- (2) a reduction in the Quarterly Service Payment; or
- (3) a combination of the above.

(d) **(Negotiate in good faith):** The State and Project Co must negotiate in good faith to agree the manner and timing of payments of the State Share of Refinancing Gain on the basis that the State is to be paid the State Share of Refinancing Gain no later than a Project Entity receives its share of the Refinancing Gain and subject to the State's rights under clause 40.4(c).

(e) **(Information):** Project Co must provide the State with all information concerning the Refinancing, projected Distributions and the Project that the State may



require to calculate the Refinancing Gain and the State Share of Refinancing Gain.

- (f) **(Changes to Floating Rate Component):** Upon a Refinancing, Project Co may request an amendment to the Payment Schedule, such that the net present cost to the State of paying the Floating Rate Component for the remainder of the Term based upon the Base Case Floating Rate Debt, Base Case Floating Rate Interest Payment or Base Case Interest Rate as at Financial Close is equal to the net present cost to the State of paying the Floating Rate Component for the remainder of the Term based upon the revised Payment Schedule. In each case, the net present cost will be calculated at the time of the Refinancing, based upon prevailing market rates, using generally accepted market conventions and Treasury Corporation of Victoria swap margin pricing methodologies consistent with the Financial Close Adjustment Protocol. For the avoidance of doubt this may include an upfront payment to or from the State as mutually agreed.

40.5 Costs Relating to a Refinancing

- (a) **(Project Co to pay State's reasonable costs):** Project Co must reimburse the State its costs (including legal and financial advisers' fees) reasonably incurred in relation to considering or consenting to a Refinancing.
- (b) **(Estimate of costs):** For the purposes of calculating any Refinancing Gain under this clause 40, Project Co may include in the Financial Model as a cost associated with the Refinancing an estimate of those costs of the State referred to in clause 40.5(a) to which the State has agreed.

40A [not disclosed]

[not disclosed]

41 Step-in by the State

41.1 Right of Step-In

- (a) **(State Step-In):** If:
- (1) subject to clause 41.1(b) but without limiting the State's other rights under this clause 41.1(a), a Major Default occurs;
 - (2) a State Cure Notice has been issued by the D&C Subcontractor or the Maintenance Subcontractor in accordance with the D&C Direct Deed or Maintenance Direct Deed (as the case may be);
 - (3) a Default Termination Event occurs;
 - (4) under clause 32.5(b), the State elects to undertake and complete any Handover Refurbishment Works which have not been completed by Project Co to the satisfaction of the Handover Reviewer;
 - (5) an Incident occurs;
 - (6) the State is entitled by Law to act to discharge a statutory power or duty; or



- (7) any Project Activities are suspended following the occurrence of a Force Majeure Event,
(each a **Step-In Event**) the State may elect to do any or all of the following:
 - (8) assume total or partial management and control of the whole or any part of the Relevant Infrastructure or the Project Activities;
 - (9) access those parts of the Site and the Relevant Infrastructure to which Project Co has access or is entitled to occupy; and
 - (10) take such other steps as are necessary in the reasonable opinion of the State for it to carry out the Project Activities and minimise the effect of the relevant Step-In Event.
- (b) (**State not to exercise**): The State must not exercise its rights under clause 41.1(a)(1) on the occurrence of a Major Default for so long as Project Co is complying with its obligations under clause 44 in respect of that Major Default.

41.2 Notice

The State may exercise its rights under clause 41.1 without prior notice to Project Co but the State must, if it is reasonably practicable to do so, give prior notice and in any event must, as soon as practicable, provide notice to Project Co that it is exercising those rights.

41.3 Consequences of the State exercising its rights

- (a) (**Suspension of State rights**): During the exercise of the State's rights under clause 41.1, Project Co's rights and obligations under this Agreement are suspended to the extent necessary to permit the State to exercise those rights.
- (b) (**No other limitation**): Except to the extent that Project Co's obligations are suspended under clause 41.3(a), the exercise by the State of its rights under clause 41.1 (or the cessation of such exercise) will not affect any other right of Project Co under this Agreement or any other State Project Document.
- (c) (**No effect on State's rights**): The exercise by the State of its rights under clause 41.1 (or the cessation of such exercise) will not affect any other right of the State under this Agreement or any other State Project Document.

41.4 Payments

- (a) (**Project Co must compensate the State**): Where the State has exercised its rights under clause 41.1 as a consequence of any of the Step-In Events:
 - (1) contemplated by clauses 41.1(a)(1), 41.1(a)(2), 41.1(a)(3) or 41.1(a)(4); or
 - (2) contemplated by clauses 41.1(a)(5), 41.1(a)(6) or 41.1(a)(7), to the extent that the Step-In Event was caused by a failure by Project Co to carry out the Project Activities in accordance with and to the standard specified in the PS&TR or by any other breach by Project Co of this Agreement or any fraudulent, reckless, unlawful, negligent or malicious act or omission of Project Co or any of its Associates;then:
 - (3) prior to Provisional Acceptance, any Liability suffered or incurred by the State in connection with the exercise by the State of its step-in rights will be a debt due and payable by Project Co to the State; and



- (4) from the Date of Provisional Acceptance to the Expiry Date:
 - (A) the State will continue to pay the Quarterly Service Payment to Project Co in connection with the Services or other obligations affected by the Step-In Event;
 - (B) the Quarterly Service Payment will be subject to Abatement (including in connection with those Step-In Events); and
 - (C) any Liability suffered or incurred by the State in connection with the exercise by the State of its step-in rights (where the Liability is in excess of the Quarterly Service Payments that are abated in accordance with clause 41.4(a)(4)(B) will be a debt due and payable by Project Co to the State.
- (b) **(Reduction in Quarterly Service Payments):** Where the State has exercised its rights under clause 41.1 as a consequence of any Step-In Events in clauses 41.1(a)(5) or 41.1(a)(6) and the Step-In Event was not the result of a failure by Project Co to carry out the Project Activities in accordance with and to the standard specified in the PS&TR or Services Specification or by any other breach by Project Co of this Agreement or any fraudulent, reckless, unlawful, negligent or malicious act or omission of Project Co or any of its Associates:
 - (1) if during the D&C Phase, the exercise of the State's rights will be deemed to be a Compensable Extension Event; and
 - (2) if during the period from the Date of Provisional Acceptance to the Expiry Date, the State will:
 - (A) pay the Quarterly Service Payment to Project Co in connection with the Services or other obligations affected by the Step-In Event;
 - (B) the Quarterly Service Payment will not be subject to Abatement in connection with those Step-In Events; and
 - (C) the State will deduct from the Quarterly Service Payment the amounts of any recurrent and other costs of Project Co which are not being incurred by Project Co during the period because the obligation to perform the relevant Services has been suspended for the period that the State exercises its rights under clause 41.1.
- (c) **(Payments during Force Majeure Event):** Where the State has exercised its rights under clause 41.1 as a consequence of a Step-In Event in clause 41.1(a)(7) which was not the result of any act or omission of Project Co or any of its Associates, clause 26.19 or 31.5 (as applicable) will apply.

41.5 Project Co to assist the State

Project Co must:

- (a) **(access to be granted):** grant such access rights as are necessary and take all action that is necessarily required by the State to assist the State in exercising its rights under clause 41.1 including:
 - (1) upon request by the State:
 - (A) doing all things to allow the State to exercise its rights under clause 41.1 for or on behalf of Project Co or a Key Subcontractor who is Accredited in respect of any activities

- to be performed by the State under clause 41.1 for which Accreditation is required by Law; or
- (B) assisting the State (or its nominee) in liaising with the Regulator or Safety Director (as applicable) in relation to Accreditation issues and, if necessary, assisting the State (or its nominee) to obtain any Accreditation required by Law in respect of the activities to be performed by the State under clause 41.1; and
- (2) using commercially reasonable endeavours to sublicense to the State or assist the State to obtain direct rights to any Third Party Intellectual Property Rights;
- (b) **(sufficient resources)**: provide sufficient resources, including personnel, to assist the State in exercising its rights under clause 41.1; and
- (c) **(not to hinder)**: not do anything to hinder, disrupt or prevent the State in exercising its rights under clause 41.1.

41.6 Undertake Project consistent with this Agreement

When exercising its rights under clauses 30.6, 31.6 or 41.1, the State must use its reasonable endeavours to carry out the Project Activities in a manner which is consistent with the State Project Documents, but taking into account the State's statutory rights and the circumstances that prompted the State to exercise those rights.

41.7 Limits on State liability during step-in

Project Co acknowledges and agrees that:

- (a) **(no obligation to remedy)**: the State is not obliged to remedy any breach, or to overcome or mitigate any risk or risk consequences, in connection with which the State exercises its rights under clause 41.1; and
- (b) **(no claim)**: except as provided in clause 41.4, Project Co will not be entitled to make any Claim against the State, arising in connection with the exercise by the State of its rights under clause 41.1 except to the extent caused by:
- (1) breach by the State of any State Project Document; or
- (2) a fraudulent, reckless, unlawful or malicious act or omission of the State or any of its Associates in the course of exercising its rights under clause 41.1.

41.8 Cessation of step-in rights

- (a) **(State may cease)**: The State may, at any time, cease to exercise its rights in accordance with this clause 41 upon giving 5 Business Days' notice to Project Co.
- (b) **(State must cease)**: Subject to clause 41.8(a), the State must cease to exercise its rights in accordance with this clause 41 where the State has exercised its rights as a consequence of any of the Step-In Events under:
- (1) clause 41.1(a)(1) or 41.1(a)(3), when the Major Default or Default Termination Event (as the case may be) has been cured;
- (2) clause 41.1(a)(2), when the D&C Subcontractor or the Maintenance Subcontractor notifies the State that default under the relevant Subcontract has been cured; or



- (3) clause 41.1(a)(4), 41.1(a)(5), 41.1(a)(6) or 41.1(a)(7), when the relevant event ceases and its consequences have been remedied.
- (c) **(Project Co to recommence)**: If the State ceases to exercise its rights under clause 41.1 in accordance with this clause 41.8:
 - (1) Project Co must immediately recommence carrying out any obligations suspended due to the exercise by the State of those rights; and
 - (2) the State must give reasonable assistance to Project Co to ensure that this process of transition is effected as smoothly as possible.
- (d) **(Project Co's expense)**: Where the State has exercised its rights under clause 41.1 as a consequence of any of the Step-In Events:
 - (1) contemplated by clause 41.1(a)(1), clause 41.1(a)(2) or clause 41.1(a)(3); or
 - (2) contemplated by clause 41.1(a)(4), clause 41.1(a)(5), clause 41.1(a)(6) or clause 41.1(a)(7), to the extent the relevant Step-In Event was the result of an act or omission of Project Co or any of its Associates (other than an act or omission undertaken in accordance with the Project Documents or undertaken lawfully in connection with the performance of the Project Activities),

the assistance given by the State in respect of the process of transition will be at Project Co's expense, which amount shall be a debt due and payable by Project Co to the State on demand.

Part G - Risk, Indemnity and Insurance

42 Risk and Liability

42.1 Risk of loss or damage

Unless otherwise expressly provided in this Agreement, Project Co bears the risk of loss or damage to the Relevant Infrastructure during the Term.

42.2 Notification of Loss and Damage

- (a) **(Project Co Notice):** Project Co must promptly notify the State of any loss or damage to the Relevant Infrastructure including details of the nature and extent of such loss or damage.
- (b) **(State to notify):** Within 60 Business Days of any loss or damage (excluding any minor damage which Project Co is obliged to remedy in accordance with clause 42.5) to the Relevant Infrastructure (or such longer period as the State reasonably requires in order to assess the situation and form its intention), the State must notify Project Co whether it requires Project Co to repair or rebuild the Relevant Infrastructure for which Project Co retains the risk of loss or damage in accordance with clause 42.1.

42.3 Repairing and rebuilding

- (a) **(Obligations to repair and rebuild):** If the State notifies Project Co that it requires Project Co to repair or rebuild the Relevant Infrastructure in accordance with clause 42.2, Project Co must:
 - (1) subject to allowing reasonable time for inspection by insurers, take immediate steps to clear any debris and begin initial repair work;
 - (2) promptly consult with the State and, unless directed by the State to repair or rebuild the Relevant Infrastructure to a different specification, promptly repair or rebuild the Relevant Infrastructure in accordance with the PS&TR, the Services Specification and the other requirements of this Agreement;
 - (3) ensure that the repaired or rebuilt Relevant Infrastructure complies with the requirements of this Agreement;
 - (4) ensure there is minimal disruption to the Relevant Infrastructure and any Services, Train Operations and Users;
 - (5) to the greatest extent possible, continue to comply with its obligations under the Project Documents; and
 - (6) keep the State fully informed of the progress of the repair or rebuilding of the Relevant Infrastructure.
- (b) **(Payment):** Subject to clauses 42.3(c), 42.3(d), 42.3(e), 42.3(f), 42.4 and 42.5, where the State elects to repair or rebuild the Relevant Infrastructure:
 - (1) Project Co must:



- (A) pay for the cost of repairing or rebuilding the Relevant Infrastructure; and
 - (B) apply any amounts deposited into the Insurance Proceeds Account in accordance with clause 43.12 towards the repair or rebuilding of the Relevant Infrastructure; and
 - (2) the State will make available to Project Co the proceeds of any Insurances received by the State for the purpose of repairing or rebuilding the Relevant Infrastructure.
- (c) **(Repair or rebuild to different specification):** If:
 - (1) the State determines that the Relevant Infrastructure is to be repaired or rebuilt on the basis of different specifications to the PS&TR or other requirements of the Agreement; and
 - (2) the incremental cost of repairing or rebuilding to different specifications to the PS&TR or other requirements of the Agreement:
 - (A) exceeds the total capital cost of repairing or rebuilding the Relevant Infrastructure in accordance with the PS&TR or other requirements of the Agreement, the State must issue a Modification Request in respect of the incremental additional cost and delay of repairing or rebuilding the Relevant Infrastructure due to the repair or rebuild being carried out on the basis of different specifications to the PS&TR or other requirements of this Agreement; or
 - (B) will increase or decrease the cost of performing the Services over the remainder of the Term, the amount payable by the State will be adjusted in accordance with the Change Compensation Principles.
- (d) **(State caused):** Subject to clause 42.5, where the loss or damage to the Relevant Infrastructure was caused by:
 - (1) a breach by the State of any State Project Document;
 - (2) a fraudulent, reckless, unlawful or malicious act or omission of the State or any of its Associates when acting in respect of the Project; or
 - (3) subject to Project Co complying with its obligations under clauses 13.9 and 17.2, the State, any of its Associates or any person authorised by the State in carrying out any Proximate State Works,then the State must issue a Modification Request in respect of the repairing or rebuilding of the Relevant Infrastructure.
- (e) **(Compensable Extension Event caused):** Subject to clause 42.5, prior to the Date of Provisional Acceptance, where the loss or damage to the Relevant Infrastructure is caused by:
 - (1) **(Metro Tunnel Package Contractor caused):** a Compensable Extension Event within paragraph 14 of the definition of Compensable Extension Event; or
 - (2) **(Train caused):** a Compensable Extension Event within paragraph 15 of the definition of Compensable Extension Event; orthen Project Co will be entitled to payment of the reasonable costs of any repair or rebuilding of the Relevant Infrastructure calculated in accordance with the Change Compensation Principles.



(f) **(Compensable Intervening Event caused)**: Subject to clause 42.5, during the FAW Phase and the Maintenance Phase, where the loss or damage to the Relevant Infrastructure is caused by:

- (1) **(Train Franchisee Interface Party caused)**: a Compensable Intervening Event within paragraph 10 of the definition of Compensable Intervening Event; or
- (2) **(Train caused)**: a Compensable Intervening Event within paragraph 11 of the definition of Compensable Intervening Event;

then Project Co will be entitled to payment of the reasonable costs of any repair or rebuilding of the Maintained Assets calculated in accordance with the Change Compensation Principles.

42.4 Uninsurable Risk or Day 1 Uninsurable Risk

If the event which gave rise to the loss or damage to the Relevant Infrastructure is an Uninsurable Risk or a Day 1 Uninsurable Risk, then the parties' rights and obligations will be as set out in clauses 43.16 and 43.17.

42.5 Minor damage

If any loss or damage to the Relevant Infrastructure for which the State is liable to pay Project Co is of such a minor nature (when considered item by item and in aggregate) that it can be remedied by Project Co:

- (a) **(usual resources)**: through the use of its site-based resources during normal working hours; and
- (b) **(no adverse effect)**: without adversely affecting the ability of Project Co to carry out the Project Activities,

then Project Co must bear the cost of rectifying such loss or damage.

42.5B [not disclosed]

[not disclosed]

42.6 Consequences of not repairing or rebuilding

If the State notifies Project Co not to repair or rebuild the Relevant Infrastructure the State must:

- (a) **(omission of Relevant Infrastructure)**: subject to clause 42.6(b), omit the relevant part of the Relevant Infrastructure from the Project, in which case that notice will be deemed to be a Modification and the State must issue a Modification Order; or
- (b) **(termination where wholly or substantially destroyed)**: if the Relevant Infrastructure has been wholly destroyed or substantially damaged and the loss or damage was caused by:
 - (1) any act or omission of Project Co or its Associates (other than to the extent permitted authorised or required by a State Project Document, or required to comply with any Law or Standard), including a Major Default (in which case such act or omission will be deemed to be a Default Termination Event) or Default Termination Event, terminate this Agreement for default in accordance with clause 45.4;



- (2) any:
 - (A) breach by the State of any State Project Document;
 - (B) fraudulent, reckless, unlawful or malicious act or omission of the State or any of its Associates; or
 - (C) Compensable Intervening Event or Compensable Extension Event,
voluntarily terminate this Agreement in accordance with clause 45.2;
or
- (3) a Force Majeure Event, Uninsurable Risk or Day 1 Uninsurable Risk, terminate this Agreement for Force Majeure in accordance with clause 45.3; and
- (4) any event not referred to in clauses 42.6(b)(1) to 42.6(b)(3), voluntarily terminate this Agreement in accordance with clause 45.2.

42.7 Damage to third party property

- (a) **(Avoiding interference):** Project Co must not interfere with, obstruct, damage or destroy any property on, in or in the vicinity of the Construction Areas or Maintenance Areas other than in accordance with its obligations under this Agreement.
- (b) **(Project Co to repair or compensate):** If Project Co breaches clause 42.7(a), Project Co must:
 - (1) promptly repair any such obstruction, damage or destruction (unless instructed by the property owner not to do so); and
 - (2) reasonably compensate the affected person for any loss suffered in connection with such interference, obstruction, damage or destruction (where Project Co has a legal liability to do so).
- (c) **(Reduced liability):** Project Co's obligation to compensate a Metro Tunnel Package Contractor under clause 42.7(b) will be reduced to the extent that the Metro Tunnel Package Contractor is entitled to be indemnified under any Insurance required to be effected and maintained under this Agreement.
- (d) [not disclosed]

42.8 Indemnity for Project Co breach

Subject to clause 35.3 and clause 42.8A, Project Co must indemnify the State and its Associates against any Claim or Liability in connection with any breach:

- (a) by Project Co under this Agreement; or
- (b) by Project Co, any of its Associates, or any Group Member under any other Project Document.

42.8A Interface liability

[not disclosed]

42.9 General indemnity

- (a) Project Co must indemnify:

- (1) **(loss or damage to Relevant Infrastructure):** the State and its Associates against any Claim or Liability arising in connection with loss or damage to or of the Relevant Infrastructure;
- (2) **(third party claims and property damage):** the State and its Associates in respect of:
 - (A) loss or damage to or of (whether total or partial) any real or personal property including:
 - (i) property belonging to the State and its Associates that is not Relevant Infrastructure; and
 - (ii) the Returned Assets, after Handback to the State or the applicable Returned Asset Owner;
 - (B) loss of use of (whether total or partial) any real or personal property including:
 - (i) property belonging to the State and its Associates that is not Relevant Infrastructure; and
 - (ii) the Returned Assets, after Handback to the State or the applicable Returned Asset Owner;
 - (C) any injury to, illness or death of, persons; and
 - (D) without limiting clause 42.9(a)(2)(C), any Claims brought against the State or any of its Associates by a third party (other than a Rail Franchisee Interface Party, the CityLink Manager or a Metro Tunnel Package Contractor),

arising in connection with any act or omission of a Group Member or Consortium Member or any of their respective Associates in connection with the Project.
- (b) **(Indemnity doesn't apply):** The indemnity in clause 42.9(a)(2)(D) will not apply to the extent the act or omission is an act or omission of Project Co or any of its Associates which is authorised or permitted under a State Project Document.
- (c) **(Reduced liability):** Project Co's Liability under clause 42.9(a)(2)(A) (to the extent the Liability is for loss of use arising out of the loss or damage) and clause 42.9(a)(2)(B) will be limited to the greater of insurance proceeds:
 - (1) payable to Project Co or any of its Associates under any Insurances for such loss of use in respect of the event or circumstances giving rise to the loss of use; and
 - (2) which would have been payable to Project Co or any of its Associates under any Insurance for such loss of use in respect of the event or circumstances giving rise to the loss of use but for a failure by Project Co or any of its Associates to comply with a Project Document or a failure by Project Co or any of its Associates to comply with the terms of those Insurances.
- (d) **(Progress Milestone limit of liability):** The State's sole and exclusive monetary remedy, and Project Co's liability in respect of failures to achieve Progress Milestones by the relevant Progress Milestone Dates will be nil.

42.10 Release

Project Co releases, and must procure that each of its Associates releases, each of the parties indemnified by Project Co in accordance with clause 42.9 from any Claim or



Liability for loss, damage, death, illness or injury to the extent caused or contributed to by any of the Project Activities or any act or omission of Project Co or any of its Associates in connection with the Project.

42.11 Limits on Project Co liability to indemnify and release

- (a) **(Reduction of liability to indemnify):** Project Co's liability to indemnify or release the State, its Associates, and any Indemnified Persons in accordance with this Agreement will be reduced to the extent that any such Claim or Liability:
- (1) arises solely from the State decision to proceed with the Project; or
 - (2) is caused or contributed to by:
 - (A) any breach by the State of any State Project Document;
 - (B) a fraudulent, reckless, unlawful or malicious act or omission of the State or any of its Associates;
 - (C) an Extension Event or Intervening Event, but only to the extent that Project Co is entitled to relief in connection with the relevant event in accordance with this Agreement; or
 - (D) Project Co complying strictly with a direction from the State Representative (except to the extent that the direction is a direction to comply with a Project Document, is permitted in accordance with a Project Document or was given as a result of a breach of a Project Document by Project Co or its Associates) provided that prior to complying with the direction:
 - (i) Project Co notified the State Representative that, in its opinion, compliance with the direction may directly result in a Claim or Liability that would otherwise be the subject of an indemnity by Project Co to the State; and
 - (ii) notwithstanding having received the notification referred to in clause 42.11(a)(2)(D)(i), the State Representative confirms that Project Co should comply or continue to comply with the direction; or
 - (E) in respect of any Claim or Liability under clause 42.8, a failure by the State to use all reasonable endeavours to mitigate the extent or consequences of that Claim or Liability.
- (b) **(Site Information Report):** For the purposes of this clause 42.11, Site Information Report providers will not be Associates of the State in respect of the Site Information Reports or the contracts pursuant to which those Site Information Reports were prepared.
- (c) **(Indemnity does not apply):** The State acknowledges that nothing in this Agreement imposes an obligation on Project Co to indemnify the State with respect to a failure to achieve Acceptance by the Date for Acceptance.

42.12 Third party claim under indemnity

If a Claim is made by a third party against the State or any of its Associates or an Indemnified Person in respect of which Project Co is required to indemnify in accordance



with this Agreement, to the extent that the State's insurers in connection with such a Claim agree, the State must:

- (a) **(assist in proceedings)**: do all things reasonably required by Project Co in negotiating, defending or otherwise taking action or proceedings in respect of that Claim; and
- (b) **(no settlement)**: not settle that Claim with the claimant without Project Co's involvement in and agreement to any such settlement.

42.13 Continuing obligation

- (a) **(Indemnity continues)**: Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties.
- (b) **(Expense not necessary)**: It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity under this Agreement.

42.14 Responsibilities as if owner

Project Co acknowledges and agrees that it has responsibilities to third parties in connection with persons, property and other aspects of the Project under the other provisions of this Agreement which may be the same as it would have if it held the freehold title to the Site.

42.15 Liability for Indirect or Consequential Loss

- (a) **(No liability of State)**: Subject to clause 42.15(b):
 - (1) the State and its Associates do not have any Liability to Project Co or any of its Associates; and
 - (2) Project Co and its Associates are not entitled to make any Claim, for any Indirect or Consequential Loss incurred or sustained by Project Co or any of its Associates:
 - (3) as a consequence of any act or omission of the State, and its Associates (whether negligent or otherwise); or
 - (4) due to any breach of a State Project Document by the State.
- (b) **(Exceptions to no State Liability)**: The exclusion of Liability of the State and its Associates under clause 42.15(a) does not apply to:
 - (1) Liability arising from criminal acts or fraud on the part of the State or its Associates;
 - (2) Liability arising from wilful misconduct under any State Project Document on the part of the State or its Associates;
 - (3) Liability arising from:
 - (A) any third party property loss or damage; or;
 - (B) any injury to, disease of, or death of a person;
 - (4) the extent that the parties cannot limit or exclude any Liability at Law;
 - (5) the extent that the State Project Documents expressly confer an entitlement on Project Co to:
 - (A) any State Contribution payable under clauses 33 and 34 of this Agreement;



- (B) any Quarterly Services Payment due and payable to Project Co by the State under clause 35.4; and
 - (C) any Final Acceptance Payment under clause 36;
 - (D) any amounts payable by the State in respect of Floating Rate Component Invoices under clause 35.5;
 - (E) State contribution of insurance proceeds received by the State for the repair or rebuilding of Relevant Infrastructure under clause 42.3(b)(2)); and
 - (F) payment of surplus funds from the Insurance Proceeds Account under clause 43.12(e);
- (6) any amounts due and payable to Project Co by the State in accordance with the Change Compensation Principles (including Lost Commercial Opportunities Revenue) or the Termination Payments Schedule;
- (7) Project Co's right to any share of Savings arising from implementation of a Technological Improvement under clause 39; and
- (8) Liability arising from any Uninsurable Risk, Day 1 Uninsurable Risk, clause 43.19 or clause 43.20 for which the State Project Documents require the State to indemnify Project Co.
- (c) **(No liability of Project Co):** Subject to clause 42.15(d):
- (1) Project Co and its Associates do not have any Liability to the State or its Associates; and
 - (2) the State or its Associates are not entitled to make any Claim, for any Indirect or Consequential Loss incurred or sustained by the State or its Associates:
 - (3) as a consequence of any act or omission of Project Co or any of its Associates (whether negligent or otherwise); or
 - (4) due to any breach of a Project Document by Project Co or any of its Associates.
- (d) **(Exceptions to no Project Co Liability):** The exclusion of Liability of Project Co and its Associates under clause 42.15(c) does not apply to:
- (1) any such Liability of Project Co or its Associates to the extent that, in respect of the event or circumstances giving rise to the Liability:
 - (A) insurance proceeds are:
 - (i) payable to Project Co or any of its Associates in respect of any Project Co Procured Insurance; or
 - (ii) paid to Project Co or any of its Associates in respect of any State Procured Insurance.
 - (B) insurance proceeds would have been payable under any Project Co Procured Insurances but for the inclusion of clause 42.15(a);
 - (C) insurance proceeds would have been payable under any Insurances but for:
 - (i) a failure by Project Co to comply with this Agreement;

- (ii) a failure by Project Co or any of its Associates to claim under the relevant Insurances; or
 - (iii) a failure by Project Co or any of its Associates to comply with the terms of the relevant Insurance (including the claims procedure under the relevant insurance),
- up to the limits of indemnity required by this Agreement;
- (2) Liability for which Project Co recovers pursuant to an indemnity under any of the Project Documents;
 - (3) Liability arising from criminal acts, fraud or wilful misconduct on the part of Project Co or any of its Associates;
 - (4) Liability arising from:
 - (A) any third party property loss or damage; or
 - (B) any injury to, disease or death of a person, caused or contributed by Project Co or any of its Associates;
 - (5) the extent that the parties cannot limit or exclude any Liability at Law;
 - (6) Liability for any deductible or any additional cost or expense payable under any Insurances with respect to, connected with, caused by or arising out of any breach of this Agreement or the relevant Insurances by Project Co or any of its Associates;
 - (7) any statutory fine or civil penalty arising from any breach of Law by Project Co or any of its Associates;
 - (8) any amounts payable or Liability incurred by the State (including to a third party) in rectifying a Defect in the Relevant Infrastructure or Returned Works, or otherwise in reinstating, repairing or rectifying any of the Relevant Infrastructure or Returned Works, for which Project Co is liable under this Agreement that is not a Liability described in paragraphs 1 or 3 of the definition of Indirect or Consequential Loss;
 - (9) abandonment of the whole or a substantial part of the Project Activities by Project Co or its Associates;
 - (10) any amounts payable by Project Co in respect of Floating Rate Component Invoices under clause 35.5;
 - (11) the State's right to any share of Savings arising from implementation of a Technological Improvement under clause 39;
 - (12) any amounts payable by Project Co in respect of a Refinancing Gain under clause 40.4;
 - (13) any amounts payable by Project Co in accordance with the Change Compensation Principles and the Termination Payments Schedule;
 - (14) any Liquidated Damages payable by Project Co up to the Liquidated Damages Cap;
 - (15) Liability in respect of any Abatement or any reduction to any Quarterly Service Payment under the Payment Schedule;
 - (16) Liability to the State or any of its Associates connected with, caused by or arising out of:
 - (A) the CityLink Interface Deed;



- (B) the Tram Franchisee Coordination Agreement; or
 - (C) the Train Franchisee Coordination Agreement,
that is not a Liability described in paragraph 1 of the definition of Indirect or Consequential Loss; and
- (17) Liability to the State or any of its Associates arising out of clause 42.16.

42.16 [not disclosed]

[not disclosed]

43 Insurance

43.1 State Procured Insurances

- (a) **(State insurances):** The State will procure and maintain, or cause to be procured and maintained with Reputable Insurers:
 - (1) for the duration of the D&C Phase or such longer period set out in the Insurance Schedule, the State D&C Phase Insurances in the form of the Initial State D&C Phase Insurances; and
 - (2) for the duration of the Maintenance Phase or such longer period set out in the Insurance Schedule, the State Maintenance Phase Insurances.
- (b) **(State to pay premium):** Subject to clause 43.1(h), the State will pay all premiums for the State Procured Insurances.
- (c) **(Policies and certificates of currency):** On reasonable request by Project Co, the State must provide:
 - (1) certificates of currency; and
 - (2) policy terms,in respect of the State Procured Insurances.
- (d) **(Required information):** No later than 6 months prior to:
 - (1) the renewal of any State D&C Phase Insurances (as relevant); or
 - (2) the procurement or renewal of any State Maintenance Phase Insurances,Project Co must provide to the State all information reasonably requested for the purpose of procuring the relevant State Procured Insurance.
- (e) **(Policy terms):** As soon as practicable, after receiving the information provided under clause 43.1(d), the State must provide Project Co with proposed policy terms for (as relevant):
 - (1) the State D&C Phase Insurances to be renewed; or
 - (2) the State Maintenance Phase Insurances to be renewed or procured.
- (f) **(Acceptability of terms):** Within 10 Business Days after receiving the information provided under clause 43.1(e), Project Co must advise the State whether the proposed policy terms for (as relevant):



- (1) the State D&C Phase Insurances to be renewed; or
 - (2) the State Maintenance Phase Insurances to be renewed or procured, are acceptable to Project Co, and if Project Co:
 - (3) advises that the proposed policy terms are acceptable, or does not advise whether or not the proposed policy terms are acceptable, the State will procure the relevant State Procured Insurances on the terms proposed, and pay the premiums for such Insurances; or
 - (4) advises that the proposed policy terms are not acceptable, it must provide reasons for this to the State, following which:
 - (A) the parties must, within 10 Business Days, meet to attempt to resolve the matter; and
 - (B) if the matter is not resolved at the meeting referred to in clause 43.1(f)(4)(A), either party may refer the matter for resolution in accordance with clause 46.2.
- (g) **(Dispute resolution):** If either party refers the matter for resolution in accordance with clause 43.1(f)(4)(B), then:
- (1) while the dispute is being resolved, the State will place the policy for the relevant State Procured Insurances in accordance with the terms referred to in clause 43.1(e); and
 - (2) if the dispute is resolved such that additional State Procured Insurance is required:
 - (A) the State will place the policy for that additional insurance; and
 - (B) to the extent that the additional insurance is a variation to the form of the relevant Initial State D&C Phase Insurance or to the requirements for the relevant State Maintenance Phase Insurance as set out in the Insurance Schedule, the additional premium will be a debt due and payable by Project Co to the State.
- (h) **(Increased premiums):** Subject to clause 43.1(i), if the amount of a premium payable for:
- (1) a State Maintenance Phase Insurance is significantly greater than the premium which was forecast for that Insurance at Financial Close; or
 - (2) a State Procured Insurance:
 - (A) is significantly greater than the premium which was paid for that Insurance in the previous period of insurance; or
 - (B) there is an increase in the premium payable as a result of any extension to the policy required due to a failure to achieve Provisional Acceptance by the Date for Provisional Acceptance or a breach of clause 26.1(d) in respect of Final Acceptance (which would not have been payable had the State D&C Phase Insurances been procured for the period of insurance specified in the Insurance Schedule assuming no such delay or breach),

and in the State's opinion, acting reasonably, the increase in the premium is wholly or partially attributable to an act or omission of Project Co or of an Associate of Project Co, or a substantial amendment to the policy terms requested by Project Co:



- (3) the State may notify Project Co of its opinion;
 - (4) within 5 Business Days of the State's notice under clause 43.1(h)(3), the parties must meet to discuss the matter; and
 - (5) within 5 Business Days of the meeting under clause 43.1(h)(4), the State (acting reasonably) must notify Project Co of the amount of the premium increase which is attributable to:
 - (A) the acts or omissions of Project Co; or
 - (B) the substantial amendment to the policy terms requested by Project Co,which amount will be a debt due and payable by Project Co to the State.
- (i) **(Additional jurisdiction):** During the D&C Phase, Project Co may seek the consent of the State to add additional jurisdictions to the situation of risk in respect of the Marine Transit (TBM) (Delay in Start Up) Insurance or the Contract Works Insurance (Advance Loss of Profits). If the State agrees (acting reasonably) that the additional jurisdiction should be covered by the Marine Transit (TBM) (Delay in Start Up) Insurance or the Contract Works Insurance (Advance Loss of Profits), the State will procure the relevant coverage in respect of that jurisdiction, and pay the additional premium.

43.2 Project Co D&C Phase Insurances

For the duration of the D&C Phase or such longer period set out in the Insurance Schedule, Project Co must procure and maintain or cause to be procured and maintained:

- (a) the Project Co D&C Phase Insurances; and
- (b) any additional insurance which a prudent owner and operator would maintain when undertaking works or carrying out activities of a similar nature to the Works, the D&C Activities, or the Final Acceptance Works.

43.3 Project Co Maintenance Phase Insurances

- (a) **(Effect and maintain):** For the duration of the Maintenance Phase or such longer period set out in the Insurance Schedule, Project Co must procure and maintain, or cause to be procured and maintained:
 - (1) the Project Co Maintenance Phase Insurances; and
 - (2) any additional insurances which a prudent service provider would maintain when providing services of a similar nature to the Services.
- (b) **(Proposed Project Co Maintenance Phase Insurances):** No less than 60 Business Days prior to the anticipated Date of Final Acceptance and prior to the date any Insurance is due to be renewed during the Maintenance Phase, Project Co must, if it is able to do so, provide the State with copies of the proposed Project Co Maintenance Phase Insurances for the State to review in accordance with the Review Procedures.
- (c) **(Insurance broker to review):** If Project Co is unable to provide copies of the Project Co Maintenance Phase Insurances to the State in accordance with clause 43.3(b), it must:



- (1) make the terms of such Insurances available to the State and the State's insurance broker to review confidentially on behalf of the State in accordance with the Review Procedures; and
- (2) provide the evidence in respect of that Insurance required under clause 43.9.

43.4 Maintenance Phase Insurances

The parties acknowledge and agree that:

- (a) the terms and requirements specified in the Insurance Schedule for the Maintenance Phase Insurances are a reflection of the insurance market at Financial Close;
- (b) subject to clause 43.1(f), if prior to or after the Date for Final Acceptance and throughout the term of the relevant Insurance policy, either party considers (acting reasonably) that the terms set out in the Insurance Schedule are no longer a reflection of the terms of the insurance that an operator of infrastructure similar to the Tunnels and Stations exercising Best Industry Practices would procure and maintain, then that party may send a notice to the other party advising it of the same and the State and Project Co (both acting reasonably) will agree the replacement terms or requirements (as applicable); and
- (c) if the parties fail to agree any replacement terms or requirements in accordance with clause 43.4(b), either party may refer the matter for resolution under clauses 46 to 47.

43.5 General insurance requirements

Project Co must:

- (a) **(Reputable Insurers)**: effect all Insurances procured in accordance with clauses 43.2 or 43.3 with Reputable Insurers;
- (b) **(premiums)**: subject to clause 43.1(b) and clause 43.14, punctually pay all premiums and other amounts payable in connection with the Insurance, and give the State copies of receipts for payment of premiums if and when requested by the State;
- (c) **(no alteration)**: not alter, extend, discontinue or cancel any Insurance, or allow any Insurance to lapse, where this would result in the relevant Insurance not meeting the requirements of this Agreement, without the prior approval of the State;
- (d) **(do not prejudice)**: not do or permit, or omit to do, anything which prejudices any Insurance;
- (e) **(rectify)**: promptly rectify anything which might, if not rectified, prejudice any Insurance;
- (f) **(fully disclose)**: fully and promptly disclose all material information known to Project Co and its Associates to all relevant insurers (and any persons acting on their behalf) relating to the Insurances;
- (g) **(comply)**: comply at all times with the terms of each Insurance;
- (h) **(do everything to enable State recovery)**: subject to clause 43.5(d), do everything reasonably required by the State, its Associates or other Insureds to whom the benefit of such Insurance extends, to enable the State, its Associates



or other Insureds (as the case may be) to claim, and to collect or recover, money due under that Insurance; and

- (i) **(indemnities secondary)**: ensure that the terms of the Project Co Procured Insurances do not require the State, its Associates or other Insureds to exhaust any indemnities given by Project Co or its Associates or Group Members to the State, its Associates, or other Insureds in this Agreement or other Project Document as a condition precedent to the insurer considering or responding to any Claim.

43.6 Terms of Insurances

Project Co must ensure that each of the Insurances (other than in respect of workers compensation) procured in accordance with clauses 43.2 or 43.3:

- (a) **(terms)**: except in respect of the Motor Vehicle Insurance contains terms, to the extent applicable and permitted by Law, to the effect that the Insurer:
 - (1) will not impute to any Insured any knowledge or intention or a state of mind possessed or allegedly possessed by any other Insured;
 - (2) in the case of Insurances under which the State or its Associates are also Insureds, agrees that the interests of the Insured include the entire assets of the Project and waives any rights of subrogation which it may have against any Insured;
 - (3) in the case of liability insurances (except in respect of Professional Indemnity Insurance), agrees to treat each Insured as a separate Insured as though a separate contract of insurance had been entered into with each of the Insured, without increasing the deductibles or reducing the overall limit of indemnity; and
 - (4) except in respect of Professional Indemnity Insurance, agrees that no reduction in limits or coverage affecting the Project or the Relevant Infrastructure will be made during the period of insurance, except under the circumstances and to the extent permitted by the *Insurance Contracts Act 1984* (Cth) and with not less than 20 Business Days prior notice to the State;
- (b) **(nature)**: is appropriate given the nature and objectives of the Project and the responsibilities and entitlements of the various Insureds in connection with this Agreement; and
- (c) **(consistency)**: is consistent with the terms set out in the Insurance Schedule or otherwise on terms that have the prior approval of the State.

43.7 Insurances primary

- (a) **(Enforceability of rights under indemnities)**: The State is not obliged to make a Claim or institute proceedings against any insurer under the Insurances before enforcing any of its rights or remedies under the indemnities referred to in this Agreement or generally.
- (b) **(Project Co's obligations not affected)**: Project Co is not relieved from and remains fully responsible for its obligations in accordance with this Agreement regardless of whether the Insurances respond or fail to respond to any Claim and regardless of the reason why any Insurance responds or fails to respond.
- (c) **(Insurances primary)**: The Insurances prescribed in the Insurance Schedule are intended by the parties to be the primary insurance contracts covering the Project risks during the Term, and the liabilities of the insurers under them are



not intended to be coordinated with the liabilities of insurers under other contracts of insurance under which the parties, or either of them, may be entitled to benefit.

43.8 Notification and making of claims

Project Co must:

- (a) **(notification)**: promptly notify the State of any occurrence that may give rise to a claim by Project Co or its Associates in connection with the Project under any Insurance, except in relation to any Workers' Compensation Insurance, Motor Vehicle Insurance or any occurrence that may give rise to a claim by the State, Project Co or its Associates in connection with the Professional Indemnity Insurance;
- (b) **(subsequent developments)**: keep the State informed of subsequent developments concerning the occurrence under clause 43.8(a);
- (c) **(pursue claims)**: subject to clause 43.8(d), diligently pursue any claim which it has under any Insurance which has arisen in connection with the Project;
- (d) **(State consent)**: not compromise, settle, prosecute or enforce any claim of the type referred to in clause 43.8(a) under any Insurance without the prior consent of the State (which must not be unreasonably withheld or delayed); and
- (e) **(TP Claims)**: in respect of TP Claims in respect of an event or occurrence during the D&C Phase (other than an occurrence during the Defects Liability Period which is solely referable to the Maintenance Services):
 - (1) establish a fair, efficient and reasonable process for the assessment and resolution of TP Claims and incorporate this process in the Community and Stakeholder Engagement Management Plan;
 - (2) provide written acknowledgment of TP Claims to claimants within 5 Business Days of Project Co receiving notice of the claim;
 - (3) to the extent possible, respond to all TP Claims within 15 Business Days of Project Co receiving notice of the claim;
 - (4) to the extent reasonably possible, resolve all TP Claims:
 - (A) for personal injury, within 20 Business Days;
 - (B) for property damage less than [not disclosed], within 20 Business Days; and
 - (C) for property damage of [not disclosed] or more, within 30 Business Days.of Project Co receiving notice of the claim;
 - (5) where a TP Claim is not resolved within the time periods under clause 43.8(e)(4), to the extent reasonably possible, provide a monthly update to the claimant in respect of the status of resolution of the TP Claim;
 - (6) in responding to third party property damage claims, consider any survey or other report prepared in relation to the property the subject of the TP Claim;
 - (7) in respect of TP Claims which are third party property damage claims, provide the State with a copy of the loss assessor's final report prepared in accordance with the Insurance Claims Protocol in relation to the TP Claim, noting that such report will not be binding on Project



Co, and may be supplemented at the time of providing the State with a copy of the loss assessor's report by any additional loss assessor's reports or a reply by Project Co to the loss assessor's report in respect of the claim;

- (8) during the Term, provide monthly reports to the State regarding the number, details and status of any TP Claims; and
- (9) in respect of third party property damage claims:
 - (A) determine if the property damage was caused by the Works;
 - (B) determine if Project Co is required to repair or compensate the affected person under clause 42.7(b); and
 - (C) provide assistance in accordance with this Agreement and the Insurance Claims Protocol to any person who has submitted a TP Claim to coordinate with the claimant when arranging for any repair works to be performed by Project Co in relation to the property damage,

however Project Co's obligations in respect of TP Claims:

- (10) do not require it to waive legal professional privilege, but this exclusion will not prevent Project Co from being required to release a loss assessor's final report to the State in respect of TP Claim which is a third party property damage claim, subject to the parties maintaining the confidentiality of a shared loss assessors report to protect Project Co's common interest privilege over a privileged loss assessor's report; and
- (11) do not apply in circumstances where the TP Claim gives rise to a Claim for indemnity under the Professional Indemnity Insurances, but this exclusion will not prevent Project Co from being required to comply with this clause in relation to a Claim under the Contract Works Insurance (Public and Products Liability).

43.9 Evidence of Insurance

Project Co must give the State evidence satisfactory to the State that the Insurances required to be procured in accordance clauses 43.2 or 43.3 have been procured and continue to be maintained in accordance with this Agreement, whenever reasonably requested by the State including:

- (a) **(certificate)**: certificates of currency;
- (b) **(all requirements)**: confirmation that all the requirements of the Insurances specified in the Insurance Schedule are included in the Insurances; and
- (c) **(deductibles)**: deductibles, terms of coverage, erosion and reinstatement of limits as the State may reasonably require, to enable it to satisfy itself that all of the insurance requirements for the Project in accordance with this Agreement are being complied with.

43.10 State may effect Insurances

- (a) **(State may effect insurance)**: The State may procure or effect and maintain the Insurances required to be procured in accordance clauses 43.2 or 43.3 and pay the relevant premiums in connection with such Insurances:
 - (1) if Project Co fails to provide evidence satisfactory to the State within 10 Business Days of a request under clause 43.9; or



- (2) in the event of any default by Project Co or its Associates in obtaining or maintaining Insurances, in accordance with this clause 43 or if any Insurance for which Project Co is responsible to effect and maintain in accordance with this Agreement is terminated.
- (b) **(Costs to be recoverable from Project Co):** The costs reasonably incurred by the State in connection with taking such action will be a debt due and payable by Project Co to the State.

43.11 Limitation of State liability

- (a) **(No Claim):** Notwithstanding the procurement of any Insurances by the State, Project Co will not be entitled to make any Claim against the State, any of the State's Associates arising out of or in connection with any such Insurances (including the procurement or maintenance of any State Procured Insurances) other than:
 - (1) a claim upon VMIA in its capacity as an insurer under a relevant contract of insurance; or
 - (2) in respect of a failure by the State to meet its obligations under clause 43.1.
- (b) **(No Claim on the State):** Project Co acknowledges and agrees that any refusal or inability of an insurer to meet its contractual obligations, in respect of a claim upon any of the State Maintenance Phase Insurances, will not constitute a failure of the State to meet its obligations under clause 43.1.
- (c) **(Acknowledgement):** Project Co acknowledges and agrees that:
 - (1) it has had sufficient opportunity to review and comment on the Initial State D&C Phase Insurances contained in the Insurance Schedule and otherwise all policy documents in relation to all State Procured Insurances prior to the State procuring those insurances; and
 - (2) subject to clause 43.1(f), the terms of the State Procured Insurances are sufficient for the purposes of the Project Activities.

43.12 Insurance Proceeds Account

- (a) **(Establish account):** Project Co must:
 - (1) establish an insurance proceeds account (**Insurance Proceeds Account**);
 - (2) maintain that account in the joint names of Project Co and the State with a financial institution nominated by Project Co and approved by the State (such approval not to be unreasonably withheld) or with a financial institution that is a party to the Finance Direct Deed;
 - (3) give details of that account to the State;
 - (4) notify the financial institution referred to in clause 43.12(a)(2) of the charge over the Insurance Proceeds Account in accordance with the State Security, procure acknowledgement of the notice from the financial institution and provide a copy of that to the State; and
 - (5) procure the agreement of the financial institution referred to in clause 43.12(a)(2) not to exercise any right of set-off or counterclaim in relation to the Insurance Proceeds Account.



- (b) **(Deposit insurance proceeds):** All insurance proceeds received from insurers in connection with the Works, the Maintained Assets or the Project Activities by Project Co or the State under the Contract Works Insurance (Material Damage) or the Industrial Special Risks Insurance, must be deposited by the recipient into the Insurance Proceeds Account.
- (c) **(Application of moneys):** Subject to clause 43.12(e), moneys in the Insurance Proceeds Account may only be applied towards the repair or rebuilding of the Relevant Infrastructure or as part of any Termination Payment.
- (d) **(Records):** Where moneys in the Insurance Proceeds Account are used for repair or rebuilding of the Relevant Infrastructure, Project Co must give the State records of expenditure from the Insurance Proceeds Account within 30 Business Days of such expenditure.
- (e) **(Surplus funds):** Any funds remaining in the Insurance Proceeds Account after application in connection with repair or rebuilding of the Relevant Infrastructure will, subject to any right of set-off the State may have, be payable to Project Co.

43.13 Proportionate Liability

- (a) **(Reduce or exclude insurance cover):** Subject to clause 43.13(b), Project Co must ensure that all Insurances do not reduce or exclude the insurance cover in connection with liabilities governed by Part IVAA of the *Wrongs Act 1958* (Vic) or any corresponding legislation of another Australian jurisdiction, by reason of the manner in which that legislation operates or does not operate, as the case may be, in light of any of the provisions of this Agreement and the obligations undertaken by Project Co in connection with it.
- (b) **(Non-specific Project Insurance):** To the extent that the relevant Insurance is not specific to the Project, Project Co is only required to use its reasonable endeavours to procure insurance on the terms referred to in clause 43.13(a).

43.14 Deductibles

- (a) **(Project Co to pay deductibles):** Subject to clause 43.14(b), clause 43.14(c), clause 43.14(d) and clause 43.14(f), Project Co must pay all amounts by way of deductibles or excesses which apply to a Claim made under any Insurance.
- (b) **(State to pay deductible):** Where the event that is insured under any Insurance is:
 - (1) loss or damage referred to in clause 42.3(d), clause 42.3(e) or clause 42.3(f); or
 - (2) caused by a Compensable Extension Event or a Compensable Intervening Event,the State must pay all amounts by way of deductibles or excesses which apply to that claim made under that Insurance.
- (c) **(State to pay other Insureds deductible):** Where, pursuant to:
 - (1) clause 43.14(d) or clause 43.14(e), a Metro Tunnel Package Contractor; or
 - (2) clause 43.14(f), an insured,is liable to pay a portion of a deductible or excess in respect of an Insurance, the State must pay, or must ensure that the relevant Metro Tunnel Package Contractor or insured (as relevant) pays, that portion of the deductible or excess.



- (d) [not disclosed]
- (e) [not disclosed]
- (f) [not disclosed]

43.15 Additional requirements

- (a) At all times during the Term, Project Co must comply with its obligations to take out and maintain registration and to pay all levies required to be paid, under the Accident Compensation Act 1985 (Vic), the Workplace Injury Rehabilitation and Compensation Act 2013 (Vic) and the Transport Accident Act 1986 (Vic) and insurances required under the Building Act 1993 (Vic) in relation to the Project.
- (b) [not disclosed]

43.16 Uninsurable Risks

- (a) **(Risk likely to become Uninsurable Risk):** If any risk becomes or is likely to become an Uninsurable Risk, then:
 - (1) Project Co must notify the State within 5 Business Days of becoming aware that the risk has become or is likely to become an Uninsurable Risk; and
 - (2) the State must meet with Project Co within 5 Business Days after receipt of Project Co's notice to discuss the risk, including whether the risk is in fact an Uninsurable Risk.
- (b) **(Parties to discuss management of an Uninsurable Risk):** If both parties agree (or if not, it is determined in accordance with clauses 46 to 47) that a risk is an Uninsurable Risk, the parties must meet further to discuss the means by which the risk should be managed.
- (c) **(Uninsurable Risk):** If the parties cannot agree as to how to manage the Uninsurable Risk then this Agreement will continue, but each Quarterly Service Payment will be adjusted to deduct a proportionate amount of the premium that was payable by Project Co for insurance of such a risk immediately prior to such risk becoming an Uninsurable Risk.

43.17 Damage caused by Day 1 Uninsurable Risk or Uninsurable Risk

- (a) **(Occurrence):** If a Day 1 Uninsurable Risk or Uninsurable Risk gives rise to loss or damage to the Relevant Infrastructure, the State must within 20 Business Days of the occurrence of the Day 1 Uninsurable Risk or Uninsurable Risk (as the case may be) (or such longer period as is reasonable in the circumstances) either:
 - (1) subject to clause 42.6 and clause 43.17(b), require Project Co to repair or rebuild the Relevant Infrastructure, in which case the State will:
 - (A) issue a Modification Order in respect of the repair and rebuilding; and
 - (B) indemnify Project Co for all other Liabilities incurred by Project Co to the extent such Liabilities arose from the occurrence of the Day 1 Uninsurable Risk or Uninsurable Risk (as the case may be); or



- (2) where the Relevant Infrastructure is wholly or substantially damaged or destroyed by the Day 1 Uninsurable Risk or Uninsurable Risk, require Project Co to repair or rebuild the Relevant Infrastructure in accordance with clause 43.17(a)(1) or terminate this Agreement by notice to Project Co, in which case a Force Majeure Termination Event will be deemed to have occurred on the date stated in the State's notice and clause 45.3(b) will apply.
- (b) **(Maximum indemnity amount):** Subject to clause **Error! Reference source not found.**, the maximum amount for which the State must indemnify Project Co, in accordance with clause 43.17(a)(1), will be:
 - (1) for a Day 1 Uninsurable Risk, an amount that is equal to the Insurance proceeds that would have been payable under any of the Insurances had the event been insurable under those Insurances; and
 - (2) for Uninsurable Risks, an amount equal to the Insurance proceeds that would have been payable had the relevant Insurance continued to be available on the previous terms of that Insurance.
- (c) **(If parties unable to agree on repair or rebuilding):** If the parties are unable to agree on how the Relevant Infrastructure will be repaired or rebuilt in accordance with clause 43.17(a)(1) (including the reasonable costs), the State must issue a Modification Order requiring Project Co to repair or rebuild the Relevant Infrastructure provided the amount payable by the State to Project Co in connection with the Modification will not exceed the amount set out in clause 43.17(b).

43.18 Review of insurance markets during Maintenance Phase

- (a) **(Review and test):** Project Co must review and test the insurance market vigilantly and no less than once every 12 Months during the Maintenance Phase, to ascertain whether a Day 1 Uninsurable Risk or Uninsurable Risk has become insurable and, determine whether, and if so what, insurance terms as to premium, deductible and coverage are available in connection with that risk, from Reputable Insurers.
- (b) **(Procure insurances):** If during the Maintenance Phase it is found that a Day 1 Uninsurable Risk or Uninsurable Risk is no longer uninsurable, to the extent that the risk is most appropriately insured pursuant to a Project Co Maintenance Phase Insurance (rather than pursuant to a State Maintenance Phase Insurance), Project Co must
 - (1) promptly notify the State; and
 - (2) if the State directs, promptly procure the insurance in connection with that risk in accordance with the other provisions of this clause 43, in which case the Quarterly Service Payments will be adjusted to reflect the additional premium payable by Project Co for insuring that risk.

43.19 State Procured Insurances breach

[not disclosed]

43.20 Government Rail Insurance Program shared limit

[not disclosed]



43.21 Change to named insurer (Key D&C Phase Insurances)

The State may, within 6 months from Financial Close, request Project Co to consider in good faith a request to amend the Contract Works Insurance (Material Damage), the Contract Works Insurance (Advance Loss of Profits) and the Contract Works Insurance (Public and Products Liability) (**Key D&C Phase Insurances**) to wholly replace the named insurer (for all purposes including for all levels of cover) with commercial insurers which have the Required Rating, and Project Co and the State must use reasonable endeavours to agree any changes requested to the relevant Key D&C Phase Insurances for the sole purpose of, and in order to effect a replacement of, the named insurer provided that, subject to this clause 43.21, Project Co is not required to agree any changes which are adverse to the terms set out in the Initial State D&C Phase Insurances. Project Co acknowledges and agrees that the Key D&C Phase Insurances will need to be amended to include a market standard terrorism exclusion if the named insurer is replaced with commercial insurers (and that it will act reasonably in considering such provision).

Part H - Default, Termination and Disputes

44 Events of Default

44.1 Failures capable of remedy

- (a) **(Meaning):** Where the word ‘remedy’ or ‘cure’ or any other grammatical form of those words is used in this clause 44, it means to cure or redress the relevant occurrence or overcome its consequences so that:
- (1) there ceases to be any continuing detrimental effect of that potential or actual default, Major Default or Default Termination Event; and
 - (2) any prior detrimental effect is rectified so that the State, its Associates and the Rail Franchisee Interface Parties are in the position they would have been in had the relevant occurrence not taken place.
- (b) **(Deemed curable – Provisional Acceptance):** A failure by Project Co to achieve Provisional Acceptance by the Date for Provisional Acceptance will be deemed to be capable of remedy from the Date for Provisional Acceptance (the remedy for which will be the achievement of Provisional Acceptance as soon as reasonably practicable after the Date for Provisional Acceptance) to the extent that Project Co provides a Cure Program under clause 44.3 showing that Provisional Acceptance will be achieved within the maximum remedy period specified in clause 44.3(d).
- (c) **(Deemed curable – Milestones):** A failure by Project Co to achieve:
- (1) a Critical Interface Milestone (PPP Responsible) by the relevant Critical Interface Milestone Date; or
 - (2) a Progress Milestone by the relevant Progress Milestone Date,
- will be deemed to be capable of remedy from the relevant Critical Interface Milestone Date or Progress Milestone Date (the remedy for which will be the achievement of the relevant Critical Interface Milestone (PPP Responsible) or Progress Milestone as soon as reasonably practicable).

44.2 Notice of Project Co Major Default

- (a) **(Notice):** Project Co must:
- (1) promptly notify the State upon the occurrence of a Major Default; and
 - (2) immediately take steps to mitigate, minimise or avoid the effects, consequences or duration of the Major Default.
- (b) **(State’s response):** If Project Co notifies the State of any Major Default under clause 44.2(a) or the State considers a Major Default has occurred, the State may give Project Co a notice (**Major Default Notice**) which contains:
- (1) details of the Major Default; and
 - (2) if the Major Default:
 - (A) is capable of remedy, a date by which Project Co must remedy the Major Default (which, subject to clause 44.3(d),



must allow for a reasonable period of time to remedy the Major Default in the circumstances); or

- (B) is not capable of remedy, a date by which Project Co must comply with any reasonable requirements of the State in connection with that Major Default (which, subject to clause 44.3(d), must allow for a reasonable period of time to comply with the State's requirements in the circumstances),

unless the State considers clause 44.5 applies, in which case the Major Default Notice will notify Project Co that the Major Default is deemed to be a Default Termination Event and clause 44.6 will apply.

- (c) **(Unreasonable notices):** If Project Co considers, in good faith, that the time stated in a Major Default Notice (or any other requirements of the Major Default Notice) is not reasonable, it must immediately notify the State including the reasons why and the time which it believes is reasonably required to remedy the Major Default or comply with any reasonable requirements of the State.
- (d) **(Changes to notices):** The State must in good faith consider Project Co's notice under clause 44.2(c) and make any changes to the Major Default Notice that it considers reasonable as a consequence of Project Co's notice.
- (e) **(Dispute):** If Project Co is not satisfied with the changes made by the State under clause 44.2(d), it may refer the matter to resolution under clauses 46 to 47.

44.3 Project Co to provide Cure Program and comply with Major Default Notice

- (a) **(Cure Program):** If the State gives a Major Default Notice to Project Co, then notwithstanding its rights under clauses 44.2(c) to 44.2(e) Project Co must:
- (1) where the Major Default is capable of remedy, unless the relevant Major Default is a failure to pay money, give the State a program to remedy the Major Default; and
 - (2) where the Major Default is not capable of remedy, give the State a program to comply with any reasonable requirements of the State (which may include a plan to replace the Subcontractor causing the Major Default),
- (in each case, a **Cure Program**) in accordance with the terms of the Major Default Notice, for review by the State in accordance with the Review Procedures.
- (b) **(Content of Cure Program):** Any Cure Program provided to the State under clause 44.3(a) must include:
- (1) each task to be undertaken, the date by which each task is to be completed and the additional resources and personnel (if applicable) to be applied to remedy the Major Default; and
 - (2) any temporary measures that will be undertaken while the Major Default is being remedied to ameliorate the impact of the Major Default.
- (c) **(Compliance required):** Notwithstanding the fact that it may have exercised its rights under clauses 44.2(c) to 44.2(e), Project Co must comply with the Major Default Notice and any Cure Program submitted under clause 44.3(a) as reviewed by the State in accordance with the Review Procedures.



- (d) **(Maximum cure period):** Subject to the Finance Direct Deed and clause 44.4(a), the maximum period of time including any extension under clause 44.4(b) which Project Co may be given to remedy a Major Default will be:
- (1) subject to clause 44.3(d)(2) and 44.3(d)(3), in respect of a Major Default occurring:
 - (A) during the D&C Phase or FAW Phase, 24 months; and
 - (B) during the Maintenance Phase, 18 Months,in the aggregate from the date of the applicable Major Default Notice; and
 - (2) in relation to paragraph 4 (*failure to achieve Provisional Acceptance*) of the definition of Major Default insofar as it relates to a failure to achieve Provisional Acceptance, 24 months in the aggregate commencing from the Date for Provisional Acceptance; and
 - (3) 6 Months in the aggregate from the date of the applicable Major Default Notice where the applicable Major Default is an Insolvency Event that occurs in relation to a Consortium Member (other than Project Co or a Group Member).

44.4 Extension of Cure Program

- (a) **(Extension):** If Project Co is prevented from carrying out its obligations in accordance with a Cure Program, as a direct result of an Extension Event or Intervening Event for which Project Co is entitled to relief under this Agreement, then the Cure Program (including the time to remedy the Major Default or comply with the State's requirements) must be extended:
- (1) to reflect the period Project Co is prevented from carrying out its obligations in accordance with the Cure Program by that Extension Event or Intervening Event; or
 - (2) without limiting clause 42, in respect of loss or damage caused by that Extension Event or Intervening Event, for the period from the occurrence of that loss or damage until the necessary repairs or rebuilding have been completed,
- subject to Project Co demonstrating to the State's satisfaction (acting reasonably) that Project Co has diligently pursued and, to the extent reasonably possible, continues to diligently pursue the Cure Program agreed or determined under clause 44.3(a).
- (b) **(Extension period):** Subject to clause 44.4(d) and clause 44.3(d), if Project Co has been diligently pursuing:
- (1) where the Major Default is capable of remedy, the remedy of that Major Default; or
 - (2) where the Major Default is not capable of remedy, compliance with any reasonable requirements of the State,
- then the time stated in the Major Default Notice will be extended by such period as the State determines is required (acting reasonably) to enable Project Co to either remedy the Major Default or comply with any reasonable requirements of the State.
- (c) **(Request for further information):** The State may request, and Project Co must provide, any further information reasonably required by the State in respect of the steps Project Co has taken to remedy the Major Default or



comply with the State's requirements in relation to that cure of the Major Default to enable the State to determine the required extension under clause 44.4(b).

- (d) **(Limitation):** Unless the State otherwise agrees, Project Co is only entitled to one extension in accordance with clause 44.4(b) in connection with the same Major Default.

44.5 Major Default not capable of remedy or cure

- (a) **(Deemed Default Termination Event):** Subject to clause 44.5(b), if the State forms the view (acting reasonably) that there are no reasonable requirements that can be met by Project Co to overcome the consequences of, or compensate the State for, a Major Default, that Major Default will be deemed to be a Default Termination Event.

- (b) **(State's obligations):** Prior to forming a view in accordance with clause 44.5(a), the State must:

- (1) notify Project Co and the Independent Reviewer that it proposes to form a view in accordance with clause 44.5(a); and

(A) in the case of Project Co, advise Project Co that it may submit to the State; and

(B) in the case of the Independent Reviewer, require the Independent Reviewer to submit to the State,

any comments or other information within 10 Business Days of the date of the notice under this clause 44.5(b)(1) (or such later date as reasonably determined by the State), which Project Co or the Independent Reviewer (as the case may be) considers may be relevant to the State forming or not forming a view in accordance with clause 44.5(a); and

- (2) consider any comments or other information which have been submitted by Project Co and the Independent Reviewer in accordance with clause 44.5(b)(1).

44.6 Default Termination Event

If any Default Termination Event occurs, the State may, without limiting any rights (other than rights of termination) it has at Law or otherwise under this Agreement, elect to:

- (a) **(termination as Default Termination Event):** terminate this Agreement at any time after the occurrence of a Default Termination Event in accordance with clause 45.4; or
- (b) **(Step-in rights):** exercise its rights under clause 41.1 to cure or attempt to cure the Default Termination Event.

44.7 Effect of curing

If a Major Default or Default Termination Event occurs and is cured by any person, any rights in respect of that Major Default or Default Termination Event (as the case may be) not exercised prior to it being cured may not thereafter be exercised.



45 Termination

45.1 Sole basis

- (a) **(Sole basis):** Termination under this clause 45 and clause 3.4 is the sole basis at Law or otherwise upon which either party is entitled to terminate, rescind or accept a repudiation of this Agreement.
- (b) **(No limitation):** Termination of this Agreement and the payment of the relevant Termination Payment will not in any way prejudice or limit the State's Claims against Project Co in respect of:
 - (1) the events giving rise to the termination; or
 - (2) any other accrued rights of the parties,provided that the payment of the relevant Termination Payment is the parties' sole monetary remedy for termination of the State Project Documents.

45.2 Voluntary Termination

- (a) **(Voluntary Termination notice):** The State may, at any time, voluntarily terminate this Agreement by giving Project Co not less than 90 days' notice.
- (b) **(Date of termination):** Voluntary termination of this Agreement will take effect upon the date specified in the notice given in accordance with clause 45.2(a).

45.3 Termination for Force Majeure

- (a) **(Force Majeure Termination Event notice):** Subject to clause 45.3(c), if a Force Majeure Termination Event occurs, then either party may terminate this Agreement by giving notice to the other party.
- (b) **(Date of termination):** Termination of this Agreement for a Force Majeure Termination Event will take effect upon the date specified in the notice given in accordance with clause 45.3(a).
- (c) **(Restrictions on termination):** Project Co must not terminate this Agreement under clause 45.3(a) during the period Project Co is able to recover (or, but for any breach of a State Project Document or the relevant Insurance by Project Co, would have been able to recover) under the Advance Loss of Profits Insurance (applicable to the Works) or the consequential loss cover section of the Industrial Special Risks Insurance (in respect of the Maintenance Phase) for the relevant Force Majeure Termination Event.

45.4 Termination for Default Termination Event

- (a) **(Termination for Default Termination Event):** Subject to the Finance Direct Deed, if a Default Termination Event occurs, the State may terminate this Agreement by giving notice to Project Co.
- (b) **(Date of termination):** Termination of this Agreement for a Default Termination Event will take effect upon the date specified in the notice given in accordance with clause 45.4(a).



45.5 Termination and Payments

Upon termination under this clause 45, the State's future obligation to pay the Quarterly Service Payment, any State Contribution, the Final D&C Phase Price, any Final Acceptance Payment and the Floating Rate Component will cease.

45.6 Assistance

Project Co will use its best endeavours to assist the State in the exercise of the State's rights in accordance with this clause 45.

45.7 Payment on termination

(a) **(Payment):** Subject to clause 45.7(b), no later than the Termination Payment Date:

- (1) where the Termination Payment is a positive amount, the State must pay to Project Co; and
- (2) where the Termination Payment is a negative amount, Project Co must pay to the State the absolute value of:

the relevant Termination Payment, being:

- (3) for Voluntary Termination, the Voluntary Termination Payment;
- (4) for Termination for a Force Majeure Termination Event, the Force Majeure Termination Payment; or
- (5) for Termination for a Default Termination Event, the Default Termination Payment,

in accordance with the Termination Payments Schedule.

(b) **(Project Co obligations):** The State's obligation to pay a Termination Payment under clause 45.7(a) is subject to Project Co having delivered up the vacated Construction Areas and Maintenance Areas (as relevant), and the Relevant Infrastructure to the State in accordance with clause 32, and otherwise having satisfied its obligations under clause 32 and the Intellectual Property Schedule having regard to the time and circumstances of the termination.

(c) **(State's rights):** If the State is not satisfied that Project Co has satisfied its obligations in clause 45.7(b), Project Co will be liable to the State for the amount that is reasonably necessary to cover the expected costs of performing those obligations (including reasonable contingencies), which amount may be set off against any Termination Payment that is payable by the State or added to any Termination Payment that is payable by Project Co.

45.8 Novation of liabilities to the State

(a) **(State's election):** Where this Agreement terminates and Project Co or Finance Co has any Actual Debt outstanding, the State may elect to assume some or all of the Liability for that Actual Debt that would otherwise have been payable by Project Co or Finance Co and to the extent the State so elects:

- (1) Project Co must ensure that such Liability is novated to the State; and
- (2) the amount of the Termination Payment which the State would otherwise be obliged to pay will be reduced by:
 - (A) the amount of the Liability; and



- (B) the amount of any costs of terminating the Finance Documents which would otherwise have been taken into account in determining the Termination Payment, but which are not incurred by reason of the novation.
- (b) **(Finance Documents)**: Project Co must ensure that it and Finance Co are permitted, in accordance with the terms of the Finance Documents, to procure the novation of their respective debt obligations in accordance with this clause 45.8.

45.9 Waiver

If a termination occurs in accordance with this Agreement, then:

- (a) **(waiver)**: subject to clause 45.9(b):
 - (1) Project Co waives any right it might otherwise have to make any Claim against the State or any of its Associates; and
 - (2) the State and each of its Associates shall have no further Liability to Project Co or any of its Associates,by reason or as a result of a termination or the circumstances relating to the termination; and
- (b) **(sole entitlement)**: Project Co's sole and exclusive entitlement to make a Claim against the State following a termination of this Agreement will be in connection with its rights to a Termination Payment.

45.10 Additional rights and obligations on Termination

The additional rights and obligations of the parties on a termination of this Agreement are set out in clause 32.

46 Dispute Resolution

46.1 Procedure for resolving disputes

- (a) **(Resolution procedure)**: Unless a State Project Document provides otherwise, any dispute between the State and Project Co arising in connection with the State Project Documents or the Project Activities (including questions concerning this Agreement's existence, meaning or validity) or a decision of the Independent Reviewer which is capable of being disputed under this clause 46 must be resolved in accordance with this clause 46 and clause 47.
- (b) **(Exclusion)**: The functions of the Independent Reviewer under the Design Review Schedule and clauses 26.2(b) and 26.2(d) are:
 - (1) advisory only and not binding on any party; and
 - (2) not a decision or determination of the Independent Reviewer capable of forming the subject matter of a Dispute which can be resolved under this clause 46 and clause 47.
- (c) **(Procedure)**: The procedure that is to be followed to resolve a Dispute is as follows:



- (1) firstly, the Dispute must be the subject of negotiation as required by clause 46.2;
- (2) secondly, if the Dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 46.2(c)(1) the parties may agree that the Dispute will be referred to an expert for determination under clauses 46.3 to 46.9 or to arbitration under clause 47;
- (3) thirdly, if:
 - (A) the Dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 46.2(c)(1) and irrespective of whether the parties failed to meet as required by that clause or whether having so met the parties fail to agree whether the Dispute should be referred to an expert or to arbitration within 20 Business Days after the expiration of the period for negotiation referred to in clause 46.1(c)(1);
 - (B) the Dispute has been referred to expert determination and a determination is not made by the expert within 30 days (or 10 Business Days, in the case of a dispute in relation to whether there are Defects in a Returned Asset pursuant to clause 25.1(d)(5)) after the expert's acceptance of appointment; or
 - (C) the Dispute is referred to expert determination and a notice of dissatisfaction is given under clause 46.6(a),then the Dispute must be referred to arbitration under clause 47.

46.2 Negotiation

- (a) **(Notification)**: If a Dispute arises then a party may give notice to the other party requesting that the Dispute be referred for resolution by negotiation between the Chief Executive Officers (or equivalent) of the State and Project Co **(Representatives)**.
- (b) **(Contents of Notice)**: A notice under clause 46.2(a) must:
 - (1) state that it is a notice under this clause 46; and
 - (2) include or be accompanied by particulars of the matters which are the subject of the Dispute.
- (c) **(Attempt to resolve Dispute)**: If a Dispute is referred for resolution by negotiation under clause 46.2(a), then:
 - (1) the Representatives must meet and attempt in good faith to resolve the Dispute (in whole or in part) within 10 Business Days of the date on which the notice under clause 46.2(a) is received (or such later date as the parties may agree); and
 - (2) any agreement reached between the Representatives will be reduced to writing, signed by or on behalf of each party and will be contractually binding on the parties.

46.3 Expert determination

- (a) Where this Agreement requires a matter to be referred to or resolved by an expert or if:



- (1) (**dispute unresolved by Representatives**): a Dispute which has been referred to the Representatives for negotiation in accordance with clause 46.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 46.2(c)(1); and
 - (2) (**referral to expert**): the parties agree within 20 Business Days after the expiration of the period for negotiation referred to in clause 46.2(c)(1), that the Dispute be referred to an expert for determination, then those parts of the Dispute which remain unresolved will be referred to an expert for determination under clauses 46.4 to 46.9.
- (b) For the avoidance of doubt:
- (1) subject to clause 46.3(b)(2), a Dispute may only be referred to an expert for determination by agreement of the parties; and
 - (2) where this Agreement requires a matter to be referred directly to an expert, the dispute resolution procedures in clause 46.1(c)(1) will not apply.

46.4 Selection of expert

- (a) (**Exchange of lists of 3 preferred experts**): Within 7 Business Days after the date on which the parties agree to refer a Dispute to an expert for determination under clause 46.3 the State and Project Co must exchange lists of 3 persons (in order of preference) who, if appointed, would satisfy the requirements of clause 46.4(d), from whom the expert is to be chosen.
- (b) (**Appointment of person who appears on both lists**): Any person that appears on both lists under clause 46.4(a) will be appointed as the expert to determine a Dispute and if more than one person appears on both lists the person given the highest order of priority by the party that gave the notice under clause 46.2(a) will be appointed.
- (c) (**Appointment if no person appears on both lists**): If no person appears on both lists, the party which gave the notice under clause 46.2(a) must procure:
 - (1) the president (or the senior non-executive officer, howsoever described) of the institute or governing body for the technical or professional discipline the subject of the relevant Dispute to nominate the expert, having regard to, but not being bound by, those persons proposed by the parties under clause 46.4(a); or
 - (2) if there is no governing body for the technical or professional discipline the subject of the relevant Dispute or such governing body advises that it will not nominate an expert, the Australian Centre for International Commercial Arbitration to nominate a person to act as the expert, having regard to, but not being bound by, those persons proposed by the parties under clause 46.4(a),within 7 Business Days of the exchange of notices under clause 46.4(a).
- (d) (**Appropriate skills**): It is the intention of the parties that the expert appointed to determine a Dispute will be an independent person with appropriate skills having regard to the nature of the matters in dispute.
- (e) (**No entitlement to challenge appointment**): Neither party will be entitled to challenge the appointment of an expert under this clause 46.4 on the basis that the expert does not satisfy the requirements of clause 46.4(d).



- (f) **(Not an arbitration agreement):** Any agreement for expert determination under this Agreement will not constitute an arbitration agreement for the purposes of the *Commercial Arbitration Act 2011 (Vic)*.
- (g) **(Agreement):** Once an expert is appointed, the State and Project Co must enter into an agreement with the expert on the terms of the Expert Determination Agreement or such other reasonable terms as the expert may require.

46.5 Rules of expert determination

The expert determination process will be administered, and the expert will be required to act, under the terms of the Expert Determination Agreement.

46.6 Expert finding

- (a) **(Notification):** The determination of the expert must be in writing and will be final and binding on the State and Project Co unless, within 10 Business Days of receipt of the determination, a party gives notice to the other party of its dissatisfaction and intention to refer the matter to arbitration in accordance with clause 47.
- (b) **(Amendment to determination):** Upon submission by any party, the expert may amend the determination to correct:
 - (1) a clerical mistake;
 - (2) an error from an accidental slip or omission;
 - (3) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
 - (4) a defect in form.

46.7 Liability of expert

- (a) **(Liability of expert):** The parties agree:
 - (1) that the expert will not be liable in connection with the expert determination, except in the case of fraud on the part of the expert; and
 - (2) to indemnify the expert against any Claim or Liability in connection with the expert determination, except in the case of fraud on the part of the expert, in which case a Claim may be made against him or her by any person who is party to the Dispute.
- (b) **(Engagement):** The State and Project Co will jointly engage the expert services in connection with the expert determination proceedings and each party will seek a separate Tax Invoice equal to its share of the costs of the expert.

46.8 Costs

The State and Project Co must:

- (a) bear their own costs in connection with the expert determination proceedings; and
- (b) pay an equal portion of the costs of the expert.



46.9 Proportionate Liability

To the extent permitted by Law, the expert will have no power to apply or to have regard to the provisions of any proportionate liability legislation which might in the absence of this clause 46.9, have applied to any dispute referred to the expert in accordance with this clause 46.

47 Arbitration

47.1 Reference to Arbitration

- (a) **(Dispute):** If:
- (1) a Dispute:
 - (A) which has been referred to the parties' Representatives for negotiation in accordance with clause 46.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 46.2(c)(1); and
 - (B) the parties do not agree to refer the Dispute to an expert for determination; or
 - (2) in the case of a Dispute which the parties agree to refer to expert determination under clause 46.3:
 - (A) a determination is not made within 30 days (or 10 Business Days, in the case of a dispute in relation to whether there are Defects in a Returned Asset pursuant to clause 25.1(d)(5)) of the expert's acceptance of the appointment; or
 - (B) a notice of dissatisfaction is given in accordance with clause 46.6,
- then the State or Project Co may notify the other party that it requires the Dispute to be referred to arbitration.
- (b) **(Referral):** Upon receipt by the other party of a notice under clause 47.1(a), the Dispute will be referred to arbitration.

47.2 Arbitration

- (a) **(ACICA Rules):** Arbitration in accordance with this clause 47 will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the **ACICA Rules**) as current at the date the Dispute is referred to arbitration and as otherwise set out in this clause 47 with this clause 47 having priority to the extent of any inconsistency.
- (b) **(Seat):** The seat of the arbitration will be Melbourne, Victoria.
- (c) **(Language):** The language of the arbitration will be English.

47.3 Appointment of arbitrator

The parties will endeavour to agree on the arbitrator or arbitrators (if the parties agree to appoint 3 arbitrators), but if no such agreement is reached within 14 Business Days of the Dispute being referred to arbitration in accordance with clause 47.1(b), the arbitrator or arbitrators will be appointed in accordance with the ACICA Rules.



47.4 General Principles for conduct of arbitration

- (a) **(Conduct of arbitration):** The parties agree that:
- (1) they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;
 - (2) any arbitration conducted in accordance with this clause 47 will not necessarily mimic court proceedings of the seat of the arbitration or the place where hearings take place (if different), and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and
 - (3) in conducting the arbitration, the arbitrator must take into account the matters set out in clauses 47.4(a)(1) and 47.4(a)(2).
- (b) **(Evidence in writing):** All evidence in chief must be in writing unless otherwise ordered by the arbitrator.
- (c) **(Evidence and discovery):** The rules for evidence and discovery will be the IBA Rules on the Taking of Evidence in International Arbitration current at the date of arbitration (or if there are no current rules, the most recent version of those rules).
- (d) **(Oral hearing):** The oral hearing must be conducted as follows:
- (1) any oral hearing must take place in Melbourne, Victoria and all outstanding issues must be addressed at the oral hearing;
 - (2) the date and duration of the oral hearing must be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in clause 47.4(a) when determining the duration of the oral hearing;
 - (3) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
 - (4) the oral hearing must be conducted on a stop clock basis with the effect that the time available to the parties must be split equally between the parties so that each party has the same time to conduct its case unless, in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the parties;
 - (5) not less than 28 days prior to the date fixed for oral hearing each party must give notice of those witnesses (both factual and expert) of the other party that it wishes to attend the hearing for cross examination;
 - (6) in exceptional circumstances the arbitrator may amend the date of hearing and extend the time for the oral hearing set in accordance with clause 47.4(d)(2);
 - (7) a party will not be bound to accept the written evidence of a witness submitted on behalf of the opposing party which is not challenged in cross examination; and
 - (8) each party is expected to put its case on significant issues in cross examination of a relevant witness called by the opposing party or, where it seeks to challenge the evidence of a witness not called for cross-examination by reference to other evidence, to identify that evidence in its written opening submissions so that the opposing party may know the nature of and basis for the challenge to the witness' written evidence.



- (e) **(Experts):** Unless otherwise ordered, each party may only rely upon one expert witness in connection with any recognised area of specialisation.

47.5 Proportional liability

To the extent permitted by Law, the arbitrator will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this clause 47.5, have applied to any dispute referred to arbitration in accordance with this clause 47.

47.6 Extension of ambit of arbitration proceedings

- (a) **(Extending Disputes):** Where:
- (1) a Dispute between the parties to this Agreement or a State Project Document is referred to arbitration in accordance with this clause 47; and
 - (2) there is some other Dispute also between the parties to and in accordance with this Agreement (whenever occurring),

the arbitrator may, upon application being made to the arbitrator by one or both of the parties at any time before a final award is made in relation to the first-mentioned Dispute, make an order directing that the arbitration be extended so as to include the other Dispute.

- (b) **(Arbitrator's order):** An arbitrator may make an order in accordance with clause 47.6(a) on such terms and conditions (if any) as the arbitrator thinks fit.

47.7 Award final and binding

- (a) **(Final and binding):** Subject to clause 47.7(b), any award will be final and binding on the parties.
- (b) **(Appeal):** Each party consents to any appeal to a court where that appeal is made under the *Commercial Arbitration Act 2011* (Vic) on a question of law arising in connection with an arbitral award made in accordance with this clause 47.

47.8 Continue to perform

Notwithstanding the existence of a Dispute, each party must continue to carry out its obligations in accordance with the State Project Documents.

47.9 Governing law of arbitration agreement

The Law governing this arbitration agreement is the law of Victoria, Australia.

Part I - Other

48 Representations and warranties

48.1 State's representations and warranties

The State represents and warrants for the benefit of Project Co that:

- (a) **(power to execute)**: the State has:
 - (1) the power to execute the State Project Documents and does so through the Victorian Minister for Public Transport on behalf of the Crown in right of the State of Victoria; and
 - (2) the power to deliver and carry out its obligations under the State Project Documents,and all necessary action has been taken to authorise that execution, delivery and performance.
- (b) **(validity)**: each State Project Document constitutes a valid and legally binding obligation on it in accordance with its terms; and
- (c) **(legality)**: the execution, delivery and performance of each State Project Document does not violate any Law to which the State is subject.

48.2 Project Co's representations and warranties

Project Co represents and warrants for the benefit of the State that:

- (a) **(power to execute)**: it has the power to execute, deliver and perform its obligations under the Project Documents;
- (b) **(legality)**: the execution, delivery and performance of each Project Document to which it is a party does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;
- (c) **(validity)**: each Project Document to which it is a party constitutes a valid and legally binding obligation on it in accordance with its terms;
- (d) **(registration)**: each CY Trustee is duly registered, properly constituted and remains in existence;
- (e) **(no trust relationship)**: except as stated in this Agreement, it is not the trustee or Responsible Entity of any trust nor does it hold any property subject to or impressed by any trust;
- (f) **(no subsidiaries)**: it and each CY Trustee has no subsidiaries;
- (g) **(no tax consolidation)**: it is not a member of any tax consolidation group within the meaning of the *Income Tax Assessment Act 1997* (Cth) or GST group within the meaning of the GST Law, except with the consent of the State;
- (h) **(no trading)**: neither it nor any CY Trustee has traded since its incorporation, other than for the purposes of entering into the Project Documents and has no liabilities other than those that have arisen in connection with entering into the Project Documents;



- (i) **(no material change)**: unless otherwise notified and accepted by the State (acting reasonably), there has been no material change in the financial condition of Project Co (since the later of its incorporation and the date of its last accounts) or any other Group Member, the Equity Investors or the Key Subcontractors (since the later of its incorporation and the date of its last audited accounts) which would prejudice the ability of Project Co to perform its obligations under the Project Documents;
- (j) **(information true and correct)**: all information that has been provided to the State is true and correct and Project Co is not aware of any material facts or circumstances that have not been disclosed to the State and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this Agreement with Project Co;
- (k) **(authorisations)**: it and each CY Trustee has taken all necessary corporate action to authorise, execute, deliver and perform its obligations under each Project Document to which it is a party and any other instrument required under a Project Document;
- (l) **(Project assets)**: all of the assets, property and revenue required to carry on the business of Project Co is and will at all times form part of Project Co's assets;
- (m) **(no other security interests)**: none of its assets are subject to any 'Encumbrance' other than a 'Permitted Encumbrance' (as each of those terms is defined in the State Security);
- (n) **(CY Trust status)**: each CY Trust is duly and validly constituted and existing under the Laws of Victoria and its respective trust deed, and each CY Trustee is and will remain the sole trustee of the relevant CY Trust;
- (o) **(CY Partnership status)**: the Cross Yarra Partnership is a partnership duly and validly constituted and existing under the Laws of Victoria and the Partnership Deed and the CY Partners are the sole partners of the Cross Yarra Partnership; and
- (p) **(personal capacity)**: no CY Trustee will at any time:
 - (1) in its personal capacity hold any assets relevant to, required for or otherwise in connection with the Project and all such assets will at all times be held on behalf of the relevant CY Trust and the Cross Yarra Partnership; or
 - (2) hold any assets or incur any liabilities other than as relevant to, as required by or otherwise in connection with its role as trustee of the relevant CY Trust and a partner in the Cross Yarra Partnership.

48.3 Repetition of representation and warranties

Each representation and warranty given by Project Co under this Agreement:

- (a) **(date of Agreement)**: is made on Contract Close; and
- (b) **(repetition)**: will be deemed to be repeated each day during the period from Contract Close to the Expiry Date,

with reference to the facts and circumstances then subsisting.

49 Benefits held on trust for its Associates

- (a) **(Benefit of indemnities):** The State holds on trust for its Associates the benefit of:
 - (1) each indemnity and release given by Project Co under this Agreement in favour of the State's Associates; and
 - (2) each right in this Agreement to the extent that such right is expressly stated to be for the benefit of the State's Associates.
- (b) **(Project Co acknowledgement):** Project Co acknowledges the existence of such trusts and consents to:
 - (1) the State exercising rights in relation to, or otherwise enforcing such indemnities, releases and rights on behalf of its Associates; and
 - (2) [not disclosed]
- (c) **(Consent not required):** The parties agree that the State does not require the consent of any of its Associates to amend or waive any provision of any State Project Document.

50 Project Co to inform itself

50.1 No representations from the State

Subject to, and without limitation to, clause 48.1, Project Co acknowledges and agrees that the State and its Associates have not made and make no representation, and give no warranty or guarantee and owe no duty of care in respect of:

- (a) **(Project Information):** the accuracy, adequacy or completeness of the Project Information;
- (b) **(Site):** the Site Conditions, title to the Site or adequacy of or access to the Site and its surroundings for the Project;
- (c) **(Site Information Reports):** the accuracy of any information contained in or any omissions from the Site Information Reports;
- (d) **(Utility Infrastructure):** the existence, location, condition or availability of any Utility Infrastructure; or
- (e) **(Easements):** any Easements and rights of way.

50.2 Acknowledgments by Project Co

Without limiting clause 50.1, but subject to, and without limitation to, clause 48.1, Project Co acknowledges and agrees that:

- (a) **(entry into Agreement):** it enters into this Agreement based on its own investigations, interpretations, deductions, information and determination;
- (b) **(opportunity to investigate):** it was given the opportunity to itself undertake, and to request others to undertake tests, enquiries and investigations:
 - (1) relating to the subject matter of any Project Information; and
 - (2) of the Site;



- (c) **(Project Information)**: the Project Information was provided by the State and any of its Associates for the information only of Project Co;
- (d) **(no invitation, offer or recommendation)**: the Project Information does not form part of this Agreement or constitute an invitation, offer or recommendation by or on behalf of the State;
- (e) **(no reliance)**: it did not rely upon any Project Information or any other information, data, representation, statement or document or the accuracy, adequacy, suitability or completeness of the Project Information or other such information, data, representation, statement or document for the purposes of entering into this Agreement or delivering the Project;
- (f) **(State entry into Agreement)**: the State has entered into this Agreement relying upon the warranties, acknowledgements, representations and agreements set out in this Agreement; and
- (g) **(Intellectual Property Rights)**: all Intellectual Property Rights in the Project Information remain the property of the State or any of its Associates or any Site Information Report providers (as the case may be).

50.3 Release and indemnity

Subject to, and without limitation to, clause 48.1, Project Co:

- (a) **(indemnity)**: indemnifies the State and its Associates against any Claim or Liability suffered or incurred by the State or its Associates; and
- (b) **(release)**: releases and will procure that its Associates release the State and its Associates from any Claim,

arising in connection with:

- (c) **(reliance)**: the provision of, or the purported reliance upon, or use of, the Project Information by Project Co, an Associate of Project Co or any other person to whom the Project Information is disclosed by Project Co, an Associate of Project Co or any person on Project Co's or the Associate's behalf; or
- (d) **(representations)**: the matters set out in clauses 50.1(a) to 50.1(e).

51 Ownership of assets and licences to use

51.1 Equipment

- (a) **(Ownership)**: All Equipment will be owned by the State.
- (b) **(Transfer to State)**: Subject to clause 51.1(c), Project Co must ensure that ownership of each item of Equipment transfers to the State:
 - (1) on the date on which Project Co acquires title to the relevant Equipment;
 - (2) without limiting clause 51.1(b)(1), no later than the Date of Final Acceptance;
 - (3) to the extent a Modification occurs in respect of the Maintained Assets following the Date of Final Acceptance, from the completion of the implementation of that Modification; and

- (4) in all cases, free from any Encumbrance other than a Permitted Encumbrance (as each of those terms is defined in the State Security).
- (c) **(Licence):** The State grants Project Co an exclusive licence to use and to permit Project Co's Subcontractors to use the Equipment for the purpose of fulfilling Project Co's obligations under this Agreement. This licence commences in respect of each item of Equipment on the date on which ownership of the relevant Equipment transfers to the State and will terminate at the end of the Term.

51.2 Asset Register

Project Co must prepare and maintain the Asset Register and provide it to the State upon request.

52 Restrictions on Project Co

52.1 Restrictions on Project Co

- (a) **(Restrictions):** Project Co must not:
 - (1) conduct any business other than the Project and the carrying out of its obligations and the exercise of its rights under the Project Documents;
 - (2) acquire or hold any property or incur any liability other than for the purposes of the Project, and must ensure that all assets, property and revenue required for or generated from the Project are and will at all times form part of the assets of Project Co;
 - (3) except as expressly permitted by this Agreement, enter into contracts with the Franchisee, other Consortium Members, any CY Trustee, the Equity Investors or any of their respective Associates;
 - (4) except as expressly permitted by this Agreement, assume or permit to subsist any liability in favour of the Franchisee, other Consortium Members, any CY Trustee, the Equity Investors or any of their respective Associates;
 - (5) be or become a member of any tax consolidated group within the meaning of the *Income Tax Assessment Act 1997* (Cth) or GST group within the meaning of the GST Law;
 - (6) commercialise or derive income from the Project Assets (other than as permitted by clause 37); or
 - (7) permit the CY Trustees to, and must ensure that the CY Trustees do not:
 - (A) in their personal capacity at any time hold any assets relevant to, required for or otherwise in connection with the Project;
 - (B) hold their interest as partners in the Cross Yarra Partnership other than through the CY Trusts;
 - (C) at any time hold any assets or incur any Liability other than as relevant to, required by or otherwise in connection with their role as trustees of the CY Trusts; or

- (D) terminate their respective CY Trust or vest, or permit the vesting of, the capital of the CY Trust in any person, except to the extent of a 'Permitted Equity Distribution' (under and as defined in the Facility Agreement),

without the State's prior consent.

- (b) **(Consent)**: The State must not unreasonably withhold its consent under clause 52.1(a)(3) or clause 52.1(a)(4) if the relevant transaction is on arm's length commercial terms except in relation to any proposed transaction with, or in favour of, the Franchisee, another Consortium Member, or an Equity Investor in which case the State's consent may be withheld in its absolute discretion.

52.2 Project Co name and branding

Project Co must:

- (a) **(Display)**: not display its or its Associate's livery, name/corporate image or brand on the Project Assets, or on any material or assets visible to the public; and
- (b) **(No changes)**: not change its or its Associate's livery, name/corporate image or brand on the Project Assets, or on any material or assets visible to the public, other than to the extent required by Law, or with the prior written consent of the State.

53 Assignment, amendments and change in ownership

53.1 Assignment, amendments to Project Documents and other dealings by Project Co

- (a) **(Restrictions on Project Co)**: Except as expressly permitted by this Agreement, the Finance Direct Deed or the State Security, Project Co must not:
- (1) assign, sell, novate, transfer, (subject to clause 53.2) mortgage or charge, create or allow to exist any security interest over, or otherwise deal with all or any part of its interest in, or obligations under;
 - (2) lease, license, transfer, sell, dispose of, part with possession of, or otherwise deal with;
 - (3) make or permit any amendment to, replacement of or waiver of a provision of;
 - (4) terminate, surrender, rescind or accept repudiation of; or
 - (5) enter into any agreement or arrangement which affects the operation or interpretation of,
- any of the Project Documents (each an **Amendment** for the purpose of this clause 53), the whole or any part of the Construction Areas, Maintenance Areas or the Relevant Infrastructure.
- (b) **(Exceptions)**: Clauses 53.1(a)(3) to 53.1(a)(5) do not apply in respect of:
- (1) a Refinancing, which is to be dealt with in accordance with clause 40; or
 - (2) a Share Capital Dealing, which is to be dealt with in accordance with clauses 53.4 and 53.6.



- (c) **(Notice of intended Amendment):** If Project Co requires an Amendment, it must submit to the State a written request seeking its consent. Such a request must set out:
- (1) the Amendment and the reasons for it;
 - (2) the response or anticipated response of any other party to the Project Documents regarding the Amendment;
 - (3) the response or anticipated response of any assignee or incoming party of the Project Documents to the Amendment; and
 - (4) copies of any documents relevant to Project Co's request.
- (d) **(State to advise):** The State must advise Project Co, within:
- (1) 15 Business Days of receiving its request under clause 53.1(c), that:
 - (A) it consents to the Amendment; or
 - (B) the Amendment is unacceptable to it and the reasons why the Amendment is unacceptable; and
 - (2) 10 Business Days of receiving its request under clause 53.1(c) if it requires further information from Project Co regarding the Amendment, in which case Project Co must provide the additional information sought by the State within a further period of 10 Business Days, and clause 53.1(c) will apply again to that Amendment.
- (e) **(Failure to respond):** If the State fails to respond for any reason within the period specified under clause 53.1(d)(1) in relation to an Amendment in respect of a Project Document, which is not a State Project Document:
- (1) Project Co may send a reminder notice; and
 - (2) if that notice is not responded to within 7 Business Days, the State will be deemed to have given its consent to such Amendment.

53.2 Financiers' securities

Each Project Entity may mortgage or charge its interest under the Project Documents to secure its obligations to any Financier (or the trustee or agent for any Financier) under the Finance Documents, if, and for so long only as, the Financier (or the trustee or agent for the Financier) is a party to the Finance Direct Deed.

53.3 Initial status of ownership

Project Co represents and warrants that, as at Financial Close, it will be indirectly and beneficially owned and Controlled as set out in the Ownership Schedule.

53.4 Restrictions on Share Capital Dealings

Subject to clause 53.6, Project Co must not and must ensure that each Group Member does not:

- (a) **(restrictions on Project Entities):** at any time:
- (1) other than for the purposes of a Distribution permitted by the Equity Documents and the Finance Documents, redeem, repurchase, defease, retire or repay any share capital or units in a Project Entity, a CY Trustee or a CY Trust, or resolve to do so;

- (2) other than in accordance with the Equity Documents and the Finance Documents, issue or agree to issue any share capital or units in a Project Entity, a CY Trustee or a CY Trust;
- (3) issue or agree to issue any warrants or options over any unissued share capital or units in a Project Entity, a CY Trustee or a CY Trust; or
- (4) permit or suffer any change to (or transfer of) the issued share capital or units in a Project Entity, a CY Trustee or a CY Trust, which results in:
 - (A) the Project Entity, the CY Trustee or the CY Trust ceasing to be directly and beneficially wholly owned and controlled by its Holding Entity as set out in the Ownership Schedule; or
 - (B) Project Co ceasing to be owned by the CY Partners in the proportions set out in the Ownership Schedule;
- (b) **(restrictions on Holding Entity):** allow a Holding Entity, at any time, to:
 - (1) other than for the purposes of a Distribution permitted by the Equity Documents and the Finance Documents, redeem, repurchase, defease, retire or repay any share capital or units in a Holding Entity, or resolve to do so;
 - (2) other than in accordance with the Equity Documents and the Finance Documents, issue or agree to issue any share capital or units in a Holding Entity;
 - (3) issue or agree to issue any warrants or options over any unissued share capital or units in a Holding Entity;
 - (4) other than in accordance with the Equity Documents and the Finance Documents, permit or suffer any change to (or transfer of), the issued share capital or units in a Holding Entity which changes the percentage of issued share capital or units owned (legally and/or beneficially) by any Equity Investor; or
 - (5) permit the transfer of unitholder or shareholder loans (or other loans in the nature of equity funding) from an Equity Investor to a party other than one wholly owned and controlled by that Equity Investor;
- (c) **(no Change in Control):** at any time, permit or suffer any Change in Control of a Consortium Member; or
- (d) **(no Change in trustee):** permit or suffer a change in the manager, trustee or responsible entity of any Group Member that is a trust,

(each a **Share Capital Dealing**), without the State's prior consent which must be requested by notice from Project Co to the State.

53.5 State's right to withhold consent

Subject to clauses 53.6(b), 53.7(b) and 53.9, the State may only withhold its consent to a proposed Share Capital Dealing if the State is of the opinion (acting reasonably) that:

- (a) a proposed new Equity Investor or Equity Investors (or any Entity that directly or indirectly Controls that new Equity Investor or Equity Investors):
 - (1) is or are not Solvent and reputable; or
 - (2) has or have an interest or duty which conflicts or may conflict in a material way with the interests of the State; or



- (b) the proposed Share Capital Dealing:
- (1) is against the public interest;
 - (2) would adversely affect the ability or capability of a Project Entity to carry out its obligations in accordance with any Project Document;
 - (3) could lead to a Probity Event;
 - (4) would, in respect of a Change in Control of a Consortium Member (who is not an Equity Investor) result in the Consortium Member being Controlled by an entity that:
 - (A) has an interest or duty which conflicts or may conflict in a material way with the interests of the State; or
 - (B) does not have a sufficient level of financial, managerial and technical capacity to deliver the Project;
 - (5) would have a material adverse effect on the Project;
 - (6) would require Approvals which have not yet been obtained; or
 - (7) would increase the Liability of, or risks accepted by, the State under the State Project Documents or in any other way in connection with the Project.

53.6 Permitted Share Capital Dealings and on-market acquisitions

- (a) **(Permitted Share Capital Dealings):** Project Co may effect, permit, suffer or allow a Permitted Share Capital Dealing at any time without the State's consent, provided that Project Co:
- (1) provides notice to the State of the Permitted Share Capital Dealing as soon as reasonably practicable; and
 - (2) provides the notice under clause 53.6(a)(1) to the State:
 - (A) in respect of any Permitted Share Capital Dealing set out in paragraphs (a) or (d) of the definition of Permitted Share Capital Dealing, not less than 5 Business Days prior to the Permitted Share Capital Dealing; and
 - (B) in respect of any Permitted Share Capital Dealing set out in paragraphs (b) or (c) of the definition of Permitted Share Capital Dealing, not more than 5 Business Days after the Permitted Share Capital Dealing.
- (b) **(On-market acquisitions):** If:
- (1) a Share Capital Dealing by way of a Change in Control occurs due to the transfers of shares or other interests which are listed on a stock exchange; and
 - (2) the consent of the State is required under this Agreement but could not have been obtained prior to the Share Capital Dealing,

that consent must be sought immediately after the Share Capital Dealing, and Project Co must procure that the Controlling Entity ceases to have the Control which resulted in the Change in Control within 60 Business Days after receiving any notice under clause 53.7 that the State does not consent to the Change in Control.



- (c) **(No Major Default):** A Change of Control under clause 53.6(b) will not result in a Major Default unless:
- (1) Project Co could have procured the consent of the State prior to the Share Capital Dealing; or
 - (2) Project Co fails to procure that the Controlling Entity ceases to have the Control which resulted in the Change in Control within 60 Business Days after the State gives notice under clause 53.7 that the State does not consent to the Change in Control.

53.7 Consent to a Share Capital Dealing

The State must advise Project Co, within 10 Business Days (or such longer period as the State reasonably requests given the nature of the proposed Share Capital Dealing) of receiving Project Co's request for consent in accordance with clause 53.4 or 53.6, whether:

- (a) **(consent):** it consents to the Share Capital Dealing;
- (b) **(unacceptable):** subject to clause 53.5, the Share Capital Dealing is unacceptable to it and the reasons why the Share Capital Dealing is unacceptable; or
- (c) **(further information):** it requires further information from Project Co regarding the Share Capital Dealing, in which case Project Co must provide the additional information sought by the State within a further period of 10 Business Days, after which the State must respond in terms of clause 53.7(a) or 53.7(b) within 10 Business Days.

53.8 Costs relating to a Share Capital Dealing

Project Co must pay the State its costs (including legal and financial advisers' fees) reasonably incurred in relation to considering or consenting to a proposed Share Capital Dealing.

53.9 Designated Investor

Project Co must ensure that each Designated Investor continues to hold at least 50% of the percentage set out in the Ownership Schedule of the total issued securities in the relevant Holding Entity directly (or indirectly via an Equity Associate of the Designated Investor) and in Project Co indirectly (through its, or its Equity Associate's holding of issued securities in the relevant Holding Entity) until the second anniversary of the Date of Final Acceptance.

53.10 Assignment by the State

- (a) **(Project Co consent required):** Subject to clause 53.10(b), the State may not sell, transfer or assign or otherwise dispose of all or any part of its interest in the State Project Documents without the prior consent of Project Co.
- (b) **(No consent required):** The State may sell, transfer or assign or otherwise dispose of all or any part of its interest in the State Project Documents without Project Co's consent, if:
 - (1) it has provided Project Co with details of the proposed transferee and the terms and conditions of the proposed transfer;



- (2) the proposed transferee is an Authority (including any Minister) which is an agent of, or the obligations of which are supported by, the Crown in the right of the State of Victoria; and
- (3) the proposed transferee has agreed to be bound by the relevant State Project Documents.

53.11 No change in Cross Yarra Partnership

Project Co must not and must ensure that each Group Member does not allow any change to the CY Partners that results in a change to the membership of the Cross Yarra Partnership.

54 Financial Model

54.1 Provision of the Base Case Financial Model

Project Co must provide to the State Representative on Contract Close Project Co's audited financial model for the Project as at that date in the form and substance approved by the State (**Base Case Financial Model**).

54.2 Status of the Financial Model

The State must not be adversely affected by any ambiguities, discrepancies, inconsistencies, conflicts, errors or omissions in the Financial Model, or by the fact that it may not reflect the actual financial performance or the projected performance or budgets of the Project or Project Co and is purely a model to be used for the purposes set out in clause 54.8.

54.3 Varying the Financial Model

The Financial Model must be varied in accordance with this clause 54 upon the occurrence of any of the following events (each a **Model Variation Event**):

- (a) (**Refinancing**): a Refinancing;
- (b) (**Change Compensation Event**): a Change Compensation Event which results in a permanent adjustment, or any other permanent adjustment, to the Quarterly Service Payment expressly provided for in this Agreement;
- (c) (**SMPC State Notice**): the issue of a SMPC State Notice in accordance with clause 34A.2(a);
- (d) [not disclosed]; and
- (e) (**Agreed Events**): any other event which Project Co and the State agree to be a Model Variation Event.

54.4 Principles for variations to the Financial Model

When a Model Variation Event occurs, the Financial Model will be varied by taking into account only the amounts determined in accordance with this Agreement including the Change Compensation Principles, as agreed between the State and Project Co, or as determined in accordance with clauses 46 to 47.



54.5 Procedures for variations to the Financial Model

Any variation to the Financial Model to take account of a Model Variation Event must be made as follows:

- (a) **(Project Co proposal)**: Project Co must propose the variation by notice to the State Representative within 15 Business Days of the Model Variation Event occurring, giving full details of the assumptions and calculations used;
- (b) **(review)**: the review of the varied Financial Model must be undertaken in accordance with the Review Procedures; and
- (c) **(amendment)**: once the variation to the Financial Model is agreed or determined, Project Co must promptly amend the Financial Model accordingly, and the parties agree that each other element of this Agreement which is directly derived from the Financial Model or Model Output Schedule will be updated to reflect the varied Financial Model.

54.6 Access to information

Project Co must provide the State Representative and any other authorised representatives of the State with:

- (a) **(varied Financial Model)**: full access to electronic copies of the varied Financial Model;
- (b) **(log)**: a log of all changes that have been made to the Financial Model;
- (c) **(calculations)**: all supporting calculations; and
- (d) **(other information)**: any other information reasonably requested by the State, for a Model Variation Event, including reasonable access to any financial modeller (including Project Co's financial modeller) with ability to access that information, and relevant passwords or other access information.

54.7 Auditing the Financial Model

- (a) **(Model auditors)**: The State Representative may at any time appoint a model auditor to audit the Financial Model and:
 - (1) the results of the audit must be disclosed to both the State and Project Co; and
 - (2) to the extent any inconsistency, ambiguity, discrepancy, conflict, error or omission is revealed in the audit by the State, Project Co must promptly correct the Financial Model accordingly.
- (b) **(Costs)**: If an audit by the State Representative results in a correction to the Financial Model, Project Co must pay the reasonable costs of the State in conducting the audit, but, if not, the State must bear the costs of the audit.

54.8 Custody of Financial Model

- (a) **(Custody)**: The Financial Model must be held in escrow from Financial Close for the Term by the Escrow Agent on the terms of the Escrow Agreement, and on the basis that it must be released to both parties for the purposes of:
 - (1) varying the Financial Model on the occurrence of Model Variation Events;
 - (2) the calculation of Termination Payments;



- (3) the determination of any Dispute in accordance with clauses 46 to 47; and
 - (4) the State Representative exercising its audit rights in accordance with clause 54.7.
- (b) **(Costs):** The costs of the Escrow Agent must be borne equally by Project Co and the State in accordance with the Escrow Agreement.

54.9 Replacement of Escrow Agent

- (a) **(Replacement):** If the Escrow Agent:
- (1) refuses or fails to carry out the Escrow Agent's obligations in accordance with the Escrow Agreement or is otherwise unable to perform the Escrow Agent's functions under the Escrow Agreement; or
 - (2) is in material breach of the terms of the Escrow Agreement,
- the State and Project Co must replace the Escrow Agent with another escrow agent, on substantially the same terms as the existing Escrow Agreement.
- (b) **(Notification):** A party must notify the other party within 5 Business Days after it becomes aware of any event identified in clause 54.9(a)(1) or 54.9(a)(2). The State Representative and Project Co must meet promptly thereafter to agree on the identity of the replacement escrow agent willing to act on substantially the same terms as the existing Escrow Agreement.
- (c) **(Appointment):** If the State and Project Co cannot agree on the selection of a replacement escrow agent willing to act on substantially the same terms as the existing Escrow Agreement, within 10 Business Days after a party becomes aware of any event identified in clauses 54.9(a)(1) or 54.9(a)(2), the State Representative must request the President of the Institute of Chartered Accountants in Australia (Victorian Branch) to appoint a person with the appropriate qualifications, skills and experience in all relevant areas of expertise to carry out the obligations of an escrow agent in accordance with an escrow agreement on substantially the same terms as the existing Escrow Agreement.

55 Records and accounts

55.1 Accounting records

- (a) **(Proper books of account):** Project Co must keep proper books of account and all other records (**Accounts and Records**) it has relating to the Project at its offices, and must ensure that each other Group Member, the D&C Subcontractor (during the D&C Phase) and the Maintenance Subcontractor (during the Maintenance Phase) does likewise.
- (b) **(Annual audit):** Project Co must have its accounts audited annually on both an unconsolidated basis and on a consolidated basis (to the extent that Project Co is part of a consolidated entity, within the meaning of the Corporations Act) and must ensure that each other Group Member, the D&C Subcontractor (during the D&C Phase, and to the extent the D&C Subcontractor is part of a consolidated entity, on a consolidated basis only) and the Maintenance Subcontractor (during the Maintenance Phase, and on a consolidated basis only) does likewise.



- (c) **(Accounting principles):** Project Co must ensure that its Accounts and Records are prepared in accordance with the Corporations Act and generally accepted Australian accounting principles and practices consistently applied, and fairly represent its operations and financial condition or consolidated financial position (as the case may be) and must ensure that each other Group Member does likewise.
- (d) **(Availability of accounting records):** Project Co must ensure that its Accounts and Records are available to the State and any person authorised by the State at any time during Business Hours (subject to receiving 2 Business Days' notice from the State) during the Term for examination, audit, inspection, transcription and copying, and must ensure that each other Group Member does likewise.
- (e) **(Availability of accounting records if Agreement is terminated):** Without limiting its obligations in accordance with clause 32, if this Agreement is terminated, Project Co must give to the State and, to the extent directed by the State, to Associates of the State access to all of its Accounts and Records which are necessary for the carrying out of the Project Activities, and must ensure that each other Group Member does likewise.
- (f) **(Access to group members' accounting records):** The State must give Project Co access to any Accounts and Records given to it by a Group Member for a period of 7 years after the date they are given.

55.2 Cost to complete information

Project Co must give to the State the same information required to be given to any Financier in accordance with the Finance Documents in relation to the costs to complete construction of the Works, at such times as are required in accordance with the Finance Documents, and must ensure that each other Group Member does likewise.

55.3 Financial statements

- (a) **(financial statements):** As soon as practicable (and in any event not later than 120 days) after the close of each Financial Year, Project Co must give to the State:
 - (1) certified copies of the consolidated (if applicable) and unconsolidated audited financial statements for the previous Financial Year for Project Co and Finance Co;
 - (2) certified copies of the unconsolidated unaudited financial statements for the previous Financial Year for each CY Trustee; and
 - (3) if requested by the State:
 - (A) the consolidated (to the extent the D&C Subcontractor is part of a consolidated entity) and unconsolidated audited financial statements for the previous Financial Year for the D&C Subcontractor (during the D&C Phase); and
 - (B) the consolidated audited and unconsolidated unaudited financial statements for the previous Financial Year for the Maintenance Subcontractor (during the Maintenance Phase).
- (b) **(Cashflow and profit and loss statements):** Not later than 30 days after the end of each Quarter, Project Co must give to the State certified copies of cashflow and profit and loss statements, and must ensure that Finance Co does likewise.



55.4 Other information

Project Co must give to the State the following information:

- (a) **(ASIC and ASX disclosures)**: copies of all documents or information given or received by any Group Member to or from the Australian Securities & Investments Commission or Australian Stock Exchange Limited, promptly after the information is first given or received;
- (b) **(changes to counterparty details)**: details of any changes to the Counterparty Details within 20 Business Days after the change; and
- (c) **(other information)**: such other information relating to the Project as the State may reasonably require from time to time including any reports prepared by, or on behalf of, Project Co in relation to the Project Activities.

56 Intellectual Property Rights

The parties rights and obligations in relation to Intellectual Property are set out in the Intellectual Property Schedule.

57 Confidential Information and disclosure

57.1 Confidential Information and disclosure by the State

- (a) **(Public Disclosure Obligations)**: The State or any Authority may disclose any information in connection with the Project (including any Confidential Information):
 - (1) in accordance with Laws;
 - (2) to satisfy the disclosure requirements of the Victorian Auditor-General;
 - (3) to satisfy the requirements of Parliamentary accountability;
 - (4) where the disclosure is in the course of the official duties of VicRoads, the Department of Economic Development, Jobs, Transport and Resources, the Secretary, the Victorian Minister for Public Transport or the Treasurer of Victoria;
 - (5) to VicTrack, local councils, any Associate of the State or any person authorised or nominated by the State to the extent necessary for the purpose of the Project, Metro Tunnel or the broader transport network provided they agree to maintaining the confidentiality of any Confidential Information;
 - (6) in annual reports of the State;
 - (7) in accordance with policies of the Victorian Government; or
 - (8) to satisfy any other recognised public requirement,**(Public Disclosure Obligations)** and Project Co must use all reasonable endeavours to assist the State or an Authority in meeting its Public Disclosure Obligations.



- (b) **(Other purposes):** The State or any Authority may disclose any information in connection with the Project (including any Confidential Information, but excluding the Finance Documents and Equity Documents) in connection with:
 - (1) the State selling, transferring, assigning or otherwise disposing of, re-franchising, contracting or otherwise dealing with all or any part of the Franchisee business (**Re-franchising**); and
 - (2) the requirements of the State Project Documents (including any tender process required to be conducted under the Termination Payments Schedule or the Change Compensation Principles).
- (c) **(Major Projects Skills Guarantee)** The State and the Department of Economic Development, Jobs, Transport and Resources may disclose statistical information contained in the Compliance Plan and the measures of Project Co's compliance with the Compliance Plan.
- (d) **(State's rights):** Subject to clause 57.1(e), in meeting its Public Disclosure Obligations or as otherwise considered necessary by the State the State may publish, disclose or make generally available each Project Document on a Victorian Government website.
- (e) **(Commercially sensitive information):** The State will not publish, disclose or otherwise make generally available the information which is specified in the Confidential Information Schedule (including the Financial Model), except if required to do so to comply with the Public Disclosure Obligations or as required under clause 57.1(b).
- (f) **(Exercise of Licence):** Nothing in this Agreement prevents the State and any sublicensees using or disclosing any information (including Confidential Information) to extent necessary or desirable for, or in connection with, the exercise of any licence granted under clause 56.

57.2 Confidential Information and disclosure by Project Co

- (a) **(Confidentiality obligation):** Subject to clause 57.2(b), Project Co must treat as secret and confidential all Confidential Information in connection with this Agreement and any other State Project Document.
- (b) **(Disclosure of Confidential Information):** Without limiting Project Co's obligation under clause 57.2(a) and subject to clause 57.2(c), Project Co may disclose Confidential Information to:
 - (1) its Associates to the extent necessary for the purpose of undertaking the Project; or
 - (2) a Rail Franchisee to the extent necessary for the purpose of undertaking the Project and to comply with its obligations under the Rail Franchisee Cooperation Agreements and the Rail Franchisee Arrangements; or
 - (3) any Financier, prospective financier or equity investor of the Project, subject to the State having been provided necessary information in respect of the proposed parties and having carried out any Probity Investigation that the State considers necessary.
- (c) **(Confidentiality deed):** Before disclosing any Confidential Information, Project Co must ensure that the person to whom the information is disclosed:
 - (1) except to the extent the person to whom information is disclosed is a Rail Franchisee Interface Party, enters into a confidentiality deed with Project Co on terms reasonably acceptable to the State; and



- (2) to the extent the person to whom information is disclosed is a Rail Franchisee Interface Party, the Rail Franchisee Interface Party agrees to comply with its confidentiality obligations under the relevant Rail Franchisee Cooperation Agreement.

57.3 Disclosure by Project Co

- (a) **(Project Co's disclosure obligations):** Subject to clause 57.3(b), Project Co must:
 - (1) not make any public disclosures, announcements or statements in relation to the Project or the State's or any of the State's Associates' involvement in the Project without the State's prior consent;
 - (2) comply with any terms and conditions the State imposes and must use all reasonable endeavours to agree with the State the wording and timing of all public disclosures, announcements or statements by it or any of its Associates relating to the Project or the State's or any of the State's Associates' involvement in the Project before the relevant disclosure, announcement or statement is made; and
 - (3) as soon as practicable, give to the State a copy of any public disclosure, announcement or statement agreed to or approved by the State in accordance with this clause 57.3(a) or for which the State's consent or approval was not required in accordance with clause 57.3(b).
- (b) **(Permitted disclosure):** For the purposes of clause 57.3(a), Project Co will not be required to obtain the State's consent or approval to the extent that any disclosure, announcement or statement is:
 - (1) required by Law, provided that it:
 - (A) notifies the State of the requirement to make that disclosure; and
 - (B) takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;
 - (2) required to obtain legal or other advice from its advisers;
 - (3) required to be made to a court in the course of proceedings to which Project Co is a party;
 - (4) required by a relevant stock exchange, subject to:
 - (A) such disclosure, announcement or statement not referring to the State's or any of its Associates' involvement in the Project; and
 - (B) Project Co having used all reasonable endeavours to obtain the State's consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant stock exchange; or
 - (5) a disclosure by:
 - (A) the Train Franchisee Interface Party made in accordance with clause 21.3(c) of the Train Franchisee Cooperation Agreement; or



- (B) the Tram Franchisee Interface Party made in accordance with clause 16.3(c) of the Tram Franchisee Cooperation Agreement.

57.4 Government procurement

Without limiting any other clause in this Agreement, Project Co must provide all assistance, information and documents to the State, as reasonably requested by the State, in relation to the State selling, transferring, assigning, disposing of, re-franchising, contracting or otherwise dealing with all or any part of the Train Franchisee Arrangements or the Train Franchisee business.

58 Privacy

58.1 Privacy Principles

- (a) **(Privacy Principles):** Project Co agrees to, and will ensure that any Subcontract contains terms which require the Subcontractor to, be bound by the Privacy Principles and any applicable Privacy Code with respect to any act done, or practice engaged in, by it in connection with this Agreement or for the Subcontract (as the case may be), in the same way as the State would be bound by the Privacy Principles and any applicable Privacy Code, in connection with that act or practice had it been directly done or engaged in by the State.
- (b) **(Release and indemnity):** Project Co must release, indemnify and must keep indemnified on demand the State and its Associates from and against any Claim or Liability (including any Claim made by, or Liability to, a third party) which the State or any of its Associates suffer or incur resulting from any act done or practice engaged in by Project Co or any Subcontractor in connection with this Agreement or the Subcontract (as the case may be), which would, had that act or practice been done or engaged in by the State, have contravened one or more of the Privacy Principles or any applicable Privacy Code.

58.2 Public Sector Data

- (a) **(Obligations):** Notwithstanding any other provision of this Agreement, Project Co must:
 - (1) provide all reasonable assistance, information and documents to the State in relation to MMRA's Security Risk Profile Assessment and Protective Data Security Plan, and the Public Sector Privacy Act;
 - (2) in relation to any Public Sector Data and Public Sector Data Systems, make itself aware of, comply with and ensure its Associates comply with the requirements of the Public Sector Data Security Standards as if it were a Public Sector Agency;
 - (3) collect, hold, manage, use, disclose and transfer Public Sector Data only:
 - (A) for the purposes of the Project Activities;
 - (B) in a manner consistent with the MMRA's Protective Data Security Plan; and

- (C) in accordance with all other requirements reasonably necessary to comply with the Public Sector Privacy Act and Public Sector Data Security Standards;
 - (4) ensure that design and function of the Project Assets is consistent with the Public Sector Data Security Standards and the MMRA's Protective Data Security Plan;
 - (5) immediately notify, and provide all reasonable assistance to the State in the event of a Public Sector Data Incident;
 - (6) comply with any recommendation or direction of the Commissioner for Privacy and Data Protection in relation to the Public Sector Privacy Act and the Public Sector Data Security Standards; and
 - (7) on termination or expiry of this Agreement, return to the State or securely destroy (at the State's election) all copies or other records containing Public Sector Data.
- (b) **(Survival):** This clause 58.2 survives expiry or termination of this Agreement until Project Co and all of its Associates cease to hold any Public Sector Data.

59 Taxes

59.1 GST General

- (a) **(GST exclusive amounts):** Unless otherwise expressly stated, all amounts referred to in this Agreement or any Project Document are exclusive of GST.
- (b) **(GST payable by Supplier):** If GST becomes payable on any Taxable Supply made by a party (**Supplier**) under or in connection with this Agreement:
 - (1) any amount payable or consideration to be provided in accordance with any other provision of this Agreement for that supply (**Agreed Amount**) is exclusive of GST;
 - (2) an additional amount will be payable by the party which is the recipient of the Taxable Supply (**Recipient**), equal to the amount of GST payable on that Taxable Supply as calculated by the Supplier in accordance with the GST Law, which will be payable at the same time and in the same manner as for the Agreed Amount; and
 - (3) the Supplier will provide a Tax Invoice to the Recipient in connection with that supply, either at the time expressly set out in any other provision of this Agreement or no later than the time at which the Agreed Amount for that Taxable Supply is to be provided in accordance with this Agreement. The Recipient is not obliged to pay any amount in accordance with this clause 59.1(b) unless and until a Tax Invoice is received by the Recipient in connection with the Taxable Supply except where the Recipient is required to issue the Tax Invoice.
- (c) **(Variation in GST payable):** If for any reason, the GST payable by the Supplier in connection with a supply it makes under or in connection with this Agreement (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it received from the Recipient under clause 59.1(b) in connection with that supply, the Supplier will provide a refund or credit to, or will be entitled to receive from, the Recipient (as



appropriate) the amount of this variation. Where an adjustment event occurs in relation to a supply and except where the Recipient is required to issue the Adjustment Note:

- (1) the Supplier will issue an Adjustment Note to the Recipient in connection with that supply within 14 days after becoming aware of that adjustment event occurring; and
 - (2) no additional amount will be payable by the Recipient unless and until an Adjustment Note is received by the Recipient.
- (d) **(GST ceasing to be payable):** No amount is payable by a party in accordance with clause 59.1(b) or 59.1(c) to the extent that the GST to which the amount relates has ceased to be payable by or refundable to the Supplier by the Commissioner of Taxation under the GST Law.
- (e) **(Expert Determination):** If the Recipient is dissatisfied with any calculation to be made by the Supplier in accordance with this clause 59.1 the Recipient may, at its own expense and after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the President of the Institute of Chartered Accountants for expert determination, which will be final and binding on all parties (except in the case of manifest error). The expert will act as an expert and not as an arbitrator and must take into account the terms of this Agreement, the matters required to be taken into account by the Supplier in accordance with this clause 59 and any other matter considered by the expert to be relevant to the determination. The parties release the expert from any liability in acting as an expert, except in the case of fraud on the part of the expert.
- (f) **(Revenue net of GST):** Any reference in this Agreement or any Project Document to price, value, sales, revenue, profit or a similar amount (**Revenue**), is a reference to the GST exclusive component of that Revenue, unless the contrary intention is expressed.
- (g) **(Cost net of GST):** Any reference in this Agreement or any Project Document to cost, expense, liability or other similar amount (**Cost**) of a party, is a reference to that Cost reduced by the Input Tax Credits to which the party is entitled in respect of such Cost, unless the contrary intention is expressed.
- (h) **(State Contributions, State Maintenance Phase Contribution, Final D&C Phase Payment and Final D&C Phase Modification Payment):**
Notwithstanding any other provision of this clause 59.1:
- (1) the parties intend that the State will not bear any net costs (including funding costs arising from timing differences) in respect of GST payable on any Taxable Supply to which the State Contributions, the State Maintenance Phase Contribution, the Final D&C Phase Payment or a Final D&C Phase Modification Payment relate;
 - (2) the parties will use their reasonable endeavours to obtain and implement an agreement by the Commissioner to offset, in the parties' running balance accounts, Project Co's liability to pay GST on a Taxable Supply to which the State Contributions, the State Maintenance Phase Contribution, the Final D&C Phase Payment or a Final D&C Phase Modification Payment relate and the State's entitlement to Input Tax Credits for a Creditable Acquisition to which the State Contributions, the State Maintenance Phase Contribution, the Final D&C Phase Payment or a Final D&C Phase Modification Payment relate. The setting off by the Commissioner of the amounts in the parties' running balance accounts will be taken to satisfy any obligation of the State to pay to Project Co an amount in respect of



- GST on the relevant Taxable Supply (whether or not the amount set-off is equal to the whole of that GST);
- (3) Project Co must, on or before the Date of Provisional Acceptance, issue the State a Tax Invoice for any Taxable Supply to which the relevant State Contribution, State Maintenance Phase Contribution, Final D&C Phase Payment or Final D&C Phase Modification Payment relates in accordance with clauses 33.3(a), 34.3(a), 34A.1(a), 35A.1(a) or 35A.2(a) (as applicable);
 - (4) the State is not obliged to make a payment to Project Co in respect of GST in respect of a Supply to which a State Contribution, a State Maintenance Phase Contribution, a Final D&C Phase Payment or a Final D&C Phase Modification Payment relates on a payment date in accordance with clause 33.4, 34.1(b), 34A.1(a), 35A.1(a), 35A.2(a) or (as applicable) until it has (acting reasonably and in accordance with clause 59.1(h)(2)) received the benefit of an Input Tax Credit for such GST (by the Input Tax Credit being offset against a GST or other tax liability, credited to the State's running balance account, being refunded to the State or a combination of the above);
 - (5) if the State is denied an Input Tax Credit by the Australian Tax Office, a Court or other appropriate Government Agency for all or part of the GST in respect of a State Contribution, a State Maintenance Phase Contribution, a Final D&C Phase Payment or a Final D&C Phase Modification Payment, Project Co must reimburse the State for any relevant GST it has paid in excess of its Input Tax Credit entitlement and indemnify the State for an amount equal to any penalty or interest as a result of claiming an Input Tax Credit for the whole of the GST on that State Contribution, State Maintenance Phase Contribution, Final D&C Phase Payment or Final D&C Phase Modification Payment;
 - (6) if clause 59.1(h)(5) applies, the State will cooperate with Project Co as reasonably required by Project Co to enable the State and Project Co to discuss with the Australian Tax Office the reasons for the denial of an Input Tax Credit and will take reasonable steps, as reasonably directed by Project Co, to dispute the denial (provided that the obligation to dispute is not a condition precedent to the operation of clause 59.1(h)(5)). Project Co indemnifies the State for its costs incurred in disputing any denial of an Input Tax Credit;
 - (7) if as a result of clause 59.1(h)(6), the State's entitlement to an Input Tax Credit is increased, the State will promptly pay to Project Co an amount equal to that increase together with any interest to which the State is entitled in relation to that amount;
 - (8) the State must take all reasonable steps to ensure it (or the State entity that is treated as making the supplies and acquisitions under the State Project Documents for GST purposes) receives the benefit of the Input Tax Credit from the Australian Taxation Office as quickly as possible, including:
 - (A) claiming the Input Tax Credit in the 'Business Activity Statement' for the Tax Period to which the Input Tax Credit is attributable;
 - (B) lodging the Business Activity Statement in which the Input Tax Credit is reported no later than the due date for that Business Activity Statement;



- (C) forwarding any queries or correspondence from the Commissioner in respect of that Business Activity Statement (but only to the extent that the queries or correspondence relates to the relevant Input Tax Credit) to Project Co; and
 - (D) promptly informing Project Co of any delays or other related issues in respect of the Input Tax Credit;
 - (9) if at any time this Agreement is terminated, the obligation of the State to pay Project Co any amount in accordance with clauses 59.1(h)(4) and 59.1(h)(7) continues in full force and effect and is an obligation separate, independent and additional to the State's obligation to make a termination payment in accordance with clause 45.7. Notwithstanding the termination of this Agreement, the State is obliged to use reasonable endeavours to obtain the Input Tax Credit and to pay to Project Co each amount in accordance with clauses 59.1(h)(4) and 59.1(h)(7); and
 - (10) if at any time this Agreement is terminated, the obligation of Project Co to pay the State any amount in accordance with clause 59.1(h)(5) continues in full force and effect.
- (i) **(Recipient Supply):** To the extent that the consideration provided for the Supplier's taxable supply to which clause 59.1(b) applies is a taxable supply made by the Recipient (**Recipient Supply**), then:
 - (1) the additional amount for GST that would otherwise be payable by the Recipient to the Supplier in accordance with clause 59.1(b)(2) shall be reduced by the amount of GST payable by the Recipient on the Recipient Supply; and
 - (2) the Recipient must issue to the Supplier a tax invoice for any Recipient Supply at the same time that the Supplier is required to issue a tax invoice to the Recipient for the Supplier's corresponding taxable supply pursuant to clause 59.1(b)(3).
- (j) **(General obligation):** Each party agrees to do all things, including providing Tax Invoices and other documentation, that may be necessary or desirable to enable or assist the other party in determining its GST payable on any supply made by that other party in connection with this Agreement, or any Input Tax Credits, adjustments or refunds in relation to any amount of GST paid or payable in connection with any supply made in connection with this Agreement.
- (k) **(GST Groups):** For the purposes of this Agreement, a reference to GST payable on a Taxable Supply made by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member and a reference to an Input Tax Credit entitlement of a party includes any corresponding Input Tax Credit entitlement of the representative member of any GST group of which that party is a member, and if a party to this Agreement makes a Taxable Supply by virtue of entering into or performing this Agreement and the 'recipient' of that Taxable Supply (within the meaning of the GST Act) is an Associate of another party to this Agreement (which for this purpose includes, in relation to the State, the Secretary), that other party to this Agreement will be obliged either to pay the amount referred to in clause 59.1(b)(2) or procure that the actual recipient pays the relevant amount, and the payer of that amount shall be the 'Recipient' for the purposes of this clause 59.1 in relation to the relevant Taxable Supply.
- (l) **(Agreement to prevail):** If, but for this clause 59.1(l), a GST clause in another Project Document would apply in connection with a Taxable Supply to which



this clause 59.1 also applies, then this clause 59.1 will apply in connection with that supply and the GST clause in the other Project Document will not apply.

- (m) **(Definitions):** In this clause 59.1 unless otherwise defined in this Agreement, terms used have the meanings given to them in the GST Law.

59.2 General liability for Taxes

- (a) **(Payment):** Subject to the Relevant Legislation, as between the State and Project Co, Project Co bears the risk of, and must pay, all Rates and Taxes incurred or imposed in connection with:
- (1) the Project;
 - (2) payments, income or net income received or receivable by any Group Member;
 - (3) the execution, stamping and registration of any Project Document;
 - (4) the performance of any Project Document and each transaction effected by or made under or in connection with any Project Document, including the Project Activities;
 - (5) any amendment to, or any consent, approval, waiver, release, surrender or discharge of or under any Project Document;
 - (6) any transaction, assignment, transfer or other dealing by or in relation to a Group Member (including dealings in the shares or other interest in a Group Member), whether or not related to the Project or the Project Documents, including in connection with a Change in Control or Share Capital Dealing and any Refinancing; and
 - (7) any Site,
- except as provided in clause 59.1.
- (b) **(Indemnity):** Project Co must indemnify the State against any Claim or Liability arising in connection with the Rates and Taxes which Project Co is required to pay in accordance with clause 59.2(a).

60 Local Industry Development Plan

60.1 Local Industry Development Plan (LIDP)

- (a) **(Compliance):** Project Co must, in carrying out its obligations in accordance with this Agreement, comply with the LIDP and meet the Local Content Requirements.
- (b) **(Application of LIDP):** Project Co acknowledges and agrees that its obligations as set out in the LIDP apply during the Term and until all of its reporting obligations as set out in clause 60.3 are fulfilled.

60.2 Revised LIDP

- (a) **(Revised LIDP):** If at any time:
- (1) a variation to this Agreement or Modification is proposed which involves or effects a change in the nature of any Contestable Items;



- (2) following receipt of a report from Project Co submitted in accordance with clause 60.3(b), the State or the Independent Reviewer notifies Project Co that it is not satisfied that:
 - (A) Project Co has met the Local Content Requirements; or
 - (B) Project Co will be able to meet the aggregate Local Content Requirements; or
- (3) Project Co considers that the requirements of the LIDP are not being met,

Project Co must:

- (4) prepare a revised LIDP which demonstrates Project Co's ability to meet the aggregate Local Content Requirements in collaboration with and certified by ICN; and
- (5) submit the revised LIDP to the State and the Independent Reviewer for review in accordance with the Review Procedures,

(Revised LIDP).

- (b) **(Provision of Revised LIDP):** When requested by the State, Project Co must provide the Revised LIDP within the time stated in the State's request.
- (c) **(Variation):** The Revised LIDP must be agreed by the parties before any variation to this Agreement can take effect unless the parties agree that a Revised LIDP is unnecessary.
- (d) **(Replacement):** Once the Revised LIDP is agreed by the parties, the Revised LIDP replaces the LIDP in the VIPP Schedule and forms part of this Agreement.

60.3 Reporting

- (a) **(Records):** Project Co must prepare and maintain records demonstrating its compliance with the LIDP.
- (b) **(Reporting):** Project Co must provide to the State:
 - (1) the LIDP Monitoring Table in the form set out in VIPP Schedule detailing:
 - (A) Project Co's aggregate compliance with the LIDP; and
 - (B) identifying and explaining any departures from the LIDP; and
 - (2) a statutory declaration made by a director of Project Co or Project Co's Chief Executive Officer or Chief Financial Officer declaring that the information contained in the LIDP Monitoring Table is true and accurate, in the form of and executed in accordance with the form set out in the VIPP Schedule,annually, and:
 - (3) on the earlier of Provisional Acceptance and 1 month after the Date for Provisional Acceptance; and
 - (4) on Final Acceptance.
- (c) **(Further information):** At the request of the State, Project Co must provide further information or explanation of any departures from the LIDP as reported in the LIDP Monitoring Table.



60.4 Adjustment of Quarterly Services Payments

- (a) **(Certification by the Independent Reviewer):** On the Date of Provisional Acceptance, the Independent Reviewer must certify:
- (1) the percentage of Local Content (ANZ) used by Project Co to the Date of Provisional Acceptance in undertaking the D&C Activities; and
 - (2) the percentage of the Project Co D&C Phase Workforce to the Date of Provisional Acceptance which was comprised of Priority Jobseekers undertaking D&C Activities in Victoria, calculated as an Annualised Employee Equivalent against the Project Co D&C Phase Workforce,
- by issuing a certificate in the form set out in the Schedule of Certificates and Notices.
- (b) **(State's entitlement to adjustment):** Without limiting clause 35.2 or clause 61.3 if, at the Date of Provisional Acceptance, Project Co has not met:
- (1) the aggregate Local Content Requirements to the Date of Provisional Acceptance; or
 - (2) the Priority Jobseekers' Requirements to the Date of Provisional Acceptance,
- each as determined in accordance with clause 60.4(a), the State will be entitled to adjust the Quarterly Service Payment to the extent and in the manner described in section 2 of the Payment Schedule.
- (c) **(Calculation of adjustment):** The parties acknowledge and agree that:
- (1) the adjustment referred to in clauses 60.4(b):
 - (A) will be calculated in accordance with the formula set out in section 2 of the Payment Schedule; and
 - (B) the formula has been agreed by the parties in good faith and the adjustment resulting from its application is a genuine pre-estimate of the anticipated or actual Liability the State will suffer if Project Co fails to meet the aggregate Local Content Requirements or the Priority Jobseekers' Requirements (as relevant) to the Date of Provisional Acceptance;
 - (2) each party wishes to avoid the difficulties of proof of damages in connection with a failure by Project Co to meet the aggregate Local Content Requirements or the Priority Jobseekers' Requirements to the Date of Provisional Acceptance; and
 - (3) the adjustment to be made in accordance with clause 60.4(b) is reasonable and is not intended as a penalty.
- (d) **(State's entitlement to common law damages):** Notwithstanding clause 60.4(e), to the extent that all or any part of this clause 60.4 is found for any reason to be void, invalid, unenforceable or otherwise inoperative so as to disentitle the State from adjusting the Quarterly Service Payments in accordance with clause 60.4(b), the State will be entitled to recover common law damages for the failure by Project Co to meet the aggregate Local Content Requirements or the Priority Jobseekers' Requirements but Project Co's Liability for such damages will not be any greater than the Liability which it would have had if this clause 60.4 had not been void, invalid, unenforceable or otherwise inoperative.



- (e) **(Sole remedy):** Subject to clause 35.3(c) and clause 60.4(d), reduction of the Quarterly Service Payments in accordance with clause 60.4(b) will be the State's sole financial remedy for a failure by Project Co to meet the aggregate Local Content Requirements or the Priority Jobseekers' Requirements to the Date of Provisional Acceptance.

60.5 Verification of Project Co's compliance with LIDP

- (a) **(Review of performance):** Project Co must:
 - (1) permit the State from time to time to undertake a review of Project Co's performance in accordance with the LIDP; and
 - (2) ensure that its Associates give all reasonable assistance to any person authorised by the State to undertake such audit or inspection.
- (b) **(Authorisations):** Project Co acknowledges and agrees that the State, the State Representative and ICN are authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding Project Co's compliance with the LIDP.
- (c) **(Additional obligations):** The obligations set out in this clause 60.4 are in addition to and do not derogate from any other obligation under this Agreement.

60.6 Use of LIDP information

Project Co acknowledges and agrees that:

- (a) **(assessment):** ICN will assess Project Co's performance against the LIDP; and
- (b) **(disclosure):** the statistical information contained in the LIDP and the LIDP Monitoring Table may be:
 - (1) included in the State's report of operations under Part 7 of the *Financial Management Act 1994 (Vic)* in respect of the State's compliance with the LIDP in the financial year to which the report of operations relates;
 - (2) provided to the Responsible Minister for the VIPP for inclusion in the Responsible Minister for VIPP's report to the Parliament for each financial year on the implementation of the LIDP during that year; and
 - (3) disclosed in the circumstances set out in clauses 60.3 and 57.1 or as otherwise required by Law.

61 Major Projects Skills Guarantee

61.1 Major Projects Skills Guarantee

- (a) Project Co must, in performing its obligations under this Agreement, comply with the Major Projects Skills Guarantee and the Major Projects Skills Guarantee Compliance Plan (**Compliance Plan**).
- (b) Project Co acknowledges and agrees that its obligations as set out in the Compliance Plan apply during the Term and until all of its reporting obligations set out in clause 61.2 are fulfilled.



- (c) Project Co agrees that the minimum labour hours requirements set out in the Compliance Plan will:
 - (1) be applied to the Works as a whole; and
 - (2) not be applied on the basis of individual Subcontracts or components.
- (d) Subject to clauses 61.1(e) and 61.1(f) the parties agree that labour hours performed by:
 - (1) Apprentices, Trainees or Engineering Cadets, either separately or in any combination; or
 - (2) pre-existing or new Apprentices, Trainees or Engineering Cadets, either separately or in any combination,may be included in determining whether the requirements of the Major Projects Skills Guarantee Compliance Plan have been achieved.
- (e) Work hours performed by Apprentices may include Apprentices:
 - (1) directly employed by Project Co and its Subcontractors; and
 - (2) employed through Group Training Organisations.
- (f) Time spent by Apprentices, Trainees or Engineering Cadets attending course related education in accordance with a Training Contract at a Registered Education and Training Organisation, or other educational institution may be included in determining whether the requirements of the Compliance Plan have been achieved.
- (g) The State agrees that the Services will be included for the purpose of calculating the deemed estimated overall project labour hours in order to determine whether Project Co has complied with the Major Projects Skills Guarantee.
- (h) Project Co must ensure that any Subcontracts entered into in relation to the Project Activities contain clauses requiring Subcontractors:
 - (1) to comply with the Major Projects Skills Guarantee and the Compliance Plan to the extent that it applies to work performed under the Subcontract;
 - (2) to provide necessary information that allows Project Co to comply with its reporting obligations under clause 61.2; and
 - (3) to permit the State to exercise its inspection and verification rights under clause 61.3.

61.2 Reports

- (a) Project Co must submit written reports (**Major Projects Skills Guarantee Performance Report**) to the State outlining its performance against the Compliance Plan.
- (b) The Major Projects Skills Guarantee Performance Reports must include details specifying Project Co's performance in complying with the Compliance Plan. Any deviations from the Compliance Plan must be included in the Major Projects Skills Guarantee Performance Reports.
- (c) Major Projects Skills Guarantee Performance Reports must be submitted by Project Co to the State:
 - (1) as specified in Table 6 of the Compliance Plan; and

- (2) otherwise, at a frequency of not less than quarterly.
- (d) In addition to the Major Projects Skills Guarantee Performance Reports, Project Co must also submit:
 - (1) an interim Major Projects Skills Guarantee Performance Report on 29 August 2020 as set out in the Compliance Plan;
 - (2) a final report (**Major Projects Skills Guarantee Final Report**) within 2 months of Provisional Acceptance; and
 - (3) a statutory declaration made by a director of Project Co or Project Co's Chief Executive Officer or Chief Financial Officer declaring that the contents of the Major Projects Skills Guarantee Final Report are true and correct, which must be submitted together with the Major Projects Skills Guarantee Final Report.

61.3 Adjustment of Quarterly Services Payments

- (a) (**Certification by the Independent Reviewer**): On the Date of Provisional Acceptance, the Independent Reviewer must certify the percentage of the total labour hours for the Works performed by Apprentices, Trainees and Engineering Cadets to the Date of Provisional Acceptance, by issuing a certificate in the form set out in the Schedule of Certificates and Notices.
- (b) (**State's entitlement to adjustment**): Without limiting clause 35.2 or clause 60.4 if, at the Date of Provisional Acceptance, Project Co has not met the Major Projects Skills Guarantee to the Date of Provisional Acceptance as determined in accordance with clause 61.3(a), the State will be entitled to adjust the Quarterly Service Payment to the extent and in the manner described in section 2 of the Payment Schedule.
- (c) (**Calculation of adjustment**): The parties acknowledge and agree that:
 - (1) the adjustment referred to in clauses 61.3(b):
 - (A) will be calculated in accordance with the formula set out in section 2 of the Payment Schedule; and
 - (B) the formula has been agreed by the parties in good faith and the adjustment resulting from its application is a genuine pre-estimate of the anticipated or actual Liability the State will suffer if Project Co fails to meet the Major Projects Skills Guarantee to the Date of Provisional Acceptance;
 - (2) each party wishes to avoid the difficulties of proof of damages in connection with a failure by Project Co to meet with the Major Projects Skills Guarantee to the Date of Provisional Acceptance; and
 - (3) the adjustment to be made in accordance with clause 61.3(b) is reasonable and is not intended as a penalty.
- (d) (**State's entitlement to common law damages**): Notwithstanding clause 61.3(e), to the extent that all or any part of this clause 61.3 is found for any reason to be void, invalid, unenforceable or otherwise inoperative so as to disentitle the State from adjusting the Quarterly Service Payments in accordance with clause 61.3(b), the State will be entitled to recover common law damages for the failure by Project Co to meet the Major Projects Skills Guarantee to the Date of Provisional Acceptance but Project Co's Liability for such damages will not be any greater than the Liability which it would have had if this clause 61.3 had not been void, invalid, unenforceable or otherwise inoperative.



- (e) **(Sole remedy):** Subject to clause 35.3(c) and clause 61.3(d), reduction of the Quarterly Service Payments in accordance with clause 61.3(b) will be the State's sole financial remedy for a failure by Project Co to meet the Major Projects Skills Guarantee to the Date of Provisional Acceptance.

61.4 Verification of compliance with Major Projects Skills Guarantee Compliance Plan

- (a) Project Co agrees that the State will have the right to inspect Project Co's records in order to verify compliance with the Compliance Plan.
- (b) Project Co must:
- (1) permit the State or its duly authorised representative, from time to time during ordinary business hours and upon notice, to inspect, verify and make copies at the State's expense of all records maintained by Project Co for the purposes of this Agreement at Project Co's premises, or provide copies of those records to the State at its request;
 - (2) permit the State, or its duly authorised representative from time to time to undertake a review of Project Co's performance in accordance with the Compliance Plan; and
 - (3) ensure that its employees, agents and subcontractors give all reasonable assistance to any person authorised by the State to undertake such audit or inspection.
- (c) Project Co acknowledges and agrees that the State, and the State's duly authorised representative are authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding Project Co's compliance with the Compliance Plan.
- (d) The obligations set out in this clause 61.3 are in addition to and do not derogate from any other obligation under this Agreement including the State's rights pursuant to clause 16.3.

61.5 Use of Major Projects Skills Guarantee information

Project Co acknowledges and agrees that the State and the Department of Economic Development, Jobs, Transport and Resources may:

- (a) disclose statistical information contained in the Compliance Plan and the measures of Project Co's compliance with the Compliance Plan; and
- (b) consider statistical information contained in the Compliance Plan and the measures of Project Co's compliance with the Compliance Plan in the assessment or review of each Consortium Member's eligibility to tender for future Victorian Government contracts.

61.6 Revised Major Projects Skills Guarantee Compliance Plan

- (a) **(Revised Compliance Plan):** If at any time a variation to this Agreement or Modification is proposed which involves or effects a change in the nature of Project Co's workforce, Project Co must:
- (1) prepare a revised Compliance Plan which demonstrates Project Co's ability to meet the Major Projects Skills Guarantee; and



(2) submit the revised Compliance Plan to the State and the Independent Reviewer for review in accordance with the Review Procedures,

(Revised Compliance Plan).

- (b) **(Provision or Revised Compliance Plan):** When requested by the State, Project Co must provide the Revised Compliance Plan within the time stated in the State's request.
- (c) **(Variation):** The Revised Compliance Plan must be agreed by the parties before any variation to this Agreement can take effect unless the parties agree that a Revised Compliance Plan is unnecessary.
- (d) **(Replacement):** Once the Revised Compliance Plan is agreed by the parties, the Revised Compliance Plan replaces the previous Compliance Plan and forms part of this Agreement.

61A RSA Equipment

- (a) **(Acknowledgement):** The parties acknowledge and agree that the RSA Equipment Quantities are indicative only, and that the technical assumptions underlying the RSA Equipment are set out in Section D3 of the Technical Solution.
- (b) **(RSA Equipment Unit Costs):** On or prior to 31 January 2018, Project Co must submit to the State for approval the RSA Equipment Unit Cost for each type of RSA Equipment.
- (c) **(RSA Equipment):** Project Co must:
 - (1) design and procure the Works in consultation with the State and the Rail Systems Alliance so as to achieve efficient outcomes for quantity and quality of RSA Equipment and all other costs associated with RSA Equipment, including the costs of procuring, installing, integrating and maintaining RSA Equipment;
 - (2) monitor, in consultation with the State and the Rail Systems Alliance, the quantities of RSA Equipment by reference to the design of the Works and the Rail Systems Alliance Works;
 - (3) prior to procuring any item of RSA Equipment, submit to the State for review an itemised quote for procuring that item of RSA Equipment; and
 - (4) procure all quantities of RSA Equipment required for the Tunnel and Stations as determined in consultation with the State and the Rail Systems Alliance and by reference to the design of the Works and the Rail Systems Alliance Works.
- (d) **(RSA Equipment Overruns):** On the Date of Provisional Acceptance, if the quantity of RSA Equipment procured by Project Co multiplied by the relevant RSA Equipment Unit Costs exceeds 110% of the RSA Equipment Limit, it will be deemed to be a Modification directed by the State and clause 38.9 will apply.
- (e) **(RSA Equipment Modifications):** If, including as the result of a change to the RSA Equipment specification or design, a new requirement is introduced that results in a material change to the type of RSA Equipment, the parties will agree, acting reasonably, any amendments required to Schedule 34 (but the RSA Equipment Limit will not be amended), and on Provisional Acceptance, if the quantity of RSA Equipment procured by Project Co multiplied by the



relevant RSA Equipment Unit Costs exceeds 110% of the RSA Equipment Limit, it will be deemed to be a Modification directed by the State and clause 38.9 will apply.

- (f) **(RSA Equipment Unit Costs):** A Modification Quote submitted by the Project Co in relation to the procurement of RSA Equipment pursuant to clause 61C(d) must be priced using the relevant RSA Equipment Unit Costs.
- (g) **(Limits):** Project Co will not be entitled to:
 - (1) any extension of time for procuring quantities of RSA Equipment in excess of the relevant RSA Equipment Quantity; or
 - (2) a Modification in relation to the procurement of RSA Equipment in excess of the relevant RSA Equipment Quantity to the extent the excess is less than 110% of the relevant RSA Equipment Quantity; or
 - (3) a Modification in relation to the procurement of RSA Equipment in excess of 110% of the relevant RSA Equipment Quantity where the RSA Equipment Limit has not been exceeded.

61B City Square Requirements

[not disclosed]

61C Meanwhile Metro Scope and Artwork Procurement

61C.1 Meanwhile Metro Scope

- (a) **(Overarching):** The parties acknowledge and agree:
 - (1) the Meanwhile Metro Scope will be finalised progressively during the D&C Phase to respond to circumstances at the time including to take into account feedback from, and priorities of, the State and other relevant Project stakeholders (as agreed between Project Co and the State from time to time);
 - (2) Project Co has a fixed budget of [not disclosed] to deliver the Meanwhile Metro Scope (**Fixed MM Budget**);
 - (3) Project Co has no obligation to:
 - (A) carry out any works in respect of the Meanwhile Metro Scope which would result in spending more than (or otherwise spend more than) the Fixed MM Budget on the delivery of the Meanwhile Metro Scope; or
 - (B) spend the Fixed MM Budget in accordance with timing which is inconsistent with the Base Case Financial Model;
 - (4) the Fixed MM Budget comprises:
 - (A) [not disclosed] which has been included by Project Co in the Financial Model (in addition to and independently from the D&C Subcontract Price); and



- (B) [not disclosed] which has been included in the D&C Subcontract Price (and which as at the date of this Agreement, has been allocated in the Meanwhile Metro Scope to certain items included in the scope included in the D&C Subcontract); and
 - (5) they will determine the allocation of the Fixed MM Budget in accordance with this clause 61C.1; and
 - (6) any Disputes in respect of this clause 61C.1 may be referred by either party by notice to expert determination in accordance with clause 46.3 to 46.9.
- (b) **(Proposed MM Strategy):** Within 60 Business Days from the date of this Agreement (and thereafter at intervals during the D&C Phase agreed with the State (acting reasonably) which must be no greater than 6 months), Project Co must submit to the State a proposed scope and strategy for the delivery of the Meanwhile Metro Scope (**MM Strategy**).
- (c) **(Contents of MM Strategy):** The proposed MM Strategy must comprise individual strategies for the Construction Area of each Station precinct and in respect of the Construction Area of each Station precinct:
 - (1) set out a detailed proposed scope and strategy for the delivery of the Meanwhile Metro Scope over the forthcoming 6 months (or such other period as agreed by the State (acting reasonably), which strategy must outline the outcome of any consultation and feedback from stakeholders with respect to the Meanwhile Metro Scope;
 - (2) include a detailed breakdown of each item or activity proposed to be delivered as part of the Meanwhile Metro Scope over the forthcoming 6 months (or such other period as agreed by the State (acting reasonably)) and a forecast estimate of the cost of each item or activity;
 - (3) include a cash-flow showing the forecast and actual expenditure against the Fixed MM Budget, which must be consistent with the timing set out in the Base Case Financial Model;
 - (4) contain a high-level draft program for the delivery of the Meanwhile Metro Scope until Provisional Acceptance;
 - (5) contain details to support the forecast and actual expenditure (as applicable); and
 - (6) contain such other information reasonably requested by the State.
- (d) **(Process to agree):**
 - (1) The State and Project Co must:
 - (A) meet to discuss the contents of a proposed or any updated MM Strategy provided by Project Co in accordance with clause 61C.1(b) within 10 Business days from receipt; and
 - (B) seek to agree the MM Strategy.
 - (2) Project Co must provide to the State an updated MM Strategy addressing any issues raised by the State (acting reasonably) within 5 Business Days (or such other time agreed by the parties, acting reasonably) following the conduct of a meeting pursuant to this clause 61C.1(d).



- (3) Subject to clause 61C.1(d)(4), clauses 61C.1(d)(1) and 61C.1(d)(2) will apply again until the parties have agreed in writing the initial (and any updated) MM Strategy.
- (4) To the extent that Project Co does not address an issue raised by the State in accordance with clause 61C.1(d)(2), the State may require that Project Co amend the MM Strategy to address that issue.
- (e) **(Agreed MM Strategy):** Subject to clause 61C.1(g)(2), Project Co must deliver the Meanwhile Metro Scope in accordance with the agreed MM Strategy.
- (f) **(Report):** Project Co must provide a written progress report to the State quarterly on the delivery of the Meanwhile Metro Scope in accordance with the agreed MM Strategy which must include:
 - (1) the status of the forecast and actual expenditure against the Fixed MM Budget; and
 - (2) documentation or information as evidence of the costs incurred by Project Co in the delivery of the Meanwhile Metro Scope.
- (g) **(No Claim):** Except to the extent that the State issues a Modification Order in accordance with clause 38:
 - (1) Project Co is not entitled to make any Claim against the State or a State Associate as a result of the actual costs properly and reasonably incurred by Project Co in delivering the Meanwhile Metro Scope exceeding the Fixed MM Budget; and
 - (2) Project Co has no obligation to carry out any works relating to the subject matter of the Meanwhile Metro Scope that would result in it incurring costs in excess of the Fixed MM Budget.

61C.2 Artwork Procurement

- (a) **(Overarching):** The parties acknowledge and agree:
 - (1) Project Co has a fixed budget of [not disclosed] **(Fixed Artwork Budget)** for Artwork Procurement within the D&C Subcontract Price;
 - (2) Project Co has no obligation to:
 - (A) carry out any works in respect of the Artwork Procurement which would result in spending more than (or otherwise spend more than) the Fixed Artwork Budget on Artwork Procurement; or
 - (B) spend the Fixed Artwork Budget in accordance with timing which is inconsistent with the timing set out in the Drawdown Schedule (as defined in the D&C Subcontract); and
 - (C) they will determine the allocation of the Fixed Artwork Budget in accordance with this clause 61C.2; and
 - (D) any Disputes in respect of this clause 61C.2 may be referred by either party by notice to expert determination in accordance with clause 46.3 to 46.9.
- (b) **(Proposed Artwork Procurement Strategy):** On or before 1 July 2018 (and thereafter at intervals during the D&C Phase agreed with the State (acting reasonably) which must be no greater than 6 months), Project Co must consult with the State and other stakeholders nominated by the State (on agreement of the identity of those stakeholders by Project Co, acting reasonably) in respect of



the Artwork Procurement and submit to the State a proposed scope and strategy for delivery of the Artwork Procurement (**Artwork Procurement Strategy**).

- (c) (**Contents of Artwork Procurement Strategy**): The proposed Artwork Procurement Strategy must:
- (1) be informed by the consultation conducted by Project Co in accordance with clause 61C.2(b);
 - (2) contain an overarching strategy and approach (including with respect to each Station, the procurement of different types of artwork and maintenance requirements of artwork);
 - (3) include an indicative timeline for the conduct of all processes relating to the Artwork Procurement;
 - (4) contemplate the preparation of briefs to artists (which must be approved in writing by the State prior to release);
 - (5) provide for the establishment of an external advisory panel to assist in the selection of installations or artwork (as applicable);
 - (6) include a cash-flow that shows the forecast and actual expenditure which must:
 - (A) be consistent with the timing set out in the Drawdown Schedule; and
 - (B) to the extent that the Artwork Procurement replaces any other Works that Project Co would otherwise be required to complete or install in accordance with this Agreement, the Fixed Artwork Budget will be increased by the value of the Works replaced by the Artwork Procurement; and
 - (7) contain such other information reasonably requested by the State.
- (d) (**Process to agree**):
- (1) The State and Project Co must:
 - (A) meet to discuss the contents of a proposed or updated Artwork Procurement Strategy provided by Project Co in accordance with clause 61C.2(b) within 10 Business days from receipt; and
 - (B) seek to agree the Artwork Procurement Strategy as soon as practicable and in any case by the dates referred to in clause 61C.2(c)(3).
 - (2) Project Co must provide to the State an updated Artwork Procurement Strategy addressing any issues raised by the State (acting reasonably) within 5 Business Days (or such other time agreed by the parties) following the conduct of a meeting pursuant to this clause 61C.2(d).
 - (3) Subject to clause 61C.2(d)(4), clauses 61C.2(d)(1) and 61C.2(d)(2) will apply again until the parties have agreed in writing the initial (and any updated) Artwork Procurement Strategy.
 - (4) To the extent that Project Co does not address an issue raised by the State in accordance with clause 61C.2(d)(2), the State may require that Project Co amend the Artwork Procurement Strategy to address that issue.



- (e) **(Agreed Artwork Procurement Strategy):** Subject to clause 61C.2(g) and clause 61C.2(h) Project Co must comply with the agreed Artwork Procurement Strategy.
- (f) **(Report):** Project Co must provide a written progress report to the State on the Artwork Procurement following agreement in writing on the Artwork Procurement Strategy as part of the Monthly D&C Phase Progress Report which must include:
 - (1) the status of the forecast and actual spend against the Fixed Artwork Budget; and
 - (2) documentation or information as evidence of the costs incurred by Project Co in the delivery of the Artwork Procurement.
- (g) **(No Claim):** Except to the extent that the State issues a Modification Order in accordance with clause 38, or Project Co is entitled to relief for a Compensable Extension Event, Project Co is not entitled to make any Claim against the State or a State Associate if the actual costs properly and reasonably incurred by Project Co in delivering the Artwork Procurement Strategy exceed the Fixed Artwork Budget.
- (h) **(Fixed Artwork Budget):** Except to the extent that the State issues a Modification Order in accordance with clause 38, Project Co has no obligation to carry out any works relating to the subject matter of the Artwork Procurement that would result in it incurring costs in excess of the Fixed Artwork Budget.

62 Probity Events and Probity Investigations

62.1 Probity Event

- (a) **(Notice):** Project Co must give notice to the State immediately upon becoming aware that a Probity Event has occurred or is likely to occur. The notice must at a minimum describe the Probity Event, when the Probity Event occurred or is likely to occur and the circumstances giving rise to the Probity Event.
- (b) **(Meeting):** Upon receipt of a notice under clause 62.1(a) or otherwise upon the occurrence of a Probity Event:
 - (1) the State and Project Co must meet within 5 Business Days to agree to a course of action that will remedy the Probity Event (including conducting a Probity Investigation); and
 - (2) Project Co must comply with any agreement made in accordance with clause 59.1(b)(1) to remedy the Probity Event in accordance with the timeframe agreed.
- (c) **(Failure to agree):** If the State and Project Co fail to agree to a course of action in accordance with clause 62.1(b), Project Co must take any action as required by the State in connection with the Project to remedy or address the Probity Event immediately upon being required to do so and in accordance with any timeframe determined by the State.

62.2 Probity Investigation

- (a) **(Requirement for Probity Investigation):** Project Co agrees that:
 - (1) the State Representative may require at any time that Project Co; or



- (2) the State may,
conduct a Probity Investigation in respect of a Relevant Person, a Group Member, a Consortium Member, a Commercial Opportunities Tenant, a Commercial Opportunities Subcontractor or any person who is proposed to become a Relevant Person, a Consortium Member, a Commercial Opportunities Tenant, or a Commercial Opportunities Subcontractor.
- (b) **(Consents required for Probity Investigation):** Project Co must procure all relevant consents from any persons in connection with which a Probity Investigation is to be conducted.
- (c) **(No appointment without consent):** Project Co must not appoint a person to the position of Relevant Person unless the State Representative has given approval (following a Probity Investigation and any other investigation the State Representative reasonably requires).

62.3 Subcontract probity requirements

If following a Probity Investigation the State is of the opinion that it is not desirable for any person to take part in the management or performance of a Subcontract, a Commercial Opportunities Sublease, or a Commercial Opportunities Subcontract, the State may:

- (a) refuse to approve the Subcontract, Commercial Opportunities Sublease, or Commercial Opportunities Subcontract; or
- (b) approve the Subcontract, Commercial Opportunities Sublease, or Commercial Opportunities Subcontract on condition that the relevant person or persons:
 - (1) not take part in the management or performance of the Subcontract, Commercial Opportunities Sublease, or Commercial Opportunities Subcontract;
 - (2) not be allowed to access the Secured Areas; and
 - (3) not be given Security Information,or on such other conditions as the State considers necessary.

62.4 State costs of Probity Events and Probity Investigation

- (a) **(State Costs):** Subject to clause 62.4(b), Project Co must bear all costs incurred by the State in connection with a Probity Event or Probity Investigation.
- (b) **(Project Co not liable):** Project Co will not be liable for the State's costs of any further Probity Investigation required by the State in respect of a Probity Event in relation to which an initial Probity Investigation has been undertaken.

62.5 Police Checks

- (a) During the Maintenance Phase, Project Co:
 - (1) must obtain a National Police Certificate for all persons employed or engaged on the Project Activities prior to such persons being granted access to the Site which is dated no more than 12 months before the intended start date for that person; and
 - (2) if requested by the State, Project Co must obtain a further National Police Certificate for any person employed or engaged on the Project Activities from time to time throughout the Maintenance Phase.



- (b) If the State, acting reasonably, decides at any time during the Maintenance Phase that a further security clearance is required in relation to any person referred to in clause 62.5(a), then Project Co must ensure that any such person undergoes such security clearance.
- (c) If:
 - (1) Project Co does not obtain a National Police Certificate, or the State, acting reasonably, has concerns in relation to the results of the National Police Certificate; or
 - (2) a person requested to undergo a security clearance pursuant to Clause 62.5(b):
 - (A) does not undergo the requested security clearance; or
 - (B) does not meet the relevant clearance requirements,then Project Co must not, except to the extent explicitly authorised by the State, permit the person (**Uncleared Personnel**) to participate in the Project Activities and if necessary Project Co must engage alternative personnel with requisite knowledge and expertise who can meet the requirements of the security clearance required pursuant to the preceding subclause, to perform the tasks that were to have been performed by the Uncleared Personnel.
- (d) Project Co is responsible for all costs associated with obtaining all National Police Certificates and security clearances.

63 Notices and bar to Claims

63.1 Notices

All communications (including approvals, consents, directions, requirements, requests, Claims, notices, agreements and demands) in connection with this Agreement:

- (a) **(in writing)**: must be in writing;
- (b) **(addressed)**: must be addressed as specified in item 17 of the Contract Particulars (or as otherwise notified by that party to each other party from time to time);
- (c) **(signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(form of delivery)**: must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by both parties) to the email address of the addressee set out in item 17 of the Contract Particulars; and
- (e) **(taken to be received)**: are taken to be received by the addressee at the address set out in item 17 of the Contract Particulars:
 - (1) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
 - (2) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day

after the date of posting by airmail to an address outside Australia;
and

- (3) in the case of email, the first to occur of:
- (A) receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - (B) the time that the communication enters an information system which is under the control of the addressee; or
 - (C) the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day.

63.2 Notices of Claims

Subject to any other provision of this Agreement which contains specific notice requirements in relation to a Claim (in which case, provided Project Co complies with such notice requirements, this clause 63.2 does not apply), the State and its Associates will not be liable upon any Claim that Project Co is entitled to make against the State or its Associates under any State Project Document or otherwise arising in connection with the Project Documents, the Relevant Infrastructure or the Project unless Project Co gives the State the notices required by clause 63.3 and, if applicable, clause 63.4.

63.3 Prescribed notices

The required notices referred to in clause 63.2 are:

- (a) **(intention to submit Claim):** a notice from Project Co in which Project Co states that it intends to submit a Claim and identifies the event on which the Claim will be based and which must be given to the State within 20 Business Days of when Project Co first became aware of the event on which the Claim is based; and
- (b) **(Claim):** a written Claim by Project Co to be given to the State within 60 Business Days of giving notice under clause 63.3(a), which must include:
 - (1) detailed particulars concerning the event on which the Claim is based;
 - (2) the legal basis for the Claim, whether based on a term of the State Project Documents or otherwise, and if based on a term of the State Project Documents, clearly identifying the specific term;
 - (3) the facts relied upon in support of the Claim in sufficient detail to permit verification; and
 - (4) details of the amount claimed and how it has been calculated.

63.4 Continuing events

If the event upon which the Claim under clause 63.3(b) is based or the consequences of the event is continuing, Project Co must continue to give information required by clause 63.3(b) every 20 Business Days after the Claim under clause 63.3(b) was submitted, until after the event or consequences of the event have ceased.



63.5 Release after Acceptance

Without limiting clause 5.3(a), on and from the date which is 6 months after the Date of Final Acceptance, Project Co releases the State from any Claim in connection with any fact, matter or thing arising in connection with the D&C Activities, the Final Acceptance Works, the Works or the State Project Documents which occurred prior to Final Acceptance, except for any Claim in connection with which Project Co has, no later than 6 months after the Date of Final Acceptance, given the State the notices required by clause 63.3, clause 63.4 (if applicable) and otherwise required in accordance with this Agreement.

63.6 Notice to Financiers

The State may provide to the Financiers a copy of any notice from:

- (a) Project Co to the State; or
 - (b) the State, the Secretary, or MMRA to Project Co,
- in connection with the State Project Documents or the Project.

64 Miscellaneous

64.1 Governing Law and jurisdiction

- (a) **(Governing Law)**: This Agreement is governed by, and must be construed according to, the Laws of Victoria, Australia.
- (b) **(Jurisdiction)**: Without limiting clauses 46 to 47, each party irrevocably submits to the non exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Agreement.

64.2 Entire agreement

To the extent permitted by Law and in relation to their subject matter, this Agreement and the other State Project Documents:

- (a) **(entire understanding)**: embody the entire understanding of the parties and constitute the entire terms agreed by the parties; and
- (b) **(prior agreements)**: supersede any prior agreement of the parties.

64.3 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to both parties) required by Law or reasonably requested by another party to give effect to this Agreement.

64.4 Survival of certain provisions

- (a) **(Surviving clauses)**: All provisions of this Agreement which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of this Agreement will survive the rescission, termination or expiration of this Agreement, including any provision in connection with:



- (1) the State's rights to set-off and recover money;
 - (2) confidentiality or privacy;
 - (3) Intellectual Property Rights;
 - (4) any obligation to make any records available to the State;
 - (5) any indemnity or financial security given in accordance with this Agreement; or
 - (6) any right or obligation arising on termination of this Agreement.
- (b) **(Interpretation)**: No provision of this Agreement which is expressed to survive the termination of this Agreement will prevent any other provision of this Agreement, as a matter of interpretation, also surviving the termination of this Agreement.
- (c) **(Survival of rights and obligations)**: No right or obligation of any party will merge on completion of any transaction in accordance with this Agreement. All rights and obligations in accordance with this Agreement survive the execution and delivery of any transfer or other document which implements any transaction in accordance with this Agreement.

64.5 Waiver

- (a) **(Writing)**: A waiver given by a party in accordance with this Agreement is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver)**: A failure to, a delay in or the partial exercise or enforcement of a right provided by Law or in accordance with this Agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or in accordance with this Agreement.
- (c) **(No waiver of another breach)**: No waiver of a breach of a term of this Agreement operates as a waiver of another breach of that term or of a breach of any other term of this Agreement.

64.6 Consents, approvals and directions

- (a) **(State)**: A consent or approval required in accordance with this Agreement from the State may be given or withheld, or may be given subject to any conditions, as the State thinks fit, unless this Agreement expressly provides otherwise. A requirement on the State to act reasonably in providing any consent or approval does not preclude the State from imposing reasonable conditions upon such consent or approval.
- (b) **(Project Co)**: A consent or approval required in accordance with this Agreement from Project Co may not be unreasonably withheld or delayed, unless this Agreement expressly provides otherwise.

64.7 Amendments

- (a) **(Agreement)**: Except as otherwise expressly provided in this Agreement, this Agreement may only be varied by a deed executed by or on behalf of each party.
- (b) **(Other State Project Documents)**: Except as otherwise expressly provided in the State Project Documents, no amendment to any other State Project



Document is valid or binding on a party unless made in writing and executed by the State and all other parties to the relevant State Project Document.

64.8 Expenses

Except as otherwise expressly provided in this Agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Agreement.

64.9 Severance

If, at any time, a provision of this Agreement or any other State Project Document is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this Agreement or any other relevant State Project Document; or
- (b) that provision under the Law of any other jurisdiction.

64.10 Counterparts

This Agreement may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same Agreement.

64.11 Moratorium legislation

Without limiting clause 5.3, to the fullest extent permitted by Law, the provisions of all Laws which operate to lessen or affect in favour of Project Co any obligation under this Agreement, or to prejudicially affect the exercise by the State of any right, power or remedy under this Agreement or otherwise, are expressly waived.

64.12 Proportionate liability

- (a) **(Excluded operation of Wrongs Act):** The operation of Part IVAA of the *Wrongs Act 1958* (Vic) is excluded in relation to all and any rights, obligations or liabilities of either party under this Agreement whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) **(Rights, obligations and liabilities):** Without limiting clause 64.12(a), the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Agreement and not otherwise, whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

64.13 PPSA

Project Co acknowledges and agrees that:

- (a) **(State's rights):** if and to the extent that the State at any time forms a belief on reasonable grounds that the State is, or will become, a secured party arising out of or in connection with this Agreement or any other State Project Document or any transaction contemplated by this Agreement or any other State Project Document, the State may at Project Co's expense take all steps that the State considers advisable to:



- (1) perfect, protect, record, register, amend or remove the registration of, the State's Security Interest in any relevant personal property that is the subject of this Security Interest (**Relevant Personal Property**); and
 - (2) better secure the State's position in respect of the Relevant Personal Property under the PPSA;
- (b) (**Key Subcontractor to assist the State**): it will do, and ensure that each Key Subcontractor does, all things reasonably necessary to assist the State to take the steps described in clause 64.13(a);
 - (c) (**Waiver of right to receive any verification statement**): it irrevocably and unconditionally waives, and will ensure that each Key Subcontractor irrevocably and unconditionally waives, its right to receive any verification statement in respect of any financing statement or financing change statement relating to any Security Interests of the State in the Relevant Personal Property;
 - (d) (**Excluded PPSA sections**): if, and only if, the State is or becomes a secured party in relation to Relevant Personal Property, and to the extent only that Chapter 4 of the PPSA would otherwise apply to an enforcement of a Security Interest in Relevant Personal Property, Project Co and the State agree, and Project Co will ensure that each Key Subcontractor agrees, that, pursuant to section 115 of the PPSA, the following provisions of the PPSA do not apply in relation to those Security Interests to the extent, if any, mentioned in section 115, section 117, section 118, section 120, subsection 121(4), section 125, section 129, section 130, subsection 132(3)(d), subsection 132(4), section 142, and section 143;
 - (e) (**No disclosure**): subject to section 275(7) of the PPSA, it will not, and it will ensure that each Key Subcontractor does not, disclose the contents of this Agreement, the amount or performance obligation secured by the State's Security Interest in Relevant Personal Property and the other information mentioned in section 275(1) of the PPSA pursuant to section 275(4) of the PPSA;
 - (f) (**Project Co to notify the State**): it must immediately notify the State if Project Co or a Key Subcontractor becomes aware of any person other than the State taking steps to register, or registering, a financing statement in relation to Relevant Personal Property; and
 - (g) (**Removal of registered security interest**): it must arrange, and ensure that each Key Subcontractor arranges, for the removal or cessation of any registration of any Security Interest that affects the priority of the State's interest in Relevant Personal Property.

For the purposes of this clause 64.13, 'registration', 'secured party', 'verification statement', 'financing statement', 'personal property' and 'financing change statement' each have the meaning given to those terms in the PPSA.



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Schedule 1

Contract Particulars

Refer to separate document.



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Schedule 2

Conditions Precedent

Refer to separate document.



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Schedule 3

Payment Schedule

Refer to separate document.



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Schedule 4

Change Compensation Principles

Refer to separate document.



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Schedule 5

Termination Payments Schedule

Refer to separate document.



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Schedule 6

State Construction Contribution Schedule

Refer to separate document.



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Schedule 7

Review Procedures

Refer to separate document.



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Schedule 8

Schedule of Certificates and Notices

Refer to separate document.



Schedule 9

Property Schedule

Refer to separate document.

- (a) Commercial Opportunities Lease
- (b) Construction Licence
- (c) Maintenance Licence
- (d) Land Availability Plan



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Schedule 10

Utilities Schedule

Refer to separate document.



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Schedule 11

Insurance Schedule

Refer to separate document.



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Schedule 12

Intellectual Property

Refer to separate document.



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Schedule 13

Independent Reviewer Deed of Appointment

Refer to separate document.



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Schedule 14

Subcontractor Direct Deed

Refer to separate document.



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Schedule 15

Subcontract Novation Deed

Refer to separate document.



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Schedule 16

Expert Determination Agreement

Refer to separate document.



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Schedule 17

Confidential Information Schedule

Refer to separate document.



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Schedule 18

Finance Documents Schedule

Refer to separate document.



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Schedule 19

Equity Documents Schedule

Refer to separate document.



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Schedule 20

Ownership Schedule

Refer to separate document.



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Schedule 21

Permitted Share Capital Dealing Schedule

Refer to separate document.



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Schedule 22

Indexes Schedule

Refer to separate document.



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Schedule 23

VIPP Schedule

Refer to separate document.



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Schedule 24

Financial Close Adjustment Protocol

Refer to separate document.



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Schedule 25

Design Review Schedule

Refer to separate document.



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Schedule 26

Completion Schedule

Refer to separate document.



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Schedule 27

Escrow Agreement (Financial Model)

Refer to separate document.



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Schedule 28

Commercial Opportunities Schedule

Refer to separate document.



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Schedule 29

Reviewable Services Schedule

Refer to separate document.



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Schedule 30

Critical Interface Milestone Program

Refer to separate document.



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Schedule 31

Final Acceptance Schedule

Refer to separate document.



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Schedule 32

Returned Works Schedule

Refer to separate document.



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Schedule 33

City Square Requirements

Refer to separate document.



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Schedule 34

RSA Equipment Pricing

Refer to separate document.



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Schedule 35

Pre-Agreed Modifications



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Schedule 36

SMPC Adjustment Protocol

Refer to separate document.



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Schedule 37

Meanwhile Metro Scope

Refer to separate document.



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Schedule 38

Steps Plan Schedule

Refer to separate document.



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Schedule 39

Insurance Claims Protocol

Refer to separate document.



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Schedule 40

Design Optimisation Land and PSA2

Refer to separate document.



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Schedule 41

Potential Base Track Occupations Schedule

Refer to separate document.



Signing page

Executed as a deed

State

Signed sealed and delivered by
**the Honourable Jacinta Allan
MP, in her capacity as the
Minister for Public Transport, on
behalf of the Crown in right of
the State of Victoria** in the
presence of

sign here ► [not disclosed]
Witness

[not disclosed]
Signature of Minister

print name [not disclosed]

Project Co

CY Partner 1

Signed for
[not disclosed]
by its attorneys

sign here ► [not disclosed]
Attorney

[not disclosed]
Attorney

print name [not disclosed]

[not disclosed]

in the presence of

sign here ► [not disclosed]
Witness

[not disclosed]
Witness

print name [not disclosed]

[not disclosed]



CY Partner 2

Signed for
[not disclosed]
by its attorney

in the presence of

sign here ▶ [not disclosed]
Attorney

sign here ▶ [not disclosed]
Witness

print name [not disclosed]

print name [not disclosed]

CY Partner 3

Signed for
[not disclosed]
by its attorney

in the presence of

sign here ▶ [not disclosed]
Attorney

sign here ▶ [not disclosed]
Witness

print name [not disclosed]

print name [not disclosed]

CY Partner 4

Signed for
[not disclosed]
by its attorney

in the presence of

sign here ▶ [not disclosed]
Attorney

sign here ▶ [not disclosed]
Witness

print name [not disclosed]

print name [not disclosed]



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Exhibit 1

Project Scope and Technical Requirements (PS&TR)

Refer to separate document.



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Exhibit 2

Project Strategies

Refer to separate document.



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Exhibit 3

Technical Solution

Refer to separate document.



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Exhibit 4

Services Specification

Refer to separate document.



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Exhibit 5

Services Solution

Refer to separate document.



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Exhibit 6

Bid D&C Program

Refer to separate document.



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Exhibit 7

Major Projects Skills Guarantee Compliance Plan

Refer to separate document.



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Exhibit 8

Soil Contamination Plans

Refer to separate document.



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Exhibit 9

Initial Contaminated Groundwater Methodology

Refer to separate document.



Schedule 1

Contract Particulars

| Item | Subject | Particulars |
|-------------------------------|----------------------------------|---|
| Clause 1 – Definitions | | |
| 1 | Agent | Name: [not disclosed] Attention: [not disclosed] Address: [not disclosed] Phone: [not disclosed] Email: [not disclosed] |
| 2 | D&C Subcontractor | Name: [not disclosed] Attention: [not disclosed] Address: [not disclosed] Phone: [not disclosed] Email: [not disclosed] Name: [not disclosed] Attention: [not disclosed] Address: [not disclosed] Phone: [not disclosed] Email: [not disclosed] Name: [not disclosed] Attention: [not disclosed] Address: [not disclosed] Phone: [not disclosed] Email: [not disclosed] |
| 3 | Date for Final Acceptance | means the date that is 12 Months after the Date of Provisional Acceptance. |
| 4 | Date for Provisional | 17 September 2023 |



| Item | Subject | Particulars |
|-------------------|---------------------------------------|---|
| <hr/> | | |
| Acceptance | | |
| <hr/> | | |
| 5 | Design Development Coordinator | Name: [not disclosed] Address: [not disclosed] Phone: [not disclosed] Email: [not disclosed] |
| <hr/> | | |
| 6 | Designated Investor | Name: [not disclosed] Attention: [not disclosed] Address: [not disclosed] Phone: [not disclosed] Email: [not disclosed] |
| | | Name: [not disclosed] Attention: [not disclosed] Address: [not disclosed] Phone: [not disclosed] Email: [not disclosed] |
| | | Name: [not disclosed] Attention: [not disclosed] Address: [not disclosed] Phone: [not disclosed] Email: [not disclosed] |
| | | Name: [not disclosed] Attention: [not disclosed] Address: [not disclosed] Phone: [not disclosed] Email: [not disclosed] |
| <hr/> | | |
| 7 | Financiers' Certifier | Name: [not disclosed] Attention: [not disclosed] Address: [not disclosed] Phone: [not disclosed] |
| <hr/> | | |



| Item | Subject | Particulars |
|------|--|--|
| | | Email: [not disclosed] |
| 8 | Key People | • [not disclosed] |
| 9 | Key Subcontracts (other than D&C Subcontract and Maintenance Subcontract) | • [not disclosed] |
| 10 | Key Subcontractors (other than D&C Subcontractor and Maintenance Subcontractor) | • [not disclosed] |
| 11 | Maintenance Subcontractor | Name: [not disclosed] Attention: [not disclosed]Address: [not disclosed] Phone: [not disclosed] Email: [not disclosed] |
| 12 | Parent Guarantor | D&C Subcontractor Parent Guarantors In favour of the State: Name: [not disclosed] Attention: [not disclosed] Address: [not disclosed] Phone: [not disclosed] Email: [not disclosed] Name: [not disclosed] Attention: [not disclosed] Address: [not disclosed] Phone: [not disclosed] Email: [not disclosed] In favour of Project Co: Name: [not disclosed] Attention: [not disclosed] Address: [not disclosed] Phone: [not disclosed] |



| Item | Subject | Particulars |
|------|------------------------------------|--|
| | | Email: [not disclosed] |
| | | Name: [not disclosed] Attention: [not disclosed] Address: [not disclosed] Email: [not disclosed] |
| | | Name: [not disclosed] Attention: [not disclosed] Address: [not disclosed] Phone: [not disclosed] Email: [not disclosed] |
| | | Maintenance Subcontractor Parent Guarantor Name: [not disclosed] Attention: [not disclosed] Address: [not disclosed] Phone: [not disclosed] Email: [not disclosed] |
| 13 | Project Co Representative/s | Name: [not disclosed] Attention: [not disclosed] Address: [not disclosed] Phone: [not disclosed] Email: [not disclosed] |
| 14 | Security Trustee | Name: [not disclosed] Attention: [not disclosed] Address: [not disclosed] Phone: [not disclosed] Email: [not disclosed] |
| 15 | State Representative | Name: [not disclosed] Attention: [not disclosed] Address: [not disclosed] |



| Item | Subject | Particulars |
|------------------------------|---|---|
| | | Phone: [not disclosed] Email: [not disclosed] |
| 16 | Train Franchisee Representative | [not disclosed] |
| Clause 63.1 – Notices | | |
| 17 | Notices | The State Name: [not disclosed] Attention: [not disclosed] Address: [not disclosed] Phone: [not disclosed] Email: [not disclosed] Project Co Name: [not disclosed] Attention: [not disclosed] Address: [not disclosed] Phone: [not disclosed] Email: [not disclosed] |
| 18 | D&C Subcontractor Project Director | Name: [not disclosed] Attention: [not disclosed] Address: [not disclosed] Phone: [not disclosed] Email: [not disclosed] |
| 19 | Lead Architect | Name: [not disclosed] Attention: [not disclosed] Address: [not disclosed] Phone: [not disclosed] Email: [not disclosed] |



Schedule 2

Conditions Precedent

| Condition Precedent | Benefiting Party | Condition Precedent Deadline |
|---|-------------------------|-------------------------------------|
| <p>1 State Project Documents</p> <p>Project Co delivering to the State original counterparts of each of the State Project Documents (other than this Agreement, any Construction Licence related to Licensed Construction Areas not required to be made available prior to Financial Close, the Maintenance Licence, the Commercial Opportunities Lease and the Utility Agreement) in each case duly executed by each of the parties to the documents other than the State, MMRA, the Rail Franchisee Interface Parties and PTV as counterparty, and each in form and substance satisfactory to the State and having satisfied all conditions precedent to such documents (other than any condition precedent that requires the satisfaction or waiver of the conditions precedent to this Agreement).</p> | State and Project Co | 12 January 2018 |
| <p>2 Project Documents</p> <p>Project Co delivering to the State certified copies of all Project Documents (other than the State Project Documents, the Accepted Works Novation Deeds and the Proof Engineer Deed of Appointment), in each case duly executed by each of the parties to the documents other than the Rail Franchisee Interface Parties and the CityLink Manager, and each in form and substance satisfactory to the State and having satisfied all conditions precedent to such documents (other than any condition precedent that requires the satisfaction or waiver of the conditions precedent to this Agreement).</p> | State and Project Co | 12 January 2018 |
| <p>3 Counterparty Details</p> <p>The State receiving the Counterparty Details.</p> | State | 12 January 2018 |
| <p>4 Legal Opinions</p> <p>The State receiving legal opinions given for the benefit of the State in form and substance satisfactory to it from solicitors acting for each Consortium Member as to customary matters for</p> | State | 12 January 2018 |



| Condition Precedent | Benefiting Party | Condition Precedent Deadline |
|---|----------------------|------------------------------|
| <p>an opinion of this nature including:</p> <ul style="list-style-type: none"> (a) the legal capacity and corporate power of that Consortium Member to enter into and perform its obligations under the Project Documents to which it is a party; (b) the enforceability against the relevant Consortium Member of the Project Documents to which it is a party; and (c) due execution by the Consortium Member of the Project Documents to which it is a party. | | |
| <p>5 Pre-Rate Set Satisfaction Notice</p> <p>The State receiving an original pre-rate set satisfaction notice in form and substance satisfactory to the State Representative signed by the Agent confirming that all initial conditions precedent to funding and drawdown of the facilities for the Project (including the satisfaction of conditions precedent under any other Project Documents) have been satisfied or waived in accordance with the terms of the Finance Documents, save for those specified in the notice which will be satisfied upon the occurrence of the agreed actions listed in the notice.</p> | State | 12 January 2018 |
| <p>6 Project Co D&C Phase Insurances</p> <p>Project Co delivering to the State in respect of the Project Co D&C Phase Insurances required to be effected under clause 43.2 (<i>Project Co D&C Phase Insurances</i>) of this Agreement:</p> <ul style="list-style-type: none"> (a) electronic copies of the fully subscribed and executed policies relating to such Insurances in form and substance satisfactory to the State; and (b) certificates from an insurance broker as to the currency of all such Insurances and confirming that the State or its Associates are insured under the policy (to the extent this is required under this Agreement). | State | 12 January 2018 |
| <p>7 FIRB approvals</p> <p>The State receiving a certified copy of the approval of the Foreign Investment Review Board of the Commonwealth Department of Treasury in respect of any foreign ownership of any Equity Investor.</p> | State and Project Co | 12 January 2018 |



| Condition Precedent | Benefiting Party | Condition Precedent Deadline |
|--|----------------------|------------------------------|
| <p>8 Financial Close Financial Model</p> <p>The State receiving an electronic copy of the Financial Close Financial Model initialled by Project Co and the Agent.</p> | State | 12 January 2018 |
| <p>9 Not used</p> | N/A | N/A |
| <p>10 Not used</p> | N/A | N/A |
| <p>11 Not used</p> | N/A | N/A |
| <p>12 Nomination as a State Project</p> <p>The State has procured that the Project has been nominated by PTV under each Rail Franchisee Projects Agreement to be delivered as a 'State Project' (as defined in the relevant Rail Franchisee Projects Agreement).</p> | State and Project Co | 12 January 2018 |
| <p>13 Construction Bond</p> <p>Project Co delivering to the State evidence satisfactory to the State that Project Co has secured Performance Bonds from the D&C Subcontractor with an aggregate face value of [not disclosed] of the D&C Subcontract Price.</p> | State | 12 January 2018 |
| <p>14 State D&C Phase Insurances</p> <p>The State delivering to Project Co in respect of the State D&C Phase Insurances required to be effected under clause 43.1 (<i>State Procured Insurances</i>) of this Agreement:</p> <ul style="list-style-type: none"> (a) copies of the fully subscribed and executed policies relating to such Insurances; and (b) certificates from an insurance broker as to the currency of all such Insurances. | Project Co | 12 January 2018 |
| <p>15 VMIA letter</p> <p>VMIA delivering to Project Co a letter confirming that it does not intend to rely on any action that the VMIA determines has been taken by Project Co and its Associates in good faith and in compliance</p> | Project Co | 12 January 2018 |



| Condition Precedent | Benefiting Party | Condition Precedent Deadline |
|---|------------------|------------------------------|
| with the Insurance Claims Protocol, including but not limited to the disclosure of any loss assessor's report to any third party, in any way that would limit, reduce or prejudice the rights of Project Co and its Associates under the State Procured Insurances. | | |
| 16 Not used | N/A | N/A |
| 17 Commercial Development Agreements Execution of each Commercial Development Agreement. | State | 12 January 2018 |

Schedule 3

Payment Schedule

PART A – GENERAL

1 General

1.1 Definitions

Unless otherwise expressly defined, expressions used in this Schedule have the meanings given to them in this Agreement:

| Term | Meaning |
|---|--|
| Abatement Free Period | has the meaning given to it in the Services Specification. |
| Actual Floating Rate | means, in respect of an Interest Period, the Base Rate (as that term is defined under the Facility Agreement). |
| Actual Floating Rate Interest Payment | means, in respect of an Interest Period, the interest payable at the Actual Floating Rate on the Base Case Floating Rate Debt. The method of calculating the Actual Floating Rate Interest Payment must be consistent with the method for calculating the Base Case Floating Rate Interest Payment in the Base Case Financial Model. For the purposes of calculating the FRC in section 12, the Actual Floating Rate Interest Payment is to be expressed as a positive number. |
| Base Case Floating Rate Debt | means, in respect of an Interest Period, the amount of the Project Debt labelled as “Base Case Floating Rate Debt” in Appendix 3 in relation to which floating rate interest payments are made. For the purposes of calculating the FRC in section 12, the Base Case Floating Rate Debt is to be expressed as a positive number. |
| Base Case Floating Rate Interest Payment | means, in respect of an Interest Period, the interest payable at the Base Case Interest Rate on the Base Case Floating Rate Debt, as specified in Appendix 3. |

| Term | Meaning |
|---|---|
| Base Case Interest Rate | means, in respect of an Interest Period, the reference floating interest rate (exclusive of any margin) as specified in Appendix 3. |
| CPI Multiplier Annual | has the meaning given in Schedule 22 (Indexes Schedule). |
| Extended Abatement Free Period | has the meaning given in section 9.5(d). |
| Failure Duration | means the period of time calculated in accordance with section 9.7(d). |
| Failure Event | means an event defined as such in the Services Specification. |
| Failure Event Level | has the meaning given in the Services Specification. |
| Failure Event Level A | means an event described as Level A in table 3 of section 2.1.7 of the Services Specification. |
| Failure Event Level B | means an event described as Level B in table 3 of section 2.1.7 of the Services Specification. |
| Failure Event Level C | means an event described as Level C in table 3 of section 2.1.7 of the Services Specification. |
| Failure Event Level D | means an event described as Level D in table 3 of section 2.1.7 of the Services Specification. |
| Failure Event Level E | means an event described as Level E in table 3 of section 2.1.7 of the Services Specification. |
| Failure Event Multiplier | means the multiplier calculated in accordance with section 9.6. |
| Failure Period | has the meaning given in section 9.5(b). |
| FAW Extended Abatement Free Period | means, in relation to a FAW Extended Rectification, the period expiring on the earlier of: |

| Term | Meaning |
|-----------------------------------|--|
| | <ol style="list-style-type: none"> 1 the alternative time for correction of the relevant Defect agreed by the State in accordance with section 3.11; and 2 rescission of the FAW Extended Rectification in accordance with section 3.11(e). |
| FAW Extended Rectification | means relief from FAW Failure Event Abatements for a period longer than 1 hour from Notification of a relevant Defect. |
| FAW Failure Event | <p>means, during the FAW Phase a Defect in the Relevant Infrastructure or any Returned Asset that:</p> <ol style="list-style-type: none"> 1 is not corrected within one hour from Notification of the Defect; and 2 has an impact on: <ol style="list-style-type: none"> a Project Co's ability to carry out the Final Acceptance Works (other than those which relate to the rectification of Defects); or b any other party's ability to carry out the Integration and Operational Readiness Activities, in accordance with agreed activities, plans or programs. |
| FAW Phase | means the period between the Date of Provisional Acceptance and the Date of Final Acceptance. |
| FAW Quality Failure | <p>means, during the FAW Phase:</p> <ol style="list-style-type: none"> 1 Project Co fails to perform the Final Acceptance Works or comply with a requirement of Clause 12 (<i>Coordination and Interface Deed Poll</i>) of this Agreement; 2 the failure: <ol style="list-style-type: none"> a relates to Project Co's performance monitoring, assessment and reporting; b has an effect on Project Co's ability to carry out other Final Acceptance Works in accordance with agreed activities, plans or programs; or c has a material effect on any other party's ability to carry out the Integration and Operational Readiness Activities in accordance with agreed activities, plans or programs; and 3 the failure is not a FAW Failure Event or a FAW Train Failure Event. |
| FAW Temporary Fix | means a course of action that will temporarily ameliorate the consequences of a Defect whilst the Defect is being corrected. |

| Term | Meaning |
|--|---|
| FAW Temporary Fix Time | means a timeframe agreed by the State for implementing a FAW Temporary Fix. |
| FAW Train Failure Event | <p>means, during the FAW Phase a Defect in the Relevant Infrastructure or any Returned Asset that:</p> <ol style="list-style-type: none"> 1 is not corrected within one hour from Notification of the Defect; 2 has an impact on: <ol style="list-style-type: none"> a Project Co's ability to carry out the Final Acceptance Works as they relate to the operation of test trains; or b any other party's ability to carry out the Integration and Operational Readiness Activities as they relate to operation of test trains, <p>in accordance with agreed activities, plans or programs.</p> |
| Fixed FAW Fee | means the fixed fee set out in the table in section 3.2 which is payable to Project Co for performing the Final Acceptance Works during the period between the Date of Provisional Acceptance and the Date for Final Acceptance. |
| Floating Rate Component or FRC | has the meaning given in section 12. |
| FRC Commencement Date | means the date specified as the 'FRC Commencement Date' in Appendix 3. |
| Functional Unit Category Amount | means the applicable amount set out in the table in section 9.2. |
| Notification | <p>means in relation to a Service Failure the point at which the Service Failure:</p> <ol style="list-style-type: none"> 1 first came to the attention of the Help Desk; 2 was detected by the BMS or any other automatic monitoring or alarm system; or 3 would have come to the attention of the Help Desk or been detected by the BMS or any other automatic monitoring or alarm system had Project Co complied with its obligations under this Agreement. |
| Off-Peak Period | has the meaning given in the Services Specification. |

| Term | Meaning |
|---|---|
| Peak Period | has the meaning given in the Services Specification. |
| Performance Parameter | has the meaning given in the Services Specification. |
| Period | has the meaning given in the table in section 9.4. |
| Quality Failure | has the meaning given in the Services Specification. |
| Quality Failure Points | has the meaning given in the Services Specification. |
| Quarterly Maintenance Fee | means the 'Quarterly Maintenance Fee' for the provision of the Services, calculated in accordance with section 6. |
| Rectify, Rectifying or Rectification | has the meaning given in the Services Specification. |
| Reliability Adjustment Abatement | means the amount calculated in accordance with section 9.7. |
| Repeat Failure | has the meaning given in section 9.6(c). |
| Response | has the meaning given in the Services Specification and "Respond" has a cognate meaning. |
| System Failure Event | has the meaning given in the Services Specification. |
| Temporary Fix | has the meaning given in the Services Specification. |
| Temporary Fix Time | has the meaning given in the Services Specification. |
| Time Weighting | has the meaning given in section 9.5. |
| WPI Multiplier Annual | has the meaning given in Schedule 22 (Indexes Schedule). |

1.2 Partial Quarters

If any amounts referred to in this Schedule (other than the Fixed FAW Fee which will not be subject to adjustment pursuant to this clause) are required to be calculated in respect of part of a Quarter (that is, a period of less than 3 Months), the relevant amount will be adjusted proportionately, having regard to the number of days in the relevant partial Quarter as a percentage of the total number of days in the full Quarter.

PART B – D&C PHASE ADJUSTMENTS

2 D&C Phase Adjustments

2.1 Calculation of D&C Phase Adjustments

- (a) The Final Acceptance Works Payment in the first Quarter after the Date of Provisional Acceptance (and, in accordance with section 3.10, any subsequent Final Acceptance Works Payment) will be reduced by the D&C Phase Adjustment (**DPA**), calculated as follows:

[not disclosed]

where:

[not disclosed]

- (b) Project Co must provide all information and evidence reasonably required by the State to determine the DPA.

2.2 Local Content Requirement Adjustment

- (a) The Local Content Requirement Adjustment (**LCA**) applies where Project Co does not meet the Local Content Requirement, measured as at the Date of Provisional Acceptance (as certified by the Independent Reviewer under clause 60.4(a)(1)).

- (b) The LCA is a one-off reduction to the Final Acceptance Works Payment and is calculated as:

[not disclosed]

where:

[not disclosed]

- (c) If the LCA calculated in accordance with the above formula is less than [not disclosed], then the LCA will be deemed to be [not disclosed].

- (d) Local Content Adjustment 1 applies when the ALC is [not disclosed] or more and less than the Local Content Requirement. It is calculated as follows:

[not disclosed]

where:

[not disclosed]

- (e) Local Content Adjustment 2 applies when the ALC is less than [not disclosed]. It is calculated as follows:

[not disclosed]

where:

[not disclosed]

2.3 Major Projects Skills Guarantee Adjustment

- (a) The Major Projects Skills Guarantee Adjustment (**MPSGA**) applies where Project Co does not meet the Major Projects Skills Guarantee (as certified by the Independent Reviewer under clause 61.3(a)).
- (b) The MPSGA is a one-off reduction to the Final Acceptance Works Payment and is calculated as:
[not disclosed]
where:
[not disclosed]
- (c) If the MPSGA calculated in accordance with the above formula is less than [not disclosed], then the Major Projects Skills Guarantee Adjustment will be deemed to be [not disclosed].

2.4 Priority Jobseekers' Requirement Adjustment

- (a) The Priority Jobseekers' Requirement Adjustment (**PJRA**) applies where Project Co does not meet the Priority Jobseekers' Requirement (as certified by the Independent Reviewer under clause 60.4(a)(2)).
- (b) The PJRA is a one-off adjustment to the Final Acceptance Works Payment and is calculated as:
[not disclosed]
where:
[not disclosed]
- (c) If the PJRA calculated in accordance with the above formula is less than [not disclosed], then the Priority Jobseekers' Requirement Adjustment will be deemed to be [not disclosed].

PART C – FINAL ACCEPTANCE WORKS PAYMENTS

3 Final Acceptance Works Payment

3.1 Calculation of Final Acceptance Works Payment

The Final Acceptance Works Payment will apply only during the FAW Phase.

The Final Acceptance Works Payment for the relevant Quarter will be calculated in accordance with the following formula:

[not disclosed]

where:

[not disclosed]

3.2 Final Acceptance Works Fee

The Final Acceptance Works Fee is calculated for each relevant Quarter in accordance with the following formula:

[not disclosed]

where:

[not disclosed]

3.3 FAW Failure Event Abatements

(a) If a FAW Failure Event occurs during a Quarter, a FAW Failure Event Abatement will arise in that Quarter for that FAW Failure Event.

(b) Each FAW Failure Event Abatement will be calculated as follows:

[not disclosed]

where:

[not disclosed]

3.4 FAW Train Failure Event Abatements

(a) If a FAW Train Failure Event occurs during a Quarter, a FAW Train Failure Event Abatement will arise in that Quarter for that FAW Train Failure Event.

(b) Each FAW Train Failure Event Abatement will be calculated as follows:

[not disclosed]

where:

[not disclosed]

3.5 FAW Abatement Amount

(a) The FAW Abatement Amount will be equal to:

- (1) for each FAW Failure Event, [not disclosed] multiplied by the CPI Multiplier Annual for the relevant Quarter; and
- (2) for each FAW Train Failure Event, [not disclosed] multiplied by the CPI Multiplier Annual for the relevant Quarter.

3.6 FAW Time Period

- (a) Subject to paragraph 3.6(b), the FAW Time Period will be equal to the number of [not disclosed] time periods (or part thereof) from Notification of the FAW Failure Event or FAW Train Failure Event (as relevant) until the relevant Defect is rectified.
- (b) If a FAW Failure Event is not remedied at the end of the Quarter in respect of which the FAW Failure Event Abatement is being calculated, the FAW Failure Event Abatement will be calculated applicable to the period of time in the relevant Quarter in which the FAW Failure Event persists. A further calculation will be completed in the following Quarter relevant to the period of time during that Quarter in which the FAW Failure Event persists.

3.7 Number of FAW Affected Areas

- (a) For the purposes of determining FAW Failure Event and FAW Train Failure Event Abatements, the Works will be divided into the following areas (**FAW Areas**):
 - (1) the westbound tunnel;
 - (2) the eastbound tunnel;
 - (3) Arden Station;
 - (4) Parkville Station;
 - (5) CBD North Station;
 - (6) CBD South Station;
 - (7) Domain Station;
 - (8) all other areas not captured above (for example, cross-passages, above ground ventilation/access shafts, etc.) will be grouped together into one FAW Area; and
 - (9) a system will be considered a FAW Area if the FAW Failure Event or FAW Train Failure Event in that system does not manifest in a Defect in any of the areas identified in paragraphs (1) to (8) (for example, a FAW Failure Event in a control system that affects systems integration activities but does not affect testing of any physical assets).
- (b) The Number of FAW Affected Areas is the number of FAW Areas affected by the FAW Failure Event or FAW Train Failure Event, as applicable.

Example 1: FAW Train Failure Event Abatement

Circumstances

- A Defect is identified in relation to the traction power system after Provisional Acceptance and before Final Acceptance.
- This Defect prevents trial running of trains in both tunnels which had been scheduled to occur at that time. It has therefore affected another party's ability to carry out the Integration and Operational Readiness Activities as they relate to operation of test trains.

- Project Co fails to correct the Defect within [not disclosed], meaning that the Defect becomes a FAW Train Failure Event.
- Project Co takes [not disclosed] to rectify this FAW Train Failure Event (in addition to the [not disclosed] period before the Defect is categorised as a FAW Train Failure Event).

Abatement calculation

- The FAW Train Failure Event has affected [not disclosed] FAW Areas (i.e. both tunnels).
- The FAW Train Failure Event has subsisted for [not disclosed] FAW Time Periods.
- Therefore, the FAW Train Failure Event Abatement is calculated as:
[not disclosed] (ignoring indexation of the FAW Abatement Amount)

3.8 FAW Quality Failure Abatements

- (a) If a FAW Quality Failure occurs during a Quarter, a FAW Quality Failure Abatement will arise in that Quarter for that FAW Quality Failure.
- (b) The FAW Quality Failure Abatement for each FAW Quality Failure will be equal to [not disclosed] per week that the FAW Quality Failure subsists multiplied by the CPI Multiplier Annual for the relevant Quarter.

3.9 Aggregation of FAW Failures

If an event occurs which causes a FAW Failure Event, a FAW Train Failure Event and/or a FAW Quality Failure, then the Final Acceptance Works Payment will be Abated for each of the FAW Failure Event, the FAW Train Failure Event and the FAW Quality Failure (as relevant).

3.10 Maximum FAW Abatement Amount

- (a) Subject to section 3.10(b), in any Quarter, the Abatement will be no greater than the total Final Acceptance Works Fee for the relevant Quarter.
- (b) To the extent that the D&C Phase Adjustment calculated in accordance with section 2.1 reduces the Final Acceptance Works Payment for a Quarter to [not disclosed] and the D&C Phase Adjustment has not been applied in full in that Quarter, the residual D&C Phase Adjustment amount will be applied to the Final Acceptance Works Payment in the next Quarter.

3.11 Extended Rectifications

- (a) If Project Co considers that it is not able to correct a Defect in the Relevant Infrastructure or any Returned Asset within [not disclosed] from Notification of the Defect, Project Co may propose a FAW Extended Rectification to the State together with an alternative time by which correction of the Defect will occur.
- (b) If the State grants Project Co a FAW Extended Rectification, the relevant Defect will not result in a FAW Failure Event Abatement until the expiry of the FAW Extended Abatement Free Period.
- (c) Subject to sections 3.11(d) and 3.11(e), the State will not refuse to grant an FAW Extended Rectification provided that:
 - (1) if so requested by the State, the FAW Extended Rectification includes a FAW Temporary Fix;
 - (2) Project Co has otherwise responded to the Defect;

- (3) in the opinion of the State, Project Co has been diligently pursuing the correction of the Defect;
- (4) in the opinion of the State, Project Co has been diligently pursuing:
 - (A) any previously agreed FAW Temporary Fix within the relevant FAW Temporary Fix Time; and
 - (B) any FAW Temporary Fix under clause 3.11(i) which the State (acting reasonably) agrees to be appropriate; and
- (5) the granting of such FAW Extended Rectification will not, in opinion of the State:
 - (A) contravene any Standard or Law or relating to health and safety, or otherwise pose a danger to health and safety of persons in the vicinity of the Site;
 - (B) cause an unreasonable level of disruption, inconvenience or loss of amenity to the Train Franchisee Interface Party, the Metro Tunnel Package Contractors, or the Ticketing Works Contractor;
 - (C) result in a delay to the Date of Final Acceptance; or
 - (D) give rise to material additional State, Train Franchisee Interface Party, Metro Tunnel Package Contractor or Ticketing Works Contractor costs.
- (d) The State may refuse to grant a FAW Extended Rectification in the event that:
 - (1) a similar Defect has occurred within the Relevant Infrastructure on more than [not disclosed] occasions during the FAW Phase; or
 - (2) the need for the extension is due to a failure on the part of Project Co to:
 - (A) adhere to Best D&C Practices; or
 - (B) mitigate its loss;
- (e) The State may rescind any previously granted FAW Extended Rectification in the instance that Project Co fails to diligently pursue a previously agreed FAW Temporary Fix or a FAW Temporary Fix which is otherwise a condition of the FAW Extended Rectification.
- (f) If the State requests a FAW Temporary Fix, or Project Co otherwise implements a FAW Temporary Fix that the State agrees is appropriate in the circumstances, Project Co must diligently pursue the FAW Temporary Fix within the time periods agreed as part of the FAW Extended Rectification, and must ensure that the Defect is corrected within the FAW Extended Abatement Free Period.
- (g) Subject to the State's compliance with its obligations under clause 3.11(c), no agreement to, or failure or refusal to agree to, a FAW Extended Rectification or FAW Temporary Fix by the State will:
 - (1) relieve Project Co of any of its obligations or liabilities under this Project Agreement other than to the extent of this section 3.11; or
 - (2) entitle Project Co to make any Claim against the State.
- (h) Any decision by the State to agree to a FAW Extended Rectification does not create a precedent nor prejudice the State's right to exercise its entire discretion in making future decisions.

- (i) Without limiting the State's rights under this section 3.11, Project Co may proceed to perform a FAW Temporary Fix without the State's approval.

4 Final Acceptance Payment

4.1 Introduction

This section 4 will apply for the purposes of calculating the Final Acceptance Payment. The Final Acceptance Payment is a one-off payment payable to Project Co upon achieving Final Acceptance.

4.2 Final Acceptance on the Date for Final Acceptance

If Final Acceptance occurs on the Date for Final Acceptance, the Final Acceptance Payment will be [not disclosed].

4.3 Early achievement of Final Acceptance

If Final Acceptance occurs before the Date for Final Acceptance, the Final Acceptance Payment will be equal to:

- (a) [not disclosed]; plus
- (b) [not disclosed] per day for each day by which the Date of Final Acceptance is earlier than the Date for Final Acceptance, capped at a maximum payment of [not disclosed].

4.4 Late achievement of Final Acceptance

If Final Acceptance occurs after the Date for Final Acceptance, the Final Acceptance Payment will be equal to:

- (a) [not disclosed]; less
- (b) [not disclosed] per day for each day by which the Date of Final Acceptance is later than the Date for Final Acceptance, subject to a minimum payment of [not disclosed].

PART D – MAINTENANCE PHASE PAYMENTS

5 Calculation of Maintenance Phase Payment

The Maintenance Phase Payment will apply only during the Maintenance Phase.

The Maintenance Phase Payment for the relevant Quarter of the Maintenance Phase will be calculated in accordance with the following formula:

[not disclosed]

where:

[not disclosed]

6 Quarterly Maintenance Fee

The Quarterly Maintenance Fee will be calculated for the relevant Quarter of the Maintenance Phase in accordance with the following formula:

[not disclosed]

where:

[not disclosed]

7 Abatement

7.1 Calculation of Abatement

Subject to section 7.2, the Abatement in any Quarter will be calculated as follows:

[not disclosed]

where:

[not disclosed]

7.2 Maximum Abatement

In any Quarter, the Abatement will be no greater than the total Quarterly Maintenance Fee for the relevant Quarter.

7.3 Access Restrictions

For the avoidance of doubt, subject to section 2.2.4 of the Services Specification, the Abatement will apply in accordance with this section 7 regardless of whether Project Co is, or is not, able to access the necessary parts of the Licensed Maintenance Areas to Rectify or ameliorate the impact of a Service Failure, with reference to the access restrictions included within the Train Franchisee Cooperation Agreement.

8 Quality Failures

8.1 Quality Failure Abatement

- (a) The Quality Failure Abatement for each Quarter will be calculated by adding the total number of Quality Failure Points incurred during the Quarter and multiplying the number of Quality Failure Points within the respective Quality Failure point band by the Quality Failure Abatement value shown next to that Quality Failure Point band set out in the table below.

| Quality Failure Point band | Quality Failure Abatement values |
|----------------------------|----------------------------------|
| [not disclosed] | [not disclosed] per point |
| [not disclosed] | [not disclosed] per point |
| [not disclosed] | [not disclosed] per point |
| [not disclosed] | [not disclosed] per point |
| [not disclosed] | [not disclosed] per point |

- (b) The Quality Failure Abatement values in the table above will be indexed by the CPI Multiplier Annual.

8.2 Quality Failure Points

Quality Failure Points will be calculated in each Quarter for each Quality Failure by reference to:

- (a) the Performance Parameter set out in the Minimum Services Specifications which is the subject of the Quality Failure; and
- (b) the principles set out in section 2.1 of the Services Specification.

8.3 Timing

- (a) Subject to paragraph (b), Quality Failures will be attributed to the Quarter in which they are reported in accordance with the Monthly Performance Report irrespective of when they occur.
- (b) If a Quality Failure is not remedied at the end of the Quarter in respect of which the Quality Failure is being calculated, the Quality Failure Points will be calculated applicable to the period of time in the relevant Quarter in which the Quality Failure persists. A further calculation will be completed in the following Quarter relevant to the period of time during that Quarter in which the Quality Failure persists.

9 Failure Events

9.1 Failure Event Abatements

- (a) If a Failure Event occurs during a Quarter which is not Rectified by Project Co within the relevant Abatement Free Period, a Failure Event Abatement will be calculated in respect of that Failure Event.

- (b) The amount of the Failure Event Abatement will be calculated in accordance with the following formula:

[not disclosed]

where:

[not disclosed]

9.2 Functional Unit Category Amounts

- (a) This section provides guidance in respect of Functional Unit Categories for the purposes of calculating Failure Event Abatements.
- (b) Multiple concurrent Failure Events can occur in a Functional Unit Category and, subject to section 10.2, an Abatement will apply in relation to each individual Failure Event. For example, if lux levels and temperature levels on the same station platform are outside the permitted bands due to separate faults in the lighting and ventilation systems, assuming these failures do not result a System Failure Event, this will be treated as two separate Failure Events.
- (c) A single failure may impact on one or more Functional Unit Categories. In such circumstances a Failure Event will be deemed to occur in each affected Functional Unit Category.
- (d) A Failure Event may occur with respect to a Functional Unit Category as a result of an event occurring in a separate Functional Unit Category. For example, a Failure Event may occur in the customer service area as a result of a Failure Event in a critical supporting area such as a plant room. In such circumstances a Failure Event will be deemed to occur in each affected Functional Unit Category.
- (e) Where an event occurs which would have been a Failure Event if it had occurred in a Functional Unit Category, but the area in which the Failure Event occurred is not identified as part of a Functional Unit Category in the Services Specification, the area will be deemed to be a Functional Unit Category and the State, acting reasonably, will determine the Failure Event Level.
- (f) The table below sets out the Functional Unit Category Amounts used in the Failure Event Abatement calculations. The table includes a Functional Unit Category Amount for each Failure Event Level.

| Functional Unit Category Amounts (\$ per 30 minutes) | | | | | |
|--|-----------------|-----------------|----------------------|---------------------|--------------------------|
| Failure Event Level | Tunnels | Passenger Area | Critical Plant Rooms | BOH Rail Operations | BOH, Plant Rooms & Other |
| A | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| B (VT only) | N/A | [not disclosed] | N/A | N/A | [not disclosed] |
| C | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| D | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| E | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |

- (g) The Functional Unit Category Amounts in the table above will be indexed by the CPI Multiplier Annual.

9.3 System Failure Events

- (a) If a System Failure Event occurs during a Quarter, a System Failure Event Abatement will be calculated in respect of that System Failure Event.
- (b) The amount of the System Failure Event Abatement will be the sum of the amounts calculated in accordance with the following formula:

[not disclosed]

where:

[not disclosed]

9.4 Period Weightings

- (a) The Period Weighting applicable at the beginning of each Failure Period is determined in accordance with the table below.

| Period | Period Weighting |
|--------------------------|------------------|
| Peak Period | [not disclosed] |
| Off-Peak Period | [not disclosed] |
| After Final Before First | [not disclosed] |

- (b) Where the same Failure Event or System Failure Event subsists during two (or more) Periods, the Period Weighting applicable will take into account the number of Failure Periods that apply during each Period. For example, if a Failure Event subsists for [not disclosed] during the Peak Period and [not disclosed] during the Off-Peak Period, [not disclosed] Failure Periods would have a Period Weighting of [not disclosed] and [not disclosed] Failure Periods would have a Period Weighting of [not disclosed].

9.5 Time Weightings

- (a) The applicable Time Weighting will be equal to the number of Failure Periods (or part thereof) that elapse from the expiry of the Abatement Free Period until Project Co has Rectified the Failure Event.
- (b) “Failure Period” means a period of [not disclosed] (or part thereof). For example, if a Failure Event is not Rectified for a period of [not disclosed] post the required Abatement Free Period, the Time Weighting will be [not disclosed].
- (c) The calculation of the formulae set out in section 9.1 (Failure Event Abatement) and 9.3 (System Failure Event) will be performed once the relevant Failure Event is Rectified. If, however, the failure to Rectify is not remedied at the end of the Quarter in respect of which the Failure Event Abatement is being calculated, then the Abatement will be calculated using a Time Weighting equal to the number of Failure Periods for the failure to Rectify in the relevant Quarter in which the Failure Event persists. A further calculation will be completed in the following Quarter using a Time Weighting equal to the number of Failure Periods for the failure to Rectify in that Quarter in which the Failure Event persists.
- (d) If the Abatement Free Period has been extended in accordance with section 2.1.6 of the Services Specification (**Extended Abatement Free Period**) and Project Co has failed to Rectify the Failure Event by the expiry of the Extended Abatement Free Period, then the calculation in accordance with section 9.1 (Failure Event Abatement) or 9.3 (System Failure Event) (as relevant) will be made using a Time Weighting calculated from the expiry of the Extended Abatement Free Period.
- (e) If a Failure Event occurs and a Temporary Fix is agreed in accordance with the Services Specification, the Failure Event Abatement will be calculated if Project Co has:
 - (1) not implemented the Temporary Fix within the Temporary Fix Time; or
 - (2) not Rectified the Failure Event within the Extended Abatement Free Period,
 and the calculation in accordance with section 9.1 (Failure Event Abatement) or 9.3 (System Failure Event) (as relevant) will be made using a Time Weighting as if no Temporary Fix had been agreed and using the applicable original Abatement Free Period.

9.6 Failure Event Multiplier

- (a) Failure Event Multipliers will only apply to Failure Events that are classified as Level C Failure Events, Level D Failure Events or Level E Failure Events.
- (b) Failure Event Multipliers will apply where the time taken to Rectify the relevant Failure Event exceeds specified thresholds (as set out in Column A of the table set out in this section 9.6) or where the Failure Event is a Repeat Failure (as set out in Column B of the table set out in this section 9.6).
- (c) For the purposes of this section 9.6, “Repeat Failure” means a Failure Event of the same type that is not Rectified within the relevant Abatement Free Period and occurs on more than one occasion within a [not disclosed] period.
- (d) The Failure Event Multiplier will be determined in accordance with the following table as the Failure Event Multiplier in Column C that corresponds to the greater of:

- (1) the actual period of time to Rectify a Failure Event (**Rectification Time**) applicable to that Failure Event in accordance with Column A; and
- (2) if the Failure Event is a Repeat Failure, the number of occurrences of the Failure Event in accordance with Column B (to the extent that this results in a higher Failure Event Multiplier applying).

| COLUMN A Rectification Time | COLUMN B Repeat Failure | COLUMN C Failure Event Multiplier |
|---|--|--------------------------------------|
| Failure Event Level C: within [not disclosed] Failure Event Level D: within [not disclosed] Failure Event Level E: within [not disclosed] | N/A | [not disclosed] |
| Failure Event Level C: greater than [not disclosed] Failure Event Level D: greater than [not disclosed] Failure Event Level E: greater than [not disclosed] | Similar Failure Event has occurred [not disclosed] within the previous [not disclosed] | [not disclosed] |
| Failure Event Level C: greater than [not disclosed] Failure Event Level D: greater than [not disclosed] Failure Event Level E: greater than [not disclosed] | Similar Failure Event has occurred [not disclosed] within the previous [not disclosed] | [not disclosed] |
| Failure Event Level C: greater than [not disclosed] or longer Failure Event Level D: greater than [not disclosed] or longer Failure Event Level E: greater than [not disclosed] or longer | Similar Failure Event has occurred [not disclosed] or more times within the previous [not disclosed] | [not disclosed] |

9.7 Reliability Adjustment

- (a) The Reliability Adjustment Abatement (**RAA**) applies where Project Co does not meet the Annual Reliability Target (**ART**) for the relevant Contract Year.
- (b) The RAA is:
 - (1) an annual adjustment to be calculated in the fourth Quarter of each Contract Year;
 - (2) applied equally over the Quarter in which it is calculated and the three subsequent Quarters, unless there are less than three Quarters remaining in the Term in which case the RAA will be applied equally over the remaining Quarters; and

- (3) calculated as the sum of all Reliability Adjustment Amounts for the relevant Contract Year, determined in accordance with paragraph (c).
- (c) The RAA will be determined for each individual lift or escalator in accordance with the table below (indexed by the CPI Multiplier Annual):

| % ARP (per escalator) | % ARP (per lift) | RAA |
|--|--|-----------------|
| If the ARP is greater than or equal to the ART | If the ARP is greater than or equal to the ART | [not disclosed] |
| If the ARP calculated below is between [not disclosed] and [not disclosed] | If the ARP calculated below is between [not disclosed] and [not disclosed] | [not disclosed] |
| If the ARP calculated below is lower than [not disclosed] | If the ARP calculated below is lower than [not disclosed] | [not disclosed] |

where:

[not disclosed]

- (d) No Abatement Free Periods will apply for the purposes of calculating Failure Durations. Failure Durations will be calculated as the period between:
- (1) Notification that the escalator or lift is not available; and
 - (2) the failure in the escalator or lift being Rectified.

10 Aggregation of Service Failures

10.1 Failure Event and Quality Failure

If an event occurs which causes both a Failure Event and a Quality Failure, then the Maintenance Phase Payment will be Abated for both the Failure Event and the Quality Failure.

10.2 Failure Event and System Failure Event

For the period during which a System Failure Event is persisting, other Failure Events arising in the Functional Unit Categories affected by the System Failure Event will not result in separate Failure Event Abatements.

10.3 More than one Quality Failure

Where an event results in more than one Quality Failure, the relevant Quality Failure to apply will be the Quality Failure with the highest number of Quality Failure Points.

11 Abatement examples

11.1 Quality Failure example

Assume Project Co has breached CM19, under which Project Co must provide a Periodic Report to the State within [not disclosed] after the end of each Operating Month.

As per the Services Specification, CM19 is allocated [not disclosed] points and has a Quality Failure Remedy Period of [not disclosed].

Assume that the Monthly Performance Report was supplied in the agreed format, content and quality [not disclosed] after the date on which it should have been supplied.

Assume there are no other Quality Failures in the period.

Calculation Steps

1. Determine impact of time (where applicable):

The Quality Failure Remedy Period is [not disclosed]. The report was provided within the [not disclosed] from the due date and the [not disclosed] after the end of the Quality Failure Remedy Period. Therefore the Quality Failure existed for [not disclosed] after the Quality Failure Remedy Period.

2. Determine the number of Quality Failure Points accrued for this failure:

The Services Specification identifies that [not disclosed] are accrued for each period of time that the failure exists. Therefore, in this case, [not disclosed] are accrued.

3. Determine the number of Quality Failure Points accrued for the month:

At the end of the month all accrued points are accumulated. If we assume that no other Quality Failure Points were accrued, then the total Quality Failure Points for the Operating Month is [not disclosed].

4. Apply formula:

[not disclosed]

11.2 Failure Event Abatement example

Assume there is a tunnel ventilation fault in the Tunnels Functional Unit Category which has resulted in degraded train service.

Assume that the fault is a Failure Event, occurs during the morning peak, takes Project Co [not disclosed] to respond to and, once a Project Co technician has responded to the fault, takes Project Co [not disclosed] to rectify.

Assume no Extended Rectification was granted and no Failure Event Multiplier is applied.

Calculation Steps

1. Determine the Failure Event Level of this failure:

Under the Services Specification, any Failure Event that does not constitute a System Failure Event and which will result in, or has the potential to result in, Degraded Operations, is categorised as a Level A Failure Event. Therefore, in this case, the Failure Event is a Level A Failure Event.

2. Determine the Response Time and Abatement Free Periods for this failure:

The Services Specification identifies that for a Level A Failure Event, Project Co must respond to notification of the failure within [not disclosed] during Peak Period and [not disclosed] during Non Peak Period. The Abatement Free Period for Level A Failure Events affecting a Tunnel Functional Unit Category is [not disclosed]. Therefore, in this instance, Project Co has [not disclosed] to respond, but will immediately begin incurring Abatements.

3. Determine the Functional Unit Category Amounts for this failure:

The Functional Unit Category Amounts table in section 9.2(f) specifies the dollar amount of abatement applicable for each [not disclosed] Failure Period at each Failure Event Level in each Functional Unit Category. In this instance, a Failure Event Level A in the Tunnels Functional Unit Category carries an abatement of [not disclosed] per Failure Period.

4. Determine the Period Weighting:

The Period Weighting applicable at the beginning of each Failure Period is determined in accordance with the table in section 9.4. In this instance, given the failure occurred during Peak Period, a Period Weighting of [not disclosed] will apply.

5. Determine the Time Weighting:

In this case, although response to the failure was made in [not disclosed] (within the allowable Response Time during Peak Period of [not disclosed]) there is no Abatement Free Period. Given the failure was not Rectified for [not disclosed], an abatement equal to [not disclosed] Failure Periods will be incurred. Therefore, the Time Weighting of the abatement is equal to [not disclosed].

6. Apply formula:

[not disclosed]

11.3 Failure Event Multiplier example

Assume there is a Level D Failure Event which is Rectified in [not disclosed] and there have been [not disclosed] equivalent Failure Events in the previous [not disclosed] period.

The table in section 9.6(d) is used to determine if a Failure Event Multiplier is applicable.

Calculation Steps

1. Determine the Failure Event Multiplier given the Rectification Time:

In this case, given a Failure Event Level D has occurred and that the Rectification Time is greater than [not disclosed], a Failure Event Multiplier of more than [not disclosed] will be applied. As the Rectification Time of [not disclosed] is between the [not disclosed] threshold of [not disclosed] (as set out in column A of the table in section 9.6(d)), a Failure Event Multiplier of [not disclosed] will be applied to the Failure Event Abatement unless the Failure Event Multiplier determined below in accordance with column B of the table in section 9.6(d) results in a higher Failure Event Multiplier applying.

2. Determine the Failure Event Multiplier given Repeat Failures:

In this instance, the Failure Event is the [not disclosed] of a similar nature in the previous [not disclosed] period and is therefore deemed a Repeat Failure. In accordance with column B of the table in section 9.6(d) a Failure Event which has occurred [not disclosed] times in the previous [not disclosed] attracts a Failure Event Multiplier of [not disclosed].

3. Apply the higher Failure Event Multiplier:

The Failure Event Multiplier to be applied is the higher of those incurred under the two methods of calculation. As the Failure Event Multiplier of [not disclosed] applicable as a result of Repeat Failures is greater than the [not disclosed] applicable as a result of the Rectification Time, a Failure Event Multiplier of [not disclosed] will be applied to the Failure Event abatement in this instance.

11.4 System Failure Event example

Assume there is a tunnel ventilation fault in a single tunnel which has resulted in the need to suspend all train services in that tunnel as it no longer complies with the Fire Engineering Report.

Assume that the fault: is a System Failure Event; occurs during the morning peak; takes Project Co [not disclosed] to rectify.

Assume no Extended Rectification was granted and no Failure Event Multiplier is applied.

Calculation Steps*1. Determine the System Failure Event:*

Under appendix B of the Services Specification, a tunnel ventilation fault that results in a tunnel being unable to support the Fire Safety Objectives set out in the Fire Engineering Report will be a System Failure Event.

2. Determine the Response Time and Abatement Free Periods for this failure:

The fault is a System Failure event and therefore no Response Time or Abatement Free Period is applicable.

3. Determine the System Failure Unit Amounts for this failure:

The System Failure Unit Amounts table in section 9.3(b) specifies the dollar amount of abatement applicable for each [not disclosed] Failure Period for each System Failure Event type. In this instance, a tunnel System Failure Event carries an abatement of [not disclosed] per Failure Period.

4. Determine the Period Weighting:

The Period Weighting applicable at the beginning of each Failure Period is determined in accordance with the table in section 9.4. In this instance, given the failure occurred during Peak Period, a Period Weighting of [not disclosed] will apply.

5. Determine the Time Weighting:

In this case the fault was remedied in [not disclosed] which equals [not disclosed] full Failure Periods plus [not disclosed]. Therefore, the Time Weighting of the abatement is equal to [not disclosed].

6. Apply formula:

[not disclosed]

11.5 Reliability Adjustment example

Assume there is an escalator that experiences a repetitive fault which results in that escalator being inoperable on [not disclosed] occasions during the year. In each instance, the fault is Rectified in [not disclosed]. Whilst not relevant to the calculation of this Reliability Adjustment Abatement, this example would have resulted in no Failure Event Abatements being incurred during the applicable Contract Year given each failure is Rectified within the applicable Abatement Free Period.

Assume there have been no other Failure Events during that year.

Calculation Steps*1. Determine sum of all Failure Durations (ΣAFD) for the relevant Contract Year:*

The sum of Failure Durations in this instance is equal to [not disclosed]

2. Determine the total annual Required Operational Hours for that escalator (ΣROH):

Assume the escalator is required operationally [not disclosed]

3. Determine the Actual Reliability Performance (ARP) for this escalator:

[not disclosed]

4. Determine the applicable Reliability Adjustment Abatement (RAA):

By reference to the first column of the table in section 9.7(c), the ARP of [not disclosed] falls in the [not disclosed] band (between [not disclosed] and [not disclosed]) which equates to a Reliability Adjustment Abatement of [not disclosed].

12 Floating Rate Component Payment

12.1 Application

This section 12 applies for the purposes of calculating the Floating Rate Component and in order to enable Project Co to prepare a Floating Rate Component Invoice in accordance with clause 35.5 of this Agreement.

12.2 Floating Rate Component

- (a) On the first day of each Interest Period from the FRC Commencement Date, the Floating Rate Component will be calculated for that Interest Period. The Floating Rate Component for that Interest Period is calculated as follows:

[not disclosed]

where:

[not disclosed]

- (b) The Floating Rate Component may be a positive or negative amount.

APPENDIX 1 – Final Acceptance Works Fee

[State Note: Appendices will be added based on Model Output Schedule.]

APPENDIX 2 – Quarterly Maintenance Fee

[State Note: Appendices will be added based on Model Output Schedule.]

APPENDIX 3 – Base Case Floating Rate Debt

[State Note: Appendices will be added based on Model Output Schedule.]



Schedule 4

Change Compensation Principles

PART A – Change Compensation Principles

1 Definitions

Unless otherwise expressly defined, expressions used in this Schedule have the meanings given to them in or for the purposes of this Agreement:

| Term | Meaning |
|------------------------------------|--|
| Additional Support Request | has the meaning given to that term in: (a) the Train Franchisee Cooperation Agreement; or (b) the Tram Franchisee Cooperation Agreement, in each case as the context requires. |
| Additional Support Response | has the meaning given to that term in: (a) the Train Franchisee Cooperation Agreement; or (b) the Tram Franchisee Cooperation Agreement, in each case as the context requires. |
| Agreed Margins | means the D&C Margin and the Maintenance Margin. |
| Allowance | means, subject to the terms of this Schedule, the percentage allowances to which Project Co is entitled for the relevant component identified in Tables 1, 2, 3 or 4 in section 3.2 of this Part A (as the case may be) depending on the applicable thresholds set out in column 2, 3 or 4 (as the case may be) of the relevant table. |
| Base Costs | means the Design Base Costs, D&C Base Costs, Maintenance Base Costs and other Costs incurred by Project Co directly attributable to a Change Compensation Event, but excluding: (a) Prolongation Costs, Financing Delay Costs and Lost Net Commercial Opportunities Revenue; (b) any Agreed Margins or other Margin of a Subcontractor engaged by Project Co; and (c) the cost of project management services provided by Project |



Co.

Change Compensation Event means each event or change to which these Change Compensation Principles are expressed in this Agreement to apply, including the events or changes described in the clauses listed in the table in section 2 of this Part A.

Change Notice means the notice referred to in section 5 of this Part A substantially in the form set out in Annexure A, including any updated Change Notice.

Change Notice Request means the notice referred to in section 5.2(a)(3) of this Part A.

Change Response means the notice referred to in section 6.1 of this Part A.

Commercial Opportunities Outgoings means all operating costs incurred, or forecast to be incurred, by Project Co and payable to a third party in respect of the Permitted Commercial Opportunities (in each case, excluding GST).

Commercial Opportunities Revenue means revenues received, or forecast to be received, by Project Co in respect of the Permitted Commercial Opportunities, including any revenue in respect of the automatic teller machines, vending machines and advertising, but excluding:

- (a) payments under indemnities or in the nature of compensation for loss suffered;
- (b) GST; and
- (c) any make good costs,

less Commercial Opportunities Outgoings.

Costs means all direct costs properly and reasonably incurred or which will be properly and reasonably incurred by Project Co to the extent that they exceed the relevant amounts (if any) assumed in the Financial Model.

D&C Base Costs means the actual costs of the D&C Subcontractor or other Subcontractor carrying out the works (as the case may be), properly and reasonably incurred and directly attributable to a Change Compensation Event, including in respect of a Change Compensation Event, any on-site management and supervision costs that are properly and reasonably incurred, and directly attributable to, that Change Compensation Event, excluding all Agreed Margins, D&C Subcontractor Preliminaries, other preliminaries and Design Base Costs which, for the purposes of determining the Final Acceptance Works Fee after the Date for Final Acceptance will be determined applying the rates set out in



Annexure B.

| | |
|--|---|
| D&C Margin | <p>means:</p> <ul style="list-style-type: none">(a) prior to the Date of Provisional Acceptance, the percentage for the "D&C Margin" that the D&C Subcontractor may charge in accordance with Table 1 in section 3.2 of this Part A;(b) after Date of Provisional Acceptance but prior to the Date of Final Acceptance, the percentage for the "D&C Margin" that the D&C Subcontractor may charge in accordance with Table 2 in section 3.2 of this Part A;(c) during the first 2 years of the Maintenance Phase, the percentage for the "D&C Margin" that the D&C Subcontractor may charge in accordance with Table 3 in section 3.2 of this Part A or, in circumstances where the D&C Subcontractor does not undertake the required works, the percentage that the Subcontractor carrying out the works may charge as determined through a competitive tender process in accordance with section 7 of this Part A; and(d) after the first 2 years of the Maintenance Phase, the percentage that the Subcontractor carrying out the works may charge as determined through a competitive tender process in accordance with section 7 of this Part A, <p>to cover all off-site overheads and administrative, corporate and other like costs and profits of the D&C Subcontractor or such other Subcontractor carrying out the works, but excluding D&C Subcontractor Preliminaries and D&C Base Costs.</p> |
| D&C Subcontractor Preliminaries | <p>means the percentage that the D&C Subcontractor may charge for "D&C Subcontractor Preliminaries" in accordance with Table 1, Table 2 or Table 3 (as the case may be) in section 3.2 of this Part A to cover all on-site overheads and other like costs (excluding any on-site management and supervision costs which are covered in the definition of D&C Base Costs).</p> |
| Design Base Costs | <p>means the actual third party design fees including architects', engineers' and other design consultants' fees properly and reasonably incurred and directly attributable to a Change Compensation Event but excluding all other costs of the D&C Subcontractor and all Agreed Margins other than the Margin of the relevant third party design consultant.</p> |
| Direct Costs | <p>has the meaning given to that term in:</p> <ul style="list-style-type: none">(a) the Train Franchisee Cooperation Agreement; or(b) the Tram Franchisee Cooperation Agreement, <p>in each case as the context requires.</p> |
| Financing Delay Costs | <p>means the incremental financing costs actually incurred, or which will be actually incurred, by Project Co or Finance Co under the</p> |



Finance Documents and directly attributable to a delay to the achievement of Provisional Acceptance caused by a Compensable Extension Event, a Rebuild Compensation Event, or a State Initiated Modification.

Franchisee's Margin

has the meaning given to that term in:

- (a) the Train Franchisee Cooperation Agreement; or
- (b) the Tram Franchisee Cooperation Agreement,

in each case as the context requires.

Lost Net Commercial Opportunities Revenue

means:

- (a) in the case of a Potential Revenue Loss Event occurring during the period up to but excluding the day which is 2 years after the Date of Final Acceptance, the net Commercial Opportunities Revenue forgone based on the revenue projections included in the Base Case Financial Model; and
- (b) in the case of a Potential Revenue Loss Event occurring during the period commencing the day which is 2 years after the Date of Final Acceptance, if the State considers (acting reasonably) that the net Commercial Opportunities Revenue forgone based on actual Commercial Opportunities Revenue prior to the Potential Revenue Loss Event is materially less than the net Commercial Opportunities Revenue forgone based on the revenue projections included in the Base Case Financial Model, the lower of:
 - (i) the net Commercial Opportunities Revenue forgone based on the revenue projections included in the Base Case Financial Model; and
 - (ii) the net Commercial Opportunities Revenue forgone based on the Base Case Financial Model as updated for actual Commercial Opportunities Revenue and prospectively for the remainder of the Term for actual Commercial Opportunities Revenue prior to the Potential Revenue Loss Event,

directly caused by the relevant Potential Revenue Loss Event.

Maintenance Base Costs

means the actual costs of the Maintenance Subcontractor or any Subcontractors properly and reasonably incurred and directly attributable to implementing the non-capital elements of a Change Compensation Event including warranty costs and lifecycle costs, but excluding the Maintenance Margin which, for the purposes of determining the Final Acceptance Works Fee after the Date for Final Acceptance will be determined applying the rates set out in Annexure B.

Maintenance Margin

means the percentage that the Maintenance Subcontractor or in circumstances where the Maintenance Subcontractor does not undertake the required works, the percentage that the Subcontractor carrying out the works may charge in accordance with Table 4 in section 3.2 of this Part A on its Maintenance Base



Costs to cover all off-site and on-site overheads and administrative, corporate and other like costs and profits of the Maintenance Subcontractor or such other Subcontractor carrying out the works.

Margin means an amount on account of off-site and on-site overheads and administrative, corporate and other like costs and profit.

Potential Revenue Loss Event has the meaning given in section 3.7(a).

Prolongation Costs means the lower of:

- (a) the actual, additional net costs (excluding Financing Delay Costs and Lost Net Commercial Opportunities Revenue) properly and reasonably incurred, or that will be incurred, by Project Co and directly attributable to a delay to the achievement of Provisional Acceptance directly as a consequence of a Compensable Extension Event, a Rebuild Compensation Event, or a State Initiated Modification; and
- (b) the maximum daily rate for:
 - (i) the period from Financial Close to the date which is six months after Financial Close, [not disclosed] per day;
 - (ii) the period from after the date which is six months after Financial Close to the date which is six months before the Date for Provisional Acceptance, [not disclosed] per day; and
 - (iii) the period after the date which is six months before the Date for Provisional Acceptance, [not disclosed] per day.

Rebuild Compensation Event means an event described in:

- (a) clause 42.3(c) (*Repairing and rebuilding*) of this Agreement, in respect of repairing and rebuilding to a different specification;
- (b) clause 42.3(d) (*Repairing and rebuilding*) of this Agreement, in respect of repairing and rebuilding State caused damage;
- (c) clause 42.3(e) (*Repairing and rebuilding*) of this Agreement, in respect of repairing and rebuilding damage caused by a train, or a Metro Tunnel Package Contractor; or
- (d) clause 43.17(a) (*Damage caused by Day 1 Uninsurable Risk or Uninsurable Risk*) of this Agreement, in respect of repairing or rebuilding damage caused by a Day 1 Uninsurable Risk or Uninsurable Risk.

Savings means the amount of any costs, including any Agreed Margins, other Margins or costs under the Finance Documents, avoided or otherwise reduced in accordance with this Schedule arising in connection with a Change Compensation Event.



**State Initiated
Modification**

means a Modification other than:

- (a) as a result of a Minor Modification Proposal;
- (b) a Modification the subject of a Modification Proposal under clause 38.6 (*Project Co Proposed Modifications*) of this Agreement; and
- (c) a Modification to implement a Technological Improvement under clause 39.3 (*Implementing Technological Improvements*) of this Agreement.

2 Change Compensation Events

| Change Compensation Event | Clause of this Agreement | Compensation to be calculated in accordance with the following section of this Part A or other provisions of this Agreement as identified |
|--|--|--|
| Amount of Handover Refurbishment Works | Clause 32.4 (<i>State election</i>). | Sections 3.1 and 3.2 of this Part A. |
| State Initiated Modification | Clause 38.1 (<i>Modification Orders</i>), 38.2 (<i>Modification Request by the State</i>), 38.3 (<i>Modification Quote</i>), 38.7 (<i>Modifications required as a result of Change in Mandatory Requirements</i>), 38.8 (<i>Modifications required as a result of a JCC Modification</i>), 38.9 (<i>Directions giving rise to Modification</i>), 38.10 (<i>Entitlement to Financing Delay Costs and Prolongation Costs</i>) and 38.11 (<i>Payment for Quotes</i>). | Sections 3.1, 3.2, 3.3, 3.6 and 3.7 of this Part A. |
| Pre-Agreed Modification | Clause 38.13 (<i>Pre-Agreed Modifications</i>) | Section 3.1 of this Part A (for works or services costs or savings (as applicable)) in which case the Base Costs for the |



| Change Compensation Event | Clause of this Agreement | Compensation to be calculated in accordance with the following section of this Part A or other provisions of this Agreement as identified |
|----------------------------------|---|--|
| | | purposes of item "C" of the calculation will be the Pre-Agreed Modification Costs. |
| Compensable Extension Event | Clause 16.3 (<i>State's right to enter, inspect and test</i>), 16.7 (<i>State right to suspend</i>), 17.2 (<i>Proximate State Work</i>), 23.8 (<i>Additional testing</i>), 26.6 (<i>Change Notice</i>), 26.10 (<i>Entitlement to Financing Delay Costs and Prolongation Costs</i>), 38.5 (<i>Omission by State</i>) and 41.4(b)(1) (<i>Payments</i>). | Section 3.3 of this Part A. |
| Compensable Intervening Event | Clause 16.7 (<i>State right to suspend</i>), 17.2 (<i>Proximate State Work</i>), 31.1(b)(6) (<i>Intervening Events entitling Change Notice</i>), 31.4(b) (<i>Payment continues for Intervening Events other than Force Majeure Events</i>), 31.6(b) (<i>Alternative arrangements</i>) and 38.5 (<i>Omission by State</i>). | Sections 3.1, 3.2 and 3.7 of this Part A. |
| Force Majeure Event | Clause 26.19 (<i>Force Majeure</i>), 31.5(c)(2) (<i>Intervening Event which is a Force Majeure Event</i>) and 41.4(c) (<i>Payments</i>). | Section 3.4 of this Part A. |
| Acceleration | Clause 26.18 (<i>Acceleration</i>) | Sections 3.1 and 3.2 of this Part A (excluding Agreed Margins or other Margin). |



| Change Compensation Event | Clause of this Agreement | Compensation to be calculated in accordance with the following section of this Part A or other provisions of this Agreement as identified |
|---|---|--|
| Project Co Proposed Modification | Clause 38.6 (<i>Project Co Proposed Modifications</i>). | Sections 3.1 and 3.2 of this Part A. |
| Minor Modification | Clause 38.12 (<i>Minor Modifications</i>). | Sections 3.1 and 3.2 of this Part A. |
| Modification for Technological Improvement | Clause 39.3 (<i>Implementing Technological Improvements</i>). | Sections 3.1 and 3.2 of this Part A. |
| Repair or rebuild to different specifications | Clause 42.3(c) (<i>Repairing and rebuilding</i>). | Sections 3.1, 3.2, 3.3 and 3.7 of this Part A (for incremental additional costs and delay). |
| Repair or rebuild caused by State | Clause 42.3(d) (<i>Repairing and rebuilding</i>). | Sections 3.1, 3.2, 3.3 and 3.7 of this Part A. |
| Repair or rebuild caused by train damage or a Metro Tunnel Package Contractor during the period to Provisional Acceptance | Clause 42.3(e) (<i>Repairing and rebuilding</i>). | Sections 3.1, 3.2, 3.3 and 3.7 of this Part A. |
| Repair or rebuild caused by train damage or the Train Franchisee Interface Party during the FAW Phase | Clause 42.3(f) (<i>Repairing and rebuilding</i>). | Sections 3.1, 3.2 and 3.7 of this Part A. |
| Repair or rebuild caused by train damage or the Train Franchisee Interface Party during the Maintenance Phase | Clause 42.3(f) (<i>Repairing and rebuilding</i>). | Sections 3.1 and 3.2 of this Part A. |



| Change Compensation Event | Clause of this Agreement | Compensation to be calculated in accordance with the following section of this Part A or other provisions of this Agreement as identified |
|---|---|--|
| Repair or rebuild caused by a Day 1 Uninsurable Risk or Uninsurable Risk. | Clause 43.17(a) (<i>Damage caused by Day 1 Uninsurable Risk or Uninsurable Risk</i>). | Sections 3.1, 3.2, 3.3 and 3.7 of this Part A. |

The table above is provided for ease of reference only, and is not intended to be an exhaustive description of the Change Compensation Events or a party's entitlement to compensation. A party's entitlement to compensation arising from any of the Change Compensation Events set out in the table above is subject to the relevant calculation specified in the third column of that table, the remainder of this Schedule and any relevant provisions of this Agreement.

3 Methodology for calculating compensation

3.1 Compensation for Change Compensation Events

Subject to sections 3.2 to 3.7 of this Part A and the specific requirements and restrictions otherwise set out in this Agreement including this Schedule, Project Co's entitlement to compensation in respect of a Change Compensation Event will be calculated as follows:

[not disclosed]

where:

[not disclosed].

3.2 Calculation of Base Costs and Agreed Margins

- (a) **(Prior to Provisional Acceptance – capital component):** For Change Compensation Events prior to the Date of Provisional Acceptance that involve a capital component, the Base Costs and Agreed Margins for the capital cost component shall be calculated as:

[not disclosed]

Where:

[not disclosed]

- (b) **(Prior to Final Acceptance – capital component):** For Change Compensation Events after the Date of Provisional Acceptance but prior to the Date of Final Acceptance that involve a capital component, the Base Costs and Agreed Margins for the capital cost component shall be calculated as:

[not disclosed]

Where:



[not disclosed]

- (c) **(Maintenance Phase – capital component)**: For Change Compensation Events during the Maintenance Phase that involve a capital component, the Base Costs and Agreed Margin for the capital cost component shall be calculated as:

[not disclosed]

Where:

[not disclosed]

- (d) **(D&C Phase and Maintenance Phase – recurrent cost component)**: For Change Compensation Events (including those with a capital cost component and whether occurring during the D&C Phase or the Maintenance Phase) which impact on the cost of carrying out the Services, the Base Costs and Agreed Margin in respect only of those recurrent costs shall be calculated as:

[not disclosed]

Where:

[not disclosed]

3.3 Compensation for Financing Delay Costs and Prolongation Costs

Subject to the specific requirements otherwise set out in this Agreement, Project Co's entitlement to Prolongation Costs and Financing Delay Costs on the occurrence of a Compensable Extension Event, a Rebuild Compensation Event, or in respect of a State Initiated Modification, will be calculated as follows:

[not disclosed]

Where:

[not disclosed]

3.4 Force Majeure Event

Where clauses 26.19(c) (*Force Majeure*) or 31.5(c) (*Intervening Event which is a Force Majeure Event*) of this Agreement apply, subject to the specific requirements and restrictions otherwise set out in this Agreement, Project Co's entitlement to compensation will be calculated as follows:

[not disclosed]

Where:

[not disclosed]

3.5 Annual review of ongoing compensation

- (a) **(Annual review)**: If compensation for a Change Compensation Event has been made by an increase or decrease in the Quarterly Services Payment under section **Error! Reference source not found.** of this Part A, the State may determine:

(1) at the time of providing comments to Project Co in respect of the corresponding update to the Financial Model; and

(2) in its absolute discretion,

that:



- (3) the amount of compensation will be subject to review; and
- (4) the intervals for such review (which must be no more frequent than annual),

in accordance with this section 3.5 of this Part A. For the avoidance of doubt, to the extent that any compensation is to accommodate the costs incurred by Project Co or Finance Co for financing a Change Compensation Event, this compensation will not be subject to review in accordance with this section, but will be governed by the provisions of this Agreement dealing with Refinancings.

- (b) **(Adjustment to Quarterly Services Payment):** To the extent that, on any such review, a re-assessment of the ongoing net Costs or net Savings arising as a consequence of any Change Compensation Event differs from the amount for which compensation was first made through the Quarterly Services Payment in accordance with the Change Compensation Principles or the amount of compensation as adjusted on any prior review and re-assessment under this section 3.5 of this Part A, that adjustment will be made to the Quarterly Services Payment over the balance of the Term.
- (c) **(Time of review):** At least one month prior to the time for review determined by the State under section 3.5(a), Project Co must undertake and provide to the State a review and a re-assessment of the amount of ongoing net Costs or net Savings arising as a consequence of the Change Compensation Event incurred, paid or accrued for which compensation has been made through the Quarterly Services Payment over the Term.
- (d) **(State review and Disputes):** The State must, within 20 Business Days of receipt of a review, notify Project Co of any matter within that review and re-assessment with which the State does not agree, and any Dispute on whether or not there ought to be re-assessment of compensation, or the amount of any re-assessment which has been made through the Quarterly Services Payment may be referred by either party for resolution in accordance with clauses 46 (*Dispute Resolution*) and 47 (*Arbitration*) of this Agreement.
- (e) **(Reasonably foreseeable):** Where a review under this section 3.5 will result in an increase in the Quarterly Services Payment, Project Co will not be entitled to any such increase unless Project Co can demonstrate to the satisfaction of the State (acting reasonably) that:
 - (1) the increase in the Quarterly Services Payment could not reasonably have been foreseen by a party performing activities similar to the Project Activities in accordance with Best Industry Practices; or
 - (2) if an increase in the Quarterly Services Payment was reasonably foreseeable in accordance with section 3.5(e)(1), the amount of the increase could not reasonably have been foreseen by a party performing activities similar to the Project Activities in accordance with Best Industry Practices,

as at the date on which Project Co issued the first Change Notice for the relevant Change Compensation Event.

3.6 Payment for Modification Quotes

If under clause 38.11 (*Payment for Quotes*) of this Agreement Project Co is entitled to recovery of third party costs incurred in preparing a Modification Quote, the State must pay the third party costs calculated in accordance with these Change Compensation Principles up to the amount quoted by Project Co in accordance with clause 38.11(b) (*Payment for Quotes*) of this Agreement for the preparation of the Modification Quote:



- (a) **(no Modification Order)**: if the State does not issue a Modification Order, within 20 Business Days of receiving an invoice from Project Co for such third party costs provided that the relevant Modification Quote has been prepared and submitted in accordance with this Agreement; or
- (b) **(Modification Order issued)**: if the State does issue a Modification Order, as part of the amount payable by the State for the Modification (including taking into account any Savings).

3.7 Compensation for Potential Revenue Loss Event

- (a) **(Potential Revenue Loss Event)**: If:
 - (1) during the D&C Phase, the State breaches any State Project Document;
 - (2) during the FAW Phase or the Maintenance Phase, a Compensable Intervening Event occurs;
 - (3) the State issues a Modification Order (excluding as a result of a Modification Proposal or a Minor Modification); or
 - (4) a Rebuild Compensation Event occurs,(in each case, a **Potential Revenue Loss Event**), and:
 - (5) in respect of the events set out in sections 3.7(a)(1), 3.7(a)(2) or 3.7(a)(4), Project Co has submitted a Change Notice to the State in accordance with section 5; and
 - (6) in respect of the event set out in section 3.7(a)(3), Project Co has complied with clause 38 (*Modifications*) of this Agreement,Project Co will be entitled to payment by the State of Lost Net Commercial Opportunities Revenue for the revenue that is lost due to the effect of the Potential Revenue Loss Event.
- (b) **(Principles for calculating compensation)**: Project Co's entitlement to Lost Net Commercial Opportunities Revenue will be:
 - (1) determined in accordance with the requirements of section 4.1, excluding sections 4.1(a)(1), 4.1(h), 4.1(i), 4.1(j) and 4.1(k);
 - (2) paid in accordance with section 4.2; and
 - (3) in the case of a Rebuild Compensation Event under paragraph (d) of the definition of Rebuild Compensation Event, capped at an amount equal to the maximum amount set out in clause 43.17(b) of this Agreement less any other amounts paid by the State under this Agreement in relation to the Rebuild Compensation Event.
- (c) **(Acknowledgements)**: The parties acknowledge and agree, in respect of a Potential Revenue Loss Event and the payment of Lost Net Commercial Opportunities Revenue that:
 - (1) section 4.3 will apply;
 - (2) to the extent that Project Co submits a Change Notice in respect of a Potential Revenue Loss Event, the requirements of section 6 and Part B will apply; and
 - (3) Lost Net Commercial Opportunities Revenue will not be payable for any period that the Potential Revenue Loss Event, or the effects of the



Potential Revenue Loss Event are continuing to the extent that period is contemporaneous with:

- (A) a delay to Provisional Acceptance caused by an event which is not an Extension Event or a Potential Revenue Loss Event; or
- (B) a delay to Final Acceptance which is caused or contributed to by an act or omission of Project Co.

4 General

4.1 General principles for calculating compensation

The extent (if any) to which compensation will be payable by the State, for a Change Compensation Event, will be determined as follows:

- (a) **(overriding considerations)**: the overriding considerations will be that:
 - (1) the State is receiving value for money; and
 - (2) the compensation amount is fair and reasonable and is calculated in a manner that is transparent;
- (b) **(timing of payments)**: all payments made by the State to Project Co in accordance with this Schedule will be made as and when the corresponding cost is incurred by Project Co or Finance Co (as the case may be) or in arrears in accordance with section 4.2 of this Part A;
- (c) **(time value of money)**: appropriate regard must be given to the time value of money and timing of cash flows;
- (d) **(open book basis)**:
 - (1) Project Co must, and must procure that its Associates (other than Subcontractors that are not Key Subcontractors or Material Subcontractors):
 - (A) provide all information referred to in this Schedule on an open book basis, in accordance with section 4.1(d)(2) of this Part A;
 - (B) if required by the State, make available the appropriate personnel to explain the basis on which a particular calculation has been made; and
 - (C) allow the State to review and undertake audits to enable it to verify compliance with this section 4.1(d) of this Part A in respect of the information referred to in section 4.1(d)(1)(A) of this Part A,

in order to enable the State to make an accurate assessment of actual Costs, Savings and Lost Net Commercial Opportunities Revenue in accordance with this Schedule; and

- (2) "open book basis" will include Project Co providing a breakdown of the calculation of all relevant preliminaries, labour, equipment, materials, subcontract, finance and other costs and the Margin of each of Project Co and its Associates (other than Subcontractors that are not Key Subcontractors or Material Subcontractors) in a clear and transparent



manner and other information reasonably requested by the State including reasonably available source documents required to verify such calculation;

- (e) **(no double counting)**: no amounts will be double counted;
- (f) **(Indexation)**: no amounts or costs payable will be Indexed more than once;
- (g) **(GST)**: any reference in the Change Notice or any other document pursuant to this Schedule 4 to price, value, sales, revenue, rates, fees or a similar amount will be a reference to that amount exclusive of GST (other than such an amount expressly agreed to be GST inclusive);
- (h) **(margins)**: except as expressly provided for in Section 3 or 4, the State will not pay or otherwise compensate Project Co (or any Associate of Project Co) for any Margin (or loss of Margin) in respect of a Change Compensation Event;
- (i) **(margins for Subcontractors)**: Subcontractors other than the D&C Subcontractor or the Maintenance Subcontractor who are engaged to carry out a Change Compensation Event will be paid a Margin as part of the Base Costs;
- (j) **(no margin for Prolongation Costs)**: notwithstanding any other section of this Schedule 4, no Margin will be payable for Prolongation Costs;
- (k) **(State's Liability)**: the State's Liability and Project Co's entitlements will be calculated subject to clause 2.15 (*Reduction in State liability for Relief Events*) of this Agreement; and
- (l) **(Fee for Independent Reviewer)**: no amounts will be payable in respect of the "Fee" as defined under the Independent Reviewer Deed of Appointment or Sub-Independent Reviewer Deed of Appointment.

4.2 Form and timing of compensation

- (a) **(Payment of Compensation)**: If a Change Compensation Event:
 - (1) results in an amount owing from Project Co to the State, the State will deduct such amount from the Quarterly Service Payments payable to Project Co after the relevant Change Compensation Event, or if no subsequent Quarterly Service Payments are payable to Project Co, such amount will be a debt due and payable by Project Co to the State;
 - (2) results in an amount owing from the State to Project Co that is not financed by Project Co in accordance with section 4.2(b) of this Part A, the State will pay such amount to Project Co:
 - (A) in accordance with the payment arrangements set out in the Change Response or Modification Order, which will be appropriate having regard to the nature and timing of costs (or, in respect of a Potential Revenue Loss Event, losses) to be incurred by Project Co in respect of the Change Compensation Event, and which could include a lump sum payment, a series of milestone payments, an adjustment to the Quarterly Service Payment (or a combination of these methods) and, if applicable, section 4.2(c) of this Part A;
 - (B) in respect of Prolongation Costs, Monthly in arrears with the first instalment payable within 1 Month after the date of receipt from Project Co of the Change Notice except to the extent that any Prolongation Costs are disputed by the State



and referred for resolution in accordance with clauses 46 (*Dispute Resolution*) and 47 (*Arbitration*) of this Agreement;

- (C) in respect of Financing Delay Costs, Quarterly in arrears on the date which the State would have paid the Quarterly Service Payment relating to those days of delay had Provisional Acceptance not been delayed by the relevant Compensable Extension Event, Rebuild Compensation Event or State Initiated Modification;
 - (D) in respect of Lost Net Commercial Opportunities Revenue, Monthly in advance of the date which Project Co would have generated the foregone Commercial Opportunities Revenue had the relevant Change Compensation Event not occurred; and
 - (E) in respect of a payment under section 3.4, Quarterly in arrears on the date which the State would have paid the Quarterly Service Payment relating to that period for which the Force Majeure Event is subsisting; or
- (3) results in an amount owing from the State to Project Co that is financed by Project Co in accordance with section 4.2(b) of this Part A the State will pay such amount to Project Co by way of an increase in the Quarterly Service Payment.
- (b) **(Funding):** Where the State requests Project Co obtain funding for a Change Compensation Event, Project Co must use (and must procure that Finance Co uses) all reasonable endeavours to obtain such funding, including by:
- (1) using any Savings resulting from other Change Compensation Events which have resulted in amounts being available under the Finance Documents;
 - (2) using (including indirectly) any standby facility that may be available to Project Co or Finance Co;
 - (3) sourcing (including indirectly) additional funding under the Finance Documents and from other sources (if permitted under the Finance Documents); and
 - (4) arranging other funding obtained on commercial terms for Project Co by the State (without any obligation on the State to make any such arrangements).

Where Project Co, having used all reasonable endeavours, is unable to obtain funding that is on terms which are satisfactory to the State, the State will, without limiting its rights under clause 38 (*Modifications*) of this Agreement, pay the relevant amounts in accordance with section 4.2(a)(2) of this Part A.

- (c) **(Lump Sum Payments):** If the State elects to pay to Project Co an amount calculated in accordance with these Change Compensation Principles in respect of a Modification by a lump sum payment, the State will pay such amount to Project Co when the following requirements have been satisfied:
- (1) in respect of Modifications required to be completed prior to the Date of Provisional Acceptance or during the FAW Phase, in accordance with the terms of the Modification Order;
 - (2) in respect of Modifications occurring or required to be completed during the Maintenance Phase, if the State requires certification of any works required, or Lost Net Commercial Opportunities Revenue incurred, as a result of the Modification by a suitably qualified



independent reviewer, upon such certification that the Modification has been completed in accordance with the relevant Change Notice and this Agreement; and

- (3) within 20 Business Days after receiving a valid Tax Invoice from Project Co for the amount calculated in accordance with these Change Compensation Principles.
- (d) **(Adjustment to Securitisation Structure):** Where an adjustment to the Quarterly Service Payment is made in accordance with section 4.2(a) of this Part A, Project Co must also calculate, in accordance with clause 35A of this Agreement, the adjustment required to be made to:
- (1) the Final D&C Phase Price;
 - (2) the Receivables Purchase Payment payable by Finance Co under the Receivables Purchase Deed; and
 - (3) the Licence Fees payable by Project Co under the Maintenance Licence to reflect, as appropriate, the adjustment to the Final D&C Phase Price.
- (e) **(Franchisee costs – Project Co Modification):** Where:
- (1) Project Co has proposed a Modification in accordance with clause 38.6 of this Agreement and has made an Additional Support Request in relation to that Modification;
 - (2) Project Co has accepted an Additional Support Response in relation to that Modification or the additional Direct Costs the relevant Rail Franchisee expects to incur in providing the Additional Support are determined in accordance with clause 5.2(g) of the relevant Rail Franchisee Cooperation Agreement; and
 - (3) the State has issued a Modification Order in respect of the Modification proposed in accordance with clause 38.6 of this Agreement,

Project Co must reimburse the relevant Rail Franchisee for its Direct Costs plus Franchisee's Margin incurred in providing the Additional Support in accordance with clause 18 of the Train Franchisee Cooperation Agreement or clause 13 of the Tram Franchisee Cooperation Agreement (as relevant).

- (f) **(Franchisee costs – State Modification):** Where:
- (1) the State issues a Modification Order or a Modification Request under clause 38.1 or clause 38.2 of this Agreement (as applicable);
 - (2) Project Co has made an Additional Support Request in relation to that Modification;
 - (3) the relevant Rail Franchisee is able to provide the Additional Support in accordance with:
 - (A) clause 17.2(c)(2) or 17.2(e) of the Train Franchisee Cooperation Agreement; or
 - (B) clause 12.3(c)(2) or 12.3(e) of the Tram Franchisee Cooperation Agreement; or(as applicable);
 - (4) Project Co has accepted an Additional Support Response in relation to that Modification or the additional Direct Costs the relevant Rail Franchisee expects to incur in providing the Additional Support are



determined in accordance with clause 5.2(g) of the relevant Rail Franchisee Cooperation Agreement; and

- (5) the State has accepted the Change Notice submitted by Project Co in relation to that Modification Order or Change Compensation Event,

the State will reimburse the relevant Rail Franchisee for its Direct Costs plus Franchisee's Margin incurred in providing the Additional Support.

- (g) [not disclosed]

4.3 Modifications and Minor Modifications

- (a) **(Application to Modifications):** Sections 5 and 6 of this Part A apply to all Change Compensation Events other than Modifications (including where arising as a result of a Minor Modification Proposal).
- (b) **(Process for Modifications):** The process for dealing with Modifications, including the issue of Modification Requests, Modification Quotes, Modification Proposals and Modification Orders, is set out in clause 38 (*Modifications*) of this Agreement.
- (c) **(Obligations for Modifications):** Any Modification Request, Modification Quote, Modification Proposal or Modification Order issued must comply with the applicable requirements of clause 38 (*Modifications*) of this Agreement and be prepared in accordance with and comply with Part B of this Schedule, and references in Part B of this Schedule to a "Change Notice" shall be deemed to refer to each Modification Request, Modification Quote, Modification Proposal or Modification Order, as the case may be (to the extent applicable).
- (d) **(Modification arising from Minor Modification Proposal):** In respect of any Modification arising as a result of a Minor Modification Proposal:
- (1) clause 38.12 (*Minor Modifications*) of this Agreement will apply;
 - (2) any amounts claimed or payable in respect of a Modification as a result of a Minor Modification Proposal must be calculated in accordance with this Schedule; and
 - (3) Project Co must promptly provide such information as is reasonably requested by the State Representative to support the amount claimed to be payable for the Modification as a result of a Minor Modification Proposal; but
 - (4) a Minor Modification Proposal (or response to it) is not otherwise required to comply with Part B of this Schedule.

5 Change Notice

5.1 Change Notice and State Response

- (a) **(Change Notice):** Any Change Notice submitted by Project Co must be prepared in accordance with and comply with Part B of this Schedule.
- (b) **(Requirements for Change Compensation Event):** Subject to section 4.3(a), if an event or change is expressed in this Agreement to be subject to, or an amount is to be calculated in accordance with, this Schedule then, as a condition precedent to making a claim in respect of such a Change Compensation Event, Project Co must, subject to section 4.3 of this Part A,



prepare and submit to the State Representative or reviewing party specified in this Agreement a Change Notice:

- (1) within the time specified in this Agreement; or
 - (2) if no time is specified in this Agreement, within 20 Business Days after the date on which Project Co first became aware of the Change Compensation Event (or such longer period as is agreed to by the State having regard to the extent and nature of the Change Compensation Event and its effects, and the information required to be included in the Change Notice).
- (c) **(Independent Reviewer)**: Any Change Notice submitted by Project Co to the State in respect of a Change Compensation Event must at the same time be submitted by Project Co to the Independent Reviewer.
- (d) **(Right of rejection)**: Without limiting section 6.2 of this Part A, the State Representative or reviewing party is entitled to reject a Change Notice where the Change Notice fails to meet the requirements of this Schedule and this Agreement.
- (e) **(Updated Change Notice)**: Where:
- (1) a Change Notice is submitted;
 - (2) the Change Compensation Event continues beyond the issue of the initial Change Notice; and
 - (3) there is no obligation otherwise in this Agreement to submit an updated Change Notice,

Project Co must prepare and submit to the State an updated Change Notice:

- (4) within the time specified in this Agreement; or
- (5) if no time is specified in this Agreement, every 20 Business Days (or such longer period as reasonably determined by the State, having regard to the extent and nature of the Change Compensation Event and its effects) for the period of the Change Compensation Event or the consequences of such event where either continue beyond the issue of the initial Change Notice.

5.2 State may request a Change Notice

- (a) **(Request)**: Without limiting the State's rights under this Agreement (including where Project Co has failed to submit a Change Notice in accordance with this Agreement), where:
- (1) the State believes that a Change Compensation Event has occurred; and
 - (2) Project Co has not submitted a Change Notice in accordance with section 5.1 of this Part A,
- the State may:
- (3) in a notice entitled "Change Notice Request", request that Project Co prepare and submit a Change Notice in respect of the particular Change Compensation Event; or
 - (4) during the Maintenance Phase, request Project Co to carry out a tender process, in accordance with section 7 of this Part A,
- (Change Notice Request)**.



- (b) **(Submission by Project Co)**: Project Co must prepare and submit a Change Notice within 20 Business Days of receipt of the Change Notice Request in accordance with section 5.1(e) of this Part A (or such longer period as is agreed to by the State having regard to the extent and nature of the Change Compensation Event and its effects, and the information required to be included in the Change Notice).
- (c) **(Requirement for Tender)**: Upon receipt of a request under section 5.2(a)(4) of this Part A, Project Co must carry out a tender process in accordance with section 7 of this Part A.

6 Change Response

6.1 State to issue a Change Response

- (a) Unless otherwise expressly stated in this Agreement, within 20 Business Days of receipt of a Change Notice, or such other period as the State reasonably requires, the State Representative, Independent Reviewer or other reviewing party (**Change Notice Recipient**):
 - (1) **(request for further information)**: may request from Project Co any further information that the Change Notice Recipient reasonably requires in order to assess Project Co's Change Notice in accordance with this Schedule; and
 - (2) **(Change Response notice)**: must advise Project Co, in a notice entitled "Change Response", that the State or Change Notice Recipient:
 - (A) accepts the Change Notice, in which case Project Co will, subject to Project Co complying with the other requirements of this Agreement (including this Schedule), be entitled to compensation calculated in accordance with section 3 of this Part A and an extension of time (if any) pursuant to clause 26 (*Time*);
 - (B) does not accept the Change Notice (and the reasons for this) and that it requires Project Co to:
 - 1) during the Maintenance Phase, carry out a tender process in accordance with section 7 of this Part A;
 - 2) have any amount that is not a fixed or specified amount under these Change Compensation Principles determined in accordance with section 6.3 of this Part A; or
 - 3) amend any aspect of the Change Notice in accordance with the Change Response to reflect (as relevant) any acceleration of the D&C Activities required by the State pursuant to clause 26.16(b) (*Reasonably achievable*) of this Agreement, and Project Co's actual entitlement; or
 - (C) rejects the Change Notice on the basis that the event which is the subject of the Change Notice is not an event for which Project Co is entitled to submit a Change Notice under the State Project Documents,



(Change Response).

- (b) **(Vary agreement):** A Change Response provided by a Change Notice Recipient which accepts all or part of a Change Notice has the effect of varying the State Project Documents to the extent accepted in relation to the relevant Change Notice, with effect from the date of receipt by Project Co of that Change Response, or such other date specified in that Change Response.
- (c) **(No obligation to review):** Nothing in this Agreement requires the Change Notice Recipient to review the Change Notice within the Review Period or in accordance with the Review Procedure.
- (d) **(No relief for failure to review):** No failure of a Change Notice Recipient to review a Change Notice or to issue a Change Response in accordance with this Agreement (including within any time period specified in this Agreement) will entitle Project Co to the relief or compensation set out in the Change Notice or put time at large or deprive the State or Change Notice Recipient of the power to grant the relief sought or such other relief as appropriate (including the power to extend time).

6.2 Options where the Change Notice is not accepted

If the State Representative does not accept or rejects a Change Notice (or a part of it) under sections 6.1(a)(2)(B) or 6.1(a)(2)(C) of this Part A, Project Co must, as a condition precedent to pursuing its Claim in respect of the Change Compensation Event (or the relevant part of it, as applicable):

- (a) if required by the Change Notice Recipient, submit an updated Change Notice to the State, responding to the Change Response; or
- (b) notify the State of any specific matters which it disputes in respect of the Change Response,

within 20 Business Days (or such other period as agreed with the State) of Project Co's receipt of the Change Response.

6.3 Dispute resolution

- (a) **(Dispute resolution referral):** Any Disputes about the Change Response may be referred by either party for resolution in accordance with clauses 46 (*Dispute Resolution*) and 47 (*Arbitration*) of this Agreement.
- (b) **(Consequences of Dispute):** If Project Co disputes all or any part of a Change Response in accordance with section 6.3(a), Project Co:
 - (1) must, in the interim, comply with the Change Response; and
 - (2) will be relieved of its obligations under this Agreement to the extent specified in the Change Response.
- (c) **(Base Costs and Savings):** Where a Dispute about a Change Response is referred for resolution under section 6.3(a) and relates to an amount as calculated by Project Co in any Change Notice, such amount not being a fixed or specified amount under these Change Compensation Principles:
 - (1) **(Base Costs):** the Base Costs calculated in item C of section 3.1 of this Part A shall be the lower of:
 - (A) the amount claimed by Project Co in accordance with this Schedule; and



- (B) the amount determined in accordance with clauses 46 (*Dispute Resolution*) to 47 (*Arbitration*) of this Agreement; and
- (2) (**Savings**): the Savings calculated in item D of section 3.1 of this Part A shall be the higher of:
 - (A) the amount claimed by Project Co in accordance with this Schedule; and
 - (B) the amount determined in accordance with clauses 46 (*Dispute Resolution*) to 47 (*Arbitration*) of this Agreement.

7 Tender process

- (a) (**Conduct of the tender process**): If Project Co is required to carry out a tender process under this Part A and in accordance with Best Industry Practice, Project Co must obtain three separate quotes (or such lesser number of quotes as directed by the State) from experienced, independent and capable contractors which are acceptable to the State (acting reasonably) to carry out the work in respect of the relevant Change Compensation Event.
- (b) (**Project Co to select**): Project Co will be responsible for selecting a subcontractor from this process in consultation with (and subject to the prior agreement of) the State.
- (c) (**Tender process material**): Project Co must permit the State to review all materials that are submitted in the tender process and provide any other information that the State reasonably requires (including such consents as are required by Law to carry out any Probity Investigations).
- (d) (**Selection criteria**): Project Co must demonstrate, to the reasonable satisfaction of the State, that the subcontractor it intends to select is the best choice having regard to:
 - (1) the price quoted in the prevailing market conditions;
 - (2) the experience and capability of that subcontractor in the context of the relevant Change Compensation Event; and
 - (3) the ability of the subcontractor to carry out the work in respect of the Change Compensation Event in the manner required by this Agreement.

The subcontractor must meet the requirements in respect of Subcontractors set out in this Agreement.

- (e) (**Effect of tender process**): Subject to section 7(f) of this Part A, Project Co must, within 10 Business Days of the outcome of the tender process, amend its Change Notice and submit it to the State or, where the State has exercised its right under section 5.2(a)(4) of this Part A, submit a Change Notice which takes full account of the outcome of the tender process.
- (f) (**State not satisfied**): If, following the conduct of the tender process, the State is not reasonably satisfied as to the matters described in section 7(d) of this Part A, or that the tender process has not been conducted in accordance with Best Industry Practice, it may:
 - (1) direct Project Co not to accept any tender;



- (2) otherwise instruct Project Co not to proceed with the work in respect of the relevant Change Compensation Event;
- (3) proceed to implement the work that would otherwise have been performed in respect of the relevant Change Compensation Event itself, through subcontractors selected by it; or
- (4) instruct Project Co to proceed with the work in respect of the relevant Change Compensation Event, but on another basis under this Schedule.



PART B - Change Notice Requirements

1 Requirements for Change Notice

A Change Notice prepared by Project Co in respect of a Change Compensation Event must:

- (a) **(Change Notice contents)**: contain:
 - (1) the information, to the extent that it is relevant to the particular Change Compensation Event, outlined in this Part B; and
 - (2) any additional information required under this Agreement in respect of a particular Change Compensation Event;
- (b) **(true and correct)**: be warranted by the Project Co Representative as being true and correct to the best of his or her knowledge;
- (c) **(signed)**: be signed by the Project Co Representative; and
- (d) **(attachments)**: attach copies of any required changes to the Project Strategies, Project Plans and Maintenance Manuals.

2 Change Compensation Event

Project Co must set out detailed particulars of the occurrence and impact of the relevant Change Compensation Event, including:

- (a) **(damage)**: details of any damage caused by the Change Compensation Event; and
- (b) **(Modification)**: in the case of a Change Compensation Event which is a Modification the subject of a Modification Order, the time for completion of the Modification (including whether the Modification is required to be completed prior to any Critical Interface Milestone Date, Progress Milestone Date, Date for Provisional Acceptance, or Date for Final Acceptance).

3 Mitigating factors

Project Co must describe the actions Project Co and any of its Associates has taken (and any further action Project Co proposes to take in the future) to:

- (a) **(Project Co to mitigate, minimise or avoid)**: mitigate, minimise or avoid the adverse effects, costs, consequences or duration of the Change Compensation Event (including by putting in place temporary measures reasonably required by the State); and
- (b) **(effects and costs arising from the Change Compensation Event)**: take advantage of any positive or beneficial effects of the Change Compensation Event and maximise any reduction in costs arising from the Change Compensation Event.



4 Effects

Project Co must provide details, where applicable, and to the extent known or able to be predicted, of the effects of the Change Compensation Event on:

- (a) **(effect on quality)**: the workmanship, quality, appearance or durability of any part of the Project;
- (b) **(effect on design and construction)**: the design, construction or commissioning of the Works;
- (c) **(effect on management and maintenance)**: the management and maintenance of the Relevant Infrastructure;
- (d) **(effect on use of the Project)**: the use of the Relevant Infrastructure and the safe, efficient and continuous operation of the Relevant Infrastructure;
- (e) **(effect on ability to meet FFP Warranty)**: the Relevant Infrastructure meeting, or the ability to maintain the Relevant Infrastructure so that it meets, the FFP Warranty;
- (f) **(effect on Project Co's ability to carry out Services)**: the carrying out of the Services and Project Co's ability to carry out Services in accordance with the performance standards in the Services Specification;
- (g) **(effect on the warranties given by Project Co)**: the warranties given by Project Co in this Agreement (and in particular under clause 48.2 (*Project Co's representations and warranties*) of this Agreement);
- (h) **(effect on this Agreement)**: any relevant part of this Agreement (including Schedules and Exhibits);
- (i) **(effect on Provisional Acceptance and milestones)**: the time consequences of the Change Compensation Event (including any impact on any Date for Provisional Acceptance, any Critical Interface Milestone Date, any Progress Milestone Date and the time during which Project Co will be unable to carry out any other obligations due to the relevant Change Compensation Event);
- (j) **(claimed revised Date for Provisional Acceptance or milestone date)**: any claimed revised Date for Provisional Acceptance, Critical Interface Milestone Date or Progress Milestone Date;
- (k) **(Accreditation)**: details of any impact the Change Compensation Event will have on Accreditation;
- (l) **(effect on Project Co's performance of any other obligations)**: the performance of any other obligations of Project Co or Finance Co under the Project Documents;
- (m) **(Permitted Commercial Opportunities revenue)**: Project Co's ability to pursue the Permitted Commercial Opportunities in accordance with clause 37 (*Commercial opportunities and revenue*) of this Agreement and to earn revenue from the Permitted Commercial Opportunities; and
- (n) **(effect on Approvals)**: any existing Approvals or the requirement for any new Approvals.



5 Cost, Saving and Loss Implications

All Change Notices must fully document all estimated Costs, Savings and Lost Net Commercial Opportunities Revenue on an open book basis and otherwise comply with section 3 of Part A, including:

- (a) **(amounts payable by or to Project Co)**: all amounts payable by or to Project Co, and each component of any payment calculation, for the proposed Change Compensation Event in accordance with this Schedule (in the form of and including all information required in accordance with this Schedule);
- (b) **(capital expenditure)**: whether or not any required capital expenditure can be accommodated within the next planned refurbishment of the Maintained Assets;
- (c) **(cost of Insurance)**: the cost of Insurances; and
- (d) **(proposed form and timing for compensation)**: the proposed form and timing for compensation in accordance with section 4.2(b) of Part A.

6 Time Implications

Without limiting clauses 26.6 (*Change Notice*) and 38.3 (*Modification Quote*) of this Agreement, all Change Notices in which Project Co claims an extension of time to the relevant Date for Provisional Acceptance, Critical Interface Milestone Date, or Progress Milestone Date must:

- (a) set out detailed particulars of the delay or likely delay and the occurrence causing the delay;
- (b) state the number of days extension claimed together with the basis for calculating the total number of days claimed including a detailed critical path programming analysis which demonstrates how the relevant event has delayed Provisional Acceptance, a Critical Interface Milestone, or a Progress Milestone;
- (c) include all information required by clause 26 (*Time*) of this Agreement and any other information reasonably required by the State Representative or other reviewing party to demonstrate that Project Co has satisfied the conditions relevant to its extension of time claim as referred to in clauses 26.7 (*Conditions precedent to extension*) and 38.3 (*Modification Quote*) of this Agreement (as applicable); and
- (d) where applicable, include the amount of Prolongation Costs, Financing Delay Costs and Lost Net Commercial Opportunities Revenue claimed, together with the basis of calculating the amount claimed.

7 Warranty by Project Co

All Change Notices must:

- (a) **(Warranty)**: where the Change Notice is in respect of a Modification the subject of a Modification Order, contain a warranty by Project Co in respect of the Change Compensation Event that:
 - (1) the relevant Change Notice has been prepared so as to avoid or minimise:



- (A) any delay in achieving Provisional Acceptance, Final Acceptance, each Critical Interface Milestone Date and each Progress Milestone Date;
- (B) any adverse safety impacts of the Change Compensation Event on people and the Maintained Assets;
- (2) the Modification when implemented will enable the Relevant Infrastructure to meet, and remain capable of being maintained so as to meet, the FFP Warranty and otherwise meet the requirements of this Agreement except to the extent that it is agreed or determined that the proposed Modification will have an adverse effect on the matters referred to in section 4 of this Part B; and
- (3) enable Project Co at all times during the Maintenance Phase to carry out the Services in accordance with the PS&TR and to comply with the terms of this Agreement, except to the extent that it is agreed or determined that the proposed Modification will have an adverse effect on the matters referred to in section 4 of this Part B,

in each case without limiting the warranties given by Project Co in other clauses of this Agreement, except to the extent that it is agreed between the parties or determined in accordance with this Agreement that the proposed Modification will have an adverse effect on the matters referred to in section 4 of this Part B; and

- (b) (**Bona fide**): contain a warranty by Project Co that it is satisfied that the Claim the subject of the Change Notice is bona fide and the relief sought is an accurate reflection of Project Co's entitlement under this Agreement to the extent it is able to be known at the time.



Annexure A Change Notice

Change Notice

Date: [insert]

To: [insert]

From: [insert]
(Project Co)

Project Agreement: the Project Agreement titled "Metro Tunnel – Tunnel and Stations PPP – Project Agreement" entered into between the State and Project Co dated [insert].

[Insert any other relevant details such as claim reference numbers]

Unless the context requires otherwise, capitalised terms used in this Change Notice have the meanings given to them in the Project Agreement.

Section 1 – Details of relevant Change Compensation Event

The relevant Change Compensation Event is:

- Amount of Handover Refurbishment Works (clause 32.4 of the Project Agreement)
- State Initiated Modification (clauses 38.1, 38.2, 38.3, 38.7, 38.8, 38.9, 38.10 and 38.11 of the Project Agreement)
- Pre-Agreed Modification (clause 38.13 of the Project Agreement)
- Compensable Extension Event (clauses 16.3, 16.7, 17.2, 23.8, 38.5 and 41.4(b)(1) of the Project Agreement)
- Compensable Intervening Event (clauses 16.7, 17.2, 31.1(b)(6), 31.4(b), 31.6(b) and 38.5 of the Project Agreement)
- Force Majeure Event (clauses 26.19, 31.5(c)(2) and 41.4(c) of the Project Agreement)
- Acceleration (clause 26.18 of the Project Agreement)
- Project Co Proposed Modification (clause 38.6 of the Project Agreement)
- Minor Modification (clause 38.12 of the Project



Agreement)

- Modification for Technological Improvement (clause 39.3)
- Repair or rebuild to different specifications (clause 42.3(c) of the Project Agreement)
- Repair or rebuild caused by State (clause 42.3(d) of the Project Agreement)
- Repair or rebuild caused by a train or a Metro Tunnel Package Contractor during the period to Provisional Acceptance (clause 42.3(e) of the Project Agreement)
- Repair or rebuild caused by a train or the Train Franchisee Interface Party during the FAW Phase (clause 42.3(f) of the Project Agreement)
- Repair or rebuild caused by a train or the Train Franchisee Interface Party during the Maintenance Phase (clause 42.3(f) of the Project Agreement)
- Repair or rebuild caused by a Day 1 Uninsurable Risk or Uninsurable Risk (clause 43.17(a) of the Project Agreement)

The impact of the Change Compensation Event is:

[insert detailed particulars of the nature, occurrence and impact of the relevant Change Compensation Event, including:

- ***the basis on which Project Co has formed the opinion that an event constitutes a Change Compensation Event;***
- ***details of any damage caused by the Change Compensation Event; and***
- ***in the case of a Change Compensation Event which is a Modification the subject of a Modification Order, the time for completion of the Modification (including whether the Modification is required to be completed prior to any Critical Interface Milestone Date, Progress Milestone Date, Date for Provisional Acceptance, or Date for Final Acceptance).***

The details of any acceleration requested by the State pursuant to a Change Response are:

[insert details]

Section 2 – Details of the effect of the relevant Change Compensation Event

To the extent known or able to be predicted, Project Co considers that the Change Compensation Event will have the following effects on:

- The workmanship, quality, appearance or

[insert details]



durability of any part of
the Project:

- The design, manufacture, construction, supply, installation, or commissioning of the Works: **[insert details]**
- The management and maintenance of the Relevant Infrastructure: **[insert details]**
- The use of the Relevant Infrastructure and the safe, efficient and continuous operation of the Relevant Infrastructure: **[insert details]**
- The Relevant Infrastructure meeting the FFP Warranty: **[insert details]**
- The carrying out of the Services and Project Co's ability to carry out Services in accordance with the performance standards in the Services Specification: **[insert details]**
- The warranties given by Project Co in the Project Agreement: **[insert details]**
- Any relevant part of the Project Agreement (including Schedules and Exhibits): **[insert details]**
- Any Accreditation: **[insert details]**
- The performance of any other obligations of Project Co or Finance **[insert details]**



Co under the Project Documents:

- Any existing Approvals or the requirement for any new Approvals: **[insert details]**

Section 3 – Details of mitigating factors

Project Co and its Associates have taken the following action to mitigate, minimise or avoid the adverse effects, Costs, consequences or duration of the Change Compensation Event (including those temporary measures reasonably required by the State): **[insert details]**

Project Co proposes to take the following action in the future to mitigate, minimise or avoid the adverse effects, Costs, consequences or duration of the Change Compensation Event (including by putting in place temporary measures reasonably required by the State): **[insert details]**

Project Co and its Associates have taken the following action to take advantage of any positive or beneficial effects of the Change Compensation Event and maximise any reduction in Costs arising from the Change Compensation Event: **[insert details]**

Project Co proposes to take the following action in the future to take advantage of any positive or beneficial effects of the Change Compensation Event and maximise any reduction in Costs arising from the Change Compensation Event: **[insert details]**



Section 4 – Details of cost, saving and Lost Net Commercial Opportunities Revenue implications

The estimated Costs, Savings and Lost Net Commercial Opportunities Revenue arising as a result of the Change Compensation Event are as set out in the following table.

| Description | Estimate of savings (\$AUD ex GST) | Estimate of costs (\$AUD ex GST) |
|--|------------------------------------|---|
| All amounts payable by or to Project Co, and each component of any payment calculation, for the proposed Change Compensation Event in accordance with the Change Compensation Principles (in the form of and including all information required in accordance with the Change Compensation Principles) | [insert details] | [insert details including details of the Direct Costs a relevant Rail Franchisee expects to incur in providing any Additional Support.] |
| Amounts of any required capital expenditure that can be accommodated within the next planned refurbishment of the Maintained Assets. | [insert details] | [insert details] |
| The cost of Insurances | [insert details] | [insert details] |
| Lost Net Commercial Opportunities Revenue | [insert details] | [insert details] |

The proposed form and timing for compensation in accordance with section 8 of the Change Compensation Principles:

[insert details]

The funding to be provided for a Change Compensation Event (where the State has requested such funding):

[insert details of proposed funding, if any]

[to the extent Project Co is unable to provide the requested funding, insert evidence that Project Co has used all reasonable endeavours to obtain such funding, including by:

- using any Savings resulting from other Change Compensation Events which have resulted in amounts



being available under the Finance Documents;

- ***using any standby facility that may be available to Project Co;***
- ***arranging for additional funding under the Finance Documents and from other sources (if permitted under the Finance Documents); and***
- ***arranging other funding obtained on commercial terms for Project Co by the State (without any obligation on the State to make any such arrangements).]***

Section 5 – Details of time implications

The delay is: ***[insert details]***

The time consequences of the Change Compensation Event are: ***[insert details]***

The number of days extension to each relevant Date for Provisional Acceptance, Critical Interface Milestone Date or Progress Milestone Date claimed is: ***[insert details]***

The basis for calculating the total number of days claimed is: ***[insert details]***

The amount of Financing Delay Costs: ***[insert details]***

The amount of Prolongation Costs: ***[insert details]***

The extent that acceleration is reasonably achievable to overcome the delay is: ***[insert details]***

Section 6 – Details of Modification request

[Project Co to insert any further information as required by clause 38.2 (Modification



Request by the State) of the Project Agreement.]

Section 7 – Warranty as to Change Notice

Project Co warrants that it is satisfied that the Claim the subject of this Change Notice is bona fide and the relief sought is an accurate reflection of Project Co's entitlement under the Project Agreement to the extent it is able to be known at the time.

I, ***[insert name of Project Co Representative]***, as the Project Co Representative, warrant that this Change Notice is true and correct to the best of my knowledge.

Where this Change Notice is in respect of a Modification the subject of a Modification Order, Project Co warrants in respect of the Change Compensation Event that:

1. this Change Notice has been prepared so as to avoid or minimise:
 - a. any delay in achieving any Critical Interface Milestone, Progress Milestone, any aspect of Provisional Acceptance and any aspect of Final Acceptance; and
 - b. any adverse safety impacts of the Change Compensation Event on people and the Relevant Infrastructure; and
2. the Modification when implemented will:
 - a. enable the Relevant Infrastructure, the Returned Assets or the Maintained Assets (as applicable) to meet the FFP Warranty and otherwise meet the requirements of the Project Agreement, except to the extent that it is agreed or determined that the proposed Modification will have an adverse effect on the matters referred to in section 2 of this Change Notice; and
 - b. enable Project Co at all times during the Maintenance Phase to carry out the Services in accordance with the Project Requirements and to comply with the terms of the Project Agreement, except to the extent that it is agreed or determined that the proposed Modification will have an adverse effect on the matters referred to in section 2 of this Change Notice,

in each case, without limiting the warranties given by Project Co in other clauses of the Project Agreement, except to the extent that it is agreed between the parties or determined in accordance with the Project Agreement that the proposed Modification will have an adverse effect on the matters referred to in section 2 of this Change Notice.

Section 8 – Signed by

Signed for and on behalf of Project Co by:

Name: ***[insert name]***

Position: Project Co Representative

Date: ***[insert date]***



HERBERT
SMITH
FREEHILLS

Section 9 – Attached

Attached with this Change Notice are the following documents:

[insert list of documents attached to this Change Notice, including copies of any required changes to the Management Plans and Maintenance Manuals.]



Annexure B
FAW Phase Base Costs

| Description | Monthly Rate | Daily Rate \$ |
|---|-----------------|-----------------|
| General | | |
| System Engineering | | |
| System Engineering and Interface Director | [not disclosed] | [not disclosed] |
| Assistant | [not disclosed] | [not disclosed] |
| SIT Manager | [not disclosed] | [not disclosed] |
| SIT Engineer 1 | [not disclosed] | [not disclosed] |
| SIT Engineer 2 | [not disclosed] | [not disclosed] |
| HR Rail Accreditation Engineer 2 | [not disclosed] | [not disclosed] |
| Systems Assurance Manager | [not disclosed] | [not disclosed] |
| Systems Safety Lead | [not disclosed] | [not disclosed] |
| Systems Safety Engineer 1 | [not disclosed] | [not disclosed] |
| RAM Lead | [not disclosed] | [not disclosed] |
| Systems Engineering Manager | [not disclosed] | [not disclosed] |
| Requirements Manager | [not disclosed] | [not disclosed] |
| Requirements Engineer 1 | [not disclosed] | [not disclosed] |
| Configuration Manager | [not disclosed] | [not disclosed] |
| Interface & Integration Manager | [not disclosed] | [not disclosed] |
| Interface Lead | [not disclosed] | [not disclosed] |
| Interface Engineer 1 | [not disclosed] | [not disclosed] |
| Interface Engineer 2 | [not disclosed] | [not disclosed] |
| V&V Lead / verifier | [not disclosed] | [not disclosed] |
| V&V Engineer 1 | [not disclosed] | [not disclosed] |



| | | |
|------------------------------------|-----------------|-----------------|
| V&V Engineer 2 | [not disclosed] | [not disclosed] |
| Operational Readiness Lead | [not disclosed] | [not disclosed] |
| Transition Engineer AMS | [not disclosed] | [not disclosed] |
| Transition Engineer ARTO | [not disclosed] | [not disclosed] |
| Operation Support | | |
| Finance | | |
| Finance Manager | [not disclosed] | [not disclosed] |
| Accounts Manager | [not disclosed] | [not disclosed] |
| Payroll Administrator Project Wide | [not disclosed] | [not disclosed] |
| Project Controls | | |
| Doc Controller Project Wide | [not disclosed] | [not disclosed] |
| M&E & Rail | | |
| Commissioning | | |
| Commissioning Manager | [not disclosed] | [not disclosed] |
| Stations - Arden | | |
| Commissioning Superintendent | [not disclosed] | [not disclosed] |
| Commissioning Supervisor 1 | [not disclosed] | [not disclosed] |
| Commissioning Engineer | [not disclosed] | [not disclosed] |
| Stations - Parkville | | |
| Commissioning Superintendent | [not disclosed] | [not disclosed] |
| Commissioning Supervisor 1 | [not disclosed] | [not disclosed] |
| Commissioning Engineer | [not disclosed] | [not disclosed] |
| Stations - CBD North | | |
| Commissioning Superintendent | [not disclosed] | [not disclosed] |
| Commissioning Supervisor 1 | [not disclosed] | [not disclosed] |
| Commissioning Engineer | [not disclosed] | [not disclosed] |
| Stations - CBD South | | |
| Commissioning Superintendent | [not disclosed] | [not disclosed] |



| | | |
|--|-----------------|-----------------|
| | disclosed] | disclosed] |
| Commissioning Supervisor 1 | [not disclosed] | [not disclosed] |
| Commissioning Engineer | [not disclosed] | [not disclosed] |
| Stations - Domain | | |
| Commissioning Superintendent | [not disclosed] | [not disclosed] |
| Commissioning Supervisor 1 | [not disclosed] | [not disclosed] |
| Commissioning Engineer | [not disclosed] | [not disclosed] |
| Site Wide Commissioning | | |
| Senior Controls Commissioning Engineer | [not disclosed] | [not disclosed] |
| Senior Rail Commissioning Engineer | [not disclosed] | [not disclosed] |
| Permit To Work / Rail Access | | |
| Permit to Work Construction / Rail Access Manager | [not disclosed] | [not disclosed] |
| Supervisor 1 | [not disclosed] | [not disclosed] |
| Supervisor 2 | [not disclosed] | [not disclosed] |
| Office Accommodation and FAW Services | | |
| Office Accommodation | [not disclosed] | [not disclosed] |
| Help Desk Services | [not disclosed] | [not disclosed] |
| Maintaining Infrastructure | [not disclosed] | [not disclosed] |
| Cleaning Services | [not disclosed] | [not disclosed] |
| Waste Services | [not disclosed] | [not disclosed] |
| Pest Control | [not disclosed] | [not disclosed] |
| Maintenance Subcontractor Resources mobilised in preparation for commencing Maintenance Services at Final Acceptance. | | |
| Services Director | | [not disclosed] |
| Technical | | [not disclosed] |



| | |
|--------------------------------|-----------------|
| Admin Officer | [not disclosed] |
| Maintenance Manager | [not disclosed] |
| Asset Engineer | [not disclosed] |
| Maintenance Supervisor | [not disclosed] |
| Commercial Manager | [not disclosed] |
| Performance Manager | [not disclosed] |
| Maintenance Planner | [not disclosed] |
| Rail Safety HSQE Manager | [not disclosed] |
| Mob phase - HR extra resource | [not disclosed] |
| Mob phase - IT extra resource | [not disclosed] |
| Electrical/Comms Tech | [not disclosed] |
| Fitter (Mechanical) | [not disclosed] |
| Help Desk | [not disclosed] |
| Electrical Apprentice | [not disclosed] |
| Mechanical Apprentice (Fitter) | [not disclosed] |
| Cleaning Manager | [not disclosed] |
| Cleaning Supervisor | [not disclosed] |
| Cleaning Resources | [not disclosed] |

Note: All of the above dollar thresholds are as at Financial Close and will be Indexed thereafter.



Schedule 5

Termination Payments

1 Definitions

Unless otherwise expressly defined, expressions used in this Schedule have the meanings given to them in or for the purposes of this Agreement.

| Term | Meaning |
|---|--|
| [not disclosed] | |
| Commercial Opportunities Revenue | has the meaning given to that term in the Change Compensation Principles. |
| Compensation Date | means: <ul style="list-style-type: none">(a) for a tender conducted under section 3.3:<ul style="list-style-type: none">(i) if the State chooses not to enter into any contract with any person resulting from the Tender Process in accordance with section 3.3(k)(2), 20 Business Days from the date on which the State notifies Project Co of its choice under section 3.3(k)(2); or(ii) otherwise the date on which the New Contract is entered into or is anticipated to be entered into; and(b) for an Independent Expert valuation under section 4:<ul style="list-style-type: none">(i) where it is deemed under section 3.3(g) that there is no Liquid Market, 60 Business Days after the date on which the State notifies Project Co that it has received fewer than two Compliant Tenders under section 3.3(g);(ii) where section 3.3(j) applies, the later of the date on which the State notifies Project Co in accordance with section 3.3(j) and the date which is 60 Business Days after the Expiry Date; or(iii) where paragraphs (b)(i) and (b)(ii) of this definition do not apply, the date which is 60 Business Days after the Expiry Date. |
| Compliant Tender | means any tender submitted that meets the qualification criteria notified under section 3.3(b). |



| Term | Meaning |
|---------------------------------------|--|
| Compliant Tenderer | means the party who submits a Compliant Tender. |
| Fair Market Value | means the amount at which an asset, equity or liability could be exchanged in an arm's length transaction between informed and willing parties, other than in a forced or liquidation sale. |
| Highest Compliant Tender Price | means the highest tender price offered by a Compliant Tender. |
| Independent Expert | has the meaning given in section 2(a). |
| Liquid Market | means where there are at least two contractors (in addition to any party controlled by the Financiers) in the prevailing market prepared to competitively tender for the undertaking of, or acquisition of, projects which are the same or of a similar type to the Project on the same or substantially similar terms and conditions to those of this Agreement and each of whom has agreed with the State to submit a Compliant Tender (even if a Compliant Tender is subsequently not received), such that the result of that tender process would provide a reasonably likely indicator as to Fair Market Value. |
| New Contract | <p>means a contract that replaces this Agreement, but without imposing on the new contracting party any Liability for any breach of this Agreement by Project Co prior to the date of that contract, and that assumes that:</p> <ul style="list-style-type: none">(a) if the New Contract is entered into prior to the Date of Provisional Acceptance, the Works are to be designed, supplied, constructed, installed, produced, commissioned or completed to achieve Provisional Acceptance in accordance with this Agreement;(b) the Services are to be carried out in accordance with, and to the standards set out in, the Services Specification and otherwise in accordance with this Agreement;(c) the term of the New Contract will be the period from the Compensation Date to the Final Expiry Date;(d) the provisions with respect to payment of the State Contributions, Floating Rate Component and Quarterly Service Payments continue to apply as set out in this Agreement, noting that the Maintenance Phase may be shorter than is contemplated in the Financial Model as a result of delay or forecast delay to the achievement of Provisional Acceptance; and(e) all other provisions of this Agreement continue to apply. |



| Term | Meaning |
|--|---|
| Post Termination Quarterly Amount | <p>means for the whole or any part of a Quarter or Quarters for the period from the Expiry Date to the Compensation Date, an amount equal to the aggregate of the Quarterly Service Payment, and the Floating Rate Component, without Abatement or adjustment to the Floating Rate Component, which would have been payable in respect of that Quarter or those Quarters under this Agreement had this Agreement not been terminated less an amount equal to the aggregate of (without double counting):</p> <ul style="list-style-type: none">(a) the greater of all cost components related to the carrying out of the Services and the reasonable costs to the State of alternative provision of the Services in accordance with, and to the standards set out in, the Services Specification and otherwise in accordance with this Agreement (whether or not any Services are carried out);(b) all cost components related to the provision of Insurance; and(c) Rectification Costs incurred by the State. <p>For the avoidance of doubt, the Post Termination Quarterly Amount can be an amount that is less than zero.</p> |
| Rectification Costs | <p>means an amount equal to the reasonable and proper costs incurred or reasonably anticipated to be incurred by the State in curing or otherwise addressing any default by Project Co and procuring performance of Project Co's obligations in accordance with the Project Documents.</p> |
| Securitisation Refund Payment | <p>has the meaning given that term in the Receivables Purchase Deed.</p> |
| Tender Costs | <p>means the reasonable and proper internal and external costs incurred by or on behalf of the State in carrying out the Tender Process (if any) and calculating the relevant Termination Payment (including engaging an Independent Expert).</p> |
| Tender Process | <p>means the process by which the State requests tenders from persons interested in entering into a New Contract, evaluates the responses from those interested parties and negotiates to enter into a New Contract with a Compliant Tenderer.</p> |
| Tender Process Monitor | <p>has the meaning given to that term in section 3.3(e).</p> |

2 Independent Expert

- (a) **(Appointment of Independent Expert):** If this Agreement is terminated and an independent expert is required to administer this Schedule, the parties will appoint an independent expert to act as an expert calculator of the relevant Termination Payment (**Independent Expert**) within 7 Business Days of:
- (1) in the case of section 4, the date on which that section commences to apply; and
 - (2) in the case of sections 5 and 6, the Expiry Date,
- and the following provisions of clause 46 (*Dispute Resolution*) of this Agreement will apply:
- (3) as if, in respect of clause 46.4 (*Selection of expert*):
 - (A) the reference in paragraph (a) to *'the date on which the parties agree to refer a Dispute to an expert for determination under clause 46.3'* were a reference to the time referred to in paragraphs (a)(1) and (2) of this section 2(a);
 - (B) the reference in paragraph (b) to *'determine a Dispute'* were a reference to *'calculate a Termination Payment'* and the reference to *'the party that gave the notice under clause 46.2(a)'* were a reference to *'the State'*;
 - (C) paragraph (c) required both parties to procure the President of the Australian Centre for International Commercial Arbitration to nominate a person to act as the expert, having regard to, but not being bound by, those persons proposed by the parties under paragraph (a);
 - (D) the reference in paragraph (d) to *'determine a Dispute'* were a reference to *'calculate a Termination Payment'*; and
 - (E) the reference in paragraph (g) to *'the terms of the Expert Determination Agreement'* were a reference to *'terms consistent with section 2 of the Termination Payments Schedule'*;
 - (4) clause 46.6 (*Expert finding*); and
 - (5) as if, in respect of clause 46.7(a) (*Liability of expert*), the reference to *'any person who is party to the Dispute'* were a reference to *'the parties'*.
- (b) **(Independent Expert to consider):** In calculating a Termination Payment, the Independent Expert may have regard to submissions and information provided by the parties, but must have regard to the matters set out in this Schedule and calculate the Termination Payment as an expert calculator.
- (c) **(Request for further information):** If the Independent Expert decides that further information is required, the Independent Expert may call for further submissions, documents or information from either or both parties and the Independent Expert must provide any information received from one party to the other party.
- (d) **(Conduct of conferences by Independent Expert):** The Independent Expert may call and conduct one or more conferences between the parties as the

Independent Expert sees fit, but must give the parties reasonable notice of the matters to be addressed at any such conference.

- (e) **(Legal representation of parties at conference):** The parties may be legally represented at any conference under this section 2.
- (f) **(Conferences to be held in private):** All conferences under this section 2 must be held in private.
- (g) **(Independent Expert may visit):** The Independent Expert may, if he or she considers it necessary, visit the Site or any of the Works (as the case may be), and the parties must facilitate the Independent Expert's access to any of those areas.
- (h) **(Timing of determination by the Independent Expert):** The Independent Expert must make his or her determination in relation to the calculation of the Termination Payment by the date that is the earlier of:
 - (1) 20 Business Days after the performance of the last of the steps set out in section 2(c) to section 2(g) to be performed; or
 - (2) 30 Business Days of the date of his or her appointment.If the Independent Expert fails to make a determination within this time, either party may refer the matter to dispute resolution in accordance with clauses 46 (*Dispute Resolution*) or 47 (*Arbitration*) of this Agreement.
- (i) **(Independent Expert to act as expert):** The Independent Expert will act as an expert and not an arbitrator and may make a decision from his or her own knowledge and expertise.
- (j) **(Cost of Independent Expert to be borne by State):** The cost of the Independent Expert will be borne by the State, but without limiting the State's right to deduct Tender Costs in calculating any Termination Payment.

3 Termination for Default Termination Event

3.1 The State's election

- (a) **(State's right to elect):** If the State terminates this Agreement for a Termination for a Default Termination Event (whether any other basis for termination then applies), the State may, subject to section 3.1(c), elect (in its sole and absolute discretion) to either:
 - (1) conduct a tender for the New Contract in accordance with section 3.3; or
 - (2) require the Independent Expert to undertake an expert determination in accordance with section 4.
- (b) **(State to notify Project Co):** The State will notify Project Co of its election on or before the day falling 20 Business Days after the Expiry Date and if the State fails to notify Project Co of its election by that date, then:
 - (1) if the State is entitled to conduct a tender for a New Contract under section 3.1(c), the State shall conduct a tender for the New Contract in accordance with section 3.3; or

- (2) if the State is not entitled to conduct a tender for a New Contract under section 3.1(c), the State shall require the Independent Expert to undertake an expert determination in accordance with section 4.
- (c) **(Circumstances State not entitled to conduct a tender):** The State is not entitled to elect to conduct a tender for the New Contract:
- (1) where Project Co or the Financiers have demonstrated to the reasonable satisfaction of the State that:
- (A) the Financiers have used best efforts to procure the transfer of Project Co's rights and liabilities under this Agreement in accordance with the Finance Direct Deed but have not done so; and
- (B) the reason for the failure to effect a transfer of Project Co's rights and liabilities under this Agreement is that there is no Liquid Market; or
- (2) where either the State agrees, or it is determined in accordance with clauses 46 (*Dispute Resolution*) to 47 (*Arbitration*) of this Agreement, that no Liquid Market exists.
- (d) **(State to pay Post Termination Quarterly Amount):** With respect to all or any part of a Quarter falling within the period from the Expiry Date to the Compensation Date (each inclusive), the State will pay to Project Co the Post Termination Quarterly Amount at the same time that the State would have been required to pay to Project Co the Quarterly Service Payment and any Floating Rate Component in respect of that Quarter had this Agreement not been terminated.
- (e) **(Set off of Post Termination Quarterly Amount):** If any Post Termination Quarterly Amount is less than zero then it will be carried forward and will be set off against any future positive Post Termination Quarterly Amount or other elements of the Default Termination Payment.

3.2 Payment on tender

- (a) **(State elects to conduct a tender):** If the State elects, or is required, to conduct a tender for the New Contract in accordance with section 3.1(a)(1) or section 3.1(b)(1) applies, sections 3.2 and 3.3 will apply.
- (b) **(Object of Tender Process):** The objective of the Tender Process is to establish a Highest Compliant Tender Price.
- (c) **(Calculation of Default Termination Payment):** The Default Termination Payment will be calculated as follows:

$$TP = A - C - D - E - F - G - H + J - M - P$$

where:

TP = the Default Termination Payment;

A = the Highest Compliant Tender Price. In determining item A, the Tender Process must:

(A) assume:

- (i) a Compensation Date determined under paragraph (a)(ii) of that definition (which will be subject to adjustment to reflect the actual date on which the Compensation Date occurs);

- (ii) that the Project Activities are carried out in accordance with, and to the standards set out in, the PS&TR, the Services Specification and otherwise in accordance with this Agreement;
 - (iii) that the provisions with respect to payment of the State Contributions, Floating Rate Component and Quarterly Service Payments continue to apply as provided for in this Agreement;
 - (iv) prior to Final Acceptance, that Commercial Opportunities Revenue will be consistent with those forecast in the Financial Model;
 - (v) after Final Acceptance, that Commercial Opportunities Revenue will be consistent with those forecast based on the Financial Model adjusted for actual Commercial Opportunities Revenues;
 - (vi) that any breach of this Agreement and any deductions under the Abatement Regime occurring prior to the Compensation Date will be disregarded for the purposes of the New Contract; and
 - (vii) that the Project Documents will be amended as required to reasonably allow for an incoming provider to carry out the Project Activities in accordance with, and to the standards set out in, the PS&TR, the Services Specification and otherwise in accordance with this Agreement; and
- (B) take into account:
- (i) the costs (if any), and their timing, which are required to be incurred to complete the Works in accordance with this Agreement and to achieve Provisional Acceptance and Final Acceptance;
 - (ii) the reinstatement costs (if any) and their timing, including a reasonable contingency against Project risks, which are required to be incurred with respect to the Relevant Infrastructure and the Site, to enable carrying out of the Project Activities until the Final Expiry Date, in accordance with and to the standards set out in the PS&TR, the Services Specification and otherwise in accordance with this Agreement; and
 - (iii) any costs, and their timing, required to be incurred to enable the entity (who is to become the new 'Project Co') to carry out the Project Activities in accordance with, and to the standards set out in, the PS&TR, the Services Specification and otherwise in accordance with this Agreement and otherwise to perform Project Co's obligations under the Project Documents,

but excluding any costs for which the State will retain the benefit of a Defect Retention Amount;

C = the Tender Costs;

- D** = any Liability of Project Co to the State or a State Associate under the State Project Documents, including all amounts in respect of which the State is entitled to exercise a right of set-off under this Agreement;
- E** = any additional costs reasonably incurred by the State as a direct result of the Default Termination Event (subject to clause 42.15(c) (*Liability for Indirect or Consequential Loss*) of this Agreement);
- F** = to the extent the aggregate of all Post Termination Quarterly Amounts equates to a negative number, the absolute value of the aggregate of all such amounts calculated under this Agreement. For the avoidance of doubt the Default Termination Payment is reduced where the aggregate of all Post Termination Quarterly Amounts equates to a negative number;
- G** = any gains which have accrued, or will accrue, to a Project Entity as a result of the termination of this Agreement or any other Project Document;
- H** = the aggregate of the following amounts:
- (A) Insurance proceeds (excluding Insurance proceeds representing Insurance indemnification of a Project Entity against liabilities to third parties);
 - (B) any other amounts owing to a Project Entity; and
 - (C) any credit balances standing in accounts held by or for the benefit of a Project Entity on the Expiry Date (other than those amounts which a Project Entity holds on trust for a Subcontractor in those accounts in accordance with the Finance Documents),
- in each case only to the extent it has not otherwise been taken into account in the determination of the Termination Payment;
- J** = any amounts owing by the State or its Associates to Project Co under the State Project Documents as at the Expiry Date (including amounts of any State Contribution, Floating Rate Component or Quarterly Service Payments which have accrued but not been paid as at the Expiry Date);
- M** = any third party amounts paid to Project Co at any time during the period between the Expiry Date and the Compensation Date; and
- P** = the Securitisation Refund Payment.

In calculating items A to P, there will be no double counting of amounts. Without limitation, the value of any unpaid State Contribution may be taken into account in item A paragraph (A)(iii) as an amount payable under the New Contract, or in item J as an amount payable to Project Co, but not both.

3.3 Tender Process

If the State elects to conduct a Tender Process for the New Contract or section 3.1(b)(1) applies, the following provisions will apply.

- (a) **(State to use reasonable endeavours):** The State will (subject to any legal requirements preventing it from doing so) use its reasonable endeavours to complete the Tender Process as soon as practicable.
- (b) **(State to notify Project Co of qualification criteria and other requirements of Tender Process):** The State will notify Project Co of the qualification criteria,

the other requirements and the terms of the Tender Process, including the timing of the Tender Process, but will act reasonably in setting such requirements and terms. If the tenderer is required to engage sub-contractors, qualification criteria will include a requirement that the tenderer engage sub-contractors with the requisite technical and financial capabilities to undertake the Project.

- (c) **(State to ensure appropriate methodology):** The State, in setting the qualification criteria and the other requirements and terms of the Tender Process, must ensure that there is in place an appropriate methodology for comparing tenders.
- (d) **(Project Co authorises release of information by State under Tender Process):** Project Co authorises the release of any information by the State under the Tender Process that would otherwise be prevented under this Agreement that is reasonably required as part of the Tender Process.
- (e) **(Project Co may appoint Tender Process Monitor):** Project Co may, at its own cost, appoint a person (the **Tender Process Monitor**) to monitor the Tender Process for the purpose of monitoring and reporting to Project Co and the Financiers on the State's compliance with the Tender Process and making representations to the State. The Tender Process Monitor will not disclose any confidential information in relation to tenders submitted as part of the Tender Process to Project Co or any other person (and will enter into a confidentiality agreement with the State, in a form acceptable to the State as a condition of its appointment) except:
 - (1) where permitted to do so by the terms of the confidentiality agreement; or
 - (2) to advise Project Co and the Financiers as to whether it considers that the State has acted in accordance with the Tender Process and correctly determined the Highest Compliant Tender Price and to provide details of any representations that the Tender Process Monitor makes to the State regarding the Tender Process.
- (f) **(Tender Process Monitor to enter into confidentiality agreement):** The Tender Process Monitor will be entitled to attend all meetings relating to the Tender Process, inspect copies of the tender documentation and proposals and is entitled to make written representations to the State regarding compliance with the Tender Process. Project Co will procure the Tender Process Monitor to make any representations it has in relation to the Tender Process to the State in a timely manner as the Tender Process proceeds. The State will not be bound to consider or act upon such representations but acknowledges that such representations may be referred to by Project Co in the event that Project Co refers a dispute relating to the Highest Compliant Tender Price for resolution in accordance with clauses 46 (*Dispute Resolution*) to 47 (*Arbitration*) of this Agreement.
- (g) **(State to determine Compliant Tenders):** As soon as practicable after tenders have been received, the State will (acting reasonably) determine the Compliant Tenders. Subject to the State receiving at least two Compliant Tenders, it will notify Project Co of the Highest Compliant Tender Price. If fewer than two Compliant Tenders are received, the State must promptly notify Project Co accordingly, and:
 - (1) it will be deemed that there is no Liquid Market;
 - (2) the tendering process pursuant to this section 3 will cease; and
 - (3) the 'no tendering' procedure under section 4 will automatically apply.

- (h) **(Discretion of State following Tender Process):** The State is not obliged to enter into any contract with any person resulting from the Tender Process. It may enter into a contract in its sole and absolute discretion.
- (i) **(Dispute resolution):** If Project Co refers a Dispute relating to the Highest Compliant Tender Price or the Default Termination Payment for resolution in accordance with clauses 46 (*Dispute Resolution*) to 47 (*Arbitration*) of this Agreement, the State will still be entitled to enter into a contract replacing this Agreement (whether or not a New Contract).
- (j) **(State may elect to follow 'no tendering' procedure):** The State may elect at any time prior to the receipt of two Compliant Tenders to follow the 'no tendering' procedure under section 4 by notifying Project Co that this election has been made.
- (k) **(Calculation of Default Termination Payment if Liquid Market exists):** If a Liquid Market exists, the Default Termination Payment is determined in accordance with section 3.2 and this section 3.3 and subject to clause 45.7(b) (*Payment on termination*) of this Agreement:
 - (1) the Default Termination Payment, calculated in accordance with section 3.2 and this section 3.3, will be payable within 20 Business Days of the date of the New Contract; or
 - (2) if the State chooses not to enter into any contract with any person resulting from the Tender Process, it must notify Project Co accordingly in which case the Default Termination Payment calculated in accordance with section 3.2 and this section 3.3 will be payable within 20 Business Days of such notification.

4 No tendering

4.1 No tendering

If the State terminates this Agreement for a Default Termination Event (whether any other right of termination then applies) and:

- (a) **(No tender conducted):** the State is not entitled to, or does not elect to, conduct a tender for a New Contract under section 3.1(c); or
- (b) **(No Liquid Market):** a Liquid Market does not or is deemed not to exist under section 3.3(g); or
- (c) **(State elects 'no tendering' procedure):** the State elects to follow the 'no tendering' procedure under this section 4 prior to receipt of two Compliant Tenders under section 3.3(j),

the Default Termination Payment will be calculated as follows:

$$TP = A - C - D - E - F - G - H + J - M - N - P$$

where:

- TP** = the Default Termination Payment;
- A** = the Fair Market Value of the Project as at the Compensation Date determined by the Independent Expert in accordance with section 4.2 on the basis that this Agreement and each of the other State Project Documents as existing immediately prior to the Expiry Date had continued until the Final Expiry Date (but for the earlier termination);



- C** = the Tender Costs (if any) and the State's reasonable forecast internal and external costs of tendering a form of contract(s) for the Project Activities to replace this Agreement after termination of this Agreement;
- D** = any Liability of Project Co to the State or a State Associate under the State Project Documents, including all amounts in respect of which the State is entitled to exercise a right of set-off under this Agreement;
- E** = any additional costs reasonably incurred by the State as a direct result of the Default Termination Event (but subject to clause 42.15(c) (*Liability for Indirect or Consequential Loss*));
- F** = to the extent the aggregate of all Post Termination Quarterly Amounts equates to a negative number, the absolute value of the aggregate of all such amounts calculated under this Agreement. For the avoidance of doubt the Default Termination Payment is reduced where the aggregate of all Post Termination Quarterly Amounts equates to a negative number;
- G** = any gains which have accrued, or will accrue, to a Project Entity as a result of the termination of this Agreement or termination of any other Project Document;
- H** = the aggregate of the following amounts:
 - (a) Insurance proceeds (excluding Insurance proceeds representing Insurance indemnification of a Project Entity against its liabilities to third parties);
 - (b) any other amounts owing to a Project Entity; and
 - (c) any credit balances standing in accounts held by or for the benefit of a Project Entity (other than those amounts which a Project Entity holds on trust for a Subcontractor in those accounts in accordance with the Finance Documents),in each case only to the extent it has not otherwise been taken into account in calculating the Default Termination Payment;
- J** = any amounts owing by the State or its Associates to Project Co under the State Project Documents as at the Expiry Date (including amounts of any State Contribution, Floating Rate Component or Quarterly Service Payments which have accrued but not been paid as at the Expiry Date);
- M** = any third party amounts paid to Project Co at any time during the period between the Expiry Date and the Compensation Date;
- N** = the costs incurred by the State of engaging the Independent Expert to administer this Schedule; and
- P** = the Securitisation Refund Payment.

In calculating items A to P, there will be no double counting of amounts. Without limitation, the value of any unpaid State Contribution may be taken into account in Item A pursuant to section 4.2(b)(2) as an amount payable under the New Contract, or in Item J as an amount payable to Project Co, but not both.

4.2 Determining Fair Market Value

In determining item A, the Independent Expert must determine the net present value of the projected cash flows for the period between the Compensation Date and the Final Expiry Date calculated on a nominal pre-tax basis using the rate of indexation forecast in the most recently published State Budget papers and otherwise by:

- (a) **(Assessing the market value)**: assessing the market value as though the willing buyer was bidding in a public tender process for the right to enter into a New Contract;
- (b) **(Assumptions)**: assuming that:
- (1) the Project Activities are carried out in accordance with, and to the standards set out in, the PS&TR, the Services Specification and in accordance with this Agreement;
 - (2) the provisions with respect to payment of the State Contributions, Floating Rate Component and Quarterly Service Payments continue to apply as provided for in this Agreement;
 - (3) prior to Final Acceptance, that Commercial Opportunities Revenue will be consistent with those forecast in the Financial Model;
 - (4) after Final Acceptance, that Commercial Opportunities Revenue will be consistent with those forecast based on the Financial Model adjusted for actual Commercial Opportunities Revenues;
 - (5) any breach of this Agreement and any deductions under the Abatement Regime occurring prior to the Compensation Date will be disregarded for the purposes of the New Contract; and
 - (6) the Project Documents will be amended as required to reasonably allow for an incoming provider to carry out the Project Activities in accordance with, and to the standards set out in, the PS&TR, the Services Specification and in accordance with this Agreement;
- (c) **(Considerations)**: taking into account:
- (1) the costs (if any), and their timing, which are required to be incurred to complete the Works in accordance with this Agreement and to achieve Provisional Acceptance and Final Acceptance;
 - (2) the reinstatement costs (if any) and their timing, including a reasonable contingency against Project risks, required to be incurred with respect to the Relevant Infrastructure and the Site to enable the carrying out of the Project Activities until the Final Expiry Date in accordance with and to the standards set out in the PS&TR, the Services Specification and otherwise in accordance with this Agreement; and
 - (3) any costs, and their timing, required to be incurred to enable the buyer (who is to become the new 'Project Co') to carry out the Project Activities in accordance with, and to the standards set out in, the PS&TR, the Services Specification and otherwise in accordance with this Agreement and to perform Project Co's obligations under the Project Documents but excluding any costs for which the State will retain the benefit of a Defect Retention Amount; and
- (d) **(Net present value calculation)**: using a discount rate to calculate the net present value of the cashflows based on the following formula, having regard to the risk profile and nature of the cashflows of the Project:

$$R = (1 + PIRR + CB_b - CB_a) \times (1 + i) - 1$$

where:

R = the discount rate;

PIRR = the pre-tax Project internal rate of return (real) as shown in the Financial Model;

- CB_b** = the real yield to maturity as at the Compensation Date on a benchmark Commonwealth bond traded in the Australian bond markets with a modified duration closest to that of the weighted average life of any outstanding Project Debt as shown in the Financial Model;
- CB_a** = the real yield to maturity as at the date of Financial Close on a benchmark Commonwealth bond traded in the Australian bond markets with a modified duration closest to that of the weighted average life of any outstanding Project Debt as shown in the Financial Model; and
- i** = the assumed long term CPI (or equivalent) indexation rate using the rates of indexation forecast in the most recently published State Budget papers.

5 Voluntary Termination

5.1 General

If this Agreement is terminated for a Voluntary Termination under clause 45.2 (*Voluntary Termination*) of this Agreement, the Voluntary Termination Payment will be calculated as follows:

Termination Payment or TP means the greater of:

$$TP = A + B - D \pm G - H - I + J + K + L + M - N - P$$

and

$$TP = A \pm G - H - I + J - M - P$$

where:

TP = the Voluntary Termination Payment;

A = the Project Debt as at the Expiry Date, but disregarding:

- (1) the impact of any modelled payment of the State Contributions on the amount forecast in the Financial Model to be owing to the Financiers as at that date, where such State Contribution has not been paid to Project Co; and
- (2) [not disclosed]

B = where the termination occurs:

- (1) on or prior to the Date of Provisional Acceptance, the amount of equity contributed in accordance with the Subscription Agreement up to the amount set out in the Base Case Financial Model plus the amount set out in the table below which corresponds to the date of the Voluntary Termination under clause 45.2 (*Voluntary Termination*) of this Agreement:

| Time period | Amount |
|------------------------------------|-----------------------------------|
| The period commencing on Financial | The amount as shown in cell D5 of |



Close and expiring on the date which is 6 months after Financial Close
(Period 1)

the 'PA-TPS' worksheet of the Model Output Schedule in the Financial Model.

The period commencing on the date immediately after the expiration of Period 1 (**Period 2 Commencement Date**) and expiring on the date which is 6 months after the Period 2 Commencement Date (**Period 2**)

The amount as shown in cell D6 of the 'PA-TPS' worksheet of the Model Output Schedule in the Financial Model.

The period commencing on the date immediately after the expiration of Period 2 (**Period 3 Commencement Date**) and expiring on the date which is 6 months after the Period 3 Commencement Date (**Period 3**)

The amount as shown in cell D7 of the 'PA-TPS' worksheet of the Model Output Schedule in the Financial Model.

The period commencing on the date immediately after the expiration of Period 3 (**Period 4 Commencement Date**) and expiring on the date which is 6 months after the Period 4 Commencement Date (**Period 4**)

The amount as shown in cell D8 of the 'PA-TPS' worksheet of the Model Output Schedule in the Financial Model.

The period commencing on the date immediately after the expiration of Period 4 (**Period 5 Commencement Date**) and expiring on the date which is 6 months after the Period 5 Commencement Date (**Period 5**)

The amount as shown in cell D9 of the 'PA-TPS' worksheet of the Model Output Schedule in the Financial Model.

The period commencing on the date immediately after the expiration of Period 5 (**Period 6 Commencement Date**) and expiring on the date which is 6 months after the Period 6 Commencement Date (**Period 6**)

The amount as shown in cell D10 of the 'PA-TPS' worksheet of the Model Output Schedule in the Financial Model.

The period commencing on the date immediately after the expiration of Period 6 (**Period 7 Commencement Date**) and expiring on the date which is 6 months after the Period 7 Commencement Date (**Period 7**)

The amount as shown in cell D11 of the 'PA-TPS' worksheet of the Model Output Schedule in the Financial Model.

The period commencing on the date immediately after the expiration of Period 7 (**Period 8 Commencement Date**) and expiring on the date which

The amount as shown in cell D12 of the 'PA-TPS' worksheet of the Model Output Schedule in the Financial



is 6 months after the Period 8 Commencement Date (**Period 8**)

Model.

The period commencing on the date immediately after the expiration of Period 8 (**Period 9 Commencement Date**) and expiring on the date which is 6 months after the Period 9 Commencement Date (**Period 9**)

The amount as shown in cell D13 of the 'PA-TPS' worksheet of the Model Output Schedule in the Financial Model.

The period commencing on the date immediately after the expiration of Period 9 (**Period 10 Commencement Date**) and expiring on the date which is 6 months after the Period 10 Commencement Date (**Period 10**)

The amount as shown in cell D14 of the 'PA-TPS' worksheet of the Model Output Schedule in the Financial Model.

The period commencing on the date immediately after the expiration of Period 10 (**Period 11 Commencement Date**) and expiring on the date which is 6 months after the Period 11 Commencement Date (**Period 11**)

The amount as shown in cell D15 of the 'PA-TPS' worksheet of the Model Output Schedule in the Financial Model.

The period commencing on the date immediately after the expiration of Period 11 (**Period 12 Commencement Date**) and expiring on the date which is 6 months after the Period 12 Commencement Date (**Period 12**)

The amount as shown in cell D16 of the 'PA-TPS' worksheet of the Model Output Schedule in the Financial Model.

The period commencing on the date immediately after the expiration of Period 12 (**Period 13 Commencement Date**) and expiring on the date which is 6 months after the Period 13 Commencement Date (**Period 13**)

The amount as shown in cell D17 of the 'PA-TPS' worksheet of the Model Output Schedule in the Financial Model.

The period commencing on the date immediately after the expiration of Period 13 (**Period 14 Commencement Date**) and expiring on the date which is 6 months after the Period 14 Commencement Date (**Period 14**)

The amount as shown in cell D18 of the 'PA-TPS' worksheet of the Model Output Schedule in the Financial Model.

The period commencing on the date immediately after the expiration of Period 14 (**Period 15 Commencement Date**) and expiring on the date which is 6 months after the Period 15 Commencement Date (**Period 15**)

The amount as shown in cell D19 of the 'PA-TPS' worksheet of the Model Output Schedule in the Financial Model.

The period commencing on the date immediately after the expiration of Period 15 (**Period 16 Commencement Date**) and expiring on the date which is 6 months after the Period 16 Commencement Date (**Period 16**)

The amount as shown in cell D20 of the 'PA-TPS' worksheet of the Model Output Schedule in the Financial Model.

(2) after the Date of Provisional Acceptance, the Fair Market Value of the equity as reasonably assessed by the Independent Expert. In making such a determination, the Independent Expert will have regard to prevailing market rates of return to equity for projects with a similar risk profile to this Project, and apply those to the forecast Project cash flows over the period from the Expiry Date to the Final Expiry Date. This assessment of Project cash flows should take into account:

- (A) the forecast revenue assuming the provisions of the Payment Schedule and those relating to payment of the Floating Rate Component and the State Contributions continue to apply;
- (B) prior to Final Acceptance, the forecast Commercial Opportunities Revenue in the Financial Model;
- (C) after Final Acceptance, the forecast Commercial Opportunities Revenue in the Financial Model adjusted for actual Commercial Opportunities Revenue;
- (D) projected costs of Project Co reasonably expected to be incurred in connection with the carrying out of the Final Acceptance Works;
- (E) projected operating costs of Project Co reasonably expected to be incurred in connection with the carrying out of the Services and assuming the Services are carried out in accordance with, and to the standards set out, in the Services Specification and otherwise in accordance with this Agreement; and
- (F) the financing costs of Project Co under the Finance Documents as set out in the Financial Model,

and in each case on the basis that the Project Documents, as amended in accordance with this Agreement, continue in full force and effect from the Expiry Date to the Final Expiry Date;

D = any Liability of Project Co to the State or a State Associate under the State Project Documents, including all amounts in respect of which the State is entitled to exercise a right of set-off under this Agreement;



G = the amount of costs incurred or gains realised by a Project Entity (acting reasonably) as a direct result of terminating the Finance Documents, including as a result of terminating or reversing any derivative position, in each case arising from the State's election to terminate for Voluntary Termination under clause 45.2 (*Voluntary Termination*) of this Agreement. If the net amount is a gain, it should be a deduction from, and if it is a cost, it should be an addition to, this Voluntary Termination Payment;

H = the aggregate of:

- (1) any other amounts owing to Project Co; and
- (2) any credit balances standing in accounts held by or for the benefit of a Project Entity on the Expiry Date (other than those amounts which a Project Entity holds on trust for a Subcontractor in those accounts in accordance with the Finance Documents),

in each case only to the extent it has not otherwise been taken into account in calculating the Voluntary Termination Payment;

I = any Insurance proceeds that:

- (1) in respect of the period before the Expiry Date, would have been paid or payable to Project Co or any of its Associates, if:
 - (A) Project Co had complied with its obligations under this Agreement;
 - (B) Project Co or any of its Associates had claimed under the relevant Insurance, except in circumstances where the deductible would exceed the claim amount; and
 - (C) Project Co or any of its Associates had complied with the terms of the relevant Insurance (including the claims procedure under the relevant Insurance),

and which if so paid would have been, or would have been required to be, applied towards any component of the Voluntary Termination Payment otherwise payable under this section 5; and

- (2) in respect of the period between the Expiry Date and the date on which the Voluntary Termination Payment is made:
 - (A) are paid to Project Co or any of its Associates; or
 - (B) would have been payable to Project Co or any of its Associates,

had, in respect of paragraph (2)(B) only:

- (C) Project Co complied with its obligations under this Agreement;
- (D) Project Co or any of its Associates claimed under the relevant Insurance, except in circumstances where the deductible would exceed the claim amount; and
- (E) Project Co and its Associates complied with the terms of the relevant Insurance (including the claims procedure under the relevant Insurance),

except for Insurance proceeds:

- (3) that are being held to be applied to repairing or rebuilding the Works or reinstating the Relevant Infrastructure; or



- (4) representing Insurance indemnification of Project Co against Liabilities to third parties;
- J** = any amounts owing by the State or any of its Associates to Project Co under the State Project Documents as at the Expiry Date (including the amount of any Floating Rate Component or Quarterly Service Payments that has accrued but not been paid as at the Expiry Date) but, excluding any State Contribution which is owing as at the Expiry Date;
- K** = redundancy payments for employees of Project Co that have been or will be reasonably and properly incurred by Project Co as a direct result of the termination of this Agreement and which would not have been otherwise incurred if this Agreement was not terminated under clause 45.2 (*Voluntary Termination*) of this Agreement;
- L** = amounts reasonably and properly incurred, on arm's length commercial terms and in line with current market practice, by Project Co and payable to a Commercial Opportunities Tenant under a Commercial Opportunities Sublease as a direct result of the termination of this Agreement;
- M** = where the termination occurs:
 - (1) on or prior to the Date of Provisional Acceptance, the aggregate of the amounts payable by Project Co to the D&C Subcontractor and the Maintenance Subcontractor set out in the table below, which corresponds to the date of the Voluntary Termination under clause 45.2 (*Voluntary Termination*) of this Agreement:

| Time period | Amount payable to D&C Subcontractor | Amount payable to Maintenance Subcontractor |
|--|--|---|
| The period commencing on Financial Close and expiring on the date which is 6 months after Financial Close (Period 1) | [not disclosed] | [not disclosed] |
| The period commencing on the date immediately after the expiration of Period 1 (Period 2 Commencement Date) and expiring on the date which is 6 months after the Period 2 Commencement Date (Period 2) | [not disclosed] | [not disclosed] |
| The period commencing on the date immediately after the expiration of Period 2 (Period 3 Commencement Date) and expiring on the date which is 6 months after the Period 3 | [not disclosed] | [not disclosed] |



Commencement Date
(Period 3)

| | | |
|--|-----------------|-----------------|
| The period commencing on the date immediately after the expiration of Period 3 (Period 4 Commencement Date) and expiring on the date which is 6 months after the Period 4 Commencement Date (Period 4) | [not disclosed] | [not disclosed] |
|--|-----------------|-----------------|

| | | |
|--|-----------------|-----------------|
| The period commencing on the date immediately after the expiration of Period 4 (Period 5 Commencement Date) and expiring on the date which is 6 months after the Period 5 Commencement Date (Period 5) | [not disclosed] | [not disclosed] |
|--|-----------------|-----------------|

| | | |
|--|-----------------|-----------------|
| The period commencing on the date immediately after the expiration of Period 5 (Period 6 Commencement Date) and expiring on the date which is 6 months after the Period 6 Commencement Date (Period 6) | [not disclosed] | [not disclosed] |
|--|-----------------|-----------------|

| | | |
|--|-----------------|-----------------|
| The period commencing on the date immediately after the expiration of Period 6 (Period 7 Commencement Date) and expiring on the date which is 6 months after the Period 7 Commencement Date (Period 7) | [not disclosed] | [not disclosed] |
|--|-----------------|-----------------|

| | | |
|--|-----------------|-----------------|
| The period commencing on the date immediately after the expiration of Period 7 (Period 8 Commencement Date) and expiring on the date which is 6 months after the Period 8 Commencement Date (Period 8) | [not disclosed] | [not disclosed] |
|--|-----------------|-----------------|



| | | |
|---|------------------------|------------------------|
| <p>The period commencing on the date immediately after the expiration of Period 8 (Period 9 Commencement Date) and expiring on the date which is 6 months after the Period 9 Commencement Date (Period 9)</p> | <p>[not disclosed]</p> | <p>[not disclosed]</p> |
|---|------------------------|------------------------|

| | | |
|--|------------------------|------------------------|
| <p>The period commencing on the date immediately after the expiration of Period 9 (Period 10 Commencement Date) and expiring on the date which is 6 months after the Period 10 Commencement Date (Period 10)</p> | <p>[not disclosed]</p> | <p>[not disclosed]</p> |
|--|------------------------|------------------------|

| | | |
|---|------------------------|------------------------|
| <p>The period commencing on the date immediately after the expiration of Period 10 (Period 11 Commencement Date) and expiring on the date which is 6 months after the Period 11 Commencement Date (Period 11)</p> | <p>[not disclosed]</p> | <p>[not disclosed]</p> |
|---|------------------------|------------------------|

| | | |
|---|------------------------|------------------------|
| <p>The period commencing on the date immediately after the expiration of Period 11 (Period 12 Commencement Date) and expiring on the date which is 6 months after the Period 12 Commencement Date (Period 12)</p> | <p>[not disclosed]</p> | <p>[not disclosed]</p> |
|---|------------------------|------------------------|

| | | |
|---|------------------------|------------------------|
| <p>The period commencing on the date immediately after the expiration of Period 12 (Period 13 Commencement Date) and expiring on the date which is 6 months after the Period 13 Commencement Date (Period 13)</p> | <p>[not disclosed]</p> | <p>[not disclosed]</p> |
|---|------------------------|------------------------|

(2) after the Date of Provisional Acceptance, amounts reasonably and properly incurred by Project Co and payable to the D&C Subcontractor and the Maintenance Subcontractor in accordance with

the relevant Subcontract as a direct result of the termination of this Agreement to the extent Project Co has used its best endeavours to minimise such costs;

- N** = all sums due and payable to a Project Entity from the Financiers as a result of any prepayment of debt or interest and any third party amounts paid to Project Co at any time during the period between the Expiry Date and the date on which the Voluntary Termination Payment is made; and
- P** = the Securitisation Refund Payment.

In calculating items A to N, there will be no double counting of amounts.

6 Termination for Force Majeure Termination Event

6.1 Termination – No Default Termination Event subsisting

Subject to section 6.2, if the State or Project Co terminates this Agreement due to a Force Majeure Termination Event and a Default Termination Event is not then subsisting, the Force Majeure Termination Payment will be the greater of:

- (a) an amount calculated as though a Default Termination Payment was due and the Termination Payment was calculated in accordance with the provisions of section 4; and
- (b) an amount calculated in accordance with section 6.3.

6.2 Termination – Default Termination Event subsisting

If the State or Project Co terminates this Agreement due to a Force Majeure Termination Event and a Default Termination Event is then subsisting, this section 6 will not apply and the Termination Payment will be an amount calculated in accordance with the provisions of section 3 or (if required by section 3) the provisions of section 4.

6.3 Force Majeure Termination Payment

Subject to sections 6.1 and 6.2, where this Agreement is terminated as a consequence of the occurrence of a Force Majeure Termination Event, the Force Majeure Termination Payment will be calculated as follows:

$$TP = A - D \pm G - H - I + J - M - O - P$$

where:

- TP** = the Force Majeure Termination Payment;
- A** = the Project Debt as at the Expiry Date, but disregarding:
- (1) the impact of any modelled payment of the State Contributions on the amount forecast in the Financial Model to be owing to the Financiers as at that date, where such State Contribution has not been paid to Project Co); and
 - (2) [not disclosed]
- D** = any Liability of Project Co to the State or a State Associate under the State Project Documents, including all amounts in respect of which the State is entitled to exercise a right of set-off under this Agreement;



- G** = the amount of costs incurred or gains realised by a Project Entity (acting reasonably) as a direct result of terminating the Finance Documents, including as a result of terminating or reversing any derivative position, in each case arising from the State's or Project Co's election to terminate this Agreement as a consequence of the occurrence of a Force Majeure Termination Event. If the net amount is a gain it should be a deduction from, and if it is a cost it should be an addition to, the Force Majeure Termination Payment;
- H** = the aggregate of the following amounts:
- (1) any amounts owing to a Project Entity; and
 - (2) any credit balances standing in accounts held by or for the benefit of a Project Entity on the Expiry Date (other than those amounts which a Project Entity holds on trust for a Subcontractor in those accounts in accordance with the Finance Documents) in each case only to the extent that it has not otherwise been taken into account in calculating the Force Majeure Termination Payment;
- I** = any Insurance proceeds that:
- (1) in respect of the period before the Expiry Date, would have been paid or payable to Project Co or any of its Associates, if:
 - (A) Project Co had complied with its obligations under this Agreement;
 - (B) Project Co or any of its Associates had claimed under the relevant Insurance, except in circumstances where the deductible would exceed the claim amount; and
 - (C) Project Co or any of its Associates had complied with the terms of the relevant Insurance (including the claims procedure under the relevant Insurance),
and which if so paid would have been, or would have been required to be, applied towards any component of the Force Majeure Termination Payment otherwise payable under this section 6; and
 - (2) in respect of the period between the Expiry Date and the date on which the Force Majeure Termination Payment is made:
 - (A) are paid to Project Co or any of its Associates; or
 - (B) would have been payable to Project Co or any of its Associates,
had, in respect of paragraph (2)(B) only:
 - (C) Project Co complied with its obligations under this Agreement;
 - (D) Project Co or any of its Associates claimed under the relevant Insurance except in circumstances where the deductible would exceed the claim amount; and
 - (E) Project Co and its Associates complied with the terms of the relevant Insurance (including the claims procedure under the relevant Insurance),
except for Insurance proceeds:
 - (3) that are being held to be applied to repairing or rebuilding the Works or reinstating the Relevant Infrastructure; or

- (4) representing Insurance indemnification of Project Co against Liabilities to third parties;
- J** = any amounts owing by the State or its Associates to Project Co under the State Project Documents as at the Expiry Date (including the amount of any Quarterly Service Payments or Floating Rate Component which has accrued but not been paid as at the Expiry Date) but excluding any State Contribution which is owing as at the Expiry Date;
- M** = all sums due and payable to a Project Entity from the Financiers as a result of any prepayment of debt or interest and any third party amounts paid to Project Co at any time during the period between the Expiry Date and the date on which the Force Majeure Termination Payment is made;
- O** = to the extent such amounts are outstanding at the Expiry Date, any amounts included in item A that are intended (as described in the Financial Model) to be refinanced in the form of equity or subordinated debt treated as equity, such amount including any accrued, deferred or rolled up interest; and
- P** = the Securitisation Refund Payment.

In calculating items A to P, there will be no double counting of amounts.

7 Interest

In respect of Termination Payments calculated under this Schedule 5 only, interest accrues:

- (a) **(Calculation of Termination Payment under sections 3 or 4)**: in respect of a Termination Payment calculated under section 3 or section 4, from the 21st Business Day after the Compensation Date to (and excluding) the date on which the Termination Payment is paid in full. Interest accrues on that Termination Payment at the default rate provided in the relevant Finance Document. Interest is payable on the date on which the Termination Payment is paid; and
- (b) **(Calculation of Termination Payment under sections 5 or 6)**: in respect of any Termination Payment calculated under section 5 or section 6, from and including the Expiry Date to (and excluding) the date on which the Termination Payment is paid in full. Interest on the Actual Debt portion of that Termination Payment accrues at the rate provided in the relevant Finance Document from and including the day after the Expiry Date to and including the 20th Business Day after the Expiry Date and thereafter on the whole of that Termination Payment at the default rate provided in the relevant Finance Document. Interest is payable on the date on which the Termination Payment is paid.

8 Insurance

If any proceeds of Insurance are received by Project Co after this Agreement is terminated (other than those Insurance proceeds representing Insurance indemnification of Project Co against Liabilities to third parties) and those proceeds:

- (a) **(Proceeds not included in calculation)**: were not taken into account in calculating the Termination Payment that has already been made on the basis that the amounts were not "paid" or "payable" to Project Co at the relevant time;



- (b) **(Proceeds paid or payable at time of calculation)**: would have been so taken into account had they been paid or payable at the time of calculating the Termination Payment; and
- (c) **(Proceeds apply)**: apply to the period up to and including the date of payment of the Termination Payment,

then those proceeds are held on trust by Project Co for the State, and Project Co must pay those proceeds, or cause those proceeds to be paid, to the State for the State's retention promptly on receipt. If the proceeds are not yet received then, to the maximum extent legally possible, the State will be subrogated to the rights of Project Co in respect of those proceeds, and entitled to recover and retain the proceeds accordingly. The rights and obligations in this section 8 survive the expiry or early termination of this Agreement.

9 Mitigation

Each party must use all reasonable endeavours to mitigate and minimise losses or costs to be included in the calculation of the relevant Termination Payment. Project Co must use all reasonable endeavours to maximise receipts and gains which are to be calculated within any Termination Payment.

Schedule 6

State Construction Contribution Schedule

[Note: Table to be updated by CYP using the Model Output Schedule from the Financial Close Financial Model.]

- (a) Subject to paragraph (b):
- (1) the Forecast Payment Claim for each Month during the D&C Phase is set out in column (a) of Table S6-1;
 - (2) the State Construction Contribution Forecast Amount for each Month during the D&C Phase is set out in column (b) of Table S6-1;
 - (3) the State Construction Contribution Funding Percentage for each Month during the D&C Phase is set out in column (c) of Table S6-1; and
 - (4) the aggregate State Construction Contribution Forecast Amount at the end of each Month during the D&C Phase is set out in column (d) of Table S6-1.
- (b) The dates and amounts in Table S6-1 will be determined in accordance with the Financial Close Adjustment Protocols and the applicable dates and amounts for the purposes of this Schedule 6 from Financial Close will be the corresponding dates and amounts set out in the Model Output Schedule.

Table S6-1 – State Construction Contribution Schedule

| Column | (a) | (b) | (c) | (d) |
|-------------|--------------------------------|---|---|--|
| Month | Forecast Payment Claim (\$) | State Construction Contribution Forecast Amount (\$) | State Construction Contribution Funding Percentage (%) | Aggregate State Construction Contribution Forecast Amount at month end (\$) |
| [15-Dec-17] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Jan-18] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Feb-18] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |



| Column | (a) | (b) | (c) | (d) |
|-------------|-----------------|-----------------|-----------------|-----------------|
| [01-Mar-18] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Apr-18] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-May-18] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Jun-18] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Jul-18] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Aug-18] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Sep-18] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Oct-18] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Nov-18] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Dec-18] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Jan-19] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Feb-19] | [not disclosed] | [not disclosed] | [not | [not disclosed] |



| Column | (a) | (b) | (c) | (d) |
|-------------|-----------------|-----------------|-----------------|-----------------|
| | | | disclosed] | |
| [01-Mar-19] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Apr-19] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-May-19] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Jun-19] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Jul-19] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Aug-19] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Sep-19] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Oct-19] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Nov-19] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Dec-19] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Jan-20] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |



| Column | (a) | (b) | (c) | (d) |
|-------------|-----------------|-----------------|-----------------|-----------------|
| [01-Feb-20] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Mar-20] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Apr-20] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-May-20] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Jun-20] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Jul-20] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Aug-20] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Sep-20] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Oct-20] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Nov-20] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Dec-20] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Jan-21] | [not disclosed] | [not disclosed] | [not | [not disclosed] |



| Column | (a) | (b) | (c) | (d) |
|-------------|-----------------|-----------------|-----------------|-----------------|
| | | | disclosed] | |
| [01-Feb-21] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Mar-21] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Apr-21] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-May-21] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Jun-21] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Jul-21] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Aug-21] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Sep-21] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Oct-21] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Nov-21] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Dec-21] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |



| Column | (a) | (b) | (c) | (d) |
|-------------|-----------------|-----------------|-----------------|-----------------|
| [01-Jan-22] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Feb-22] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Mar-22] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Apr-22] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-May-22] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Jun-22] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Jul-22] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Aug-22] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Sep-22] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Oct-22] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Nov-22] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Dec-22] | [not disclosed] | [not disclosed] | [not | [not disclosed] |

| Column | (a) | (b) | (c) | (d) |
|-------------|-----------------|-----------------|-----------------|-----------------|
| | | | disclosed] | |
| [01-Jan-23] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Feb-23] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Mar-23] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Apr-23] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-May-23] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Jun-23] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Jul-23] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Aug-23] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Sep-23] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Oct-23] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Nov-23] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |

| Column | (a) | (b) | (c) | (d) |
|-------------|-----------------|-----------------|-----------------|-----------------|
| [01-Dec-23] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Jan-24] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Feb-24] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Mar-24] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Apr-24] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-May-24] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Jun-24] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Jul-24] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| [01-Aug-24] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |

Schedule 7

Review Procedures

1 Submission and review

1.1 Submission

- (a) **(Submission)**: Pursuant to the State Project Documents, Project Co must submit certain documents, data or other information (each a '**Submitted Document**') to the State and the Independent Reviewer (as relevant) (**Reviewing Party**) in accordance with these Review Procedures and the terms of the State Project Documents.
- (b) **(Specified documents)**: For the avoidance of doubt, the Design Documentation is the subject of a separate review process under the Design Review Schedule and the PS&TR and will not be reviewed in accordance with these Review Procedures.
- (c) **(Requirements for Submission)**: With each Submitted Document, Project Co must provide:
 - (1) details of the Submitted Document, its nature, and the relevant clause or schedule of the State Project Documents in accordance with which it is submitted for review; and
 - (2) any other information required in accordance with the State Project Documents, or otherwise required by the Reviewing Party, for the review of the Submitted Document in accordance with these Review Procedures.

1.2 Review Period

For the purpose of these Review Procedures, the "**Review Period**" means:

- (a) where the period is expressly specified in the State Project Documents, that period; or
- (b) where no period is expressly specified, 15 Business Days after the date the Reviewing Party has received all the relevant details and information from Project Co in accordance with sections 1.1(c) and 2.

1.3 Approval by the Minister for Planning

- (a) Nothing in these Review Procedures or in any response by the State to any Submitted Document constitutes an approval of that document by the Victorian Minister for Planning or any other Minister of the State for the purposes of satisfying the requirements of any Approval or any Approval condition.
- (b) Any Submitted Document or amendment to a Submitted Document which needs to be approved by a Minister of the State to satisfy the requirements of any Approval or Approval condition must be submitted for approval after completing the procedures set out in sections 2 to 6.1 below.



2 Further information

Project Co must as soon as possible upon request by the Reviewing Party:

- (a) submit any further information, data or documents;
- (b) make available appropriately qualified personnel; and
- (c) provide access to Project Co Material,

that the Reviewing Party reasonably requires in order to review the Submitted Document and respond in accordance with these Review Procedures.

3 Review in stages

- (a) **(Stages)**: If Submitted Documents are to be reviewed in stages, each stage must be submitted for review and the review completed in accordance with these Review Procedures before any subsequent stage may be submitted for review.
- (b) **(Further Review)**: If, for any reason, any stage is reviewed out of sequence as a consequence of any act or omission of Project Co, the Reviewing Party will be entitled to further review or to complete a new review of those stages of the Submitted Documents that have already been reviewed in accordance with section 4.2.

4 Response to Submitted Document

4.1 Response to Submitted Documents

- (a) **(Options for review)**: The Reviewing Party may:
 - (1) provide comments, no comments, or conditions in respect of a Submitted Document;
 - (2) where a Submitted Document is expressly required to be approved under this Agreement, approve the Submitted Document; or
 - (3) reject or partially reject a Submitted Document,(each a **Response**) within the Review Period in accordance with this section 4.
- (b) **(Review of Submitted Document)**: Where the State and the Independent Reviewer are both Reviewing Parties:
 - (1) the State may review the Submitted Document and provide its Response to the Independent Reviewer (with a copy to Project Co) within 5 Business Days before the expiry of the relevant Review Period; and
 - (2) the Independent Reviewer must review the Submitted Document taking into account the State's Response provided under section 4.1(b)(1) and provide its Response to Project Co (with a copy to the State) within the Review Period in accordance with this section 4.
- (c) **(Documents requiring approval)**: With respect to any of the following documents:



- (1) a Utility Agreement;
- (2) an Environmental Management Plan;
- (3) a Transport Management Plan;
- (4) a Community and Stakeholder Engagement Management Plan; or
- (5) a Maintenance Manual,

the Reviewing Party must, within the Review Period, review the Submitted Document and either:

- (6) approve; or
- (7) reject or comment on,

the Submitted Document.

- (d) **(Proceeding with Project Activities)**: Project Co must not proceed with, or proceed to implement, a Submitted Document:
 - (1) subject to section 4.1(d)(2) and 4.2(b), unless the Reviewing Party has been afforded the Review Period to review the Submitted Document and has not rejected or commented on the Submitted Document; or
 - (2) with respect to the documents listed in section 4.1(c), unless the Reviewing Party and, if required by any Approval, the Victorian Minister for Planning, has approved the Submitted Document.

4.2 Consequences of a Response to a Submitted Document

- (a) **(Response to Submitted Documents)**: Other than in respect of the documents listed in section 4.1(c), if the Reviewing Party does not respond within the Review Period, or responds with “no comments” in respect of a Submitted Document, Project Co may proceed with the Project Activities in accordance with the Submitted Documents.
- (b) **(Comments)**: Other than in respect of the documents listed in section 4.1(c), if the Reviewing Party has comments on a Submitted Document it must indicate that its response is in the form of “comments” and Project Co may proceed with the Project Activities in accordance with the Submitted Document but must address such comments in the following update of the Submitted Document.
- (c) **(Conditions)**: If the Reviewing Party considers that Project Co may proceed with the Project Activities in accordance with the Submitted Document, but that certain conditions must be satisfied in doing so:
 - (1) the Reviewing Party must indicate that its response to the Submitted Document is in the form of “conditions”; and
 - (2) Project Co may proceed with the Project Activities in accordance with the Submitted Document, but must otherwise satisfy the conditions:
 - (A) within the time specified by the Reviewing Party (acting reasonably); or
 - (B) if no time is specified, promptly.
- (d) **(Rejecting a Submitted Document)**: If the Reviewing Party rejects, or partially rejects, a Submitted Document:
 - (1) the Reviewing Party must indicate its response is in the form of a “rejection” or “partial rejection”; and



- (2) Project Co must:
 - (A) amend the Submitted Document in accordance with the comments of the Reviewing Party provided under section 4.4;
 - (B) resubmit the revised Submitted Document to the Reviewing Party within the time specified in the notice under section 4.4(b) and the provisions of sections 1 to 6 will apply again to such re-submission; and
 - (C) not proceed with the Project Activities in accordance with the Submitted Document except to the extent that the Reviewing Party partially rejects a Submitted Document, in which case Project Co may proceed with the Project Activities in accordance with any section of that Submitted Document that was not rejected by the Reviewing Party, to the extent that no consequential amendments are likely to be required to that section of the Submitted Document as a result of the partial rejection.
- (e) **(Approval of a Submitted Document):** Subject to section 4.1(d)(2), where a Submitted Document is expressly required to be approved under this Agreement:
 - (1) if the Reviewing Party does not respond within the Review Period, or responds with “approved”, Project Co may proceed with the Project Activities; or
 - (2) if the Reviewing Party rejects, or partially rejects, a Submitted Document, then section 4.2(d) will apply.

4.3 Grounds upon which Reviewing Party may comment, impose conditions, or reject

The Reviewing Party may only provide comments or conditions on, or reject a Submitted Document:

- (a) **(Submitted Documents):** if the Submitted Document:
 - (1) is incomplete or inaccurate, of poor quality, is ambiguous or unclear or otherwise is not in a condition to allow the Reviewing Party, in its reasonable opinion, to adequately review it;
 - (2) does not comply with the applicable Laws or Standards; or
 - (3) is otherwise not in accordance with, or is not submitted in accordance with, the requirements of the State Project Documents (including the PS&TR, Services Specification and D&C Program);
- (b) **(Proceeding with the Project Activities):** if the Reviewing Party considers that implementing or proceeding with the Project Activities on the basis of the Submitted Document would:
 - (1) adversely affect any rights of the State in accordance with a State Project Document, the State's ability to perform its obligations under a State Project Document or any of its statutory functions or its ability to enforce any such right;
 - (2) would likely result in an increase to the State's Liabilities under a State Project Document;



- (3) not enable Project Co to comply with its obligations under the State Project Documents, or satisfy the FFP Warranty or the Project Requirements;
 - (4) where the Submitted Document is also a 'Franchisee Input Document' as defined under the Train Franchisee Cooperation Agreement:
 - (A) prevent the Train Franchisee from being able to comply with the Train Franchisee Arrangements, except to the extent that the State has directed Project Co in accordance with clause 38.9(e)(2) (*Directions giving rise to Modification*) of this Agreement that it is not required to amend the Submitted Document to reflect comments of this nature;
 - (B) prevent the Train Franchisee from being able to discharge its safety duties under the Rail Safety National Law; or
 - (C) to the extent the Franchisee Input Document relates to any rail safety management arrangements proposed by Project Co or the 'Project Co Subcontractors' (as defined in the Train Franchisee Cooperation Agreement) in relation to any:
 - (I) Returned Existing Network Works; or
 - (II) Maintenance Services,comprising Railway Operations, prevent compliance with the requirements of the Train Accreditation and the Train Franchisee Rail Safety Requirements; or
 - (5) where the Submitted Document is also a 'Franchisee Input Document' as defined under the Tram Franchisee Cooperation Agreement:
 - (A) prevent the Tram Franchisee from being able to comply with the Tram Franchisee Arrangements, except to the extent that the State has directed Project Co in accordance with clause 38.9(e)(2) (*Directions giving rise to Modification*) of this Agreement that it is not required to amend the Submitted Document to reflect comments of this nature;
 - (B) prevent the Tram Franchisee from being able to discharge its safety duties under the Tram Safety Act; or
 - (C) to the extent the Franchisee Input Document relates to any rail safety management arrangements proposed by Project Co or the 'Project Co Subcontractors' (as defined in the Tram Franchisee Cooperation Agreement) in relation to the Tram Works, prevent compliance with the requirements of the Tram Accreditation and the 'Franchisee Rail Safety Requirements' (as defined in the Tram Franchisee Cooperation Agreement).
- (c) **(Required to be approved):** if the Submitted Document is expressly required to be approved by the Reviewing Party.

4.4 Substantiate rejection, conditions or comments

If the Reviewing Party provides Project Co with comments on, imposes conditions on, or rejects a Submitted Document, the Reviewing Party must:

- (a) **(Sufficient details):** provide sufficient detail to Project Co within the Review Period to substantiate those comments, conditions, or that rejection; and



- (b) **(Resubmission period)**: to the extent the Reviewing Party rejects or partially rejects a Submitted Document, notify Project Co of the time within which Project Co must resubmit the Submitted Document to the Reviewing Party.

4.5 D&C Program

If the Submitted Document is the D&C Program, in addition to its rights in accordance with sections 4.1 to 4.3, the Reviewing Party may provide comments in connection with the D&C Program or reject the D&C Program, and Project Co must amend the D&C Program accordingly, if the Submitted Document does not satisfy the requirements of clause 18.1 (*Submission of the D&C Program*) of this Agreement.

5 Document management

5.1 Copies of Submitted Documents

- (a) **(Copies required)**: Unless otherwise expressly provided in the State Project Documents, Project Co must provide:
- (1) three original paper copies;
 - (2) one electronic version in .pdf format; and
 - (3) one electronic version in original format (in accordance with section 5.1(c)),
- of each Submitted Document to the Reviewing Party for review in accordance with these Review Procedures.
- (b) **(Submission to the State)**: Where the Reviewing Party is the Independent Reviewer, a copy of the Submitted Document must also be submitted to the State at the same time.
- (c) **(Form for Electronic copies)**: An electronic version in original format of a Submitted Document must be an electronic copy of that document in the format of the software in which the document was originally created that has been configured to allow the Reviewing Party to access and amend the information contained therein in the same manner as the original creator(s) of that document.

5.2 Register of Submitted Documents

- (a) **(Register)**: Project Co must compile and maintain a register of the date of submission and content of each Submitted Document and must regularly update that register to record:
- (1) each Submitted Document to which it receives a response or comment from the Reviewing Party, including a copy of that response or comment; and
 - (2) each Submitted Document to which it receives no response or comment within the Review Period.
- (b) **(Access)**: The register must be capable of access by the State, the Independent Reviewer and any person authorised by the State.



6 Compliance with Submitted Documents

6.1 Disputed amendments

- (a) **(Disagreement):** If Project Co does not agree that any rejection, partial rejection, condition or comments made by a Reviewing Party in respect of a Submitted Document are in accordance with section 4, Project Co must notify the Reviewing Party and Project Co and the Reviewing Party must meet to try to resolve the difference of opinion in good faith.
- (b) **(No resolution):** If, within 5 Business Days of Project Co's notice under section 6.1(a), Project Co still disputes that any amendments are required to the Submitted Document, or conditions are required to be complied with by Project Co, Project Co may refer the matter for resolution in accordance with clauses 46 (*Dispute Resolution*) and 47 (*Arbitration*) of this Agreement.

6.2 Compliance with Submitted Document

If:

- (a) **(Entitled to proceed):** Project Co is entitled to proceed with, or proceed to implement, a Submitted Document in accordance with section 4.2; or
- (b) **(No amendment required):** it is determined in accordance with section 6.1 that no further amendment to the Submitted Document is required,

then, subject to section 1.3:

- (c) **(Carrying out of Project Activities):** subject to section 6.2(d), Project Co must carry out the Project Activities in accordance with the Submitted Document and otherwise in accordance with the State Project Documents;
- (d) **(Departure by Project Co):** subject to section 6.2(e), Project Co must depart from that Submitted Document where it is necessary to do so to comply with the State Project Documents; and
- (e) **(Notice of departure):** if Project Co intends to depart from that Submitted Document, then:
 - (1) it must give the Reviewing Party prior notice of this intention together with an updated version of the Submitted Document incorporating all or any changes proposed; and
 - (2) the provisions of sections 1 to 6 will apply again to such re-submission.



Schedule 8

Schedule of Certificates and Notices

Execution Version

Project Co must provide to the State certificates and notices in the form set out in Parts 1, 3–10 and 12–32 of this Schedule signed by the person specified in and otherwise in accordance with this Schedule. The State may, at its absolute discretion, provide the notice in Part 2 in accordance with clause 21.2(b) of this Agreement or the notice in Part 11 in accordance with clause 24.3(b) of this Agreement.

| Part of this Schedule containing the form | Title of certificate or notice | Certificate or notice to be signed by | Clause/Section of the State Project Documents |
|---|---|---------------------------------------|---|
| Project Agreement | | | |
| Part 1 | Project Co's Notice – Critical Interface Milestone/Progress Milestone Achievement | Project Co | Clause 21.2(a) of the Agreement |
| Part 2 | State's Notice – Critical Interface Milestone/Progress Milestone Achievement | State | Clause 21.2(b) of the Agreement |
| Part 3 | Independent Reviewer's Certificate of Critical Interface Milestone/Progress Milestone Achievement | Independent Reviewer | Clause 21.2(c)(1) of the Agreement |
| Part 4 | Independent Reviewer's Notice – Critical Interface Milestone/Progress Milestone not achieved (List of work remaining to be performed) | Independent Reviewer | Clause 21.2(c)(2)(A) of the Agreement |



| Part of this Schedule containing the form | Title of certificate or notice | Certificate or notice to be signed by | Clause/Section of the State Project Documents |
|--|--|--|--|
| Part 5 | Independent Reviewer's Notice – Critical Interface Milestone/Progress Milestone not achieved (No list of work remaining to be performed) | Independent Reviewer | Clause 21.2(c)(2)(B) of the Agreement |
| Part 6 | Project Co's Notice – Critical Interface Milestone/Progress Milestone outstanding work | Project Co | Clause 21.2(d) of the Agreement |
| Part 7 | Independent Reviewer's Certificate of Test Procedure | Independent Reviewer | Clause 23.2(b) of the Agreement |
| Part 8 | Independent Reviewer's Certificate of Test Completion/Notice of Test Outcome | Independent Reviewer | Clause 23.5(c) of the Agreement |
| Part 9 | Project Co's Notice – Expectation of achieving Provisional Acceptance | Project Co | Clause 24.2(a) of the Agreement |
| Part 10 | Project Co's Notice – Provisional Acceptance | Project Co | Clause 24.3(a) of the Agreement |
| Part 11 | State's Notice – Provisional Acceptance | State | Clause 24.3(b) of the Agreement |
| Part 12 | Independent Reviewer's Certificate of Provisional Acceptance | Independent Reviewer | Clause 24.3(c)(1) of the Agreement |



| Part of this Schedule containing the form | Title of certificate or notice | Certificate or notice to be signed by | Clause/Section of the State Project Documents |
|--|--|--|--|
| Part 13 | Independent Reviewer's Notice – Provisional Acceptance not achieved (List of work remaining to be performed) | Independent Reviewer | Clause 24.3(c)(2)(A) of the Agreement |
| Part 14 | Independent Reviewer's Notice – Provisional Acceptance not achieved (No list of work remaining to be performed) | Independent Reviewer | Clause 24.3(c)(2)(B) of the Agreement |
| Part 15 | Project Co's Notice – Provisional Acceptance of outstanding work | Project Co | Clause 24.3(e) of the Agreement |
| Part 16 | Project Co's Notice – Returned Works | Project Co | Clause 24.4(b)(2) of the Agreement |
| Part 17 | Independent Reviewer's Notice – Returned Works | Independent Reviewer | Clause 24.4(d)(1) of the Agreement |
| Part 18 | Independent Reviewer's Notice – Returned Works completion not achieved (List of work remaining to be performed) | Independent Reviewer | Clause 24.4(d)(2)(A) of the Agreement |
| Part 19 | Independent Reviewer's Notice – Returned Works completion not achieved (No list of work remaining to be performed) | Independent Reviewer | Clause 24.4(d)(2)(B) of the Agreement |



| Part of this Schedule containing the form | Title of certificate or notice | Certificate or notice to be signed by | Clause/Section of the State Project Documents |
|--|---|--|--|
| Part 20 | Project Co's Notice – Correction of Defect | Project Co | Clause 24.4(f) of the Agreement |
| Part 21 | Project Co's Notice – Handback of Returned Works | Project Co | Clause 24.4(i)(1) of the Agreement |
| Part 22 | Independent Reviewer's Certificate – Final Acceptance | Independent Reviewer | Clause 24.5(b) of the Agreement |
| Part 23 | Independent Reviewer's Notice – Non-compliance | Independent Reviewer | Clause 26.2(b) of the Agreement |
| Part 24 | Project Co's Notice – Explanation and/or Remediation Plan | Project Co | Clause 26.2(c) of the Agreement |
| Part 25 | Independent Reviewer's Notice – Response to Explanation | Independent Reviewer | Clause 26.2(d) of the Agreement |
| Part 26 | Independent Reviewer's Certificate of QSP Adjustment (1) | Independent Reviewer | Clause 60.4(a) of the Agreement |
| Part 27 | Independent Reviewer's Certificate of QSP Adjustment (2) | Independent Reviewer | Clause 61.3(a) of the Agreement |
| Schedule 25 – Design Review Schedule | | | |
| Part 28 | Independent Reviewer's Certificate of Certified Design | Independent Reviewer | Section 2.8(c)(1) of Schedule 25 (<i>Design Review</i>) to the Agreement |



| Part of this Schedule containing the form | Title of certificate or notice | Certificate or notice to be signed by | Clause/Section of the State Project Documents |
|--|---|--|--|
| PS&TR | | | |
| Part 29 | Independent Reviewer's Certificate – As-Built Records | Independent Reviewer | Section 1.3.5.2(b)(5) of Volume 2, Part C of the PS&TR |
| Part 30 | Proof Engineer's Certificate – Design Documentation | Proof Engineer | Section 7.8.1.1 of Volume 2, Part C of the PS&TR |
| Part 31 | Proof Engineer's Certificate – Erection of Load Bearing Falsework | Proof Engineer | Section 7.8.1.2(b) of Volume 2, Part C of the PS&TR |
| Part 32 | Proof Engineer's Certificate of Compliance | Proof Engineer | Section 7.8.3 of Volume 2, Part C of the PS&TR |



Part 1
Project Co's Notice – Critical Interface Milestone/Progress Milestone Achievement

Metro Tunnel – Tunnel and Stations PPP

To: [], on behalf of the Crown in right of the State of Victoria (**State**)
and [] (**Independent Reviewer**)

From: [] (**Project Co**)

- 1 Pursuant to clause 21.2(a) of the Project Agreement between the State and Project Co dated [*insert*] (**Agreement**), Project Co:
 - (a) notifies the State and the Independent Reviewer that it considers [*insert description of Critical Interface Milestone/Progress Milestone*] [(**Critical Interface Milestone/Progress Milestone**)] has been achieved, as at [*insert date*];
 - (b) requests that the Independent Reviewer issues a Certificate of Critical Interface Milestone/Progress Milestone Achievement; and
 - (c) provides the State and the Independent Reviewer with a detailed list of Minor Defects relevant to the Works and the Metro Tunnel Interface Works the subject of the [**Critical Interface Milestone/Progress Milestone**] in the attached Schedule.
- 2 Terms defined in the Agreement have the same meaning in this notice.

Signed for and on behalf of
[*insert name and address of Project Co*]

Date



Part 2
State's Notice – Critical Interface Milestone/Progress Milestone Achievement

Metro Tunnel – Tunnel and Stations PPP

To: [] (Project Co) and
[] (Independent Reviewer)

From: [], on behalf of the Crown in right of the State of Victoria (**State**)

- 1 Pursuant to clause 21.2(b) of the Project Agreement between the State and Project Co dated [*insert*] (**Agreement**), the State hereby:
 - (a) notifies Project Co and the Independent Reviewer that it considers that Project Co has achieved [*insert description of Critical Interface Milestone/Progress Milestone*], as at [*insert date*]; and
 - (b) requests that the Independent Reviewer issues a Certificate of Critical Interface Milestone/Progress Milestone Achievement.
- 2 Terms defined in the Agreement have the same meaning in this notice.

Signed for and on behalf of the State

Date



**Part 3
Independent Reviewer's Certificate of Critical Interface
Milestone/Progress Milestone Achievement**

Metro Tunnel – Tunnel and Stations PPP

To: [], on behalf of the Crown in right of the State of Victoria (**State**)
and [] (**Project Co**)

From: [] (**Independent Reviewer**)

- 1 Pursuant to clause 21.2(c)(1) of the Project Agreement entered into between the State and Project Co dated [*insert*] (**Agreement**), I certify that [*insert description of Critical Interface Milestone/Progress Milestone*] (**Critical Interface Milestone/Progress Milestone**) has been achieved as at [*insert date*].
- 2 In accordance with clause 21.2(c)(1)(C) of the Agreement, I set out in the attached Schedule a list of Minor Defects in the Works and the Metro Tunnel Interface Works the subject of the [*Critical Interface Milestone/Progress Milestone*].
- 3 Terms defined in the Agreement have the same meaning in this certificate.
- 4 This certificate is given for the sole benefit of each of the parties specified in clause 5.7 of the Independent Reviewer Deed of Appointment, and may not be relied upon by any other person.

Signed for and on behalf of
[*insert name of Independent Reviewer*]

Date

Schedule

[*List of Minor Defects in the Works the subject of the Critical Interface Milestone/Progress Milestone.*]



Part 4
Independent Reviewer's Notice – Critical Interface
Milestone/Progress Milestone not achieved (List of work remaining to
be performed)

Metro Tunnel – Tunnel and Stations PPP

To: [], on behalf of the Crown in right of the State of Victoria (**State**)
and [] (**Project Co**)

From: [] (**Independent Reviewer**)

- 1 Pursuant to clause 21.2(c)(2)(A) of the Project Agreement entered into between the State and Project Co dated [*insert*] (**Agreement**), I advise that [*insert description of Critical Interface Milestone/Progress Milestone*] [**Critical Interface Milestone/Progress Milestone**] has not been achieved.
- 2 The work remaining to be undertaken to achieve the Critical Interface Milestone/Progress Milestone is listed in the attached Schedule.
- 3 Terms defined in the Agreement have the same meaning in this notice.
- 4 This notice is given for the sole benefit of each of the parties specified in clause 5.7 of the Independent Reviewer Deed of Appointment, and may not be relied upon by any other person.

Signed for and on behalf of
[*insert name of Independent Reviewer*]

Date

Schedule

[*Insert details of work remaining to be performed.*]



Part 5
Independent Reviewer's Notice – Critical Interface
Milestone/Progress Milestone not achieved (No list of work remaining
to be performed)

Metro Tunnel – Tunnel and Stations PPP

To: [], on behalf of the Crown in right of the State of Victoria (**State**)
and [] (**Project Co**)

From: [] (**Independent Reviewer**)

- 1 Pursuant to clause 21.2(c)(2)(B) of the Project Agreement entered into between the State and Project Co dated [*insert*] (**Agreement**), I advise that [*insert description of Critical Interface Milestone/Progress Milestone*] [**Critical Interface Milestone/Progress Milestone**] has not been achieved.
- 2 I advise that the [**Critical Interface Milestone/Progress Milestone**] is so far from being achieved that it is not practicable to provide a list of the type referred to in clause 21.2(c)(2)(A) of the Agreement.
- 3 Terms defined in the Agreement have the same meaning in this notice.
- 4 This notice is given for the sole benefit of each of the parties specified in clause 5.7 of the Independent Reviewer Deed of Appointment, and may not be relied upon by any other person.

Signed for and on behalf of
[*insert name of Independent Reviewer*]

Date



Part 6
Project Co's Notice – Critical Interface Milestone/Progress Milestone
outstanding work

Metro Tunnel – Tunnel and Stations PPP

To: [], on behalf of the Crown in right of the State of Victoria (**State**)
and [] (**Independent Reviewer**)

From: [] (**Project Co**)

- 1 Pursuant to clause 21.2(d) of the Project Agreement entered into between the State and Project Co dated [*insert*] (**Agreement**), Project Co hereby notifies the State and the Independent Reviewer that the work listed in the Independent Reviewer's Notice – Critical Interface Milestone/Progress Milestone not achieved (List of work remaining to be performed) issued pursuant to clause 21.2(c)(2)(A) of the Agreement dated [*insert*] has been completed.
- 2 Terms defined in the Agreement have the same meaning in this notice.

Signed for and on behalf of
[*insert name and address of Project Co*]

Date



Part 7 Independent Reviewer's Certificate of Test Procedure

Metro Tunnel – Tunnel and Stations PPP

To: [], on behalf of the Crown in right of the State of Victoria (**State**)
and [] (**Project Co**)

From: [] (**Independent Reviewer**)

- 1 Pursuant to clause 23.2(b) of the Project Agreement entered into between the State and Project Co dated [insert] (**Agreement**), I certify that [insert **description of Test Procedure**] submitted pursuant to clause 23.2(a)(2) of the Agreement meets the requirements of this Agreement, the PS&TR, the Testing and Commissioning Management Plan, the Completion Schedule and the Systems Engineering Standard.
- 2 Terms defined in the Agreement have the same meaning in this notice.
- 3 This notice is given for the sole benefit of each of the parties specified in clause 5.7 of the Independent Reviewer Deed of Appointment, and may not be relied upon by any other person.

Signed for and on behalf of
[insert name of Independent Reviewer]

Date



Part 8 Independent Reviewer's Certificate of Test Completion/Notice of Test Outcome

Metro Tunnel – Tunnel and Stations PPP

To: [], on behalf of the Crown in right of the State of Victoria (**State**)
and [] (**Project Co**)

From: [] (**Independent Reviewer**)

- 1 Pursuant to clause 23.5(c) of the Project Agreement entered into between the State and Project Co dated [*insert*] (**Agreement**), I [*certify / give notice*] that [*insert description of Test*], in respect of which I have received a Test Report submitted pursuant to clause 23.5(a) of the Agreement, [*has been passed / has been failed / does not comply with the requirements of the Agreement*].
- 2 Terms defined in the Agreement have the same meaning in this notice.
- 3 This notice is given for the sole benefit of each of the parties specified in clause 5.7 of the Independent Reviewer Deed of Appointment, and may not be relied upon by any other person.

Signed for and on behalf of
[*insert name of Independent Reviewer*]

Date



Part 9
Project Co's Notice – Expectation of achieving Provisional Acceptance

Metro Tunnel – Tunnel and Stations PPP

To: [], on behalf of the Crown in right of the State of Victoria (**State**)
Copy: [] (**Independent Reviewer**)
From: [] (**Project Co**)

- 1 Pursuant to clause 24.2(a) of the Project Agreement between the State and Project Co dated [*insert*] (**Agreement**), Project Co notifies the State that it reasonably expects to achieve Provisional Acceptance on [*insert date*].
- 2 Terms defined in the Agreement have the same meaning in this notice.

Signed for and on behalf of
[*insert name and address of Project Co*]

Date



Part 10 Project Co's Notice – Provisional Acceptance

Metro Tunnel – Tunnel and Stations PPP

To: [], on behalf of the Crown in right of the State of Victoria (**State**)
and [] (**Independent Reviewer**)

From: [] (**Project Co**)

- 1 Pursuant to clause 24.3(a) of the Project Agreement between the State and Project Co dated [*insert*] (**Agreement**), Project Co hereby:
 - (a) notifies the State and the Independent Reviewer that it considers that it has achieved Provisional Acceptance, as at [*insert date*];
 - (b) requests that the Independent Reviewer issue a Certificate of Provisional Acceptance; and
 - (c) notifies the State and the Independent Reviewer that the detailed list of work in the attached Schedule (including minor Defect correction and any Final Acceptance Works) remains to be performed in its opinion to achieve Final Acceptance.
- 2 Terms defined in the Agreement have the same meaning in this notice.

Signed for and on behalf of
[*insert name and address of Project Co*]

Date

Schedule

[*Insert details of work that remains to be performed to achieve Final Acceptance.*]



Part 11 State's Notice – Provisional Acceptance

Metro Tunnel – Tunnel and Stations PPP

To: [] (Project Co) and
[] (Independent Reviewer)

From: [], on behalf of the Crown in right of the State of Victoria (**State**)

- 1 Pursuant to clause 24.3(b) of the Project Agreement between the State and Project Co dated [*insert*] (**Agreement**), the State hereby:
 - (a) notifies Project Co and the Independent Reviewer that it considers that Project Co has achieved Provisional Acceptance, as at [*insert date*]; and
 - (b) requests that the Independent Reviewer issues a Certificate of Provisional Acceptance.
- 2 Terms defined in the Agreement have the same meaning in this notice.

Signed for and on behalf of the State

Date



Part 12 Independent Reviewer's Certificate of Provisional Acceptance

Metro Tunnel – Tunnel and Stations PPP

To: [], on behalf of the Crown in right of the State of Victoria (**State**)
and [] (**Project Co**)

From: [] (**Independent Reviewer**)

- 1 Pursuant to clause 24.3(c)(1) of the Project Agreement entered into between the State and Project Co dated [*insert*] (**Agreement**), I certify that Provisional Acceptance has been achieved as at [*insert date*].
- 2 In accordance with clause 24.3(c)(1) of the Agreement, I set out in the attached schedule:
 - (a) a list of Defects of the kind referred to in paragraph (1) of the definition of Provisional Acceptance (including any Defects in a Returned Asset) required to be corrected by Project Co; and
 - (b) details of the work remaining to be undertaken in order for Project Co to achieve Final Acceptance, including any Final Acceptance Works.
- 3 Terms defined in the Agreement have the same meaning in this certificate.
- 4 This certificate is given for the sole benefit of each of the parties specified in clause 5.7 of the Independent Reviewer Deed of Appointment, and may not be relied upon by any other person.

Signed for and on behalf of
[*insert name of Independent Reviewer*]

Date of Provisional Acceptance and
Date of Certificate

Schedule

[*Insert details of Defects and work remaining to be performed in order for Project Co to achieve Final Acceptance.*]



Part 13
Independent Reviewer's Notice – Provisional Acceptance not achieved (List of work remaining to be performed)

Metro Tunnel – Tunnel and Stations PPP

To: [], on behalf of the Crown in right of the State of Victoria (**State**)
and [] (**Project Co**)

From: [] (**Independent Reviewer**)

- 1 Pursuant to clause 24.3(c)(2)(A) of the Project Agreement entered into between the State and Project Co dated [*insert*] (**Agreement**), I advise that Provisional Acceptance has not been achieved.
- 2 The work remaining to be performed in order for Project Co to achieve Provisional Acceptance is listed in the attached schedule.
- 3 Terms defined in the Agreement have the same meaning in this notice.
- 4 This notice is given for the sole benefit of each of the parties specified in clause 5.7 of the Independent Reviewer Deed of Appointment, and may not be relied upon by any other person.

Signed for and on behalf of
[*insert name of Independent Reviewer*]

Date

Schedule

[*Insert details of work remaining to be performed.*]



Part 14
Independent Reviewer's Notice – Provisional Acceptance not achieved (No list of work remaining to be performed)

Metro Tunnel – Tunnel and Stations PPP

To: [], on behalf of the Crown in right of the State of Victoria (**State**)
and [] (**Project Co**)

From: [] (**Independent Reviewer**)

- 1 Pursuant to clause 24.3(c)(2)(B) of the Project Agreement] entered into between the State and Project Co dated [*insert*] (**Agreement**), I advise that Provisional Acceptance has not been achieved.
- 2 I advise that Provisional Acceptance is so far from being achieved that it is not practicable to provide a list of the type referred to in clause 24.3(c)(2)(A) of the Agreement.
- 3 Terms defined in the Agreement have the same meaning in this notice.
- 4 This notice is given for the sole benefit of each of the parties specified in clause 5.7 of the Independent Reviewer Deed of Appointment, and may not be relied upon by any other person.

Signed for and on behalf of
[*insert name of Independent Reviewer*]

Date



Part 15
Project Co's Notice – Provisional Acceptance of outstanding work

Metro Tunnel – Tunnel and Stations PPP

To: [], on behalf of the Crown in right of the State of Victoria (**State**)
and [] (**Independent Reviewer**)

From: [] (**Project Co**)

- 1 Pursuant to clause 24.3(e) of the Project Agreement entered into between the State and Project Co dated **[insert] (Agreement)**, Project Co hereby notifies the State and the Independent Reviewer that the work listed in the Independent Reviewer's Notice – Provisional Acceptance not achieved (List of work remaining to be performed) issued pursuant to clause 24.3(c)(2)(A) of the Agreement dated **[insert]** has been completed.
- 2 Terms defined in the Agreement have the same meaning in this notice.

Signed for and on behalf of
[insert name and address of Project Co]

Date



Part 16
Project Co's Notice – Returned Works

Metro Tunnel – Tunnel and Stations PPP

To: [], on behalf of the Crown in right of the State of Victoria (**State**)
and [] (**Independent Reviewer**) and []
(**Returned Asset Owner**)

From: [] (**Project Co**)

- 1 Pursuant to clause 24.4(b)(3) of the Project Agreement between the State and Project Co dated [*insert*] (**Agreement**), Project Co hereby notifies that, with the exception of the Defects referred to in clause 24.4(b)(1) of the Agreement and specified in the attached schedule, the Returned Asset described generally below has been completed in accordance with the State Project Documents, as at [*insert date*].
- 2 Terms defined in the Agreement have the same meaning in this notice.

Returned Asset:

Signed for and on behalf of
[*insert name and address of Project Co*]

Date

Schedule
[*Insert details of Defects*]



Part 17
Independent Reviewer's Notice – Returned Works

Metro Tunnel – Tunnel and Stations PPP

To: [], on behalf of the Crown in right of the State of Victoria (**State**)
and [] (**Project Co**)

From: [] (**Independent Reviewer**)

- 1 Pursuant to clause 24.4(d)(1) of the Project Agreement between the State and Project Co dated [insert] (**Agreement**), I confirm that with the exception of the Defects referred to in clause 24.4(b)(1) of the Agreement and specified in the attached schedule, the Returned Asset described generally below has been completed in accordance with the State Project Documents, as at [insert date].
- 2 Terms defined in the Agreement have the same meaning in this notice.
- 3 This notice is given for the sole benefit of each of the parties specified in clause 5.7 of the Independent Reviewer Deed of Appointment, and may not be relied upon by any other person.

Returned Asset:

Signed for and on behalf of
[insert name of Independent Reviewer]

Date

Schedule
[Insert details of Defects]



Part 18
Independent Reviewer's Notice – Returned Works completion not achieved (List of work remaining to be performed)

Metro Tunnel – Tunnel and Stations PPP

To: [], on behalf of the Crown in right of the State of Victoria (**State**)
and [] (**Project Co**)

From: [] (**Independent Reviewer**)

- 1 Pursuant to clause 24.4(d)(2)(A) of the Project Agreement entered into between the State and Project Co dated [*insert*] (**Agreement**), I advise that the Returned Asset described generally below has not been completed.
- 2 The work remaining to be performed for the Returned Asset described generally below to be completed (subject only to Defects of the kind referred to in clause 24.4(b)(1) of the Agreement) is listed in the attached schedule.
- 3 Terms defined in the Agreement have the same meaning in this notice.
- 4 This notice is given for the sole benefit of each of the parties specified in clause 5.7 of the Independent Reviewer Deed of Appointment, and may not be relied upon by any other person.

Returned Asset:

Signed for and on behalf of
[*insert name of Independent Reviewer*]

Date

Schedule
[*Insert details of work to be performed.*]



Part 19
Independent Reviewer's Notice – Returned Works completion not achieved (No list of work remaining to be performed)

Metro Tunnel – Tunnel and Stations PPP

To: [], on behalf of the Crown in right of the State of Victoria (**State**)
and [] (**Project Co**)

From: [] (**Independent Reviewer**)

- 1 Pursuant to clause 24.4(d)(2)(B) of the Project Agreement between the State and Project Co dated [*insert*] (**Agreement**), I advise that the Returned Asset described generally below is so far from being completed in accordance with the State Project Documents that it is not practicable to provide a list of the type referred to in clause 24.4(d)(2)(A) of the Agreement.
- 2 Terms defined in the Agreement have the same meaning in this notice.
- 3 This notice is given for the sole benefit of each of the parties specified in clause 5.7 of the Independent Reviewer Deed of Appointment, and may not be relied upon by any other person.

Returned Asset:

Signed for and on behalf of
[*insert name of Independent Reviewer*]

Date



Part 20 Project Co's Notice – Correction of Defect

Metro Tunnel – Tunnel and Stations PPP

To: [], on behalf of the Crown in right of the State of Victoria (**State**),
[] (**Independent Reviewer**) and [] (**Returned
Asset Owner**)

From: [] (**Project Co**)

- 1 Pursuant to clause 24.4(f) of the Project Agreement between the State and Project Co dated [*insert*] (**Agreement**), I hereby confirm that the work identified in the Independent Reviewer's Notice – Returned Works completion not achieved (List of work remaining to be performed) issued under clause 24.4(d)(2)(A) of the Agreement dated [*insert*] and identified in the attached schedule has now been completed.
- 2 Terms defined in the Agreement have the same meaning in this notice.

Signed for and on behalf of
[*insert name and address of Project Co*]

Date

Schedule

[*Insert details of work that has been completed.*]



**Part 21
Project Co's Notice – Handback of Returned Works**

Metro Tunnel – Tunnel and Stations PPP

To: [] (**Returned Asset Owner**)
Copy: [], on behalf of the Crown in right of the State of Victoria (**State**)
and [] (**Independent Reviewer**)
From: [] (**Project Co**)

- 1 Pursuant to clause 24.4(i)(1) of the Project Agreement between the State and Project Co dated [insert] (**Agreement**), Project Co hereby notifies the Returned Asset Owner that the date of Handback of the Returned Asset described generally below will be on [insert date].
- 2 Terms defined in the Agreement have the same meaning in this notice.

Returned Asset:

Signed for and on behalf of
[insert name and address of Project Co]

Date



Part 22 Independent Reviewer's Certificate – Final Acceptance

Metro Tunnel – Tunnel and Stations PPP

To: [], on behalf of the Crown in right of the State of Victoria (**State**)
and [] (**Project Co**)

From: [] (**Independent Reviewer**)

- 1 Pursuant to clause 24.5(b) of the Project Agreement entered into between the State and Project Co dated [insert] (**Agreement**), I certify that Final Acceptance has been achieved as at [insert date].
- 2 Terms defined in the Agreement have the same meaning in this certificate.
- 3 This certificate is given for the sole benefit of each of the parties specified in clause 5.7 of the Independent Reviewer Deed of Appointment, and may not be relied upon by any other person.

Signed for and on behalf of
[insert name of Independent Reviewer]

Date of Final Acceptance and Date of Certificate



**Part 23
Independent Reviewer's Notice – Non-compliance**

Metro Tunnel – Tunnel and Stations PPP

To: [], on behalf of the Crown in right of the State of Victoria (**State**)
and [] (**Project Co**)

From: [] (**Independent Reviewer**)

1 Pursuant to clause 26.2(b) of the Project Agreement entered into between the State and Project Co dated [insert] (**Agreement**), I hereby notify the State and Project Co of my opinion that:

- (a) *[the obligations of Project Co under the State Project Documents relating to the D&C Activities are not being complied with;*
- (b) *the D&C Program does not accurately reflect the actual progress of the Works in all material respects;*
- (c) *a Critical Interface Milestone (PPP Responsible) will not be achieved by the relevant Critical Interface Milestone Date;*
- (d) *a Progress Milestone will not be achieved by the relevant Progress Milestone Date;*
- (e) *Provisional Acceptance will not be achieved by the Date for Provisional Acceptance; and*
- (f) *from the Date of Provisional Acceptance, Project Co is not expeditiously and diligently progressing the Works to achieve Final Acceptance.]*

[State Note: Amend as appropriate.]

2 The reasons for my opinion are set out in the attached schedule.

3 Terms defined in the Agreement have the same meaning in this notice.

4 This notice is given for the sole benefit of each of the parties specified in clause 5.7 of the Independent Reviewer Deed of Appointment, and may not be relied upon by any other person.

Signed for and on behalf of
[insert name of Independent Reviewer]

Date



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Schedule

[Insert reasons for the Independent Reviewer's opinion that the obligations of Project Co under the State Project Documents in relation to the construction of the Works are not being met.]



Part 24
Project Co's Notice – Explanation and/or Remediation Plan

Metro Tunnel – Tunnel and Stations PPP

To: [], on behalf of the Crown in right of the State of Victoria (**State**)
and [] (**Independent Reviewer**)

From: [] (**Project Co**)

- 1 Pursuant to clause 26.2(c) of the Project Agreement entered into between the State and Project Co dated **[insert] (Agreement)**, Project Co hereby:
 - (a) *[notifies the State and the Independent Reviewer that it disagrees with the opinion contained within the Independent Reviewer's Notice – Non-compliance dated **[insert]** for the reasons set out in the attached Schedule A (**Explanation**); [and/or]*
 - (b) *[to the extent that Project Co does not disagree with the Independent Reviewer's opinion, provides in the attached Schedule B a plan and a program for the rectification of the non-compliance specified in the Independent Reviewer's Notice – Non-compliance dated **[insert]** (**Remediation Plan**)].*
[State Note: Amend as appropriate.]
- 2 Terms defined in the Agreement have the same meaning in this notice.

Signed for and on behalf of
[insert name and address of Project Co]

Date

[Schedule A]
[Insert Project Co's Explanation, if applicable.]

[Schedule B]
[Insert details of Project Co's Remediation Plan, if applicable.]



Part 25 Independent Reviewer's Notice – Response to Explanation

Metro Tunnel – Tunnel and Stations PPP

To: [], on behalf of the Crown in right of the State of Victoria (**State**)
and [] (**Project Co**)

From: [] (**Independent Reviewer**)

- 1 Pursuant to clause 26.2(d) of the Project Agreement entered into between the State and Project Co dated **[insert] (Agreement)**, I hereby notify the State and Project Co of my opinion that Project Co's Explanation dated **[insert]** *[satisfactorily addresses / does not satisfactorily address]* the concerns raised in the Independent Reviewer's Notice – Non-compliance dated **[insert]**.
- 2 The details of and reasons for my opinion are set out in the attached schedule.
- 3 Terms defined in the Agreement have the same meaning in this notice.
- 4 This notice is given for the sole benefit of each of the parties specified in clause 5.7 of the Independent Reviewer Deed of Appointment, and may not be relied upon by any other person.

Signed for and on behalf of
[insert name of Independent Reviewer]

Date

Schedule

[Insert details of and reasons for Independent Reviewer's opinion as to adequacy of Project Co's Explanation.]



Part 26
Independent Reviewer's Certificate of QSP Adjustment (1)

Metro Tunnel – Tunnel and Stations PPP

To: [], on behalf of the Crown in right of the State of Victoria (**State**)
and [] (**Project Co**)

From: [] (**Independent Reviewer**)

- 1 Pursuant to clause 60.4(a) of the Project Agreement entered into between the State and Project Co dated [*insert*] (**Agreement**), I hereby certify that:
 - (a) the percentage of Local Content (ANZ) used by Project Co to the Date of Provisional Acceptance in undertaking the D&C Activities is [*insert*]; and
 - (b) the percentage of the Project Co D&C Phase Workforce to the Date of Provisional Acceptance which comprised of Priority Jobseekers undertaking D&C Activities in Victoria, calculated as an Annualised Employee Equivalent against the Project Co D&C Phase Workforce is [*insert*].
- 2 Terms defined in the Agreement have the same meaning in this certificate.
- 3 This certificate is given for the sole benefit of each of the parties specified in clause 5.7 of the Independent Reviewer Deed of Appointment, and may not be relied upon by any other person.

Signed for and on behalf of
[*insert name of Independent Reviewer*]

Date



Part 27
Independent Reviewer's Certificate of QSP Adjustment (2)

Metro Tunnel – Tunnel and Stations PPP

To: [], on behalf of the Crown in right of the State of Victoria (**State**)
and [] (**Project Co**)

From: [] (**Independent Reviewer**)

- 1 Pursuant to clause 61.3(a) of the Project Agreement entered into between the State and Project Co dated **[insert] (Agreement)**, I hereby certify the percentage of the total labour hours for the Works performed by Apprentices, Trainees and Engineering Cadets to the Date of Provisional Acceptance is **[insert]%**.
- 2 Terms defined in the Agreement have the same meaning in this certificate.
- 3 This certificate is given for the sole benefit of each of the parties specified in clause 5.7 of the Independent Reviewer Deed of Appointment, and may not be relied upon by any other person.

Signed for and on behalf of
[insert name of Independent Reviewer]

Date



Part 28 Independent Reviewer's Certificate of Certified Design

Metro Tunnel – Tunnel and Stations PPP

To: [], on behalf of the Crown in right of the State of Victoria (**State**)
and [] (**Project Co**)

From: [] (**Independent Reviewer**)

- 1 In accordance with section 2.8(c)(1) of Schedule 25 (*Design Review*) to the Project Agreement entered into between the State and Project Co dated **[insert]** (**Agreement**), I hereby certify the Certified Design Documentation submitted pursuant to section 2.5 of Schedule 25 to the Agreement on **[insert date of submission]**.
- 2 The Design Stage(s) to which this certificate applies is/are as follows:
 - (a) **[insert]**.
- 3 Terms defined in the Agreement have the same meaning in this certificate.
- 4 This certificate is given for the sole benefit of each of the parties specified in clause 5.7 of the Independent Reviewer Deed of Appointment, and may not be relied upon by any other person.

Signed for and on behalf of
[insert name and address of Project Co]

Date



Part 29 Independent Reviewer's Certificate – As-Built Records

Metro Tunnel – Tunnel and Stations PPP

To: [], on behalf of the Crown in right of the State of Victoria (**State**)
and [] (**Project Co**)

From: [] (**Independent Reviewer**)

- 1 In accordance with section 1.3.5.2(b)(5) of Volume 2, Part C of the PS&TR, I hereby certify that the As-Built Records for the Design Stage(s) (or part thereof) specified in paragraph 2 comply with the requirements of section 1.3.5 of Volume 2, Part C of the PS&TR.
- 2 The Design Stage(s) (or part thereof) to which this certificate applies is/are as follows:
 - (a) **[insert]**.
- 3 Terms defined in the Project Agreement entered into between the State and Project Co dated **[insert]** have the same meaning in this certificate.
- 4 This certificate is given for the sole benefit of each of the parties specified in clause 5.7 of the Independent Reviewer Deed of Appointment, and may not be relied upon by any other person.

Signed for and on behalf of
[insert name Independent Reviewer]

Date



Part 30 Proof Engineer's Certificate – Design Documentation

Metro Tunnel – Tunnel and Stations PPP

To: [], on behalf of the Crown in right of the State of Victoria (**State**),
[] (**Independent Reviewer**) and [] (**Project Co**)
From: [] (**Proof Engineer**)

- 1 In accordance with section 7.8.1.1 of Volume 2, Part C of the PS&TR, I hereby certify that, in the performance of the D&C Activities, the Design Documentation listed in the attached Schedule is adequate for all:
 - (a) civil structures;
 - (b) tunnel structures including all tunnel support and primary and secondary linings and all relevant fire and life safety considerations;
 - (c) bridges and underpasses;
 - (d) earth retaining structures;
 - (e) sign gantries and other load bearing structures, including all foundations;
 - (f) load bearing falsework;
 - (g) Temporary Works;
 - (h) formwork required for concrete pours higher than 2 metres;
 - (i) blasting design;
 - (j) geotechnical designs including earth retaining structures (soil nailing and rock anchoring), embankment and formation;
 - (k) drainage design (excluding the proof engineering of standard proprietary products that meet Industry acceptable performance criteria); and
 - (l) groundwater settlement, groundwater movement predicted extents analysis and proposed mitigation measures.
- 2 Terms defined in the Project Agreement entered into between the State and Project Co dated [*insert*] have the same meaning in this certificate.

Signed for and on behalf of
[*insert name and address of Proof Engineer*]



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Date

Schedule

[Insert details of Design Documentation being certified]



Part 31
Proof Engineer's Certificate – Erection of Load Bearing Falsework

Metro Tunnel – Tunnel and Stations PPP

To: [], on behalf of the Crown in right of the State of Victoria (**State**),
[] (**Independent Reviewer**) and [] (**Project Co**)
From: [] (**Proof Engineer**)

- 1 In accordance with section 7.8.1.2(b) of Volume 2, Part C of the PS&TR, I hereby certify that the load bearing falsework and/or formwork listed in the attached Schedule has been erected in accordance with the IFC Design Documentation.
- 2 Terms defined in the Project Agreement entered into between the State and Project Co dated [*insert*] have the same meaning in this certificate.

Signed for and on behalf of
[*insert name and address of Proof Engineer*]

Date

Schedule

[*Insert relevant details of load bearing falsework and/or formwork being certified*]



Part 32 Proof Engineer's Certificate of Compliance

Metro Tunnel – Tunnel and Stations PPP

To: [], on behalf of the Crown in right of the State of Victoria (**State**),
[] (**Independent Reviewer**) and [] (**Project Co**)
From: [] (**Proof Engineer**)

- 1 In accordance with section 7.8.3 of Volume 2, Part C of the PS&TR, I hereby certify that I have carried out a detailed check and accept the drawings and/or documents listed in the attached Schedule.
- 2 Terms defined in the Project Agreement entered into between the State and Project Co dated [*insert*] have the same meaning in this certificate.

Signed for and on behalf of
[*insert name and address of Proof Engineer*]

Date

Schedule

[*Insert relevant details of drawings and/or documents being certified*]



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Execution Version

Schedule 9

Part A – Commercial Opportunities Lease



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FREEHILLS

Deed

Metro Tunnel
Tunnel and Stations PPP

Commercial Opportunities Lease

[insert [State]]

[insert Project Co]

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Commercial Opportunities Lease

Date ►

Between the parties

[State] **[Insert]**

Project Co **[Insert]**
[Insert ACN] of **[insert address]**

- Recitals
- 1 The background to the Project is set out in the Project Agreement.
 - 2 [The State has leased the Leased Area from VicTrack under the Head Lease.]
 - 3 As part of the development and implementation of the Project, the State has agreed to grant, and Project Co has agreed to accept, a lease of the Leased Area on the terms and conditions contained in this Lease.
 - 4 The State has the power to grant this Lease.
-

This deed witnesses as follows:



1 Definitions and interpretation

1.1 Project Agreement definitions

Unless otherwise expressly defined, expressions used in this Lease have the meanings given to them in the Project Agreement.

1.2 Definitions

In this Lease, unless the context otherwise requires:

| Term | Meaning |
|------------------------------|---|
| Commencement Date | means the Date of this Lease. |
| Crown | means the Crown in right of the State of Victoria. |
| Expiry Date | means the date the Project Agreement is terminated. |
| Final Acceptance Area | means each area on the Leased Area Plan on which the Works are still being performed. |
| Head Lease | means the document entitled [<i>describe lease</i>] between VicTrack and the State for and in relation to the Leased Area dated [<i>insert</i>]. |
| Lease | means this lease, including all Schedules, Exhibits, Attachments and Annexures to it. |
| Leased Area | means the area delineated on the Leased Area Plan excluding each Final Acceptance Area. |
| Leased Area Plan | means Attachment 1. |
| Permitted Use | means: <ol style="list-style-type: none">1 the performance of the Permitted Commercial Opportunities and the Commercial Opportunities Works in accordance with the Project Agreement and this Lease;2 the performance of any other Project Activities relevant to the Leased Area in accordance with the Project Agreement and this Lease;3 the storage and location of any plant, equipment, machinery, facilities and vehicles necessary for the carrying out of the Permitted Commercial Opportunities, Commercial Opportunities |



| Term | Meaning |
|--------------------------|--|
| | Works and relevant Project Activities; and 4 any other purpose permitted by the Project Agreement or otherwise agreed by the State. |
| Project Agreement | means the document entitled "Project Agreement" between the State and Project Co dated [insert] . |
| Rent | means [not disclosed] |
| Reserved Minerals | has the meaning given to it in clause 3.1(a). |
| Term | the term of this Lease commencing on the Commencement Date and ending on the Expiry Date. |

1.3 Interpretation

In this Lease:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;
- and unless the context otherwise requires:
- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa and a word indicating a gender includes every other gender;
 - (c) **(references)**: a reference to:
 - (1) a party, clause, Schedule, Exhibit, Attachment or Annexure is a reference to a party, clause, Schedule, Exhibit, Attachment or Annexure of or to this Lease; and
 - (2) a section is a reference to a section of a Schedule;
 - (d) **(document as amended)**: a reference to this Lease or to any other deed, agreement, document or instrument includes a reference to this Lease or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
 - (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
 - (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
 - (g) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;



- (h) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **(“includes”)**: “includes” will be read as if followed by the phrase “(without limitation)”;
- (j) **(“or”)**: the meaning of “or” will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) **(“\$”)**: a reference to “\$”, “AUD” or “dollar” is to Australian currency;
- (m) **(time)**: a reference to time is a reference to time in Melbourne, Australia;
- (n) **(rights)**: a reference to a right includes any benefit, remedy, function, duty, obligation, Liability, interest, entitlement, title, discretion, authority or power;
- (o) **(obligations and liabilities)**: a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (p) **(“may”)**: the term “may”, when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;
- (q) **(construction)**: where there is a reference to an Authority, institute or association or other body referred to in this Lease which:
 - (1) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Lease is deemed to refer to that other entity; or
 - (2) ceases to exist, this Lease is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (r) **(“remedy”)**: the use of the word “remedy” or any form of it in this Lease means that the event to be remedied must be remedied or its effects overcome; and
- (s) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

1.4 Inconsistency

Where there is an inconsistency, ambiguity or discrepancy between this Lease and any other State Project Document, the order of precedence in clause 2.3 (*Inconsistency between State Project Documents*) of the Project Agreement applies.

1.5 Business Day

If the day on or by which anything is to be done in accordance with this Lease is not a Business Day, that thing must be done no later than the next Business Day.



1.6 Provisions limiting or excluding liability, rights or obligations

- (a) A right of the State or an obligation of Project Co under this Lease will not limit or exclude any other right of the State or obligation of Project Co under this Lease unless expressly stated.
- (b) Any provision of this Lease which seeks to limit or exclude a Liability of a party is to be construed as doing so only to the extent permitted by Law.

1.7 Approvals, directions and notices in writing

Unless otherwise expressly provided in this Lease or agreed between the parties, all approvals, consents, directions, requirements, requests, claims, notices, agreements and demands given or required to be given under this Lease must be given in writing.

1.8 Prior approval or consent

Where Project Co is required by this Lease to obtain the State's consent or approval to an action, document or thing, unless otherwise expressly stated, that consent or approval must be obtained prior to the actions, document or thing occurring or coming into effect.

1.9 Action without delay

Unless there is a provision in this Lease which specifies a period of time in which something must be done by the parties, all things must be done without undue delay.

1.10 Relationship of the parties

Unless otherwise expressly provided, nothing in this Lease:

- (a) **(no additional relationship)**: creates a partnership, joint venture, fiduciary, employment or agency relationship between the parties; or
- (b) **(no good faith)**: imposes any duty of good faith on the State.

1.11 State's rights and obligations

- (a) **(Acknowledgement)**: The parties acknowledge the substance, operation and potential effect and consequences of clause 2.13 (*State's executive rights and duties*) of the Project Agreement in relation to this Lease.
- (b) **(No Claim)**: Subject to clause 1.11(c), Project Co will not be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its statutory or executive rights or duties.
- (c) **(Liability for breach)**: Clauses 1.11(a) and 1.11(b) do not limit any Liability which the State would have to Project Co under this Lease as a result of a breach by the State of a term of this Lease but for these clauses.

1.12 Reasonable endeavours of the State

Any statement in this Lease providing that the State will use or exercise "reasonable endeavours" or "act reasonably" in relation to an outcome, means that the State:

- (a) **(Relevant steps)**: will take steps to bring about the relevant outcome so far as it is reasonably able to do so, having regard to its resources and other responsibilities;



- (b) **(No guarantee)**: cannot guarantee the relevant outcome; and
- (c) **(No obligation)**: is not required to:
 - (1) exercise a right of any Government Party, or to influence, over-ride, interfere with or direct any other Government Party in the proper exercise and performance of its legal, statutory or executive duties and functions;
 - (2) exercise a power or discretion in a manner that the State regards as not in the public interest;
 - (3) develop or implement new policy;
 - (4) procure legislation; or
 - (5) act in any way that the State regards as not in the public interest.

1.13 Cost of carrying out obligations

Each party must carry out its obligations under this Lease at its own cost, unless expressly provided otherwise.

2 Delegation

2.1 Right to delegate

Project Co acknowledges that the State may exercise any right, statutory or otherwise, it has to appoint a person as a delegate to perform any of its rights under this Lease.

2.2 Notice of delegation

The State will give Project Co notice of:

- (a) **(delegate)**: any delegate so appointed, setting out the delegated rights and including a copy of the relevant instrument of appointment; and
- (b) **(revocation or change)**: any revocation or change or delegation contemplated by clause 2.3.

2.3 Revocation or amendment of delegation

Any delegation in accordance with clause 2.2 may be revoked, changed, delegated, limited or made subject to such conditions as the State determines from time to time.

2.4 No limitation of State obligations

The appointment of a delegate to perform some or all of the rights of the State under this Lease does not limit the rights or obligations of the State under this Lease.



3 Reservations

3.1 Reservations in respect of minerals

- (a) **(Reserved Minerals):** This Lease is granted subject to the reservation to the Crown in respect of the Leased Area and every part of it of all minerals within the meaning of the *Mineral Resources (Sustainable Development) Act 1990* (Vic) and petroleum within the meaning of the *Petroleum Act 1998* (Vic) **(Reserved Minerals)**.
- (b) **(Exercise of rights by the State for the Term):** For the Term, the State will not exercise any right in respect of the Reserved Minerals.

3.2 Reservations in respect of access

- (a) Subject to the terms of the State Project Documents, the State reserves to itself and its Associates the right to create any registered or unregistered easement or other right through or around the Leased Area.
- (b) Prior to the creation or registration of any easement in accordance with clause 3.2(a), the State or its Associate(s) (as applicable) must notify Project Co of its intention to create or register the easement.

3.3 Reservations in respect of adjoining land

Project Co acknowledges and agrees that the State has reserved the right for the State, its Associates and any other persons authorised by the State to enter upon the Leased Area to construct, maintain, operate, develop and manage all adjoining land to the Leased Area, including for service connection of adjoining land to Utility Infrastructure located on the Leased Area.

3.4 Other Reservations

Project Co acknowledges and agrees that:

- (a) **(reservation of infrastructure):** the State has reserved the right for:
 - (1) Relevant Utility Infrastructure; and
 - (2) any other assets of the State, its Associates, Authorities and Government Parties,to remain or be constructed or installed in, on, under, over or through the Leased Area; and
- (b) **(reservation for relevant parties):** for the purpose of exercising the rights referred to in clause 3.4(a) and for the purpose of operating, repairing or maintaining the infrastructure and assets referred to in clause 3.4(a), the State has reserved the right for the State, its Associates, Authorities and Government Parties to enter upon the Leased Area (with or without vehicles or machinery).

4 Negation of representations and warranties

The State makes no representations (express or implied) and gives no warranties (express or implied):



- (a) **(suitability for purposes)**: that the Leased Area or any other land is now or will remain suitable or adequate for all or any of the purposes contemplated in this Lease or the Project Agreement; and
 - (b) **(Project Agreement representations)**: as to the matters specified in clause 50.1 (*No representations from the State*) of the Project Agreement,
- and all warranties (if any) and representations (if any) implied by Law are expressly negated.

5 Grant of Lease

5.1 Grant of Lease

The State grants to Project Co as tenant a lease of the Leased Area for the Term on the terms and conditions set out in this Lease.

5.2 Project Co's acknowledgment

Project Co acknowledges this Lease and Project Co's rights in respect of the Leased Area are subject to:

- (a) the provisions of the Project Agreement;
- (b) all interests, rights, Easements and reservations affecting the Leased Area;
- (c) any defects, whether latent or patent, in the Leased Area; and
- (d) the rights reserved by the State under the Project Agreement, including the step-in rights contained in clause 41 (*Step-in by the State*) of the Project Agreement.

6 Use of the Leased Area

6.1 Permitted use

Project Co must only use the Leased Area for the Permitted Use.

6.2 Compliance with Laws and Approvals

Project Co must comply with all Laws and Approvals from time to time applicable to the Leased Area or the use or occupation of the Leased Area.

6.3 Compliance with notices

Project Co must at its own cost and expense comply with all notices, orders and directions issued or given by an Authority which affect or relate to the Leased Area and the use or occupation of the Leased Area, regardless of whether the notice, order or direction is addressed to or requires compliance by either or both of the State, Project Co or any other person.



6.4 Notices

A party that receives a notice, order or direction from an Authority which affects or relates to the Leased Area or the use or occupation of the Leased Area must promptly give a copy of that notice, order or direction to the other party.

6.5 No nuisance

During the Term, Project Co warrants that it will comply with all Environmental Requirements, the Project Agreement and the Services Specification and will not, and agrees not to:

- (a) **(noxious or offensive)**: use, exercise or carry on or permit to be used, exercised or carried on in or upon the Leased Area any noxious or offensive act, trade, business or occupation; or
- (b) **(annoyance, nuisance, grievance)**: do or permit or omit to be done in or upon the Leased Area anything which is or may be to the annoyance, nuisance, grievance, damage or disturbance of the State or persons otherwise lawfully on the Leased Area or occupiers or owners of any adjacent land or land within the vicinity of the Leased Area,

except where this is required or expressly permitted by the Project Agreement or is an unavoidable consequence of the performance of the Project Activities in accordance with the Project Agreement.

7 Rent and Utilities

7.1 Payment of Rent

Project Co must pay the Rent to the State, each quarter on the same day that it receives the Quarterly Service Payment. The parties acknowledge and agree that the Rent will be offset against the Quarterly Service Payment.

7.2 Charges for Utilities

Project Co must pay all charges (including service charges) for Utilities to or from the Leased Area, together with any costs charged or levied by the Utility Provider in respect of the provision or maintenance of the Relevant Utility Infrastructure, which provides or supplies those Utilities exclusively to the Leased Area.

7.3 Separate metering

Project Co must install, or arrange for the installation of, meters at Project Co's own cost and expense for the recording or metering of any of the Utilities or substances provided or supplied to each Permitted Commercial Opportunity within the Leased Area.

7.4 Payment by State

If Project Co defaults in the payment of any of the costs or charges referred to in clause 7.2, the State may (without limiting any other rights and remedies of the State) pay the costs or charges, and any amount paid by the State will be a debt due and payable from Project Co to the State.



8 Easements

- (a) Subject to the terms of the State Project Documents, the State may grant rights of support and easements, dedicate land and enter into any arrangement or agreement with any party with an interest in any adjacent land or with any Authority or Utility Provider as the State thinks fit for the purpose of:
- (1) public or private access to the Leased Area;
 - (2) support of structures erected on adjoining land; or
 - (3) the provision of services.
- (b) The State must not exercise its rights under clause 8(a) to derogate from the enjoyment of the rights of Project Co under this Lease.

9 Harm minimisation

Project Co must:

- (a) (use of Leased Area): in using or occupying the Leased Areas; and
- (b) (performing Project Activities): except to the extent necessary to undertake the Project Activities and otherwise to comply with its obligations under the Project Agreement,

cause as little harm and inconvenience and do as little damage as reasonably possible to the Leased Area (and any adjacent area) and any improvement on the Leased Area or any adjacent area (including any Relevant Utility Infrastructure).

10 Removal of materials and make good

Without limiting its obligations under the Project Agreement:

- (a) (**during the Term**): during the Term, as soon as practicable after completion of any Project Activities on the Leased Areas; and
- (b) (**prior to Term ending**): prior to the end of the Term,

Project Co must:

- (c) (**removal of equipment**): remove all plant, equipment, machinery, facilities and vehicles (except to the extent they form part of the Leased Areas);
- (d) (**clean and safe condition**): ensure that the relevant part of the Leased Areas is left in a clean and safe condition;
- (e) (**removal of waste**): ensure that all waste, rubbish, debris and redundant materials are removed promptly from the relevant part of the Leased Areas in accordance with Best Industry Practices;
- (f) (**public use**): without limiting clause 10(d), ensure that any relevant part of the Leased Areas which will become open to the public is safe for public use and occupation; and
- (g) (**damage**): except to the extent necessary to comply with its obligations under the Project Agreement, make good all damage caused by Project Co's use and occupation of the Leased Areas.

11 Maintenance and repair

11.1 Maintenance

Project Co must maintain the Leased Area and the Relevant Infrastructure in accordance with Project Co's obligations under the Project Agreement.

11.2 State's right of access

Without limitation to any rights of access in the Project Agreement, the State, PTV, VicTrack and any officer, agent, adviser, consultant, contractor or employee of the State may at all reasonable times enter the Leased Area (with or without vehicles and equipment), including to:

- (a) **(investigations)**: make reasonable investigations as the State, any officer, agent, adviser, consultant, contractor or employee of the State or those authorised by the State deem necessary for the purpose of ascertaining whether or not there has been any breach of any of the terms, covenants or conditions expressed or implied in this Lease;
- (b) **(compliance)**: carry out any maintenance, repairs, alterations, additions or other work necessary to comply with the State's obligations under this Lease, at Law or in respect of the exercise by the State of any statutory functions;
- (c) **(Project Co repairs)**: carry out any maintenance, repairs, alterations, additions or other work which the State elects to do but which Project Co is required or liable to do under this Lease by any Law or by any Requirement but fails to do so within the time specified or otherwise allowed for that work to be done; or
- (d) **(other powers)**: exercise any other powers and rights of the State under this Lease or the Project Agreement.

11.3 Exercise of rights

In exercising its rights under clause 11.2, the State, its Associates or any other persons authorised by the State must comply with the State Project Documents.

11.4 Project Co's acknowledgement

Project Co acknowledges and agrees that the exercise by the State, its Associates or any other persons authorised by the State of the rights of access to the Leased Area under the State Project Documents:

- (a) will not give rise to any right of Project Co to terminate this Lease or make any Claim against the State, its Associates or any other person authorised by the State to access the Leased Area; and
- (b) will not release Project Co from its obligations pursuant to this Lease.

12 GST

- (a) **(Supply)**: If GST is or will be or is purported to be payable on the supply of any good, service or thing (a **Supply**) by either party under this Lease, to the extent the consideration otherwise provided for that Supply is not stated to include an amount in respect of GST on that Supply, the party receiving the Supply must



pay to the party making the Supply on demand a sum equal to any GST payable by the supplier in respect of that Supply.

- (b) **(Reimbursement)**: To the extent that one party is required to reimburse the other party for costs incurred by the other party, those costs do not include any amount in respect of GST for which the other party is entitled to claim an input tax credit.
- (c) **(Valid tax invoice)**: A party's obligation to pay an amount under clause 12 is subject to a valid tax invoice being delivered to that party.
- (d) **(Rent)**: The Rent under this Lease is exclusive of GST.
- (e) **(Project Agreement to prevail)**: If clause 59 (*Taxes*) of the Project Agreement would apply in connection with a Taxable Supply to which this clause 12 also applies then clause 59 (*Taxes*) of the Project Agreement will apply in connection with that supply and the provisions of this clause 12 (but for this clause 12) will not apply.
- (f) **(Definitions)**: In this clause 12, unless otherwise defined in this Lease, terms used have the meanings given to them in the GST Law.

13 Quiet enjoyment

Other than as a result of the exercise by the State, any of its Associates, Government Parties, an Authority or any other person of any right which is expressly or impliedly conferred upon it (including the State's rights contained in clauses 16.3 (*State's right to enter, inspect and test*) and 41 (*Step-in by the State*) of the Project Agreement):

- (a) by this Lease;
- (b) under any other Project Document; or
- (c) otherwise at Law,

Project Co will and may peaceably possess and enjoy the Leased Area for the Term without any interruption or disturbance from the State or any other person or persons lawfully claiming by, from or under the State.

14 Risk

Except as otherwise expressly provided in the State Project Documents, as between the State and Project Co, Project Co accepts all risks (and the cost of such risks) in connection with the use and occupation of the Leased Area.

15 Termination

15.1 Termination of Lease

This Lease will automatically terminate on the Expiry Date but may not otherwise be terminated.



15.2 Consequences of termination

Upon termination of this Lease, the rights and obligations of the parties under this Lease will cease, except for:

- (a) any accrued rights or obligations under this Lease; and
- (b) any rights or obligations which are expressed (either in this Lease or in any other State Project Document) to continue after termination of this Lease or any other State Project Document.

15.3 Waiver

If this Lease is lawfully terminated in accordance with clause 15.1, Project Co waives any right it might otherwise have to pursue a Claim of restitution of any kind, including a Claim of unjust enrichment or quantum meruit, but this clause 15.3 does not affect Project Co's rights under clause 45 (*Termination*) of the Project Agreement.

16 Dispute resolution and Arbitration

If any dispute or difference of opinion arises between the parties under this Lease, each party may refer any such matter for resolution in accordance with this clause 16 and the dispute or difference of opinion must be resolved in the same manner that disputes or differences of opinion under the Project Agreement are resolved. Accordingly, the provisions of clauses 46 (*Dispute Resolution*) and 47 (*Arbitration*) of the Project Agreement are incorporated into this Lease but as if:

- (a) the only persons party to the Project Agreement, and the only persons party to the relevant dispute or difference of opinion, are the parties to the relevant dispute; and
- (b) the only matters for expert determination under those provisions are the matters referred for expert determination under this Lease.

17 Assignment and subletting

17.1 Restrictions on assignment

Other than in accordance with the Project Agreement and this Lease, Project Co must not:

- (a) assign, novate, transfer, mortgage, charge or otherwise deal with its interest in this Lease;
- (b) grant leases, subleases and licences over parts of the Leased Area; or
- (c) assign, transfer, dispose of, part with possession of, create or allow any interest in, or otherwise deal with any of its rights or obligations under this Lease,

without the prior consent of the State.



17.2 Subletting and other dealings

Project Co may sublease parts of the Leased Area for the Permitted Commercial Opportunities in accordance with the terms of the Project Agreement, and any such sublease must not have any expiry date any later than one day before the end of the Term.

17.3 Access to contractors and others

The State acknowledges that Project Co may grant access to the Leased Area to the D&C Subcontractor, the Maintenance Subcontractor, Commercial Opportunities Subcontractors and other Subcontractors (and any of their employees, servants, agents and contractors) for the Permitted Uses.

18 Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Lease:

- (a) **(in writing)**: must be in writing;
- (b) **(addressees)**: must be addressed as set out below (or as otherwise notified by that party to each other party from time to time);

State

Attention: [insert]

Address: [insert]

Email: [insert]

Project Co

Attention: [insert]

Address: [insert]

Email: [insert]

- (c) **(signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(form of delivery)**: must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by both parties) to the email address of the addressee set out in clause 18(b); and
- (e) **(taken to be received)**: are taken to be received by the addressee at the address set out in clause 18(b):
 - (1) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00am on the next Business Day;
 - (2) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and

- (3) in the case of email, the first to occur of:
- (A) receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - (B) the time that the communication enters an information system which is under the control of the addressee; or
 - (C) the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00am on the next Business Day.

19 Representations and Warranties

19.1 State's representations and warranties

The State represents and warrants for the benefit of Project Co that:

- (a) **(power to execute)**: it has the power to execute, deliver and carry out its obligations under this Lease and all necessary action has been taken to authorise that execution, delivery and performance;
- (b) **(binding obligation)**: this Lease constitutes a valid and legally binding obligation on it in accordance with its terms; and
- (c) **(no violation of any Law)**: the execution, delivery and performance of this Lease does not violate any Law to which the State is subject.

19.2 Project Co's representations and warranties

Project Co represents and warrants for the benefit of the State that:

- (a) **(power to execute)**: it has the power to execute, deliver and carry out its obligations under this Lease and all necessary action has been taken to authorise that execution, delivery and performance;
- (b) **(no violation of any Law)**: the execution, delivery and performance of this Lease does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;
- (c) **(binding obligation)**: this Lease constitutes a valid and legally binding obligation on it in accordance with its terms; and
- (d) **(duly registered)**: it is duly registered, properly constituted and remains in existence.



20 Miscellaneous

20.1 Governing law and jurisdiction

- (a) **(Governing law):** This Lease is governed by, and must be construed according to, the Laws of Victoria, Australia.
- (b) **(Jurisdiction):** Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Lease.

20.2 Entire agreement

To the extent permitted by Law, in relation to its subject matter, this Lease:

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

20.3 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to both parties) required by Law or reasonably requested by another party to give effect to this Lease.

20.4 Surviving provisions

- (a) **(Survival):** All provisions of this Lease which, expressly or by implication from their nature, are intended to survive the rescission, termination or expiration of this Lease will survive the rescission, termination or expiration of this Lease including any provision in connection with:
 - (1) the State's rights to set-off and recover money;
 - (2) confidentiality or privacy;
 - (3) Intellectual Property Rights;
 - (4) any obligation to make any Records available to the State;
 - (5) any indemnity or financial security given in accordance with this Lease; or
 - (6) any right or obligation arising on termination of this Lease.
- (b) **(Interpretation):** No provision of this Lease which is expressed to survive the termination of this Lease will prevent any other provision of this Lease, as a matter of interpretation, also surviving the termination of this Lease.

20.5 Waiver

- (a) **(Writing):** A waiver given by a party in accordance with this Lease is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver):** A failure to, a delay in or the partial exercise or enforcement of a right, power or remedy provided by Law or in accordance with this Lease by a



party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or in accordance with this Lease.

- (c) **(No waiver of another breach):** No waiver of a breach of a term of this Lease operates as a waiver of another breach of that term or of a breach of any other term of this Lease.

20.6 Consents, approvals and directions

- (a) **(State):** A consent or approval required in accordance with this Lease from the State may be given or withheld, or may be given subject to any conditions, as the State thinks fit, unless this Lease expressly provides otherwise.
- (b) **(Project Co):** A consent or approval required under this Lease from Project Co may not be unreasonably withheld or delayed, unless this Lease expressly provides otherwise.

20.7 Amendments

- (a) **(Agreement):** Except as otherwise expressly provided in this Lease, this Lease may only be varied by a deed executed by or on behalf of each party.
- (b) **(Other State Project Documents):** Except as otherwise expressly provided in the State Project Documents, no amendment to any other State Project Document is valid or binding on a party unless made in writing and executed by the State and all other parties to the relevant State Project Document.

20.8 Severance

If, at any time, a provision of this Lease is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this Lease; or
- (b) that provision under the Law of any other jurisdiction.

20.9 Counterparts

This Lease may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same agreement.

20.10 Moratorium legislation

To the extent permitted by Law, the application to this Lease or to any party of any Law or any requirement or any moratorium having the effect of extending or reducing the Term, reducing or postponing the payment of Rent or any part of it or otherwise affecting the operation of the terms of this Lease or its application to any party is excluded and negated.

20.11 Proportionate liability

- (a) **(Exclusion of Wrongs Act):** The operation of Part IVAA of the *Wrongs Act 1958* (Vic) is excluded in relation to all and any rights, obligations or liabilities of



either party under this Lease whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

- (b) **(Rights, obligations and liabilities)**: Without limiting clause 20.11(a), the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Lease and not otherwise, whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

20.12 Indemnities

- (a) **(Continuing liability)**: Each indemnity in this Lease is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Lease.
- (b) **(Expense not necessary)**: It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Lease.
- (c) **(Payable on demand)**: A party must pay on demand any amount it must pay under an indemnity in this Lease.
- (d) **(Indemnity held on trust)**: The State and Project Co acknowledge and agree that:
- (1) each indemnity or promise referred to in this Lease in favour of any of the State's Associates is held on trust by the State for the benefit of any of the State's Associates from the date of this Lease; and
 - (2) the consent of the State's Associates referred to in clause 20.12(d)(1) will not be required for any amendment to, or waiver of rights under this Lease.

20.13 No representation or reliance

- (a) **(No representation)**: Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Lease, except for representations or inducements expressly set out in this Lease.
- (b) **(No reliance)**: Each party acknowledges and confirms that it does not enter into this Lease in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Lease.

20.14 Exclusion of express and implied covenants, powers and provisions

- (a) **(Transfer of Land Act 1958 (Vic) not to apply)**: The covenants and powers implied by the *Transfer of Land Act 1958 (Vic)* do not apply and will not be implied in this Lease except to the extent those covenants and powers are included in the covenants and powers contained in this Lease.
- (b) **(Property Law Act 1958 (Vic) not to apply)**: The provisions of section 144 of the *Property Law Act 1958 (Vic)* do not apply and will not be implied in this Lease.



Signing page

Executed as a deed



Attachment 1

Leased Area Plan



HERBERT
SMITH
FREEHILLS

Execution Version

Schedule 9

Part B – Construction Licence



HERBERT
SMITH
FREEHILLS

Metro Tunnel
Tunnel and Stations PPP

Construction Licence

The Minister for Public Transport on behalf of the
Crown in right of the State of Victoria

Cross Yarra Partnership



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Construction Licence

Date ►

Between the parties

| | |
|-------|---|
| State | The Minister for Public Transport on behalf of the Crown in right of the State of Victoria |
|-------|---|

| | |
|------------|---|
| Project Co | <ol style="list-style-type: none">1 [not disclosed];2 [not disclosed];3 [not disclosed]; and4 [not disclosed], <p>(together, Cross Yarra Partnership) (ABN 57 956 065 885) of Level 8, 136 Exhibition Street, Melbourne, VIC 3000, Australia.</p> |
|------------|---|

| | |
|----------|--|
| Recitals | <ol style="list-style-type: none">1 The background to the Project is set out in the Project Agreement.2 As part of the development and implementation of the Project, the State has agreed to grant, and Project Co has agreed to accept, a licence in respect of the Licensed Construction Areas on the terms and conditions contained in this Licence.3 The State has the power to grant this Licence under:<ul style="list-style-type: none">• section 173 of the Relevant Legislation;• section 75 of the <i>Land Acquisition and Compensation Act 1986</i> (Vic) as it has effect pursuant to section 119 of the Relevant Legislation; or• otherwise. |
|----------|--|

This agreement witnesses as follows:



1 Definitions and interpretation

1.1 Project Agreement definitions

Unless otherwise expressly defined, expressions used in this Licence have the meanings given to them in the Project Agreement.

1.2 Definitions

In this Licence, unless the context otherwise requires:

| Term | Meaning |
|--|--|
| Access Licence (Chep) | the licence entitled 'Access licence' between VicTrack (as head lessor), Chep (as licensor) and the Secretary (as licensee), a draft of which was provided to Project Co on 8 December 2017. |
| Access Licence (Secretary) | the licence entitled 'Access licence' between the Secretary (as licensor) and Chep (as licensee), a draft of which was provided to Project Co on 8 December 2017. |
| Amended Licensed Construction Area Plan | has the meaning given in clause 4.1(b)(1). |
| Arden Access Licences | means: <ol style="list-style-type: none">1 the Access Licence (Chep); and2 the Access Licence Secretary. |
| Authority | means any government or governmental, semi-governmental or local government authority, local council, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality or any person having jurisdiction over the Licensed Construction Areas, Project Co, the State or any of them or anything in relation to any of them. |
| Chep | means Chep Pallectron Solutions Pty Ltd (ACN 161 486 960). |
| City Ford Lease | the lease entitled 'Ground Lease, 734 Elizabeth Street, Melbourne' between the University and the Secretary, a draft of which was provided to Project Co on 15 November 2017. |
| Federation Square Lease | the lease between Fed Square Pty Ltd and the Secretary, a draft of which was provided to Project Co on 15 November 2017. |



| Term | Meaning |
|--|---|
| Hand-back Works | has the meaning given in the Hand-back Works Deed. |
| Hand-back Works Deed | the document entitled 'Hand-back Works Deed' between the University and MMRA dated March 2017, as amended by the document entitled 'Letter of Agreement – Variation of Hand-back Works Deed', a draft of which was provided to Project Co on 12 December 2017. |
| LACA | the <i>Land Acquisition and Compensation Act 1986</i> (Vic). |
| Licence | means this construction licence and includes all Schedules, Exhibits, Attachments and Annexures to it. |
| Licence Commencement Date | means the later of the date: <ol style="list-style-type: none">1 of Financial Close; or2 on which the first parcel of land comprising the Licensed Construction Areas is required to be made available to Project Co in accordance with the Land Availability Plans. |
| Licence Fee | means [not disclosed] |
| Licensed Construction Area Plan | has the meaning given in clause 4.1 and includes any Amended Licensed Construction Area Plan. |
| Licensed Construction Areas | means that part of the subdivided stratum (limited in height and depth) which is: <ol style="list-style-type: none">1 included in the Land Availability Plans; and2 identified in the Licensed Construction Area Plan. |
| Permitted Use | means: <ol style="list-style-type: none">1 the performance of the D&C Activities and the Final Acceptance Works in accordance with the Project Agreement and this Licence;2 the storage and location of any equipment, vehicles and machinery necessary for the carrying out of the D&C Activities and the Final Acceptance Works, unless otherwise specified by the State;3 the exercise by Project Co of its rights and the compliance by Project Co with its obligations under the Project Agreement, to the extent to which they relate to the Licensed Construction |



| Term | Meaning |
|------------------------------------|--|
| | Areas; and 4 any other purpose agreed by the State. |
| Project Agreement | the document entitled "Project Agreement" between the State and Project Co dated on or about the date of this Licence. |
| Requirement | includes any requirement, notice, order, demand, direction, recommendation, request, stipulation or similar notification received from or given by any Authority or pursuant to any Law whether in writing or otherwise and notwithstanding to whom such a Requirement is addressed or directed. |
| Secretary | the Secretary to the Department of Economic Development, Jobs, Transport and Resources on behalf of the Crown in the right of the State of Victoria. |
| Shrine Licence | the licence granted under section 17B of the <i>Crown (Reserves) Act 1978</i> (Vic) dated 18 October 2016 between the Shrine Licensor and the Secretary. |
| Shrine Licensed Area | the area referred to in the Shrine Licence as the 'licensed premises'. |
| Shrine Licensor | the Shrine of Remembrance trustees appointed pursuant to section 3 of the <i>Shrine of Remembrance Act 1978</i> (Vic). |
| Temporary Works Area (Chep) | has the meaning given to 'Temporary Works Area' in the Access Licence (Chep). |
| Term | the term of this Licence as described in clause 6. |
| VicTrack General Licence | the document titled 'Melbourne Metro Rail Project – Licence For Access to and Use of Unleased VicTrack Land for the Purposes of the Project' dated 15 September 2016 between VicTrack and the Secretary. |
| University | the University of Melbourne (ABN 84 002 705 224). |



1.3 Interpretation

In this Licence:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa and a word indicating a gender includes every other gender;
- (c) **(references)**: a reference to:
- (1) a party, clause, Schedule, Exhibit, Attachment or Annexure is a reference to a party, clause, Schedule, Exhibit, Attachment or Annexure of or to this Licence; and
 - (2) a section is a reference to a section of a Schedule;
- (d) **(document as amended)**: a reference to this Licence or to any other deed, agreement, document or instrument includes a reference to this Licence or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **(“includes”)**: “includes” will be read as if followed by the phrase “(without limitation)”;
- (j) **(“or”)**: the meaning of “or” will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) **(“\$”)**: a reference to “\$”, “AUD” or “dollar” is to Australian currency;
- (m) **(time)**: a reference to time is a reference to time in Melbourne, Australia;
- (n) **(rights)**: a reference to a right includes any benefit, remedy, function, duty, obligation, Liability, interest, entitlement, title, discretion, authority or power;
- (o) **(obligations and liabilities)**: a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;



- (p) (“**may**”): the term “may”, when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;
- (q) (**construction**): where there is a reference to an Authority, institute or association or other body referred to in this Licence which:
 - (1) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Licence is deemed to refer to that other entity; or
 - (2) ceases to exist, this Licence is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (r) (“**remedy**”): the use of the word “remedy” or any form of it in this Licence means that the event to be remedied must be remedied or its effects overcome; and
- (s) (**contra proferentem rule not to apply**): each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

1.4 Inconsistency

Where there is an inconsistency, ambiguity, or discrepancy between this Licence and any other State Project Document, then the order of precedence in clause 2.3 (*Inconsistency between State Project Documents*) of the Project Agreement applies.

1.5 Business Day

If the day on or by which anything is to be done in accordance with this Licence is not a Business Day, that thing must be done no later than the next Business Day.

1.6 Provisions limiting or excluding liability, rights or obligations

- (a) A right of the State or an obligation of Project Co under this Licence will not limit or exclude any other right of the State or obligation of Project Co under this Licence unless expressly stated.
- (b) Any provision of this Licence which seeks, either expressly or by implication, to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.

1.7 Approvals, directions and notices in writing

Unless otherwise expressly provided in this Licence or agreed between the parties, all approvals, consents, directions, requirements, requests, claims, notices, agreements and demands given or required to be given under this Licence must be given in writing.

1.8 Prior approval or consent

Where Project Co is required by this Licence to obtain the State’s consent or approval to an action, document or thing, unless otherwise expressly stated, that consent or approval must be obtained prior to the actions, document or thing occurring or coming into effect.



1.9 Action without delay

Unless there is a provision in this Licence which specifies a period of time in which something must be done by the parties, all things must be done without undue delay.

1.10 Relationship of the parties

Unless otherwise expressly provided, nothing in this Licence:

- (a) **(no additional relationship)**: creates a partnership, joint venture, fiduciary, employment or agency relationship between the parties; or
- (b) **(no good faith)**: imposes any duty of good faith on the State.

1.11 State's rights and obligations

- (a) **(Acknowledgement)**: The parties acknowledge the substance, operation and potential effect and consequences of clause 2.13 (*State's executive rights and duties*) of the Project Agreement in relation to this Licence.
- (b) **(No Claim)**: Subject to clause 1.11(c), Project Co will not be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its statutory or executive rights or duties.
- (c) **(Liability for breach)**: Clauses 1.11(a) and 1.11(b) do not limit any Liability which the State would have to Project Co under this Licence as a result of a breach by the State of a term of this Licence but for these clauses.

1.12 Reasonable endeavours of the State

Any statement in this Licence providing that the State will use or exercise "reasonable endeavours" or "act reasonably" in relation to an outcome, means that the State:

- (a) **(relevant steps)**: will take steps to bring about the relevant outcome so far as it is reasonably able to do so, having regard to its resources and other responsibilities;
- (b) **(no guarantee)**: cannot guarantee the relevant outcome; and
- (c) **(no obligation)**: is not required to:
 - (1) exercise a right of any Government Party, or to influence, over-ride, interfere with or direct any other Government Party in the proper exercise and performance of its legal, statutory or executive duties and functions;
 - (2) exercise a power or discretion in a manner that the State regards as not in the public interest;
 - (3) develop or implement new policy;
 - (4) procure legislation; or
 - (5) act in any way that the State regards as not in the public interest.

1.13 Cost of carrying out obligations

Each party must carry out its obligations under this Licence at its own cost, unless expressly provided otherwise.



2 Delegation

2.1 Right to delegate

Project Co acknowledges that the State may exercise any right, statutory or otherwise, it has to appoint a person as a delegate to perform any of its rights under this Licence.

2.2 Notice of delegation

The State will give Project Co notice of:

- (a) **(delegate)**: any delegate so appointed, setting out the delegated rights and including a copy of the relevant instrument of appointment; and
- (b) **(revocation or change)**: any revocation or change of any delegation contemplated by clause 2.3.

2.3 Revocation or amendment of delegation

Any such delegation may be revoked, changed, delegated, limited or made subject to such conditions as the State determines from time to time.

2.4 No limitation of obligations

The appointment of a delegate to perform some or all of the rights of the State under this Licence does not limit the rights or obligations of the State under this Licence.

3 Negation of representations and warranties

The State makes no representations (express or implied) and gives no warranties (express or implied):

- (a) **(suitability of purposes)**: that the Licensed Construction Areas or any other land is now or will remain suitable or adequate for all or any of the purposes contemplated by this Licence or in the Project Agreement; and
- (b) **(Project Agreement representations)**: as to the matters specified in clause 50.1 (*No representations from the State*) of the Project Agreement,

and all warranties (if any) and representations (if any) implied by Law, are to the extent permitted by Law, expressly negated.

4 Grant of Licence

4.1 Licensed Construction Areas

- (a) **(Licensed Construction Areas at the Licence Commencement Date)**: At the Licence Commencement Date, the Licensed Construction Areas will, for the purposes of this Licence, be comprised of the land identified in the plan set out in Attachment 1 (**Licensed Construction Area Plan**).



- (b) **(Amendment of the Licensed Construction Areas):** If, at any time during the Term, the parties to this Licence wish to vary, for the purposes of this Licence, the land which comprises the Licensed Construction Areas or the land identified in the Land Availability Plans are varied in accordance with clause 6.3 (*Adjustment of Land Availability Plans*) of the Project Agreement, then:
- (1) the State must prepare and provide Project Co with an amended version of the Licensed Construction Area Plan (**Amended Licensed Construction Area Plan**), which identifies any amendments to Licensed Construction Areas; and
 - (2) both parties must sign the Amended Licensed Construction Area Plan as an acknowledgement of their agreement to the variation of the Licensed Construction Areas,
- and from the date on which the Amended Licensed Construction Area Plan has been signed by both parties:
- (3) the Amended Licensed Construction Area Plan will be deemed to have replaced the Licensed Construction Area Plan; and
 - (4) the Licensed Construction Areas will, for the purposes of this Licence, be deemed to be the areas shown on the Amended Licensed Construction Area Plan.

4.2 Licence over the Licensed Construction Areas

- (a) **(Grant of licence):** The State grants to Project Co for the Term a non-exclusive licence to use the Licensed Construction Areas for the Permitted Use on the terms of this Licence and the Project Agreement.
- (b) **(Period):** Project Co must only remain on the Licensed Construction Areas for the minimum period as is reasonably necessary for the Permitted Use.
- (c) **(Sub-licence):** Project Co may sub-licence all or part of the Licensed Construction Areas with the consent of the State, such consent not to be unreasonably withheld.

4.3 Nature of interest

- (a) **(Nature of interest):** Project Co acknowledges and agrees that:
 - (1) the rights conferred on Project Co by this Licence rest in contract only and do not confer a proprietary interest on Project Co; and
 - (2) its rights and obligations arising out of or in relation to the Licensed Construction Areas are as set out in the Project Agreement.
- (b) **(Ownership and access)** Without limiting the generality of clause 4.3(a), Project Co acknowledges and agrees that:
 - (1) ownership and control of the Licensed Construction Areas remains vested in the relevant owner of the land at all times;
 - (2) this Licence does not grant Project Co ownership, control or legal entitlement to exclusive possession of the Licensed Construction Areas nor does it extend to Project Co an entitlement to rents or profits in respect of the Licensed Construction Areas;
 - (3) Project Co and any of its Associates can access the Licensed Construction Areas only for the Permitted Use; and



- (4) Project Co may not construct any permanent works on the 'Temporary Land' (as described in the Land Availability Plans Schedule).

4.4 Responsibility of Project Co

Project Co acknowledges and agrees that it has the same responsibilities to third parties in connection with persons, property and all other aspects of the Licensed Construction Areas which it would have if it held the freehold title to the Licensed Construction Areas.

4.5 Liability

The parties acknowledge and agree that Project Co is required to indemnify the State under clause 42 (*Risk and Liability*) of the Project Agreement in connection with its use and occupation of the Licensed Construction Areas.

4.6 Conditions on licence

Project Co acknowledges that to the extent that land access has been procured pursuant to a temporary occupation under section 75 of the *Land Acquisition and Compensation Act 1986* (Vic) (**LACA**) as it has effect pursuant to section 119 of the *Major Transport Projects Facilitation Act 2009* (Vic) (**MTPF Act**):

- (a) Project Co must:
- (1) not use the land for any purpose other than as permitted in section 75(2) of the LACA;
 - (2) comply with the obligations in relation to occupation of land in section 76 of the LACA; and
 - (3) to the extent that the landowner or occupier requires separation of the land, comply with the requirements in section 79 of the LACA; and
- (b) where the State is required to serve notice pursuant to section 75(3) of the LACA to procure land access, Project Co must give plans which meet the requirements for issuing a notice to occupy land under section 75 of the LACA in accordance with:
- (1) the time for delivery of 'Plans' in clause 6.3(h) of the Project Agreement (*Adjustment of Land Availability Plans*);
 - (2) the Land Availability Plans; and
 - (3) the Steps Plan Schedule to the Project Agreement.

5 Payments

5.1 Licence Fee

Project Co must pay the Licence Fee to the State, if demanded by the State.

5.2 Utilities

The parties acknowledge and agree that the rights and obligations of Project Co in relation to Utilities are set out in the Project Agreement, including clause 16.5 (*Utilities*) of the Project Agreement.



5.3 Payment by the State

If Project Co defaults in the payment of any of the costs or charges referred to in clause 5.2, the State may (without limiting any other rights and remedies of the State) pay the costs or charges, and any amount paid by the State will be a debt due and payable from Project Co to the State.

6 Term of Licence

This Licence takes effect on the Licence Commencement Date and continues until the earlier of:

- (a) the termination of the Project Agreement; and
- (b) the Date of Final Acceptance.

7 Approval to demolish structures, etc

Except where specified or required under the PS&TR, Project Co must submit to the State for approval (with such approval not to be unreasonably withheld by the State), prior to submitting to the responsible authority under any relevant planning scheme (if required), any proposal to demolish any structure or building in, on, under or over the Licensed Construction Areas.

8 Stakeholder requirements

8.1 VicTrack General Licence

- (a) **(Acknowledgement):** Project Co acknowledges that it has received a copy of the VicTrack General Licence.
- (b) **(use of Licensed Construction Area):** Project Co must, and must ensure that its Associates:
 - (1) except as required by Law, do not do, or omit to do anything which may cause the Secretary to breach the VicTrack General Licence; and
 - (2) in using or occupying the Licensed Construction Area, or performing the D&C Activities and the Final Acceptance Works, do all things required to be done by the Secretary pursuant to the VicTrack General Licence, and carry out all of the Secretary's obligations under the VicTrack General Licence, except for the Secretary's obligations under clauses 3(d), 3(e), 8(a), 8(b) and 9 of the VicTrack General Licence.

8.2 Shrine Licence

- (a) **(Acknowledgement):** Project Co acknowledges that it has received a copy of the Shrine Licence.



- (b) **(Use of Shrine Licenced Area):** Project Co must, and must ensure that its Associates, except as required by Law, do not do, or omit to do anything which may cause the Secretary to breach the Shrine Licence.
- (c) **(Approvals):** Project Co must:
 - (1) undertake all fire protection works on the Shrine Licenced Area required by Law to the satisfaction of the Shrine Licensor and the responsible fire Authority pursuant to clause 2.6 of the Shrine Licence; and
 - (2) not erect or permit the erection of any permanent improvement on the Shrine Licenced Area without the Shrine Licensor's written approval pursuant to clause 3.8 of the Shrine Licence.
- (d) **(Shrine-specific obligations):** Project Co must perform the obligations of the Secretary under Special Conditions 1 to 17 of the Shrine Licence in respect of the Shrine Licenced Area, except for Special Conditions 6(a) and 6(b).

8.3 Federation Square Lease

- (a) **(Acknowledgement):** Project Co acknowledges that it has received a copy of the Federation Square Lease.
- (b) **(Use of Federation Square Land):** On and from execution of the Federation Square Lease, Project Co must, and must ensure that its Associates, except as required by Law, do not do, or omit to do anything which may cause the Secretary to breach the Federation Square Lease.

8.4 City Ford Lease

- (a) **(Acknowledgement):** Project Co acknowledges that it has received a copy of the City Ford Lease.
- (c) **(Use of City Ford Premises):** On and from execution of the City Ford Lease, Project Co must, and must ensure that its Associates, except as required by Law, do not do, or omit to do anything which may cause the Secretary to breach the City Ford Lease.
- (d) **(University access requirements):** Project Co acknowledges the University's right of access under clause 2.1 and 2.2 of the City Ford Lease and must reasonably facilitate the University's exercise of its right of access.
- (e) **(City Ford Lease-specific obligations):** Project Co must perform the obligations of the Secretary under clause 6.2(a), 6.3(b), 6.4 and 11.1 of the City Ford Lease.

8.5 Hand-back Works Deed

- (a) **(Acknowledgement):** Project Co acknowledges that it has received a copy of the Hand-back Works Deed.
- (b) **(No breach of Hand-back Works Deed):** On and from execution of the Hand-back Works Deed, Project Co must, and must ensure that its Associates, except as required by Law, do not do, or omit to do anything which may cause MMRA to breach the Hand-back Works Deed.
- (c) **(Hand-back Works obligations):** Project Co must:



- (1) provide notice to MMRA no later than 40 days' prior to the commencement of the Hand-back Works;
- (2) engage and consult with the University and consider the comments of the University in accordance with clause 5.1(b) of the Hand-back Works Deed;
- (3) provide information to the University as required under clause 5.2 of the Hand-back Works Deed; and
- (4) perform the obligation of MMRA under clause 9.1 of the Handback Works Deed.

8.6 Arden Access Licences

- (a) **(Acknowledgement)**: Project Co acknowledges that it has received copies of the Arden Access Licences.
- (b) **(No breach of Access Licences)**: On and from execution of the Arden Access Licences, Project Co must, and must ensure that its Associates, except as required by Law, do not do, or omit to do anything which may cause the Secretary to breach the Arden Access Licences.
- (c) **(Access Licence (Secretary) obligations)**: Project Co must perform the obligation of the Secretary under clause 4(c) of the Access Licence (Secretary).
- (d) **(Access Licence (Chep) obligations)**: Project Co must:
 - (1) act in conjunction with the Secretary and Chep to agree in good faith any other measures with respect to the Temporary Works Area (Chep) under clause 3(b)(3) of the Access Licence (Chep); and
 - (2) perform the obligations of the Secretary under clause 3(b)(2), 5.2, 6(a)-(c), 6(f), 6(j), 8(c) and Attachment 1(c)-(e) of the Access Licence (Chep).

9 Harm minimisation

Project Co must:

- (a) **(use of Licensed Construction Area)**: in using or occupying the Licensed Construction Area; and
- (b) **(performing D&C Activities and the Final Acceptance Works)**: except to the extent necessary to undertake the D&C Activities and the Final Acceptance Works, and otherwise to comply with its obligations under the Project Agreement,

cause as little harm and inconvenience and do as little damage as reasonably possible to the Licensed Construction Areas (and any adjacent area) and any improvement or foliage on the Licensed Construction Areas or any adjacent area (including any Relevant Utility Infrastructure).

10 Removal of materials and make good

Without limiting its obligations under the Project Agreement:



- (a) **(during Term)**: during the Term, as soon as practicable after completion of any Project Activities on any part of the Licensed Construction Areas; and
- (b) **(prior to Term ending)**: prior to the end of the Term,
Project Co must:
 - (c) **(removal of equipment)**: remove all plant, equipment, machinery, facilities and vehicles (except to the extent they form part of the Relevant Infrastructure);
 - (d) **(clean and safe condition)**: ensure that the relevant part of the Licensed Construction Areas is left in a clean and safe condition;
 - (e) **(removal of rubbish)**: ensure that all waste, rubbish, debris and redundant materials are removed promptly from the Licensed Construction Areas in accordance with Best D&C Practices;
 - (f) **(public use and occupation)**: without limiting clause 10(d), ensure that any relevant part of the Licensed Construction Areas which will become open to the public is safe for public use and occupation; and
 - (g) **(damage)**: except to the extent necessary to comply with its obligations under the Project Agreement (including where specified or required under the PS&TR), make good all damage caused by Project Co's use and occupation of the Licensed Construction Areas.

11 Maintenance and repair

11.1 Maintenance

Project Co, at its cost, during the Term and any extension or holding over must keep and maintain the Licensed Construction Areas in accordance with the Project Agreement.

11.2 State's right of access

Without limitation to any rights of access in the Project Agreement, the State and any officer, agent, adviser, consultant, contractor or employee of the State may at all reasonable times enter the Licensed Construction Areas (with or without vehicles and equipment), including to:

- (a) **(investigations)**: make reasonable investigations as the State, any officer, agent, adviser, consultant, contractor or employee of the State or those authorised by the State deem necessary for the purpose of ascertaining whether or not there has been any breach of any of the terms, covenants or conditions expressed or implied in this Licence;
- (b) **(compliance)**: carry out any maintenance, repairs, alterations, additions or other work necessary to comply with the State's obligations under this Licence, at Law or in respect of the exercise by the State of any statutory functions;
- (c) **(Project Co repairs)**: carry out any maintenance, repairs, alterations, additions or other work which the State elects to do but which Project Co is required or liable to do under this Licence by any Law or by any Requirement but fails to do so within the time specified or otherwise allowed for that work to be done; or
- (d) **(other powers)**: exercise any other powers and rights of the State under this Licence or the Project Agreement.



12 GST

- (a) **(Supply)**: If GST is or will be or is purported to be payable on the supply of any good, service or thing (a **Supply**) by either party under this Licence, to the extent the consideration otherwise provided for that Supply is not stated to include an amount in respect of GST on that Supply, the party receiving the Supply must pay to the party making the Supply on demand a sum equal to any GST payable by the supplier in respect of that Supply.
- (b) **(Reimbursement)**: To the extent that one party is required to reimburse the other party for costs incurred by the other party, those costs do not include any amount in respect of GST for which the other party is entitled to claim an input tax credit.
- (c) **(Valid tax invoice)**: A party's obligation to pay an amount under clause 12(a) is subject to a valid tax invoice being delivered to that party.
- (d) **(Licence Fee)**: The Licence Fee under this Licence is exclusive of GST.
- (e) **(Project Agreement to prevail)**: If clause 59 (*Taxes*) of the Project Agreement would apply in connection with a Taxable Supply to which this clause 12 also applies then clause 59 (*Taxes*) of the Project Agreement will apply in connection with that supply and the provisions of this clause 12 (but for this clause 12(e)) will not apply.
- (f) **(Definitions)**: In this clause 12, unless otherwise defined in this Licence, terms used have the meanings given to them in the GST Law.

13 Dispute Resolution and Arbitration

If any dispute or difference of opinion arises between the parties under this Licence, each party may refer any such matter for resolution in accordance with this clause 13 and the dispute or difference of opinion must be resolved in the same manner that disputes or differences of opinion under the Project Agreement are resolved. Accordingly, the provisions of clauses 46 (*Dispute Resolution*) and 47 (*Arbitration*) of the Project Agreement are incorporated into this Licence but as if:

- (a) the only persons party to the Project Agreement, and the only persons party to the relevant dispute or difference of opinion, are the parties to the relevant dispute; and
- (b) the only matters for expert determination under those provisions are the matters referred for expert determination under this Licence.

14 Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) under or in connection with this Licence:

- (a) **(in writing)**: must be in writing;
- (b) **(addressees)**: must be addressed as set out below (or as otherwise notified by that party to each other party from time to time);



State

Attention: [not disclosed]

Address: [not disclosed]

Email: [not disclosed]

Project Co

Attention: [not disclosed]

Address: [not disclosed]

Email: [not disclosed]

- (c) **(signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(form of delivery)**: must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by both parties) to the email address of the addressee set out in clause 14(b); and
- (e) **(taken to be received)**: are taken to be received by the addressee at the address set out in clause 14(b):
 - (1) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
 - (2) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and
 - (3) in the case of email, the first to occur of:
 - (A) receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - (B) the time that the communication enters an information system which is under the control of the addressee; or
 - (C) the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day.

15 Representations and Warranties

15.1 State's representations and warranties

The State represents and warrants for the benefit of Project Co that:



- (a) **(power to execute)**: it has the power to execute, deliver and carry out its obligations under this Licence and all necessary action has been taken to authorise that execution, delivery and performance;
- (b) **(binding obligation)**: this Licence constitutes a valid and legally binding obligation on it in accordance with its terms; and
- (c) **(no violation of any Law)**: the execution, delivery and performance of this Licence does not violate any Law to which the State is subject.

15.2 Project Co's representations and warranties

Project Co represents and warrants for the benefit of the State that:

- (a) **(power to execute)**: it has the power to execute, deliver and carry out its obligations under this Licence and all necessary action has been taken to authorise that execution, delivery and performance;
- (b) **(no violation of any Law)**: the execution, delivery and performance of this Licence does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;
- (c) **(binding obligation)**: this Licence constitutes a valid and legally binding obligation on it in accordance with its terms; and
- (d) **(duly registered)**: it is duly registered, properly constituted and remains in existence.

16 Miscellaneous

16.1 Governing Law and jurisdiction

- (a) **(Governing Law)**: This Licence is governed by, and must be construed according to, the Laws of Victoria, Australia.
- (b) **(Jurisdiction)**: Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Licence.

16.2 Entire agreement

To the extent permitted by Law, in relation to its subject matter, this Licence and the other State Project Documents:

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

16.3 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to that party) required by Law or reasonably requested by another party to give effect to this Licence.



16.4 Surviving provisions

- (a) **(Survival):** All provisions of this Licence which, expressly or by implication from their nature, are intended to survive the rescission, termination or expiration of this Licence will survive the rescission, termination or expiration of this Licence.
- (b) **(Interpretation):** No provision of this Licence which is expressed to survive the termination of this Licence will prevent any other provision of this Licence, as a matter of interpretation, also surviving the termination of this Licence.

16.5 Waiver

- (a) **(Writing):** A waiver given by a party in accordance with this Licence is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver):** A failure to, a delay in or the partial exercise or enforcement of a right, power or remedy provided by Law or in accordance with this Licence by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or in accordance with this Licence.
- (c) **(No waiver of another breach):** No waiver of a breach of a term of this Licence operates as a waiver of another breach of that term or of a breach of any other term of this Licence.

16.6 Consents, approvals and directions

- (a) **(State):** A consent or approval required in accordance with this Licence from the State may be given or withheld, or may be given subject to any conditions, as the State (in its absolute discretion) thinks fit, unless this Licence expressly provides otherwise.
- (b) **(Project Co):** A consent or approval required under this Licence from Project Co may not be unreasonably withheld, unless this Licence expressly provides otherwise.

16.7 Amendments

Except as otherwise expressly provided in this Licence, this Licence may only be varied by a deed executed by or on behalf of each party.

16.8 Severance

If, at any time, a provision of this Licence is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this Licence; or
- (b) that provision under the Law of any other jurisdiction.

16.9 Counterparts

This Licence may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the agreement of each party who



has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same agreement.

16.10 Moratorium

To the extent permitted by Law, the application to this Licence or to any party of any Law or any requirement or any moratorium having the effect of extending or reducing the Term, reducing or postponing the payment of the Licence Fee or any part of it or otherwise affecting the operation of the terms of this Licence or its application to any party is excluded and negated.

16.11 Proportionate liability

- (a) **(Exclusion of Wrongs Act):** The operation of Part IVAA of the *Wrongs Act 1958* (Vic) is excluded in relation to all and any rights, obligations or liabilities of either party under this Licence whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) **(Rights, obligations and liabilities):** Without limiting clause 16.11(a), the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Licence and not otherwise, whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

16.12 No merger

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this Licence. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

16.13 No representation or reliance

- (a) **(No representation):** Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Licence, except for representations or inducements expressly set out in this Licence.
- (b) **(No reliance):** Each party acknowledges and confirms that it does not enter into this Licence in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Licence.



Signing page

Executed as an agreement

State

Executed by **the Honourable
Jacinta Allan MP, in her
capacity as the Minister for
Public Transport,
on behalf of the Crown in right
of the State of Victoria** in the
presence of

sign here ►

Witness

Signature of Minister

print name _____



CY Partner 1

Signed for
[not disclosed]
by its attorneys

sign here ► _____
Attorney

Attorney

print name _____

in the presence of

sign here ► _____
Witness

Witness

print name _____

CY Partner 2

Signed for
[not disclosed]
by its attorney

in the presence of

sign here ► _____
Attorney

sign here ► _____
Witness

print name _____

print name _____

CY Partner 3

Signed for
[not disclosed]
by its attorney

in the presence of

sign here ► _____
Attorney

sign here ► _____
Witness

print name _____

print name _____



CY Partner 4

Signed for
[not disclosed]
by its attorney

in the presence of

sign here ► _____
Attorney

sign here ► _____
Witness

print name _____

print name _____



Attachment 1

Licensed Construction Area Plan

| Land (refer to Plans in Land Availability Plans Schedule) | | Source of land access rights |
|--|---|-------------------------------------|
| Arden Government Land (VicTrack) | The land shown hatched pink including that land hatched pink and shaded blue, orange and brown and marked A1 on Project Drawing Number with reference [TAS-CYP-PW-00-DRG-XLP-MMN-003610.Rev G.1 and labelled Arden Sheet] (excluding the land shown shaded blue and pink) | VicTrack General Licence |



Schedule 9

Part C – Maintenance Licence



HERBERT
SMITH
FREEHILLS

Execution Version

Metro Tunnel
Tunnel and Stations PPP

Maintenance Licence

[insert *State*]

[insert *Project Co*]



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Maintenance Licence

Date ►

Between the parties

State **[Insert]**

Project Co **[Insert]**
[insert ACN] of **[insert address]**

- Recitals
- 1 The background to the Project is set out in the Project Agreement.
 - 2 [The State has licensed the Licensed Maintenance Areas from VicTrack under the Head License – Maintenance Areas.]
 - 3 As part of the implementation of the Project, the State has agreed to grant, and Project Co has agreed to accept, a licence in respect of the Licensed Maintenance Areas on the terms and conditions contained in this Licence.
 - 4 The State has the power to grant this Licence under:
 - [the Head License – Maintenance Areas;]
 - section 173 of the Relevant Legislation;
 - section 75 of the *Land Acquisition and Compensation Act 1986* (Vic) as it has effect pursuant to section 119 of the Relevant Legislation; or
 - otherwise.
-

This agreement witnesses as follows:

1 Definitions and interpretation

1.1 Project Agreement definitions

Unless otherwise expressly defined, expressions used in this Licence have the meanings given to them in the Project Agreement.

1.2 Definitions

In this Licence, unless the context otherwise requires:

| Term | Meaning |
|---|---|
| [not disclosed] | [not disclosed] |
| Amended Licensed Maintenance Area Plan | has the meaning given in clause 4.1(b). |
| [not disclosed] | [not disclosed] |
| Authority | means any government or governmental, semi-governmental or local government authority, local council, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality or any person having jurisdiction over the Licensed Maintenance Areas, Project Co, the State or any of them or anything in relation to any of them. |
| Head Licence – Maintenance Areas | [means the document entitled "[insert]" between VicTrack and the State for and in relation to the Licensed Maintenance Areas dated on or about the date of this Lease.] |
| Licence | means this maintenance licence and includes all Schedules, Exhibits, Attachments and Annexures to it. |
| Licence Commencement Date | means the Date of Provisional Acceptance. |
| [not disclosed] | 1 [not disclosed] |
| [not disclosed] | [not disclosed] |
| [not disclosed] | [not disclosed] |
| Licence Fee Payment Date | means each date for payment of a Licence Fee Payment as set out in the Licence Fee Payment Schedule. |

| Term | Meaning |
|---------------------------------------|--|
| Licence Fee Payment Schedule | means Schedule 1, as adjusted: <ol style="list-style-type: none"> 1 in accordance with the Financial Close Adjustment Protocol; or 2 following approval of a SMPC Project Co Notice pursuant to clause 34A.2(b) of the Project Agreement. |
| [not disclosed] | [not disclosed] |
| [not disclosed] | [not disclosed] |
| Licensed Maintenance Area Plan | has the meaning given in clause 4.1(a) and includes any Amended Licensed Maintenance Area Plan. |
| Licensed Maintenance Areas | means that part of the subdivided stratum (limited in height and depth) which is identified in the Licensed Maintenance Area Plan. |
| Permitted Use | means: <ol style="list-style-type: none"> 1 the carrying out of the Services in accordance with the Project Agreement to the extent the Services relate to the Licensed Maintenance Areas; 2 the storage and location of any equipment, vehicles and machinery necessary for the carrying out of the Services in accordance with the Project Agreement to the extent the Services relate to the Licensed Maintenance Areas, unless otherwise specified by the State; 3 the exercise by Project Co of its rights, and the compliance by Project Co with its obligations, under the Project Agreement, to the extent to which they relate to the Licensed Maintenance Areas; and 4 any other purpose agreed by the State in writing. |
| Project Agreement | means the document entitled "Project Agreement" between the State and Project Co dated [insert] . |
| Requirement | includes any requirement, notice, order, demand, direction, recommendation, request, stipulation or similar notification received from or given by any Authority or pursuant to any Law whether in writing or otherwise and notwithstanding to whom such a Requirement is addressed or directed. |
| Term | has the meaning given in clause 6. |
| VicTrack General Licence | [the document titled 'Melbourne Metro Rail Project – Licence For Access to and Use of Unleased Victrack Land for the Purposes of the Project' dated [insert] between VicTrack and the Secretary.] |

1.3 Interpretation

In this Licence:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;
- and unless the context otherwise requires:
- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa and a word indicating a gender includes every other gender;
 - (c) **(references)**: a reference to:
 - (1) a party, clause, Schedule, Exhibit, Attachment or Annexure is a reference to a party, clause, Schedule, Exhibit, Attachment or Annexure of or to this Licence; and
 - (2) a section is a reference to a section of a Schedule;
 - (d) **(document as amended)**: a reference to this Licence or to any other deed, agreement, document or instrument includes a reference to this Licence or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
 - (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
 - (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
 - (g) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
 - (h) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
 - (i) **(“includes”)**: “includes” will be read as if followed by the phrase “(without limitation)”;
 - (j) **(“or”)**: the meaning of “or” will be that of the inclusive, being one, some or all of a number of possibilities;
 - (k) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
 - (l) **(“\$”)**: a reference to “\$”, “AUD” or “dollar” is to Australian currency;
 - (m) **(time)**: a reference to time is a reference to time in Melbourne, Australia;
 - (n) **(rights)**: a reference to a right includes any benefit, remedy, function, duty, obligation, Liability, interest, entitlement, title, discretion, authority or power;
 - (o) **(obligations and liabilities)**: a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
 - (p) **(“may”)**: the term “may”, when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;
 - (q) **(construction)**: where there is a reference to an Authority, institute or association or other body referred to in this Licence which:

- (1) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Licence is deemed to refer to that other entity; or
- (2) ceases to exist, this Licence is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (r) **(remedy)**: the use of the word “remedy” or any form of it in this Licence means that the event to be remedied must be remedied or its effects overcome; and
- (s) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

1.4 Inconsistency

Where there is an inconsistency, ambiguity or discrepancy between this Licence and any other State Project Document, then the order of precedence in clause 2.3 (*Inconsistency between State Project Documents*) of the Project Agreement applies.

1.5 Business Day

If the day on or by which anything is to be done in accordance with this Licence is not a Business Day, that thing must be done no later than the next Business Day.

1.6 Provisions limiting or excluding liability, rights or obligations

- (a) A right of the State or an obligation of Project Co under this Licence will not limit or exclude any other right of the State or obligation of Project Co under this Licence unless expressly stated.
- (b) Any provision of this Licence which seeks to limit or exclude a Liability of a party is to be construed as doing so only to the extent permitted by Law.

1.7 Approvals, directions and notices in writing

Unless otherwise expressly provided in this Licence or agreed between the parties, all approvals, consents, directions, requirements, requests, claims, notices, agreements and demands given or required to be given under this Licence must be given in writing.

1.8 Prior approval or consent

Where Project Co is required by this Licence to obtain the State’s consent or approval to an action, document or thing, unless otherwise expressly stated, that consent or approval must be obtained prior to the actions, document or thing occurring or coming into effect.

1.9 Action without delay

Unless there is a provision in this Licence which specifies a period of time in which something must be done by the parties, all things must be done without undue delay.

1.10 Relationship of the parties

Unless otherwise expressly provided, nothing in this Licence:

- (a) **(no additional relationship)**: creates a partnership, joint venture, fiduciary, employment or agency relationship between the parties; or
- (b) **(no good faith)**: imposes any duty of good faith on the State.

1.11 State's rights and obligations

- (a) **(Acknowledgement):** The parties acknowledge the substance, operation and potential effect and consequences of clause 2.13 (*State's executive rights and duties*) of the Project Agreement in relation to this Licence.
- (b) **(No Claim):** Subject to clause 1.11(c), Project Co will not be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its statutory or executive rights or duties.
- (c) **(Liability for breach):** Clauses 1.11(a) and 1.11(b) do not limit any Liability which the State would have to Project Co under this Licence as a result of a breach by the State of a term of this Licence but for these clauses.

1.12 Reasonable endeavours of the State

Any statement in this Licence providing that the State will use or exercise "reasonable endeavours" or "act reasonably" in relation to an outcome, means that the State:

- (a) **(relevant steps):** will take steps to bring about the relevant outcome so far as it is reasonably able to do so, having regard to its resources and other responsibilities;
- (b) **(no guarantee):** cannot guarantee the relevant outcome; and
- (c) **(no obligation):** is not required to:
 - (1) exercise a right of any Government Party, or to influence, over-ride, interfere with or direct any other Government Party in the proper exercise and performance of its legal, statutory or executive duties and functions;
 - (2) exercise a power or discretion in a manner that the State regards as not in the public interest;
 - (3) develop or implement new policy;
 - (4) procure legislation; or
 - (5) act in any way that the State regards as not in the public interest.

1.13 Cost of carrying out obligations

Each party must carry out its obligations under this Licence at its own cost, unless expressly provided otherwise.

1.14 Assignment of Licence Fee

Project Co acknowledges that the State has offered to assign the Licence Fee (exclusive of GST) due in connection with the Maintenance Licence to Finance Co pursuant to the Receivables Purchase Deed. On receipt of a notice of assignment:

- (a) Project Co must pay the Licence Fee (exclusive of GST) to Finance Co in accordance with the notice;
- (b) any such payment will discharge the liability of Project Co to pay the Licence Fee to the State under this Licence; and
- (c) Project Co must pay the GST payable in respect of each Licence Fee to the State, but it is only obliged to make that payment when it has been provided with a Tax Invoice in respect of the relevant Licence Fee.

2 Delegation

2.1 Right to delegate

Project Co acknowledges that the State may exercise any right, statutory or otherwise, it has to appoint a person as a delegate to perform any of its rights under this Licence.

2.2 Notice of delegation

The State will give Project Co notice of:

- (a) any delegate so appointed, setting out the delegated rights and including a copy of the relevant instrument of appointment; and
- (b) any revocation or change of any delegation contemplated by clause 2.3.

2.3 Revocation or amendment of delegation

Any such delegation may be revoked, changed, delegated, limited or made subject to such conditions as The State determines from time to time.

2.4 No limitation of State's actions

- (a) The appointment of a delegate to perform some or all of the rights of the State under this Licence does not limit the rights or obligations of the State under this Licence.

3 Negation of representations or warranties

The State makes no representations (express or implied) and gives no warranties (express or implied):

- (a) **(suitability of purposes)**: that the Licensed Maintenance Areas or any other land is now or will remain suitable or adequate for all or any of the purposes contemplated in this Licence or the Project Agreement; and
- (b) **(Project Agreement representations)**: as to the matters specified in clause 50.1 (*No representations from the State*) of the Project Agreement,

and all warranties (if any) and representations (if any) implied by Law are expressly negated.

4 Grant of Licence

4.1 Licensed Maintenance Areas

- (a) **(Licensed Maintenance Areas at the Licence Commencement Date)**: At the Licence Commencement Date, the Licensed Maintenance Areas will, for the purposes of this Licence, be comprised of the land identified in the plan set out in Attachment 1 (**Licensed Maintenance Area Plan**).
- (b) **(Amendment of the Licensed Maintenance Areas)**: If, at any time during the Term, the parties to this Licence wish to vary, for the purposes of this Licence, the land which comprises the Licensed Maintenance Areas, then:
 - (1) the State must prepare and provide Project Co with an amended version of the Licensed Maintenance Area Plan (**Amended Licensed**

Maintenance Area Plan) which identifies any amendments to Licensed Maintenance Areas; and

- (2) both parties must sign the Amended Licensed Maintenance Area Plan as an acknowledgement of their agreement to the variation of the Licensed Maintenance Areas,

and from the date on which the Amended Licensed Maintenance Area Plan has been signed by both parties:

- (3) the Amended Licensed Maintenance Area Plan will be deemed to have replaced the Licensed Maintenance Area Plan; and
 - (4) the Licensed Maintenance Areas will, for the purposes of this Licence, be deemed to be the areas shown on the Amended Licensed Maintenance Area Plan.
- (c) **(Licensed Maintenance Areas at Final Acceptance):** At the Date of Final Acceptance, pursuant to clause 4.1(b), the parties must both sign the Access Plan as an acknowledgement of their agreement to the variation of the Licensed Maintenance Areas to reflect the Access Plan.

4.2 Licence over the Licensed Maintenance Areas

- (a) **(Grant of Maintenance Licence):** The State grants to Project Co for the Term a non-exclusive licence to use the Licensed Maintenance Areas for the Permitted Use on the terms of this Licence and the Project Agreement.
- (b) **(Period):** Project Co must only remain on the Licensed Maintenance Areas for the minimum period as is reasonably necessary for the Permitted Use.
- (c) **(Sub-licence):** Project Co may sub-licence all or part of the Licensed Maintenance Areas with the consent of the State, such consent not to be unreasonably withheld.

4.3 Nature of interest

- (a) **(Nature of interest):** Project Co acknowledges and agrees that:
 - (1) the rights conferred on Project Co by this Licence rest in contract only and do not confer a proprietary interest on Project Co; and
 - (2) its rights and obligations arising out of or in relation to the Licensed Maintenance Areas are as set out in the Project Agreement.
- (b) **(Ownership and access):** Without limiting the generality of clause 4.3(a), Project Co acknowledges and agrees that:
 - (1) ownership and control of the Licensed Maintenance Areas remains vested in the relevant owner of the land at all times;
 - (2) this Licence does not grant Project Co ownership, control or legal entitlement to exclusive possession of the Licensed Maintenance Areas nor does it extend to Project Co an entitlement to rents or profits in respect of the Licensed Maintenance Areas; and
 - (3) Project Co and its Associates can access the Licensed Maintenance Areas only for the Permitted Use.

4.4 Responsibility of Project Co

Project Co acknowledges and agrees that it has the same responsibilities to third parties in connection with persons, property and all other aspects of the Licensed Maintenance Areas which it would have if it held the freehold title to the Licensed Maintenance Areas.

4.5 Liability

The parties acknowledge and agree that Project Co is required to indemnify the State under clause 42 (*Risk and Liability*) of the Project Agreement in connection with its use and occupation of the Licensed Maintenance Areas.

5 Payments

5.1 Licence Fee

- (a) **(Licence Fee payable in advance)**: In consideration of the rights to enter on, occupy and access (as applicable) the Licensed Maintenance Area pursuant to this Licence, Project Co must, on each Licence Fee Payment Date, pay the Licence Fee to the State, or to such other party as the State may from time to time direct, without demand from the State.
- (b) **(Licence Fee not to abate)**: The payment of the Licence Fee by Project Co will not abate during the Term for any reason.
- (c) **(Non-payment of Licence Fee)**: The State acknowledges that, if the Licence Fee is not received in full, or at all, on any Licence Fee Payment Date, such non-payment is not in and of itself a breach in the performance or observance of Project Co's obligations under the State Project Documents.
- (d) **(Debt due and payable)**: Without limiting clause 5.1(c), the parties acknowledge and agree that any Licence Fee that is not received in full, or at all, on any Licence Fee Payment Date will be a debt due and payable from Project Co to the State.
- (e) **(Adjustments)**: The parties will adjust the Licence Fee to reflect:
 - (1) any adjustment to the Final D&C Phase Payment and Receivables Purchase Payment as described in clause 35A.1(f) and 35A.3(c) of the Project Agreement; and
 - (2) any payment of the Receivables Refund Payment, Contribution Payment and State Maintenance Phase Contribution, as described in clause 34A.1(b) of the Project Agreement.
- (f) **(Termination)**: If this Licence is terminated in accordance with clause 6, Project Co will not be obliged to pay any Licence Fee after the date that this Maintenance Licence is terminated.

5.2 Utilities

The parties acknowledge and agree that the rights and obligations of Project Co in relation to the Utilities are set out in the Project Agreement, including clause 16.5 (*Utilities*) of the Project Agreement.

5.3 Payment by State

If Project Co defaults in the payment of any of the costs or charges referred to in clause 5.1(b), the State may (without limiting any other rights and remedies of the State) pay the costs or charges, and any amount paid by the State will be a debt due and payable from Project Co to the State.

5.4 Floating payment

The floating payment is calculated as the sum of:

[not disclosed]

The floating payment:

- (a) accrues daily from (and including) the first day of an Interest Period to (and excluding) the last day of the Interest Period;
- (b) is payable on each Licence Fee Payment Date in accordance with clause 5.1(a); and
- (c) is calculated on actual days elapsed using a year of 365 days.

6 Term of Licence

This Licence takes effect on the Licence Commencement Date and continues until the earlier of:

- (a) the termination of the Project Agreement; and
- (b) any other earlier date agreed by the parties.

7 VicTrack General Licence

- (a) **(Acknowledgement):** Project Co acknowledges that it has received a copy of the VicTrack General Licence.
- (b) **(use of Licensed Maintenance Areas):** Project Co must, and must ensure that its Associates:
 - (1) except as required by Law, do not do, or omit to do anything which may cause the Secretary to breach the VicTrack General Licence; and
 - (2) in using or occupying the Licensed Maintenance Areas, or performing the Services, do all things required to be done by the Secretary pursuant to the VicTrack General Licence, and carry out all of the Secretary's obligations under the VicTrack General Licence except:
 - (A) for the Secretary's obligations under clauses 3(d), 3(e), 8(a), 8(b), 9, 14 and 15 of the VicTrack General Licence; or
 - (B) to the extent that the Secretary's obligations under clauses 2(c), 2(d), 4(c), 4(d), 6(b) and 6(c) of the VicTrack General Licence are not reasonably within the scope of the Services.

8 Harm minimisation

Project Co must:

- (a) **(use of Licensed Maintenance Areas):** in using or occupying the Licensed Maintenance Areas; and
- (b) **(necessary for Services):** except to the extent necessary to carry out the Services and otherwise to comply with its obligations under the Project Agreement,

cause as little harm and inconvenience and do as little damage as reasonably possible to the Licensed Maintenance Areas (and any adjacent area) and any improvement on the Licensed Maintenance Areas or any adjacent area (including any Relevant Utility Infrastructure).

9 Removal of materials and make good

Without limiting its obligations under the Project Agreement:

- (a) **(during the Term)**: during the Term, as soon as practicable after completion of any Services on the Licensed Maintenance Areas; and
- (b) **(prior to Term ending)**: prior to the end of the Term,

Project Co must:

- (c) **(removal of equipment)**: remove all plant, equipment, machinery, facilities and vehicles (except to the extent they form part of the Licensed Maintenance Areas);
- (d) **(clean and safe condition)**: ensure that the relevant part of the Licensed Maintenance Areas is left in a clean and safe condition;
- (e) **(removal of waste)**: ensure that all waste, rubbish, debris and redundant materials are removed promptly from the relevant part of the Licensed Maintenance Areas in accordance with Best Industry Practices;
- (f) **(public use)**: without limiting clause 9(d), ensure that any relevant part of the Licensed Maintenance Areas which will become open to the public is safe for public use and occupation; and
- (g) **(damage)**: except to the extent necessary to comply with its obligations under the Project Agreement, make good all damage caused by Project Co's use and occupation of the Licensed Maintenance Areas.

10 Maintenance and repair

10.1 Maintenance

Project Co, at its cost, during the Term and any extension or holding over must keep and maintain the Licensed Maintenance Areas in accordance with the Project Agreement.

10.2 State's right of access

Without limitation to any rights of access in the Project Agreement, the State, PTV, VicTrack and any officer, agent, adviser, consultant, contractor or employee of the State may at all reasonable times enter the Licensed Maintenance Area (with or without vehicles and equipment), including to:

- (a) **(investigations)**: make reasonable investigations as the State, any officer, agent, adviser, consultant, contractor or employee of the State or those authorised by the State deem necessary for the purpose of ascertaining whether or not there has been any breach of any of the terms, covenants or conditions expressed or implied in this Licence;
- (b) **(compliance)**: carry out any maintenance, repairs, alterations, additions or other work necessary to comply with the State's obligations under this Licence, at Law or in respect of the exercise by the State of any statutory functions;
- (c) **(Project Co repairs)**: carry out any maintenance, repairs, alterations, additions or other work which the State elects to do but which Project Co is required or liable to do under this Licence by any Law or by any Requirement but fails to do so within the time specified or otherwise allowed for that work to be done; or
- (d) **(other powers)**: exercise any other powers and rights of the State under this Licence or the Project Agreement.

When exercising its rights under clauses 10.2(b) and 10.2(c), the State must use its reasonable endeavours to carry out such activities in a manner which is consistent with

the State Project Documents, but taking into account the State's statutory rights and the circumstances that prompted the State to exercise those rights.

11 GST

- (a) **(Supply)**: If GST is or will be or is purported to be payable on the supply of any good, service or thing (a **Supply**) by either party under this Licence, to the extent the consideration otherwise provided for that Supply is not stated to include an amount in respect of GST on that Supply, the party receiving the Supply must pay to the party making the Supply on demand a sum equal to any GST payable by the supplier in respect of that Supply.
- (b) **(Reimbursement)**: To the extent that one party is required to reimburse the other party for costs incurred by the other party, those costs do not include any amount in respect of GST for which the other party is entitled to claim an input tax credit.
- (c) **(Valid tax invoice)**: A party's obligation to pay an amount under clause 11(a) is subject to a valid tax invoice being delivered to that party.
- (d) **(Licence Fee)**: The Licence Fee under this Licence is exclusive of GST.
- (e) **(Project Agreement to prevail)**: If clause 59 (*Taxes*) of the Project Agreement would apply in connection with a Taxable Supply to which this clause 11 also applies then clause 59 (*Taxes*) of the Project Agreement will apply in connection with that supply and the provisions of this clause 11 (but for this clause 11(e)) will not apply.
- (f) **(Definitions)**: In this clause 11, unless otherwise defined in this Licence, terms used have the meanings given to them in the GST Law.

12 Dispute Resolution and Arbitration

If any dispute or difference of opinion arises between the parties under this Licence, each party may refer any such matter for resolution in accordance with this clause 12 and the dispute or difference of opinion must be resolved in the same manner that disputes or differences of opinion under the Project Agreement are resolved. Accordingly, the provisions of clauses 46 (*Dispute Resolution*) and 47 (*Arbitration*) of the Project Agreement are incorporated into this Licence but as if:

- (a) **(parties)**: the only persons party to the Project Agreement, and the only persons party to the relevant dispute or difference of opinion, are the parties to the relevant dispute; and
- (b) **(matters for determination)**: the only matters for expert determination under those provisions are the matters referred for expert determination under this Licence.

13 Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) under this Licence:

- (a) **(in writing)**: must be in writing;
- (b) **(addressed)**: must be addressed as set out below (or as otherwise notified by that party to each other party from time to time);

State:

Attention: [insert]

Address: [insert]

Email: [insert]

Project Co:

Attention: [insert]

Address: [insert]

Email: [insert]

- (c) **(signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(form of delivery)**: must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by both parties) to the email address of the addressee, set out in clause 13(b); and
- (e) **(taken to be received)**: are taken to be received by the addressee at the address set out in clause 13(b):
 - (1) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
 - (2) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and
 - (3) in the case of email, the first to occur of:
 - (A) receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - (B) the time that the communication enters an information system which is under the control of the addressee; or
 - (C) the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day.

14 Representations and Warranties

14.1 State's representations and warranties

- (a) The State represents and warrants for the benefit of Project Co that:
- (b) **(power to execute)**: it has the power to execute, deliver and carry out its obligations under this Licence and all necessary action has been taken to authorise that execution, delivery and performance;
- (c) **(binding obligation)**: this Licence constitutes a valid and legally binding obligation on it in accordance with its terms; and
- (d) **(no violation of any Law)**: the execution, delivery and performance of this Licence does not violate any Law to which the State is subject.

14.2 Project Co's representations and warranties

- (a) Project Co represents and warrants for the benefit of the State that:
- (b) **(power to execute)**: it has the power to execute, deliver and carry out its obligations under this Licence and all necessary action has been taken to authorise that execution, delivery and performance;
- (c) **(no violation of any Law)**: the execution, delivery and performance of this Licence does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;
- (d) **(binding obligation)**: this Licence constitutes a valid and legally binding obligation on it in accordance with its terms; and
- (e) **(duly registered)**: it is duly registered, properly constituted and remains in existence.

15 Miscellaneous

15.1 Governing Law and jurisdiction

- (a) **(Governing Law)**: This Licence is governed by, and must be construed according to, the Laws of Victoria, Australia.
- (b) **(Jurisdiction)**: Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Licence.

15.2 Entire agreement

To the extent permitted by Law, in relation to its subject matter, this Licence:

- (a) **(whole agreement)**: embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) **(prior agreements)**: supersedes any prior agreement of the parties.

15.3 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to that party) required by Law or reasonably requested by another party to give effect to this Licence.

15.4 Surviving provisions

- (a) **(Survival)**: All provisions of this Licence which, expressly or by implication from their nature, are intended to survive the rescission, termination or expiration of this Licence will survive the rescission, termination or expiration of this Licence.
- (b) **(Interpretation)**: No provision of this Licence which is expressed to survive the termination of this Licence will prevent any other provision of this Licence, as a matter of interpretation, also surviving the termination of this Licence.

15.5 Waiver

- (a) **(Writing)**: A waiver given by a party in accordance with this Licence is only effective and binding on that party if it is given or confirmed in writing by that party.

- (b) **(No waiver):** A failure to, a delay in or the partial exercise or enforcement of a right, power or remedy provided by Law or in accordance with this Licence by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or in accordance with this Licence.
- (c) **(No waiver of another breach):** No waiver of a breach of a term of this Licence operates as a waiver of another breach of that term or of a breach of any other term of this Licence.

15.6 Consents, approvals and directions

- (a) **(State):** A consent or approval required in accordance with this Licence from the State may be given or withheld, or may be given subject to any conditions, as the State (in its absolute discretion) thinks fit, unless this Licence expressly provides otherwise.
- (b) **(Project Co):** A consent or approval required under this Licence from Project Co may not be unreasonably withheld, unless this Licence expressly provides otherwise.

15.7 Amendments

Except as otherwise expressly provided in this Licence, this Licence may only be varied by a deed executed by or on behalf of each party.

15.8 Severance

If, at any time, a provision of this Licence is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) **(under this Licence):** any other provision of this Licence; or
- (b) **(under another jurisdiction):** that provision under the Law of any other jurisdiction.

15.9 Counterparts

This Maintenance Licence may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same agreement.

15.10 Moratorium

To the extent permitted by Law, the application to this Licence or to any party of any Law or any requirement or any moratorium having the effect of extending or reducing the Term, reducing or postponing the payment of the Licence Fee or any part of it or otherwise affecting the operation of the terms of this Licence or its application to any party is excluded and negated.

15.11 Proportionate liability

- (a) **(Exclusion of Wrongs Act):** The operation of Part IVAA of the *Wrongs Act 1958* (Vic) is excluded in relation to all and any rights, obligations or liabilities of either party under this Licence whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) **(Rights, obligations and liabilities):** Without limiting clause 15.11(a), the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Licence and not otherwise,

whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

15.12 No merger

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this Licence. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

15.13 No representation or reliance

- (a) **(No representation):** Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Licence, except for representations or inducements expressly set out in this Licence.
- (b) **(No reliance):** Each party acknowledges and confirms that it does not enter into this Licence in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Licence.



HERBERT
SMITH
FREEHILLS

Signing page

Executed as an agreement



Schedule 1

Licence Fee Payment Schedule

[not disclosed]



HERBERT
SMITH
FREEHILLS

Attachment 1

Licensed Maintenance Area Plan

| Precinct | Street no. | Street Name | Project EIR Map ID (In the event of any inconsistency, the description in the Land Description column prevails) | Temporary works | | Permanent works | | Land Description | Land Availability and Qualifications |
|----------------|-------------|---|--|---|--|--|---|---|---|
| | | | | Interim Land Availability Date (subject to the Land Availability and Qualifications) | Temporary Land Exit Date (subject to the progressive handback obligations at clause 24.4(a) of the Project Agreement) | Nature of permanent works - Surface - Strata | Permanent Land Availability Date (subject to the Land Availability and Qualifications) | | |
| Western Portal | 135-143 | Ormond Street | A40 | | | | V11890 F992 (being previously known as V8213 F614) | <p>Land Description: Vic / Fei Crown Reference VicTrack Let Plan / Survey Plan</p> <p>All land requirements for any relevant title must be included in a single plan. Note: Delay in delivering the plan, by the dates for delivery of the plans in this Land Availability Plan will delay, by a corresponding period, the Temporary or Permanent Land Availability Dates (as relevant).</p> <p>subject to the Land Availability and Qualifications</p> | <p>Land Availability and Qualifications</p> <p>Land Availability and Qualifications.</p> <p>Draft plans must be provided 15 Business Days prior to the date listed below save where specified in this column.</p> |
| Western Portal | 10, 125-129 | Childers Street and Kensington Road | A42 | | | Surface & Strata | V11890 F989 & V11890 F990 | Land will be added to the construction licence on the relevant Land Availability Date in accordance with clause 6.5 of the Project Agreement. Project Co to co-operate with other works package contractors to coordinate access. | |
| Western Portal | 30, 34 | McLennan Drive | T2 | | | | Parcel shaded blue and marked 'T2' on Project Drawing Number TAS-CYP-PW-OO-DRG-XLP-MMN-003004 Rev G.4 | Land will be added to the construction licence on the relevant Land Availability Date in accordance with clause 6.5 of the Project Agreement. Project Co to co-operate with other works package contractors and Construction Power Contractor to coordinate access. | |
| Arden | N/A | Arden Government Land (VicTrack) NB: Excludes 'Chop' land | A1 (part) | | | Surface & Strata | The land shown hatched pink including that land hatched pink and shaded blue, orange and brown and marked A1 on Project Drawing number with reference TAS-CYP-PW-OO-DRG-XLP-MMN-003610 Rev G.1, and labelled Arden Sheet (excluding the land shown shaded blue and pink). | Land will be added to the construction licence on the relevant Land Availability Date in accordance with clause 6.5 of the Project Agreement. Project Co to co-operate with other works package contractors and Construction Power Contractor to coordinate access. | |
| Arden | N/A | Arden Government 'Chop' Land (VicTrack) | A1 (part) | | | Surface | The land shown shaded blue and pink only on Project Drawing Number with reference TAS-CYP-PW-OO-DRG-XLP-MMN-003610 Rev G.1 and labelled Arden Sheet | Areas shown blue and pink (Chop land) on the plan referenced in the 'Land Description' column are shared access only. Land will be added to the construction licence on the relevant Land Availability Date in accordance with clause 6.5 of the Project Agreement. Project Co to co-operate with other works package contractors and Construction Power Contractor to coordinate access. | |
| Arden | N/A | Langford Street (for sub-station) | CY130 | | | Surface | Parcel shaded pink and marked 'CY130' on Project Drawing Number TAS-CYP-PW-OO-DRG-XLP-MMN-003009 Rev G.4 | | |

| Predict | Street no. | Street Name | Project Co. Map ID (In the event of any inconsistency the description in the Land Description column prevails) | Temporary works | | | Permanent works | | Land Description | Land Availability and Qualifications |
|-----------|------------|--|---|---|--|--|---|--|--|--------------------------------------|
| | | | | Temporary Land Availability Date (subject to the Land Availability and Qualifications) | Temporary Land Exit Date (subject to the progressive handback obligations at clause 24.4(f) of the Project Agreement) | Nature of permanent works - Surface - Strata | Permanent Land Availability Date (subject to the Land Availability and Qualifications) | | | |
| Parkville | N/A | University Square (surface and strata beneath Underground Carpark) | A31 (T) CY168 (P) | | | Surface & Strata | | <p>In respect of the temporary land, the land at surface only being the land shown hatched pink and labelled 'Construction site' on Project Drawing Number with reference TAS-CYP-PW-00-DRG-XLP-MMN-003615 Rev G.2 and labeled University Square Surface Sheet, to the extent it falls within title Vol 600 Folio 912.</p> <p>In respect of the permanent land at surface as shown shaded orange and the permanent land at strata under the carpark shown shaded blue or cross-hatched blue on Project Drawing Number with reference TAS-CYP-PW-00-DRG-XLP-MMN-003105 Rev G.4.</p> | <p>Final 'Plan' for the temporary land to be provided at least 1 month prior to the Temporary Land Availability Date such plan must be generally in accordance with the plan provided under the 'Land Description' column and must include any strata required beneath the underground carpark. For the avoidance of doubt, to the extent that temporary land falls outside title Vol 600 Folio 912, the State will not provide access and Project Co. is to procure access.</p> <p>Draft plan for all permanent land must be provided by Project Co. to the State by [REDACTED]. Final 'Plan' to be provided by Project Co. to the State by [REDACTED].</p> | |
| Parkville | N/A | University Square (surface in respect of access to build permanent infrastructure) | A31 (T) CY168 (P) | To be advised by Project Co | To be advised by Project Co | | | <p>The land at surface only and shown hatched pink blue and labelled 'Access to build permanent infrastructure' on Project Drawing Number with reference TAS-CYP-PW-00-DRG-XLP-MMN-003515 Rev G.2 and labelled University Square Surface Sheet, to the extent it falls within title Vol 600 Folio 912.</p> | <p>Following Project Co advising the State of the Temporary Land Availability Date, draft plan and final plan to be provided in accordance with the timeframes set out in the Steps Plan Schedule such plans must be generally in accordance with the plan provided under the 'Land Description' column. For the avoidance of doubt, to the extent that temporary land falls outside title Vol 600 Folio 912, the State will not provide access and Project Co. is to procure access.</p> | |
| Parkville | N/A | University Square (Underground Carpark) | A31 (T) CY168 (P) | | | Strata | | <p>In respect of the temporary land, being the strata land in the carpark shown hatched pink on the plan with reference Project Drawing Number TAS-CYP-PW-00-DRG-XLP-MMN-003610 Rev G.1 and labelled University Square Car Park Sheet.</p> <p>In respect of the permanent land, the land shown shaded blue and orange on Project Drawing Number with reference TAS-CYP-PW-00-DRG-XLP-MMN-003610 Rev G.1 and labelled University Square Car Park Sheet.</p> | <p>In respect of the temporary land, occupation is limited to such below ground land in the carpark as is necessary to provide the permanent structures in the carpark or above ground and is subject to ensuring access and egress to the carpark in accordance with the EFRS.</p> <p>Final 'Plan' to be provided at least 6 months prior to the Temporary Land Availability Date such plan must be generally in accordance with the plan provided under the 'Land Description' column. Draft plan for all permanent land must be provided by Project Co. to the State by [REDACTED]. Final 'Plan' to be provided by Project Co. to the State by [REDACTED].</p> | |
| Parkville | N/A | City Ford | A32 | | | | | <p>V9737/871, V9726/5559 & V9903/413</p> | <p>Land will be added to the construction licence 10 days following receipt of the final contamination report undertaken pursuant to the City Ford lease. The State's estimated date [REDACTED].</p> | |

| Predict | Street no. | Street Name | Project Co. Map ID (In the event of any inconsistency the description in the Land Description column prevails) | Temporary works | | | Permanent works | | Land Description | Land Availability and Qualifications |
|-----------|------------|---|---|---|--|--|---|---|--|--------------------------------------|
| | | | | Temporary Land Availability Date (subject to the Land Availability and Qualifications) | Temporary Land Exit Date (subject to the progressive handback obligations at clause 24.4(f) of the Project Agreement) | Nature of permanent works - Surface - Strata | Permanent Land Availability Date (subject to the Land Availability and Qualifications) | | | |
| Parkville | 230 | University Main Campus (Grattan Street) | A33 | | | | | | <p>Land Description: Vol / Fol Crown Reference VICTrack Lot Plan / Survey Plan</p> <p>(subject to the Land Availability and Qualifications)</p> <p>Draft plans must be provided 15 Business Days prior to the date listed below save where specified in this column.</p> <p>All land requirements for any relevant title must be included in a single plan.</p> <p>Notes: Delay in delivering the plans by the dates for delivery of the plans in this Land Availability plan will delay, by a corresponding period, the Temporary or Permanent Land Availability Dates (as relevant).</p> | |
| Parkville | 792 | Elisabeth Street (Peter Doherty Institute) UoM Bldg 248 | UoM Bldg 248 | | | Strata | | <p>In respect of the temporary land at strata, being the land shown cross-hatched blue to the north of Grattan Street on Project Drawing Number with reference TAS-CYP-PW-00-DRG-XLP-MMN-003513 Rev G.1 and labelled University of Melbourne Main Campus Sheet.</p> <p>In respect of the temporary land at surface, being the land shown hatched pink to the north of Grattan Street on Project Drawing Number with reference TAS-CYP-PW-00-DRG-XLP-MMN-003613 Rev G.1 and labelled University of Melbourne Main Campus Sheet.</p> <p>If the University does not object and subject to the above timeframes the Temporary Land Availability Date may be brought forward.</p> <p>Final 'Plan' for the permanent land must be provided by Project Co to the State by [REDACTED] and for avoidance of doubt no permanent land will be acquired for construction ground supports. No further draft plan is required for the permanent plan.</p> | | |
| Parkville | 161 | Barry Street (Alan Gilbert Building) UoM Bldg 104 | UoM Bldg 104 | | | Strata | | <p>The land shown cross-hatched blue between Berkeley Street and Elizabeth Street on Project Drawing Numbers with reference TAS-CYP-PW-00-DRG-XLP-MMN-003104 Rev G.4 and TAS-CYP-PW-00-DRG-XLP-MMN-003105 Rev G.4</p> <p>Being the land cross-hatched blue between Berkeley Street and Barry Street on Project Drawing Number with reference TAS-CYP-PW-00-DRG-XLP-MMN-003105 Rev G.4</p> <p>Final 'Plan' to be provided by Project Co to the State by [REDACTED] such plan must be generally in accordance with the plan provided under the 'Land Description' column.</p> <p>Draft plan must be provided by [REDACTED].</p> <p>Note subject to clause 6.3B of the Project Agreement.</p> | | |
| CBD North | 24-46 | A Beckett St (RMIT Basketball Courts) | A2 (approx.) | | | | | <p>Final 'Plan' to be provided by Project Co to the State by [REDACTED] such plan must be generally in accordance with the plan provided under the 'Land Description' column.</p> <p>Draft plan must be provided by [REDACTED].</p> <p>Note subject to clause 6.3B of the Project Agreement.</p> | | |
| CBD North | N/A | Road-CL0112 | A3 | | | Surface | | <p>L1 on Plan for Creation of Lease Ref: 244876 dated [REDACTED]</p> <p>Land will be added to the construction licence on the relevant Land Availability Date in accordance with clause 6.5 of the Project Agreement. Project Co to co-operate with other works package contractors to coordinate access.</p> | | |
| CBD North | 212-222 | La Trobe Street | A4 | | | Surface | | <p>SP23698 - Parcels L4</p> <p>Land will be added to the construction licence on the relevant Land Availability Date in accordance with clause 6.5 of the Project Agreement. Project Co to co-operate with other works package contractors to coordinate access.</p> <p>V8416 E121</p> <p>Land will be added to the construction licence on the relevant Land Availability Date in accordance with clause 6.5 of the Project Agreement. Project Co to co-operate with other works package contractors to coordinate access.</p> | | |

| Prelinct | Street no. | Street Name | Project Co. Map ID <small>(In the event of any inconsistency the description in the Land Description column prevails)</small> | Temporary works | | Permanent works | | Land Description | Land Availability and Qualifications |
|-----------|------------|-----------------------------------|--|--|---|--|--|---|--|
| | | | | Temporary Land Availability Date <small>(subject to the Land Availability and Qualifications)</small> | Temporary Land Exit Date <small>(subject to the progressive handbook obligations at clause 24.4(f) of the Project Agreement)</small> | Nature of permanent works - Surface - Strata | Permanent Land Availability Date <small>(subject to the Land Availability and Qualifications)</small> | | |
| CBD North | 204-206 | La Trobe Street | A5 | | Surface | | V11880 F219 (being previously known as V6234 F736) | Land will be added to the construction licence on the relevant Land Availability Date in accordance with clause 6.5 of the Project Agreement. Project Co to co-operate with other works package contractors to coordinate access. | <p>Draft plans must be provided 15 Business Days prior to the date listed below save where specified in this column.</p> <p>All land requirements for any relevant title must be included in a single plan.</p> <p>Note: Delay in delivering the plans by the dates for delivery of the plans in this Land Availability plan will delay, by a corresponding period, the Temporary or Permanent Land Availability Dates (as relevant).</p> <p>(subject to the Land Availability and Qualifications)</p> |
| CBD North | 208-210 | La Trobe Street | A6 | | Surface | | V11879 F851 (being previously known as V10382 F528) | Land will be added to the construction licence on the relevant Land Availability Date in accordance with clause 6.5 of the Project Agreement. Project Co to co-operate with other works package contractors to coordinate access. | |
| CBD North | 200 | La Trobe Street (multiple titles) | A7 | | Surface | | All lots on P5418686G | Land will be added to the construction licence on the relevant Land Availability Date in accordance with clause 6.5 of the Project Agreement. Project Co to co-operate with other works package contractors to coordinate access. | |
| CBD North | 17-27 | Little La Trobe Street | A8 | | Surface | | V8369 F005 | Land will be added to the construction licence on the relevant Land Availability Date in accordance with clause 6.5 of the Project Agreement. Project Co to co-operate with other works package contractors to coordinate access. | |
| CBD North | 12-14 | Little La Trobe Street | A9 | | Surface | | V9364 F533 (part) being that part of the land shaded and written blue on the registered plan with reference CP107762 | Land will be added to the construction licence on the relevant Land Availability Date in accordance with clause 6.5 of the Project Agreement. Project Co to co-operate with other works package contractors to coordinate access. | |
| CBD North | 16 | Little La Trobe Street | A10 | | Surface | | V11881 F730 (being previously known as V3668 F405) | Land will be added to the construction licence on the relevant Land Availability Date in accordance with clause 6.5 of the Project Agreement. Project Co to co-operate with other works package contractors to coordinate access. | |
| CBD North | 18-20 | Little La Trobe Street | A11 | | Surface | | V11890 F993 (being previously known as V9331 F960) | Land will be added to the construction licence on the relevant Land Availability Date in accordance with clause 6.5 of the Project Agreement. Project Co to co-operate with other works package contractors to coordinate access. | |
| CBD North | 377-391 | Swanston Street | A12 | | Surface | | V11891 F773 (being previously known as V11141 F32) | Land will be added to the construction licence on the relevant Land Availability Date in accordance with clause 6.5 of the Project Agreement. Project Co to co-operate with other works package contractors to coordinate access. | |
| CBD North | 414-418 | Swanston Street (RMIT) | CY11 & Additional | | Strata | | The land shown cross-hatched blue immediately south of Franklin Street and east of Swanston Street on Project Drawing Number with reference TAS-CYP-PW-00-DRG-KLP-MMN-063302 Rev G.4 | Final 'Plan' to be provided by Project Co to the State by [redacted] such plan must be generally in accordance with the plan provided under the 'Land Description' column. Draft plan must be provided by [redacted]. Note subject to clause 6.3B of the Project Agreement. | |
| CBD North | 420 | Swanston Street (City Baths) | T65 | | Strata | | The land shown cross-hatched blue and marked T65 on Project Drawing Number with reference TAS-CYP-PW-00-DRG-KLP-MMN-063304 Rev G.4 | Final 'Plan' to be provided by Project Co to the State by [redacted] such plan must be generally in accordance with the plan provided under the 'Land Description' column. Draft plan must be provided by [redacted]. | |

| | | Temporary works | | | Permanent works | | Land Description | | Land Availability and Qualifications | |
|-----------|----------------|------------------------------------|--|--|---|--|--|--|---|--|
| Predict | Street no. | Street Name | Project Co. Map ID <small>(In the event of any inconsistency the description in the Land Description column prevails)</small> | Temporary Land Availability Date <small>(subject to the Land Availability and Qualifications)</small> | Temporary Land Exit Date <small>(subject to the progressive handback obligations at clause 24.4(f) of the Project Agreement)</small> | Nature of permanent works - Surface - Strata | Permanent Land Availability Date <small>(subject to the Land Availability and Qualifications)</small> | Land Description Vol / Fol Crown Reference VICTrack Lot Plan / Survey Plan <small>(subject to the Land Availability and Qualifications)</small> | Draft plans must be provided 15 Business Days prior to the date listed below save where specified in this column. All land requirements for any relevant title must be included in a single plan. Notes: Delay in delivering the plans by the dates for delivery of the plans in this Land Availability plan will delay, by a corresponding period, the Temporary or Permanent Land Availability Dates (as relevant). | |
| | | | | | | | | | | |
| CBD North | 411-423 | Swanston Street (RMIT) | T66 | | | Strata | ██████████ | The land shown shaded blue and the land shown cross-hatched blue and marked T66 on the Project Drawing Number with reference TAS-CYP-PW-00-DRG-XLP-MMN-003303 Rev G.4 | Final 'Plan' to be provided by Project Co to the State by ██████████ such plan must be generally in accordance with the plan provided under the 'Land Description' column. Draft plan must be provided by ██████████. | |
| CBD North | CYP to confirm | Little La Trobe Street Shaft | CY26 and Additional | | | Strata | ██████████ | The land shown cross-hatched blue between A'Beckett Street and Literature Lane to the west of the parcel marked T66 and the shown cross-hatched blue immediately south of Literature Lane and west of parcel marked A11 or Project Drawing Number with reference TAS-CYP-PW-00-DRG-XLP-MMN-003303 Rev G.4 and that land marked C726 and shaded blue and that land shown cross-hatched blue being part of the land at 393 Swanston Street and that land immediately north of Lt La Trobe Street and west of parcel marked A11 on Project Drawing Number TAS-CYP-PW-00-DRG-XLP-MMN-003304 Rev G.4 and that land shown cross-hatched blue on the north and south of Literature Lane on Project Drawing Number with reference TAS-CYP-PW-00-DRG-XLP-MMN-003317 Rev G.4 | Final 'Plan' to be provided by Project Co to the State by ██████████ such plan must be generally in accordance with the plan provided under the 'Land Description' column. Draft plan must be provided by ██████████. Note subject to clause 6.3B of the Project Agreement. | |
| CBD North | 445 | Swanston Street - RMIT Building 80 | RMIT Bldg 80 | | | Strata | ██████████ | The land shown cross-hatched blue immediately south of Franklin Street between Stewart Street and Swanston Street on Project Drawing Number with reference TAS-CYP-PW-00-DRG-XLP-MMN-003302 Rev G.4 and that land shown cross-hatched blue immediately north of A'Beckett Street between Stewart Street and Swanston Street on Project Drawing Number with reference TAS-CYP-PW-00-DRG-XLP-MMN-003303 Rev G.4 | Final 'Plan' to be provided by Project Co to the State by ██████████ such plan must be generally in accordance with the plan provided under the 'Land Description' column. Draft plan must be provided by ██████████. Note subject to clause 6.3B of the Project Agreement. | |

| Predict | Street no. | Street Name | Project Co. Map ID (In the event of any inconsistency the description in the Land Description column prevails) | Temporary works | | Permanent works | | Land Description | Land Availability and Qualifications |
|-----------|------------|---|---|---|--|--|---|---|---|
| | | | | Temporary Land Availability Date (subject to the Land Availability and Qualifications) | Temporary Land Exit Date (subject to the progressive handback obligations at clause(24.4f)) of the Project Agreement) | Nature of permanent works - Surface - Strata | Permanent Land Availability Date (subject to the Land Availability and Qualifications) | | |
| CBD South | N/A | Federation Square | A13 | | | Surface & Strata | | <p>Land Description: Vol / Fol Crown Reference VICTrack Lot Plan / Survey Plan (subject to the Land Availability and Qualifications)</p> <p>Final 'Plan' for temporary and permanent land (excluding that land labelled as 'construction occupation of underground corridor') to be provided by Project Co by [REDACTED] such plans must be generally in accordance with the plan provided under the 'Land Description' column and must delineate between Fed Square Proprietary Limited and VICTrack ownership.</p> <p>In respect of any temporary occupation under section 75, anything removed on the land must be reinstated at cessation of that occupation to ensure compliance with the requirements of section 75 and 76 of the Land Acquisition and Compensation Act 1986 in accordance with the Construction Licence.</p> | <p>Death plans must be provided 15 Business Days prior to the date listed below save where specified in this column.</p> <p>All land requirements for any relevant title must be included in a single plan.</p> <p>Notes: Delay in delivering the plans by the dates for delivery of the plans in this Land Availability plan will delay, by a corresponding period, the Temporary or Permanent Land Availability Dates (as relevant).</p> |
| CBD South | N/A | Federation Square | | | Surface (unless strata agreed by landowner) | | | <p>In respect of the temporary land at surface, being the land shown hatched pink on Project Drawing Number with reference TAS-CYP-PW-00-DRG-XLP-MMN-003612 Rev G.1 and labelled Federation Square Sheet, but excluding the rectangular parcel of land on the Flinders Street edge of Federation Square north of the Western Shard labelled 'Construction Occupation of Underground Corridor' but excluding any land hatched pink and shaded orange and blue.</p> <p>In respect of permanent land, the land shown shaded orange and blue including such land with additional pink hatching marked A13 on Project Drawing Number with reference TAS-CYP-PW-00-DRG-XLP-MMN-003612 Rev G.1 and labelled Federation Square Sheet.</p> | <p>To be provided as surface temporary occupation in accordance with sections 75 and 76 of the Land Acquisition and Compensation Act, unless an alternative arrangement can be agreed with the landowner to provide shared access to the underground services corridor under this location.</p> <p>Final 'Plan' for the temporary occupation of the 'underground corridor' must be provided by Project Co to the State at least 6 months prior to the Temporary Land Availability Date such plan must be generally in accordance with the plan provided under the 'Land Description' column and must include details of any third party interests in respect of the 'underground corridor'.</p> |
| CBD South | 228-236 | Flinders Street (Port Phillip Arcade) (Excludes 222-224 Dangerfield includes carriageway easement over Royston Place) | A17 | | Surface | | | <p>The rectangular parcel of land on the Flinders Street edge of Federation Square north of the Western Shard and identified hatched pink and labelled 'Construction Occupation of Underground Corridor' on Project Drawing Number with reference TAS-CYP-PW-00-DRG-XLP-MMN-003612 Rev G.1 and labelled Federation Square Sheet.</p> | <p>Land will be added to the construction licence on the relevant Land Availability Date in accordance with clause 6.5 of the Project Agreement. Project Co to co-operate with other works package contractors to coordinate access.</p> |
| CBD South | 9-11 | Swanston Street (Excluding party wall easement) | A18 | | Surface | | | <p>V 11890 F561 (previously known as V9844 F827)</p> <p>NB: Carriageway easement for Royston Place is known as carriageway easement 'E-2 and labelled 'Royston Place' on P9420871Y referenced on title with dealing number V966371Y</p> | <p>Land will be added to the construction licence on the relevant Land Availability Date in accordance with clause 6.5 of the Project Agreement. Project Co to co-operate with other works package contractors to coordinate access.</p> |
| CBD South | 13 | Swanston Street | A19 | | Surface | | | <p>V11879 F596 (being previously known as V7833 F170)</p> | <p>Land will be added to the construction licence on the relevant Land Availability Date in accordance with clause 6.5 of the Project Agreement. Project Co to co-operate with other works package contractors to coordinate access.</p> |
| CBD South | 15-19 | Swanston Street | A20 | | Surface | | | <p>V11879 F999 (being previously known as V4300 F957)</p> | <p>Land will be added to the construction licence on the relevant Land Availability Date in accordance with clause 6.5 of the Project Agreement. Project Co to co-operate with other works package contractors to coordinate access.</p> |
| CBD South | 21-25 | Swanston Street | A21 | | Surface | | | <p>V11880 F008 (being previously known as V9592 F272) and V11880 F009 (being previously known as V9999 F635)</p> | <p>Land will be added to the construction licence on the relevant Land Availability Date in accordance with clause 6.5 of the Project Agreement. Project Co to co-operate with other works package contractors to coordinate access.</p> |
| CBD South | 27-29 | Swanston Street | A22 | | Surface | | | <p>V11880 F010 (being previously known as V8212 F174)</p> <p>V11879 F849 (being previously known as V6538 F454)</p> | <p>Land will be added to the construction licence on the relevant Land Availability Date in accordance with clause 6.5 of the Project Agreement. Project Co to co-operate with other works package contractors to coordinate access.</p> |

| Predict | Street no. | Street Name | Temporary works | | | Permanent works | | Land Description | Land Availability and Qualifications |
|-----------|------------|--|---|---|--|--|---|---|---|
| | | | Project Co. Map ID (In the event of any inconsistency the description in the Land Description column prevails) | Temporary Land Availability Date (subject to the Land Availability and Qualifications) | Temporary Land Exit Date (subject to the progressive handback obligations at clause 24.4(f) of the Project Agreement) | Nature of permanent works - Surface - Strata | Permanent Land Availability Date (subject to the Land Availability and Qualifications) | | |
| CBD South | N/A | ROAD - Cooker Alley & Extension (PH0837) | | | | | | <p>Draft plans must be provided 15 Business Days prior to the date listed below save where specified in this column.</p> <p>All land requirements for any relevant title must be included in a single plan.</p> <p>Notes: Delay in delivering the plans by the dates for delivery of the plans in this Land Availability plan will delay, by a corresponding period, the Temporary or Permanent Land Availability Dates (as relevant).</p> <p>(subject to the Land Availability and Qualifications)</p> | <p>Land will be added to the construction licence on the relevant Land Availability Date in accordance with clause 6.5 of the Project Agreement. Project Co to co-operate with other works package contractors to coordinate access.</p> |
| CBD South | 68 | Swanston Street (City Square) | CY159 (part) | | | Surface | | <p>SP23697 - Parcels 3, 6 & 8</p> | <p>Land will be added to the construction licence on the relevant Land Availability Date in accordance with clause 6.5 of the Project Agreement. Project Co to co-operate with other works package contractors to coordinate access.</p> |
| CBD South | 68 | Swanston Street (City Square) | CY159 (part) | | | Strata | | <p>Lots 2 & 8 on PS428405M</p> | <p>Land will be added to the construction licence on the relevant Land Availability Date in accordance with clause 6.5 of the Project Agreement. Project Co to co-operate with other works package contractors to coordinate access.</p> |
| CBD South | 205 | Collins Street (Westm) | CY159 (part) | | | Strata | | <p>The land shown cross-hatched blue and marked CY159 on the Project Drawing Numbers with reference TAS-CYP-PW-00-DRG-XUP-MMIN-003311 Rev G.4 and TAS-CYP-PW-00-DRG-XUP-MMIN-003312 Rev G.4 which is located below carpark level 3 on PS428405M.</p> | <p>Final 'Plan' to be provided by Project Co to the State by [REDACTED] such plan must be generally in accordance with the plan provided under the 'Land Description' column.</p> <p>Draft plan must be provided by [REDACTED]</p> |
| CBD South | 198-206 | Flinders Street (St Pauls) | CY165 (part) | | | Strata (Pedestrian and Construction Adit and Strata) | | | <p>Final 'Plan' to be provided by Project Co to the State by [REDACTED] such plan must be generally in accordance with the plan provided under the 'Land Description' column.</p> <p>Draft plan must be provided by [REDACTED].</p> <p>Note subject to clause 6.3B of the Project Agreement.</p> |
| CBD South | N/A | Campbell Arcade | CY41 | | | Strata | | <p>The land shown coloured pink on the plan with reference A/7.2.2013</p> | <p>Project Co required to supply 'Plan' at least 6 months prior to the Permanent Land Availability Date such plan must be generally in accordance with the plan provided under the 'Land Description' column.</p> |
| Domain | N/A | Albert Road Traffic Island adjoins 29A Albert Road | A24 | | | Surface | | <p>SP23643 parcel 1 and 2</p> | |
| Domain | N/A | Edmund Herring Memorial Oval | A25 | | | | | <p>SP23642 Parcel 2</p> | <p>Land will be added to the construction licence on the relevant Land Availability Date in accordance with clause 6.5 of the Project Agreement. Project Co to co-operate with other works package contractors to coordinate access including as to land occupied by the Construction Power Contractor.</p> |
| Domain | N/A | Shrine of Remembrance St Kilda Road | A26 | | | Surface | | <p>MMR-ADV-PMMA-M2-DD-914 sign Rev E</p> | <p>Land will be added to the construction licence on the relevant Land Availability Date in accordance with clause 6.5 of the Project Agreement. Project Co to co-operate with other works package contractors to coordinate access.</p> |

| | | Temporary works | | | Permanent works | | Land Description | | Land Availability and Qualifications | |
|--|------------|---|---|---|---|--|---|--|--|--|
| Predict | Street no. | Street Name | Project Co. Map ID (In the event of any inconsistency the description in the Land Description column prevails) | Temporary Land Availability Date (subject to the Land Availability and Qualifications) | Temporary Land Exit Date (subject to the progressive handback obligations at clause(24.4)) of the Project Agreement) | Nature of permanent works - Surface - Strata | Permanent Land Availability Date (subject to the Land Availability and Qualifications) | Land Description Vol / Fol Crown Reference VICTrack Lot Plan / Survey Plan (subject to the Land Availability and Qualifications) | Drift plans must be provided 15 Business Days prior to the date listed below save where specified in this column. All land requirements for any relevant title must be included in a single plan. Notes: Delay in delivering the plans by the dates for delivery of the plans in this Land Availability plan will delay, by a corresponding period, the Temporary or Permanent Land Availability Dates (as relevant). | |
| Eastern Portal | N/A | Osborne St Ball Reserve (VICTrack) | | | In accordance with the Interface Definition Sheet but no later than [REDACTED] | Surface | [REDACTED] | As to permanent land, that part of VICTrack South Yarra Lot 53 shown coloured orange or blue on Project Drawing Number with reference TAS-CYP-PW-00-DRG-XLP-MMN-003611 Rev G.2 and labelled Eastern Portal Sheer. As to temporary land, that part of VICTrack South Yarra Lot 53 shown hatched pink on Project Drawing Number with reference TAS-CYP-PW-00-DRG-XLP-MMN-003611 Rev G.2 and labelled Eastern Portal Sheet. | Project Co required to supply 'Plan' at least 3 months prior to the Temporary Land Availability Date such plan must be generally in accordance with the plan provided under the 'Land Description' column. Land will be added to the construction licence on the relevant Land Availability Date in accordance with clause 6.5 of the Project Agreement. Project Co to co-operate with other works package contractors to coordinate access. The State will use reasonable endeavours to assist Project Co to obtain access to land shown coloured orange, blue or hatched pink on Project Drawing Number with reference TAS-CYP-PW-00-DRG-XLP-MMN-003611 Rev G2 and labelled Eastern Portal Sheet that is not part of VICTrack South Yarra Lot 53 | |
| Tunnel, Adits and Construction Ground support Land | N/A | Strata land for tunnels (TBM / mined tunnel), adits and construction ground supports. | TT Parcels | | | Strata | [REDACTED] | All that land coloured blue and /or cross-hatched blue (other than that cross-hatched land under road) on Project Drawing Numbers with references TAS-CYP-PW-00-DRG-XLP-MMN-003001-003025 Rev G.4 and TAS-CYP-PW-00-DRG-XLP-MMN-003101-003108 Rev G.4 and TAS-CYP-PW-00-DRG-XLP-MMN-003201-003204 Rev G.4 and TAS-CYP-PW-00-DRG-XLP-MMN-003301-003328 Rev G.4 and TAS-CYP-PW-00-DRG-XLP-MMN-003401-003404 Rev G.4 and TAS-CYP-PW-00-DRG-XLP-MMN-003501-003515 Rev G.4 being all that land required for tunnels, adits and construction ground supports excluding any such land otherwise referenced in the remainder of this Land Availability Plan. | Final 'Plan' to be provided by Project Co to the State by [REDACTED] such plan must be generally in accordance with the plan provided under the 'Land Description' column. Drift plan must be provided by [REDACTED]. For the avoidance of doubt, the State will not acquire or make available any underground land that comprise any existing privately owned underground structures. | |
| | | Melbourne Market | | | | | | The land shown coloured pink on the Melbourne Market Land Availability Plan Ref. MM20171208 | The Temporary Land Availability Date is [REDACTED], subject to VICTrack agreement. Further: a) Unless otherwise agreed in writing by the parties (in each case acting reasonably) and subject to paragraph (b) and (c), the State must demolish all buildings on the land shown coloured pink on the Melbourne Market Land Availability Plan Ref: MM20171208 other than Warehouse F and the Flower Shed (Obsolete Buildings) prior to the Land Availability Date. b) The State may direct Project Co in writing to demolish the Obsolete Buildings, in which case Project Co will demolish the Obsolete Buildings at a cost to the State of up to \$3.5 million (payable on production of itemised invoices), as soon as practicable following the Land Availability Date (and otherwise on terms agreed by the parties, in each case acting reasonably). c) If the State provides Project Co with a quote for demolition at a cost less than \$3.5million, or other information as to current site condition relevant to demolition cost, Project Co must consider that information and provide a revised quote for the purposes of Project Co demolition under (b). | The terms of the temporary occupation are to be finalised and will be included within the Construction Licence conditions. |



Schedule 10

Utilities Schedule

Metro Tunnel
Tunnel and Stations PPP

Utility Agreement

The Secretary of the Department of Economic
Development, Jobs, Transport and Resources

[_____]



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| Deed of Accession | 1 |
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Signing Page

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Utility Agreement

Date ►

Between the parties

Secretary **The Secretary of the Department of Economic Development,
Jobs, Transport and Resources**
of **[insert address]**

Utility **[Insert]**

- Recitals
- 1 The Utility is an entity which owns, operates or controls Utility Infrastructure which will be affected by the Works.
 - 2 The Parties agree that their respective rights and obligations in respect of Utility Infrastructure which is affected by the Works will be governed in accordance with the terms of this Agreement.
-

This deed witnesses as follows:



1 Definitions and interpretations

1.1 Project Agreement definitions

Unless otherwise expressly defined, expressions used in this Agreement have the meanings given to them in or for the purposes of the Project Agreement.

1.2 Definitions

In this Agreement, unless the context otherwise requires:

| Term | Meaning |
|--------------------------|---|
| Agreed Amount | has the meaning given in clause 19(b). |
| Agreement | means this agreement and includes all schedules, exhibits, attachments and annexures to it. |
| Approval | includes allocations, approvals, licences, permits, consents, easements, authorisations or clearances. |
| Claim | <p>includes any claim, action, demand or proceeding whether for the payment of money (including damages) or any other relief or remedy:</p> <ul style="list-style-type: none">(a) under, arising out of, or in connection with, this Agreement; or(b) arising out of, or in connection with, the Works or Utility Works or any party's conduct prior to the date of this agreement; or(c) otherwise at Law or in equity, including:<ul style="list-style-type: none">(i) by statute;(ii) in tort for negligence or otherwise, including negligent misrepresentation; or(iii) for restitution, including restitution based on unjust enrichment. |
| Commencement Date | means, subject to clause 3, the date on which this Agreement has been executed by all of the Parties to it. |
| Controller | has the meaning given to it in the Corporations Act. |



| Term | Meaning |
|--|---|
| Cost | has the meaning given in clause 19(g). |
| Deed of Accession | means the document set out in Annexure A. |
| Expiry Date | the date 6 years from the Commencement Date. |
| Party | means either the Secretary, the Utility or any other person who has executed the Deed of Accession and Parties means each of them. |
| Project Agreement | means the document entitled 'Project Agreement' between the State and Project Co dated [insert] . |
| Project Co | means the Project Co appointed under the Project Agreement. |
| Recipient | has the meaning given in clause 19(b)(2). |
| Renewed Term | means a period of 2 years, commencing on the Expiry Date. |
| Representatives | has the meaning given in clause 15.2. |
| Revenue | has the meaning given in clause 19(f). |
| Supplier | has the meaning given in clause 19(b). |
| Term | means the period referred to under clause 4.1 or as otherwise extended in accordance with clause 4.2. |
| Unnotified Utility Infrastructure | has the meaning given to it in section 209 of the Relevant Legislation. |
| Utility Infrastructure | means the infrastructure referred to in Attachment 1. |
| Utility Works | means any works required to be performed in respect of: (a) Utility Infrastructure; or |



| Term | Meaning |
|---------------------------------|--|
| | (b) Unnotified Utility Infrastructure, as a direct result of the Works. |
| Utility Works Objectives | means minimising the: (a) impact of the Utility Works on the performance of the Works; (b) scope, cost and duration of any Utility Works performed by the Utility; and (c) disruption to services provided by the Utility Infrastructure. |
| Utility Works Order | means the document in Attachment 4. |
| Utility Works Proposal | means the document in Attachment 2. |
| Utility Works Response | means the document in Attachment 3. |

1.3 Interpretation

In this Agreement:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;
and unless the context otherwise requires:
- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa and a word indicating a gender includes every other gender;
- (c) **(Agreement and Schedule references)**: a reference to:
 - (1) a party, clause, Schedule, Exhibit, or Annexure is a reference to a party, clause, Schedule, Exhibit or Annexure of or to this Agreement;
and
 - (2) a section is a reference to a section of this Schedule;
- (d) **(Agreement as amended)**: a reference to this Agreement or to any other deed, agreement, document or instrument includes a reference to this Agreement or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;



- (g) (**legislation**): a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) (**definitions**): if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) (**"includes"**): "includes" will be read as if followed by the phrase "(without limitation)";
- (j) (**"or"**): the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) (**information**): a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) (**"\$"**): a reference to "\$", AUD or dollar is to Australian currency;
- (m) (**time**): a reference to time is a reference to time in Melbourne, Australia;
- (n) (**rights**): a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (o) (**obligations and liabilities**): a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (p) (**"may"**): the term "may", when used in the context of a power, right or remedy exercisable by the Secretary, means that the Secretary can exercise that power, right or remedy in its absolute and unfettered discretion and the Secretary has no obligation to do so;
- (q) (**construction**): where there is a reference to an Authority, institute or association or other body referred to in this Agreement which:
 - (1) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Agreement is deemed to refer to that other entity; or
 - (2) ceases to exist, this Agreement is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (r) (**remedy**): the use of the words "remedy" or "cure" or any form of such words in this Agreement means that the event to be remedied or cured must be remedied or cured or its effects overcome; and
- (s) (**contra proferentem rule not to apply**): each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

1.4 Approvals, directions and notices in writing

Unless otherwise expressly provided in this Agreement or agreed between the parties, all approvals, consents, directions, requirements, requests, claims, notices, agreements and demands must be given in writing.



2 Acknowledgment

The Parties acknowledge that this Agreement is a utility agreement for the purposes of section 210 of the Relevant Legislation.

3 Conditions Precedent

- (a) **(Commencement Date):** Subject to clause 3(b), this Agreement will commence on the later of:
 - (1) the date of this Agreement; and
 - (2) the date of Financial Close.
- (b) **(Conditions Precedent):** If the date of this Agreement is before the date of Financial Close, clause 3 and clauses 1.1, 1.2, 1.3, 15, 16, 18, 20 and 21, will commence on the date of this Agreement with the remainder of the provisions commencing on Financial Close.
- (c) **(Notification):** Upon becoming aware that Financial Close has occurred, the Secretary must notify the Utility in writing, in which case this Agreement will commence on the date on which the Secretary notifies the Utility in accordance with this clause 3(c).

4 Term

4.1 Term of Agreement

This Agreement commences on the Commencement Date and will terminate on the Expiry Date.

4.2 Renewal option

If the Secretary:

- (a) **(renewal):** wishes to renew this Agreement for the Renewed Term to commence immediately after the Expiry Date; and
- (b) **(written notice):** gives notice to the Utility not less than 1 month before the Expiry Date,

this Agreement will be extended for the Renewed Term on the same terms, except that this clause 4.2 will not apply.

5 Role of the Parties

The Parties acknowledge and agree that:

- (a) **(Project Co responsibility):** under the Project Agreement, Project Co will be responsible for:



- (1) the design, construction and commissioning of the Works, in accordance with the Project Agreement; and
 - (2) making all arrangements in respect of the performance of the Utility Works;
- (b) **(Deed of Accession)**: if requested by either the State or the Secretary, Project Co must execute the Deed of Accession within 10 Business Days of being requested to do so; and
- (c) **(Project Co to assume obligations and liabilities)**: upon execution of the Deed of Accession, this Agreement will be deemed to be read as if a reference to the Secretary is followed by a reference to "or Project Co" and subject to clause 16.5 (*Utilities*) of the Project Agreement, the obligations and liabilities assumed by and the rights conferred on the Secretary and Project Co will bind and benefit them jointly and severally.

6 Utility Works

6.1 Utility Works Proposal

Unless otherwise agreed by the Parties in writing and subject to clause 6.6, prior to commencing any Utility Works, the Secretary must issue the Utility with a Utility Works Proposal, which must set out:

- (a) **(details of affected Utility Infrastructure)**: details of the Utility Infrastructure which is (or is likely to be) affected by the Works;
- (b) **(nature of Utility Works)**: the nature of any Utility Works required to be performed as a result of the Works;
- (c) **(timing)**: the proposed timing of the Utility Works;
- (d) **(standards)**: the proposed standards to which the Utility Works are to be performed;
- (e) **(method)**: the proposed method for carrying out (including the entity which will carry out) the Utility Works;
- (f) **(estimate of costs)**: if the Utility is to carry out all or part of the Utility Works, the proposed estimate of costs for the Utility Works to be performed by the Utility;
- (g) **(minimise disruption)**: the means by which disruption to services provided by the Utility Infrastructure will be minimised; and
- (h) **(method of certifying)**: the proposed method for certification of the Utility Works,

having regard to the Utility Works Objectives.

6.2 Response to Utility Works Proposal

Within 10 Business Days of the receipt of a Utility Works Proposal, the Utility must issue the Secretary with the Utility Works Response, which must:

- (a) **(agreement)**: confirm those aspects of the Utility Works Proposal with which it agrees (acting reasonably);



- (b) **(alternative proposal)**: in respect of each aspect of the Utility Works Proposal with which the Utility does not agree, set out an alternative proposal, which must set out in detail:
 - (1) the reasons why the Utility does not so agree; and
 - (2) the reasons why its alternative proposal is preferable,having regard to the Utility Works Objectives; and
- (c) **(additional information)**: without limiting clauses 6.2(a) or 6.2(b), set out:
 - (1) the extent to which the Utility proposes to have a role in performing the Utility Works;
 - (2) the proposed reasonable cost of any Utility Works to be performed by the Utility; and
 - (3) the method of payment of the proposed reasonable cost referred to in clause 6.2(c)(2).

6.3 Alternative proposals

If:

- (a) **(negotiate in good faith)**: the Utility submits an alternative proposal in accordance with clause 6.2(b), the Secretary and the Utility must undertake genuine good faith negotiations to agree and document each of the matters set out in the Utility's alternative proposal within 10 Business Days of the Secretary receiving the alternative proposal, having regard to the Utility Works Objectives; and
- (b) **(dispute resolution)**: the Secretary and the Utility are unable to agree each of the matters set out in the Utility's alternative proposal within 10 Business Days of the Secretary receiving the alternative proposal, then a Party may refer the matter for resolution in accordance with clause 15.

6.4 Utility Works Order

If:

- (a) **(agreement)**: the Secretary and the Utility are able to agree "with" or "on" the matters set out in the:
 - (1) Utility Works Proposal; or
 - (2) Utility's alternative proposal in its Utility Works Response;
- (b) **(no Utility Works Proposal)**: the Utility Works need to be performed but the Secretary and the Utility have agreed that the Secretary does not need to issue a Utility Works Proposal in accordance with clause 6.1; or
- (c) **(unable to agree)**: the Secretary and the Utility are unable to agree the matters referred to in clause 6.4(a), but the matters are determined in accordance with clause 15,

then the Parties must promptly (and, in any event, within 10 Business Days of the agreement or determination) prepare and each sign the Utility Works Order recording the terms on which the Utility Works will be performed, as agreed or determined.



6.5 Performance of and payment for Utility Works

- (a) **(Utility Works Order):** After the Utility Works Order has been signed under clause 6.4:
- (1) the Secretary and the Utility must perform the Utility Works in accordance with the Utility Works Order and this Agreement; and
 - (2) if applicable, the Utility will be paid for performing the Utility Works in accordance with the Utility Works Order and clause 6.7 of this Agreement.
- (b) **(obligations):** The Secretary and the Utility (as relevant) must, in undertaking the Utility Works:
- (1) ensure that the Utility Works are carried out in a sound and workmanlike manner with due care and skill;
 - (2) comply with all authorisations necessary in order to undertake the Utility Works;
 - (3) undertake the Utility Works in a manner consistent with the manner in which the Utility Works would be undertaken by a prudent, efficient and experienced utility provider and infrastructure manager;
 - (4) ensure that the Utility Works are undertaken with due expedition and without unreasonable or unnecessary delay;
 - (5) comply with all regulatory and mandatory standards imposed by Law, together with all standards which a prudent, efficient and experienced utility infrastructure manager, construction manager or project manager (as the case may be) exercising due care, skill and diligence would comply with, having regard to the nature of the Utility Works; and
 - (6) ensure that the Utility Works are fit for their intended purpose as identified in or reasonably inferred from the Utility Works Order.

6.6 Unnotified Utility Infrastructure

- (a) **(Unnotified Utility Works notice):** Upon becoming aware of any Unnotified Utility Infrastructure, the Secretary must issue the Utility with a notice, which must:
- (1) identify, describe and specify the location of the Unnotified Utility Infrastructure;
 - (2) state that:
 - (A) the Secretary intends to remove, relocate or protect the infrastructure (as the case may be); and
 - (B) the Utility has 5 Business Days within which either to agree to the Secretary carrying out the Utility Works required to remove, relocate or protect the Unnotified Utility Infrastructure or to carry out the Utility Works required to remove, relocate or protect the Unnotified Utility Infrastructure itself; and
 - (3) set out details of the proposed:



- (A) estimate of costs for any Utility Works required to remove, relocate or protect the Unnotified Utility Infrastructure, which are to be performed by the Utility; and
 - (B) method for certification of the Utility Works required to remove, relocate or protect the Unnotified Utility Infrastructure.
- (b) **(Unnotified Utility Works response):** Within 5 Business Days of the receipt of the notice under clause 6.6(a), the Utility must issue the Secretary with a notice, which sets out whether the Utility:
 - (1) agrees to allow the Secretary to carry out the Utility Works; or
 - (2) proposes to carry out the Utility Works itself and the date by which it expects to complete the Utility Works,required to remove, relocate or protect the Unnotified Utility Infrastructure.
- (c) **(Performance of the Utility Works):** If the Utility:
 - (1) agrees to allow the Secretary to carry out the Utility Works, then the Secretary may immediately commence carrying out the Utility Works;
 - (2) agrees in its notice given under clause 6.6(b) to itself carry out the Utility Works required to remove, relocate or protect the Unnotified Utility Infrastructure, then it:
 - (A) must immediately carry out and complete the Utility Works as soon as reasonably practicable; and
 - (B) will be paid for performing the Utility Works in accordance with clause 6.7; or
 - (3) fails to:
 - (A) respond to the notice given by the Secretary under clause 6.6(a) within 5 Business Days;
 - (B) carry out the Utility Works in accordance with its notice given under clause 6.6(b) within 5 Business Days; or
 - (C) agree as to the Utility Works to be carried out to remove, relocate or protect the Unnotified Utility Infrastructure within 5 Business Days,then:
 - (D) the Secretary may carry out the Utility Works required to remove, relocate or protect the Unnotified Utility Infrastructure; and
 - (E) the Utility indemnifies and will keep the Secretary indemnified against any action, suit, claim, demand, Liability, cost or expense arising out of or in connection with the exercise by the Secretary of its rights under this clause 6.6(c)(3).

6.7 Cost of Utility Works to be performed by the Utility

Where the Utility performs Utility Works in accordance with this clause 6, it will be entitled to be paid:

- (a) **(arm's length):** a reasonable, competitive, arm's length market price for doing so, which will comprise all of its reasonable direct and overhead costs and will



be calculated on a fully open book basis under which the Utility provides the Secretary with all such information and documents as the Secretary may reasonably require to ensure that those costs represent a reasonable, competitive, arm's length market price for the Utility Works; and

- (b) **(margin)**: a margin of 10%.

6.8 Insurances

Each Party who performs Utility Works in connection with this Agreement must effect and maintain (or cause to be effected and maintained) at all times during which it performs those works, the Insurances specified in the Insurance Schedule and such other insurances that a prudent and experienced contractor would obtain and maintain for works similar to the Utility Works.

7 Access to the Project Area

7.1 Grant of licence

Subject to clauses 7.2 and 8.2 and agreeing the relevant Utility Works Order, the Secretary grants to the Utility, including its employees, agents, contractors and nominated representatives, a licence to access, occupy and use the Project Area (at no charge) for the purposes of performing the Utility Works.

7.2 Non-exclusive access

Subject to clause 7.3, the grant of the licence to the Utility under this clause 7:

- (a) **(access for the Secretary and Associates)**: does not prevent the Secretary, any of its Associates and nominated representatives from accessing and using the Project Area for any other purpose; and
- (b) **(licence)**: is subject to the licence granted to Project Co to access, occupy and use the Project Area for the purposes of the Works.

7.3 Non-interference

- (a) **(Written authorisation)**: The Secretary must not, and must ensure that its employees, agents, contractors and nominated representatives do not, under any circumstances, interfere with, disrupt or damage the Utility Infrastructure without authorisation from the Utility, except in the event of an emergency which in the reasonable opinion of the Secretary:
- (1) poses an imminent threat to public or environmental safety; or
 - (2) is likely to result in damage to the:
 - (A) Utility Infrastructure; or
 - (B) Works.
- (b) **(Obligations)**: The Utility must, in undertaking any Utility Works:
- (1) not cause any damage to the Project Area or any other infrastructure, plant, equipment, machinery, services, fixtures or other items on the Project Area;



- (2) only access and use the Project Area for the purpose of implementing the Utility Works;
- (3) without limiting any of its obligations under this Agreement, at all times comply with all reasonable site access and safety protocols made known to the Utility by the Secretary from time to time;
- (4) minimise nuisance and prevent unreasonable noise, dust, vibration and disturbance; and
- (5) remove all rubbish and debris from the Project Area caused or created by it undertaking the Utility Works.

8 Personnel

8.1 Qualified persons

The Secretary and the Utility must ensure that its personnel (including its employees, agents, contractors and nominated representatives) who carry out Utility Works under this Agreement:

- (a) **(personnel to be properly trained and qualified)**: are properly trained and qualified and adequately experienced to perform the duties allocated to them, and exhibit a high standard of work and conduct; and
- (b) **(regular training)**: are provided with regular training to ensure that their skills and qualifications are maintained to the then current industry standards applicable to the provision of the Utility Works.

8.2 Access to the Project Area

Whenever the Utility's personnel (including its employees, agents, contractors and nominated representatives) access the Project Area under clause 7.1, the Utility will ensure that those personnel:

- (a) **(training and induction)**: attend any training or induction program required by the Secretary;
- (b) **(compliance with health and safety obligations)**: are acquainted with and comply with the OHS Legislation, all OHS Regulations and any other relevant health and safety legislation;
- (c) **(standards)**: are made aware of the importance that the Secretary places on establishing and maintaining high standards in relation to workplace health and safety and protection of the environment;
- (d) **(compliance)**: comply with reasonable directions, procedures and policies made known to the Utility (including those of the "principal contractor" under the OHS Legislation, OHS Regulations and any other relevant health and safety legislation);
- (e) **(responsible and businesslike manner)**: act in a responsible and businesslike manner on and around the Project Area;
- (f) **(avoid interference)**: carry out the Utility Works so as to avoid interfering with, disrupting, damaging or delaying the Works; and



- (g) **(emergency response plan)**: give the Secretary a copy of the emergency response plan in relation to any Utility Infrastructure erected or installed on the Project Area during any access to the Project Area by the Utility.

9 Payment

- (a) **(Invoicing)**: When providing an invoice under this Agreement, the Utility or the Secretary (the **Payee**) must invoice the other Party (the **Payer**) for the performance of the Utility Works in accordance with the terms of payment agreed in the relevant Utility Works Order for the relevant Utility Works under clause 6.4.
- (b) **(Payment)**: The Payer must pay a correctly rendered invoice within 20 Business Days of receipt of that invoice, except when it disputes all or part of that invoice in which case it will pay the undisputed portion of the invoice. The Payee will immediately credit the portion of the invoice in dispute and the matter must be referred for resolution in accordance with clause 15.

10 Records, access and audits

10.1 Records

The Utility must keep full, true, auditable and up to date books of account, records and documentation relating:

- (a) **(performance of Utility Work)**: to the Utility Works performed in accordance with this Agreement; and
- (b) **(amounts payable)**: to amounts payable by the Secretary in respect of the performance of Utility Works by the Utility, including complete and accurate records of and supporting documentation for all invoices submitted to the Secretary and all payments made by the Secretary under this Agreement, including the amount and manner of calculation of any amounts proposed by the Utility under clause 6.7 or agreed or determined to be payable under clause 6.4.

10.2 Audit

The Secretary may conduct an audit of the Utility for the purpose of auditing the Utility's compliance with its obligations under this Agreement, including the amount and manner of calculation of any amounts payable by the Secretary in respect of the performance of Utility Works.

10.3 Incorrect invoicing

Without limiting or otherwise affecting the Secretary's rights, where any invoice rendered by the Utility under clause 9 is found to have been incorrect after payment has been made by the Secretary, the overpayment will be recovered from the Utility by payment to the Secretary or offset against a subsequent invoice.



10.4 Documentation to be provided following completion of Utility Works

Where the Secretary or the Utility undertakes any Utility Works it must, as soon as reasonably practicable but in any event no later than 10 Business Days after receipt of payment in respect of the Utility Works, provide the Secretary or the Utility with all data, drawings, information, records, plans and other material relating to those Utility Works.

11 Step In

11.1 Step In

If the Utility:

- (a) **(default by Utility)**: is in default of a material term of this Agreement and fails to remedy that default within 10 Business Days after its receipt of a notice of default from the Secretary (or such other period the Parties may agree in writing); or
- (b) **(Utility subject to Insolvency Event)**: commits, suffers or is the subject of an Insolvency Event,

then the Secretary may by further notice to the Utility, elect to:

- (c) **(management and control by the Secretary of Utility)**: temporarily or permanently assume total or partial management and control of the whole or part of the Utility Works; and
- (d) **(take steps to perform Utility Works)**: take such other steps as are necessary in the reasonable opinion of the Secretary to perform the Utility Works.

11.2 No Claim

The Utility will have no Claim, action, demand or entitlement to institute any proceedings against the Secretary, whether for the payment of money or any other relief or remedy, arising out of or in connection with the exercise by the Secretary of its step-in rights under clause 11.1.

11.3 Indemnity

The Utility indemnifies and will keep the Secretary indemnified against any action, suit, Claim, demand, Liability, cost or expense arising out of or in connection with the exercise by the Secretary of its step-in rights under clause 11.1.

11.4 Utilities to assist the Secretary

The Utility must provide the Secretary with all necessary assistance in a timely manner to enable it to exercise its step-in rights under clause 11.1 effectively and expeditiously.



12 Force Majeure Events

12.1 Non-performance excused

Non-performance by the Secretary or the Utility of any obligation or condition required by this Agreement to be performed will be excused during the time and to the extent that such performance is prevented, wholly or in part, by a Force Majeure Event.

12.2 Notification and diligence

- (a) **(Force Majeure Event):** Where the Secretary or the Utility is, by reason of a Force Majeure Event, unable to perform any obligation or condition required by this Agreement to be performed, it must:
- (1) notify the Secretary or the Utility as the case may be, as soon as practical after becoming aware of the Force Majeure Event, of:
 - (A) reasonably full particulars of the event or circumstance of Force Majeure Event;
 - (B) where possible, an estimate of the period of time required to enable it to resume full performance of its obligations; and
 - (C) where possible, the means proposed to be adopted to remedy or abate the Force Majeure Event;
 - (2) use all reasonable diligence and employ all reasonable means to remedy or abate the Force Majeure Event as expeditiously as possible; and
 - (3) notify the Secretary or the Utility (as the case may be) when the Force Majeure Event has terminated or abated to an extent which permits resumption of performance to occur.
- (b) **(Effect):** No Party will, by virtue of this clause 12, be required against its will to:
- (1) adjust or settle any strike, lockout, ban or other industrial disturbance; or
 - (2) make payment of, or otherwise provide compensation in response to, or as a consequence or in settlement of, any native title or cultural heritage claim by or on behalf of indigenous peoples.
- (c) **(Lack of funds):** No Party may claim lack of funds as a Force Majeure Event in accordance with this clause 12 or withhold moneys due and payable whether or not a Force Majeure Event exists.

13 Effect of Force Majeure

The period of time during which performance of any obligation or condition is prevented by a Force Majeure Event will not be added to the time provided in this Agreement for the performance of that obligation or condition nor to the time required for the performance of any act dependent thereon.



14 Limitation of liability and indemnities

14.1 Liability and indemnities

- (a) **(Indemnity)**: Subject to clause 14.1(b), each of the Secretary and the Utility indemnifies and will keep each other indemnified against any action, suit, Claim, demand, Liability, cost or expense arising out of or in connection with any failure by the Secretary or the Utility as the case may be to comply with:
- (1) any applicable Law; or
 - (2) the terms of this Agreement.
- (b) **(Proportionate liability)**: The liability of the Secretary or the Utility (as the case may be) will be reduced proportionately to the extent to which the liability is caused or contributed to by the Secretary or the Utility (respectively).

14.2 Limitation of liability

Notwithstanding any other provision in this Agreement, the Secretary and the Utility will not be liable to each other for any Consequential Loss.

14.3 Survival of indemnities

Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the Parties, and survives termination of this Agreement.

14.4 Release

- (a) **(Utility Works performed by the Secretary)**: Upon certification of Utility Works which have been performed by the Secretary, the Utility releases the Secretary from any action, suit, claim, demand, Liability, cost or expense in respect of any fact, matter or thing arising out of, or in any way in connection with, the Utility Infrastructure or the Utility Works.
- (b) **(Utility Works performed by the Utility)**: Upon receipt of payment in respect of Utility Works which have been performed by the Utility, the Utility releases the Secretary from any action, suit, claim, demand, Liability, cost or expense in respect of any fact, matter or thing arising out of, or in any way in connection with, the Utility Infrastructure or the Utility Works, except for any claim included in the invoice under clause 9 to which the Utility Works relates, which is given to the Secretary within the time required by, and in accordance with the terms of, clause 9.

15 Dispute Resolution

15.1 Procedure for resolving disputes

- (a) **(Disputes to be resolved)**: Any dispute between the Parties arising under this Agreement must be resolved in accordance with this clause 15.
- (b) **(Dispute resolution procedure)**: The procedure that is to be followed to resolve a dispute is as follows:



- (1) the dispute must be the subject of negotiation as required by clause 15.2;
 - (2) if the dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 15.2(c)(1) the parties may agree that the dispute must be referred to an expert for determination in accordance with clauses 15.4 to 15.8 (inclusive) or to arbitration in accordance clause 16; and
 - (3) if:
 - (A) the dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 15.2(c)(1) and irrespective of whether the parties failed to meet as required by that clause or whether having so met the parties fail to agree whether the dispute should be referred to an expert or to arbitration within 20 Business Days after the expiration of the period for negotiation referred to in clause 15.2(c)(1);
 - (B) the dispute is referred to expert determination in accordance with clause 15.1(b)(2) and:
 - (i) a determination is not made by the expert within 30 days after the expert's acceptance of appointment; or
 - (ii) a notice of dissatisfaction is given in accordance with clause 15.6(a),
- then the dispute must be referred to arbitration in accordance with clause 16.

15.2 Negotiation

- (a) **(Notification)**: If a dispute arises then a Party may give notice to the other Party requesting that the dispute be referred for resolution by negotiation between the Chief Executive Officers (or equivalent) of both Parties (**Representatives**).
- (b) **(Contents of Notice)**: A notice under clause 15.2(a) must:
 - (1) state that it is a notice under this clause 15; and
 - (2) include or be accompanied by particulars of the matters which are the subject of the dispute.
- (c) **(Attempt to resolve Dispute)**: If a dispute is referred for resolution by negotiation under clause 15.2(a), then:
 - (1) the Representatives must meet and attempt in good faith to resolve the dispute (in whole or in part) within 10 Business Days of the date on which the notice under clause 15.2(a) is received (or such later date as the Parties may agree); and
 - (2) any agreement reached between the Representatives will be reduced to writing, signed by or on behalf of each Party and will be contractually binding on the Parties.

15.3 Expert determination

if:



- (a) **(dispute unresolved by Representatives)**: a dispute which has been referred to the Representatives for negotiation in accordance with clause 15.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 15.2(c)(1); and
- (b) **(referral to expert)**: the Parties agree within 20 Business Days after the expiration of the period for negotiation referred to in clause 15.2(c)(1) that the dispute be referred to an expert for determination,

then those parts of the dispute which remain unresolved will be referred to an expert for determination under clauses 15.4 to 15.8. For the avoidance of doubt, a dispute may only be referred to an expert for determination by agreement of the Parties.

15.4 Selection of expert

- (a) **(Exchange of lists of 3 preferred experts)**: Within 7 Business Days after the date on which the Parties agree to refer a dispute to an expert for determination under clause 15.3, the Parties must exchange lists of 3 persons (in order of preference) who, if appointed, would satisfy the requirements of clause 15.4(d), from whom the expert is to be chosen.
- (b) **(Appointment of person who appears on both lists)**: Any person that appears on both lists under clause 15.4(a) will be appointed as the expert to determine a dispute and if more than one person appears on both lists the person given the highest order of priority by the party that gave the notice under clause 15.2(a) will be appointed.
- (c) **(Appointment if no person appears on both lists)**: If no person appears on both lists, the party which gave the notice under clause 15.2(a) must procure:
 - (1) the president (or the senior non-executive officer, howsoever described) of the institute or governing body for the technical or professional discipline the subject of the relevant dispute to nominate the expert, having regard to, but not being bound by, those persons proposed by the Parties under clause 15.4(a); or
 - (2) if there is no governing body for the technical or professional discipline the subject of the relevant dispute or such governing body advises that it will not nominate an expert, the President of the Australian Centre for International Commercial Arbitration to nominate a person to act as the expert, having regard to, but not being bound by, those persons proposed by the Parties under clause 15.4(a).
- (d) **(Appropriate skills)**: It is the intention of the Parties that the expert appointed to determine a dispute will be an independent person with appropriate skills having regard to the nature of the matters in dispute.
- (e) **(No entitlement to challenge appointment)**: Neither Party will be entitled to challenge the appointment of an expert under this clause 15.4 on the basis that the expert does not satisfy the requirements of clause 15.4(d).
- (f) **(Not an arbitration agreement)**: Any agreement for expert determination under this Agreement will not constitute an arbitration agreement for the purposes of the *Commercial Arbitration Act 2011* (Vic).
- (g) **(Agreement)**: Once an expert is appointed, the Parties must enter into an agreement with the expert on the terms of the Expert Determination Agreement or such other reasonable terms as the expert may require.



15.5 Rules of expert determination

The expert determination process will be administered, and the expert will be required to act, under the terms of the Expert Determination Agreement.

15.6 Expert finding

- (a) **(Notification):** The determination of the expert must be in writing and will be final and binding on the Parties unless, within 10 Business Days of receipt of the determination, a Party gives notice to each other Party of its dissatisfaction and intention to refer the matter to arbitration under clause 16.
- (b) **(Amendment to determination):** Upon submission by any Party, the expert may amend the determination to correct:
 - (1) a clerical mistake;
 - (2) an error from an accidental slip or omission;
 - (3) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
 - (4) a defect in form.

15.7 Liability of expert

- (a) **(Liability of expert):** The Parties agree:
 - (1) that the expert will not be liable in connection with the expert determination, except in the case of fraud on the part of the expert; and
 - (2) to indemnify the expert against any Claims or Liability in connection with the expert determination, except in the case of fraud on the part of the expert, in which case a Claim may be made against him or her by any person who is a party to the dispute.
- (b) **(Engagement):** The Parties will jointly engage the expert services in connection with the expert determination proceedings and each party will seek a separate Tax Invoice equal to its share of the costs of the expert.

15.8 Costs

The Parties must:

- (a) bear their own costs in connection with the expert determination proceedings; and
- (b) pay an equal portion of the costs of the expert.

16 Arbitration

16.1 Reference to Arbitration

- (a) **(Dispute):** If:
 - (1) a dispute:



- (A) which has been referred to the Parties' Representatives for negotiation in accordance with clause 15.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 15.2(c)(1); and
 - (B) the Parties do not agree to refer the dispute to an expert for determination; or
- (2) in the case of a dispute which the Parties agree to refer to expert determination under clause 15.3:
- (A) a determination is not made within 30 days of the expert's acceptance of the appointment; or
 - (B) a notice of dissatisfaction is given in accordance with clause 15.6,

then either Party may notify the other that it requires the dispute to be referred to arbitration.

- (b) (**Referral**): Upon receipt by the other Party of a notice under clause 16.1(a), the dispute will be referred to arbitration.

16.2 Arbitration

- (a) (**ACICA Rules**): Arbitration in accordance with this clause 16 will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Rules) and as otherwise set out in this clause 16.
- (b) (**Seat**): The seat of the arbitration will be Melbourne, Victoria.
- (c) (**Language**): The language of the arbitration will be English.

16.3 Appointment of arbitrator

The Parties will endeavour to agree on the arbitrator or arbitrators (if the parties agree to appoint three arbitrators), but if no such agreement is reached within 15 Business Days of the dispute being referred to arbitration in accordance with clause 16.1(b), the arbitrator or arbitrators will be appointed by the Australian Centre for International Commercial Arbitration.

16.4 General Principles for conduct of arbitration

- (a) (**Conduct of arbitration**): The Parties agree that:
 - (1) they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;
 - (2) any arbitration conducted in accordance with this clause 16 will not necessarily mimic court proceedings of the seat of the arbitration or the place where hearings take place (if different), and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and
 - (3) in conducting the arbitration, the arbitrator must take into account the matters set out in clauses 16.4(a)(1) and 16.4(a)(2).
- (b) (**Evidence in writing**): All evidence in chief must be in writing unless otherwise ordered by the arbitrator.



- (c) **(Evidence and discovery):** The rules for evidence and discovery will be the IBA Rules on the Taking of Evidence in International Arbitration current at the date of arbitration.
- (d) **(Oral hearing):** The oral hearing must be conducted as follows:
- (1) any oral hearing must take place in Melbourne, Victoria and all outstanding issues must be addressed at the oral hearing;
 - (2) the date and duration of the oral hearing must be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in clause 16.4(a) when determining the duration of the oral hearing;
 - (3) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
 - (4) the oral hearing must be conducted on a stop clock basis with the effect that the time available to the Parties must be split equally between the Parties so that each Party has the same time to conduct its case unless, in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the Parties;
 - (5) not less than 28 days prior to the date fixed for oral hearing each Party must give notice of those witnesses (both factual and expert) of the other Party that it wishes to attend the hearing for cross examination;
 - (6) in exceptional circumstances the arbitrator may amend the date of hearing and extend the time for the oral hearing set in accordance with clause 16.4(d)(2);
 - (7) a Party will not be bound to accept the written evidence of a witness submitted on behalf of the opposing party which is not challenged in cross examination; and
 - (8) each Party is expected to put its case on significant issues in cross examination of a relevant witness called by the opposing Party or, where it seeks to challenge the evidence of a witness not called for cross-examination by reference to other evidence, to identify that evidence in its written opening submissions so that the opposing Party may know the nature of and basis for the challenge to the witness' written evidence.
- (e) **(Experts):** Unless otherwise ordered each Party may only rely upon one expert witness in connection with any recognised area of specialisation.

16.5 Proportional liability

To the extent permitted by Law, the arbitrator will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this clause 16.5, have applied to any dispute referred to arbitration in accordance with this clause 16.

16.6 Extension of ambit of arbitration proceedings

- (a) **(Extending Disputes):** Where:
- (1) a dispute between the Parties to this Agreement is referred to arbitration in accordance with this clause 16; and



- (2) there is some other dispute also between the Parties to and in accordance with this Agreement (whenever occurring),

the arbitrator may, upon application being made to the arbitrator by one or both of the Parties at any time before a final award is made in relation to the first-mentioned dispute, make an order directing that the arbitration be extended so as to include the other dispute.

- (b) **(Arbitrator's order):** An arbitrator may make an order in accordance with clause 16.6(a) on such terms and conditions (if any) as the arbitrator thinks fit.

16.7 Award final and binding

- (a) **(Final and binding):** Subject to clause 16.7(b), any award will be final and binding on the Parties.
- (b) **(Appeal):** Each Party consents to any appeal to a court where that appeal is made under the *Commercial Arbitration Act 2011 (Vic)* on a question of law arising in connection with an arbitral award made in accordance with this clause 16.

16.8 Continue to perform

Notwithstanding the existence of a dispute, each Party must continue to carry out its obligations in accordance with this Agreement.

16.9 Governing law of arbitration agreement

The Law governing this arbitration agreement is the law of Victoria, Australia.

16.10 Interlocutory relief

This clause 16 does not prevent a Party from seeking urgent interlocutory relief from a court of competent jurisdiction where, in that Party's reasonable opinion, that action is necessary to protect that Party's rights.

17 Assignment

17.1 No assignment

- (a) **(No assignment):** Subject to clause 17.2, the Secretary and the Utility must not assign or otherwise deal with this Agreement or any right or obligation under this Agreement except in accordance with a security interest granted in favour of a financier or with the prior consent of the other Party, which consent will not be unreasonably withheld or delayed provided that:
- (1) the assignee has agreed in writing to be bound by the terms of this Agreement by an appropriate deed of assignment in a form reasonably acceptable to the Secretary or the Utility as the case may be; and
- (2) the Secretary or the Utility as the case may be has demonstrated to the reasonable satisfaction of the other that the assignee is reputable, of good financial standing and is capable of fulfilling all the obligations of the Secretary or the Utility under this Agreement for the Term.



- (b) **(Consent)**: Consent to an assignment will not prejudice or in any way reduce any right that the Secretary and the Utility may have as against the other (whether positive or negative) which had accrued to the benefit of one Party in so far as it relates to the other, prior to the date of the assignment.

17.2 Assignment by the Secretary

The Secretary may assign, transfer or otherwise dispose of its rights and obligations under this Agreement where:

- (a) **(details of transferee)**: it has provided details of the proposed transferee and the terms and conditions of the proposed transferee to the Utility;
- (b) **(nature of the transferee)**: the proposed transferee is an agent of, or the obligations of which are supported by the Crown in right of the State of Victoria; and
- (c) **(agreement to be bound)**: the proposed transferee has agreed to be bound by this Agreement.

18 Confidential Information and disclosure

18.1 Confidential Information and disclosure by the Secretary

- (a) **(Public Disclosure Obligations)**: The Secretary may disclose any information in connection with the Project (including any Confidential Information) in accordance with its Public Disclosure Obligations and the Utility must use all reasonable endeavours to assist the Secretary in meeting its Public Disclosure Obligations.
- (b) **(Other purposes)**: the Secretary, the State or any Authority may disclose any information in connection with the Project (including any Confidential Information) in connection with the requirements of the State Project Documents (including any tender process required to be conducted under the Termination Payments Schedule, or Change Compensation Principles).
- (c) **(The Secretary's rights)**: Subject to clause 18.1(d), in meeting its Public Disclosure Obligations or as otherwise considered necessary by the State, the Secretary may publish, disclose or make generally available each Project Document on a Victorian Government website.
- (d) **(Commercially sensitive information)**: The Secretary will not publish, disclose or otherwise make generally available the information which is specified in the Confidential Information Schedule (including the Financial Model), except if required to do so to comply with the Public Disclosure Obligations in accordance with clauses 18.3(a).

18.2 Confidential Information and disclosure by the Utility

- (a) **(Confidentiality obligation)**: Subject to clause 18.2(b), the Utility must treat as secret and confidential all Confidential Information.
- (b) **(Disclosure of Confidential Information)**: Without limiting the Utility's obligation under clause 18.2(a) and subject to clause 18.2(c), the Utility may disclose Confidential Information to its Associates to the extent necessary for the purpose of its obligations in accordance with this Agreement.



- (c) **(Confidentiality deed):** Before disclosing any Confidential Information, the Utility must ensure that the person to whom the information is disclosed enters into a confidentiality deed with the Utility on terms reasonably acceptable to the Secretary.

18.3 Disclosure by the Utility

- (a) **(Utility's disclosure obligations):** Subject to clause 18.3(b), the Utility must:
- (1) not make any public disclosures, announcements or statements in relation to the Project or the State's or any of the State's Associates' involvement in the Project without the State's prior consent;
 - (2) comply with any terms and conditions the State imposes and must use all reasonable endeavours to agree with the State the wording and timing of all public disclosures, announcements or statements by it or any of its Associates relating to the Project or the State's or any of the State's Associates' involvement in the Project before the relevant disclosure, announcement or statement is made; and
 - (3) as soon as practicable, give to the Secretary a copy of any public disclosure, announcement or statement agreed to or approved by the Secretary in accordance with this clause 18.3(a) or for which the Secretary's consent or approval was not required in accordance with clause 18.3(b).
- (b) **(Permitted disclosure):** For the purposes of clause 18.3(a), the Utility will not be required to obtain the Secretary's consent or approval to the extent that any disclosure, announcement or statement is:
- (1) required by Law, provided that it:
 - (A) notifies the Secretary of the requirement to make that disclosure; and
 - (B) takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;
 - (2) required to obtain legal or other advice from its advisers;
 - (3) required to be made to a court in the course of proceedings to which the Utility is a party; or
 - (4) required by a relevant stock exchange, subject to:
 - (A) such disclosure, announcement or statement not referring to the State's or any of its Associates' involvement in the Project; and
 - (B) the Utility having used all reasonable endeavours to obtain the Secretary's consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant stock exchange.



19 GST General

- (a) **(GST exclusive amounts):** Unless otherwise expressly stated, all amounts referred to in this Agreement are exclusive of GST.
- (b) **(GST payable by Supplier):** If GST becomes payable on any Taxable Supply made by a Party (**Supplier**) under or in connection with this Agreement:
- (1) any amount payable or consideration to be provided in accordance with any other provision of this Agreement for that supply (**Agreed Amount**) is exclusive of GST;
 - (2) an additional amount will be payable by the Party which is the recipient of the Taxable Supply (**Recipient**), equal to the amount of GST payable on that Taxable Supply as calculated by the Supplier in accordance with the GST Law, which will be payable at the same time and in the same manner as for the Agreed Amount; and
 - (3) the Supplier will provide a Tax Invoice to the Recipient in connection with that supply, either at the time expressly set out in any other provision of this Agreement or no later than the time at which the Agreed Amount for that Taxable Supply is to be provided in accordance with this Agreement. The Recipient is not obliged to pay any amount in accordance with this clause 19 unless and until a Tax Invoice is received by the Recipient in connection with the Taxable Supply except where the Recipient is required to issue the Tax Invoice.
- (c) **(Variation in GST payable):** If for any reason the GST payable by the Supplier in connection with a supply it makes under or in connection with this Agreement (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it received from the Recipient under clause 19(b) in connection with that supply, the Supplier will provide a refund or credit to, or will be entitled to receive from, the Recipient (as appropriate) the amount of this variation. Where an adjustment event occurs in relation to a supply and except where the Recipient is required to issue the Adjustment Note:
- (1) the Supplier will issue an Adjustment Note to the Recipient in connection with that supply within 14 days after becoming aware of that adjustment event occurring; and
 - (2) no additional amount will be payable by the Recipient unless and until an Adjustment Note is received by the Recipient.
- (d) **(GST ceasing to be payable):** No amount is payable by a party in accordance with clause 19(b) or 19(c) to the extent that the GST to which the amount relates has ceased to be payable by or refundable to the Supplier by the Commissioner of Taxation under the GST Law.
- (e) **(Expert Determination):** If the Recipient is dissatisfied with any calculation to be made by the Supplier in accordance with this clause 19 the recipient may, at its own expense and after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the President of the Institute of Chartered Accountants for expert determination, which will be final and binding on all parties (except in the case of manifest error). The expert will act as an expert and not as an arbitrator and must take into account the terms of this Agreement, the matters required to be taken into account by the Supplier in accordance with this clause 19 and any other matter considered by the expert to be relevant to



the determination. The Parties release the expert from any liability in acting as an expert, except in the case of fraud on the part of the expert.

- (f) **(Revenue net of GST):** Any reference in this Agreement or any Project Document to price, value, sales, revenue, profit or a similar amount (**Revenue**), is a reference to the GST exclusive component of that Revenue, unless the contrary intention is expressed.
- (g) **(Cost net of GST):** Any reference in this Agreement or any Project Document to cost, expense, liability or other similar amount (**Cost**) of a party, is a reference to that Cost reduced by the Input Tax Credits to which the party is entitled in respect of such Cost, unless the contrary intention is expressed.
- (h) **(General obligation):** Each Party agrees to do all things, including providing Tax Invoices and other documentation, that may be necessary or desirable to enable or assist the other Party in determining its GST payable on any supply made by that other Party in connection with this Agreement, or any Input Tax Credits, adjustments or refunds in relation to any amount of GST paid or payable in connection with any supply made in connection with this Agreement.
- (i) **(GST Groups):** For the purposes of this Agreement, a reference to GST payable on a Taxable Supply made by a Party includes any corresponding GST payable by the representative member of any GST group of which that Party is a member and a reference to an Input Tax Credit entitlement of a Party includes any corresponding Input Tax Credit entitlement of the representative member of any GST group of which that Party is a member, and if a party to this Agreement makes a Taxable Supply by virtue of entering into or performing this Agreement and the 'recipient' of that Taxable Supply (within the meaning of the GST Act) is an Associate of another party to this Agreement, that other party to this Agreement will be obliged either to pay the amount referred to in clause 19(b)(2) or procure that the actual recipient pays the relevant amount, and the payer of that amount shall be the 'Recipient' for the purposes of this clause 19 in relation to the relevant Taxable Supply.
- (j) **(Project Agreement to prevail):** If clause 59 (*Taxes*) of the Project Agreement would apply in respect of a Taxable Supply to which this clause 19 also applies then clause 59 (*Taxes*) of the Project Agreement will apply in respect of that supply and the provisions of this clause 19 (but for this paragraph) will not apply.
- (k) **(Definitions):** In this clause 19, unless otherwise defined in this Agreement, terms used have the meanings given to them in the GST Law.

20 Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Agreement:

- (a) must be in writing;
- (b) must be addressed as set out below (or as otherwise notified by that Party to each other party from time to time);

The Secretary:

Attention: **[insert]**

Name: **[insert]**

Address: **[insert]**



Email [insert]

Utility:

Attention: [insert]

Name: [insert]

Address: [insert]

Email [insert]

- (c) must be signed by the Party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that Party on its behalf;
- (d) must be delivered by hand or posted by prepaid post to the address, or emailed (in the form agreed by both Parties) to the email address of the addressee set out in clause 20(b); and
- (e) are taken to be received by the addressee at the address set out in clause 20(b):
 - (1) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00am on the next Business Day;
 - (2) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and
 - (3) in the case of email, the first to occur of:
 - (A) receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - (B) the time that the communication enters an information system which is under the control of the addressee; or
 - (C) the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00am on the next Business Day.

21 Miscellaneous

21.1 Governing Law and jurisdiction

- (a) **(Governing Law):** This Agreement is governed by, and must be construed according to, the Laws of Victoria, Australia.
- (b) **(Jurisdiction):** Subject to clauses 15 to 16, each Party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings that may be brought in connection with this Agreement.



21.2 Entire agreement

To the extent permitted by Law and in relation to its subject matter, this Agreement:

- (a) **(entire understanding)**: embodies the entire understanding of the Parties and constitutes the entire terms agreed by the Parties; and
- (b) **(prior agreements)**: supersedes any prior Agreement between the Parties.

21.3 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to both parties) required by Law or reasonably requested by another party to give effect to this Agreement.

21.4 Survival of certain provisions

- (a) **(Surviving clauses)**: All provisions of this Agreement which, expressly or by implication from their nature, are intended to survive the rescission, termination or expiration of this Agreement will survive the rescission, termination or expiration of this Agreement, including any provision in connection with:
 - (1) the Secretary's rights to set-off and recover money;
 - (2) confidentiality or privacy;
 - (3) Intellectual Property Rights;
 - (4) any obligation to make any Records available to the Secretary;
 - (5) any indemnity or financial security given in accordance with this Agreement; or
 - (6) any right or obligation arising on termination of this Agreement.
- (b) **(Interpretation)**: No provision of this Agreement which is expressed to survive the termination of this Agreement will prevent any other provision of this Agreement, as a matter of interpretation, also surviving the termination of this Agreement.
- (c) **(Survival of rights and obligations)**: No right or obligation of any party will merge on completion of any transaction in accordance with this Agreement. All rights and obligations in accordance with this Agreement survive the execution and delivery of any transfer or other document which implements any transaction in accordance with this Agreement.

21.5 Waiver

- (a) **(No waiver)**: Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of a right provided by law or under this Agreement, by the Secretary or the Utility does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement of, that or any other right provided by Law or under this Agreement.
- (b) **(Writing)**: A waiver or consent given by the Secretary or the Utility under this Agreement is only effective and binding if it is given or confirmed in writing by the Secretary or the Utility.



- (c) **(No waiver of another breach):** No waiver of a breach of a term of this Agreement operates as a waiver of another breach of that term or of a breach of any other term of this Agreement.

21.6 Consents, approvals and directions

- (a) **(The Secretary):** A consent or approval required in accordance with this Agreement from the Secretary may be given or withheld, or may be given subject to any conditions, as the Secretary thinks fit, unless this Agreement expressly provides otherwise.
- (b) **(Utility):** A consent or approval required in accordance with this Agreement from the Utility may not be unreasonably withheld or delayed, unless this Agreement expressly provides otherwise.

21.7 Amendments

Except as otherwise expressly provided in this Agreement, this Agreement may only be varied by a deed executed by or on behalf of each party.

21.8 Expenses

Except as otherwise expressly provided in this Agreement or (as between the State and Project Co) the Project Agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Agreement.

21.9 Severance

If, at any time, a provision of this Agreement becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this Agreement; or
- (b) that provision under the Law of any other jurisdiction.

21.10 Counterparts

This Agreement may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same Agreement.

21.11 Moratorium legislation

Without limiting clause 5.3 (*All Risks*) of the Project Agreement, to the fullest extent permitted by Law, the provisions of all Laws which operate to lessen or affect in favour of the Utility any obligation under this Agreement, or to prejudicially affect the exercise by the Secretary of any right, power or remedy under this Agreement, are expressly waived.

21.12 Proportionate liability

(Excluded operation of Wrongs Act): The operation of Part IVAA of the *Wrongs Act 1958* (Vic) is excluded in relation to all and any rights, obligations or liabilities of either party under this Agreement whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.



HERBERT
SMITH
FREEHILLS



HERBERT
SMITH
FREEHILLS

Attachment 1

Utility Infrastructure

[State Note: To be inserted.]



Attachment 2

Utility Works Proposal

UTILITY WORKS PROPOSAL

To: **[insert name of Utility] (Utility)**

This is a Utility Works Proposal issued under clause 6.1 of the Utility Agreement between the Secretary, **[insert name of other parties]** dated **[insert]**. Unless otherwise expressly defined, expressions used in this Utility Works Proposal have the meanings given to them in or for the purposes of the Project Agreement.

[The Secretary/Project Co] notes the following, in respect of Utility Infrastructure that has been (or is likely to be) affected by the Works:

1 Description of the Utility Infrastructure which is (or is likely to be) affected by the Works:

[insert]

Description of the nature of any Utility Works required to be performed as a result of the Works:

[insert]

Article I. Proposed timing of the Utility Works:

[insert]

Article II. Proposed standards to which the Utility Works are to be performed:

[insert]

Article III. Proposed method for carrying out (including the entity which will carry out) the Utility Works:

[insert]

Article IV. If the Utility is to carry out all or part of the Utility Works, the proposed budget for the Utility Works to be performed by the Utility:

[insert]

Article V. Description of the means by which disruption to services provided by the Utility Infrastructure will be minimized by the Utility:

[insert]

Article VI. Proposed method for final certification of the Utility Works:

[insert]

Signed: _____

Date: _____

[The Secretary/Project Co]



Attachment 3

Utility Works Response

UTILITY WORKS RESPONSE

To: [The Secretary/Project Co] (**The Secretary/Project Co**)

This is a Utility Works Response issued under clause 6.2 of the Utility Agreement between the Secretary, [**insert name of other parties**] dated [**insert**]. Unless otherwise expressly defined, expressions used in this Utility Works Response have the meanings given to them in or for the purposes of the Project Agreement.

[**insert name of Utility**] (**Utility**) notes the following, in respect of Utility Works Response issued under clause 6.1 of the Utilities Agreement:

1 Description of those aspects of the Utility Works Proposal with which the Utility agrees:

[**insert**]

Article I. In respect of all aspects of the Utility Works Proposal with which the Utility does not agree, a description (having regard to the Utility Works Objectives) of the Utility's alternative proposal, including the reasons why the Utility does not so agree and the reasons why its alternative proposal is preferable:

[**insert**]

Article II. If Utility has submitted an alternative proposal, the extent to which the Utility proposes to have a role in performing the Utility Works and, if it is intended that the Utility will perform part or all of the Utility Works, the proposed reasonable cost of any Utility Works to be performed by the Utility.

[**insert**]

Signed: _____

Date: _____

Utility



Attachment 4

Utility Works Order

UTILITY WORKS ORDER

This is a Utility Works Order issued under clause 6.4 of the Utility Agreement between the Secretary, [*insert name of other parties*] dated [*insert*]. Unless otherwise expressly defined, expressions used in this Utility Works Order have the meanings given to them in or for the purposes of the Project Agreement.

The Parties have agreed the following (or alternatively, it has been determined by an expert in accordance with clause 15 of the Utility Agreement), in respect of Utility Infrastructure that has been (or is likely to be) affected by the Works:

- 1 Description of the Utility Infrastructure which is (or is likely to be) affected by the Works:

[*insert*]

Article I. Description of the nature of any Utility Works required to be performed as a result of the Works:

[*insert*]

Article II. Proposed timing of the Utility Works:

[*insert*]

Article III. Proposed standards to which the Utility Works are to be performed:

[*insert*]

Article IV. Proposed method for carrying out (including the entity which will carry out) the Utility Works:

[*insert*]

Article V. To the extent that the Utility will carry out all or part of the Utility Works, the amount payable to the Utility in respect of the performance of the Utility Works:

[*insert*]

Article VI. Description of the means by which disruption to services provided by the Utility Infrastructure will be minimised by the Utility:

[*insert*]

Article VII. Proposed method for final certification of the Utility Works:

[*insert*]

Signed: _____

Date: _____

Utility



HERBERT
SMITH
FREEHILLS

Signed: _____

[The Secretary/Project Co]

Date: _____



HERBERT
SMITH
FREEHILLS

Annexure A

Deed of Accession

Deed

Metro Tunnel
Tunnel and Stations PPP

Accession Deed

The Secretary of the Department of Economic
Development, Jobs, Transport and Resources

[Insert Project Co]

[Insert Utility]



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Accession Deed

Date ►

Between the parties

Secretary **The Secretary of the Department of Economic Development,
Jobs, Transport and Resources**
of **[insert address]**

Utility **[insert]**
[insert ACN] of **[insert address]**

Project Co **[insert]**
[insert ACN] of **[insert address]**

Recitals 1. The Secretary has entered into the Utility Agreement with the
Utility.
2. Under the Project Agreement, Project Co has agreed to, upon
request, execute this deed and implement the Utility Works in
accordance with its obligations under the Project Agreement and
the Utility Agreement.

This deed witnesses as follows:

1 Definitions and interpretation

1.1 Definitions

The meanings of the terms used in this deed are set out below. Unless otherwise expressly defined, terms defined in the Project Agreement have the same meaning in this deed.

| Term | Meaning |
|--------------------------|--|
| Project Agreement | means the document entitled 'Project Agreement' between the State and Project Co dated [insert] . |
| Effective Date | means the date of this deed. |
| Party | means any of the Secretary, Project Co or the Utility and Parties means each of them. |
| Utility Agreement | means the document entitled 'Utility Agreement' between the Secretary and the Utility dated on or about the date of this deed. |
| Utility Works | has the meaning given to it in the Utility Agreement. |

1.2 Interpretation

In this deed:

- (a) headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;
- and unless the context otherwise requires:
- (b) a word importing the singular includes the plural and vice versa and a word indicating a gender includes every other gender;
 - (c) a reference to:
 - (1) a party, clause, Schedule, Exhibit, or Annexure is a reference to a party, clause, Schedule, Exhibit or Annexure of or to this deed; and
 - (2) a section is a reference to a section of a Schedule;
 - (d) a reference to this deed or to any other deed, agreement, document or instrument includes a reference to this deed or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
 - (e) a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;



- (f) a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) "includes" will be read as if followed by the phrase "(without limitation)";
- (j) the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) a reference to "\$", AUD or dollar is to Australian currency;
- (m) a reference to time is a reference to time in Melbourne, Australia;
- (n) a reference to a right includes any benefit, remedy, function, duty, obligation, Liability, interest, entitlement, title, discretion, authority or power;
- (o) a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (p) the term "may", when used in the context of a power, right or remedy exercisable by the Secretary, means that the Secretary can exercise that power, right or remedy in its absolute and unfettered discretion and the Secretary has no obligation to do so;
- (q) where there is a reference to an Authority, institute or association or other body referred to in this deed which:
 - (1) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this deed is deemed to refer to that other entity; or
 - (2) ceases to exist, this deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (r) the use of the words "remedy" or "cure" or any form of such words in this deed means that the event to be remedied or cured must be remedied or cured or its effects overcome; and
- (s) each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

1.3 Precedence of Project Agreement

Each of the Parties acknowledges and agrees that to the extent of any inconsistency, ambiguity or discrepancy between its obligations under this deed, and the Project Agreement, the terms of the Project Agreement will prevail.

2 Covenant

- (a) Project Co:
 - (1) confirms that it has been supplied with a copy of the Utility Agreement; and
 - (2) with effect from the Effective Date, agrees to be bound by the Utility Agreement and to perform all of the obligations required to be performed by the Secretary under the Utility Agreement:
 - (A) as if Project Co was named in the Utility Agreement as a "Party"; and
 - (B) in accordance with clause 5(c) of the Utility Agreement.
- (b) The Utility covenants with Project Co, with effect from the Effective Date, to comply with the provisions of, and to perform all its obligations under the Utility Agreement so far as they may remain to be observed and performed.

3 Miscellaneous

3.1 Governing Law and jurisdiction

- (a) This deed is governed by, and must be construed according to, the Laws of Victoria, Australia.
- (b) Without limiting clauses 15 to 16 of the Utility Agreement, each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this deed.

3.2 Entire Agreement

To the extent permitted by Law and in relation to their subject matter, this deed:

- (a) embodies the entire understanding of the Parties and constitute the entire terms agreed by the Parties; and
- (b) supersedes any prior agreement of the Parties.

3.3 Further acts and documents

Each Party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to both Parties) required by Law or reasonably requested by another Party to give effect to this deed.

3.4 Waiver

- (a) A waiver given by a Party in accordance with this deed is only effective and binding on that Party if it is given or confirmed in writing by that Party.
- (b) A failure to, a delay in or the partial exercise or enforcement of a right provided by Law or in accordance with this deed by a Party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement,



of that or any other right, power or remedy provided by Law or in accordance with this deed.

- (c) No waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

3.5 Consents, approvals and directions

- (a) A consent or approval required in accordance with this deed from the Secretary may be given or withheld, or may be given subject to any conditions, as the Secretary thinks fit, unless this deed expressly provides otherwise.
- (b) A consent or approval required in accordance with this deed from Project Co may not be unreasonably withheld or delayed, unless otherwise expressly provided in this deed.

3.6 Amendments

Except as otherwise expressly provided in this deed, this deed may only be varied by a deed executed by or on behalf of each Party.

3.7 Expenses

Except as otherwise expressly provided in this deed or (as between the State and Project Co) the Project Agreement, each Party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this deed.

3.8 Severance

If, at any time, a provision of this deed or any other State Project Document is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this deed or any other relevant State Project Document;
or
- (b) that provision under the Law of any other jurisdiction.

3.9 Counterparts

This deed may be executed in any number of counterparts and by the Parties in separate counterparts. Each counterpart constitutes the deed of each Party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same agreement.

3.10 Moratorium legislation

Without limiting clause 5.3 (*All Risks*) of the Project Agreement, to the fullest extent permitted by Law, the provisions of all Laws which operate to lessen or affect in favour of a Party other than the State any obligation under this deed, or prejudicially affect the exercise by the State of any right, power or remedy under this deed or otherwise, are expressly waived.



3.11 Proportionate liability

- (a) The operation of Part IVAA of the *Wrongs Act 1958* (Vic) is excluded in relation to all and any rights, obligations or liabilities of either Party under this deed whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) Without limiting clause 3.11(a), the rights, obligations and liabilities of the Parties (including those relating to proportionate liability) are as specified in this deed and not otherwise, whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.



Signing page

Executed as a deed

[State Note: execution blocks to be inserted.]



HERBERT
SMITH
FREEHILLS

Signing page

Executed as a deed

[State Note: execution blocks to be inserted.]



Schedule 11

Insurance Schedule

There are 4 parts to this Schedule 11:

- Part A – State D&C Phase Insurances;
- Part B – Project Co D&C Phase Insurances;
- Part C – State Maintenance Phase Insurances; and
- Part D – Project Co Maintenance Phase Insurances.



Part A – State D&C Phase Insurances

The State must procure, or cause to be procured, and thereafter maintained, each of the Insurances with respect to the Project specified in this Part A for the applicable period of insurance. Each such Insurance must be procured and maintained upon the minimum terms specified in this Part A and clause 43 (*Insurance*) of this Agreement and the form of the Initial State D&C Phase Insurances is set out in Appendix 1. The parties acknowledge and agree that the Initial State D&C Phase Insurances satisfy the requirements of this schedule.

Summary of State D&C Phase Insurances required:

- (a) Contract Works Insurance (Material Damage);
- (b) Contract Works Insurance (Public and Products Liability);
- (c) Contract Works Insurance (Advance Loss of Profits);
- (d) Marine Transit (TBM) Insurance; and
- (e) Marine Transit (TBM) (Delay in Start Up) Insurance.



(a) Contract Works Insurance (Material Damage)

| Insurance element | Minimum Requirement |
|--------------------------|---|
| Insured | <p>Each of:</p> <ul style="list-style-type: none">• Project Co;• Finance Co;• Project Co's Associates;• the State;• the State's Associates;• the Security Trustee;• the D&C Subcontractor;• the Train Franchisee;• the Tram Franchisee;• each Metro Tunnel Package Contractor and its Associates; and• all Subcontractors and each other party which has an insurable interest or is required to be insured under any Project Document relating to the Works, the Metro Tunnel Interface Works, the D&C Activities and the Final Acceptance Works. |
| Sum insured | <p>The full cost of reinstatement or replacement of the Works and Metro Tunnel Interface Works.</p> |
| Scope of cover | <p>Physical loss, destruction or damage to the Works and Metro Tunnel Interface Works, including construction and reinstatement of the Works and Metro Tunnel Interface Works.</p> <p>Insurance to include coverage at a minimum for the following:</p> <ul style="list-style-type: none">• principal owned materials;• materials, plant and equipment on Site which form part of the Works or Metro Tunnel Interface Works;• continuation of cover for any part of the Works or Metro Tunnel Interface Works handed over and put into use at any time prior to the Date of Final Acceptance;• specific tunnelling conditions as applicable;• offsite fabrication;• professional fees;• removal of debris;• expediting expenses;• temporary protection and/or loss mitigation expenses;• [not disclosed] contract price escalation;• inland transit and off-site storage; |



| Insurance element | Minimum Requirement |
|-------------------------|--|
| | <ul style="list-style-type: none">• subsidence/earth movement;• civil works/excavation works;• commissioning and testing of the Works and Metro Tunnel Interface Works;• specialist tunnelling equipment, including tunnel boring machines (TBMs) and road headers;• LEG 2/06;• temporary protection and loss mitigation costs;• claims preparation costs;• government costs; and• cash settlement option. |
| Situation of risk | Anywhere in the Commonwealth of Australia, including whilst in storage, or in transit between any places therein. |
| Maximum Deductibles | <ul style="list-style-type: none">• Tunnelling works - [not disclosed]• All other works - [not disclosed] |
| Additional requirements | <ul style="list-style-type: none">• The policy must be procured and maintained on a project specific basis.• Cover to include a multiple insured clause including cross liability, non-imputation and waiver of subrogation.• Single highest excess applies to claims arising from the one event.• No requirement to exhaust indemnities as a condition precedent to making a claim.• terrorism coverage in respect of an 'eligible terrorism loss' within the meaning of the <i>Terrorism Insurance Act 2003</i> (Cth). |
| Period of insurance | At all times: <ul style="list-style-type: none">• during the D&C Phase; and• until the expiration of the last defects liability period under the Key Subcontracts, if any such defects liability period extends beyond the D&C Phase. |



(b) Contract Works Insurance (Public and Products Liability)

| Insurance element | Minimum Requirement |
|--------------------------|--|
| Insured | <p>Each of:</p> <ul style="list-style-type: none">• Project Co;• Finance Co;• Project Co Associates;• the State;• State's Associates;• the Security Trustee;• the D&C Subcontractor;• the Train Franchisee;• the Tram Franchisee;• each Metro Tunnel Package Contractor and its Associates; and• all Subcontractors and each other party which has an insurable interest or is required to be insured under any Project Document relating to the Works, the Metro Tunnel Interface Works, the D&C Activities and the Final Acceptance Works. |
| Sum insured | <p>[not disclosed] for any one occurrence or series of occurrences arising out of the same source or original cause in connection with the Works or Metro Tunnel Interface Works. Unlimited in the aggregate during the period of insurance but limited to [not disclosed] in the aggregate of all occurrences in any one period of insurance with respect to products and completed operations liability.</p> |
| Scope of cover | <p>Legal liability to pay compensation for personal injury and/or property damage caused by an occurrence during the period of insurance, where such occurrence:</p> <ul style="list-style-type: none">• arises out of the Works, the Metro Tunnel Interface Works, the D&C Activities and the Final Acceptance Works; and• arises out of the occupation by any Insured of any part of the Works or Metro Tunnel Interface Works handed over and put into use at any time prior to the Date of Final Acceptance. |
| Geographical Limits | <p>Worldwide excluding USA and Canada.</p> |
| Maximum Deductibles | <p>[not disclosed] any one occurrence or series of occurrences arising out of the same source or original cause, and unlimited in aggregate with respect to the number of occurrences during the policy period.</p> |
| Additional requirements | <ul style="list-style-type: none">• To be procured on a project specific basis. |



| Insurance element | Minimum Requirement |
|--------------------------|--|
| | <ul style="list-style-type: none">• Cross liability clause – applying for the benefit of each Insured to ensure that each of the Insureds is deemed a separate insured for the purpose of indemnity under the policy.• Severability and non-imputation clauses.• Terrorism coverage in respect of an ‘eligible terrorism loss’ within the meaning of the Terrorism Insurance Act 2003 (Cth).• Worker to worker liability.• Pollution liability but only if caused by a sudden, accidental, unexpected and unintended occurrence.• On hook liability.• Bodily injury and/or property damage arising from an error or omission in design or specification or breach of professional duty.• Cover for mobile plant and equipment not required to be registered/used as a tool of trade (unless separate insurance procured for this exposure under another insurance policy).• Cover for existing or other property (including any existing buildings) in the Insured’s care, custody or control.• Single highest excess applies to claims arising from the one event.• No requirement to exhaust indemnities as a condition precedent to making a claim. |
| Period of insurance | <p>At all times:</p> <ul style="list-style-type: none">• during the D&C Phase; and• until the expiration of the last defects liability period under the Key Subcontracts, if any such defects liability period extends beyond the D&C Phase. |



(c) Contract Works Insurance (Advance Loss of Profits)

| Insurance element | Minimum Requirement |
|--------------------------|--|
| Insured | Each of: <ul style="list-style-type: none">• the State;• Project Co;• Finance Co;• the Security Trustee; and• each Metro Tunnel Package Contractor. |
| Level of cover | <ul style="list-style-type: none">• [not disclosed] |
| Scope of cover | Loss or damage resulting from delay in respect of a matter insured under Part A, section (a) of this Schedule (Contract Works Insurance (Material Damage)), including: <ul style="list-style-type: none">• Abatements;• debt service and refinancing costs;• prolongation costs;• claims preparation costs; and• loss of revenue associated with the Permitted Commercial Opportunities. |
| Situation of risk | Anywhere in the Commonwealth of Australia. |
| Maximum Deductibles | [not disclosed] |
| Additional requirements | <ul style="list-style-type: none">• Suppliers premises extension and nominated suppliers' premises extension on terms comparable to those in the Contract Works Insurance (Advance Loss of Profits) policy procured as an Initial State D&C Phase Insurance.• Public utilities extension.• Cover for Prevention of access.• Cover for additional increased costs of working.• terrorism coverage in respect of an 'eligible terrorism loss' within the meaning of the <i>Terrorism Insurance Act 2003</i> (Cth).• waiver of subrogation against Key Subcontractors.• cross liability/multiple insureds clause.• the policy must be procured and maintained on a project specific basis. |



| Insurance element | Minimum Requirement |
|--------------------------|---|
| | <ul style="list-style-type: none">• no requirement to exhaust indemnities as a condition precedent to making a claim. |
| Period of insurance | From the date of this Agreement until the Date of Final Acceptance. |



(d) Marine Transit (TBM)

| Insurance element | Minimum Requirement |
|--------------------------|--|
| Insured | Each of: <ul style="list-style-type: none">• Project Co;• Finance Co;• Project Co's Associates;• the State;• the State's Associates;• the Security Trustee;• the D&C Subcontractor;• each Metro Tunnel Package Contractor and its Associates; and• all Subcontractors and each other party which has an insurable interest or is required to be insured under any Project Document relating to the Works, Metro Tunnel Interface Works, the D&C Activities and the Final Acceptance Works. |
| Level of cover | The maximum total value of specialist tunnelling equipment, including TBMs and road headers, to be transferred in any one shipment, plus a provision for the costs of freight, insurance, taxes and duties as may be applicable. |
| Scope of cover | Unless covered under the Contract Works Insurance (Material Damage) in respect of the Works or Metro Tunnel Interface Works, loss or damage incurred during the shipment, carriage, or importation of any specialist tunnelling equipment, including TBMs and road headers, intended to be incorporated or used in connection with the Works, Metro Tunnel Interface Works the D&C Activities or the Final Acceptance Works. |
| Situation of risk | Worldwide. |
| Maximum Deductibles | [not disclosed] of maximum limit of indemnity for any one shipment or [not disclosed] whichever is the lesser. |
| Additional requirements | No requirement to exhaust indemnities as a condition precedent to making a claim. |
| Period of insurance | From the time of leaving the manufacturer, or other place of original order in the country of origin, until arrival at the Construction Areas. |



(e) Marine Transit (TBM) (Delay in Start Up)

| Insurance element | Minimum Requirement |
|--------------------------|---|
| Insured | Each of: <ul style="list-style-type: none">• Project Co;• Finance Co;• the Security Trustee; and• each Metro Tunnel Package Contractor. |
| Level of cover | <ul style="list-style-type: none">• [not disclosed] |
| Scope of cover | Loss or damage for delay resulting from a matter insured under Part A, section (d) of this Schedule (Marine Transit (TBM)), including: <ul style="list-style-type: none">• Abatements;• debt service and refinancing costs including Interest on State Contribution;• prolongation costs;• claims preparation costs; and• loss of revenue associated with the Permitted Commercial Opportunities. |
| Situation of risk | Worldwide. |
| Maximum Deductibles | [not disclosed] |
| Additional requirements | <ul style="list-style-type: none">• Single highest excess applies to claims arising from the one event.• No requirement to exhaust indemnities as a condition precedent to making a claim. |
| Period of insurance | At all times during the D&C Phase until the Date of Final Acceptance. |



Part B – Project Co D&C Phase Insurances

Project Co must procure, or cause to be procured, and thereafter maintained, each of the Insurances with respect to the Project specified in this Part B for the applicable period of insurance. Each such Insurance must be procured and maintained upon the minimum terms specified in this Part B and clause 43 (*Insurance*) of this Agreement.

Summary of Project Co D&C Phase Insurances required:

- (a) Contractors' Pollution Liability Insurance;
- (b) Plant and Equipment Insurance;
- (c) Marine Transit Insurance (General) Insurance;
- (d) Marine Transit (General) (Delay in Start-Up) Insurance;
- (e) Design and Construct Professional Indemnity Insurance;
- (f) Workers' Compensation Insurance; and
- (g) Motor Vehicle Insurance.



(a) Contractors' Pollution Liability

| Insurance element | Minimum Requirement |
|--------------------------|---|
| Insured | Each of: <ul style="list-style-type: none">• Project Co;• Finance Co;• Project Co Associates;• the State;• State Associates;• the Security Trustee;• the D&C Subcontractor; and• all Subcontractors and each other party which has an insurable interest or is required to be insured under any Project Document relating to the Works, the D&C Activities and the Final Acceptance Works. |
| Sum insured | <ul style="list-style-type: none">• [not disclosed] per pollution condition; and• [not disclosed] in the aggregate. |
| Scope of cover | For legal liability (including to counterparties) to pay compensation for death, personal injury, loss of or damage to third party property and clean up costs as a result of pollution conditions caused by the Works, the D&C Activities or the Final Acceptance Works. |
| Situation of risk | Anywhere in the Commonwealth of Australia. |
| Retroactive date | N/A. |
| Maximum Deductibles | [not disclosed] per condition. |
| Additional requirements | <ul style="list-style-type: none">• Occurrence wording.• Completed operations extension (for a minimum of [not disclosed]), to cover liability to pay compensation for personal injury or property damage which occurs at any time arising out or in connection with the Works, the D&C Activities, or the Final Acceptance Works.• Third party property damage for the assets of the State or any State Associate.• The policy must be procured and maintained on a project specific basis.• The policy must specifically cover: |



| Insurance element | Minimum Requirement |
|--------------------------|--|
| | <ol style="list-style-type: none">1 sudden, accidental and gradual Pollution;2 remediation costs;3 liability connected with asbestos (including, liability for soil and groundwater pollution);4 liability for soil and groundwater pollution;5 legal defence costs; and6 biodiversity and natural resource damages. <ul style="list-style-type: none">• Cross liability clause such that claims by an Insured, in respect of property in which they have a proprietary, leasehold or license interest, are treated as third party claims for liability coverage purposes.• Severability and-non imputation clauses. |
| Period of insurance | At all times during the D&C Phase. |



(b) Plant and Equipment Insurance

| Insurance element | Minimum Requirement |
|--------------------------|---|
| Insured | Each of: <ul style="list-style-type: none">• Project Co;• Finance Co;• Project Co Associates;• the Security Trustee;• the State;• State Associates;• the D&C Subcontractor; and• all Subcontractors and each other party which has an insurable interest or is required to be insured under any Project Document relating to the Works, the D&C Activities and the Final Acceptance Works. |
| Level of cover | Indemnity value of the respective plant or equipment used in connection with the Works. |
| Scope of cover | Damage or destruction for an indemnity value of the respective plant and equipment whether owned or hired by Project Co or the D&C Subcontractor used for the purposes of undertaking the Works, excluding damage to, or destruction of, specialist tunnelling equipment, including TBMs and road headers. |
| Situation of risk | Anywhere in the Commonwealth of Australia. |
| Maximum Deductibles | [not disclosed] per claim. |
| Additional requirements | N/A. |
| Period of insurance | At all times during the D&C Phase, and until the expiration of the last Defects Liability Period under the Key Subcontracts, if any such period extends beyond the D&C Phase. |



(c) Marine Transit (General)

| Insurance element | Minimum Requirement |
|--------------------------|---|
| Insured | Each of: <ul style="list-style-type: none">• Project Co;• Finance Co;• Project Co Associates;• the State;• State Associates;• the Security Trustee;• the D&C Subcontractor; and• all Subcontractors and each other party which has an insurable interest or is required to be insured under any Project Document relating to the Works, the D&C Activities and the Final Acceptance Works. |
| Level of cover | The maximum total value of the Works or other property to be transferred (excluding specialist tunnelling equipment, including TBMs and road headers) in any one shipment, plus a provision for the costs of freight, insurance, taxes and duties as may be applicable. |
| Scope of cover | Unless covered under the Contract Works Insurance (Material Damage) in respect of the Works, loss or damage incurred during the shipment, carriage, or importation of any goods (excluding specialist tunnelling equipment, including TBMs and road headers) intended to be incorporated or used in connection with the Works, the D&C Activities or the Final Acceptance Works. |
| Situation of risk | Worldwide. |
| Maximum Deductibles | [not disclosed] of maximum limit of indemnity for any one shipment or [not disclosed] whichever is the lesser. |
| Period of insurance | From the time of leaving the manufacturer, or other place of original order in the country of origin, until arrival at the Construction Areas. |



(d) Marine Transit (General) (Delay in Start Up)

| Insurance element | Minimum Requirement |
|--------------------------|--|
| Insured | Each of: <ul style="list-style-type: none">• Project Co• Finance Co; and• the Security Trustee. |
| Level of cover | <ul style="list-style-type: none">• [not disclosed] |
| Scope of cover | Loss or damage for delay resulting from a matter insured under Part B, section (c) of this Schedule (Marine Transit (General)), including: <ul style="list-style-type: none">• Abatements;• debt service and refinancing costs;• prolongation costs;• claims preparation costs; and• loss of revenue associated with the Permitted Commercial Opportunities. |
| Situation of risk | Worldwide. |
| Maximum Deductibles | [not disclosed] |
| Period of insurance | [not disclosed] |



(e) Design and Construct Professional Indemnity Insurance

| Insurance element | Minimum Requirement |
|--------------------------|---|
| Insured | Each of: <ul style="list-style-type: none">• the D&C Subcontractor;• other Key Subcontractors carrying out the D&C Activities and the Final Acceptance Works; and• Project Co. |
| Sum insured | Minimum coverage of [not disclosed] for any one claim and in the aggregate for all claims during the period of insurance. |
| Scope of cover | Covering legal liability arising from an act, error or omission of the Insured in relation to the performance of each Insured's professional activities and duties in connection with the Works, the D&C Activities and the Final Acceptance Works, including: <ul style="list-style-type: none">• loss mitigation and rectification;• proportionate liability; and• contractual liability. |
| Situation of risk | Worldwide. |
| Retroactive date | From the commencement of the design and bid services of the Project. |
| Maximum Deductibles | [not disclosed] any one claim, other than for insured versus insured claims which is [not disclosed]. |
| Additional Requirements | <ul style="list-style-type: none">• Indemnity to the State for its vicarious liability arising out of acts, errors and omissions of its Associates.• Contractual clauses between Project Co and any Subcontractor carrying out the D&C Activities or the Final Acceptance Works must not contain provisions which preclude recovery for breach of professional duty up to the limit of the insurance.• Include cover for construction defects as a result of error in design or specification.• Severability and non-imputation clauses.• The policy must be procured and maintained on a project specific basis. |
| Period of insurance | Continuous period for [not disclosed] from Financial Close, and then at all times until [not disclosed] after Final Acceptance. |



(f) Workers' Compensation Insurance

| Insurance element | Minimum Requirement |
|--------------------------|---|
| Insured | Each party and each Associate is required to procure its own Workers' Compensation and Employer's Liability policy, in respect of its statutory obligations and otherwise as required by Law and commercial prudence. |
| Level of cover | As required by Law. |
| Risks covered | As required by Law. |
| Maximum Deductibles | As required by Law. |
| Additional requirements | N/A. |
| Period of cover | At all times during the D&C Phase. |



(g) Motor Vehicle Insurance

Table 1 – Vehicle damage

| Insurance element | Minimum Requirement |
|--------------------------|--|
| Insured | Each party and each Associate is required to procure and maintain its own insurance for vehicles to be used in connection with the Works, the D&C Activities or the Final Acceptance Works. |
| Level of cover | Third Party Property Damage – Minimum coverage of [not disclosed] per occurrence and unlimited in the aggregate. |
| Risks covered | All: <ul style="list-style-type: none">• third party property damage; and• bodily injury to the extent not covered under the Motor Vehicle Insurance (Bodily Injury), in respect of all vehicles used in connection with the Works, the D&C Activities or the Final Acceptance Works. |
| Maximum Deductibles | [not disclosed] per occurrence. |
| Additional requirements | <ul style="list-style-type: none">• All motor vehicles used in connection with the Works, the D&C Activities or the Final Acceptance Works must be registered currently for compulsory third party insurance as required by Law, if for use on public roads.• Policy must cover unregistered vehicles or vehicles used as a tool of trade unless covered under the Contract Works (Public and Products Liability) Insurance Policy. |
| Period of cover | At all times during the D&C Phase. |

Table 2 – Bodily injury

| Insurance element | Minimum Requirement |
|--------------------------|---|
| Insured | Each party and each Associate is required to procure and maintain its own insurance for vehicles to be used in connection with the Works, the D&C Activities or the Final Acceptance Works. |
| Level of cover | As required by law. |



| Insurance element | Minimum Requirement |
|--------------------------|------------------------------------|
| Risks covered | Bodily injury. |
| Maximum Deductibles | As required by law. |
| Period of cover | At all times during the D&C Phase. |



Part C – State Maintenance Phase Insurances

The State must procure or cause to be procured, and thereafter maintain or cause to be maintained, each of the Insurances with respect to the Project specified in this Part C for the applicable period of Insurance. Each such Insurance must be procured and maintained upon the minimum terms specified in this Part C and clause 43 (*Insurance*) of this Agreement.

The State must procure that VMIA enters into a protocol with Project Co in relation to the State Maintenance Phase Insurances, which must set out timing for the submission and processing of claims (including the notification of loss). The protocol will be for the purposes of managing claims only and will not give rise to any liability of either party.

The State and Project Co acknowledge and agree that the terms of the State Procured Maintenance Phase Insurances agreed by the Parties under clause 43.1(f)(3), resolved under clause 43.1(f)(4)(A) or determined pursuant to clause 43.1(g)(2) of this Agreement are deemed to satisfy the requirements of this Insurance Schedule.

All amounts specified below will be Indexed in accordance with the Indexes Schedule.

Summary of State Maintenance Phase Insurances required:

- (a) Industrial Special Risks (Material Damage) Insurance;
- (b) Public and Products Liability Insurance; and
- (c) Business Interruption Insurance.



(a) Industrial Special Risks (Material Damage) Insurance

| Insurance element | Minimum Requirement |
|--------------------------|---|
| Insured | <p>Each of:</p> <ul style="list-style-type: none">• Project Co;• Finance Co;• Project Co Associates• the State;• State Associates;• the Security Trustee;• the Maintenance Subcontractor;• the Train Franchisee; and• all Subcontractors and each other party which has an insurable interest or is required to be insured under any Project Document relating to the Services. |
| Sum insured | <p>If this insurance is procured and maintained on a project specific basis - In relation to the Relevant Infrastructure, the Returned VicTrack Works and the Returned Train Works, full replacement or reinstatement value any one occurrence, which includes amounts sufficient to cover costs of demolition and removal of debris, professional fees and an amount to cover additional costs and expenses to expedite the commencement and completion of the repair, replacement or reinstatement of the Relevant Infrastructure.</p> <p>If this insurance is procured and maintained as part of the Government Rail Insurance Program – The sum insured under the Government Rail Insurance Program.</p> <p>Actual sub limits are to be as agreed with the State at the time of procuring the Industrial Special Risk/Business Interruption Insurance and will be Indexed thereafter.</p> |
| Scope of Cover | <p>Physical loss, destruction of or damage to all property of every kind and description:</p> <ul style="list-style-type: none">• forming part of the Relevant Infrastructure, the Returned VicTrack Works or the Returned Train Works;• connected with the Relevant Infrastructure, the Returned VicTrack Works, the Returned Train Works, or the Services; or• otherwise agreed between the State and Project Co. <p>Sub limits:</p> <ul style="list-style-type: none">• removal of debris;• professional fees;• accidental damage;• expediting expenses; |



| Insurance element | Minimum Requirement |
|-------------------------|--|
| | <ul style="list-style-type: none">• property in transit (within Australia);• machinery breakdown;• electronic data processing equipment breakdown;• sue and labour expenses;• construction works; and• additional extra costs of reinstatement. <p>Perils covered to include at a minimum:</p> <ul style="list-style-type: none">• earthquake;• flood;• action of the sea/tidal wave/tsunami;• storm/tempest/cyclone;• hail/lightning strike;• landslip/earth movement;• fire/explosion;• impact;• burglary/theft;• malicious damage;• riots/strikes/civil commotion;• accidental damage; and• Terrorism coverage in respect of an 'eligible terrorism loss' within the meaning of the <i>Terrorism Insurance Act 2003</i> (Cth). |
| Situation of risk | Anywhere in the Commonwealth of Australia (and whilst in transit or storage). |
| Maximum Deductibles | <ul style="list-style-type: none">• Tunnels related claims: [not disclosed]• Non-tunnels related claims: [not disclosed] |
| Additional requirements | <ul style="list-style-type: none">• Co-insurance provisions not to apply.• No requirement to exhaust indemnities as a condition precedent to making a claim.• Policy must incorporate relevant provisions of the <i>Insurance Contracts Act 1984</i> (Cth), in the form of the Initial State D&C Phase Insurances.• The appointment of a loss assessor must be agreed by the parties where the loss results in a claim. If the loss falls within the deductible and Project Co (or its Associates) elect to use the services of a loss assessor, Project Co (or its Associates) may select the loss assessor (at their discretion and without reference to |



| Insurance element | Minimum Requirement |
|-------------------|--|
| | <p data-bbox="643 405 719 434">VMIA).</p> <ul data-bbox="603 450 1348 887" style="list-style-type: none"><li data-bbox="603 450 1348 506">• Limit must be sufficient to cover all relevant and appropriate loss scenarios including on a per occurrence basis.<li data-bbox="603 521 1034 551">• No unusual conditions or exclusions.<li data-bbox="603 566 1348 622">• Terrorism coverage in respect of an 'eligible terrorism loss' within the meaning of the <i>Terrorism Insurance Act 2003</i> (Cth)<li data-bbox="603 638 1348 694">• Must reflect the risk profile of the assets and operations of Project Co and its Associates.<li data-bbox="603 710 1348 792">• Based, as a minimum, on the Industry Mark IV endorsed to reflect the coverage available to Project Co at the time of placement had Project Co effected the insurance.<li data-bbox="603 808 1348 887">• Include a provision which provides that the policy is primary and that the insurer must not seek contribution from the insurer of any other policy effected by Project Co or its Associates. |
| Period of cover | For a period of 12 months commencing on the Date of Final Acceptance, to be renewed annually until the Expiry Date. |



(b) Public and Products Liability Insurance

| Insurance element | Minimum Requirement |
|--------------------------|--|
| Insured | Each of: <ul style="list-style-type: none">• Project Co;• Finance Co;• Project Co Associates;• the State• State Associates;• the Security Trustee;• the Maintenance Subcontractor;• the Train Franchisee; and• all Subcontractors and each other party which has an insurable interest or is required to be insured under any Project Document relating to the Services. |
| Sum insured | A minimum of: <ul style="list-style-type: none">• [not disclosed] for any one occurrence with regards to Public Liability; and• [not disclosed] for any one occurrence and [not disclosed] in the annual aggregate for Products Liability. |
| Scope of Cover | To cover legal liability for: <ul style="list-style-type: none">• third party property damage, including property in the care, custody and control of the Insured, for which the Insured is responsible and which is not otherwise already insured for the Insured's benefit, and including resultant consequential and economic loss; and• Personal injury (including libel and slander), disease or death of any person including resultant consequential and economic loss, arising in connection with:<ul style="list-style-type: none">• its products;• the provision of the Services; and• this Agreement during the Maintenance Phase. |
| Situation of risk | Anywhere in the Commonwealth of Australia (and whilst in transit or storage). |
| Maximum Deductibles | [not disclosed] each and every occurrence with respect to third party property damage. [not disclosed] each and every occurrence with respect to third party |



| Insurance element | Minimum Requirement |
|-------------------------|--|
| | <p>bodily injury.</p> <p>[not disclosed] each and every occurrence with respect to Workcover recoveries.</p> |
| Additional requirements | <ul style="list-style-type: none">• The policy must be procured and maintained on either a project specific basis, or as part of the Government Rail Insurance Program.• Care custody and control.• Worker to worker liability.• Liability arising out of personal injury to contract labour hire persons.• Cover liability arising from construction operations on site.• Sudden and accidental pollution.• Terrorism coverage in respect of an 'eligible terrorism loss' within the meaning of the <i>Terrorism Insurance Act 2003</i> (Cth).• Cover for mobile plant and equipment not required to be registered/used as a tool of trade or registered plant whilst used as a tool of trade (unless separate insurance procured for this exposure).• No requirement to exhaust indemnities as a condition precedent to making a claim.• Policy must incorporate relevant provisions of the <i>Insurance Contracts Act 1984</i> (Cth), in the form of the Initial State D&C Phase Insurances.• The appointment of a loss assessor must be agreed by the parties where the loss results in a claim. If the loss falls within the deductible and Project Co (or its Associates) elect to use the services of a loss assessor, Project Co (or its Associates) may select the loss assessor (at their discretion and without reference to VMIA).• Must reflect the risk profile of the assets and operations of Project Co and its Associates.• Provide cover notwithstanding the legal liability of the Insured.• Cover to include loss and loss of use in respect of property damage and/or bodily injury arising out of the provision of professional services.• Cover to include contractual liability (no contractual liability exclusion).• No unusual conditions or exclusions.• Based, as a minimum, on a broad form liability wording endorsed to reflect the coverage no less favourable to the Insured than is commonly available on public private partnership projects in Victoria. |



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| Insurance element | Minimum Requirement |
|--------------------------|---|
| Period of cover | For a period of 12 months commencing on the Date of Final Acceptance, to be renewed annually until the Expiry Date. |



(c) Business Interruption Insurance

| Insurance element | Minimum Requirement |
|--------------------------|---|
| Insured | <p>Each of:</p> <ul style="list-style-type: none">• Project Co;• Finance Co;• Project Co Associates;• the State• State Associates;• the Security Trustee;• the Maintenance Subcontractor;• the Train Franchisee; and• all Subcontractors and each other party which has an insurable interest or is required to be insured under any Project Document relating to the Services. |
| Sum insured | <p>Reflecting a limit of no less than the number of Quarterly Services Payments (prior to any Abatement), plus any loss of revenue associated with the Permitted Commercial Opportunities, plus any other additional amounts as agreed with Project Co (acting reasonably), which will be lost during the period of replacement or reinstatement of the Relevant Infrastructure.</p> <p>Actual sub limits are to be as agreed with the State at the time of procuring the Business Interruption Insurance and will be Indexed thereafter.</p> |
| Scope of Cover | <p>Coverage for business interruption in respect of loss of revenue (including loss of revenue resulting from Abatement) and loss of revenue associated with the Permitted Commercial Opportunities) and additional expenses, arising out of physical loss, destruction of or damage to the Relevant Infrastructure, including sub-limits for:</p> <ul style="list-style-type: none">• increased costs of working;• additional increased cost of working;• utilities memorandum;• prevention of access;• suppliers;• human infectious disease; and• professional fees/claims preparation costs. |
| Situation of risk | Anywhere in the Commonwealth of Australia. |



| Insurance element | Minimum Requirement |
|-------------------------|--|
| Maximum Deductibles | <ul style="list-style-type: none">• Tunnels related claims: [not disclosed]• Non-tunnels related claims: [not disclosed]• For loss of commercial revenue claims: [not disclosed] |
| Additional requirements | <ul style="list-style-type: none">• An appropriate amendment to the basis of settlement clause to clarify that the policy will cover the Abatement of Project Co's Quarterly Service Payment as a result of an insured peril.• An appropriate amendment to the policy will be required to clarify that (subject to overall limits, and policy terms and conditions) the State and any State Associate is entitled to be covered under this policy to the extent that the Quarterly Service Payment is not Abated as a result of an event, act, omission, fact, matter or occurrence (in whole or part) but the State or any State Associate incurs Liabilities that would otherwise be claimable under the policy, such as increased costs of working or additional increased costs of working.• Even if the Industrial Special Risks (Material Damage) Insurance required by Part C(a) of Schedule 11 is procured or maintained as part of the Government Rail Insurance Program, this policy must be procured on the basis that Project Co (the Maintenance Subcontractor and Project Co's other Associates') particular loss is separately provided for.• Co-insurance provisions not to apply.• No requirement to exhaust indemnities as a condition precedent to making a claim.• Policy must incorporate relevant provisions of the <i>Insurance Contracts Act 1984</i> (Cth), in the form of the State D&C Phase Insurances.• The appointment of a loss assessor must be agreed by the parties where the loss results in a claim. If the loss falls within the deductible and Project Co (or its Associates) elect to use the services of a loss assessor, Project Co (or its Associates) may select the loss assessor (at their discretion and without reference to VMIA).• Terrorism coverage in respect of an 'eligible terrorism loss' within the meaning of the <i>Terrorism Insurance Act 2003</i> (Cth).• Must reflect the risk profile of the assets and operations of Project Co and its Associates.• Limit must be sufficient to cover all relevant and appropriate loss scenarios including on a per occurrence basis.• No unusual conditions or exclusions.• Based, as a minimum, on the Industry Mark IV endorsed to reflect the coverage available to Project Co at the time of placement had Project Co effected the insurance. |



| Insurance element | Minimum Requirement |
|--------------------------|---|
| Period of cover | For a period of 12 months commencing on the Date of Final Acceptance, to be renewed annually until the Expiry Date. |



Part D – Project Co Maintenance Phase Insurances

Project Co must procure or cause to be procured, and thereafter maintain or cause to be maintained, each of the Insurances with respect to the Project specified in this Part D for the applicable period of Insurance. Each such Insurance must be procured and maintained upon the minimum terms specified in this Part D and clause 43 (*Insurance*) of this Agreement.

All amounts specified below in relation to Motor Vehicle Insurance will be Indexed in accordance with the Indexes Schedule.

Summary of Project Co Maintenance Phase Insurances required:

- (a) Maintenance Phase Professional Indemnity Insurance;
- (b) Workers' Compensation Insurance;
- (c) Motor Vehicle Insurance; and
- (d) Plant and Equipment.



(a) Maintenance Phase Professional Indemnity Insurance

Project Co must ensure that each Key Subcontractor procures its own professional indemnity insurance which is consistent with the terms set out below, and include a principal's indemnity in favour of each of Project Co and the Maintenance Subcontractor.

| Insurance element | Minimum Requirement |
|--------------------------|--|
| Insured | The Maintenance Subcontractor |
| Principal Indemnity | A principal's indemnity will be provided for Project Co. |
| Sum insured | [not disclosed] for any claim and in annual aggregate. |
| Scope of Cover | Covering legal liability arising from an act error or omission of the insured in relation to the performance of each Insured's professional activities and duties in connection with the Relevant Infrastructure and the Services. |
| Situation of risk | Anywhere in the Commonwealth of Australia. |
| Retroactive date | The date that the professional activities under a contract relating to the Maintenance Phase commences. |
| Maximum Deductibles | [not disclosed] each occurrence. |
| Additional requirements | Severability and non-imputation clauses. |
| Period of cover | For a period of 12 months commencing on the Date of Final Acceptance, to be renewed annually until 7 years after completion of the Maintenance Phase. |



(b) Workers' Compensation and Employer's Liability Insurance

| Insurance element | Minimum Requirement |
|--------------------------|--|
| Insured | Each party and Associate is required to procure its own Workers' Compensation and Employer's Liability policy, in respect of its statutory obligations and otherwise as required by Law and commercial prudence. |
| Level of cover | As required by Law. |
| Risks covered | As required by Law. |
| Retroactive date | N/A |
| Maximum Deductibles | As required by Law. |
| Additional requirements | N/A |
| Period of cover | At all times during the Maintenance Phase. |



(c) Motor Vehicle Insurance

Table 1 – Vehicle damage

| Insurance element | Minimum Requirement |
|---|---|
| Party responsible for procuring the insurance | Each party and each Associate is required to procure and maintain its own insurance for vehicles to be used in connection with the Relevant Infrastructure or the Services. |
| Insured | Each party to procure its own insurance for vehicles to be used in connection with the Relevant Infrastructure or the Services. |
| Level of cover | Third Party Property Damage – Minimum coverage of [not disclosed] per occurrence and in the aggregate in respect. |
| Risks covered | All: <ul style="list-style-type: none">• third party property damage; and• bodily injury to the extent not covered under the Motor Vehicle Insurance (Bodily Injury), in respect of all vehicles used in connection with Relevant Infrastructure or Services. |
| Retroactive date | N/A. |
| Maximum Deductibles | [not disclosed] each and every occurrence |
| Additional requirements | <ul style="list-style-type: none">• All motor vehicles must be registered currently for compulsory third party insurance as required by Law if for use on public roads.• Cover for mobile plant and equipment not required to be registered or used as a tool of trade or registered plant whilst used as a tool of trade (unless separate insurance procured for this exposure or covered under the Public and Products Liability Insurance). |
| Period of cover | At all times during the Maintenance Phase. |



Table 2 – Bodily injury

| Insurance element | Minimum Requirement |
|--------------------------|---|
| Insured | Each party and each Associate is required to procure and maintain its own insurance for vehicles to be used in connection with the Relevant Infrastructure or the Services. |
| Level of cover | As required by law. |
| Risks covered | Bodily injury. |
| Maximum Deductibles | As required by law. |
| Period of cover | At all times during the Maintenance Phase. |



(d) Plant and Equipment

| Insurance element | Minimum Requirement |
|--------------------------|--|
| Insured | Each of: <ul style="list-style-type: none">• Project Co;• Finance Co;• Project Co Associates;• the Security Trustee;• the State;• State Associates;• the Maintenance Subcontractor; and• all Subcontractors and each other party which has an insurable interest or is required to be insured under any Project Document relating to the Relevant Infrastructure or the Services. |
| Level of cover | Indemnity value of the respective plant or equipment used in connection with the Relevant Infrastructure or the Services. |
| Scope of cover | Damage or destruction for an indemnity value of the respective plant and equipment whether owned or hired by Project Co or the Maintenance Subcontractor used for the purposes of undertaking the Services. |
| Situation of risk | Anywhere in the Commonwealth of Australia. |
| Maximum Deductibles | [not disclosed] |
| Additional requirements | N/A. |
| Period of insurance | At all times during the Maintenance Phase. |



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APPENDIX – 1: Initial State D&C Phase Insurances



Schedule 12

Intellectual Property

1 Definitions

In this Schedule, unless the context otherwise requires:

| Term | Meaning |
|---|--|
| Indemnified Persons | has the meaning given to that term in section 5(f) of this Schedule. |
| Model Litigant Guidelines | means the 'Victorian Model Litigant Guidelines' read in conjunction with the provisions of the <i>Civil Procedure Act 2010 (Vic)</i> . |
| Moral Rights | has the meaning given to it in the <i>Copyright Act 1968 (Cth)</i> and any corresponding or similar rights granted under any other laws anywhere in the world. |
| Project Intellectual Property Rights | means all Intellectual Property Rights in: (a) any Project Co Material, the Relevant Infrastructure or the Returned Assets, including any such Intellectual Property Rights: (i) existing at the date of this Agreement; or (ii) which come into existence after the date of this Agreement, including those derived from Intellectual Property Rights existing at the date of this Agreement; and (b) any information, ideas, documents, equipment or material of any kind and however embodied, which are supplied, brought to or used by or on behalf of Project Co in undertaking the Project (including each method of working used by or on behalf of Project Co in carrying out the Project Activities) or which are made available to the State in accordance with this Agreement by or on behalf of Project Co, whether or not forming part of the Project Co Material, the Relevant Infrastructure or the Returned Assets and whether or not owned by a third party. |
| Third Party Intellectual Property Rights | means any Intellectual Property Rights that are not vested in Project Co or any of its Associates. |



2 Warranties

Project Co warrants to the State that:

- (a) **(No infringement or rights)**: no Intellectual Property Rights or Moral Rights or other rights of any person will be infringed or breached:
- (1) in delivering the Project; or
 - (2) by use or enjoyment of the Project Co Material, the Relevant Infrastructure or the Returned Assets; or
 - (3) by use or exercise of the Project Intellectual Property Rights,
- by the State, any of its Associates or any person nominated or authorised by the State in connection with this Agreement; and
- (b) **(ownership of rights)**: it owns, or has the authority to grant the rights granted in accordance with this Schedule 12 in connection with, the Project Intellectual Property Rights and neither:
- (1) the exercise of those rights by the State, any of its Associates or any person nominated or authorised by the State in connection with this Agreement; nor
 - (2) the possession or use of any materials in which those rights subsist in connection with this Agreement,
- will give rise to any Liability on the part of the State, any of its Associates or any person nominated or authorised by the State, including to pay any compensation (including any royalty) to any person, or give rise to a right entitling any person to make a Claim against the State, any of its Associates or any person nominated or authorised by the State for any attribution or acknowledgment or rectification in relation to the Project Intellectual Property Rights or any materials in which they subsist.

3 Grant of licence

Project Co:

- (a) **(grant)**: grants to the State;
- (b) **(procure of grant)**: without limiting Project Co's obligations under section 6 of this Schedule, must procure that each of its Associates legally entitled to do so grants to the State (with effect from the date the relevant Project Intellectual Property Rights come into existence); and
- (c) **(all things necessary)**: must do all things necessary to give effect to the grant to the State of,

a world-wide, perpetual, irrevocable, non-exclusive, transferable, royalty-free licence (including the right to sub-license) to use, reproduce, modify, adapt, develop, communicate to the public or otherwise exploit the Project Co Material, and to exercise all or any of the Project Intellectual Property Rights, for the purposes of:

- (d) **(Project)**: the Project (including, where this Agreement is terminated for any reason other than for convenience under clause 45.2 (*Voluntary Termination*) of this Agreement, to complete any Project Activities which have not been:
- (1) carried out; or



- (2) carried out in accordance with the applicable State Project Documents,
as at the date of termination);
- (e) **(Project Documents)**: the exercise of the rights of the State or its Associates in accordance with the Project Documents (including its step-in rights in accordance with clause 41 (*Step-in by the State*) of this Agreement);
- (f) **(Project Co Material, Relevant Infrastructure and Returned Assets)**: the procurement, design, supply, construction, installation, production, commissioning, completion, operation, maintenance, repair and alteration of:
 - (1) the Project Co Material (to the extent that it relates to the Returned Assets) or the Returned Assets on and from Handback; and
 - (2) the Project Co Material or the Relevant Infrastructure on and from the Expiry Date; and
- (g) **(interfaces)**: the procurement, design, supply, construction, installation, production, commissioning, completion, operation, maintenance, repair and alteration of any thing (including infrastructure, equipment, computer hardware, computer software and computer or telecommunications systems) which interfaces or interoperates with, or is located (in whole or in part) under, on or above the Project Co Materials, the Relevant Infrastructure, or the Returned Assets, during and after the Term, but only to the extent the use or exercise of the Project Intellectual Property Rights is required to enable the proper procurement, design, supply, construction, installation, production, commissioning, completion, operation, maintenance, repair or alteration of that thing.

4 Project Co Material, Relevant Infrastructure and Returned Assets

Without limiting Project Co's other obligations under this Agreement with respect to the delivery of any Project Co Material, the Relevant Infrastructure or the Returned Assets, Project Co will provide, and procure that its Associates provide, all documentation, information and assistance and materials as the State may reasonably require for the State's:

- (a) use and enjoyment of the Project Co Material, the Relevant Infrastructure or the Returned Assets; or
- (b) use and exercise of the Project Intellectual Property Rights,
in connection with this Agreement.

5 Indemnities

- (a) **(Intellectual Property Rights, Moral Rights or other rights)**: Project Co must indemnify the Indemnified Persons against any Claim or Liability brought against, suffered or incurred by the Indemnified Persons arising in connection with any infringement, violation, alleged infringement or alleged violation by Project Co or any of its Associates or any Indemnified Person of any Intellectual Property Rights, Moral Rights or other rights of any person or any Liability which



any one or more of the Indemnified Persons may have to pay compensation (including any royalty) to a third party or make any attribution or acknowledgement or rectification in relation to any Project Intellectual Property Rights, any Project Co Material, the Relevant Infrastructure, or the Returned Assets, in connection with:

- (1) the Project; and
 - (2) in the case of the Indemnified Persons:
 - (A) using or enjoying the Project Co Material, the Relevant Infrastructure or the Returned Assets as delivered by or on behalf of Project Co to the State or as modified from time to time (but not to the extent that any Claim or Liability arises from any modification made by the State or third parties engaged by the State which is not as directed or approved by Project Co) in connection with this Agreement; or
 - (B) using or exercising the Project Intellectual Property Rights in the manner authorised by this Agreement.
- (b) **(Breach of warranties):** Project Co must indemnify the Indemnified Persons against any Liability or Claim arising from any breach of the warranties set out in section 2 of this Schedule.
- (c) **(Indemnities under this section 5):** In relation to any Claim or Liability for which an Indemnified Person seeks to be indemnified under section 5(a) or 5(b) of this Schedule:
- (1) Project Co may (subject to Project Co confirming to the State that the Claim or Liability is the subject of the indemnity in section 5(a) or 5(b) of this Schedule) conduct any defence or settlement in any such Claim or in relation to any such Liability, provided that Project Co:
 - (A) keeps the State informed of all material steps in relation to the conduct of any defence or settlement;
 - (B) consults with, and complies with all reasonable requirements of, the State in relation to such defence or settlement including complying with the Model Litigant Guidelines; and
 - (C) ensures that no settlement is made on terms which involve any admission of liability on the part of any Indemnified Person without the prior consent of that Indemnified Person;
 - (2) the State must use reasonable endeavours to ensure Indemnified Persons provide all cooperation reasonably required by Project Co in relation to such defence; and
 - (3) to the extent that the Claim or enjoyment or Liability under section 5(a) or section 5(b) of this Schedule comes to the attention of the State before it comes to the attention of Project Co, the State will notify Project Co of the Claim or enjoyment or Liability.
- (d) **(Interference with use or enjoyment of Project Co Material, the Relevant Infrastructure or the Returned Assets):** If a Claim or Liability referred to in section 5(a) of this Schedule substantially interferes with the Indemnified Persons' use or enjoyment of any Project Co Material, Relevant Infrastructure or Returned Asset, or the use or exercise of the Project Intellectual Property Rights, or the State reasonably believes, in consultation with Project Co, that such Claim or Liability may substantially interfere with such use or enjoyment, Project Co will (at the State's option, and without limiting any of the State's other rights under any Project Document):



- (1) replace the Project Co Material, the Relevant Infrastructure, the Returned Asset or the subject matter of the relevant Project Intellectual Property Right, without additional charge, with a non-infringing product or service of at least equivalent functionality and performance and which otherwise meets all relevant requirements for that Project Co Material, Relevant Infrastructure or Returned Asset in accordance with the Project Documents;
 - (2) modify the Project Co Material, the Relevant Infrastructure, the Returned Asset or the subject matter of the relevant Project Intellectual Property Right to overcome the infringement without additional charge and without materially impeding functionality or performance or rendering it non-compliant with any relevant requirements for that Project Co Material, Relevant Infrastructure or Returned Asset in accordance with the Project Documents; or
 - (3) obtain a licence for the Indemnified Persons to continue use and enjoyment of the Project Co Material, the Relevant Infrastructure, the Returned Asset or the subject matter of the relevant Project Intellectual Property Right in accordance with the licence granted under section 3 of this Schedule and pay any additional fee required for such licence.
- (e) **(Intellectual Property Rights)**: Neither the State's rights nor Project Co's liabilities or obligations, whether under this Agreement or otherwise according to Law, in connection with Intellectual Property Rights, will be limited by the terms of this section 5.
- (f) **(Indemnified Persons)**: For the purposes of this section 5, the Indemnified Persons are each of:
- (1) the State;
 - (2) the State's Associates; and
 - (3) any person nominated or authorised by the State (including the respective sub-licensees of the State and its Associates) to use any Intellectual Property Rights.

6 Moral Rights

If Project Co, in the course of carrying out the Project Activities, makes use of any work or other subject matter in which copyright subsists (**Material**), Project Co must procure from every person (including any officer, employee, agent, consultant or Subcontractor of Project Co or any of its Associates) who is an author of that Material a consent which is valid and effective under the *Copyright Act 1968* (Cth) and signed by that person by which (to the maximum extent permitted by Law) that person irrevocably and unconditionally consents to the State, any of its Associates and any person nominated or authorised by the State (including sub-licensees), Project Co and its Associates and any person authorised to do acts comprised in the copyright (**Beneficiaries**):

- (a) **(exercise of rights)**: using, disclosing, reproducing, transmitting, exhibiting, communicating, adapting, publishing or otherwise exercising its rights in relation to the Material anywhere in the world in whatever form any of the Beneficiaries thinks fit (including the making of any distortions, additions or alterations to the Material or any adaptation thereof, or to any part of the Material or of any adaptation of the Material in a manner which, but for the consent, infringes or may infringe that person's Moral Rights in the Material); and



- (b) **(no identification)**: using, disclosing, reproducing, transmitting, exhibiting, communicating, adapting, publishing or otherwise exercising its rights in relation to the Material or any adaptation thereof (or any part of the Material or of any such adaptation) anywhere in the world without making any identification of that person in relation to the Material.

7 Third Party Materials

- (a) **(Application of Third Party Intellectual Property Rights)**: Sections 3 and 6 of this Schedule will not apply to any Intellectual Property Rights that are Third Party Intellectual Property Rights if, and only to the extent that:
- (1) the material the subject of the relevant Intellectual Property Rights (the **Third Party Material**) is generally commercially available on reasonable commercial terms;
 - (2) Project Co and its Associates have been unable (despite their reasonable endeavours) to procure from the relevant third party the right to grant the licences in sections 3 and 6 of this Schedule in respect of that Third Party Material;
 - (3) Project Co has notified the State that it has been unable to procure the necessary licence rights for that Third Party Material;
 - (4) Project Co has used its reasonable endeavours to procure a licence for the State in respect of that Third Party Material (whether from Project Co or the relevant third party) on terms as close as possible to the terms of sections 3 and 6 of this Schedule, and has notified the State of those terms; and
 - (5) the State has given its approval to the Third Party Material being excluded from the subject matter of the licenses granted in sections 3 and 6 of this Schedule. This approval may be given at the State's sole discretion, and is subject to such conditions as the State sees fit.
- (b) **(No State approval)**: The State not giving its approval in accordance with section 7(a)(5) of this Schedule will not relieve Project Co from any of its obligations under this Agreement or any of the Project Documents.
- (c) **(State withdraws approval)**: If the State has reasonable grounds to withdraw, and notifies Project Co that it has withdrawn, its approval under this section 7 of this Schedule in respect of any Third Party Material, Project Co must use its reasonable endeavours to immediately procure for the State from the relevant third party (or parties), at Project Co's sole cost and expense, all licences necessary under the terms of this Agreement in respect of that Third Party Material.
- (d) **(Procurement of licences to Third Party Material)**: If the State approves certain Third Party Material being excluded from the subject matter of the licenses granted in sections 3 and 6 of this Schedule and instead being licensed to the State on certain terms notified under section 7(a)(4) of this Schedule, Project Co must immediately grant to the State or procure from the relevant third party a licence for the State (as the case may be) on those terms.



Schedule 13

Independent Reviewer Deed of Appointment

Deed

Metro Tunnel
Tunnel and Stations PPP

Independent Reviewer Deed of Appointment

The Minister for Public Transport on behalf of the
Crown in right of the State of Victoria

Project Co

AECOM Australia Pty Ltd

Metro Trains Melbourne Pty Ltd

KDR Victoria Pty Ltd



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Independent Reviewer Deed of Appointment

Date ►

Between the parties

State **The Minister for Public Transport on behalf of the Crown in right of the State of Victoria**

Project Co 1 [not disclosed];
2 [not disclosed];
3 [not disclosed]; and
4 [not disclosed],
(together, **Cross Yarra Partnership**) of Level 8, 136 Exhibition Street, Melbourne, VIC 3000, Australia.

Train Franchisee **Metro Trains Melbourne Pty Ltd**
ACN 136 429 948 of Level 17, 700 Collins Street, Melbourne Victoria 3000.

Tram Franchisee **KDR Victoria Pty Ltd**
ABN 42 138 066 074 of Level 3, 555 Bourke Street, Melbourne Victoria 3000.

Independent Reviewer **AECOM Australia Pty Ltd**
ACN 093 846 925 of Collins Square, Level 10, Tower Two, 727 Collins Street, Melbourne Victoria 3008.

Recitals

- 1 The background to the Project is set out in the Project Agreement.
- 2 The Independent Reviewer is experienced generally in construction and project management and, in particular, in:
 - a the review and checking of design documentation; and
 - b design and construction in respect of rail infrastructure and tunnels,and offers its expertise in those fields.
- 3 The State Project Documents and the Project Alliance Agreements contemplate that the Independent Reviewer will discharge certain functions, including those set out in the Services



Schedule.

- 4 The Independent Reviewer will perform its obligations in accordance with the terms and conditions of this Deed.
- 5 The Train Franchisee is the operator of the Melbourne metropolitan train network.
- 6 The Tram Franchisee is the operator of the Melbourne metropolitan tram network.
- 7 The Project Activities carried out by Project Co under the Project Agreement will interface with the operation of the Melbourne metropolitan train network and the Melbourne metropolitan tram network.
- 8 The Train Franchisee and Project Co, and the Tram Franchisee and Project Co, have agreed to co-operate and co-ordinate their activities in relation to the Project in accordance with the Rail Franchisee Cooperation Agreements and each Rail Franchisee enters into this Deed in its capacity as counterparty to the relevant Rail Franchisee Cooperation Agreement.

This deed witnesses as follows:



1 Definitions and interpretation

1.1 Project Agreement definitions

Unless otherwise expressly defined, expressions used in this Deed have the meanings given to them in or for the purposes of the Project Agreement.

1.2 Definitions

In this Deed, unless the context otherwise requires:

| Term | Meaning |
|---------------------------------|---|
| Adjustment Event | has the meaning given in the Project Alliance Agreements. |
| Agreed Amount | has the meaning given in clause 15(b)(1). |
| Aggregate Monthly Amount | means, for a given month, the amount set out for that month in the column entitled "Aggregate Monthly Amount" in section 8(a), 8(b), or 8(c) of Schedule 3 (as the context requires). |
| Alliance Services | means: <ol style="list-style-type: none">1 all of the functions conferred on the Independent Reviewer under a Project Alliance Agreement in respect of Non-PPP CIMs, as varied in accordance with clause 11 or the terms of the applicable Project Alliance Agreement;2 all other things or tasks which the Independent Reviewer must do to comply with its obligations under a Project Alliance Agreement in respect of Non-PPP CIMs; and3 without limiting paragraph 2, all other things and tasks in respect of Non-PPP CIMs not described in a Project Alliance Agreement if those things and tasks should have been reasonably anticipated by an experienced and expert professional provider of similar services as being necessary for the performance of those things or tasks or which are otherwise capable of inference from a Project Alliance Agreement. |
| Alliance Services Fee | means the sum of the fees payable to the Independent Reviewer for performance of the Alliance Services, as adjusted from time to time in accordance with clause 11.1 and the Payment Schedule. |
| Alliance Services Fee | has the meaning given in section 8(c) of Schedule 3. |



| Term | Meaning |
|---|--|
| Cap | |
| Alliance Services Fee Cumulative Cap | means the Aggregate Monthly Amount set out in section 8(c) of Schedule 3 (as applicable), minus the aggregate of all previous Fees paid to the Independent Reviewer in respect of the Alliance Services. |
| Authorisation | has the meaning given in the Project Alliance Agreements. |
| AW Services | has the meaning given to the term 'Services' under the Independent Reviewer Deed of Appointment (Advanced Works). |
| AW Services Fee | has the meaning given to the term 'Fee' under the Independent Reviewer Deed of Appointment (Advanced Works). |
| Capped Party | has the meaning given in clause 9.3(b). |
| Commencement Date | has the meaning given in clause 2.1. |
| Contract Particulars | means the particulars set out in Schedule 1. |
| Cost | has the meaning given in clause 15(g). |
| Critical Interface Milestones | means all of the Critical Interface Milestones set out under the: <ol style="list-style-type: none">1 Project Agreement; and2 Project Alliance Agreements. |
| Deed | means this deed and includes all Schedules, Exhibits, Attachments and Annexures to it. |
| Disbursements Cap | has the meaning given in section 9 of Schedule 3. |
| Dispute | has the meaning given in clause 16.2. |
| Disputing Parties | has the meaning given in clause 16.2. |



| Term | Meaning |
|--|---|
| DLP Fee Cap | has the meaning given in section 8(e)(1) of Schedule 3. |
| DLP Fee Cumulative Cap | means the Aggregate Monthly Amount set out in section 8(b) of Schedule 3 (as applicable), minus the aggregate of all previous Fees paid to the Independent Reviewer for the Upstream Independent Reviewer Functions (excluding the Alliance Services) performed in accordance with this Deed during the DLP Fee Period. |
| DLP Fee Period | means the period commencing on the expiry of the Initial Fee Period and ending on the date of the Last DLP. |
| DLP Fee Proposal | has the meaning given in section 8(d) of Schedule 3. |
| Downstream Independent Reviewer Contracts | means: <ol style="list-style-type: none">1 the D&C Subcontract;2 any Subcontract in respect of the Project Activities as specified in item 9 of the Contract Particulars of the Project Agreement; and3 any Sub-Independent Reviewer Deed. |
| Downstream Independent Reviewer Functions | means the functions, powers and obligations of the Independent Reviewer or the Sub-Independent Reviewer (as applicable) under the Downstream Independent Reviewer Contracts. |
| Downstream Parties | means the D&C Subcontractor. |
| Expiry Date | means the date which is the earlier of: <ol style="list-style-type: none">1 the end of the Term; and2 termination of this Deed in accordance with clause 12 or otherwise at Law. |
| Fee | means the sum of the fees payable or paid to the Independent Reviewer for performance of the Services, as adjusted from time to time in accordance with clause 11.1 and the Payment Schedule, and includes the Alliance Services Fee. |
| Hold Point | has the meaning given in the PS&TR. |



| Term | Meaning |
|--|---|
| Independent Reviewer Deed of Appointment (Advanced Works) | means the document entitled 'Independent Reviewer Deed of Appointment (Advanced Works)' dated [insert] between the State, the D&C Subcontractor, the Independent Reviewer, the Train Franchisee and the Tram Franchisee. |
| Independent Reviewer Material | means all documentation, information (including databases and drafts), models and other material in which Intellectual Property Rights are capable of subsisting prepared, used or provided by or on behalf of the Independent Reviewer in carrying out the Services. |
| Independent Reviewer's Representative | means the person named in the Contract Particulars or any other person appointed by the Independent Reviewer with the approval of the Project Parties from time to time to replace that person. |
| Independent Subcontractor | means the independent subcontractor appointed by the Independent Reviewer under clauses 5.13 and 5.14 to perform the Independent Subcontractor Services. |
| Independent Subcontractor Services | means each part of the Services relating to: <ol style="list-style-type: none">1 the certification of any Critical Interface Milestones; and2 assessing and quantifying interface cost impacts under the Project Alliance Agreements. |
| Initial Fee Cap | has the meaning given in section 8(a) of Schedule 3. |
| Initial Fee Cumulative Cap | means the Aggregate Monthly Amount set out in section 8(a) of Schedule 3 (as applicable), minus the aggregate of: <ol style="list-style-type: none">1 all previous Fees paid to the Independent Reviewer for the Upstream Independent Reviewer Functions (excluding the Alliance Services) performed in accordance with this Deed during the Initial Fee Period; and2 all of the AW Services Fees paid pursuant to the Independent Reviewer Deed of Appointment (Advanced Works). |
| Initial Fee Period | means the period commencing on the date of this Deed and ending on the Date of Final Acceptance. |
| Initial Monitoring Plan | means the document set out in Schedule 4. |
| Key People | means the people identified as such in the Contract Particulars. |



| Term | Meaning |
|------------------------------------|--|
| Key RIA People | has the meaning given in clause 4A(e). |
| Liability Cap | has the meaning given in clause 9.1. |
| Member | means a person who is a 'Member' for the purposes of the expression of interest or request for proposal in respect of the Rail Infrastructure Alliance. |
| Monitoring Plan | means a monitoring plan provided by the Independent Reviewer in accordance with clause 3.4, as amended and updated in accordance with clause 3.4. |
| Non-Capped Party | has the meaning given in clause 9.3(c). |
| Non-PPP CIM | means: <ol style="list-style-type: none">1 any RIA-RSA CIM, as that term is defined in the Rail Infrastructure Alliance Agreement; and2 any RSA-RIA CIM or RSA-HCMT CIM, as each of those terms are defined in the Rail Systems Alliance Agreement. |
| Payment Schedule | means the schedule set out in Schedule 3. |
| Primary Policy | has the meaning given in clause 9.5(d)(2). |
| Project Agreement | means the document entitled 'Project Agreement' between the State and Project Co dated on or about the date of this Deed. |
| Project Alliance Agreements | means: <ol style="list-style-type: none">1 the Rail Systems Alliance Agreement; and2 the Rail Infrastructure Alliance Agreement. |
| Project Alliance Services | means each part of the Services performed under a Project Alliance Agreement. |
| Project Alliance Site | means any land, or any part of land, where the Rail Systems Alliance Works or the Rail Infrastructure Alliance Works are to be performed. |



| Term | Meaning |
|---|--|
| Project Parties | means the State and Project Co. |
| Project Parties' Representatives | means, in respect of each of the State and Project Co, the person named in the Contract Particulars or any other person appointed by the relevant Project Party from time to time to replace that person. |
| Quality Management Plan | means the plan of that name prepared and updated in accordance with the Project Management Requirements. |
| Quarter | means: <ol style="list-style-type: none">1 the period from the Commencement Date until the first Quarterly Date during the Term;2 each 3 month period commencing on a Quarterly Date; and3 the period from the last Quarterly Date during the Term until the Expiry Date. |
| Rail Franchisee Input Document | has the meaning given to the term 'Franchisee Input Document' in a Rail Franchisee Cooperation Agreement. |
| Recipient | has the meaning given in clause 15(b)(2). |
| Resource Adjustment | means an adjustment in the level of resources which are required from the Independent Reviewer to perform the Upstream Independent Reviewer Functions. |
| Resource Adjustment Order | means the document issued by the Project Parties in accordance with section 11.5 of the Payment Schedule. |
| Respondent | means a person who is a 'Respondent' for the purposes of the expression of interest or request for proposal in respect of the Rail Infrastructure Alliance. |
| Revenue | has the meaning given in clause 15(f). |
| RIA IR Services | means those parts of the Services which relate to: <ol style="list-style-type: none">1 a Critical Interface Milestone identified in the Critical Interface Milestone Program; and2 any other part of the Services which is related or connected to the RIA and which the State notifies each other party is an 'RIA |



| Term | Meaning |
|--|---|
| | IR Service' for the purposes of this Deed. |
| RIA Sub-consultant | has the meaning given in clause 4A(c). |
| Schedule of Rates and Disbursements | means the schedule of rates and prices, disbursements and caps set out in section 9 of the Payment Schedule as adjusted from time to time in accordance with clause 11.1 and the Payment Schedule. |
| Services | means: <ol style="list-style-type: none">1 the AW Services;2 the Alliance Services;3 all of the functions conferred on the Independent Reviewer under this Deed, the State Project Documents or the Downstream Independent Reviewer Contracts, as varied in accordance with clause 11 or in accordance with terms of the Downstream Independent Reviewer Contracts;4 all other things or tasks which the Independent Reviewer must do to comply with its obligations under this Deed, the State Project Documents or the Downstream Independent Reviewer Contracts; and5 without limiting paragraph 2, all other things and tasks not described in this Deed, the State Project Documents or the Downstream Independent Reviewer Contracts if those things and tasks should have been reasonably anticipated by an experienced and expert professional provider of similar services as being necessary for the performance of those things or tasks or which are otherwise capable of inference from this Deed, the State Project Documents or the Downstream Independent Reviewer Contracts. |
| Services Schedule | means the schedule set out in Schedule 2. |
| Sub-Independent Reviewer | has the meaning given in the D&C Subcontract. |
| Sub-Independent Reviewer Deed | means a document entitled 'Sub-Independent Reviewer Deed of Appointment' between Project Co, the Independent Reviewer, and the D&C Subcontractor, dated on or about the date of this Deed. |
| Sub-IR Services | has the meaning given in the Sub-Independent Reviewer Deed. |



| Term | Meaning |
|--|--|
| Substitute Reviewer | has the meaning given in clause 11.2(a). |
| Successor Operator | has the meaning given to that term in the relevant Rail Franchisee Cooperation Agreement. |
| Supplier | has the meaning given in clause 15(b). |
| Term | means the period from the Commencement Date to the date 1 month after the expiry of the D&C Phase or such later date as agreed by the parties. |
| Train Franchisee Rail Safety Requirements | means the terms of the Train Franchisee's accredited Safety Management System, including the following requirements to the extent applicable to such Maintenance Services: <ol style="list-style-type: none">1 Safety and Environmental Requirements for contractors Working on Franchisee Premises – L0-SQE-PRO-014; and2 Contractor Safety Procedure – L1-SQE-PRO-011. |
| Train Franchisee Representative | means the person named in the Contract Particulars or any other person appointed by the Train Franchisee with the prior approval of the Project Parties from time to time to replace that person. |
| Tram Franchisee Rail Safety Requirements | means the rail safety requirements arising under the terms of the Tram Franchisee's accredited Tram Safety Management System. |
| Tram Franchisee Representative | means the person named in the Contract Particulars or any other person appointed by the Tram Franchisee with the prior approval of the Project Parties from time to time to replace that person. |
| Transition Out Period | means the period of 24 months prior to the end of the Term. |
| Transition Out Plan | means the plan prepared by the Independent Reviewer to meet its obligations in accordance with clause 13 which is in a form reasonably agreed to by the Project Parties. |
| Upstream Independent Reviewer Functions | means the Services excluding the Downstream Independent Reviewer Functions. |

1.3 Interpretation

In this Deed:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;
- and unless the context otherwise requires:
- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa and a word indicating a gender includes every other gender;
 - (c) **(Deed and Schedule references)**: a reference to:
 - (1) a party, clause or Schedule is a reference to a party, clause or Schedule of or to this Deed;
 - (2) a section is a reference to a section of a Schedule;
 - (3) the Train Franchisee includes PTV to the extent PTV exercises any step-in rights under the Train Franchisee Arrangements as contemplated by clause 23 of the Train Franchisee Cooperation Agreement; and
 - (4) the Tram Franchisee includes PTV to the extent and for the duration PTV exercises any step-in rights under the Tram Franchisee Arrangements as contemplated by clause 18 of the Tram Franchisee Cooperation Agreement;
 - (d) **(deed as amended)**: a reference to this Deed or to any other deed, agreement, document or instrument includes a reference to this Deed or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
 - (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
 - (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
 - (g) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
 - (h) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
 - (i) **("includes")**: "includes" will be read as if followed by the phrase "(without limitation)";
 - (j) **("or")**: the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
 - (k) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
 - (l) **("\$")**: a reference to "\$", AUD or dollar is to Australian currency;
 - (m) **(time)**: a reference to time is a reference to time in Melbourne, Australia;



- (n) (**rights**): a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (o) (**obligations and liabilities**): without limiting clause 1.6 or 1.7, a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (p) ("**may**"): the term "may", when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;
- (q) (**construction**): where there is a reference to an Authority, institute or association or other body referred to in this Deed which:
 - (1) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or
 - (2) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (r) (**remedy**): the use of the words "remedy", "cure" or any form of such words in this Deed means that the event to be remedied or cured must be remedied or cured or its effects overcome; and
- (s) (**contra proferentem rule not to apply**): each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

1.4 Business Day

If the day on or by which anything is to be done in accordance with this Deed is not a Business Day, that thing must be done no later than the next Business Day.

1.5 Inconsistency

Where there is an inconsistency, ambiguity or discrepancy between:

- (a) this Deed and any other State Project Documents, then the order of precedence in clause 2.3 (*Inconsistency between State Project Documents*) of the Project Agreement applies; or
- (b) this Deed and a Project Alliance Agreement, then the greater or higher requirement, standard quality, level of service, quantum or scope as determined by the State will prevail.

1.6 Joint and several Liability of Independent Reviewer

If the Independent Reviewer comprises more than one person:

- (a) (**joint and several**): the obligations of those persons are joint and several; and
- (b) (**proceedings**): each Project Party and each Rail Franchisee may proceed against any or all of them for any failure of the Independent Reviewer to comply with any obligation in accordance with this Deed or otherwise.



1.7 Several Liability

- (a) **(Project Parties):** If a provision of this Deed binds the Project Parties, that provision binds each of the Project Parties severally and not jointly and severally.
- (b) **(Project Parties and Rail Franchisees):** If a provision of this Deed binds the Project Parties and one or both of the Rail Franchisees, that provision binds each of the Project Parties and the relevant Rail Franchisees severally and not jointly and severally.

1.8 Relationship of the parties

- (a) **(No partnership or joint venture):** The relationship between and among the parties to this Deed will not be that of partners or joint venturers and nothing therein contained will be deemed to constitute a partnership or joint venture among them and no party will have authority or power to act unilaterally as agent for the other.
- (b) **(Independent contractor):** It is understood that the Independent Reviewer is acting as an independent contractor for the Project Parties and the Rail Franchisees and therefore the Independent Reviewer is not authorised to enter into any binding obligations on behalf of the Project Parties or the Rail Franchisees.
- (c) **(No relationship):** Unless otherwise expressly provided, this Deed does not:
 - (1) create a partnership, joint venture or fiduciary relationship between the parties to this Deed; or
 - (2) impose any duty of good faith on the State.

1.9 Approvals, directions and notices in writing

Unless otherwise expressly provided in this Deed or agreed between the parties, all approvals, consents, directions, requirements, requests, claims, notices, agreements and demands must be given in writing.

1.10 Action without delay

Unless there is a provision in this Deed which specifies a period of time in which something must be done by the parties, all things must be done without undue delay.

1.11 Prior approval or consent

Where Project Co, a Rail Franchisee, or the Independent Reviewer or any of them are required by this Deed to obtain the State's consent or approval to an action, document or thing, unless otherwise expressly stated, that consent or approval must be obtained prior to the actions, document or thing occurring or coming into effect.

1.12 Provisions limiting or excluding Liability

- (a) **(No limit):** A right of the State or a Rail Franchisee, or any obligation of Project Co or the Independent Reviewer, under this Deed will not limit or exclude any other right of the State or a Rail Franchisee, or obligation of Project Co or the Independent Reviewer under this Deed unless expressly stated.



- (b) **(Permitted by Law)**: Any provision of this Deed which seeks, either expressly or by implication, to limit or exclude a Liability of a party is to be construed as doing so only to the extent permitted by Law.

1.13 State's rights and obligations

- (a) **(Acknowledgement)**: The parties acknowledge the substance, operation and potential effect and consequences of clause 2.13 (*State's executive rights and duties*) of the Project Agreement in relation to this Deed.
- (b) **(No Claim)**: Subject to clause 1.13(c) Project Co, the Rail Franchisees, and the Independent Reviewer will not be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its executive or statutory rights or duties.
- (c) **(Liability for breach)**: Clauses 1.13(a) and 1.13(b) do not limit any Liability which the State would have had to Project Co, the Rail Franchisees, or the Independent Reviewer under any State Project Document as a result of a breach by the State of a term of any State Project Document but for those clauses.

1.14 Reasonable endeavours

Any statement in this Deed providing that the State will use or exercise "reasonable endeavours" or "act reasonably" in relation to an outcome, means that the State:

- (a) **(Relevant steps)**: will take steps to bring about the relevant outcome so far as it is reasonably able to do so, having regard to its resources and other responsibilities;
- (b) **(No guarantee)**: cannot guarantee the relevant outcome; and
- (c) **(No obligation)**: is not required to:
 - (1) exercise a right of any Government Party, or to influence, over-ride, interfere with or direct any other Government Party in the proper exercise and performance of its legal, statutory or executive duties and functions;
 - (2) exercise a power or discretion in a manner that the State regards as not in the public interest;
 - (3) develop or implement new policy;
 - (4) procure legislation; oract in any way that the State regards as not in the public interest.

1.15 Cost of carrying out obligations

Each party must carry out its obligations under this Deed at its own cost, unless expressly provided otherwise.

2 Conditions precedent

2.1 Conditions precedent

The rights and obligations of the parties under this Deed will not commence until the later of:

- (a) **(Execution of this Deed)**: the date of execution of this Deed by all parties to this Deed;
- (b) **(Execution of the Project Agreement)**: the date of execution of the Project Agreement by all parties to the Project Agreement;
- (c) **(Execution of the Train Franchisee Cooperation Agreement)**: the date of execution of the Train Franchisee Cooperation Agreement by all parties to the Train Franchisee Cooperation Agreement; and
- (d) **(Execution of the Tram Franchisee Cooperation Agreement)**: the date of execution of the Tram Franchisee Cooperation Agreement by all parties to the Tram Franchisee Cooperation Agreement,

(Commencement Date).

2.2 Failure to achieve Financial Close

- (a) **(Termination)**: If the Project Parties do not achieve Financial Close by the Condition Precedent Deadline, then the Project Parties may, at their option, terminate this Deed by notice to the Independent Reviewer and the Rail Franchisees.
- (b) **(Rights and obligations upon termination)**: Where this Deed is terminated in accordance with this clause 2.2 then, notwithstanding clause 12.7:
 - (1) the Independent Reviewer will only be entitled to be paid the proportion of the Fee for the Services performed up to the date of termination in accordance with the Payment Schedule; and
 - (2) the Independent Reviewer will not otherwise be entitled to bring any Claim against the Project Parties or the Rail Franchisees arising in connection with:
 - (A) the termination of this Deed; or
 - (B) the Project, the State Project Documents, the Project Alliance Agreements, the Rail Franchisee Cooperation Agreement, or the Downstream Independent Reviewer Contracts.

3 General obligations of the Independent Reviewer

3.1 Appointment

- (a) **(Appointment)**: Each of the Project Parties appoints the Independent Reviewer under this Deed to perform the Services for the benefit of each of the Project Parties and subject to clause 6.9, each of the Rail Franchisees.
- (b) **(Acceptance of appointment)**: The Independent Reviewer confirms its acceptance of the appointment.

3.2 Services

The Independent Reviewer must carry out the Services in accordance with this Deed for the Term.

3.3 Effect of Services Schedule

The Project Parties, the Rail Franchisees, and the Independent Reviewer acknowledge that the Services Schedule:

- (a) is indicative only;
- (b) is not intended to be a complete description of the Services;
- (c) does not limit or otherwise affect the Services or the performance of the Services; and
- (d) cannot be used as the aid to interpretation of the Services.

3.4 Monitoring Plan

- (a) **(Provision and amendment of Monitoring Plan):** The Independent Reviewer:
 - (1) must prepare and submit to the Project Parties and the Rail Franchisees within 25 Business Days of the date of this Deed a Monitoring Plan which must, as a minimum, address those issues set out in the Initial Monitoring Plan and which addresses the requirements for the Monitoring Plan set out in Schedule 5;
 - (2) subject to clause 3.4(e), must, throughout the performance of the Services, develop, continually review and, if necessary, amend the Monitoring Plan:
 - (A) as required by clause 3.4(c)(2);
 - (B) to reflect any Resource Adjustment;
 - (C) to take into account events which will, or may reasonably be expected to, affect the manner in which the Independent Reviewer carries out the Services, including:
 - (i) Modifications under the State Project Documents;
 - (ii) changes in Law;
 - (iii) Approvals (including the conditions of Approvals);
 - (iv) the commencement of new phases or stages of design, construction, operations or maintenance in accordance with the State Project Documents or the Project Alliance Agreements;
 - (v) to take into account the manner in which Project Co is undertaking the Works and the D&C Activities, including any Defects or non-compliances with the State Project Documents;
 - (vi) any breach or potential breach of the warranty in clause 3.4(b);
 - (vii) with respect to the Project Alliance Services, Adjustment Events under the Project Alliance Agreements;

- (viii) with respect to the Project Alliance Services, Authorisations (including the conditions of Authorisations) under the Project Alliance Agreements; and
 - (ix) with respect to the Project Alliance Services, to take into account the manner in which the Rail Systems Alliance or the Rail Infrastructure Alliance is undertaking the Rail Systems Alliance Works or the Rail Infrastructure Alliance Works, including any non-compliances with the Project Alliance Agreements;
 - (D) for the purposes of continuous improvement of the Monitoring Plan by continually improving the standards and quality of the Services carried out in accordance with the Monitoring Plan; and
 - (E) as otherwise agreed with the Project Parties and, where the proposed change relates to activities addressed by a Rail Franchisee Cooperation Agreement, the relevant Rail Franchisee(s);
- (3) must promptly submit each amended Monitoring Plan to the Project Parties and the Rail Franchisees; and
- (4) acknowledges that the Initial Monitoring Plan sets out certain minimum requirements in respect of the Monitoring Plan and no Monitoring Plan provided in accordance with this clause 3.4 can in any way limit or reduce the requirements or obligations of the Independent Reviewer set out in the Initial Monitoring Plan, except where it is necessary to do so to comply with the State Project Documents.
- (b) **(Warranty)**: The Independent Reviewer warrants that the carrying out of the Services in accordance with the Monitoring Plan will enable the Independent Reviewer to comply with its obligations under this Deed.
- (c) **(Acknowledgements)**: The Independent Reviewer acknowledges that the Monitoring Plan:
 - (1) does not limit the Independent Reviewer's obligations under this Deed; and
 - (2) will require amendment resulting from a change to the Services in accordance with clause 11.
- (d) **(Review of updated plan)**: Each Project Party, and each Rail Franchisee may:
 - (1) review each amended Monitoring Plan provided to the Project Parties and Rail Franchisees in accordance with this clause 3.4; and
 - (2) if the amended Monitoring Plan does not comply with this Deed or the State Project Documents, notify the other Project Party and the Rail Franchisees and the Independent Reviewer of that non-compliance within 15 Business Days of the submission of the amended Monitoring Plan to the Project Parties and the Rail Franchisees.
- (e) **(Amended plan)**: If the Independent Reviewer receives a notice in accordance with clause 3.4(d)(2), the Independent Reviewer must promptly submit an amended Monitoring Plan to the Project Parties and the Rail Franchisees.
- (f) **(Compliance with Plan)**: Except where otherwise provided in this Deed or the State Project Documents, the Independent Reviewer must not depart and must

ensure that its subcontractors do not depart from the Monitoring Plan unless it is necessary to do so to ensure compliance with this Deed or the State Project Documents.

- (g) **(No duty to review):** The Project Parties and the Rail Franchisees owe no duty to the Independent Reviewer to review the Monitoring Plan or any amended Monitoring Plan for errors, omissions or compliance with this Deed or the State Project Documents. No comment on or approval, agreement or review of the Monitoring Plan by a Project Party or a Rail Franchisee will constitute a direction for the purposes of clause 5.6 or otherwise.

3.5 Independent Reviewer Deed of Appointment (Advanced Works)

- (a) **(Acknowledgement of termination and provision of Services):** The parties acknowledge and agree that:
- (1) the Independent Reviewer Deed of Appointment (Advanced Works) has been terminated in accordance with its terms;
 - (2) the AW Services form part of the Services to be delivered by the Independent Reviewer pursuant to this Deed; and
 - (3) the exercise of any functions or decisions made by the Independent Reviewer pursuant to the Independent Reviewer Deed of Appointment (Advanced Works) are regarded as being functions exercised or decisions made by the Independent Reviewer under this Deed.
- (b) **(Accrued Liabilities):** The Independent Reviewer:
- (1) accepts all Liabilities of the Independent Reviewer accrued under or in connection with the Independent Reviewer Deed of Appointment (Advanced Works), as such Liabilities existed immediately prior to termination of the Independent Reviewer Deed of Appointment (Advanced Works), as if those Liabilities accrued under this Deed;
 - (2) agrees that any obligation or Liability of the “Project Parties” (as defined in the Independent Reviewer Deed of Appointment (Advanced Works) immediately prior to termination) and the Rail Franchisees, including in respect of payment, arising under or in connection with the Independent Reviewer Deed of Appointment (Advanced Works) is satisfied and discharged at the time of Financial Close,

and the Independent Reviewer, the “Project Parties” (as defined in the Independent Reviewer Deed of Appointment (Advanced Works) immediately prior to termination) and the Rail Franchisees have no Claim against each other in relation to any matter arising under or in connection with the Independent Reviewer Deed of Appointment (Advanced Works).

4 Various functions of the Independent Reviewer

- (a) **(Application of clause):** This clause 4 only applies if the Independent Reviewer or any of its subcontractors undertaking the Upstream Independent Reviewer Functions is the same entity undertaking the Downstream Independent Reviewer Functions.
- (b) **(Upstream Independent Reviewer Functions paramount):** The Project Parties, the Rail Franchisees and the Independent Reviewer acknowledge and



agree that the Upstream Independent Reviewer Functions represent the paramount role of the Independent Reviewer, with the intent that:

- (1) if there is any ambiguity, conflict, discrepancy or inconsistency between any Upstream Independent Reviewer Functions and any Downstream Independent Reviewer Functions, the Upstream Independent Reviewer Functions will prevail as between the parties to this Deed;
- (2) neither the existence nor terms of a Downstream Independent Reviewer Function nor the exercise, failure to exercise or manner of exercise of a Downstream Independent Reviewer Function will be a precedent for, limit or otherwise affect the exercise of, or be construed in any way as an aid to interpretation of, an Upstream Independent Reviewer Function; and

(3) neither:

- (A) the receipt by the Independent Reviewer of any notice, claim, plan, program, report, manual, model or any other document or information nor the giving of any notice, the making of any comment or any other act or omission by the Independent Reviewer arising in connection with a Downstream Independent Reviewer Function; nor
- (B) the existence or performance of any function by, any consultation with, or provision of any notice, report, certificate, comment or any other document or information to, the Independent Reviewer by any other reviewer, certifier, engineer, adviser or other consultant engaged by any party other than the State,

will:

- (C) give rise to any obligation on the part of the Independent Reviewer to exercise (or exercise in a particular manner) any Upstream Independent Reviewer Function;
- (D) relieve Project Co from the giving of any notice, claim, plan, program, report, manual, model or any other document or information or the doing of any other thing in respect of an Upstream Independent Reviewer Function in order to give rise to any obligation on the part of the Independent Reviewer to exercise that Upstream Independent Reviewer Function; or
- (E) be a precedent for, limit or otherwise affect the exercise of, or be construed in any way as an aid to interpretation of, an Upstream Independent Reviewer Function.

(c) **(State approval and consent):** The Project Parties, the Rail Franchisees, and the Independent Reviewer acknowledge and agree that:

- (1) the Independent Reviewer may not, and must ensure that its subcontractors do not exercise any function or enter into any arrangement arising in connection with the Project, the Rail Systems Alliance Works or the Rail Infrastructure Alliance Works other than in accordance with this Deed (including in accordance with clause 7.4) or the Sub-Independent Reviewer Deed, unless approved by the State and on such terms approved by the State; and

- (2) no Downstream Independent Reviewer Function may be varied, altered or amended without the State's consent.
- (d) **(No Liability):** Subject to clause 4(e), to the extent permitted by Law, none of the State, its Associates, the Rail Franchisees or the Independent Reviewer will have any Liability, nor will Project Co or its Associates be entitled to make, continue or enforce any Claim against, or seek, pursue or obtain an indemnity against or contribution to Liability from the State, any of its Associates, the Rail Franchisees or the Independent Reviewer, and Project Co indemnifies the State, its Associates, each Rail Franchisee and the Independent Reviewer in respect of any such Claim or Liability arising in connection with:
- (1) any ambiguity, conflict, discrepancy or inconsistency between any Upstream Independent Reviewer Functions and any Downstream Independent Reviewer Functions; or
- (2) subject to clause 9.10:
- (A) the exercise, failure to exercise or manner of exercise of any Downstream Independent Reviewer Function;
- (B) any act or omission of the Independent Reviewer arising in connection with the performance of any Downstream Independent Reviewer Function; or
- (C) the giving of any notice, claim, plan, program, report, manual, model or any other document or information, or any other act or omission in respect of any Downstream Independent Reviewer Function or any Downstream Independent Reviewer Contract.
- (e) **(No exclusion of Liability):** For the avoidance of doubt, clause 4(d) will not operate to exclude the Independent Reviewer's Liability with respect to:
- (1) a failure by the Independent Reviewer to comply with clause 4(g); or
- (2) any matter for which the Independent Reviewer has provided an indemnity in accordance with clause 9.10.
- (f) **(Duty of care to Project Parties):** The Independent Reviewer acknowledges that it owes a duty of care to the Project Parties and the Rail Franchisees when performing the Downstream Independent Reviewer Functions.
- (g) **(Obligations when performing downstream functions):** The Independent Reviewer warrants to the Project Parties and the Rail Franchisees that, in performing the Downstream Independent Reviewer Functions, it itself will, and will ensure that its subcontractors:
- (1) comply with all Laws, act honestly, diligently, reasonably and with the degree of professional care, knowledge, experience and skill which would be expected of an expert professional providing services similar to the Services for projects similar to the Project;
- (2) at all times, act within the time requirements for the performance of its obligations, both as:
- (A) Independent Reviewer in accordance with this Deed and the State Project Documents and the Project Alliance Agreements; and
- (B) Independent Reviewer when performing any Downstream Independent Reviewer Function which has an equivalent Upstream Independent Reviewer Function;



- (3) at all times act independently of the relevant Downstream Parties and all other parties to the Downstream Independent Reviewer Contracts;
 - (4) ensure that the performance of any Downstream Independent Reviewer Function does not give rise to any (or the possibility of any) conflict of interest;
 - (5) ensure that it does not otherwise compromise its ability to perform the Upstream Independent Reviewer Functions in accordance with this Deed;
 - (6) when performing the Downstream Independent Reviewer Functions, provide to the State copies of all written communications and details of all non-written communications with the Downstream Parties and consult with and provide all further information required by the State in connection with those communications;
 - (7) otherwise comply with any reasonable requirements of the State for the purposes of this warranty; and
 - (8) use and apply the same methodology that it uses and applies in performing the Upstream Independent Reviewer Functions.
- (h) **(Fee payable solely for Services):** The Project Parties, the Rail Franchisees, and the Independent Reviewer acknowledge and agree that the Fee payable in accordance with this Deed will be payable solely for, and will relate solely to, performance of the Upstream Independent Reviewer Functions. The Fee will not, for the avoidance of doubt, be payable for or relate to any Downstream Independent Reviewer Functions, which will be separately payable in accordance with the Sub-Independent Reviewer Deed.
- (i) **(Delegation of risks, liabilities, obligations and responsibilities):** Any express or implied delegation of risks, liabilities, obligations or responsibilities by Project Co and its respective Associates, whether in the Sub-Independent Reviewer Deed, any other Downstream Independent Reviewer Contract or otherwise, does not constitute approval of such delegation by the State or in any way limit or derogate from the scope of Project Co's obligations in accordance with the State Project Documents or this Deed or affect in any way the obligations of the Independent Reviewer in accordance with the State Project Documents or this Deed. References to risks, liabilities, obligations or responsibilities assumed or accepted or acknowledgements given by any such entity or Associate in relation to any such delegation will be construed as assumed or accepted or given (as applicable) by Project Co in accordance with the State Project Documents.
- (j) **(No effect on Upstream Independent Reviewer Functions):** Reference in the Sub-Independent Reviewer Deed or any other Downstream Independent Reviewer Contract to the performance of a function by the Independent Reviewer under any Downstream Independent Reviewer Contract, or the provision to or receipt by the Independent Reviewer of a document, certificate or notice from any Downstream Party (in its capacity as Independent Reviewer), does not in any way affect the functions of the Independent Reviewer under the State Project Documents or this Deed.

4A Rail Infrastructure Alliance

- (a) **(Application of clause):** This clause 4A applies during any time period during which the Independent Reviewer or any of its subsidiaries or subcontractors is:



- (1) a Member of a Respondent for the purposes of, or is otherwise participating in, the expression of interest or request for proposal in respect of the Rail Infrastructure Alliance; or
 - (2) an RIA Participant under the Rail Infrastructure Alliance Agreement.
- (b) **(Independent Reviewer not to perform RIA IR Services):** The Independent Reviewer must not perform the RIA IR Services.
- (c) **(Engagement of RIA Sub-consultant):** The Independent Reviewer must engage a sub-consultant:
 - (1) who must be Advisian Pty Ltd, or another sub-consultant approved by the State (which approval the State may grant or deny in its sole and absolute discretion);
 - (2) to solely perform the RIA IR Services on terms of engagement approved by the State (which approval the State may grant or deny in its sole and absolute discretion); and
 - (3) at the sole cost of the Independent Reviewer. The Independent Reviewer acknowledges and agrees that nothing in this clause 4A entitles the Independent Reviewer to claim a change to the Fee or to any other type of payment under the Payment Schedule,**(RIA Sub-consultant).**
- (d) **(No subcontracting):** The RIA Sub-consultant must not subcontract any of the RIA IR Services without the prior written approval of the Project Parties.
- (e) **(Approval of Key RIA People):** The Independent Reviewer must seek the prior written approval of each of the Project Parties and the Rail Franchisees (which approval each Project Party or Rail Franchisee may grant or deny in its sole and absolute discretion) of any key personnel proposed by the RIA Sub-consultant to perform any part of the RIA IR Services (**Key RIA People**).
- (f) **(Application of clause 5.11):** Clause 5.11 applies to Key RIA People as if they were Key People, with the following amendments:
 - (1) removal of Key RIA People pursuant to clause 5.11(b) requires the prior consent of each of the Project Parties and the Rail Franchisees;
 - (2) notifications pursuant to clause 5.11(d) must be provided to both the Project Parties and the Rail Franchisees; and
 - (3) the approval of both the Project Parties and the Rail Franchisees is required to replace Key RIA People pursuant to clause 5.11(e).
- (g) **(Independent Reviewer's obligations):** The Independent Reviewer must:
 - (1) ensure that:
 - (A) any of its directors, agents, officers, employees and contractors involved or connected with the subject matter of this Deed, including the provision of the Services, do not participate in the Rail Infrastructure Alliance; and
 - (B) any of its directors, agents, officers, employees and contractors involved or connected with the Rail Infrastructure Alliance do not participate in the subject matter of this Deed, including the provision of the Services;
 - (2) implement and comply with such probity arrangements as are directed by the State, including those the State considers necessary to mitigate



- the potential for any actual or perceived unfair advantage to be obtained by any person or entity;
- (3) establish internal systems and processes to ensure that information is not shared beyond, and confidentiality is preserved between, those directors, agents, officers, employees and contractors which are referred to in clause 4A(g)(1); and
 - (4) notify the Project Parties immediately in writing if it becomes aware of any non-compliance with this clause 4A(g).
- (h) **(Demonstration of compliance):** The State may, at any time, require the Independent Reviewer to demonstrate to the State's satisfaction the Independent Reviewer's compliance with clause 4A(g) (or any part of it).
- (i) **(State discretion to notify of new RIA IR Services):** Without limiting the State's rights and discretions under this Deed, if the State at any time, and in its sole and absolute discretion, is not satisfied that clause 4A(g) or (h) are being complied with, the Independent Reviewer acknowledges that the State may exercise its rights under limb (2) of the definition of RIA IR Services.

5 Performance by Independent Reviewer

5.1 Standard of care

The Independent Reviewer must and must ensure that its subcontractors exercise the standard of skill, care and diligence in the performance of the Services that would be expected of an expert professional provider of the Services experienced in providing services similar to the Services for projects similar to the Project.

5.2 Duty to act honestly, fairly and independently

The Independent Reviewer must and must ensure that its subcontractors, in performing the Services act honestly, professionally and independently of the Project Parties, the Rail Franchisees, the Rail Systems Alliance, the Rail Infrastructure Alliance and the Downstream Parties and their respective Associates.

5.3 Time requirements

The Independent Reviewer must and must ensure that its subcontractors perform the Services:

- (a) **(Time limit specified):** within the time limits specified in this Deed, the State Project Documents and the Project Alliance Agreements; and
- (b) **(No time limit specified):** where no time limit is specified, within a reasonable time.

5.4 Conflict of interest

- (a) **(Warranty):** The Independent Reviewer warrants that:
 - (1) as at the date of this Deed, no conflict of interest arises out of its engagement by the Project Parties under this Deed; and
 - (2) if, during the term of this Deed, it becomes aware of the existence or possibility of a conflict of interest, it will:



- (A) immediately notify the Project Parties of that conflict of interest or possible conflict of interest; and
 - (B) take such steps to avoid or mitigate the conflict of interest or possible conflict of interest as the Project Parties may reasonably require.
- (b) **(Prior approval):** The Independent Reviewer must not exercise and must ensure that its subcontractors do not exercise any function nor enter into any arrangement arising out of in respect of or in connection with the Project, the Rail Systems Alliance Works or the Rail Infrastructure Alliance Works other than in accordance with this Deed unless approved by the Project Parties and on such terms as are approved by the State.
- (c) **(Warranty to Rail Franchisees):** The Independent Reviewer warrants that:
 - (1) as at the date of this Deed, no conflict of interest arises out of its or its subcontractors' performance of the Services under this Deed in respect of each Rail Franchisee; and
 - (2) if, during the term of this Deed, it becomes aware of the existence or possibility of a conflict of interest, it will:
 - (A) immediately notify the Project Parties and the relevant Rail Franchisee(s) of that conflict of interest or possible conflict of interest; and
 - (B) take such steps to avoid or mitigate the conflict of interest or possible conflict of interest as the relevant Rail Franchisee(s) may reasonably require.

5.5 Communications with Project Parties

The Independent Reviewer must ensure that a copy of each written communication between the Independent Reviewer and a Project Party or a Rail Franchisee which relates to the Project or this Deed, is promptly given to each other Project Party and Rail Franchisee.

5.6 No authority to give directions or waive requirements

The Independent Reviewer has no authority to:

- (a) **(Directions):** give directions to the Project Parties, the Rail Franchisees, the Rail Systems Alliance, the Rail Infrastructure Alliance or the Downstream Parties, other than as may (if at all) be expressly set out in this Deed, the State Project Documents, the Project Alliance Agreements, the Rail Franchisee Cooperation Agreements, or a Downstream Independent Reviewer Contract;
- (b) **(Waive or vary):** waive or vary any requirements of the State Project Documents, the Project Alliance Agreements, the Rail Franchisee Cooperation Agreements, or a Downstream Independent Reviewer Contract; or
- (c) **(Discharge or release):** discharge or release a party from any of its obligations under the State Project Documents, the Project Alliance Agreements, or the Rail Franchisee Cooperation Agreements.

5.7 Acknowledgement of reliance

- (a) **(Reliance):** Subject to clause 5.7(b), the Independent Reviewer acknowledges that each Project Party, each Rail Franchisee, and each Downstream Party:

- (1) is entitled to, and will, rely on:
 - (A) the skill and expertise of the Independent Reviewer in the performance of the Services; and
 - (B) any certificate signed or given by the Independent Reviewer under the State Project Documents or the Project Alliance Agreements; and
 - (2) may suffer Liability if the Independent Reviewer does not perform the Services in accordance with the requirements of this Deed.
- (b) **(No liability):** Notwithstanding anything else in this clause 5.7, the Independent Reviewer is not responsible for, has no duty of care to, and has no Liability to a Rail Franchisee to review any Submitted Document in respect of:
- (1) a Rail Franchisee's ability to comply with the relevant Rail Franchisee Arrangements;
 - (2) the Train Franchisee's ability to discharge its duties under the Rail Safety National Law;
 - (3) the Tram Franchisee's ability to discharge its duties under the Tram Safety Act;
 - (4) the Train Franchisee's ability to comply with the requirements of its Train Accreditation and the Train Franchisee Rail Safety Requirements, to the extent that a Submitted Document relates to any rail safety management arrangements in relation to any Maintenance Services comprising Railway Operations; or
 - (5) the Tram Franchisee's ability to comply with the requirements of its Tram Accreditation and the Tram Franchisee Rail Safety Requirements, to the extent that a Submitted Document relates to any rail safety management arrangements in relation to the Tram Works,
- except to the extent:
- (6) the relevant Rail Franchisee has provided comments in relation to these matters pursuant to the State Project Documents, the Project Alliance Agreements or the relevant Rail Franchisee Cooperation Agreement; or
 - (7) the PS&TR requires the relevant Submitted Document to comply with or allow the relevant Rail Franchisee to discharge its duties in relation to such matters.

5.8 Knowledge of Project Parties' requirements

The Independent Reviewer warrants that:

- (a) **(Informed itself of documents relating to Services):** it has informed itself of the requirements of the State Project Documents, the Project Alliance Agreements, the Rail Franchisee Cooperation Agreements, and the Downstream Independent Reviewer Contracts in so far as they relate to the Services;
- (b) **(Informed itself of other requirements):** without limiting clause 5.8(a), it has informed itself of all time limits and other requirements for any function which the Independent Reviewer must perform in accordance with the State Project Documents, the Project Alliance Agreements, the Rail Franchisee Cooperation Agreements, and the Downstream Independent Reviewer Contracts;



- (c) **(Nature of work)**: it has informed itself of the nature of the work necessary for the performance of the Services and (to the maximum extent possible) the means of access to and facilities within the Site and any land, or any part of land where works are to be performed under a Project Alliance Agreement, including any restrictions on any such access; and
- (d) **(Sufficiency of the Fee)**: it has satisfied itself as to the sufficiency of the Fee and the 'Fee' (as defined in the Sub-Independent Reviewer Deed) having regard to the costs which it will incur in complying with its obligations in accordance with this Deed.

5.9 Co-ordination and co-operation

The Independent Reviewer must and must ensure that its subcontractors, in performing the Services:

- (a) **(Co-operation)**: co-operate with the Project Parties, the Rail Franchisees, the Rail Systems Alliance, the Rail Infrastructure Alliance and the Downstream Parties and their respective Associates;
- (b) **(Co-ordinate)**: co-ordinate the Services with the work to be performed by the Project Parties, the Rail Franchisees, the Rail Systems Alliance, the Rail Infrastructure Alliance and the Downstream Parties, and their respective Associates; and
- (c) **(Avoid unreasonable interference)**: avoid any unreasonable interference, disruption or delay to the work to be performed by the Project Parties, the Rail Franchisees, the Rail Systems Alliance, the Rail Infrastructure Alliance and the Downstream Parties, and their respective Associates.

5.10 Personnel

The Independent Reviewer must provide sufficient numbers of experienced and competent personnel to perform its obligations in accordance with this Deed within the timeframes specified in this Deed, the State Project Documents, the Project Alliance Agreements, the Rail Franchisee Cooperation Agreements, and the Downstream Independent Reviewer Contracts.

5.11 Key People

Without limiting its obligations in accordance with clause 5.10, the Independent Reviewer must:

- (a) **(Key People perform functions)**: ensure that the Key People perform the functions specified in the Contract Particulars and, unless reasonably directed otherwise by the Project Parties, ensure that they are committed and available to the Project, the Rail Systems Alliance Works and the Rail Infrastructure Alliance Works as required to fulfil the requirements of this Deed, the State Project Documents, the Project Alliance Agreements and the Rail Franchisee Cooperation Agreements;
- (b) **(Removal of Key People)**: subject to clause 5.11(c), not remove the Key People without the prior consent of the Project Parties (which must not be unreasonably withheld or delayed, and who must consult with the Rail Franchisees prior to providing or withholding such consent);
- (c) **(Best endeavours)**: use its best endeavours to ensure that none of the Key People resign or otherwise become unavailable to perform their functions as required by clause 5.11(a);



- (d) **(Unavailability of Key People):** without limiting clause 5.11(f) and in relation to any Key People who resign or otherwise become or may become unavailable to perform their functions as required by clause 5.11(a) (whether temporarily or permanently), notify the Project Parties accordingly including advising the Project Parties of the way in which the Independent Reviewer proposes to address the unavailability of any such Key People;
- (e) **(Replacement of Key People):** if any of the Key People are removed, die, become seriously ill or resign, subject to the approval of the Project Parties, replace them as soon as practicable with persons of at least equivalent skill and experience; and
- (f) **(Availability of Key People):** ensure that the Key People are available for consultation as any Project Party may reasonably require from time to time.

5.12 Independent Reviewer's Representative

The Independent Reviewer:

- (a) **(Independent Reviewer's Representative):** has nominated the Independent Reviewer's Representative as the person to act as its representative for the Services;
- (b) **(Nominate another person):** may, from time to time nominate another person to act as the Independent Reviewer's Representative, subject to the Project Parties' approval (in their sole and absolute discretion and with no obligation to do so), in which case that person will be the relevant representative in lieu of the person named in the Contract Particulars; and
- (c) **(Authority to bind Independent Reviewer):** confirms that the Independent Reviewer's Representative has the power and authority to bind the Independent Reviewer.

5.13 Subcontracting

The Independent Reviewer:

- (a) **(No subcontracting):** may not subcontract the performance of any of its Services without the prior consent of each Project Party (which may be conditional) and the Rail Franchisees (which, in the case of the Rail Franchisees, must not be unreasonably withheld or delayed); and
- (b) **(Responsible for performance):** remains responsible for the performance of the Services in accordance with this Deed, notwithstanding any such subcontracting.

5.14 Independent Subcontractor

- (a) The Independent Reviewer acknowledges and agrees that:
 - (1) if the Independent Reviewer or a member or Associate of the Independent Reviewer is a member or Associate of the Rail Infrastructure Alliance or the Rail Systems Alliance, it would give rise to a conflict of interest as described in clause 5.4 if the Independent Reviewer performed the Independent Subcontractor Services; and
 - (2) if clause 4A does not apply, then to avoid a conflict of interest as described in clause 5.4 it must accordingly engage the Independent Subcontractor to perform the Independent Subcontractor Services in accordance with clause 5.13 and this clause 5.14.



- (b) The Independent Reviewer acknowledges and agrees that the Independent Subcontractor must:
- (1) be independent of the Project Parties, the Rail Franchisees and the Downstream Parties;
 - (2) be suitably qualified and experienced to perform the Independent Subcontractor Services;
 - (3) perform the Independent Subcontractor Services without giving rise to any actual or potential conflict of interest; and
 - (4) except as consented to by the State in writing (either conditionally or unconditionally, and at the State's sole and absolute discretion) not be:
 - (A) affiliated (by way of joint venture, ownership, contract or otherwise) with:
 - (i) Project Co or an Associate of Project Co;
 - (ii) the Rail Systems Alliance or an Associate of the Rail Systems Alliance;
 - (iii) the Rail Infrastructure Alliance or an Associate of the Rail Infrastructure Alliance; or
 - (B) an Associate of the State or involved with the State or an Associate of the State in respect of the Metro Tunnel;
 - (C) a Utility Provider or an Associate of a Utility Provider; or
 - (D) involved in any other infrastructure projects funded by the State other than Metro Tunnel, including the 'Level Crossing Removal Project', Cranbourne Pakenham Rail Upgrade, Mernda Rail Extension, Flinders Street Station Redevelopment, West Gate Tunnel Project, the 'High Capacity Metro Trains Public Private Partnership' project and the X'Trapolis trains project.
- (c) In seeking the consent to the appointment of the Independent Subcontractor under clause 5.13(a), the Independent Reviewer must give all parties from whom consent is required clause 5.13(a) written notice of the proposed Independent Subcontractor, which must include details:
- (1) of any involvement of the proposed Independent Subcontractor and any Associates, directors, agents, officers, employees and contractors of the proposed Independent Subcontractor with any aspect of the Metro Tunnel (including any involvement in any tender process in respect of any aspect of the Metro Tunnel); and
 - (2) with respect to any of the matters listed in clause 5.14(b).
- (d) Determinations of the Independent Subcontractor in its performance of the Independent Subcontractor Services will be final and binding on the Independent Reviewer.

6 Role of the Project Parties

6.1 No interference or influence

- (a) **(No interference or influence):** The Project Parties and the Rail Franchisees must not interfere with, or attempt to influence, the Independent Reviewer or its subcontractors in the performance of any of the Services. A communication allowed by this Deed, the Project Agreement, the Project Alliance Agreements, a Rail Franchisee Cooperation Agreement, or a Downstream Independent Reviewer Contract will not, however, of itself constitute a breach of this clause 6.1(a).
- (b) **(Project Parties and Rail Franchisees may provide comments):** Clause 6.1(a) will not prevent a Project Party or a Rail Franchisee from providing written comments to the Independent Reviewer in respect of any aspect of the Project Activities, the Rail Systems Alliance Works or the Rail Infrastructure Alliance Works or as contemplated by a Rail Franchisee Cooperation Agreement.

6.2 Provision of information

- (a) Project Co must, as soon as practicable, ensure that the Independent Reviewer is provided with all information, assistance, documentation, models and particulars as the Independent Reviewer reasonably requests:
 - (1) **(Services):** relating to the Services;
 - (2) **(Project Documents):** required under the State Project Documents, the Rail Franchisee Cooperation Agreements, and the Downstream Independent Reviewer Contracts; and
 - (3) **(Performance of Services):** to enable it to perform the Services effectively and otherwise in accordance with the State Project Documents, the Rail Franchisee Cooperation Agreements, the Downstream Independent Reviewer Contracts and this Deed.
- (b) The State must, as soon as practicable, ensure that the Independent Reviewer is provided with all information, assistance, documentation, models and particulars as the Independent Reviewer reasonably requests:
 - (1) **(Project Alliance Services):** relating to the Project Alliance Services;
 - (2) **(Project Alliance Agreements):** required under the Project Alliance Agreements; and
 - (3) **(Performance of Project Alliance Services):** to enable it to perform the Project Alliance Services effectively and otherwise in accordance with the Project Alliance Agreements, the State Project Documents, the Rail Franchisee Cooperation Agreements, the Downstream Independent Reviewer Contracts and this Deed.

6.3 Access to records and systems

- (a) Without limiting the obligations of Project Co under the State Project Documents and the Rail Franchisee Cooperation Agreements, or clause 6.2, Project Co must provide the Independent Reviewer with such information and documentation (including all Design Documentation) and access to Project Co's books, records and systems as the Independent Reviewer may reasonably require to enable it to perform the Services effectively and otherwise in



accordance with this Deed, the State Project Documents and the Rail Franchisee Cooperation Agreements.

- (b) The State must provide the Independent Reviewer with such information and documentation and access to each of the Rail Systems Alliance' and the Rail Infrastructure Alliance's books, records and systems as the Independent Reviewer may reasonably require to enable it to perform the Project Alliance Services effectively and otherwise in accordance with this Deed, the State Project Documents, the Project Alliance Agreements and the Rail Franchisee Cooperation Agreements.
- (c) Nothing in this clause 6.3 will be construed as a waiver of legal professional privilege.

6.4 Access to premises

- (a) Project Co must ensure that the Independent Reviewer and its subcontractors are given such access to any place where any part of the Project Activities is being carried out (including transport within the Construction Site and where it is reasonably required access to the premises of their respective Associates) and all necessary assistance as is required to enable the Independent Reviewer or its subcontractors to perform the Services effectively and in accordance with the requirements of this Deed, the State Project Documents, the Rail Franchisee Cooperation Agreements, and the Downstream Independent Reviewer Contracts.
- (b) The State must ensure that the Independent Reviewer and its subcontractors are given such access to any place where any part of the Rail Systems Alliance Works or the Rail Infrastructure Alliance Works are being carried out and all necessary assistance as is required to enable the Independent Reviewer or its subcontractors to perform the Project Alliance Services effectively and in accordance with the requirements of this Deed, the State Project Documents, the Project Alliance Agreements, the Rail Franchisee Cooperation Agreements, and the Downstream Independent Reviewer Contracts.

6.5 Right to enter, inspect and test

- (a) **(Right of entry):** Subject to clause 6.5(b), the Independent Reviewer (or any person authorised by the Independent Reviewer) may, upon giving reasonable notice to Project Co or in the case of the Project Alliance Services, the State (except in the case of an emergency when no notice is required), enter the Site or the offices of Project Co, or in the case of the Project Alliance Services, the Project Alliance Sites or the offices of the Rail Systems Alliance or the Rail Infrastructure Alliance to:
 - (1) inspect, observe or test any part of the Relevant Infrastructure or the Project Activities or in the case of the Project Alliance Sites, any Rail Systems Alliance Works or Rail Infrastructure Alliance Works (whether or not such inspections, observations or tests are otherwise required in accordance with this Deed);
 - (2) exercise any right or carry out any obligation which the Independent Reviewer has in accordance with any State Project Document, the Project Alliance Agreements or Rail Franchisee Cooperation Agreement; or
 - (3) take such other action as the Independent Reviewer considers necessary to exercise its rights in accordance with this Deed and to discharge its duties, powers and obligations.



- (b) **(Conditions of access):** When entering the Site or the Project Alliance Sites in accordance with clause 6.5(a), the Independent Reviewer must and must ensure any authorised person:
- (1) complies with the Site Access and Interface Protocols, or in the case of the Project Alliance Sites, any equivalent site access and interface protocols under the Project Alliance Agreements;
 - (2) does not unnecessarily interfere with the carrying out of the Project Activities, or in the case of the Project Alliance Services any works carried out under the Project Alliance Agreements; and
 - (3) does not damage the Relevant Infrastructure or the Site, or in the case of the Project Alliance Services, any Rail Systems Alliance Works or Rail Infrastructure Alliance Works or the Project Alliance Sites.
- (c) **(Project Co to assist):** If requested by the Independent Reviewer, Project Co, or in the case of the Project Alliance Services, the State must assist the Independent Reviewer in connection with any inspection or testing in accordance with this clause 6.5, including:
- (1) providing access to such part of the Relevant Infrastructure and all Project Co Materials, or in the case of the Project Alliance Services, such part of the Rail Systems Alliance Works or the Rail Infrastructure Alliance Works as may be required by the Independent Reviewer;
 - (2) preparing samples of materials used in connection with the Relevant Infrastructure, or in the case of the Project Alliance Services, such part of the Rail Systems Alliance Works or the Rail Infrastructure Alliance Works as required by the Independent Reviewer; and
 - (3) forwarding the samples prepared in accordance with clause 6.5(c)(2) to the Independent Reviewer or such other place or person notified by the Independent Reviewer.

6.6 Meetings

The Project Parties and the Rail Franchisees must:

- (a) **(Design meetings):** allow the Independent Reviewer and, if applicable, its subcontractors to attend design meetings; and
- (b) **(Other meetings):** attend such meetings with the Independent Reviewer and its subcontractors as the Independent Reviewer may reasonably request to enable it to perform the Services effectively and otherwise in accordance with this Deed.

6.7 Co-operation

- (a) **(Project Co to cooperate):** Project Co must and must ensure that each Downstream Party and Project Co's Associates co-operate with the Independent Reviewer and, if applicable, its subcontractors during the carrying out of the Services.
- (b) **(Rail Franchisees to cooperate):** Each Rail Franchisee must and must ensure that its Associates co-operate with the Independent Reviewer and, if applicable, its subcontractors during the carrying out of the Services.



6.8 Project Parties and Rail Franchisees not liable

On no account will a Project Party or a Rail Franchisee be liable to another Project Party or its Associates, or Rail Franchisee or its Associates for any act or omission by the Independent Reviewer or its subcontractors whether or not in accordance with or purportedly in accordance with a provision of this Deed, the State Project Documents, the Project Alliance Agreements, the Rail Franchisee Cooperation Agreements, or otherwise.

6.9 Role of the Rail Franchisees

The parties acknowledge and agree that:

- (a) the Rail Franchisees are party to this Deed solely for the purpose of receiving the Services provided by the Independent Reviewer in relation to any Submitted Documents to which a Rail Franchisee Input Document relates, ensuring that the construction of the Works comply with the requirements of the Project Agreement and in relation to the identification and rectification of Defects during the relevant Defects Liability Period; and
- (b) all of the rights and obligations of a Rail Franchisee under this Deed must be interpreted by reference to the limited purpose set out in clause 6.9(a).

7 Reporting and meetings

7.1 Progress reports

- (a) The Independent Reviewer must submit a written report to each Project Party and each Rail Franchisee:
 - (1) **(Before meeting of Project Control Group)**: 2 Business Days before each meeting of the Project Control Group in accordance with clause 11.4 (*Project Control Group*) of the Project Agreement;
 - (2) **(Project Parties requires)**: in such form as the Project Parties may reasonably require; and
 - (3) **(Details)**: containing details of:
 - (A) Project Co's compliance (and details of any non-compliances) with the State Project Documents;
 - (B) the results of the review of Design Documentation in accordance with clause 19.3 (*Design Review Process*) of the Project Agreement;
 - (C) the results of the review of the D&C Program in accordance with clause 18 (*D&C Program*) of the Project Agreement;
 - (D) the results of review of construction of the Works during the performance of the D&C Activities in accordance with clause 26.2 (*Independent Reviewer's review of progress*) of the Project Agreement;
 - (E) any Management Plans and Maintenance Manuals, notices and other information and documentation and the results of any review of those documents or that information received from Project Co in accordance with the State Project Documents;



- (F) the results of any review of the operation of the quality system developed and implemented by Project Co and any review and assessment of the quality of the Project Activities in accordance with the State Project Documents;
 - (G) any matters or departures notified in accordance with clauses 26 (*Time*) or 25 (*Defects*) of the Project Agreement;
 - (H) any notices given by a Project Party to the Independent Reviewer and any notices issued by the Independent Reviewer;
 - (I) any certificates issued or received by the Independent Reviewer in accordance with the Schedule of Certificates and Notices;
 - (J) any certificates of completion for Provisional Acceptance or Final Acceptance, or for Handback of any Returned Assets issued or requested by Project Co or the State in relation to any of the Works;
 - (K) progress of Project Co in relation to Provisional Acceptance, each Critical Interface Milestone, each Progress Milestone, and Final Acceptance (as applicable) including the status of any Defects and the rectification of any Defects;
 - (L) the forecast cost of the Services (including for the current and following Quarter), taking into account current expenditure, resourcing and future forecasts;
 - (M) notification of reports requested by one Project Party in accordance with clause 7.4;
 - (N) relevant details in relation to the performance of any Downstream Independent Reviewer Functions; and
 - (O) such other matters in respect of the Services as the Project Parties (acting jointly) may reasonably request from time to time.
- (b) The Independent Reviewer must submit a written report to the State:
- (1) **(Before meeting of Project Control Group)**: 2 Business Days before each meeting of the Project Control Group in accordance with clause 11.4 (*Project Control Group*) of the Project Agreement;
 - (2) **(Project Parties requires)**: in such form as the State may reasonably require; and
 - (3) **(Details)**: containing details of:
 - (A) the Rail Systems Alliance and the Rail Infrastructure Alliance's compliance (and details of any non-compliances) with the Project Alliance Agreements;
 - (B) any notices given by the Rail Systems Alliance or the Rail Infrastructure Alliance to the Independent Reviewer and any notices issued by the Independent Reviewer to the Rail Systems Alliance or the Rail Infrastructure Alliance;
 - (C) any certificates issued or received by the Independent Reviewer in accordance with the Project Alliance Agreements;



- (D) the forecast cost of the Project Alliance Services (including for the current and following quarter), taking into account current expenditure, resourcing and future forecasts;
- (E) notification of reports requested by one Project Party in accordance with clause 7.4; and
- (F) such other matters in respect of the Project Alliance Services as the State may reasonably request from time to time.

7.2 Project Control Group

- (a) **(Establishment):** The Project Control Group will be established in accordance with clause 11.4 (*Project Control Group*) of the Project Agreement.
- (b) **(Independent Reviewer's obligations):** The Independent Reviewer must:
 - (1) during the D&C Phase, attend each meeting of the Project Control Group; and
 - (2) present and explain each progress report prepared in accordance with clause 7.1 at the relevant meeting.

7.3 Meetings with Project Parties

The Independent Reviewer must attend, and ensure that all relevant Key People and, if applicable, its subcontractors attend, meetings with the Project Parties and, if applicable the Rail Systems Alliance and the Rail Infrastructure Alliance monthly during the Term or as otherwise agreed by the parties, to discuss the progress of the Services.

7.4 Reports requested by one Project Party or Rail Franchisee

- (a) **(Request by one Project Party or Rail Franchisee):** A Project Party or a Rail Franchisee may request the Independent Reviewer to prepare an additional report which is not otherwise required by the State Project Documents.
- (b) **(Independent Reviewer to prepare report):** The Independent Reviewer must prepare the additional report as requested in accordance with clause 7.4(a), except where the Independent Reviewer is:
 - (1) of the reasonable opinion that it would be inappropriate to prepare such a report in light of the performance and nature of the Services; or
 - (2) not reasonably capable of preparing such a report.
- (c) **(Cost of reports):** The cost of additional reports prepared in accordance with this clause 7.4 will be paid to the Independent Reviewer in accordance with the Payment Schedule.

7.5 Questions relating to a report

- (a) **(Project Parties and Rail Franchisees may submit questions):** Without limiting clauses 6.1(b) or 7.2(b)(2), a Project Party or a Rail Franchisee may submit questions or queries to the Independent Reviewer in relation to a report issued in accordance with clause 7.1.
- (b) **(Independent Reviewer to respond):** Subject to clause 5.5, the Independent Reviewer must, within a reasonable period having regard to the nature of the



question or query, respond in writing to questions and queries submitted by a Project Party or a Rail Franchisee in accordance with this clause 7.5.

8 Quality

8.1 Quality assurance system

The Independent Reviewer must:

- (a) **(Plan and develop)**: plan, develop and implement a quality assurance system which:
 - (1) meets the requirements of the relevant AS/NZS ISO Standards as and when they are published;
 - (2) is consistent with the Monitoring Plan; and
 - (3) is consistent with the requirements for the Quality Management Plan; and
- (b) **(Provide Project Party Representatives)**: within 15 Business Days of the date of this Deed, provide the Project Party Representatives with details of the quality assurance system which complies with clause 8.1(a) and which the Independent Reviewer proposes to adopt.

8.2 Audit

- (a) **(Independent Reviewer must allow audits)**: The Independent Reviewer must:
 - (1) allow any audit of its quality assurance system in accordance with this Deed by a Project Party or a third party appointed by the Project Parties at the request of a Project Party and at the cost of that Project Party; and
 - (2) fully co-operate with that third party in respect of the carrying out of the quality assurance audit.
- (b) **(Access to premises and information)**: Without limiting clauses 6.3, 6.4, 6.5 or 8.2(a), the Independent Reviewer must, at all times:
 - (1) give to the Project Parties or the third party appointed by the Project Parties (as the case may be) access to premises occupied by the Independent Reviewer or its subcontractors where the Services are being undertaken; and
 - (2) permit the Project Parties or the third party appointed by the Project Parties to inspect applicable information relevant to the quality assurance audit.

8.3 Quality assurance not to relieve Independent Reviewer

The Independent Reviewer will not be relieved of any responsibilities or obligations in accordance with this Deed as a result of:

- (a) **(Compliance)**: compliance with the requirements of this clause 8; or
- (b) **(Acts or omissions of Project Parties)**: any acts or omissions of the Project Parties with respect to the requirements of this clause 8, including:



- (1) any review of, comments upon, or notice in respect of, the quality assurance system or any Monitoring Plan; and
- (2) any audit in accordance with clause 8.2.

8.4 Non-complying services

The Independent Reviewer must at its cost:

- (a) **(Re-perform services)**: unless directed otherwise by the Project Parties (and, to the extent the relevant Services are for the benefit of the Rail Franchisees as contemplated by clause 6.9, the relevant Rail Franchisees), re-perform all Services which have not been performed in accordance with this Deed; and
- (b) **(All such steps)**: take all such steps as may be reasonably necessary to:
 - (1) mitigate the effect on the Project Parties and the Rail Franchisees of the failure to perform the Services in accordance with this Deed; and
 - (2) put the Project Parties and Rail Franchisees (as closely as possible) in the positions in which they would have been had the Independent Reviewer performed the Services in accordance with this Deed, including all such steps as may be reasonably directed by the Project Parties.

9 Liability, insurance and indemnity

9.1 Limitation of Liability

Subject to clause 9.4, the Independent Reviewer's total Liability for all Claims which the Project Parties, the Rail Franchisees, and the Downstream Parties or their respective Associates might have (whether jointly or severally) against the Independent Reviewer or the Sub-Independent Reviewer:

- (a) **(This Deed, the Independent Reviewer Deed of Appointment (Advanced Works) and Sub-Independent Reviewer Deed)**: arising in connection with this Deed, the Independent Reviewer Deed of Appointment (Advanced Works) and the Sub-Independent Reviewer Deed;
- (b) **(Services or Project)**: arising in connection with the Services, the Sub-IR Services, the Project, the Rail Systems Alliance Works or the Rail Infrastructure Alliance Works; or
- (c) **(Law)**: otherwise at Law or in equity including:
 - (1) any statute (insofar as it is possible to exclude such Liability); or
 - (2) in tort for negligence or otherwise, including negligent misrepresentation,

in respect of any fact, matter or thing under, arising in connection with the Services, the Sub-IR Services, the Project, the Rail Systems Alliance Works, the Rail Infrastructure Alliance Works or any Project Document or Project Alliance Agreement will be limited in aggregate to the greater of:

- (d) **(Specified amount)**: the amount specified in Item 4 of the Contract Particulars; or
- (e) **(Up to indemnity limit)**: to the extent that the relevant Liability:



- (1) is the subject of an indemnity under any policy of insurance required to be maintained by the Independent Reviewer under clause 9.5 of this Deed; or
 - (2) would have been the subject of such indemnity in accordance with the terms of a policy of insurance required to be effected and maintained by the Independent Reviewer under this Deed but for a breach by the Independent Reviewer under clause 9.5 of this Deed, the Sub-Independent Reviewer Deed or any such insurance policy,
- then:
- (3) the amount of the minimum limit of indemnity required under that policy of insurance as specified in the Contract Particulars; or
 - (4) where there is a Primary Policy, the aggregate of any indemnity under the Primary Policy and any supplementary insurance policy, up to the amount specified in item 5 of the Contract Particulars

(Liability Cap).

9.2 Share of Liability Cap

As between:

- (a) **(State)**: the State, the Rail Franchisees and their respective Associates (on the one hand); and
- (b) **(Project Co)**: Project Co, the Downstream Parties and their respective Associates (on the other hand),

unless the State agrees otherwise and subject to clause 9.3:

- (c) **(Percentage for State's Claims)**: 50 per cent of the Liability Cap shall be available to satisfy the State's, the Rail Franchisees' and their respective Associates' Claims against the Independent Reviewer; and
- (d) **(Percentage for Project Co's Claims)**: 50 per cent of the Liability Cap shall be available to satisfy Project Co's, the Downstream Parties' and their respective Associates' Claims against the Independent Reviewer (including any Claim by the D&C Subcontractor in connection with the Independent Reviewer Deed of Appointment (Advanced Works) or the Sub-Independent Reviewer Deed),

provided that this clause 9.2 will only apply to Claims which are subject to the Liability Cap in accordance with clause 9.1.

9.3 Residual Liability Cap

The Project Parties and the Rail Franchisees acknowledge and agree that if:

- (a) **(Expiry)**: the Term has expired;
- (b) **(Exhausted Liability Cap)**: either the State, the Rail Franchisees and their respective Associates (collectively), or Project Co, the Downstream Parties and their respective Associates (the **Capped Party**) has exhausted its share of the Liability Cap and is contemplating a claim against the Independent Reviewer or is contemplating a claim against the Independent Reviewer that, if successful, would exhaust its share of the Liability Cap; and
- (c) **(Non-Capped Party not exhausted)**: the other party (the **Non-Capped Party**) has not exhausted its share of the Liability Cap;

then:



- (d) **(Release unused portion)**: the Capped Party may request the Non-Capped Party to release all or a portion of its unused portion of the Liability Cap to the Capped Party for the purposes of its contemplated claim (and must provide the Non-Capped Party with reasonable particulars of such claim);
- (e) **(Consideration of Capped Party's request)**: the Non-Capped Party must, acting reasonably, consider the Capped Party's request and, if and to the extent that the Non-Capped Party:
 - (1) has no claim outstanding against the Independent Reviewer; and
 - (2) does not consider that there is any reasonable prospect that it will have a future claim against the Independent Reviewer for all or the relevant unused portion of the Liability Cap,

then:

- (f) **(Release of unused portion)**: the Non-Capped Party must, by written notice to the relevant Capped Party, release to that Capped Party all or so much of the unused portion of the Liability Cap as is not required to be retained by the Non-Capped Party for the purposes of any claims contemplated under clause 9.3(e)(1) or clause 9.3(e)(2);
- (g) **(Reduction by Independent Reviewer)**: the Non-Capped Party's proportion of the Liability Cap will only be reduced by the amount of any order made against the Independent Reviewer in respect of the relevant claim by the Capped Party (disregarding any amount in respect of which the Liability Cap does not apply); and
- (h) **(Increase in Liability Cap proportion)**: the Capped Party's proportion of the Liability Cap will only be increased by the amount of any order made against the Independent Reviewer in respect of the relevant Claim (disregarding any amount in respect of which the Liability Cap does not apply) provided that such increase does not exceed the amount released to the Capped Party in accordance with clause 9.3(f).

9.4 Exclusions

The limitation of Liability in clause 9.1 does not apply to any Claims arising in connection with any of the following on the part of the Independent Reviewer or anyone for whom it is responsible:

- (a) **(Fraud)**: fraud;
- (b) **(Wilful misconduct)**: wilful misconduct, being any conduct, act or omission done or to be done by the Independent Reviewer or Associate of the Independent Reviewer which results from conscious, intentional or reckless disregard of any provision of this Deed, the Independent Reviewer Deed of Appointment (Advanced Works) or any Sub-Independent Reviewer Deed or the rights or welfare of those who are or may be affected by that conduct, act or omission;
- (c) **(Gross negligence)**: gross negligence, being any negligent act or omission involving a serious disregard to an obvious and material risk and which the Independent Reviewer knew, or ought reasonably to have been aware, would result in substantial losses being incurred by a Project Party, a Rail Franchisee, or a Downstream Party or their respective Associates; or
- (d) **(Abandonment)**: abandonment of all or any material part of the Services.

9.5 Insurances

- (a) **(Insurances):** The Independent Reviewer must hold and maintain from the Commencement Date:
- (1) project specific public liability insurance:
 - (A) endorsed to include the Project Parties, the D&C Subcontractor and the Rail Franchisees as named insureds in respect of any Liability a Project Party, the D&C Subcontractor or a Rail Franchisee incur arising in connection with the acts or omissions of the Independent Reviewer or the Sub-Independent Reviewer;
 - (B) covering, without limitation, the Independent Reviewer's Liability in accordance with clause 9.10 and the Sub-Independent Reviewer's Liability in accordance with clause 9.8 of the Sub-Independent Reviewer Deed;
 - (C) with a limit of indemnity of not less than the amount specified in the Contract Particulars with respect to project specific public liability insurance;
 - (D) with a deductible of not more than the amount specified in the Contract Particulars with respect to project specific public liability insurance;
 - (E) which otherwise complies with the requirements of this Deed and is on such minimum terms as set out in the Contract Particulars with respect to project specific public liability insurance; and
 - (F) which applies retroactively to cover Liability in respect of any Liability of a Project Party, the D&C Subcontractor or a Rail Franchisee incurred arising in connection with the acts or omissions of the Independent Reviewer in connection with the Independent Reviewer Deed of Appointment (Advanced Works);
 - (2) project specific professional indemnity insurance:
 - (A) with a limit of indemnity of not less than the amount specified in the Contract Particulars with respect to project specific professional indemnity insurance for any single claim in respect of legal Liability (including, without limitation, in connection with property damage, personal injury or death) arising in connection with a breach of professional duty under clause 5 or clause 5 of the Sub-Independent Reviewer Deed or otherwise in connection with this Deed or the Sub-Independent Reviewer Deed whether owed in contract or otherwise, by reason of any negligent act, error or omission by the Independent Reviewer or its Associates;
 - (B) with a deductible of not more than the amount specified in the Contract Particulars with respect to project specific professional indemnity insurance;
 - (C) which otherwise complies with the requirements of this Deed and is on such minimum terms as set out in the Contract Particulars with respect to project specific professional indemnity insurance; and

- (D) which applies retroactively to cover legal Liability arising in connection with a breach of professional duty under clause 5 or otherwise in connection with the Independent Reviewer Deed of Appointment (Advanced Works), whether owed in contract or otherwise, by reason of any negligent act, error or omission by the Independent Reviewer or its Associates; and
 - (3) workers' compensation insurance against any Liability, whether in accordance with statute or at common law, for the death of, or injury to, persons employed by the Independent Reviewer, or if the Independent Reviewer is comprised of more than one party, employed by each such party in carrying out the Services.
- (b) **(Requirements for Insurances):** The insurances referred to in clause 9.5(a) must be effected with Reputable Insurers and:
 - (1) to the extent that the requirements of clause 9.5(a) are satisfied by having corporate insurance policies in place pursuant to clause 9.5(d);
 - (A) those corporate insurance policies must be on such terms as would be reasonably prudent for the type of Services that the Independent Reviewer is providing; and
 - (B) the Independent Reviewer must provide written confirmation from the Independent Reviewer's insurance broker which confirms that those corporate insurance policies are on terms which comply with the requirements of this Deed and the Sub-Independent Reviewer Deed; and
 - (2) if clause 9.5(b)(1) does not apply, be on such terms as are approved by the State (such approval not to be unreasonably withheld).
- (c) **(More than one Independent Reviewer):** If the Independent Reviewer comprises more than one person, the insurances referred to in clause 9.5(a) must (subject always to the overall limit of indemnity not being increased as a result):
 - (1) insure each of those parties both jointly and severally; and
 - (2) include a cross liability clause whereby the insurer agrees:
 - (A) to waive all rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured; and
 - (B) that the term "insured" applies to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them.
- (d) **(Corporate insurance policies):** The parties acknowledge and agree that:
 - (1) subject to clause 9.5(e), the Independent Reviewer may satisfy the requirements of clause 9.5(a), including the Contract Particulars, by having corporate insurance policies in place;
 - (2) the project specific professional indemnity insurance held and maintained by the Independent Reviewer in accordance with clause 9.5(a) will be the primary policy of insurance under this Deed **(Primary Policy)**;
 - (3) any corporate insurance policy in place in accordance with clause 9.5(d)(1) will only be claimed against following the Primary Policy being exhausted;



- (4) from the earlier of the date that is 3 years after the cessation of the Services or the date of termination of this Deed, the Independent Reviewer may elect to satisfy the requirements of clause 9.5(a)(2) solely by relying on corporate insurance policies; and
 - (5) the Primary Policy must have a sum insured with a minimum coverage of for any one claim and in the aggregate.
- (e) **(Requirement to procure additional insurance):** If:
- (1) the Independent Reviewer provides any of the insurances required under clause 9.5(a) by having corporate insurance policies in place pursuant to clause 9.5(d); and
 - (2) the amount available for recovery under the relevant type of insurance pursuant to clause 9.5(d) is at any time less than the sum required to be insured under clause 9.5(a),
- the Independent Reviewer must immediately procure additional insurance to cover the difference.
- (f) **(Maintenance of insurance):** The Independent Reviewer must:
- (1) not discontinue or cancel any insurance required under clause 9.5(a), or allow any such insurance to lapse, where this would result in the relevant insurance not meeting the requirements of this Deed, without the prior approval of the State;
 - (2) not do, or permit, or omit to do, anything which prejudices any insurance required under clause 9.5(a);
 - (3) promptly rectify anything which might, if not rectified, prejudice any insurance required under clause 9.5(a); and
 - (4) comply at all times with the terms of any insurance required under clause 9.5(a).

9.6 Notice of matter affecting insurance

The Independent Reviewer must notify the Project Parties and the Rail Franchisees 30 days in advance of any event which could affect its insurance cover or if any policy is cancelled, avoided or allowed to lapse.

9.7 Provision of information

The Independent Reviewer must provide to the Project Parties and the Rail Franchisees:

- (a) **(Certified copies):** certified copies of the insurance policies (where the Project Parties, the D&C Subcontractor and the Rail Franchisees are included as named insureds), except where an insurance policy is a corporate insurance policy used pursuant to clause 9.5(d); and
- (b) **(Certificates of currency):** certificates of currency, with respect to the insurances effected and maintained by the Independent Reviewer for the purposes of this clause 9 at any time on request by any Project Party or Rail Franchisee, and upon the renewal of each policy.

9.8 Periods for insurance

The Independent Reviewer must keep:



- (a) **(Project specific professional indemnity insurance)**: the project specific professional indemnity insurance current for a period of 6 years after the cessation of the Services or the date of termination of this Deed, whichever is earlier;
- (b) **(Workers compensation insurance)**: the employers' Liability and workers compensation insurance current until it ceases to perform the Services;
- (c) **(Project specific public Liability insurance)**: the project specific public liability insurance current until it ceases to perform the Services; and
- (d) **(Other insurances)**: any other insurances required under clause 9.5 current for such time as may reasonably be required by the Project Parties.

9.9 Obligations unaffected by insurance

The requirement to effect and maintain insurance in this clause 9 does not limit the Liability or other obligations of the Independent Reviewer in accordance with this Deed.

9.10 Indemnity

- (a) **(Breach and negligent act or omission)**: Subject to clause 9.1 the Independent Reviewer is liable for and must indemnify each Project Party and Rail Franchisee against any Claim or loss brought against, suffered or incurred by a Project Party or a Rail Franchisee in respect of:
 - (1) any breach of this Deed by the Independent Reviewer;
 - (2) any negligent act or omission of the Independent Reviewer or its subcontractors; or
 - (3) any of the following:
 - (A) the loss or damage to or of, or loss of use of (whether total or partial), any real or personal property (including property belonging to a Project Party or a Rail Franchisee);
 - (B) any injury to, illness or death of, persons; or
 - (C) any third party Claims brought against a Project Party or a Rail Franchisee (including any Claim brought by another Project Party or Rail Franchisee, and any Claim or loss suffered or incurred by a Project Party or Rail Franchisee to another Project Party or Rail Franchisee),

arising in connection with any wrongful act or omission of the Independent Reviewer or any of its Associates in connection with the Project, the Rail Systems Alliance Works or the Rail Infrastructure Alliance Works.
- (b) **(Reduction in Liability)**: The Independent Reviewer's Liability to a Project Party or Rail Franchisee under this clause 9.10 is reduced proportionally to the extent to which any action, proceeding, claim or demand arises out of any negligence or wrongful act or omission of that Project Party or Rail Franchisee, or their Associates.
- (c) **(Survival)**: All obligations to indemnify under this Deed survive termination of this Deed.



9.11 Proportionate Liability

- (a) **(No reduction in insurance covers):** Subject to clause 9.11(b), the Independent Reviewer must ensure that all insurances required under clause 9.5 do not reduce or exclude the insurance cover in connection with liabilities governed by Part IVA of the *Wrongs Act 1958* (Vic) or any corresponding legislation of another Australian jurisdiction, by reason of the manner in which that legislation operates or does not operate, as the case may be, in light of any of the provisions of this Deed and the obligations undertaken by the Independent Reviewer in connection with it.
- (b) **(Reasonable endeavours):** To the extent that the Insurance is not specific to the Project, the Independent Reviewer is only required to use its reasonable endeavours to procure insurance on the terms referred to in clause 9.11(a).

10 Payment

- (a) Subject to clause 7.4, the State (on behalf of the Project Parties and the Rail Franchisees) must pay to the Independent Reviewer the Fee subject to and in accordance with this clause 10 and the Payment Schedule.
- (b) **(Cumulative Caps):** Payments in respect of the Fee:
 - (1) for the Upstream Independent Reviewer Functions (excluding the Alliance Services) performed in accordance with this Deed during the Initial Fee Period must not exceed the Initial Fee Cumulative Cap for the relevant month;
 - (2) for the Upstream Independent Reviewer Functions (excluding the Alliance Services) performed in accordance with this Deed during the DLP Fee Period must not exceed the DLP Fee Cumulative Cap for the relevant month; and
 - (3) for the Alliance Services performed in accordance with this Deed, must not exceed the Alliance Services Fee Cumulative Cap for the relevant month.

11 Change to or suspension of Services and appointment of Substitute Reviewer

11.1 Change to Services

- (a) **(Notice of change to Services):** The Project Parties (and, to the extent the relevant Services are for the benefit of the Rail Franchisees as contemplated by clause 6.9, the relevant Rail Franchisees) may, by joint notice to the Independent Reviewer, instruct the Independent Reviewer to carry out a change to the Services (including an addition or omission) which is within the general scope of this Deed. The Independent Reviewer must comply with any such instruction. For the avoidance of doubt, neither a Resource Adjustment nor a delay to the Date of Final Acceptance are of themselves a change to the Services, however:



- (1) a Modification Order issued by the State under the Project Agreement, other than a Modification Order issued under clause 38.1(b) of the Project Agreement; or
- (2) a Modification Order under the D&C Subcontract arising out of a Modification Order described in clause 11.1(a)(1):

which results in:

- (3) a Resource Adjustment; or
- (4) a delay to the Date of Final Acceptance,

(Relevant Modification) will constitute a change to the Services for the purpose of clause 11.1(b).

- (b) **(Adjustment to Fee Caps):** The relevant Initial Fee Cap, DLP Fee Cap, Alliance Services Fee Cap or Disbursement Cap will be adjusted to reflect the change to the Services referred to in clause 11.1(a) in accordance with the Schedule of Rates and Disbursements. If the adjustment to the relevant Initial Fee Cap, DLP Fee Cap, Alliance Services Fee Cap or Disbursements Cap for the change to the Services cannot be determined by reference to the Schedule of Rates and Disbursements, the adjustment will be a reasonable amount determined by the State and Project Co.
- (c) **(Modification-related Fees):** The parties agree that, in respect of a Relevant Modification:
 - (1) notwithstanding anything to the contrary in this Deed or the Project Agreement, Project Co will not be required to reimburse the State for any part of the Fee paid to the Independent Reviewer as a direct result of an increase in the Fee directly arising out of a Relevant Modification;
 - (2) where that Relevant Modification leads to a change in the "Sub-IR Services" under the Sub-Independent Reviewer Deed, the State will pay Project Co the increase in the "Fee" (as those terms are defined under the Sub-Independent Reviewer Deed) directly arising out of that Relevant Modification within 20 Business Days after the provision to the State of a Tax Invoice (as that term is defined in the GST Law) received by Project Co from the Sub-Independent Reviewer in connection with that increase in the "Fee";
 - (3) any claim for an increase in the Fee under this Deed or the Sub-Independent Reviewer Deed directly arising from a Relevant Modification must be provided on an "open book basis";
 - (4) for the purposes of this clause 11.1, "open book basis" includes the Independent Reviewer providing (or procuring from the Sub-Independent Reviewer to the extent necessary) a breakdown of the calculation of all relevant labour, equipment, materials, subcontract and other costs in a clear and transparent manner and other information reasonably requested by the State including reasonably available source documents required to verify such calculation. If required by the State, the Independent Reviewer will make available the appropriate personnel to explain the basis on which a particular calculation has been made; and
 - (5) no amounts will be double counted.



11.2 Appointment of Substitute Reviewer

- (a) **(Appointment of Substitute Reviewer):** The Independent Reviewer acknowledges that the Project Parties (and, to the extent the relevant Services are for the benefit of the Rail Franchisees as contemplated by clause 6.9, the relevant Rail Franchisees) may appoint another reviewer (**Substitute Reviewer**) to carry out those Services which are omitted as referred to in clause 11.1(a).
- (b) **(Rights and powers):** The Substitute Reviewer will have all of the rights and powers of the Independent Reviewer under the Project Documents in connection with those Services.
- (c) **(Decisions):** Any decision of a Substitute Reviewer so appointed will be treated (between the Project Parties and the Rail Franchisees, but not as between the Project Parties, the Rail Franchisees and the Independent Reviewer) as if it is a decision of the Independent Reviewer.
- (d) **(No responsibility for performance):** Without prejudice to any Claim which any Project Party or Rail Franchisee may have in respect of the performance of the Independent Reviewer, the Independent Reviewer is not responsible for the performance of the Substitute Reviewer.

11.3 Independent Reviewer must continue to perform

Notwithstanding a change to the Services or the appointment of a Substitute Reviewer, the Independent Reviewer must continue to perform its Services, as changed in accordance with clause 11.1, in accordance with this Deed.

11.4 Suspension of Services

- (a) **(Suspension of Services):** The Project Parties (and, to the extent the relevant Services are for the benefit of the Rail Franchisees as contemplated by clause 6.9, the relevant Rail Franchisees) may, by joint notice to the Independent Reviewer, instruct the Independent Reviewer to suspend and, after a suspension has been instructed, to recommence, the performance of any or all of the Services.
- (b) **(Payment during suspension):** During the period which the Independent Reviewer's performance of the Services are suspended in accordance with clause 11.4(a), the State (on behalf of the Project Parties and the Rail Franchisees) will pay the Independent Reviewer:
 - (1) subject to the provisions of this Deed, for the Services that are not suspended (if any); and
 - (2) subject to the Independent Reviewer using all reasonable endeavours to mitigate, minimise or avoid the effects and consequences of the costs associated with the suspension of any or all of the Services, such unavoidable costs incurred arising in connection with the suspension of the Services or costs incurred by the Independent Reviewer in anticipation of their Services not being suspended.

11.5 Meeting of all Project Parties and Rail Franchisees

- (a) **(Project Party or Rail Franchisee may call meeting):** If a Project Party or Rail Franchisee is of the opinion that the Independent Reviewer is not performing its duties in accordance with this Deed, that Project Party or Rail Franchisee may



call a meeting of the Project Parties' Representatives and any relevant Rail Franchisee's Representative(s) who must attend within 2 Business Days (or such other period as requested by that Project Party or Rail Franchisee) to decide an appropriate action to resolve the issue.

- (b) **(Resolutions to be considered):** Without limiting the scope of the Project Parties' decision, the Project Parties and any relevant Rail Franchisee will consider at such a meeting whether to resolve the issue referred to in clause 11.5(a) by:
- (1) requesting that the Independent Reviewer comply with this Deed;
 - (2) changing the Services of the Independent Reviewer in accordance with clause 11.1 and appointing a Substitute Reviewer in accordance with clause 11.2 in connection with the Services which the Independent Reviewer is not performing in accordance with this Deed;
 - (3) suspending the Services of the Independent Reviewer in accordance with clause 11.4; or
 - (4) terminating the appointment of the Independent Reviewer in accordance with clause 12.

12 Termination

12.1 Notice of default

If the Independent Reviewer is in breach of this Deed and the breach is, in the reasonable opinion of the Project Parties, able to be remedied then the Project Parties may jointly give notice to the Independent Reviewer:

- (a) specifying the breach; and
- (b) requiring that the breach be remedied within 7 days, or such later date as agreed by the State and Project Co.

12.2 Termination for breach

If:

- (a) **(Unable to remedy breach):** the Independent Reviewer is in breach of this Deed and the breach is not, in the reasonable opinion of the Project Parties, able to be remedied; or
- (b) **(Breach not remedied):** the Project Parties give a notice in accordance with clause 12.1 and the breach is not remedied within the period of time notified to the Independent Reviewer in accordance with clause 12.1(b),

then, subject to clause 12.6, the Project Parties may immediately terminate the appointment of the Independent Reviewer by joint notice to the Independent Reviewer.

12.3 Termination for insolvency

If an Insolvency Event occurs in respect of the Independent Reviewer then, subject to clause 12.6, the Project Parties may immediately terminate the appointment of the Independent Reviewer by joint notice to the Independent Reviewer, whether or not the Independent Reviewer is then in breach of this Deed.



12.4 Termination for convenience

Subject to clause 12.6, the Project Parties may at any time for their convenience terminate the appointment of the Independent Reviewer upon 21 days joint notice to the Independent Reviewer, and appoint another person to act as the Independent Reviewer.

12.5 No automatic termination upon termination of any State Project Document

The appointment of the Independent Reviewer does not automatically terminate upon the termination of any of the State Project Documents, the Project Alliance Agreements or a Rail Franchisee Cooperation Agreement.

12.6 Prior agreement on replacement

Prior to serving a notice in accordance with clause 12.2, 12.3 or 12.4, the Project Parties must have agreed upon another person to act as the Independent Reviewer consistent with clause 11.9 (*Replacement of Independent Reviewer*) of the Project Agreement.

12.7 Independent Reviewer's rights upon termination for convenience

Where the appointment of the Independent Reviewer is terminated in accordance with clause 12.4:

- (a) **(payment in accordance with Payment Schedule):** the Independent Reviewer is only entitled to be paid by the State and Project Co in accordance with the Payment Schedule:
 - (1) the proportion of the Fee for Services performed up to the date of the termination; and
 - (2) unavoidable liabilities incurred by the Independent Reviewer as a consequence of the termination, except to the extent the Independent Reviewer fails to mitigate such liabilities, up to the following amounts:
 - (A) in respect of project office lease break costs;
 - (B) if termination under clause 12.4 occurs within 12 months of Financial Close, in respect of relocation costs for employees who have relocated or are in the process of doing so; and
 - (C) in respect of IT licensing costs for project specific systems.
- (b) **(no entitlement to Claim):** the Independent Reviewer will not otherwise be entitled to bring any Claim against the State, Project Co or the Rail Franchisees arising in connection with:
 - (1) the termination of this Deed; or
 - (2) the Project, the State Project Documents, the Project Alliance Agreements or the Rail Franchisee Cooperation Agreements; and
- (c) **(Project Co obligation):** if this Deed is terminated in accordance with clause 12.4 following a voluntary termination of the Project Agreement by the State under clause 45.2(a) of the Project Agreement, the State and Project Co agree that any costs payable under clause 12.7(a)(2) will not be a cost for which Project Co will be liable under clause 11.7(c) of the Project Agreement.



12.8 Termination without prejudice

Termination of the appointment of the Independent Reviewer will be without prejudice to any other rights which the Project Parties or the Rail Franchisees may have in respect of any breach of the terms of this Deed which occurred prior to the date of termination.

12.9 Copy of notices to Rail Franchisees

A copy of any notice issued by the Project Parties in accordance with this clause 12 must be given to the Rail Franchisees at the same time as it is given to the Independent Reviewer.

13 Transition out

13.1 Transition Out Period

- (a) **(Obligations):** During the Transition Out Period, the Independent Reviewer must:
- (1) provide the Services required in accordance with, and otherwise comply with, the Transition Out Plan; and
 - (2) without being limited by clause 13.1(a)(1), cooperate and consult with the Project Parties and the Rail Franchisees and do all such tasks and things as may be reasonably necessary to ensure:
 - (A) the smooth transition to the State of the Independent Reviewer's responsibilities for the monitoring of Project Co's carrying out of the Project Activities; and
 - (B) the final completion of all the Services and the full discharge of all of the Independent Reviewer's responsibilities in accordance with this Deed.
- (b) **(Transition Out Plan):** For the purposes of clause 13.1(a), the Independent Reviewer must:
- (1) prepare a draft of the Transition Out Plan and provide it to the Project Parties by no later than 60 Business Days before the commencement of the Transition Out Period which:
 - (A) is based on the draft Transition Out Plan submitted by the Independent Reviewer with its tender for the Services; and
 - (B) takes into account all relevant considerations which have arisen during the Term;
 - (2) provide all drafts of the Transition Out Plan to the Project Parties for review and consult with the Project Parties as required in relation to such drafts;
 - (3) review and, if necessary, update the Transition Out Plan and make such amendments as may be reasonably required by the Project Parties to any draft of the Transition Out Plan; and
 - (4) finalise, to the reasonable satisfaction of the Project Parties, the Transition Out Plan by no later than 20 Business Days before the commencement of the Transition Out Period.



- (c) **(Review Transition Out Plan every 6 months)**: The Independent Reviewer must review the Transition Out Plan at least once every 6 months during the Transition Out Period. The Independent Reviewer must consult with the Project Parties as required in relation to any necessary amendments to the Transition Out Plan. The Project Parties may require the Independent Reviewer, by notice, to make reasonable amendments to the Transition Out Plan during the Transition Out Period, if reasonably necessary to achieve the objectives specified in clause 13.1(a)(2).

13.2 Delivery of documents

Upon completion of the Services, or upon the termination of the appointment of the Independent Reviewer, the Independent Reviewer:

- (a) **(Books, records and documentation)**: must deliver up to the Project Parties or to such other person as the Project Parties may direct (which may include a Rail Franchisee), all books, records, drawings, specifications and other documentation in the possession, custody or control of the Independent Reviewer or its subcontractors relating to the Services; and
- (b) **(Right to use documentation)**: acknowledges that the Project Parties and where applicable, the Rail Franchisees, have the right to use all such books, records, drawings, specifications and other documents for the purposes of the Project, the Rail Systems Alliance Works and the Rail Infrastructure Alliance Works.

13.3 Reasonable assistance

Prior to completion of the Services, or upon the termination of the appointment of the Independent Reviewer, the Independent Reviewer must provide full assistance to the Project Parties, the Rail Franchisees, the Downstream Parties and any successor to the Independent Reviewer appointed in order to enable such successor to be in a position to perform the Services with effect from the appointment of such successor.

14 Intellectual property

The Independent Reviewer:

- (a) **(Grant)**: grants to the State;
- (b) **(All things necessary)**: must do all things necessary to give effect to the grant to the State of,

a world-wide, perpetual, irrevocable, non-exclusive, transferable, royalty-free licence (including the right to sub-license) to use, reproduce, modify, adapt, develop, communicate to the public or otherwise exploit the Independent Reviewer Material, for the purposes of:

- (c) **(Project)**: the Project, the Rail Systems Alliance Works or the Rail Infrastructure Alliance Works (including where this Deed is terminated for any reason other than for convenience under clause 12.4 to complete any Services which have not been:
- (1) carried out; or



- (2) carried out in accordance with the applicable State Project Documents, the Project Alliance Agreements and Rail Franchisee Cooperation Agreements,
as at the date of termination);
- (d) **(Project Documents)**: the exercise of the rights of the State or its Associates in accordance with the State Project Documents (including its step-in rights in accordance with clause 41 (*Step-in by the State*) of the Project Agreement); and
- (e) **(Further procurement)**: the procurement, design, supply, construction, installation, production, commissioning, completion, operation, maintenance, repair and alteration, during and after the Term, of any part of the Project, the Relevant Infrastructure or any other project relating to aspects of the Metro Tunnel.

15 GST

- (a) **(GST exclusive amounts)**: Unless otherwise expressly stated, all amounts referred to in this Deed or any Project Document are exclusive of GST.
- (b) **(GST payable by Supplier)**: If GST becomes payable on any Taxable Supply made by a party (**Supplier**) under or in connection with this Deed:
- (1) any amount payable or consideration to be provided in accordance with any other provision of this Deed for that supply (**Agreed Amount**) is exclusive of GST;
 - (2) an additional amount will be payable by the party which is the recipient of the Taxable Supply (**Recipient**), equal to the amount of GST payable on that Taxable Supply as calculated by the Supplier in accordance with the GST Law, which will be payable at the same time and in the same manner as for the Agreed Amount; and
 - (3) the Supplier will provide a Tax Invoice to the Recipient in connection with that supply, either at the time expressly set out in any other provision of this Deed or no later than the time at which the Agreed Amount for that Taxable Supply is to be provided in accordance with this Deed. The Recipient is not obliged to pay any amount in accordance with this clause 15(b) unless and until a Tax Invoice is received by the Recipient in connection with the Taxable Supply except where the Recipient is required to issue the Tax Invoice.
- (c) **(Variation in GST payable)**: If for any reason, the GST payable by the Supplier in connection with a supply it makes under or in connection with this Deed (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it received from the Recipient under clause 15(b) in connection with that supply, the Supplier will provide a refund or credit to, or will be entitled to receive from, the Recipient (as appropriate) the amount of this variation. Where an Adjustment Event occurs in relation to a supply and except where the Recipient is required to issue the Adjustment Note:
- (1) the Supplier will issue an Adjustment Note to the Recipient in connection with that supply within 14 days after becoming aware of that Adjustment Event occurring; and
 - (2) no additional amount will be payable by the Recipient unless and until an Adjustment Note is received by the Recipient.



- (d) **(GST ceasing to be payable):** No amount is payable by a party in accordance with clauses 15(b) or 15(c) to the extent that the GST to which the amount relates has ceased to be payable by or refundable to the Supplier by the Commissioner of Taxation under the GST Law.
- (e) **(Expert Determination):** If the Recipient is dissatisfied with any calculation to be made by the Supplier in accordance with this clause 15, the Recipient may, at its own expense and after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the President of the Institute of Chartered Accountants for expert determination, which will be final and binding on all parties (except in the case of manifest error). The expert will act as an expert and not as an arbitrator and must take into account the terms of this Deed, the matters required to be taken into account by the Supplier in accordance with this clause 15 and any other matter considered by the expert to be relevant to the determination. The parties release the expert from any Liability in acting as an expert, except in the case of fraud on the part of the expert.
- (f) **(Revenue net of GST):** Any reference in this Deed or any Project Document to price, value, sales, revenue, profit or a similar amount (**Revenue**), is a reference to the GST exclusive component of that Revenue, unless the contrary intention is expressed.
- (g) **(Cost net of GST):** Any reference in this Deed or any Project Document to cost, expense, Liability or other similar amount (**Cost**) of a party, is a reference to that Cost reduced by the Input Tax Credits to which the party is entitled in respect of such Cost, unless the contrary intention is expressed.
- (h) **(General obligation):** Each party agrees to do all things, including providing Tax Invoices and other documentation, that may be necessary or desirable to enable or assist the other party in determining its GST payable on any supply made by that other party in connection with this Deed, or any Input Tax Credits, adjustments or refunds in relation to any amount of GST paid or payable in connection with any supply made in connection with this Deed.
- (i) **(GST groups):** For the purposes of this Deed, a reference to GST payable on a Taxable Supply made by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member and a reference to an Input Tax Credit entitlement of a party includes any corresponding Input Tax Credit entitlement of the representative member of any GST group of which that party is a member.
- (j) **(Project Agreement to prevail):** If, but for this clause 15(j), a GST clause in another Project Document would apply in connection with a Taxable Supply to which this clause 15 also applies, then clause 59 (*Taxes*) of the Project Agreement will apply in connection with that supply and the GST clause in the other Project Document will not apply.
- (k) **(Definitions):** In this clause 15 unless otherwise defined in this Deed, terms used have the meanings given to them in the GST Law.

16 Dispute Resolution

16.1 Disputes to be resolved in accordance with the Project Agreement

- (a) **(Dispute between Project Co and the State):** Any dispute between the Project Parties arising in connection with this Deed must be resolved in accordance



with the procedures set out in clauses 46 (*Dispute Resolution*) to 47 (*Arbitration*) of the Project Agreement.

- (b) (**Dispute between Project Co and Train Franchisee**): Any dispute between Project Co and the Train Franchisee arising in connection with this Deed must be resolved in accordance with the procedures set out in clause 28 (*Dispute Resolution*) and clause 29 (*Arbitration*) of the Train Franchisee Cooperation Agreement.
- (c) (**Dispute between Project Co and Tram Franchisee**): Any dispute between Project Co and the Tram Franchisee arising in connection with this Deed must be resolved in accordance with the procedures set out in clause 23 (*Dispute Resolution*) and clause 24 (*Arbitration*) of the Tram Franchisee Cooperation Agreement.
- (d) (**Dispute between State and a Rail Franchisee**): Any dispute between the State and a Rail Franchisee arising in connection with this Deed must be resolved in accordance with the procedures set out in the relevant Rail Franchisee Arrangements.

16.2 Notice of dispute

If any dispute (other than a dispute which is to be referred for resolution in accordance with clause 16.1) arises between a Project Party or a Rail Franchisee (on the one hand) and the Independent Reviewer (on the other hand) (**Disputing Parties**) in respect of any fact, matter or thing arising out of or in connection with the Services or this Deed (**Dispute**), any of the Disputing Parties may give notice to each of the other parties specifying:

- (a) the dispute or difference;
- (b) particulars of the reasons for being dissatisfied; and
- (c) the position which is believed to be correct.

16.3 Executive negotiation

The Dispute identified in the notice given under clause 16.2 is to be referred to the persons described in the Contract Particulars who must:

- (a) (**Good faith negotiations**): meet and undertake genuine and good faith negotiations with a view to resolving the Dispute; and
- (b) (**Procedure for resolution**): if they cannot resolve the Dispute, endeavour to agree upon a procedure to resolve the Dispute.

16.4 Referral to Mediation

If the persons described in the Contract Particulars cannot resolve, or agree upon a procedure to resolve, the Dispute within 10 Business Days after the date the notice is given under clause 16.2, or within such longer period of time as these persons may agree, the Dispute is to be submitted to mediation in accordance with clauses 16.5 to 16.8.

16.5 Mediation

Within 5 Business Days of the expiration of the period referred to in clause 16.4, the Dispute will be referred for mediation to:

- (a) (**Specified Person**): the person set out in the Contract Particulars;



- (b) **(Appointed Person)** if:
- (1) no such person is specified; or
 - (2) the mediator specified in the Contract Particulars or the person appointed in accordance with this clause 16.5(b):
 - (A) is unavailable;
 - (B) declines to act; or
 - (C) does not respond within 5 Business Days of a request for advice as to whether they are able to conduct the mediation,
- a person appointed by the Chair (or acting Chair, as the case may be) of the Resolution Institute, Australia.

16.6 Place of mediation

The place of mediation will be Melbourne.

16.7 Evidence not admissible

Evidence of anything said, documents presented to, admissions made or matters raised in the course of any mediation will be confidential to the Disputing Parties and the mediator and will not be admissible in any subsequent proceedings.

16.8 Costs

Failing any agreement to the contrary between the Disputing Parties, the costs of the mediation (including any fees charged by the mediator) will be shared equally between the Disputing Parties.

16.9 Reference to litigation

If after 15 Business Days of the mediator nominated in accordance with clause 16.5 having accepted his or her appointment, the Dispute has not been resolved, then the Dispute may be referred to litigation.

16.10 Condition precedent to litigation

The Project Parties, the Rail Franchisees and the Independent Reviewer must comply with the provisions of clauses 16.2 to 16.9 as a condition precedent to commencing court proceedings in respect of any Dispute to which clause 16.2 applies (other than proceedings for urgent or injunctive relief).

16.11 Services to continue

The Independent Reviewer must continue to perform the Services in accordance with this Deed notwithstanding the existence of a Dispute referred to in clause 16.2.

17 Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Deed:



- (a) **(In writing)**: must be in writing;
- (b) **(Addressed)**: must be addressed as set out below (or as otherwise notified by that party to each other party from time to time):

State

Attention: [not disclosed]
Address: [not disclosed]
Phone: [not disclosed]
Email: [not disclosed]

Project Co

Attention: [not disclosed]
Address: [not disclosed]
Phone: [not disclosed]
Email: [not disclosed]

Train Franchisee

Attention: [not disclosed]
Address: [not disclosed]
Phone: [not disclosed]
Email: [not disclosed]

Tram Franchisee

Attention: [not disclosed]
Address: [not disclosed]
Phone: [not disclosed]
Email: [not disclosed]

Independent Reviewer

Attention: [not disclosed]
Address: [not disclosed]
Phone: [not disclosed]
Email: [not disclosed]

- (c) **(Signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(Form of delivery)**: must be delivered by hand or posted by prepaid post to the address, or emailed (in the form agreed by both parties) to the email address of the addressee set out in clause 17(b); and
- (e) **(Taken to be received)**: are taken to be received by the addressee at the address set out in clause 17(b):
 - (1) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which



case that communication is taken to be received at 9.00 am on the next Business Day;

- (2) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and
- (3) in the case of email, the first to occur of:
 - (A) receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - (B) the time that the communication enters an information system which is under the control of the addressee; or
 - (C) the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day.

18 Miscellaneous

18.1 Governing law and jurisdiction

- (a) **(Governing Law):** This Deed is governed by, and must be construed according to, the Laws of Victoria, Australia.
- (b) **(Jurisdiction):** Without limiting clause 16, each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Deed.

18.2 Entire agreement

To the extent permitted by Law and in relation to their subject matter, this Deed, the State Project Documents, the Project Alliance Agreements and the Rail Franchisee Cooperation Agreements:

- (a) **(Entire understanding):** embody the entire understanding of the parties, and constitute the entire terms agreed by the parties; and
- (b) **(Prior agreements):** supersede any prior agreement of the parties.

18.3 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to each party) required by Law or reasonably requested by another party to give effect to this Deed.



18.4 Survival of certain provisions

- (a) **(Surviving clauses):** All provisions of this Deed which, expressly or by implication from their nature, are intended to survive the rescission, termination or expiration of this Deed will survive the rescission, termination or expiration of this Deed, including any provision in connection with:
- (1) the Project Party's rights to set-off and recover money;
 - (2) confidentiality or privacy;
 - (3) any obligation to make any records available to the State;
 - (4) any indemnity or financial security given in accordance with this Deed; or
 - (5) any right or obligation arising on termination of this Deed.
- (b) **(Interpretation):** No provision of this Deed which is expressed to survive the termination of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the termination of this Deed.
- (c) **(Survival of rights and obligations):** No right or obligation of any party will merge on completion of any transaction in accordance with this Deed. All rights and obligations in accordance with this Deed survive the execution and delivery of any transfer or other document which implements any transaction in accordance with this Deed.

18.5 Waiver

- (a) **(Writing):** A waiver given by a party in accordance with this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver):** A failure to, a delay in or the partial exercise or enforcement of a right provided by Law or in accordance with this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or in accordance with this Deed.
- (c) **(No waiver of another breach):** No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

18.6 Consents, approvals and directions

- (a) **(State):** A consent or approval required in accordance with this Deed from the State or the Project Parties jointly may be given or withheld, or may be given subject to any conditions, as the State (or the Project Parties jointly, if the consent or approval is required from the Project Parties jointly) think fit, unless this Deed expressly provides otherwise.
- (b) **(Project Co and Rail Franchisees):** A consent or approval required in accordance with this Deed from Project Co only or a Rail Franchisee may not be unreasonably withheld or delayed, unless this Deed expressly provides otherwise.



18.7 Amendments

Except as otherwise expressly provided in this Deed, this Deed may only be varied by a deed executed by or on behalf of each party.

18.8 Expenses

Except as otherwise expressly provided in this Deed, the State Project Documents or the Rail Franchisee Cooperation Agreements, each party must pay its own costs and expenses in connection with negotiating, preparing, executing, and performing this Deed.

18.9 Severance

If at any time a provision of this Deed, a State Project Document, a Project Alliance Agreement or a Rail Franchisee Cooperation Agreement is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) **(Under this Deed)**: any other provision of this Deed, the relevant State Project Documents, the relevant Project Alliance Agreement or the relevant Rail Franchisee Cooperation Agreement; or
- (b) **(Under another jurisdiction)**: that provision under the Law of any other jurisdiction.

18.10 Counterparts

This Deed may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same Deed.

18.11 Moratorium legislation

To the fullest extent permitted by Law, the provisions of all Laws which operate to lessen or affect in favour of the Independent Reviewer any obligations under this Deed, or to prejudicially affect the exercise by the Project Parties or the Rail Franchisees of any right, power or remedy under this Deed or otherwise are expressly waived.

18.12 Proportionate liability

- (a) **(Excluded operation of Wrongs Act)**: The operation of Part IVAA of the *Wrongs Act 1958 (Vic)* is excluded in relation to all and any rights, obligations or liabilities of any party under this Deed whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) **(Rights, obligations and liabilities)**: Without limiting clause 18.12(a), the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Deed and not otherwise, whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

18.13 Confidentiality

- (a) **(Obligation to keep confidential)**: The Independent Reviewer must keep confidential details of this Deed, the State Project Documents, the Project



Alliance Agreements and the Rail Franchisee Cooperation Agreements, and all information and documents provided to, or by, the Independent Reviewer relating to the Services and not disclose or use the information or documents except:

- (1) to the Project Parties or the Rail Franchisees;
 - (2) for the purposes of performing the Services;
 - (3) where required by Law or to obtain legal advice on this Deed; or
 - (4) with the prior consent of the Project Parties, and where applicable, the relevant Rail Franchisee(s).
- (b) **(Survival)**: This obligation will survive completion of the Services or the termination of this Deed.
- (c) **(Permitted Disclosure)**: The Independent Reviewer agrees that notwithstanding any other provision of this Deed:
- (1) the Rail Franchisees may disclose the existence, or provide a complete copy, of this Deed and any documents or information provided or received under or in relation to this Deed to PTV, PTV's Associates or a prospective Successor Operator in order to facilitate the Rail Franchisees' compliance with the relevant Rail Franchisee Arrangements;
 - (2) the State may disclose this Deed and any documents or information provided or received under or in relation to this Deed to satisfy its Public Disclosure Obligations; and
 - (3) the Project Parties may disclose this Deed and any documents or information provided or received under or in relation to this Deed as permitted in accordance with clause 57.1 (*Confidential Information and disclosure by the State*) of the Project Agreement.

18.14 Assignment and security

- (a) **(Assignment and security)**: Subject to clause 18.14(b), no party to this Deed may assign, novate, transfer, mortgage, charge, encumber or otherwise deal with any of its rights or obligations under this Deed without the prior consent of each other party to this Deed.
- (b) **(Novation by Rail Franchisee)**: The parties acknowledge and agree that if the Train Franchisee Arrangements or the Tram Franchisee Arrangements are terminated or rescinded or come to an end for any reason, the relevant Rail Franchisee may be required to assign or novate, all of its rights or obligations under this Deed to PTV or a Successor Operator. Each other party consents to any such assignment or novation and must, on request by PTV, execute any document or documents required by PTV to effect such assignment or novation, provided that the new arrangements are on terms no more onerous than the terms of this Deed.

18.15 No representation or reliance

- (a) **(No representation)**: Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Deed, except for representations or inducements expressly set out in this Deed.



- (b) **(No reliance)**: Each party acknowledges and confirms that it does not enter into this Deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Deed.

18.16 Indemnities

- (a) **(Continuing Liability)**: Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the parties.
- (b) **(Expense not necessary)**: It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Deed.

18.17 Indemnity held on trust

- (a) **(State holds on trust)**: The State holds on trust for its Associates the benefit of:
 - (1) each indemnity and release given by Project Co, a Rail Franchisee or the Independent Reviewer under this Deed in favour of the State's Associates; and
 - (2) each right in this Deed to the extent that such right is expressly stated to be for the benefit of the State or the State's Associates.
- (b) **(Acknowledgement)**: Project Co, each Rail Franchisee and the Independent Reviewer acknowledge the existence of such trusts and consent to:
 - (1) the State exercising rights in relation to, or otherwise enforcing such indemnities, releases and rights on behalf of its Associates; and
 - (2) the State's Associates exercising rights in relation to, or otherwise enforcing the indemnities, releases and those rights as if they were a party to this Deed.
- (c) **(Further Acknowledgment)**: The parties acknowledge that nothing in this clause 18.17 in and of itself increases the Independent Reviewer's Liability under this Deed.

18.18 Set off

The State may deduct from any moneys due and payable to the Independent Reviewer under this Deed or otherwise at Law:

- (a) **(Moneys due and payable)**: any moneys due and payable by the Independent Reviewer to the State; and
- (b) **(Claims)**: any Claim that the State may have against the Independent Reviewer under or in connection with this Deed or in connection with the Services.



Schedule 1

Contract Particulars

1 Independent Reviewer's Representative

Name: [not disclosed]

Attention: [not disclosed]

Address: [not disclosed]

Phone: [not disclosed]

Email: [not disclosed]

2 Project Parties' and Rail Franchisees' Representatives

2.1 State:

Name: [not disclosed]

Attention: [not disclosed]

Address: [not disclosed]

Phone: [not disclosed]

Email: [not disclosed]

2.2 Project Co:

Name: [not disclosed] Attention: [not disclosed]

Address: [not disclosed]

Phone: [not disclosed]

Email: [not disclosed]

2.3 Train Franchisee:

Name: [not disclosed]

Attention: [not disclosed]

Address: [not disclosed]

Phone: [not disclosed]

Email: [not disclosed]



2.4 Tram Franchisee:

Name: [not disclosed]

Attention: [not disclosed]

Address: [not disclosed]

Phone: [not disclosed] Email: [not disclosed]

3 Key People

[not disclosed]

4 Limitation on Independent Reviewer's Liability

[not disclosed]

5 Professional indemnity insurance

Project Specific

| Insurance element | Minimum Requirement |
|-------------------------|---|
| Insured | The Independent Reviewer |
| Sum insured | Minimum coverage of [not disclosed] for any one claim and in the aggregate for all claims during the period of insurance. |
| Scope of cover | Covering legal liability arising from an act, error or omission of the Insured in relation to the performance of each Insured's professional activities and duties in connection with the Services. |
| Situation of risk | Anywhere in the Commonwealth of Australia. |
| Maximum Deductibles | [not disclosed] |
| Additional Requirements | <ul style="list-style-type: none"> • Indemnity to Independent Reviewer as principal for its vicarious liability arising out of acts, errors and omissions of its Associates; • Contractual clauses between the Independent Reviewer and any Associates must not contain provisions which preclude |



| Insurance element | Minimum Requirement |
|---------------------|--|
| | <p>recovery for breach of professional duty up to the limit of the insurance; and</p> <ul style="list-style-type: none"> Severability and non-imputation clauses. |
| Period of insurance | From the date on which the project specific professional indemnity insurance is first procured pursuant to clause 9.5(a)(2) until the period of [not disclosed] following the expiry of the Term (PSPI Period). |

6 Public Liability insurance

| Project Specific Insurance element | Minimum Requirement |
|------------------------------------|--|
| Insured | <p>Each of:</p> <ul style="list-style-type: none"> the Independent Reviewer and its Associates; Project Co and its Associates; the Rail Franchisees and their respective Associates; the State and its Associates; and the D&C Subcontractor and its Associates. |
| Sum insured | Minimum coverage of [not disclosed] for any one occurrence and unlimited in the aggregate during the period of insurance. |
| Scope of cover: | <p>To cover legal liability for:</p> <ul style="list-style-type: none"> third party property damage, including property in the care, custody and control of the Insured, for which the Insured is responsible and which is not otherwise already insured for the Insured's benefit, and including resultant consequential and economic loss; and personal injury (including libel and slander), disease or death of any person including resultant consequential and economic loss, <p>arising in connection with its products, the provision of the Services.</p> |



| Project Specific Insurance element | Minimum Requirement |
|---|--|
| Situation of risk | Anywhere in the Commonwealth of Australia (and whilst in transit). |
| Maximum Deductibles | [not disclosed] |
| Period of cover | Until expiry of the Term. |

7 Dispute resolution

[not disclosed]



Schedule 2

Services

1 General

The Independent Reviewer must:

- (a) **(Role)**: become familiar with the role (express or implied) under the State Project Documents, the Project Alliance Agreements, the Rail Franchisee Cooperation Agreements and the Downstream Independent Reviewer Contracts of the "Independent Reviewer" and review information made available to the Independent Reviewer by the parties in order to become fully acquainted with the Project, the Rail Systems Alliance Works and the Rail Infrastructure Alliance Works;
- (b) **(Discharge functions)**: discharge the functions which the State Project Documents, the Project Alliance Agreements, the Rail Franchisee Cooperation Agreements and the Downstream Independent Reviewer Contracts contemplate will be discharged by the Independent Reviewer;
- (c) **(Attend meetings and report)**: attend meetings and report as required from time to time by the parties;
- (d) **(Minimum surveillance)**: undertake, as a minimum, the surveillance of the Project, the Rail Systems Alliance Works and the Rail Infrastructure Alliance Works set out or described in the Monitoring Plan;
- (e) **(Hold Points and witness points)**: attend, as a minimum, the Hold Points and witness points set out or described in the Monitoring Plan;
- (f) **(Certificates)**: issue certificates in accordance with and in the form set out in the Schedule of Certificates and Notices and the Project Alliance Agreements (as applicable); and
- (g) **(General)**: otherwise discharge the functions of the Independent Reviewer under the State Project Documents, the Project Alliance Agreements, the Rail Franchisee Cooperation Agreements, and the Downstream Independent Reviewer Contracts.

2 Project Agreement

The Independent Reviewer's functions under the Project Agreement include, but are not necessarily limited to, the functions set out in the table below. Section references are to the Project Agreement unless otherwise stated.



| Clause No. | Independent Reviewer Role |
|---|--|
| Project Agreement | |
| 1.1 Definition of "D&C Program" | Set, where reasonably required, requirements for the D&C Program. |
| 1.1 Definition of "Date of Final Acceptance" | Sign the Certificate of Final Acceptance. |
| 1.1 Definition of "Date of Provisional Acceptance" | Sign the Certificate of Provisional Acceptance. |
| 1.1 Definition of "Interface Step Date" | Determine Interface Step Dates pursuant to clause 12.5(c). |
| 1.1 Definition of "Major Default" | Notify the State and Project Co that: <ul style="list-style-type: none"> (a) an Amended Remediation Plan does not satisfactorily address the requirements of clause 26.2(f) under clause 26.2(k)(1); (b) Project Co is not diligently pursuing a Remediation Plan or an Amended Remediation Plan under clause 26.2(k)(2); or (c) Project Co will not be able to achieve Provisional Acceptance by the date that is 24 months after the Date for Provisional Acceptance under clause 26.2(k)(3). |
| 1.1 Definition of "Minor Defect" | Determine if Project Co or the relevant Metro Tunnel Package Contractor has reasonable grounds for not promptly rectifying a Defect. |
| 2.16(a) No State liability for review | Except as otherwise expressly provided in the Independent Reviewer Deed of Appointment, the Independent Review does not owe a duty of care to Project Co to: <ul style="list-style-type: none"> (a) review (or when reviewing) the Project Co Material submitted by Project Co (even where submitted in accordance with the Review Procedures); or (b) inspect or review the Project Activities, the Relevant Infrastructure, the Metro Tunnel Interface Works or the Ticketing Works for Defects, other errors or omissions or for compliance with the State Project Documents or any Laws. |



| | |
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| 7.6(b) Interference, obstruction and nuisance | <p>If the levels of nuisance or interference arising from Project Co undertaking the Works or carrying out the Project Activities are not reasonable, are not in the interests of the safety of persons on the Site or areas adjacent to the Site, or do not meet a condition or requirement of any Approval, direct Project Co to:</p> <ul style="list-style-type: none">(a) stop or change the manner of undertaking the Works or carrying out of the Project Activities; and(b) amend the Construction Management Plan and any other relevant Management Plan to remedy the nuisance or interference and submit it for review in accordance with the Review Procedures. |
| 11.4 Project Control Group | Attend meetings of the Project Control Group during the D&C Phase. |
| 11.4(g) Project Control Group | <p>Receive from Project Co no later than 10 Business Days after the end of each Month the following reports:</p> <ul style="list-style-type: none">(a) prior to the Date of Final Acceptance, a Monthly D&C Phase Progress Report for the previous Month prepared and updated in accordance with the PS&TR; and(b) from the Date of Final Acceptance to the Expiry Date, a Monthly Performance Report for the previous month and the current Monthly Maintenance Schedule prepared and updated in accordance with the Final Acceptance Schedule or the Services Specification (as relevant). |
| 11.6 Appointment of Independent Reviewer | Act in accordance with the terms of the Project Agreement and this Deed, and independently of the State and Project Co and their respective Associates. |
| 11.7(a) Other Project roles of Independent Reviewer | Must not, without the prior consent of the State, be appointed by the Financiers to act in any role in connection with the Finance Documents. |
| 11.7(d) Other Project roles of Independent Reviewer | Assess whether the parties (as a result of their respective conduct) have a proportionate responsibility for the costs and expenses of the Independent Reviewer paid by the State under clause 11.7(b) which differs from the proportions stated in clause 11.7(c) and, where necessary, state the relevant proportions in a notice to the parties. |
| 11.7(e) Other Project roles of Independent Reviewer | If requested by Project Co or the State, prepare a report not otherwise required by the Project Agreement or the Independent Reviewer Deed of Appointment and provide a copy of that additional report to both parties. |



| | |
|--|--|
| 11.9(b) Replacement of Independent Reviewer | If a new Independent Reviewer is appointed in accordance with clause 11.9(a), abide by the exercise of any functions or decisions made by the previous Independent Reviewer. |
| 12.5(c) Failure to agree Interface Step Dates | If Project Co fails to agree with the Rail Systems Alliance or the State (as relevant) the dates for the completion of the Interface Steps which relate to the Rail Systems Alliance or the Rail Infrastructure Alliance (as relevant), determine those dates (such dates to be reasonable having regard to what is reasonably achievable in light of the D&C Program and the Rail Systems Alliance's program or the Rail Infrastructure Alliance's program (as applicable). |
| 14.1 Preparation of Management Plans | Review the Management Plans in accordance with the Review Procedures, and request any additional information that is reasonably required. |
| 14.3(c) Updates and revisions of Management Plans | If the State gives notice under clause 14.3(b), review the amended or updated Management Plan in accordance with the Review Procedures. |
| 14.3(d) Updates and revisions of Management Plans | Receive from Project Co notice of any proposed changes to a Management Plan and review the amended Management Plan in accordance with the Review Procedures. |
| 16.3(a) State's right to enter, inspect and test | <p>If authorised by the State, the Independent Reviewer may during Business Hours or upon giving reasonable notice to Project Co (except in the case of an emergency when no notice is required) enter the Site or the offices of Project Co to:</p> <ul style="list-style-type: none">(a) inspect, observe or test any part of the Relevant Infrastructure or the Project Activities (whether or not such inspections, observations or tests are otherwise required in accordance with the Project Agreement;(b) exercise any right (including any step-in right) or carry out any obligation which the State has in accordance with any State Project Document;(c) take such other action as the State considers necessary to exercise its rights in accordance with any State Project Document and to discharge its executive or statutory rights or duties; or(d) examine and make copies of the records, reports and all documents reasonably requested of Project Co or any Subcontractor in connection with the Project. |
| 16.3(c) State's right to enter, | When entering the site in accordance with clause 16.3(a) or otherwise: |



- inspect and test
- (a) comply with the Site Access and Interface Protocols and any generally applicable safety and security requirements of Project Co;
 - (b) not unnecessarily interfere with the carrying out of the Project Activities; and
 - (c) not damage the Relevant Infrastructure or the Site.
-

16.6
Schedule of Certificates and Notices

Receive from Project Co the certificates required by the Schedule of Certificates and Notices in accordance with the terms of the Schedule of Certificates and Notices.

18.1(a)
Submission of the D&C Program

Receive from Project Co the D&C Program for review in accordance with the Review Procedures.

18.1(d)
Submission of the D&C Program

In the event of a proposed or likely material departure from the D&C Program, receive from Project Co a notice of any proposed or likely material departure together with reasons why the material departure is necessary to comply with the Project Agreement.

18.1(f)
Submission of the D&C Program

Exercise sole and absolute discretion as to whether to use the D&C Program for any purpose, including assessing any Claim made by Project Co.

18.2
Updates to the D&C Program

Receive from Project Co updates of the D&C Program (including all sub-programs and associated reports) for review in accordance with the Review Procedures at the following intervals:

- (a) by 31 January 2018 to reflect the date of Financial Close, the Date for Provisional Acceptance and the Date for Final Acceptance;
- (b) at least monthly (no later than 10 Business Days after the end of each Month) to accurately reflect the status and any change in the progress of the D&C Activities and the Final Acceptance Works (including any delays which have or may have occurred in respect of the progress of the D&C Activities or the Final Acceptance Works) or any other changes to the activities, times, durations or other information contained in the D&C Program and any sub-programs to accurately reflect the actual status and progress of the D&C Activities and the Final Acceptance Works;
- (c) within 10 Business Days of Project Co being granted an extension of time to a Critical interface Milestone Date, a Progress Milestone Date or the Date for Provisional Acceptance, instructed to accelerate the D&C Activities or directed to carry out a Modification; and
- (d) within 5 Business Days of Project Co deciding to make any material changes to the information contained in the D&C



Program.

| | |
|--|---|
| 19.3(c) and (d) Design Review Process | Receive the Design Documentation submitted or resubmitted by Project Co and review it in accordance with the Design Review Schedule. |
| 21.2(a) Certificate of Critical Interface Milestone/Progress Milestone Achievement | <p>Receive from Project Co:</p> <ul style="list-style-type: none"> (a) notice that it has achieved a Critical Interface Milestone or Progress Milestone; (b) a request for a Certificate of Critical Interface Milestone/Progress Milestone Achievement; and (c) a detailed list of an Minor Defects to the Works and the Metro Tunnel Interface Works the subject of the relevant to the Critical Interface Milestone or Progress Milestone. |
| 21.2(b) Certificate of Critical Interface Milestone/Progress Milestone Achievement | <p>Receive from the State:</p> <ul style="list-style-type: none"> (a) notice that it considers a Critical Interface Milestone or Progress Milestone has been achieved; and (b) a request that a Certificate of Critical Interface Milestone/Progress Milestone Achievement be issued. |
| 21.2(c) Certificate of Critical Interface Milestone/Progress Milestone Achievement | <p>As soon as reasonably practicable and, in any event, within 15 Business Days of receiving notice of Critical Interface Milestone/Progress Milestone achievement from either Project Co or the State, determine whether the Critical Interface Milestone or Progress Milestone has been achieved and:</p> <ul style="list-style-type: none"> (a) if the Critical Interface Milestone or Progress Milestone has been achieved, issue the required Certificate of Critical Interface Milestone/Progress Milestone Achievement to the State and Project Co; or (b) if the Critical Interface Milestone or Progress Milestone has not been achieved, issue the required notice to the State and Project Co. |
| 21.2(d) Certificate of Critical Interface Milestone/Progress Milestone Achievement | <p>Receive from Project Co notice when work remaining to be undertaken to achieve Critical Interface Milestone or Progress Milestone has been completed.</p> |
| 21.2(f) Certificate of Critical Interface Milestone/Progress Milestone Achievement | <p>Determine whether Critical Interface Milestone or Progress Milestone has been achieved:</p> <ul style="list-style-type: none"> (a) without restriction by any notice, list or opinion previously provided to Project Co under clause 21.2(c); and (b) with entitlement to raise any other items of work as a ground for determining that a Critical Interface Milestone or Progress |



Milestone has not been achieved.

21.2(g)
Certificate of Critical
Interface
Milestone/Progress
Milestone Achievement

Make any determinations in respect of Returned Works comprising a Progress Milestone pursuant to clause 2.12(c) consistent with each notice in respect of those Returned Works under clause 24.4(d)(1).

23.1(b)
Testing and Commissioning

Receive from Project Co and review any updated Testing and Commissioning Management Plans with the intent of allowing Project Co the opportunity to recover any delays or reduce the likelihood of further delays.

23.2
Test Procedures

For each Test:

- (a) receive from Project Co the relevant Test Procedure at least 60 Business Days (or 30 Business Days for revised Test Procedures) prior to the proposed date of the Test;
- (b) within 20 Business Days (or 10 Business Days for revised Test Procedures) of receiving the Test Procedure, review the Test Procedure; and
- (c) when satisfied that the Test Procedure meets the requirements of the Project Agreement, the PS&TR, the Testing and Commissioning Management Plan, the Completion Schedule and the Systems Engineering Standard, certify the Test Procedure by providing to Project Co and the State a certificate in the form set out in the Schedule of Certificates and Notices.

23.3(a)
Notice of Tests

Receive from Project Co at least 10 Business Days' notice of the date, time and place for the conduct of each Test.

23.3(c)
Notice of Tests

If Project Co decides to postpone a Test, receive from Project Co at least 5 Business Days' notice of the rescheduled date, time and place for the conduct of that Test.

23.3(d)
Notice of Tests

Receive from Project Co:

- (a) an extract from the D&C Program that specifies the date, time and place for the conduct of each Test to be conducted for the following 25 Business Day period; and
- (b) an updated extract from the D&C Program each week during the period that Project Co is carrying out Tests.

23.4(b)
Conduct of Tests

Approve amendments to a Test Procedure proposed by Project Co during the conduct of the relevant Test to account for any circumstances that arise during the Test.



23.4(c) Attend and witness the conduct of Tests (without being obliged to).
Conduct of Tests

23.5(a) Receive from Project Co, within 10 Business Days of Project Co carrying out a Test, a Test Report.
Test Reports

23.5(c) Within 10 Business Days of receiving a Test Report:
Test Reports

- (a) certify that the Test has been passed in accordance with the Test Procedure by issuing a certificate in the form set out in the Schedule of Certificates and Notices; or
- (b) notify Project Co and the State that the Test has been failed or that the Test Report does not comply with the requirements of this Agreement.

23.7 Receive from Project Co re-submitted Test Reports.
Non-compliant Test Report

23.8(a) Confirm whether tests required by the Project Agreement, the PS&TR, the Testing and Commissioning Management Plan, the Completion Schedule or the Systems Engineering Standard have been carried out as required or in accordance with Best Industry Practice.
Additional testing

24.2 Receive from Project Co a copy of separate notices 60 Business Days and 20 Business Days prior to the date upon which Project Co expects to achieve Provisional Acceptance.
Notice before Provisional Acceptance

If, after giving notice, the date on which Project Co expects to achieve Provisional Acceptance changes, receive promptly from Project Co notice of the revised date.

24.3(a) Receive from Project Co:
Provisional Acceptance

- (a) notice that it has achieved Provisional Acceptance;
- (b) a request for a Certificate of Provisional Acceptance; and
- (c) a detailed list of work (including Minor Defect correction, and any Final Acceptance Works) to be undertaken to achieve Final Acceptance.

24.3(b) Receive from the State:
Provisional Acceptance

- (a) notice that it considers Provisional Acceptance has been achieved; and
- (b) a request that the Certificate of Provisional Acceptance be issued.



| | |
|--|---|
| 24.3(c) Provisional Acceptance | As soon as reasonably practicable and, in any event, within 15 Business Days of receiving notice of Provisional Acceptance from either Project Co or the State, determine whether Provisional Acceptance has been achieved and: (a) if Provisional Acceptance has been achieved, issue the required Certificate of Provisional Acceptance to the State and Project Co; or (b) if Provisional Acceptance has not been achieved, issue the required notice to the State and Project Co. |
| 24.3(e) Provisional Acceptance | Receive from Project Co notice when work remaining to be undertaken to achieve Provisional Acceptance has been completed. |
| 24.3(g) Provisional Acceptance | Determine whether Provisional Acceptance has been achieved: (a) without restriction by any notice, list or opinion previously provided to Project Co under clause 24.3(c); and (b) with entitlement to raise any other items of work (other than Minor Defects in the Relevant Infrastructure and Returned Works) as a ground for determining that Provisional Acceptance has not been achieved. |
| 24.4(a) Completion and Handback of Returned Works | Progressively inspect the Returned Works, consider whether the Returned Works have been completed in accordance with the State Project Documents and carry out any reinspection or other activities required by the Project Agreement or the Independent Reviewer Deed of Appointment. |
| 24.4(b)(3) Completion and Handback of Returned Works | Receive from Project Co notice in the form required by the Schedule of Certificates and Notices which: (a) states that the Returned Asset has been completed in accordance with the State Project Documents; and (b) lists any relevant Defects. |
| 24.4(b)(4) Completion and Handback of Returned Works | Jointly inspect the Returned Asset with Project Co and the Returned Asset Owner no more than 5 Business Days after receipt of Project Co's notice under clause 24.4(b)(2). |
| 24.4(c) Completion and Handback of Returned Works | In determining whether or not to issue a notice under clause 24.4(d), consider any reasonable comments of the relevant Returned Asset Owner provided within 5 Business Days after the time of the inspection under clause 24.4(b)(3). |
| 24.4(d) Completion and Handback | As soon as reasonably practicable following inspection under clause 24.4(b)(4), determine whether the Returned Asset has been completed in accordance with the State Project Documents |



of Returned Works (subject only to relevant Defects) and issue to the State and Project Co either:

- (a) a notice in the form required by the Schedule of Certificates and Notices confirming that the Returned Asset has been completed (subject only to relevant Defects); or
- (b) a notice either:
 - (i) listing the work remaining to be undertaken in order to complete the Returned Asset in accordance with the State Project Documents (subject only to relevant Defects); or
 - (ii) stating that the Returned Asset is so far from being completed in accordance with the State Project Documents that it is not practicable to provide a list of work remaining to be undertaken.

24.4(f) Receive from Project Co notice when the work listed in a notice issued by the Independent Reviewer under clause 24.4(d)(2)(A) has been completed.

Completion and Handback of Returned Works

24.4(h) Determine whether the Returned Asset has been completed in accordance with the State Project Documents (subject only to relevant Defects):

- (a) without restriction by any notice, list or opinion which it previously provided to Project Co under clause 24.4(d)(2); and
- (b) with entitlement to raise any other items of work (other than relevant Defects) as a ground for determining that the Returned Asset has not been completed in accordance with the State Project Documents.

24.5(a) When the Independent Reviewer considers that Final Acceptance has been achieved, as soon as reasonably practicable issue a Certificate of Final Acceptance to the State and Project Co certifying that Final Acceptance has been achieved and stating the Date of Final Acceptance.

Final Acceptance

24.5(b) Determine whether Final Acceptance has been achieved:

- (a) without restriction by any Certificate of Provisional Acceptance, notice, list or opinion previously provided or obligation of Project Co to correct any Defects; and
- (b) with entitlement to raise any other items of work as a ground for determining that Final Acceptance has not been achieved.

25.1(b) Receive from Project Co notice of any Defects in the Maintained Assets or Returned Assets identified by Project Co in accordance with the procedure for notification of Defects at any time during the Relevant Defects Term.

Defects



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| 25.1(c) Defects | If the Independent Reviewer believes there is a Defect in the Maintained Assets or the Returned Assets at any time during the relevant Defects Term, issue to Project Co a notice specifying: (a) that Defect; and (b) the reasonable period of time within which Project Co must rectify that Defect. |
| 25.1(d) Defects | Receive from Project Co notice that a notice given in accordance with clause 25.1(c) or a determination made in accordance with clause 24.4(d) and disputed by Project Co under clause 25.1(d)(3) is being referred for resolution under the Project Agreement. |
| 25.1(h) Defects | Receive from Project Co notice that a Defect has been rectified promptly after its rectification by Project Co. |
| 25.1(i) Defects | Receive from the State notice under clause 25.1(i)(3) and, within 10 Business Days of receiving the State's notice, issue to the State and Project Co a notice setting out the determined cost necessary to rectify the relevant Defect. |
| 25.2(a)(2)(B) Defects Liability Periods for Returned Assets | Assess whether Defects in a Returned Asset: (a) notified by Project Co pursuant to clause 25.1(b); or (b) notified by the State or the Independent Reviewer pursuant to clause 25.1(c) prior to the date referred to in clause 25.2(a)(2)(A), have been rectified. |
| 26.2(a) Independent Reviewer's review of progress | Continually review (by general overview, reasonable checking, and visiting the Site to inspect the progress of the Works, including where requested by the State) the carrying out of the D&C Activities and Final Acceptance Works to ensure that: (a) the obligations of Project Co under the State Project Documents relating to the D&C Activities and Final Acceptance Works are being complied with; (b) Provisional Acceptance will be achieved by the Date for Provisional Acceptance; (c) each Critical Interface Milestone (PPP Responsible) will be achieved by the relevant Critical Interface Milestone Date; (d) from the Date of Provisional Acceptance, Project Co is expeditiously and diligently progressing the Works to achieve Final Acceptance; and (e) the D&C Program accurately reflects the actual progress of the Works in all material respects. |
| 26.2(b) | Notify Project Co and the State, with reasons, if of the opinion that: |



Independent Reviewer's review of progress

- (a) the obligations of Project Co under the State Project Documents relating to the D&C Activities and Final Acceptance Works are not being complied with;
- (b) the D&C Program does not accurately reflect the actual progress of the Works in all material respects;
- (c) a Critical Interface Milestone (PPP Responsible) will not be achieved by the relevant Critical Interface Milestone Date;
- (d) Provisional Acceptance will not be achieved by the Date for Provisional Acceptance; or
- (e) from the Date of Provisional Acceptance, Project Co is not expeditiously and diligently progressing the Works to achieve Final Acceptance.

26.2(c)
Independent Reviewer's review of progress

In response to the notice issued by the Independent Reviewer under clause 26.2(b), within 10 Business Days receive from Project Co notice setting out:

- (a) any matters with which it disagrees with the Independent Reviewer's opinion, together with its reasons for doing so (**Explanation**); and
- (b) to the extent it does not disagree, a plan and a program for the rectification of any non-compliance in accordance with clause 26.2(f) (**Remediation Plan**),

for review in accordance with the Review Procedures.

26.2(d)
Independent Reviewer's review of progress

Within 10 Business Days of receiving an Explanation, notify the State and Project Co of its opinion as to whether or not the Explanation satisfactorily addresses its concerns, together with reasons for forming that opinion.

26.2(e)
Independent Reviewer's review of progress

If the Independent Reviewer notifies Project Co under clause 26.2(d) that the Explanation is not satisfactory, receive from Project Co within 10 Business Days of Project Co receiving the notice a Remediation Plan in accordance with clause 26.2(f) for review in accordance with the Review Procedures.

26.2(f)-(g)
Independent Reviewer's review of progress

If a Remediation Plan has been prepared in response to a notice issued under clause 26.2(b) or 26.2(e)(2), review the Remediation Plan in accordance with the Review Procedures and determine if it is satisfactory having regard to the Remediation Plan requirements set out in clause 26.2(f).

26.2(h)
Independent Reviewer's review of progress

Notify the State and Project Co that, in its opinion, a Remediation Plan is satisfactory and receive from Project Co monthly updates to the Remediation Plan for review in accordance with the Review Procedures.



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| 26.2(i) Independent Reviewer's review of progress | Notify the State and Project Co that, in its opinion, a Remediation Plan is unsatisfactory, and receive an Amended Remediation Plan prepared by Project Co within 5 Business Days of receipt by Project Co of the Independent Reviewer's notice, for review in accordance with the Review Procedures. |
| 26.2(k) Independent Reviewer's review of progress | Notify the State and Project Co that, in its opinion: <ul style="list-style-type: none">(a) an Amended Remediation Plan does not satisfactorily address the requirements of clause 26.2(f);(b) Project Co is not diligently pursuing the Remediation Plan or Amended Remediation Plan; or(c) Project Co will not be able to achieve Provisional Acceptance by the date that is 24 months after the Date for Provisional Acceptance, in the case of (a) or (b) at any time after receipt of the relevant Remediation Plan or Amended Remediation Plan. |
| 26.3 Notification of delay to Acceptance | Receive from Project Co notice promptly after it becomes aware of any matter which will, or is likely to, give rise to a delay in achieving Provisional Acceptance, a Critical Interface Milestone, or a Progress Milestone Date. |
| 26.6 Change Notice | Receive from Project Co any Change Notice submitted in accordance with clause 26.6 within 15 Business Days from the date Project Co became aware, or ought reasonably to have become aware of relevant delay. |
| 26.7 Conditions precedent to extension | Determine whether Project Co has demonstrated that: <ul style="list-style-type: none">(a) it has been, or will be, delayed in achieving Provisional Acceptance or a relevant Progress Milestone by an Extension Event or a relevant Critical Interface Milestone by a Compensable Extension Event; and(b) the Extension Event has caused or will cause activities on the critical path contained in the then current D&C Program to be delayed (except if the extension of time claim relates only to a Critical Interface Milestone, in which case Project Co is not required to demonstrate delay to the critical path contained in the then current D&C Program). |
| 26.8(a) Extension of Time determined by Independent Reviewer | Receive from the State any evidence it considers relevant to the Independent Reviewer's consideration of Project Co's Change Notice under clause 26.6. |
| 26.8(b) Extension of Time determined by Independent | If the conditions precedent in clause 26.7 have been satisfied, determine a reasonable period by which to extend the Date for Provisional Acceptance, any relevant Critical Interface Milestone |



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| Reviewer | Date, and relevant Progress Milestone Date and, in doing so, take into account all relevant evidence presented by the parties and not be bound by the D&C Program. |
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| 31.1(b) Intervening Events | Receive from Project Co a Change Notice submitted in accordance with clause 31.1(b) within 15 Business Days from the date it became aware, or ought reasonably to have become aware, of an Intervening Event. |
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| 44.5(b) Major Default not capable of remedy or cure | Receive from the State notice pursuant to clause 44.5(b) and submit to the State within 10 Business Days of the date of the notice any comments or other information the Independent Reviewer considers may be relevant to the State forming or not forming a view in accordance clause 44.5(a). |
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| 60.2 Revised LIDP | Notify Project Co that it is not satisfied that: <ul style="list-style-type: none">(a) Project Co has met the Local Content Requirements; or(b) Project Co will be able to meet the aggregate Local Content Requirements, and receive from Project Co a revised LIDP for review in accordance with the Review Procedures. |
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| 60.4(a) Adjustment of Quarterly Service Payments | Certify, on the Date of Provisional Acceptance: <ul style="list-style-type: none">(a) the percentage of Local Content (ANZ) used by Project Co to the Date of Provisional Acceptance in undertaking the D&C Activities; and(b) the percentage of the Project Co D&C Phase Workforce to the Date of Provisional Acceptance which comprised of Priority Jobseekers undertaking D&C Activities in Victoria, calculated as an Annualised Employee Equivalent against the Project Co D&C Phase Workforce, by issuing a certificate in the form set out in the Schedule of Certificates and Notices. |
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| 61.3 Adjustment of Quarterly Service Payments | Certify, on the Date of Provisional Acceptance, the percentage of the total labour hours for the Works performed by Apprentices, Trainees and Engineering Cadets to the Date of Provisional Acceptance by issuing a certificate in the form set out in the Schedule of Certificates and Notices. |
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| 61.6 Revised Major Projects Skills Guarantee Compliance Plan | Review any revised Compliance Plans in accordance with the Review Procedures. |
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Schedule 4 (*Change Compensation Principles*)

5.1(c)
Change Notice and State Response

Receive from Project Co any Change Notice submitted in respect of a Change Compensation Event.

6.1(a)
State to issue Change Response

Respond to a Change Notice received pursuant to section 5.1(c) within 20 Business Days in accordance with section 6.

Schedule 7 (*Review Procedures*)

1.1(a)
Submission

Receive from Project Co any document required to be submitted under a State Project Document for review in accordance with the Review Procedures and the terms of the State Project Documents.

4.1
Response to Submitted Documents

Respond to a Submitted Document within the Review Period in accordance with section 4.

Schedule 25 (*Design Review*)

2.1(f)
General

As necessary, require the appropriate design personnel (including the Proof Engineer) to be made available to explain any Design Documentation, and reasonably request information regarding any Design Documentation.

2.2
Design Development Coordinator obligations

Attend meetings in respect of the design of the Project Assets and be consulted by Project Co throughout the Design Development Process as required by the Project Agreement.

2.3(a)
Sequence, concurrency and overlap of Design Packages

Receive from Project Co the Design Packages for review in accordance with the Design Management Plan, the D&C Program and the Design Review Schedule.

2.7
State and stakeholder review of Interim Design Documentation and Certified Design Documentation

Receive from Project Co:

- (a) the Interim Design Documentation for each Design Package, and provide any comments within 20 Business Days; and
- (b) the Certified Design Documentation for each Design Package, and provide any comments within 15 Business Days.



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| 2.8(Review of Certified Design Documentation | Receive from Project Co: (a) the Interim Design Documentation and review within the relevant Review Period in accordance with section 2.8(a); and (b) the Certified Design Documentation and review in accordance with section 2.8(c), and (as appropriate) certify all or part of the Design Documentation by providing to Project Co and the State a certificate in the form set out in the Schedule of Certificates and Notices. Any actual or potential non-compliances must be notified to Project Co in accordance with section 2.8(e) |
| 2.9(a) Issue of IFC Design | Receive from Project Co the IFC Design Documentation for each Design Package, together with all information required by the Design Review Schedule. |
| 2.10(b) Changes to the Technical Solution | Receive from Project Co notification of any change to the Technical Solution, and determine satisfaction in accordance with section 2.10(b). |
| 4 Initial Design Meeting | Attend an initial design meeting with Project Co and the State with 10 Business Days after Financial Close to commence planning of the Design Development Process and discuss the Design Management Plan. |
| 5.1 Further updates to Design Management Plan | Reasonably request Project Co to submit updated Design Management Plans or discrete components of the Design Management Plan, and receive from Project Co any revisions, modifications or updated versions of the Design Management Plan. |
| 6.2 Management of Stakeholder Group process | Attend Stakeholder Group meetings for various Design Packages. |
| 7.1 Purpose of Design Development Presentations | Request at the Design Development Presentations any necessary presentation and explanation of mock ups (including full scale or scale mock ups) of different components of the Project Assets. |
| 7.2 Frequency, notice and attendance at Design Development Presentations | Reasonably request Design Development Presentations, and receive from Project Co 10 Business Days' notice of the conduct of a Design Development Presentation. |
| 9(a)-(d) Mock ups and material | Receive from Project Co the project specific material samples and mock ups required by section 7.6 of the Design Requirements |

samples Section, with at least 4 weeks' prior notice.

9(e)
Mock-ups and material samples

Review any material sample or mock up within 6 weeks of submission, and either:

- (a) certify the material sample or mock up; or
- (b) notify Project Co of any actual non-compliances with the requirements of the Project Agreement, together with detailed reasons, which must be Addressed by Project Co before Project Co may proceed to construction of the relevant Works.

Schedule 26 (Completion Schedule)

3.2
Provisional Acceptance report

Receive from Project Co a report in respect of the Maintained Assets (excluding the Final Acceptance Works) and Returned Works (excluding the Returned Train Works and the Returned VicTrack Works).

Determine whether the Provisional Acceptance report includes all information reasonably necessary for operation, use and maintenance of the Maintained Assets, and is in an acceptable form.

4.2
Final Acceptance report

Receive from Project Co a report in respect of the Maintained Assets, the Returned Train Works and the Returned VicTrack Works.

Determine whether the Final Acceptance report includes all information reasonably necessary for operation, use and maintenance of the Maintained Assets, the Returned Train Works and the Returned VicTrack Works, and is in an acceptable form.

3 PS&TR

The Independent Reviewer's functions under Volume 2, Part A of the PS&TR include, but are not necessarily limited to, the functions set out in the table below. Section references are to Volume 2, Part A of the PS&TR unless stated otherwise.

| Section No. | Independent Reviewer Role |
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| 2.1.6(f) Reference Documents | Where a Reference Document provides for the approval of alternative construction methods or materials by a superintendent or representative, receive from Project Co notice: <ul style="list-style-type: none"> (a) in the Construction Documentation; or (b) as proposed changes to Design Documentation, |

of such methods or materials.

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| 2.1.6(h) Reference Documents | Where a Reference Document provides for any determination, direction or agreement by a superintendent that is not otherwise provided for expressly under section 2.1.6, receive from Project Co notice: <ul style="list-style-type: none"> (a) in the Construction Documentation; or (b) as changes to Design Documentation, of such determinations, directions or agreements. |
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| 2.1.6(i) Reference Documents – General | Where a Reference Document provides for the approval of a proposed adoption or variance of a particular standard, code, reference, guidelines, manual or other technical document, determine whether to grant that approval. |
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The Independent Reviewer's functions under Volume 2, Part C of the PS&TR include, but are not necessarily limited to, the functions set out in the table below. Section references are to Volume 2, Part C of the PS&TR unless stated otherwise.

| Section No. | Independent Reviewer Role |
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| 1.2.4(b) Process Requirements – Management Plans | Receive from Project Co notice of any audit proposed to be conducted in accordance with section 1.2.4, 3.5 or 4.7 at least 5 Business Days prior to that audit occurring. |
| 1.2.4(c) Process Requirements – Management Plans | Receive from Project Co in respect of any audit conducted in accordance with section 1.2.4, 3.5 or 4.7: <ul style="list-style-type: none"> (a) an audit report; and (b) proposed and/or implemented actions for addressing any non-conformances identified in the audit report, within 5 Business Days of the audit's completion. |
| 1.3.3.2 Process Requirements – Records | Receive, as a condition precedent to Final Acceptance, a complete electronic copy of the As-Built Records for each Construction Package (including the final revised electronic versions of IFC Design Documentation). |
| 1.3.3.3 Process Requirements – Records | Receive, no later than 60 days after the date of completion of the Returned Works and as a condition precedent to Handback of Returned Works, a complete electronic copy of the As-Built Records for each Returned Works Construction Package (including the final revised electronic versions of IFC Design Documentation and maintenance records for the Returned Works during construction). |



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| 1.3.5.2(b)(5) Process Requirements – Records | Certify As-Built Records by providing a certificate in the form set out in the Schedule of Certificates and Notices. |
| 1.3.5.2(c)(1) Process Requirements – Records | Certify As-Built Records by providing a certificate in the form set out in the Schedule of Certificates and Notices. |
| 1.3.5.2(c)(1) Process Requirements – Records | Determine, for the purposes of closing as As-Built Records, whether subsequent Works will prevent inspection or repair of the Works represented by the As-Built Records. |
| 1.3.5.2(d) Process Requirements – Records | Where it is either not practicable to undertake testing required for closure of As-Built Records before Works are covered up or in particular situations where test results are available, determine any additional inspection or testing arrangements to be included in the applicable Inspection and Test Plan. |
| 1.3.5.2(d) Process Requirements – Records | Where it is either not practicable to undertake testing required for closure of As-Built Records before Works are covered up or in particular situations where test results are available, determine any additional inspection or testing arrangements to be included in the applicable Inspection and Test Plan. |
| 1.3.9.8 Process Requirements – Records | Determine whether non-conformances identified by the Independent Reviewer have been closed out satisfactorily. |
| 1.4.1.2(k) Process Requirements – Reporting | Notify Project Co of any other issues it requires to be addressed in the Monthly D&C Phase Progress Report. |
| 2.2.2.1(a) Project Management Requirements – Program Management | In respect of each update to the D&C Program, receive from Project Co a Program Summary Report listing the planning assumptions that underpin the program. |
| 2.2.3.1(a) Project Management Requirements – Program Management | Receive from Project Co updates to the D&C Program in accordance with the Project Agreement. |



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| 2.6.4.7 Project Management Requirements – Information Management | Receive from Project Co a report in respect of Project Co's compliance audit of the implemented digital engineering strategy against future State or Federal digital engineering (BIM) related standards or guidelines. |
| 3.5.1.3 Environmental Management Requirements – Environmental Audits | Receive from Project Co any environmental audit undertaken pursuant to section 3.5. |
| 6.3.1.1(a) Occupational Health and Safety Management – Road Safety | Determine, if requested by Project Co, whether a heavy vehicle will not perform the function for which it is intended if side under run guards are fitted. |
| 7.3.2 Design Requirements – Design Review Meetings | Attend design review meetings. |
| 7.4.1.3 Design Requirements – Design Risks Register | Receive from Project Co every two weeks a copy of the latest Design Risk Register. |
| 7.5.1.2 Design Requirements – Design Documentation | Receive from Project Co Interim Design Documentation for review in accordance with the Design Review Schedule. |
| 7.5.2.2 Design Requirements – Design Documentation | Receive from Project Co Certified Design Documentation for review in accordance with the Design Review Schedule. |
| 7.5.1.2 Design Requirements – Design Documentation | Receive from Project Co IFC Design Documentation for review in accordance with the Design Review Schedule. |
| 7.7.5 Design Requirements – Proof Engineering | Receive each Proof Engineering Certificate of Compliance with the relevant Certified Design Documentation. |
| 7.13.2 Design Requirements – | Attend Safety in Design (SiD) Workshops. |



Safety in Design

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| 7.13.4.7 Design Requirements – Safety in Design | Receive from Project Co within 5 Business Days of the conclusion of each SiD Workshop a report and a copy of the outputs from the workshop, including assessed risks and recommendations. |
| 9.9.5.2(d) Transport Management Requirements – Road Safety Audits | Receive from Project Co within 2 Business Days of a Road Safety Audit being undertaken in relation to the Worksite Traffic Management Plan a Road Safety Audit initial report and Project Co's response to that report. |
| 9.9.6 Transport Management Requirements – Road Safety Audits | Where desired, request comment by the senior Road Safety Auditor on road safety issues associated with the Contract. |
| 9.11.1.2 Transport Management Requirements – Unplanned Transport Disruptions | Receive from Project Co reports of any unplanned disruptions to a traffic lane, footpath, cycleway, tramway, bus lane, or road caused by the Works |
| 9.11.1.4 Transport Management Requirements – Unplanned Transport Disruptions | Receive from Project Co following any unplanned disruption event a report on the outcome of a review of the Transport Management Plan and the relevant Worksite Traffic Management Plan and Traffic Guidance System. |
| 10.3.2.1 Construction Requirements – Notification of Incidents | Receive from Project Co within 2 Business Days of any incident a report including all relevant details of the incident. |
| 10.4.5 Construction Requirements – Construction Documentation | Receive from Project Co Construction Documentation for review in accordance with the Review Procedures. |
| 10.5.2 Construction Requirements – Construction Review Meetings | Attend construction review meetings. |
| 10.7.2.3 Construction Requirements | Receive within four weeks of a condition survey being undertaken and prior to the commencement of the relevant Works the condition |



– Site Investigation,
Condition Surveys and
Monitoring

survey.

10.7.3.5(d)

Construction Requirements
– Site Investigation,
Condition Surveys and
Monitoring

Upon request, receive from Project Co a copy of quality assurance processes and verification documentation.

10.7.4.9

Construction Requirements
– Site Investigation,
Condition Surveys and
Monitoring

Receive from Project Co:

- (a) analysis and determinations, including the original Predicted Effects and any Acceptable Effects and any revisions, and re-evaluations of the Predicted Effects and the Acceptable Effects;
- (b) results of monitoring the actual effects of the Works and the Temporary Works on the existing ground conditions, infrastructure and properties over time;
- (c) details of any adjustments to the manner in which Project Co's Works are carried out which are necessary as a consequence of any re-evaluation of Predicted Effects; and
- (d) details of designs and materials for the repair and reinstatement of infrastructure and properties required by section 10.7.4.8.

11.1.5.1

Transition and Acceptance
Requirements – Testing and
Commissioning

Receive notice of any non-conformance or Defect identified by testing and commissioning.

11.2.1.2(f)

Transition and Acceptance
Requirements – Handback

Determine whether Inspection and Test Plans are satisfactory.

11.2.1.2(v)

Transition and Acceptance
Requirements – Handback

Determine whether Handback Documentation includes all information necessary for operation, use and maintenance and, where necessary, request that additional information be included.

11.2.2.1

Transition and Acceptance
Requirements – Handback

Receive from Project Co a Health and Safety Completion Report.

6.2(m)(13)

Annexure 2 – Digital

Receive from Project Co outputs from the sustainability performance model(s) demonstrating compliance with the performance requirements of the Sustainability Management Plan



Engineering Management and Sustainability Targets.
Plan

4 D&C Subcontract

The Independent Reviewer's and/or the Sub-Independent Reviewer's functions (as the case may be) under the D&C Subcontract include, but are not necessarily limited to:

| Clause No. | Independent Reviewer Role |
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| D&C Subcontract | |
| 1.1 Definition of "D&C Program" | Set, where reasonably required, requirements for the D&C Program. |
| 1.1 Definition of "Major Default (D&C)"* | Notify Project Co that it has formed the view that the D&C Subcontractor will not achieve Provisional Acceptance within the period covered by the then current Liquidated Damages (Provisional Acceptance) Cap. |
| 1.1 Definition of "Minor Defect" | Determine if the D&C Subcontractor or the relevant Metro Tunnel Package Contractor has reasonable grounds for not promptly rectifying a Defect. |
| 2.16(a) No Project Co liability for review | Except as otherwise expressly provided in the Sub-Independent Reviewer Deed of Appointment, Project Co and the Sub-Independent Reviewer do not owe a duty of care to the D&C Subcontractor to: <ul style="list-style-type: none"> (a) review (or when reviewing) the D&C Subcontractor Material submitted by the D&C Subcontractor; or (b) inspect or review the D&C Activities, the Final Acceptance Works, the Relevant Infrastructure, the Metro Tunnel Interface Works, or the Ticketing Works for Defects, other errors or omissions or for compliance with the D&C Project Documents or any Laws. |
| 11.4 Project Control Group | If requested to, attend meetings of the Project Control Group during the D&C Phase. |
| 11.4(g) Project Control Group | Receive from the D&C Subcontractor no later than 8 Business Days after the end of each Month the following reports updated and prepared in accordance with the PS&TR: |



| Clause No. | Independent Reviewer Role |
|---|---|
| | <p>(a) prior to the Date of Final Acceptance, a Monthly D&C Phase Progress Report for the previous Month; and</p> <p>(b) from the Date of Final Acceptance to the expiry of the D&C Phase, a Monthly Performance Report for the previous Month.</p> |
| 11.5A(i) Construction Control Group* | If requested to, attend meetings of the Construction Control Group. |
| 11.7(d) Other Project roles of Independent Reviewer* | Determine the proportionate responsibility of Project Co and the D&C Subcontractor (as a result of their respective conduct) for any Higher IC Payment Proportion (PA) and notify the D&C Subcontractor of any Higher IC Payment Proportion (PA) payable by it. |
| 11.11(b) Appointment of Sub-Independent Reviewer* | Act in accordance with the terms of the D&C Subcontract and this Deed, and independently of the D&C Parties. |
| 11.12(c) Other Project roles and costs of Sub-Independent Reviewer* | Assess whether the parties (as a result of their respective conduct) have a proportionate responsibility for the costs and expenses of the Sub-Independent Reviewer which differs from the position in clause 11.7(c) that Project Co will pay such costs and expenses and, where necessary, state the relevant proportions in a notice to the parties. |
| 11.12(d) Other Project roles of Sub-Independent Reviewer* | If the Sub-Independent Reviewer prepares a report not otherwise required by the D&C Subcontract or the Sub-Independent Reviewer Deed of Appointment, provide a copy of that additional report to both parties, with the cost of preparing the report being borne by the party that requested it. |
| 11.14 Replacement of Sub-Independent Reviewer* | If a new Sub-Independent Reviewer is appointed in accordance with clause 11.14, abide by the exercise of any functions or decisions made by the previous Sub-Independent Reviewer. |
| 14.1 Preparation of Management Plans | Review the Management Plans in accordance with the Review Procedures (D&C), and request any additional information that is reasonably required. |
| 14.3(c) Updates and revisions of | If Project Co gives notice under clause 14.3(b), review the amended or updated Management Plan in accordance with the |



| Clause No. | Independent Reviewer Role |
|---|---|
| Management Plans | Review Procedures (D&C). |
| 14.3(d) Updates and revisions of Management Plans | Receive from the D&C Subcontractor notice of any proposed changes to a Management Plan and review the amended Management Plan in accordance with the Review Procedures (D&C). |
| 16.3(a) The State and Project Co's right to enter, inspect and test | If authorised by Project Co, the Sub-Independent Reviewer may during Business Hours or upon giving reasonable notice to Project Co (except in the case of an emergency when no notice is required) enter the Site or the offices of the D&C Subcontractor for the purposes set out in clause 16.3(a) of the D&C Subcontract. |
| 16.3(c) The State and Project Co's right to enter, inspect and test | When entering the site in accordance with clause 16.3(a) or otherwise: <ul style="list-style-type: none">(a) comply with the Site Access and Interface Protocols and any generally applicable safety and security requirements of the D&C Subcontractor;(b) not unnecessarily interfere with the carrying out of the D&C Activities and the Final Acceptance Works; and(c) not damage the Relevant Infrastructure or the Site. |
| 16.6 Schedule of Certificates and Notices (D&C) | Receive from the D&C Subcontractor the certificates required by the Schedule of Certificates and Notices (D&C) in accordance with the terms of the Schedule of Certificates and Notices (D&C). |
| 18.1(a) Submission of the D&C Program | Receive from the D&C Subcontractor the D&C Program for review in accordance with the Review Procedures (D&C). |
| 18.1(d) Submission of the D&C Program | In the event of a proposed or likely material departure from the D&C Program, receive from the D&C Subcontractor a notice of any proposed or likely material departure together with reasons why the material departure is necessary to comply with the D&C Subcontract. |
| 18.1(g) Submission of the D&C Program* | Exercise sole and absolute discretion as to whether to use the D&C Program for any purpose, including assessing any Claim made by the D&C Subcontractor. |
| 18.2 | Receive from the D&C Subcontractor updates of the D&C Program |

| Clause No. | Independent Reviewer Role |
|---|--|
| Updates to the D&C Program | <p>(including all sub-programs and associated reports) for review in accordance with the Review Procedures at the following intervals:</p> <ul style="list-style-type: none"> (a) 29 January 2018 to reflect the date of Financial Close, the Date for Provisional Acceptance and the Date for Final Acceptance; (b) at least monthly (no later than 8 Business Days after the end of each Month) to accurately reflect the status and any change in the progress of the D&C Activities and the Final Acceptance Works (including any delays which have or may have occurred in respect of the progress of the D&C Activities or the Final Acceptance Works) or any other changes to the activities, times, durations or other information contained in the D&C Program and any sub-programs to accurately reflect the actual status and progress of the D&C Activities and the Final Acceptance Works; (c) within 8 Business Days of the D&C Subcontractor being granted an extension of time to a Critical Interface Milestone Date, a Progress Milestone Date or the Date for Provisional Acceptance, instructed to accelerate the D&C Activities or directed to carry out a Modification; and (d) within 4 Business Days of the D&C Subcontractor deciding to make any material changes to the information contained in the D&C Program. |
| 23.1(b) Testing and Commissioning | <p>Receive from the D&C Subcontractor and review any updated Testing and Commissioning Management Plans with the intent of allowing the D&C Subcontractor the opportunity to recover any delays or reduce the likelihood of further delays.</p> |
| 23.2 Test Procedures | <p>For each Test:</p> <ul style="list-style-type: none"> (a) receive from the D&C Subcontractor the relevant Test Procedure at least 65 Business Days (or 35 Business Days for revised Test Procedures) prior to the proposed date of the Test; (b) within 28 Business Days (or 14 Business Days for revised Test Procedures) of receiving the Test Procedure, review the Test Procedure; and (c) when satisfied that the Test Procedure meets the requirements of the D&C Subcontract, the PS&TR, the Testing and Commissioning Management Plan, the Completion Schedule and the Systems Engineering Standard, certify (strictly in accordance with any certification of the Independent Reviewer) the Test Procedure by providing to the D&C Subcontractor and Project Co a certificate in the form set out in the Schedule of Certificates and Notices (D&C). |
| 23.3(a) | <p>Receive from the D&C Subcontractor at least 12 Business Days'</p> |



| Clause No. | Independent Reviewer Role |
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| Notice of Tests | notice of the date, time and place for the conduct of each Test. |
| 23.3(b) Notice of Tests | Receive from the D&C Subcontractor notice of the postponement of any Test. |
| 23.3(c) Notice of Tests | If the D&C Subcontractor decides to postpone a Test, receive from the D&C Subcontractor at least 6 Business Days' notice of the rescheduled date, time and place for the conduct of that Test. |
| 23.3(d) Notice of Tests | Receive from the D&C Subcontractor: <ul style="list-style-type: none">(a) an extract from the D&C Program that specifies the date, time and place for the conduct of each Test to be conducted for the following 25 Business Day period; and(b) an updated extract from the D&C Program each week during the period that the D&C Subcontractor is carrying out Tests. |
| 23.4(b) Conduct of Tests | Approve amendments to a Test Procedure proposed by the D&C Subcontractor during the conduct of the relevant Test to account for any circumstances that arise during the Test. |
| 23.4(c) Conduct of Tests | Attend and witness the conduct of Tests (without being obliged to). |
| 23.5(a) Test Reports | Receive from Project Co, within 8 Business Days of the D&C Subcontractor carrying out a Test, a Test Report. |
| 23.5(c) Test Reports | Within 8 Business Days of receiving a Test Report and strictly in accordance with any direction of the Independent Reviewer: <ul style="list-style-type: none">(a) certify that the Test has been passed in accordance with the Test Procedure by issuing a certificate in the form set out in the Schedule of Certificates and Notices (D&C); or(b) notify the D&C Subcontractor and Project Co that the Test has been failed or that the Test Report does not comply with the requirements of the D&C Subcontract. |
| 23.7 Non-compliant Test Report | Receive from the D&C Subcontractor re-submitted Test Reports. |

| Clause No. | Independent Reviewer Role |
|---|---|
| <p>24.2 Notice before Provisional Acceptance</p> | <p>Receive from the D&C Subcontractor a copy of separate notices 62 Business Days and 22 Business Days prior to the date upon which the D&C Subcontractor expects to achieve Provisional Acceptance.</p> <p>If, after giving notice, the date on which the D&C Subcontractor expects to achieve Provisional Acceptance changes, receive promptly from the D&C Subcontractor notice of the revised date.</p> |
| <p>25.1(b) Defects</p> | <p>Receive from the D&C Subcontractor notice of any Defects in the Maintained Assets or Returned Assets identified by the D&C Subcontractor in accordance with the procedure for notification of Defects at any time during the Relevant Defects Term.</p> |
| <p>25.1(c) Defects</p> | <p>If the Sub-Independent Reviewer believes there is a Defect in the Maintained Assets or Returned Assets at any time during the relevant Defects Term, issue to the D&C Subcontractor a notice specifying:</p> <ul style="list-style-type: none"> (a) that Defect; (b) the reasonable period of time within which the D&C Subcontractor must rectify that Defect; and (c) the potential for the Defect or the rectification of the Defect to give rise to Abatement.* |
| <p>25.1(d) Defects</p> | <p>Receive from the D&C Subcontractor notice that a notice given in accordance with clause 25.1(c) or a determination made in accordance with clause 24.4(d) and disputed by the D&C Subcontractor under clause 25.1(d)(3) is being referred for resolution under the D&C Subcontract.</p> |
| <p>25.1(h) Defects</p> | <p>Receive from the D&C Subcontractor notice that a Defect has been rectified promptly after its rectification by the D&C Subcontractor.</p> |
| <p>25.1(i) Defects</p> | <p>Receive from the State notice under clause 25.1(i)(3) and, within 12 Business Days of receiving Project Co's notice, issue to Project Co and the D&C Subcontractor a notice setting out the determined cost necessary to rectify the relevant Defect.</p> |
| <p>25.2(a)(2)(B) Defects Liability Periods for Returned Assets</p> | <p>Assess whether Defects in a Returned Asset:</p> <ul style="list-style-type: none"> (d) notified by the D&C Subcontractor pursuant to clause 25.1(b); or (e) notified by Project Co or the Sub-Independent Reviewer pursuant to clause 25.1(c) prior to the date referred to in clause 25.2(a)(2)(A), <p>have been rectified.</p> |



| Clause No. | Independent Reviewer Role |
|--|--|
| 26.2A(a) Sub-Independent Reviewer's review of progress* | Notify Project Co and the D&C Subcontractor of the Sub-Independent Reviewer's opinion on: <ul style="list-style-type: none">(a) when the D&C Subcontractor is reasonably likely to achieve Provisional Acceptance; and(b) if Provisional Acceptance will not be achieved within the period covered by the then current Liquidated Damages (Provisional Acceptance) Cap, within 2 Business Days after receipt by Project Co of a notice from the Independent Reviewer under clause 26.2(b)(2) or clause 26.2(b)(3) of the Project Agreement. |
| 26.3 Notification of delay to Acceptance | Receive from the D&C Subcontractor notice promptly after it becomes aware of any matter which will, or is likely to, give rise to a delay in achieving Provisional Acceptance, a Critical Interface Milestone, or a Progress Milestone Date. |
| 26.6 Change Notice* | Receive from the D&C Subcontractor any Change Notice submitted in accordance with clause 26.6 within 20 Business Days (if the cause of delay is a Construction Extension Event) and otherwise within 13 Business Days from the date the D&C Subcontractor aware, or ought reasonably to have become aware, of the relevant delay. |
| 26.7 Conditions precedent to extension* | Determine whether the D&C Subcontractor has demonstrated that: <ul style="list-style-type: none">(a) it has been, or will be, delayed in achieving Provisional Acceptance or a relevant Progress Milestone Date by an Extension Event or a relevant Critical Interface Milestone by a Compensable Extension Event or a Construction Extension Event; and(b) the Extension Event has caused or will cause activities on the critical path contained in the then current D&C Program to be delayed (except if the extension of time claim relates only to a Critical Interface Milestone, in which case Project Co is not required to demonstrate delay to the critical path contained in the then current D&C Program). |
| 26.8(a) Extension of Time determined by Sub-Independent Reviewer | Receive from Project Co any evidence it considers relevant to the Sub-Independent Reviewer's consideration of the D&C Subcontractor's Change Notice under clause 26.6. |
| 26.8(b) Extension of Time determined by Sub-Independent Reviewer | If the conditions precedent in clause 26.7 have been satisfied, determine a reasonable period by which to extend the Date for Provisional Acceptance, any relevant Critical Interface Milestone Date, and relevant Progress Milestone Date (which, except in respect of an Extension Event under paragraph (1), (2) or (3) of the |



| Clause No. | Independent Reviewer Role |
|--|---|
| | definition of Extension Event, must be strictly in accordance with the Independent Reviewer's determination under clause 26.8 of the Project Agreement) and, in doing so, take into account all relevant evidence presented by the parties and not be bound by the D&C Program. |
| 27.3(c)(2)(B) Replacement Third Construction Bond* | Determine the amount required to rectify outstanding Defects notified to the D&C Subcontractor. |
| 27.3(d) Release of Third Construction Bond* | Certification of rectification of outstanding Defects. |
| 31.1(b) Intervening Events | Receive from the D&C Subcontractor a Change Notice submitted in accordance with clause 31.1(b) within 12 Business Days from the date it became aware, or ought reasonably to have become aware, of an Intervening Event. |
| 44.5(b) Major Default not capable of remedy or cure | Receive from the Project Co notice pursuant to clause 44.5(a) and submit to Project Co within 8 Business Days of the date of the notice any comments or other information the Sub-Independent Reviewer considers may be relevant to Project Co forming or not forming a view in accordance clause 44.5(a). |
| 60.2 Revised LIDP | Notify the D&C Subcontractor that it is not satisfied that: (a) the D&C Subcontractor has met the Local Content Requirements; or (b) the D&C Subcontractor will be able to meet the aggregate Local Content Requirements, and receive from the D&C Subcontractor a revised LIDP for review in accordance with the Review Procedures (D&C). |
| 61.6 Revised Major Projects Skills Guarantee Compliance Plan | Review any revised Compliance Plans in accordance with the Review Procedures (D&C). |
| Schedule 4 (Change Compensation Principles) | |
| 5.1(c) | Receive from the D&C Subcontractor any Change Notice submitted |



| Clause No. | Independent Reviewer Role |
|---|---|
| Change Notice and State Response | in respect of a Change Compensation Event. |
| 6.1(a) Project Co to issue Change Response | Respond to a Change Notice received pursuant to section 5.1(c) within 24 Business Days in accordance with section 6. |
| Schedule 7 (Review Procedures) | |
| 1.1(a) Submission | Receive from the D&C Subcontractor any document required to be submitted under a D&C Project Document for review in accordance with the Review Procedures (D&C) and the terms of the D&C Project Documents. |
| 4.1 Response to Submitted Documents | Respond to a Submitted Document within the D&C Review Period in accordance with section 4. |
| Schedule 25 (Design Review) | |
| 5.1 Further updates to Design Management Plan | Receive from the D&C Subcontractor any revisions, modifications or updated versions of the Design Management Plan. |

* Function performed by the Sub-Independent Reviewer under the D&C Subcontract.

5 Rail Systems Alliance

The Independent Reviewer's functions under the Rail Systems Alliance include, but are not necessarily limited to, the functions set out in the table below. Section references are to the Rail Systems Alliance Agreement unless otherwise stated. Capitalised terms in this Section 5 that are not defined under clause 1 of this Deed have the meaning given to them in the Rail Systems Alliance Agreement.



| Clause No. | Independent Reviewer Role |
|---|---|
| [21.1(a)] Certificate of Critical Interface Milestone Achievement | Receive notice under clause 21.1(a) from the ALT, the Project Owner, PPP Contractor, the RIA Participants or the HCMT Contractor (as the case may be), that the party considers it will be delayed in achieving a CIM by the Date for CIM Achievement. |
| [21.1(b)] Certificate of Critical Interface Milestone Achievement | Receive an updated notice where the relevant party considers the extent of the delay notified to the Independent Reviewer under clause 21.1(a) has changed. |
| [21.1(c)] Certificate of Critical Interface Milestone Achievement | Receive from the ALT, the Project Owner, the PPP Contractor, the RIA Participants or the HCMT Contractor: <ul style="list-style-type: none">(a) a notice that in the opinion of the relevant party, a CIM has been achieved; and(b) a request for a Certificate of CIM Achievement. |
| [21.1(d)] Certificate of Critical Interface Milestone Achievement | Receive from the Owner Participant: <ul style="list-style-type: none">(a) a notice that in the opinion of the Owner Participant or the NOPs (as the case may be), the NOPS, the PPP Contractor, the RIA Participants or the HCMT Contractor have achieved a CIM; and(b) a request for a Certificate of CIM Achievement. |
| [21.1(e)] Certificate of Critical Interface Milestone Achievement | As soon as reasonably practicable and, in any event, within 3 Business Days of the ALT complying with clause 21.1(a) or the Owner Participant giving notice under clause 21.1(d), determine whether the relevant CIM has been achieved and either: <ul style="list-style-type: none">(a) if the relevant CIM has been achieved, issue the required Certificate of CIM Achievement (stating the date on which the relevant CIM was achieved) to the Participants and the IDS Counterparty (and if the date is after the relevant Date for CIM Achievement, the number of days that the Participants or the IDS Counterparty have caused or contributed to the delay by failing to achieve an earlier CIM or non-CIM in the same IDS); or(b) if the relevant CIM has not been achieved, issue the required notice to the Participants and the IDS Counterparty. |
| [21.1(f)] Certificate of Critical Interface Milestone Achievement | Receive notice from the NOPS when any work listed under clause 21.1(e)(2)(A) has been completed. |



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|---|---|
| <p>[21.1(g)] Certificate of Critical Interface Milestone Achievement</p> | <p>Consider under clause 21.1(d) and 21.1(e) the notice given under clause 21.1(f) as if it were the original notice given under clause 21.1(a)</p> |
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|---|---|
| <p>[21.4(b)] CIM Achievement (RSA-HCMT CIM, RSA-PPP CIM and RSA-RIA CIM)</p> | <p>Receive notice that within 3 Business Days of the Date of CIM Achievement, an IDS Counterparty believes it can overcome or mitigate the delay or part of the delay in order to achieve the subsequent CIM or a future CIM in the same IDS in accordance with clause 21.4(a).</p> |
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|---|--|
| <p>[23.1(a)] Interface Costs – Participants impacting a Specified Related Works Contractor</p> | <p>Assess and quantify the additional costs of Interface Impacts to the Project Owner as set out in clause 23.1(a) and notify the Project Owner and the NOPs of the costs, in writing, within 10 Business Days of such Interface Impact.</p> |
|---|--|

6 Rail Infrastructure Alliance

The Independent Reviewer's functions under the Rail Infrastructure Alliance include, but are not necessarily limited to, the functions set out in the table below. Section references are to the Rail Infrastructure Alliance Agreement unless otherwise stated. Capitalised terms in this Section 6 that are not defined under clause 1 of this Deed have the meaning given to them in the Rail Systems Alliance Agreement.

| Clause No. | Independent Reviewer Role |
|---|---|
| <p>[22.1(a)] Certificate of Critical Interface Milestone Achievement</p> | <p>Receive notice under clause 22.1(a) from the ALT, the Project Owner, PPP Contractor or the RSA Participants (as the case may be), that the party considers it will be delayed in achieving a CIM by the Date for CIM Achievement.</p> |
| <p>[22.1(b)] Certificate of Critical Interface Milestone Achievement</p> | <p>Receive an updated notice from, where the relevant party considers the extent of the delay notified to the Independent Reviewer under clause 22.1(a) has changed.</p> |
| <p>[22.1(c)] Certificate of Critical Interface Milestone Achievement</p> | <p>Receive from the ALT, the Project Owner, the PPP Contractor or the RSA Participants:</p> <ul style="list-style-type: none"> (a) a notice that in the opinion of the relevant party, a CIM has been achieved; and (b) a request for a Certificate of CIM Achievement. |



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|---|---|
| <p>[22.1(d)] Certificate of Critical Interface Milestone Achievement</p> | <p>Receive from the Owner Participant:</p> <ul style="list-style-type: none">(a) a notice that in the opinion of the Owner Participant, the NOPS, the PPP Contractor or the RSA Participants have achieved a CIM; and(b) a request for a Certificate of CIM Achievement. |
| <p>[22.1(e)] Certificate of Critical Interface Milestone Achievement</p> | <p>As soon as reasonably practicable and, in any event, within 3 Business Days of the ALT complying with clause 22.1(a) or the Owner Participant giving notice under clause 22.1(d), determine whether the relevant CIM has been achieved and either:</p> <ul style="list-style-type: none">(a) if the relevant CIM has been achieved, issue the required Certificate of CIM Achievement to the Participants and the IDS Counterparty (and if the date is after the relevant Date for CIM Achievement, the number of days that the Participants or the IDS Counterparty have caused or contributed to the delay by failing to achieve an earlier CIM or non-CIM in the same IDS); or(b) if the relevant CIM has not been achieved, issue the required notice to the Participants and the IDS Counterparty. |
| <p>[22.1(f)] Certificate of Critical Interface Milestone Achievement</p> | <p>Receive notice from the NOPS when any work listed under clause 22.1(e)(2)(A) has been completed.</p> |
| <p>[22.1(g)] Certificate of Critical Interface Milestone Achievement</p> | <p>Consider under clause 22.1(d) and 22.1(e) the notice given under clause 22.1(f) as if it were the original notice given under clause 22.1(a)</p> |
| <p>[22.4(b)] CIM Achievement (RSA-HCMT CIM, RSA-PPP CIM and RSA-RIA CIM)</p> | <p>Receive notice that within 3 Business Days of the Date of CIM Achievement, an IDS Counterparty believes it can overcome or mitigate the delay or part of the delay in order to achieve the subsequent CIM or a future CIM in the same IDS in accordance with clause 22.4(a).</p> |
| <p>[24.1(a)] Interface Costs – Participants impacting a Specified Related Works Contractor</p> | <p>Assess and quantify the additional costs of Interface Impacts to the Project Owner as set out in clause 24.1(a) and notify the Project Owner and the NOPS of the costs, in writing, within 10 Business Days of such Interface Impact.</p> |



Schedule 3

Payment Schedule

1 Payment of the Fee for Services

- (a) **(State responsible)**: Subject to sections 1(b) and 1(c) of this Schedule 3, and without limiting any provision of the Project Agreement, the State will be solely and exclusively liable for making any payments due to the Independent Reviewer under this Deed.
- (b) **(Payment for special reports)**: Without limiting any provision of the Project Agreement, the relevant Project Party or Rail Franchisee requesting the preparation of an additional report under clause 7.4 will be solely responsible for payment to the Independent Reviewer for the costs associated with the preparation of such additional report.
- (c) **(Payment for Downstream Independent Reviewer Functions)**: For the avoidance of doubt, if Project Co requires the Independent Reviewer to exercise its functions under the Sub-Independent Reviewer Deed, Project Co will assume sole Liability in respect of the applicable fees (in addition to any fees otherwise payable in accordance with this section 1).
- (d) **(AW Services Fee)**: The parties acknowledge and agree that the AW Services Fee for the AW Services has been paid pursuant to the Independent Reviewer Deed of Appointment (Advanced Works). Nothing in this Deed makes the Project Parties liable for, and the Independent Reviewer has no Claim to be paid any amount for or in respect of, the AW Services (including any associated disbursements) under this Deed, including any part of the AW Services performed by the Independent Reviewer after Financial Close.

2 Payment claim

- (a) **(Independent Reviewer to prepare and submit)**: Subject to section 5, the Independent Reviewer must submit to the State (with a copy to Project Co) a claim for payment on account of the Fee (not including an additional report required under clause 7.4):
 - (1) for the Upstream Independent Reviewer Functions performed in accordance with this Deed during a month, at the end of the month; and
 - (2) calculated in and otherwise in accordance with this Payment Schedule.
- (b) **(Content)**: Each payment claim prepared in accordance with section 2(a) must set out:
 - (1) a breakdown of the Upstream Independent Reviewer Functions, including details of personnel days worked for each resource (in a

form and including such information and supporting documentation) as the Project Parties may require from time to time) actually carried out during the relevant month;

- (2) details of approved disbursements actually incurred during the relevant month (including such information and supporting documentation as the Project Parties may require from time to time);
- (3) the part of the Fee then payable;
- (4) if the Independent Reviewer considers acting reasonably, for the purposes of clause 11.7(d) (*Proportionate payment of costs*) of the Project Agreement, that the Project Parties (as a result of their respective conduct) have a proportionate responsibility for the costs and expenses of the Independent Reviewer which differs from the proportions stated in clause 11.7(c) (*Payment of costs*) of the Project Agreement, the Independent Reviewer's assessment of the relevant proportions. The parties acknowledge and agree that the Independent Reviewer's assessment of the parties' respective conduct for the purposes of clause 11.7(d) (*Proportionate payment of costs*) of the Project Agreement will be limited to circumstances where a party fails to comply with its obligations under clause 6 of this Deed or acts unreasonably and that conduct has or will cause an increase in the Fee under this Deed which should be reasonably borne by the parties at a proportion different from that stated in clause 11.7(c) (*Payment of costs*) of the Project Agreement; and
- (5) the amounts previously claimed by the Independent Reviewer in relation to the applicable Initial Fee Cap, DLP Fee Cap, Alliances Services Fee Cap or Disbursements Cap (both on a real and nominal basis) and the amount of the monthly or quarterly payment,

and otherwise be in a form and substance agreed with the Project Parties.

- (c) **(Payment Claims for special reports):** Where an additional report has been requested by a Project Party or a Rail Franchisee under clause 7.4, the Independent Reviewer must submit a separate payment claim to the Project Party or Rail Franchisee (as applicable) who made the request in respect of the preparation of the report.

3 Payment

- (a) **(Payment of Fee):** Subject to sections 3(b), 4(b) and 5, within 20 Business Days of receipt of a payment claim in accordance with section 2(a), the State must pay the Independent Reviewer the part of the Fee which the State believes represents the value of the Upstream Independent Reviewer Functions performed by the Independent Reviewer during the period for which the payment claim is submitted.
- (b) **(Payment for special reports):** Within 20 Business Days of receipt of a payment claim under section 2(c), the relevant Project Party must pay the Independent Reviewer the amount which it believes represents the value of the Upstream Independent Reviewer Functions performed by the Independent Reviewer relating to the preparation of the additional report during the period for which the payment claim is submitted.



4 Payment of wages by Independent Reviewer

- (a) **(Signed statement required):** Before a payment is made to the Independent Reviewer under section 3, the relevant Project Party may require the Independent Reviewer to give the relevant Project Party a statement signed by the Independent Reviewer stating that no wages or payments to any sub-contractors of the Independent Reviewer are due and owing by the Independent Reviewer in respect of the Services at the time of payment.
- (b) **(Possible to withhold money):** If, within 2 Business Days after the request, the Independent Reviewer fails to provide the statement, then the party responsible for the payment of the relevant payment claim may withhold payment of moneys due to the Independent Reviewer until the statement is received.

5 Insurance

Before a payment claim can be made by the Independent Reviewer under section 2(a), the Independent Reviewer must have effected the insurance required by clause 9.5 on the basis set out in section 10 and provided evidence of this to the Project Parties. If a payment claim is purported to be submitted by the Independent Reviewer prior to effecting such insurance and providing such evidence, neither of the Project Parties will be liable to make any payment in respect of such claim.

6 Books of account

The Independent Reviewer must, for the purposes of this Deed:

- (a) institute and maintain all proper books of account and operating records necessary to afford a correct and complete record and explanation of all payment claims (including relevant supporting documentation) made by the Independent Reviewer under this Deed; and
- (b) permit the Project Parties' Representatives (and any persons authorised by either of them) access at all reasonable times to all relevant books of account and operating records necessary to establish that all payment claims made by the Independent Reviewer and all moneys paid to the Independent Reviewer under the terms of this Deed are or have been properly accounted for.

7 Notification of disputed amounts

If the State or Project Co disputes any amount which the Independent Reviewer has claimed then the State or Project Co (as applicable) must notify the Independent Reviewer of its reasons for disputing that amount within 20 Business Days after receipt of the relevant payment claim.



8 The Fee

(a) **(Initial Fee Cap):** The Initial Fee Cap for the Initial Fee Period is set out below (being the aggregate of the monthly fees in this section 8(a)):

| Description | Amount | Aggregate Monthly Amount |
|---------------|-----------------|--------------------------|
| December 2017 | [not disclosed] | [not disclosed] |
| January 2018 | [not disclosed] | [not disclosed] |
| February 2018 | [not disclosed] | [not disclosed] |
| Mar-18 | [not disclosed] | [not disclosed] |
| Apr-18 | [not disclosed] | [not disclosed] |
| May-18 | [not disclosed] | [not disclosed] |
| Jun-18 | [not disclosed] | [not disclosed] |
| Jul-18 | [not disclosed] | [not disclosed] |
| Aug-18 | [not disclosed] | [not disclosed] |
| Sep-18 | [not disclosed] | [not disclosed] |
| Oct-18 | [not disclosed] | [not disclosed] |
| Nov-18 | [not disclosed] | [not disclosed] |
| Dec-18 | [not disclosed] | [not disclosed] |
| Jan-19 | [not disclosed] | [not disclosed] |



| Description | Amount | Aggregate Monthly Amount |
|--------------------|-----------------|---------------------------------|
| Feb-19 | [not disclosed] | [not disclosed] |
| Mar-19 | [not disclosed] | [not disclosed] |
| Apr-19 | [not disclosed] | [not disclosed] |
| May-19 | [not disclosed] | [not disclosed] |
| Jun-19 | [not disclosed] | [not disclosed] |
| Jul-19 | [not disclosed] | [not disclosed] |
| Aug-19 | [not disclosed] | [not disclosed] |
| Sep-19 | [not disclosed] | [not disclosed] |
| Oct-19 | [not disclosed] | [not disclosed] |
| Nov-19 | [not disclosed] | [not disclosed] |
| Dec-19 | [not disclosed] | [not disclosed] |
| Jan-20 | [not disclosed] | [not disclosed] |
| Feb-20 | [not disclosed] | [not disclosed] |
| Mar-20 | [not disclosed] | [not disclosed] |
| Apr-20 | [not disclosed] | [not disclosed] |
| May-20 | [not disclosed] | [not disclosed] |



| Description | Amount | Aggregate Monthly Amount |
|--------------------|-----------------|---------------------------------|
| Jun-20 | [not disclosed] | [not disclosed] |
| Jul-20 | [not disclosed] | [not disclosed] |
| Aug-20 | [not disclosed] | [not disclosed] |
| Sep-20 | [not disclosed] | [not disclosed] |
| Oct-20 | [not disclosed] | [not disclosed] |
| Nov-20 | [not disclosed] | [not disclosed] |
| Dec-20 | [not disclosed] | [not disclosed] |
| Jan-21 | [not disclosed] | [not disclosed] |
| Feb-21 | [not disclosed] | [not disclosed] |
| Mar-21 | [not disclosed] | [not disclosed] |
| Apr-21 | [not disclosed] | [not disclosed] |
| May-21 | [not disclosed] | [not disclosed] |
| Jun-21 | [not disclosed] | [not disclosed] |
| Jul-21 | [not disclosed] | [not disclosed] |
| Aug-21 | [not disclosed] | [not disclosed] |
| Sep-21 | [not disclosed] | [not disclosed] |



| Description | Amount | Aggregate Monthly Amount |
|--------------------|-----------------|---------------------------------|
| Oct-21 | [not disclosed] | [not disclosed] |
| Nov-21 | [not disclosed] | [not disclosed] |
| Dec-21 | [not disclosed] | [not disclosed] |
| Jan-22 | [not disclosed] | [not disclosed] |
| Feb-22 | [not disclosed] | [not disclosed] |
| Mar-22 | [not disclosed] | [not disclosed] |
| Apr-22 | [not disclosed] | [not disclosed] |
| May-22 | [not disclosed] | [not disclosed] |
| Jun-22 | [not disclosed] | [not disclosed] |
| Jul-22 | [not disclosed] | [not disclosed] |
| Aug-22 | [not disclosed] | [not disclosed] |
| Sep-22 | [not disclosed] | [not disclosed] |
| Oct-22 | [not disclosed] | [not disclosed] |
| Nov-22 | [not disclosed] | [not disclosed] |
| Dec-22 | [not disclosed] | [not disclosed] |
| Jan-23 | [not disclosed] | [not disclosed] |



| Description | Amount | Aggregate Monthly Amount |
|--------------------|-----------------|---------------------------------|
| Feb-23 | [not disclosed] | [not disclosed] |
| Mar-23 | [not disclosed] | [not disclosed] |
| Apr-23 | [not disclosed] | [not disclosed] |
| May-23 | [not disclosed] | [not disclosed] |
| Jun-23 | [not disclosed] | [not disclosed] |
| Jul-23 | [not disclosed] | [not disclosed] |
| Aug-23 | [not disclosed] | [not disclosed] |
| Sep-23 | [not disclosed] | [not disclosed] |
| Oct-23 | [not disclosed] | [not disclosed] |
| Nov-23 | [not disclosed] | [not disclosed] |
| Dec-23 | [not disclosed] | [not disclosed] |
| Jan-24 | [not disclosed] | [not disclosed] |
| Feb-24 | [not disclosed] | [not disclosed] |
| Mar-24 | [not disclosed] | [not disclosed] |
| Apr-24 | [not disclosed] | [not disclosed] |
| May-24 | [not disclosed] | [not disclosed] |



| Description | Amount | Aggregate Monthly Amount |
|------------------------|-----------------|--------------------------|
| Jun-24 | [not disclosed] | [not disclosed] |
| Jul-24 | [not disclosed] | [not disclosed] |
| Aug-24 | [not disclosed] | [not disclosed] |
| Sep-24 | [not disclosed] | [not disclosed] |
| Initial Fee Cap | [not disclosed] | |

(b) **(DLP Fee Period estimate)**: The estimated Fee cap for the DLP Fee Period is set out below (being the aggregate quarterly fee in this section 8(b)):

| Description | Amount | Aggregate Monthly Amount |
|-------------|-----------------|--------------------------|
| Oct-24 | [not disclosed] | [not disclosed] |
| Nov-24 | [not disclosed] | [not disclosed] |
| Dec-24 | [not disclosed] | [not disclosed] |
| Jan-25 | [not disclosed] | [not disclosed] |
| Feb-25 | [not disclosed] | [not disclosed] |
| Mar-25 | [not disclosed] | [not disclosed] |
| Apr-25 | \$- | [not disclosed] |
| May-25 | [not disclosed] | [not disclosed] |
| Jun-25 | \$- | [not disclosed] |



| Description | Amount | Aggregate Monthly Amount |
|--------------------|-----------------|---------------------------------|
| Jul-25 | \$- | [not disclosed] |
| Aug-25 | [not disclosed] | [not disclosed] |
| Sep-25 | [not disclosed] | [not disclosed] |
| Oct-25 | \$- | [not disclosed] |
| Nov-25 | [not disclosed] | [not disclosed] |
| Dec-25 | \$- | [not disclosed] |
| Jan-26 | \$- | [not disclosed] |
| Feb-26 | [not disclosed] | [not disclosed] |
| Mar-26 | [not disclosed] | [not disclosed] |
| Apr-26 | \$- | [not disclosed] |
| May-26 | [not disclosed] | [not disclosed] |
| Jun-26 | \$- | [not disclosed] |
| Jul-26 | \$- | [not disclosed] |
| Aug-26 | [not disclosed] | [not disclosed] |
| Sep-26 | [not disclosed] | [not disclosed] |
| Oct-26 | \$- | [not disclosed] |



| Description | Amount | Aggregate Monthly Amount |
|--------------------------------|-----------------|---------------------------------|
| Nov-26 | [not disclosed] | [not disclosed] |
| Dec-26 | \$- | [not disclosed] |
| Jan-27 | \$- | [not disclosed] |
| Feb-27 | [not disclosed] | [not disclosed] |
| Mar-27 | \$- | [not disclosed] |
| Apr-27 | \$- | [not disclosed] |
| May-27 | [not disclosed] | [not disclosed] |
| Jun-27 | \$- | [not disclosed] |
| Jul-27 | \$- | [not disclosed] |
| Aug-27 | \$- | [not disclosed] |
| Sep-27 | [not disclosed] | [not disclosed] |
| Oct-27 | \$- | [not disclosed] |
| Nov-27 | \$- | [not disclosed] |
| Dec-27 | \$- | [not disclosed] |
| Jan-28 | \$- | [not disclosed] |
| DLP Fee Period estimate | [not disclosed] | |



(c) **(Alliance Services Fee Cap):** The Alliance Services Fee Cap for the Initial Fee Period and the DLP Fee Period is set out below (being the aggregate monthly and quarterly fee in this section 8(c)):

| Description | Amount | Aggregate Monthly Amount |
|-------------|-----------------|--------------------------|
| Nov-17 | \$- | \$- |
| Dec-17 | \$- | \$- |
| Jan-18 | \$- | \$- |
| Feb-18 | \$- | \$- |
| Mar-18 | [not disclosed] | [not disclosed] |
| Apr-18 | [not disclosed] | [not disclosed] |
| May-18 | [not disclosed] | [not disclosed] |
| Jun-18 | [not disclosed] | [not disclosed] |
| Jul-18 | [not disclosed] | [not disclosed] |
| Aug-18 | [not disclosed] | [not disclosed] |
| Sep-18 | [not disclosed] | [not disclosed] |
| Oct-18 | [not disclosed] | [not disclosed] |
| Nov-18 | [not disclosed] | [not disclosed] |
| Dec-18 | [not disclosed] | [not disclosed] |



| Description | Amount | Aggregate Monthly Amount |
|--------------------|-----------------|---------------------------------|
| Jan-19 | [not disclosed] | [not disclosed] |
| Feb-19 | [not disclosed] | [not disclosed] |
| Mar-19 | [not disclosed] | [not disclosed] |
| Apr-19 | [not disclosed] | [not disclosed] |
| May-19 | [not disclosed] | [not disclosed] |
| Jun-19 | [not disclosed] | [not disclosed] |
| Jul-19 | [not disclosed] | [not disclosed] |
| Aug-19 | [not disclosed] | [not disclosed] |
| Sep-19 | [not disclosed] | [not disclosed] |
| Oct-19 | [not disclosed] | [not disclosed] |
| Nov-19 | [not disclosed] | [not disclosed] |
| Dec-19 | [not disclosed] | [not disclosed] |
| Jan-20 | [not disclosed] | [not disclosed] |
| Feb-20 | [not disclosed] | [not disclosed] |
| Mar-20 | [not disclosed] | [not disclosed] |
| Apr-20 | [not disclosed] | [not disclosed] |



| Description | Amount | Aggregate Monthly Amount |
|--------------------|-----------------|---------------------------------|
| May-20 | [not disclosed] | [not disclosed] |
| Jun-20 | [not disclosed] | [not disclosed] |
| Jul-20 | [not disclosed] | [not disclosed] |
| Aug-20 | [not disclosed] | [not disclosed] |
| Sep-20 | [not disclosed] | [not disclosed] |
| Oct-20 | [not disclosed] | [not disclosed] |
| Nov-20 | [not disclosed] | [not disclosed] |
| Dec-20 | [not disclosed] | [not disclosed] |
| Jan-21 | [not disclosed] | [not disclosed] |
| Feb-21 | [not disclosed] | [not disclosed] |
| Mar-21 | [not disclosed] | [not disclosed] |
| Apr-21 | [not disclosed] | [not disclosed] |
| May-21 | [not disclosed] | [not disclosed] |
| Jun-21 | [not disclosed] | [not disclosed] |
| Jul-21 | [not disclosed] | [not disclosed] |
| Aug-21 | [not disclosed] | [not disclosed] |



| Description | Amount | Aggregate Monthly Amount |
|--------------------|-----------------|---------------------------------|
| Sep-21 | [not disclosed] | [not disclosed] |
| Oct-21 | [not disclosed] | [not disclosed] |
| Nov-21 | [not disclosed] | [not disclosed] |
| Dec-21 | [not disclosed] | [not disclosed] |
| Jan-22 | [not disclosed] | [not disclosed] |
| Feb-22 | [not disclosed] | [not disclosed] |
| Mar-22 | [not disclosed] | [not disclosed] |
| Apr-22 | [not disclosed] | [not disclosed] |
| May-22 | [not disclosed] | [not disclosed] |
| Jun-22 | [not disclosed] | [not disclosed] |
| Jul-22 | [not disclosed] | [not disclosed] |
| Aug-22 | [not disclosed] | [not disclosed] |
| Sep-22 | [not disclosed] | [not disclosed] |
| Oct-22 | [not disclosed] | [not disclosed] |
| Nov-22 | [not disclosed] | [not disclosed] |
| Dec-22 | [not disclosed] | [not disclosed] |



| Description | Amount | Aggregate Monthly Amount |
|--------------------|-----------------|---------------------------------|
| Jan-23 | [not disclosed] | [not disclosed] |
| Feb-23 | [not disclosed] | [not disclosed] |
| Mar-23 | [not disclosed] | [not disclosed] |
| Apr-23 | [not disclosed] | [not disclosed] |
| May-23 | [not disclosed] | [not disclosed] |
| Jun-23 | [not disclosed] | [not disclosed] |
| Jul-23 | \$- | [not disclosed] |
| Aug-23 | \$- | [not disclosed] |
| Sep-23 | \$- | [not disclosed] |
| Oct-23 | \$- | [not disclosed] |
| Nov-23 | \$- | [not disclosed] |
| Dec-23 | \$- | [not disclosed] |
| Jan-24 | \$- | [not disclosed] |
| Feb-24 | \$- | [not disclosed] |
| Mar-24 | \$- | [not disclosed] |
| Apr-24 | \$- | [not disclosed] |



| Description | Amount | Aggregate Monthly Amount |
|--------------------|---------------|---------------------------------|
| May-24 | \$- | [not disclosed] |
| Jun-24 | \$- | [not disclosed] |
| Jul-24 | \$- | [not disclosed] |
| Aug-24 | \$- | [not disclosed] |
| Sep-24 | \$- | [not disclosed] |
| Oct-24 | \$- | [not disclosed] |
| Nov-24 | \$- | [not disclosed] |
| Dec-24 | \$- | [not disclosed] |
| Jan-25 | \$- | [not disclosed] |
| Feb-25 | \$- | [not disclosed] |
| Mar-25 | \$- | [not disclosed] |
| Apr-25 | \$- | [not disclosed] |
| May-25 | \$- | [not disclosed] |
| Jun-25 | \$- | [not disclosed] |
| Jul-25 | \$- | [not disclosed] |
| Aug-25 | \$- | [not disclosed] |



| Description | Amount | Aggregate Monthly Amount |
|--------------------|---------------|---------------------------------|
| Sep-25 | \$- | [not disclosed] |
| Oct-25 | \$- | [not disclosed] |
| Nov-25 | \$- | [not disclosed] |
| Dec-25 | \$- | [not disclosed] |
| Jan-26 | \$- | [not disclosed] |
| Feb-26 | \$- | [not disclosed] |
| Mar-26 | \$- | [not disclosed] |
| Apr-26 | \$- | [not disclosed] |
| May-26 | \$- | [not disclosed] |
| Jun-26 | \$- | [not disclosed] |
| Jul-26 | \$- | [not disclosed] |
| Aug-26 | \$- | [not disclosed] |
| Sep-26 | \$- | [not disclosed] |
| Oct-26 | \$- | [not disclosed] |
| Nov-26 | \$- | [not disclosed] |
| Dec-26 | \$- | [not disclosed] |



| Description | Amount | Aggregate Monthly Amount |
|----------------------------------|-----------------|--------------------------|
| Jan-27 | \$- | [not disclosed] |
| Feb-27 | \$- | [not disclosed] |
| Mar-27 | \$- | [not disclosed] |
| Apr-27 | \$- | [not disclosed] |
| May-27 | \$- | [not disclosed] |
| Jun-27 | \$- | [not disclosed] |
| Jul-27 | \$- | [not disclosed] |
| Aug-27 | \$- | [not disclosed] |
| Sep-27 | \$- | [not disclosed] |
| Oct-27 | \$- | [not disclosed] |
| Nov-27 | \$- | [not disclosed] |
| Dec-27 | \$- | [not disclosed] |
| Jan-28 | \$- | [not disclosed] |
| Alliance Services Fee Cap | [not disclosed] | |

(d) **(DLP Fee Proposal):** At least 3 Months prior to the end of the Initial Fee Period, the Independent Reviewer must submit a proposal to the Project Parties setting out its proposed fee estimate and estimated fee cap (which must include the cost of procuring the insurances required under clauses 9.5(a)(1) and 9.5(a)(2)) for the DLP Fee Period (**DLP Fee Proposal**). The DLP Fee Proposal must:



- (1) to the extent applicable, be based on the Schedule of Rates and Disbursements; and
 - (2) not exceed the estimated DLP Fee Period estimate set out in section 8(b) of this Schedule 3.
- (e) **(DLP Fee Cap):** Within 20 Business Days of receipt of a DLP Fee Proposal, the Project Parties must either:
- (1) notify the Independent Reviewer that the DLP Fee Proposal is accepted, in which case the total amount set out in the DLP Fee Proposal will be the fee cap for the DLP Fee Period (**DLP Fee Cap**); or
 - (2) notify the Independent Reviewer that the DLP Fee Proposal is not accepted, in which case:
 - (A) the Project Parties and the Independent Reviewer must meet to undertake good faith negotiations with a view to agreeing on a fee cap for the DLP Fee Period; and
 - (B) to the extent the Project Parties and the Independent Reviewer do not agree on a fee cap for the DLP Fee Period under section 8(e)(2)(A) within 20 Business Days of meeting in accordance with section 8(e)(2) of this Schedule 3, the DLP Fee Cap for the DLP Fee Period will be reasonably determined by the Project Parties.
- (f) **(Fee Cap):** The maximum Fee payable to the Independent Reviewer under this Deed during:
- (1) the Initial Fee Period (excluding the Alliance Services Fee and disbursements) must not exceed the Initial Fee Cap; and
 - (2) the DLP Fee Period (excluding the Alliance Services Fee and disbursements) must not exceed the DLP Fee Cap.
- (g) **(Alliance Services Fee Cap):** The maximum Alliance Services Fee payable to the Independent Reviewer under this Deed during the Initial Fee Period and the DLP Fee Period (excluding disbursements) must not exceed the Alliances Services Fee Cap.
- (h) **(Inclusions):** Except as otherwise provided, the Initial Fee Cap, DLP Fee Cap and the Alliance Services Fee Cap are inclusive of labour, material, overhead, supervision, management of subcontracts, profit and insurance (including the insurances required under clauses 9.5(a)(1) and 9.5(a)(2) and including premiums, brokerage fees, stamp duty, and exchange rate fees (if applicable) in relation to such insurances).

9 Schedule of Rates and Disbursements

| Specific Personnel | Grade | Daily Rate (\$) |
|--------------------|----------------------|-----------------|
| [not disclosed] | Associate Director 2 | [not disclosed] |



| | | |
|-----------------|----------------------|-----------------|
| [not disclosed] | Technical Director 3 | [not disclosed] |
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 3 | [not disclosed] |
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 3 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Industry Director 1 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 3 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Associate Director 1 | [not disclosed] |



| | | |
|-----------------|------------------------|-----------------|
| [not disclosed] | Principal Professional | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 3 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 3 | [not disclosed] |
| [not disclosed] | Principal Professional | [not disclosed] |
| [not disclosed] | Associate Director 1 | [not disclosed] |
| [not disclosed] | Associate Director 1 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Principal Professional | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Principal Professional | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |



| | | |
|-----------------|------------------------|-----------------|
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Principal Professional | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Principal Professional | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Industry Director 3 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 3 | [not disclosed] |
| [not disclosed] | Industry Director 1 | [not disclosed] |
| [not disclosed] | Industry Director 1 | [not disclosed] |
| [not disclosed] | Industry Director 1 | [not disclosed] |
| [not disclosed] | Technical Director 3 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Principal Professional | [not disclosed] |



| | | |
|-----------------|----------------------|-----------------|
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Senior Professional | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Industry Director 1 | [not disclosed] |
| [not disclosed] | Industry Director 1 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |



| | | |
|-----------------|------------------------|-----------------|
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 3 | [not disclosed] |
| [not disclosed] | Technical Director 3 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Industry Director 1 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Associate Director 1 | [not disclosed] |
| [not disclosed] | Principal Professional | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Principal Professional | [not disclosed] |
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Technical Director 2 | [not disclosed] |



| | | |
|--------------------------|----------------------|------------------------|
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 3 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Industry Director 1 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Industry Director 1 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| General Personnel | | Daily Rate (\$) |
| Graduate | | [not disclosed] |
| Professional | | [not disclosed] |
| Senior Professional | | [not disclosed] |
| Principal Professional | | [not disclosed] |
| Associate Director 2 | | [not disclosed] |
| Associate Director 1 | | [not disclosed] |
| Technical Director 3 | | [not disclosed] |
| Technical Director 2 | | [not disclosed] |
| Technical Director 1 | | [not disclosed] |



| | |
|---------------------|-----------------|
| Industry Director 3 | [not disclosed] |
|---------------------|-----------------|

| | |
|---------------------|-----------------|
| Industry Director 2 | [not disclosed] |
|---------------------|-----------------|

| | |
|---------------------|-----------------|
| Industry Director 1 | [not disclosed] |
|---------------------|-----------------|

| | |
|----------------------|---------------|
| Disbursements | Amount |
|----------------------|---------------|

| | |
|-----------|-----------------|
| Insurance | [not disclosed] |
|-----------|-----------------|

| | |
|----------------|---|
| Project Office | In accordance with the schedule outlined below. |
|----------------|---|

| | |
|---|---|
| Other, (including IT Software, Office Supplies, PPE, Transport, Travel – Air Fare, Travel – Hotel, Travel – Other, Travel – Per Diems) | In accordance with the schedule outlined below. |
|---|---|

| | |
|--------------------------|-----------------|
| Disbursements Cap | [not disclosed] |
|--------------------------|-----------------|

| Date | Project Office Monthly Amount | Other Monthly Amount* *inclusive of IT Software, Office Supplies, PPE, Transport, Travel – Air Fare, Travel – Hotel, Travel – Other, Travel – Per Diems. |
|-------------|-------------------------------|---|
|-------------|-------------------------------|---|

| | | |
|----------|-----|-----------------|
| Dec 2017 | \$- | [not disclosed] |
|----------|-----|-----------------|

| | | |
|----------|-----|-----------------|
| Jan 2018 | \$- | [not disclosed] |
|----------|-----|-----------------|

| | | |
|----------|-----|-----------------|
| Feb 2018 | \$- | [not disclosed] |
|----------|-----|-----------------|

| | | |
|--------|-----------------|-----------------|
| Mar-18 | [not disclosed] | [not disclosed] |
|--------|-----------------|-----------------|

| | | |
|--------|-----------------|-----------------|
| Apr-18 | [not disclosed] | [not disclosed] |
|--------|-----------------|-----------------|



| | | |
|--------|-----------------|-----------------|
| May-18 | [not disclosed] | [not disclosed] |
| Jun-18 | [not disclosed] | [not disclosed] |
| Jul-18 | [not disclosed] | [not disclosed] |
| Aug-18 | [not disclosed] | [not disclosed] |
| Sep-18 | [not disclosed] | [not disclosed] |
| Oct-18 | [not disclosed] | [not disclosed] |
| Nov-18 | [not disclosed] | [not disclosed] |
| Dec-18 | [not disclosed] | [not disclosed] |
| Jan-19 | [not disclosed] | [not disclosed] |
| Feb-19 | [not disclosed] | [not disclosed] |
| Mar-19 | [not disclosed] | [not disclosed] |
| Apr-19 | [not disclosed] | [not disclosed] |
| May-19 | [not disclosed] | [not disclosed] |
| Jun-19 | [not disclosed] | [not disclosed] |
| Jul-19 | [not disclosed] | [not disclosed] |
| Aug-19 | [not disclosed] | [not disclosed] |
| Sep-19 | [not disclosed] | [not disclosed] |



| | | |
|--------|-----------------|-----------------|
| Oct-19 | [not disclosed] | [not disclosed] |
| Nov-19 | [not disclosed] | [not disclosed] |
| Dec-19 | [not disclosed] | [not disclosed] |
| Jan-20 | [not disclosed] | [not disclosed] |
| Feb-20 | [not disclosed] | [not disclosed] |
| Mar-20 | [not disclosed] | [not disclosed] |
| Apr-20 | [not disclosed] | [not disclosed] |
| May-20 | [not disclosed] | [not disclosed] |
| Jun-20 | [not disclosed] | [not disclosed] |
| Jul-20 | [not disclosed] | [not disclosed] |
| Aug-20 | [not disclosed] | [not disclosed] |
| Sep-20 | [not disclosed] | [not disclosed] |
| Oct-20 | [not disclosed] | [not disclosed] |
| Nov-20 | [not disclosed] | [not disclosed] |
| Dec-20 | [not disclosed] | [not disclosed] |
| Jan-21 | [not disclosed] | [not disclosed] |
| Feb-21 | [not disclosed] | [not disclosed] |



| | | |
|--------|-----------------|-----------------|
| Mar-21 | [not disclosed] | [not disclosed] |
| Apr-21 | [not disclosed] | [not disclosed] |
| May-21 | [not disclosed] | [not disclosed] |
| Jun-21 | [not disclosed] | [not disclosed] |
| Jul-21 | [not disclosed] | [not disclosed] |
| Aug-21 | [not disclosed] | [not disclosed] |
| Sep-21 | [not disclosed] | [not disclosed] |
| Oct-21 | [not disclosed] | [not disclosed] |
| Nov-21 | [not disclosed] | [not disclosed] |
| Dec-21 | [not disclosed] | [not disclosed] |
| Jan-22 | [not disclosed] | [not disclosed] |
| Feb-22 | [not disclosed] | [not disclosed] |
| Mar-22 | [not disclosed] | [not disclosed] |
| Apr-22 | [not disclosed] | [not disclosed] |
| May-22 | [not disclosed] | [not disclosed] |
| Jun-22 | [not disclosed] | [not disclosed] |
| Jul-22 | [not disclosed] | [not disclosed] |



| | | |
|--------|-----------------|-----------------|
| Aug-22 | [not disclosed] | [not disclosed] |
| Sep-22 | \$- | [not disclosed] |
| Oct-22 | \$- | [not disclosed] |
| Nov-22 | \$- | [not disclosed] |
| Dec-22 | \$- | [not disclosed] |
| Jan-23 | \$- | [not disclosed] |
| Feb-23 | \$- | [not disclosed] |
| Mar-23 | \$- | [not disclosed] |
| Apr-23 | \$- | [not disclosed] |
| May-23 | \$- | [not disclosed] |
| Jun-23 | \$- | [not disclosed] |
| Jul-23 | \$- | [not disclosed] |
| Aug-23 | \$- | [not disclosed] |
| Sep-23 | \$- | [not disclosed] |
| Oct-23 | \$- | [not disclosed] |
| Nov-23 | \$- | [not disclosed] |
| Dec-23 | \$- | [not disclosed] |



| | | |
|--------|-----|-----------------|
| Jan-24 | \$- | [not disclosed] |
| Feb-24 | \$- | [not disclosed] |
| Mar-24 | \$- | [not disclosed] |
| Apr-24 | \$- | [not disclosed] |
| May-24 | \$- | [not disclosed] |
| Jun-24 | \$- | [not disclosed] |
| Jul-24 | \$- | [not disclosed] |
| Aug-24 | \$- | [not disclosed] |
| Sep-24 | \$- | [not disclosed] |

Except as otherwise provided, the rates and prices set out in the Schedule of Rates are inclusive of overhead, supervision, management of subcontracts and profit.

10 Disbursements

The Independent Reviewer will:

- (a) **(Entitlement to reimbursement):** only be entitled to reimbursement of disbursements for which the Independent Reviewer is to be paid on a schedule of rates basis under this Deed if those disbursements:
 - (1) have been reasonably and properly incurred for the sole purpose of performing Services;
 - (2) have the prior approval of the State and Project Co;
 - (3) to the extent applicable, are in accordance with the Schedule of Rates and Disbursements; and
 - (4) are supported by documentation provided to the State and Project Co which is satisfactory to the State and Project Co;
- (b) not be entitled to make any Claim against the State and Project Co arising in connection with disbursements or other costs incurred in connection with the performance of the Services other than in accordance with section 10(a); and



- (c) not be entitled to reimbursement of disbursements in accordance with section 10(a) to the extent those disbursements exceed:
- (1) the Disbursements Cap; or
 - (2) the cumulative aggregate of the monthly disbursements for the corresponding disbursement period as set out in section 9.

11 Adjustments to Payments

11.1 Fee caps

Subject to sections 11 and 12 of this Schedule 3, the Initial Fee Cap, DLP Fee Cap, DLP Fee Period estimate, Alliance Services Fee Cap and Disbursements Cap set out in or otherwise agreed in accordance with sections 8 and 9 of this Schedule 3 are fixed amounts and are not subject to adjustment and the Independent Reviewer will not be entitled to make any Claim in connection with a delay to Final Acceptance.

11.2 Not used

11.3 No indexation

For the avoidance of doubt, no amount contained in this Deed is subject to any form of adjustment or indexation whatsoever, including but not limited to:

- (a) the Initial Fee Cap, DLP Fee Cap, DLP Fee Period estimate, Alliance Services Fee Cap, and Disbursements Cap; and
- (b) any amount set out in sections 8 and 9 of this Schedule 3.

11.4 Not used

11.5 Resource Adjustment Order

The Project Parties may direct the Independent Reviewer to carry out a Resource Adjustment by issuing a document entitled 'Resource Adjustment Order' in accordance with this section. The parties will act reasonably in issuing such directions, including where the progress of the Project is different to that anticipated at the time of entering this Deed.

11.6 Notice of resource evaluation

- (a) No fewer than 20 Business Days before the start of every Quarter, the Independent Reviewer must provide the Project Parties with a notice setting out:
 - (1) its evaluation of the resource levels and disbursements (in a form set out in Schedule 6 or as otherwise agreed by the Project Parties) required for the upcoming Quarter having regard to the actual nature and extent of the Upstream Independent Reviewer Functions to be carried out by the Independent Reviewer during the relevant Quarter (having regard to the minimum resourcing estimates contained in the Initial Monitoring Plan); and

- (2) any suggested re-profiling of resources and disbursements for the Services over the expected balance of the Term having regard to its evaluation of the resource levels required to complete the Services and the Initial Fee Cap, DLP Fee Cap, Alliance Services Fee Cap and Disbursements Cap and the amount by which the relevant monthly or quarterly fees for the Quarter should be adjusted as a result of the Resource Adjustment (if any).
- (b) The Independent Reviewer acknowledges that any suggested re-profiling of resources, disbursements and adjustments to the future monthly or quarterly fee for the Quarter as a result of the Resource Adjustment:
 - (1) may adjust the relevant monthly or quarterly fees and disbursements for future periods and spread the remaining Fees and disbursements up to the Initial Fee Cap, DLP Fee Cap, Alliance Services Fee Cap or Disbursement Cap (as applicable) over the then expected balance of the Term; and
 - (2) must not exceed the cumulative value of the original monthly or quarterly fees or disbursements set out in sections 8(a), 8(b) or 9 (as applicable) at any time.

11.7 Quarterly meeting

No fewer than 10 Business Days before the start of every Quarter, the Independent Reviewer must meet with the Project Parties to:

- (a) evaluate the resource levels and disbursements required for the Quarter having regard to the actual nature and extent of the Upstream Independent Reviewer Functions to be carried out by the Independent Reviewer in that Quarter; and
- (b) discuss:
 - (1) the possibility of effecting a Resource Adjustment in that Quarter; and
 - (2) the Independent Reviewer's estimate of the amount by which the relevant monthly or quarterly fees and disbursements should be adjusted as a result of any such Resource Adjustment.

11.8 Resource adjustment and its approval

If the Project Parties' and the Independent Reviewer agree (acting reasonably) on a Resource Adjustment and the adjustment in the monthly or quarterly fees or disbursements (as applicable) before the start of the relevant Quarter, then:

- (a) the Project Parties will issue a Resource Adjustment Order;
- (b) subject to section 11.6(b), the monthly or quarterly fees and disbursements (as applicable) will be adjusted by the agreed amount outlined in the Resource Adjustment Order; and
- (c) the Independent Reviewer must promptly effect the Resource Adjustment.

12 GST

All lump sums, rates and amounts in this Payment Schedule do not include GST.



HERBERT
SMITH
FREEHILLS

Schedule 4

Initial Monitoring Plan

Refer separate document.



Schedule 5

Requirements for Monitoring Plan

- (a) Update contents and clause number references throughout the Monitoring Plan and its annexures to reflect the terms of the executed versions of this Deed, the Project Agreement and the PS&TR and all relevant schedules and annexures to those documents.
- (b) Update all relevant contents, processes and procedures to ensure coordination with the terms of the Sub-Independent Reviewer Deed.
- (c) Update, incorporate and attach the Review Process Procedures and Internal Administration Procedures set out in Annexure B to the Monitoring Plan.
- (d) Comprehensive and detailed methodologies to be articulated for the performance of the Services.
- (e) Timeframes for reports and the provision of deliverables contemplated in the Monitoring Plan to be co-ordinated across the Project Documents for the Project as agreed.
- (f) A resource allocation indicating the level, nature and timing of resources which are required from the Independent Reviewer to perform the Services consistent with the Independent Reviewer's tender submitted to the State for the Services.
- (g) Any other requirements reasonably requested by the Project Parties.



Signing page

Executed as a deed

State

Signed sealed and delivered by
**The Minister for Public
Transport on behalf of the
Crown in right of the State of
Victoria**

in the presence of

sign here ► _____
Minister

sign here ► _____
Witness

print name _____

print name _____



CY Partner 1

Signed sealed and delivered for
[not disclosed]
by its attorneys

sign here ► _____
Attorney Attorney

print name _____

in the presence of

sign here ► _____
Witness Witness

print name _____



CY Partner 2

Signed sealed and delivered for
[not disclosed]
by its attorney

in the presence of

sign here ► _____
Attorney

sign here ► _____
Witness

print name _____

print name _____



CY Partner 3

Signed sealed and delivered for
[not disclosed]
by its attorney

in the presence of

sign here ► _____
Attorney

sign here ► _____
Witness

print name _____

print name _____



CY Partner 4

Signed sealed and delivered for
[not disclosed]
by its attorney

in the presence of

sign here ▶ _____
Attorney

sign here ▶ _____
Witness

print name _____

print name _____



Independent Reviewer

Signed sealed and delivered for
**AECOM Australia Pty Ltd (ACN
093 846 925)**
by its attorney

in the presence of

sign here ► _____
Attorney

sign here ► _____
Witness

print name _____

print name _____



Train Franchisee

Signed sealed and delivered by
Metro Trains Melbourne Pty Ltd
(ACN 136 429 948)
by

sign here ► _____
Company Secretary/Director

sign here ► _____
Director

print name _____

print name _____



Tram Franchisee

Signed sealed and delivered by
**KDR Victoria Pty Ltd (ABN 42
138 066 074)**
by

sign here ► _____
Company Secretary/Director

sign here ► _____
Director

print name _____

print name _____



HERBERT
SMITH
FREEHILLS

Execution Version

Schedule 14

Subcontractor Direct Deed



HERBERT
SMITH
FREEHILLS

Deed

[Click here to enter a date.](#)

Metro Tunnel
Tunnel and Stations PPP

Subcontractor Direct Deed

The Minister for Public Transport on behalf of the
Crown in right of the State of Victoria

Cross Yarra Partnership

Subcontractor

[Insert Parent Guarantor]



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Signing page **44**

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Subcontractor Direct Deed

Date ►

Between the parties

State The Minister for Public Transport on behalf of the Crown in right of the State of Victoria

Project Co 1 [not disclosed];
2 [not disclosed];
3 [not disclosed]; and
4 [not disclosed],
(together, **Cross Yarra Partnership**) (ABN 57 956 065 885) of Level 8, 136 Exhibition Street, Melbourne, VIC 3000, Australia.

Subcontractor **[Insert]**
[Insert ABN] of **[insert address]**

Parent Guarantor **[Insert]**
[Insert ABN] of **[insert address]**

Recitals

- 1 The background to the Project is set out in the Project Agreement.
- 2 Project Co and the Subcontractor are or will become parties to the Subcontract.
- 3 The Subcontractor has agreed to grant to the State certain rights in relation to the Subcontract.
- 4 Project Co and the Parent Guarantor are or will become parties to the Parent Guarantee.
- 5 The Parent Guarantor has agreed to grant the State certain rights in relation to the Parent Guarantee.

This deed witnesses as follows:



1 Defined terms and interpretation

1.1 Project Agreement definitions

Unless otherwise expressly defined, expressions used in this Deed have the meanings given to them in or for the purposes of the Project Agreement.

1.2 Definitions

In this Deed, unless the context requires otherwise:

| Term | Meaning |
|--|--|
| Additional Obligor | means a company or other entity which is wholly owned by the State. |
| Additional Obligor Step-In Notice | has the meaning given in clause 7.1(a)(4). |
| Additional Obligor Step-Out Date | has the meaning given in clause 7.3(d). |
| Agreed Amount | has the meaning given in clause 13(b)(1). |
| Assumption Date | has the meaning given in clause 7.3(a). |
| Cost | has the meaning given in clause 13(g). |
| Deed | means this deed and includes all Schedules, Exhibits, Attachments and Annexures to it. |
| Default Event | means any: <ol style="list-style-type: none">1 breach by Project Co of any of its obligations under a Subcontractor Document; or2 other event or circumstance, which alone or with the giving of notice or passage of time or both, would entitle the Subcontractor Party to terminate, rescind, accept the repudiation of, or suspend any or all of its obligations under, the Subcontractor Documents. |
| Default Event Notice | has the meaning given in clause 6.2(a). |



| Term | Meaning |
|--------------------------------|--|
| Disputing Parties | has the meaning given in clause 9.1(a). |
| Material Adverse Effect | means a material adverse effect on: <ol style="list-style-type: none">1 the ability of each of Project Co or a Subcontractor Party to perform and observe their respective obligations under any Project Document to which it is a party; or2 the rights of the State under any State Project Document, or the ability or capacity of the State to exercise its rights or perform its obligations under a State Project Document. |
| Novation Notice | has the meaning given in clause 8.1(a). |
| Novation Notice Date | means: <ol style="list-style-type: none">1 in relation to clause 8.3, the later of the date of the Novation Notice and the date each of the Subcontractor Parties consents or is deemed (in accordance with clause 8.3(d)) to have consented to the novation; and2 otherwise, the date of the Novation Notice. |
| Parent Guarantee | means the document dated on or about the date of this Deed entitled '[insert]' between [insert]. |
| Project Agreement | means the document entitled 'Project Agreement' between the State and Project Co dated [insert]. |
| Project Co's Rights | has the meaning given in clause 7.3(b)(1)(A). |
| Receiver | means a receiver or receiver and manager appointed by the State under the State Security. |
| Recipient | has the meaning given in clause 13(b)(2). |
| Representative | has the meaning given in clause 9.2(a). |
| Revenue | has the meaning given in clause 13(f). |
| State Cure Notice | has the meaning given in clause 6.2(c). |



| Term | Meaning |
|--------------------------------------|--|
| Statement Beneficiary | means the State, an Additional Obligor or Receiver appointed under clause 7. |
| Step-In Period | has the meaning given in clause 7.1(b). |
| Step-In Right | has the meaning given in clause 7.1(a). |
| Subcontract | means the document entitled ' [insert] ' dated on or about the date of this Deed between Project Co and the Subcontractor. |
| Subcontractor Associate | means any: <ol style="list-style-type: none">1 Subcontractor Relevant Person in respect of the Subcontractor only (excluding the Project Co Representative); and2 officer, agent, adviser, consultant, contractor or employee of the Subcontractor. |
| Subcontractor Consent Deed | means the document entitled ' [insert] ' dated on or about the date of this Deed between Project Co, the Subcontractor Parties and the Security Trustee. |
| Subcontractor Document | means: <ol style="list-style-type: none">1 in respect of the Subcontractor, the Subcontract; and2 in respect of the Parent Guarantor, the Parent Guarantee. |
| Subcontractor Parties | means: <ol style="list-style-type: none">1 the Subcontractor; and2 the Parent Guarantor, and Subcontractor Party means each of them. |
| Subcontractor Relevant Person | means: <ol style="list-style-type: none">1 a director or secretary of a Subcontractor Party; or2 any officer or employee, consultant, contractor or agent of a Subcontractor Party who:<ol style="list-style-type: none">a has the ability to exercise influence or control in relation to the Subcontractor Party, or in matters relating to the Project;b works in any role in connection with the Project Activities, including undertaking any task for the purpose of a Subcontractor Document or this Deed; or |



| Term | Meaning |
|--------------------------------|--|
| | c has access to Confidential Information in connection with the Project. |
| Subcontractor Statement | has the meaning given in clause 6.4. |
| Substitute Party | has the meaning given in clause 8.1(a). |
| Supplier | has the meaning given in clause 13(b). |

1.3 Interpretation

In this Deed:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;
- and unless the context otherwise requires:
- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa and a word indicating a gender includes every other gender;
 - (c) **(references)**: a reference to:
 - (1) a party, clause, Schedule, Exhibit, or Annexure is a reference to a party, clause, Schedule, Exhibit or Annexure of or to this Deed; and
 - (2) a section is a reference to a section of a Schedule;
 - (d) **(Deed as amended)**: a reference to this Deed or to any other deed, agreement, document or instrument includes a reference to this Deed or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
 - (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
 - (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
 - (g) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
 - (h) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
 - (i) **(‘includes’)**: ‘includes’ will be read as if followed by the phrase ‘(without limitation)’;



- (j) (**'or'**): the meaning of 'or' will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) (**information**): a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) (**'\$'**): a reference to '\$', AUD or dollar is to Australian currency;
- (m) (**time**): a reference to time is a reference to time in Melbourne, Australia;
- (n) (**rights**): a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (o) (**obligations and liabilities**): a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (p) (**'may'**): the term 'may', when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;
- (q) (**construction**): where there is a reference to an Authority, institute or association or other body referred to in this Deed which:
 - (1) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or
 - (2) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (r) (**remedy**): the use of the words 'remedy' or 'cure' or any form of such words in this Deed means that the event to be remedied or cured must be remedied or cured or its effects overcome; and
- (s) (**contra proferentem rule not to apply**): each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

1.4 Priority of documents

To the extent of any inconsistency, ambiguity or discrepancy between this Deed and a Subcontractor Document, this Deed prevails.

1.5 State Project Documents

Each of the Subcontractor Parties acknowledges that it has received a copy of the Project Agreement, the State Security and the Finance Direct Deed.

1.6 Inconsistency

Where there is an inconsistency, ambiguity or discrepancy between this Deed and any other State Project Document, then the order of precedence in clause 2.3 of the Project Agreement applies.



1.7 Business Day

If the day on or by which anything is to be done in accordance with this Deed is not a Business Day, that thing must be done no later than the next Business Day.

1.8 Prior approval or consent

Where the Subcontractor Parties are required by this Deed to obtain the State's consent or approval to an action, document or thing, unless otherwise expressly stated, that consent or approval must be obtained prior to the actions, document or thing occurring or coming into effect.

1.9 Action without delay

Unless there is a provision in this Deed which specifies a period of time in which something must be done by the parties, all things must be done without undue delay.

1.10 Provisions limiting or excluding Liability, rights or obligations

- (a) **(No limit):** A right of the State or any obligation of the Subcontractor Parties or Project Co under this Deed will not limit or exclude any other right of the State or obligation of the Subcontractor Parties or Project Co under this Deed unless expressly stated.
- (b) **(Permitted by Law):** Any provision of this Deed which seeks, either expressly or by implication, to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.

1.11 Relationship of the parties

Unless otherwise expressly provided, this Deed does not:

- (a) **(no additional relationship):** create a partnership, joint venture, fiduciary, employment or agency relationship between the parties; or
- (b) **(no good faith):** impose any duty of good faith on the State.

1.12 Approvals, directions and notices in writing

Unless otherwise expressly provided in this Deed or agreed between the parties, all approvals, consents, directions, requirements, requests, claims, notices, agreements and demands given or required to be given under this Deed must be given in writing.

1.13 State's rights and obligations

- (a) **(Acknowledgement):** The parties acknowledge the substance, operation and potential effect and consequences of clause 2.13 of the Project Agreement in relation to this Deed.
- (b) **(No Claim):** Subject to clause 1.13(c), Project Co and the Subcontractor Parties will not be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its executive or statutory rights or duties.
- (c) **(Liability for breach):** Clauses 1.13(a) and 1.13(b) do not limit any Liability which the State would have had to Project Co or the Subcontractor Parties



under any State Project Document as a result of a breach by the State of a term of any State Project Document but for these clauses.

1.14 Reasonable endeavours of State

Any statement in this Deed providing that the State will use or exercise 'reasonable endeavours' or 'act reasonably' in relation to an outcome, means that the State:

- (a) **(relevant steps)**: will take steps to bring about the relevant outcome so far as it is reasonably able to do so, having regard to its resources and other responsibilities;
- (b) **(no guarantee)**: cannot guarantee the relevant outcome; and
- (c) **(no obligation)**: is not required to:
 - (1) exercise a right of any Government Party, or to influence, over-ride, interfere with or direct any other Government Party in the proper exercise and performance of its legal, executive or statutory rights and duties and functions;
 - (2) exercise a power or discretion in a manner that the State regards as not in the public interest;
 - (3) develop or implement new policy;
 - (4) procure legislation; or
 - (5) act in any way that the State regards as not in the public interest.

2 Conditions precedent

The satisfaction or waiver of the Conditions Precedent in accordance with clause 3 of the Project Agreement, is a condition precedent to the coming into operation of this Deed (other than this clause 2 and clauses 1.1 to 1.3, 1.7, 1.8, 1.11, 1.12, 1.13, 1.14, 4, 9, 10, 12, 14, 15 and 17).

3 Acknowledgments

3.1 By the Subcontractor Parties concerning the State Security

The Subcontractor Parties each acknowledge and agree:

- (a) **(grant of security by Project Co)**: that Project Co may give a security interest in the form of the State Security in favour of the State over all assets and undertakings of Project Co including Project Co's right, title and interest under the Subcontractor Documents or assign Project Co's right, title and interest under the Subcontractor Documents to the State by way of security, and the Subcontractor Parties each consent to the State Security and any such assignment;
- (b) **(exercise of rights)**: to the State's rights under the State Security including the appointment by Project Co of the State as attorney of Project Co to do, perform and exercise all things, acts and rights under the Subcontractor Documents on behalf of and for the account of Project Co;



- (c) **(no Default Event)**: that the grant of, or exercise by the State of its rights under, the State Security will not itself contravene, or constitute a Default Event under, a Subcontractor Document or entitle a Subcontractor Party to exercise any right (including termination) under it;
- (d) **(Liabilities and obligations)**: that nothing in the State Security will cause the State or State Associate to assume any Liabilities or obligations under a Subcontractor Document except as may result from its own acts or omissions in exercising rights or in performing or failing to perform obligations under a Subcontractor Document as envisaged by this Deed;
- (e) **(notice of any other assignment)**: that with the exception of the security interests under the Finance Documents, it has not received notice of any other assignment or charge by Project Co of any right, title, interest in or benefit of Project Co under the Subcontractor Documents; and
- (f) **(set off)**: that as of the date of this Deed, it has no knowledge of any right of set off or counterclaim which it may have against Project Co so as to diminish any money payable by it to Project Co under a Subcontractor Document, except only where the right of set off or counterclaim is contained within the Subcontractor Document.

3.2 By the Subcontractor Parties concerning the State's rights

- (a) **(State's rights)**: The Subcontractor Parties each acknowledge the State's rights under clauses 2.13, 16.3, 25, 28.5, 35, 41, 44, 45 and 62.2 of the Project Agreement and the other relevant clauses listed in clause 13.3(c) of the Project Agreement.
- (b) **(Facilitation of rights)**: The Subcontractor must exercise its rights under the Subcontract in a way that facilitates the effective exercise by the State of the rights referred to in clause 3.2(a) and will on reasonable notice permit the State or a State Associate to have access to, and take copies of, the records, reports, documents and other papers to which the State is entitled to have access in accordance with the State's rights referred to in clause 3.2(a).
- (c) **(Continued performance)**: During the period in which the State is exercising a right referred to in clause 3.2(a), the State may, in accordance with the Project Agreement and the Subcontract, require the suspension or the continuation of performance by the Subcontractor of its obligations under the Subcontract, and if it does so, the Subcontractor will comply with this requirement (but without limiting the Subcontractor's rights under clause 6) and with all reasonable directions of the State in relation to the performance of the Subcontract by the Subcontractor during such period.
- (d) **(State not liable)**: The requirement of the State that the Subcontractor suspend or continue to perform its obligations under the Subcontract and the giving of any direction under clause 3.2(c) by the State will not be construed as an assumption by the State of any obligations of the Subcontractor under the Subcontract.
- (e) **(Subcontracting)**: The Subcontractor will not subcontract any of its obligations under the Subcontract without the prior consent of the State, where so required in accordance with clause 13 of the Project Agreement.
- (f) **(Probity Investigations)**: Without limiting clauses 3.2(a) to (e), the Subcontractor Parties each acknowledge and agree that:



- (1) in accordance with clauses 13 and 62.2 of the Project Agreement, from time to time, the State may or may require Project Co to conduct Probity Investigations of;
 - (A) the Subcontractor Parties;
 - (B) Subcontractor Relevant Persons; or
 - (C) other persons in relation to any further subcontracting by the Subcontractor of any of its obligations under the Subcontract;
- (2) on request of the State, it will procure the consent of each Subcontractor Relevant Person:
 - (A) to any Probity Investigation; and
 - (B) to the extent that the State is entitled to do so under the Project Agreement, to such other probity and security investigations that the State may require; and
- (3) it:
 - (A) will not appoint, or retain the appointment of; and
 - (B) will ensure that no other person appoints, or retains the appointment of,

a person to the position of a Subcontractor Relevant Person in relation to the management or performance of the Subcontract without the State's approval which may be withdrawn at any time including following a Probity Investigation and other such investigations that the State may require under clauses 13 and 62.2 of the Project Agreement.

3.3 By Project Co

Project Co is bound by, and must cooperate in the implementation of, this Deed. It acknowledges that this Deed is intended to benefit only the Subcontractor Parties and the State, and does not in any way affect any obligation or right of Project Co under the Subcontractor Documents or under any Project Document except as expressly set out herein.

3.4 Information

Project Co and the Subcontractor Parties each acknowledge and agree that:

- (a) **(information purpose):** any information, data and documents provided by the State or a State Associate:
 - (1) are provided for information purposes only and all of the State's or a State Associates' Intellectual Property Rights therein remain the property of the State or the State Associate (as the case may be); and
 - (2) do not form part of this Deed or constitute an invitation, offer or recommendation by or on behalf of the State or a State Associate;
- (b) **(no Liability):** to the extent permitted by Law, none of the State or the State Associates will have any Liability to the Subcontractor Parties or any Subcontractor Associate, nor will a Subcontractor Party or any Subcontractor Associate be entitled to make any Claim against the State, or seek, pursue or obtain an indemnity against or contribution to Liability from the State or a State Associate arising in connection with:



- (1) the provision of, or purported reliance upon, or use of, any information, data and documents referred to in clause 3.4(a) by a Subcontractor Party or any other person to whom such information is disclosed by a Subcontractor Party, a Subcontractor Associate, or any person on behalf of a Subcontractor Party or any Subcontractor Associate;
- (2) any reference to the State in a Subcontractor Document; or
- (3) any review of, comments upon, acceptance, approval or certification of the form or substance of a Subcontractor Document by the State.

3.5 Subcontract not to affect State rights

Project Co and the Subcontractor Parties each acknowledge and agree that:

- (a) **(rights not affected)**: where the Subcontractor is expressed in the Subcontract to have a right (or possible right) to compensation or relief which is dependent on or determined by reference to the Project Agreement or an equivalent or similar right of Project Co:
 - (1) this does not of itself expand Project Co's rights, or the State's Liability, under the Project Agreement to include the compensation or relief to which the Subcontractor is or may become entitled under the Subcontract; and
 - (2) Project Co's rights, and the State's Liability, under the Project Agreement will be determined solely in accordance with the terms of the Project Agreement;
- (b) **(risk of discrepancy)**: as between the State (on the one hand) and Project Co and the Subcontractor Parties (on the other hand), Project Co and the Subcontractor Parties accept and will bear the risk of any inconsistency, ambiguity or discrepancy between the terms of the Subcontract and the Project Agreement; and
- (c) **(dealing directly with State)**: notwithstanding anything to the contrary in the Subcontract, no Subcontractor Party has any right to deal directly with the State or participate in any meeting, consultation or process (including negotiation or dispute resolution) unless:
 - (1) expressly provided to the contrary in the Project Agreement or this Deed; or
 - (2) the State consents.

3.6 [Construction Bond]

[State Note: clause 3.6 (Construction Bond) is not intended to apply to the Subcontractor Direct Deed of the Maintenance Subcontractor.]

- (a) **[(Demand)]**: The State may require Project Co to make a demand under any Construction Bond subject to and in accordance with clause 27 (*State right to require Project Co to call on Construction Bond*) of the Project Agreement and clause **[insert] [(Construction Bond)]** of the Finance Direct Deed.
- (b) **(Inform State)**: Project Co must immediately inform the State when a demand is made under any Construction Bond.
- (c) **(State Liability)**: Without limiting the Subcontractor's rights against Project Co if a demand is made that is not permitted under the Subcontract, the State will have no Liability to the Subcontractor, and the Subcontractor releases the State

from and against any Claim the Subcontractor may have, arising in connection with the State requiring Project Co to make a demand under the Construction Bond as contemplated by clause 3.6(a).]

4 Representations and warranties by the Subcontractor

Each Subcontractor Party represents and warrants for the benefit of the State that:

- (a) **(power to execute)**: it has the power to execute, deliver and carry out its obligations under this Deed, the Subcontractor Documents, and each other Project Document to which it is a party and all necessary action has been taken to authorise that execution, delivery and performance;
- (b) **(legality)**: the execution, delivery and performance of this Deed, the Subcontractor Documents, and each other Project Document to which it is a party does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;
- (c) **(validity)**: this Deed, the Subcontractor Documents, and each other Project Document to which it is a party constitutes a valid and legally binding obligation on it in accordance with its terms;
- (d) **(registration)**: it is duly registered, properly constituted and remains in existence;
- (e) **(no trust relationship)**: except as stated in this Deed, it is not the trustee or responsible entity of any trust nor does it hold any property subject to or impressed by any trust in relation to this Project;
- (f) **(information true and correct)**: all information provided by it to the State is true and correct to the best of its knowledge and belief (having undertaken enquiries reasonably expected of a skilled professional carrying out the obligations of the Subcontractor under the Subcontract) as at the date on which it is provided and no Subcontractor Party is aware of any material facts or circumstances that have not been disclosed to the State and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this Deed or to consent to the entry into the Subcontract;
- (g) **(litigation)**: no Claim against it is current or pending or (to its knowledge) is threatened, which will or is likely to have a material adverse effect upon it or its ability to perform its financial and other obligations under this Deed, the Subcontractor Documents, or any other Project Document to which it is a party;
- (h) **(Insolvency Event)**: no Insolvency Event has occurred in respect of it;
- (i) **(accounts)**: in respect of its accounts:
 - (1) its most recent consolidated audited (if the requirement for auditing is applicable) accounts give a true and fair view of its and its subsidiaries' state of affairs as at the date to which they relate and the results of its and its subsidiaries' operations for the accounting period ended on such date;
 - (2) there has been no material adverse change in its or its subsidiaries' state of affairs since such date; and
 - (3) such accounts have been prepared in accordance with the Corporations Act and accounting principles and practices generally accepted in Australia consistently applied, except to the extent of



departures from such principles and practices disclosed in such accounts;

- (j) **(no default):**
- (1) no default has occurred under any document or agreement binding on it or its assets which relates to financial indebtedness; and
 - (2) nothing else has occurred,
- which, with the giving of notice or lapse of time, constitute an event of default, cancellation, prepayment event (pursuant to a bona fide right to exercise prepayment) or similar event (whatever called) under any such document or agreement, would have a Material Adverse Effect;
- (k) **(no immunity):** neither it nor any of its assets enjoys any immunity from set off, suit or execution; and
- (l) **(own investigations):** in entering into this Deed, the Subcontractor Documents to which it is a party, and any other Project Document to which it is a party it relied upon its own investigations and has not relied upon any representation or warranty about its subject matter by the State, Project Co or any other person unless in respect of Project Co or any other person, other than the State or any of its Associates, it is expressly permitted to do so in accordance with a Project Document to which it is a party.

5 Undertakings of the Subcontractor Parties

5.1 Undertakings

The Subcontractor Parties each undertake to the State as follows:

- (a) **(notification of Default Event):** in the case of the Subcontractor, it will notify the State of any Default Event promptly after it gives notice of that Default Event in accordance with clause **[insert]** (**[Notice of Project Co Event of Default]**) of the Subcontract;
- (b) **(documents in relation to Default Event):** in the case of the Subcontractor, it will promptly give the State a copy of all documents issued by the Subcontractor to Project Co in relation to a Default Event;
- (c) **(no amendment without consent):** it will not:
- (1) make or permit any amendment, replacement of, or addition to;
 - (2) subject to clause 6.2, terminate, surrender, rescind, or accept repudiation of;
 - (3) except in accordance with this Deed, permit the novation, assignment or substitution of any party's rights, obligations, or interest in; or
 - (4) allow any express waiver of its material rights and obligations under, a Subcontractor Document without the consent of the State, provided that the State will not withhold its consent where the State has given, or is required to give, an equivalent consent under the Project Agreement;
- (d) **(deed of accession):** it will not novate, assign or substitute any of its rights, obligations or interest in a Subcontractor Document without first procuring that the proposed novatee, assignee or substitute executes a deed in favour of the State (in form and substance approved by the State) pursuant to which the



novatee, assignee or substitute agrees to accept and be bound by this Deed as if it were the Subcontractor or the Parent Guarantor (as the case may be);

- (e) **(attend meetings and inspections)**: it will (when reasonably requested by the State):
- (1) attend meetings with the State or any of its Associates;
 - (2) provide the State, any of its Associates and other authorised personnel (including the Independent Reviewer) with:
 - (A) in the case of the Subcontractor, full access to the Site to the extent provided in the Project Agreement and to the extent that the Subcontractor has access or is granted access under the Subcontract; and
 - (B) any other information, records or documents that the State, any of its Associates (acting reasonably) or the Independent Reviewer require in relation to the carrying out of the performance of the obligations under or compliance with the Subcontract or any information required by the State to comply with requests from the Victorian Auditor-General; and
 - (3) in the case of the Subcontractor, to the extent provided in the Project Agreement, permit the State and any of its Associates to attend all tests and inspections to be carried out by the Subcontractor in connection with the Project; and
- (f) **(access to records)**: in the case of the Subcontractor, at the request of the State (acting reasonably), the Subcontractor will:
- (1) permit the State and any of its Associates to inspect all records, reports, plans, programs, specifications, and technical documents prepared or kept by the Subcontractor in relation to the performance of its obligations under the Subcontract or otherwise relating to the Project; and
 - (2) supply the State and any of its Associates with a copy of any such report or document which they may require from time to time.

5.2 State access to Site

When entering the Site in accordance with clause 5.1(e)(2)(A), the State agrees to comply with, and ensure that its Associates and the authorised personnel comply with, clause 16.3 (*State's right to enter, inspect and test*) of the Project Agreement.

5.3 [Appointment of Subcontractor as principal contractor]

[State Note: clause 5.3 has been drafted for consistency with clause 15.3 (Principal Contractor) and 15.4 (New WHS Regulations) of the Project Agreement as it relates to the D&C Subcontractor. It will be modified in line with clause 15.4 (New WHS Regulations) of the Project Agreement for the Maintenance Subcontractor.]

[In respect of the Licensed Construction Areas, upon Financial Close and up to and including the termination of the last Construction Licence in connection with the D&C Activities:

- (a) **(appointment)**: the State appoints the Subcontractor as Principal Contractor and authorises the Subcontractor to manage or control the Licensed



Construction Areas to the extent necessary to discharge the duties of a Principal Contractor under the OHS Legislation;

- (b) **(acceptance of appointment)**: the Subcontractor accepts the appointment by the State as Principal Contractor, and agrees:
- (1) to comply with all the obligations of; and
 - (2) to manage or control the Licensed Construction Areas to the extent necessary to discharge its duties as,
a Principal Contractor under the OHS Legislation; and
- (c) **(Revised appointment)**: the Subcontractor accepts any revised appointment as Principal Contractor that may be necessary as a result of a Change in Mandatory Requirements the subject of a Modification Order.]

6 Right to cure before termination of the Subcontract

6.1 State's cure rights

- (a) **(Provide State with notices)**: The Subcontractor must give the State:
- (1) Default Event Notices; and
 - (2) State Cure Notices,
- as required by clause 6.2.
- (b) **(State Cure Notice)**: On receiving a State Cure Notice, and subject to the Finance Direct Deed, the State may (but is not obliged to) take steps to:
- (1) remedy, or procure the remedy of, that Default Event; or
 - (2) if the Default Event is not capable of remedy, commence and continue to perform the obligations of Project Co under the Subcontract.

6.2 Termination or suspension with cause

The Subcontractor may only exercise a right under the Subcontract to terminate, rescind, accept the repudiation of, or (subject to clause 6.3) suspend the performance of any or all of its obligations under the Subcontract if:

- (a) **(prior notice)**: the Subcontractor has given to the State prior notice setting out details of the Default Event giving rise to that proposed exercise in accordance with clause 6.4 **(Default Event Notice)**;
- (b) **(expiration of remedy period)** any remedy period available to the Financiers in respect of the Default Event under the Subcontractor Consent Deed has expired without a remedy being achieved;
- (c) **(State cure notice)**: the Subcontractor has given notice to the State **(State Cure Notice)** confirming that any remedy period available to the Financiers in respect of the Default Event under the Subcontractor Consent Deed has expired without a remedy being achieved; and
- (d) **(Default Event remedy)**: where:
- (1) the Default Event is capable of remedy within 20 Business Days after the date on which the State received the State Cure Notice, the

- Default Event has not been remedied within that 20 Business Day period;
- (2) the Default Event is capable of remedy within a period longer than 20 Business Days after the date on which the State received the State Cure Notice, the State (or an Additional Obligor or Receiver appointed under clause 7) has not commenced remedying the Default Event within that 20 Business Day period or, having commenced remedying, has not continued to diligently pursue that remedy;
 - (3) the Default Event is not capable of remedy and the Default Event Notice contains a claim for reasonable compensation for the Default Event, Project Co or the State (or another person on behalf of either of them) has not paid or otherwise provided that compensation to the Subcontractor:
 - (A) to the extent that the relevant amount of compensation has been referred to dispute resolution under clauses 9 to 10, within 20 Business Days after that dispute is resolved; or
 - (B) otherwise within 20 Business Days after the date on which the State received the State Cure Notice;
 - (4) the Default Event is not capable of remedy and the Default Event Notice does not contain a claim for reasonable compensation for the Default Event, the State (or an Additional Obligor or Receiver appointed under clause 7) does not commence and continue to perform Project Co's obligations under the Subcontract within 20 Business Days after the date on which the State received the State Cure Notice; or
 - (5) the State notifies the Subcontractor that it elects not to remedy, or procure the remedy of, the Default Event.

6.3 Early suspension of Subcontractor's obligations

If:

- (a) **(right to suspend)**: the Subcontractor, but for the operation of clause 6.2, would have a right to suspend the performance of its obligations under the Subcontract;
- (b) **(State Cure Notice)**: the Subcontractor has issued a State Cure Notice to the State with respect to that Default Event;
- (c) **(dispute, non-payment or expired period)**: either:
 - (1) the State has not undertaken to pay to the Subcontractor the amounts payable under the Subcontract within 10 Business Days of:
 - (A) subject to clause 6.3(c)(2), the date of receipt of the State Cure Notice; or
 - (B) if the State refers the amounts in the Default Event Notice to dispute resolution under clauses 9 to 10, the dispute being determined; or
 - (2) without limiting clause 6.2(d), the State has undertaken to pay the Subcontractor amounts payable under the Subcontract for a stated period and that period has expired without the State paying such amounts or without that period being extended by the State (acting reasonably); and



(d) **(not remedied)**: the Default Event has not otherwise been remedied, then the Subcontractor may suspend performance of its obligations under the Subcontract.

6.4 Subcontractor Statements

As part of any Default Event Notice, the Subcontractor must include a statement of:

- (a) **(all amounts due and payable)**: all amounts due and payable to the Subcontractor under the Subcontract on or before the date of the Default Event Notice but remaining unpaid at such date;
- (b) **(Claim)**: the nature and, to the best of the Subcontractor's knowledge and belief, the amount of any Claim asserted by the Subcontractor arising in connection with the Subcontract against Project Co; and
- (c) **(Intention to terminate)**: where the Subcontractor intends to terminate the Subcontract due to a default or breach of condition of a non-financial nature or intends to claim damages or to seek some other form of relief:
 - (1) the provisions of the Subcontract alleged to have been breached or not fulfilled;
 - (2) sufficient information to enable the State to identify the material facts;
 - (3) the steps reasonably required to remedy the Default Event (if reasonably capable of remedy);
 - (4) the time within which the specified steps can reasonably be expected to be taken;
 - (5) if applicable, the amount of damages claimed and the manner in which they have been calculated; and
 - (6) if applicable, the other relief to be sought,

(being the **Subcontractor Statement**).

6.5 Warranty of accuracy and waiver

The Subcontractor:

- (a) **(warranty)**: warrants to the State that each Subcontractor Statement will, subject to unintended error which the Subcontractor agrees to rectify, be a true, complete and accurate statement of the amounts or other relief to which the Subcontractor considers itself entitled; and
- (b) **(waiver)**: waives and abandons all Claims then known or which ought reasonably to have been known to the Subcontractor arising in connection with the Subcontract prior to the date of the Default Event Notice other than the claims disclosed in the Subcontractor Statement.

6.6 Verification of Subcontractor Statements

The State may appoint one or more independent chartered accountants, technical advisers or other appropriately qualified persons to verify (at the cost of Project Co) a Subcontractor Statement, and the Subcontractor must, subject to such persons executing an appropriate confidentiality agreement as the Subcontractor may reasonably request, permit such persons to have access to and to make copies of all records, documents, data and accounting and other information not subject to legal (including, without limitation, solicitor and own client) and other professional privilege which is reasonably



required with a view to confirming the accuracy and completeness of such Subcontractor Statement.

6.7 Subcontractor Statements to be conclusive evidence

- (a) **(Reliance)**: Each Statement Beneficiary is entitled to rely on a Subcontractor Statement for the purpose of determining the extent of the matters occurring prior to a Default Event which are required to be remedied and the requirements to effect the remedy of that Default Event by a Statement Beneficiary.
- (b) **(Conclusive evidence)**: A Subcontractor Statement will, to the extent provided for in clause 6.4 and 6.5, be conclusive evidence in favour of any Statement Beneficiary that the Subcontractor has waived and abandoned all Claims then known or which ought reasonably to have been known to the Subcontractor arising in connection with the Subcontract prior to the date of the Default Event Notice other than the Claims disclosed in the Subcontractor Statement.
- (c) **(Claims against Project Co)**: Clauses 6.5(b), 6.7(a) and 6.7(b) are without prejudice to the rights of the Subcontractor to pursue any Claims against Project Co following the end of the Step-In Period or termination of the Subcontract.
- (d) **(Disputes)**: For the avoidance of doubt, a Subcontractor Statement will not prevent any Statement Beneficiary from disputing the amount of any Claim or other relief sought by the Subcontractor or the existence of any default by Project Co under the Subcontract. In the case of any such dispute:
 - (1) the time periods set out in clause 6.2(d) will continue to apply to those amounts and obligations (if any) which are not in dispute;
 - (2) the dispute must be referred to dispute resolution under clauses 9 to 10; and
 - (3) during the period of dispute resolution, all parties must continue to perform their obligations under this Deed and the Project Documents.

7 Step-In by the State

7.1 Step-In Right

- (a) **(Exercise)**: Following receipt of a State Cure Notice or if the State is entitled to exercise any of the rights referred to in clause 3.2 or otherwise as permitted under any Project Document, the State may:
 - (1) if permitted under the State Security and the Finance Direct Deed, appoint a Receiver over Project Co or any or all of its assets (including the Subcontractor Documents);
 - (2) itself enter into possession of any or all of the assets of Project Co;
 - (3) take such other action as it is permitted to take under the terms of the Project Documents; or
 - (4) by notice to the Subcontractor (**Additional Obligor Step-In Notice**), procure that an Additional Obligor assumes jointly and severally with Project Co all of Project Co's rights and obligations under the Subcontractor Documents,(each a **Step-In Right**).



- (b) **(Step-In Period):** The period from the date on which the Subcontractor receives notice of the exercise of any Step-In Right to the earliest of:
- (1) the Additional Obligor Step-Out Date;
 - (2) the date on which the Subcontractor terminates the Subcontract;
 - (3) the date of any transfer under clause 8;
 - (4) the date which the State has notified the Subcontractor will be the date that the State ceases to exercise its Step-In Rights; and
 - (5) any other date on which the State ceases to continue to exercise its Step-In Rights,
- is the **Step-In Period**.
- (c) **(Acknowledgment):** The Subcontractor Parties each acknowledge that the exercise by the State of a Step-In Right in the manner contemplated by this Deed will not of itself contravene the Subcontractor Documents, or constitute a Default Event under the Subcontract or entitle a Subcontractor Party to exercise any right (including termination) under a Subcontractor Document.

7.2 Step-In by the State

- (a) **(Rights):** Subject to the Finance Direct Deed, the State may at any time during a Step-In Period, exercise all or any of its rights and carry out all or any of the obligations of Project Co in connection with the Subcontractor Documents, as if it were Project Co to the exclusion of Project Co.
- (b) **(No Liability):** Project Co and the Subcontractor Parties each agree that, subject to clause 7.3(b):
- (1) none of the State or its Associates will have any Liability; and
 - (2) none of Project Co or the Subcontractor Parties will be entitled to make, continue or enforce any Claim against the State or any of its Associates,

arising in connection with the Subcontractor Documents or this Deed by reason only of the State or any of its Associates exercising any of Project Co's rights, or performing any of Project Co's obligations under the Subcontractor Documents other than, and then only to the extent of, Liability for fraudulent, reckless, unlawful or malicious acts or omissions, or wilful misconduct of the State or any State Associate.

7.3 Step-In using Additional Obligor

- (a) **(Assumption Date):** If clause 7.1(a)(4) applies, the Additional Obligor will become a party to the Subcontractor Documents on the date on which the Additional Obligor Step-In Notice is given to the Subcontractor or such later date as the Subcontractor and the State may agree (**Assumption Date**).
- (b) **(Rights and obligations of Additional Obligor):** During a Step-In Period in respect of which the State has exercised a Step-In Right under clause 7.1(a)(4):
- (1) subject to clause 7.3(b)(2), the Additional Obligor and Project Co will be jointly and severally:
 - (A) entitled to exercise the rights of Project Co under the Subcontractor Documents (excluding any accrued rights of Project Co in respect of any damage, loss, cost, charge, expense, outgoing or payment to the extent that the rights

- arose prior to the Assumption Date) (**Project Co's Rights**);
and
- (B) liable for the performance or non-performance of all Project Co's obligations under the Subcontractor Documents arising on or after the Assumption Date except as released in accordance with clause 7.3(e);
- (2) as between Project Co, the Subcontractor Parties and the Additional Obligor, only the Additional Obligor is authorised to deal with the Subcontractor Parties and to exercise Project Co's Rights;
- (3) Project Co acknowledges that it will be legally bound by all the acts and omissions of the Additional Obligor in so dealing with the Subcontractor Parties and in exercising Project Co's Rights;
- (4) the Additional Obligor will be bound by any earlier decision, directions, approvals, notices or consents given or made prior to the Assumption Date;
- (5) clause 14 will apply to the Subcontractor Parties and the Additional Obligor as if the address and email address of the Additional Obligor (as notified to the Subcontractor Parties and Project Co) were set out in addition to those of Project Co; and
- (6) the Subcontractor Parties will owe their respective obligations under the Subcontractor Documents to Project Co and the Additional Obligor jointly but the performance by a Subcontractor Party in favour of either Project Co or the Additional Obligor will be a good discharge of the relevant obligations under the Subcontractor Documents.
- (c) (**No Liability**): Without prejudice to the Subcontractor's rights under clauses 6.2 and 6.3, the Additional Obligor will have no obligation to, and no Liability in respect of, remedying any default or breach of Project Co under the Subcontractor Documents arising prior to the Assumption Date.
- (d) (**Additional Obligor Step-Out Date**): The Additional Obligor may at any time give the Subcontractor notice terminating the Additional Obligor's rights and obligations under the Subcontractor Documents (without affecting the continuation of Project Co's obligations or liabilities towards the Subcontractor Parties under the Subcontractor Documents). Such notice must specify the date on which it takes effect, which must be:
- (1) at least 30 days after the date of the notice; or
- (2) if a Novation Notice has been given, the Novation Notice Date,
- (**Additional Obligor Step-Out Date**).
- (e) (**Release**): On and from the Additional Obligor Step-Out Date, as between the Subcontractor Parties and the Additional Obligor only, each of the Subcontractor Parties and the Additional Obligor will be released from all obligations under the Subcontractor Documents (except for those obligations owed to each other which have arisen during the relevant Step-In Period), whether or not a Claim has been made in respect of those obligations or they have not fallen due to be performed or have not been performed. For the avoidance of doubt, on and from the Additional Obligor Step-Out Date, the Subcontractor Parties will continue to owe their obligations under the Subcontractor Documents to:
- (1) Project Co; or
- (2) if a Novation Notice has been given, to the Substitute Party.

7.4 Indemnity

Project Co must indemnify the State, its Associates and any Additional Obligor against any Claim or Liability (including any Claim made by, or Liability to, a third party) the State, any of its Associates or any Additional Obligor suffers or incurs arising in connection with taking any action under clause 7.2 or clause 7.3, except to the extent that such Claim or Liability is caused or contributed to by any of the events set out in clause 42.11 (*Limits on Project Co liability to indemnify and release*) of the Project Agreement.

8 State's option to novate to the State or third party

8.1 Option

- (a) **(Novation Notice)**: The State may require a novation of the Subcontractor Documents upon the termination of the Project Agreement by giving a notice **(Novation Notice)** to the Subcontractor Parties. The Novation Notice must specify the person to whom the State intends to novate the Subcontractor Documents whether this be the State or another person **(Substitute Party)**.
- (b) **(Subcontractor's obligations to continue)**: If the State issues a Novation Notice then (without prejudice to the Subcontractor's rights under clauses 6.2 and 6.3) the Subcontractor Parties, until the Novation Notice Date, must continue to perform their respective obligations under the Subcontractor Documents.
- (c) **(Subcontractor to continue work)**: If the Subcontractor has exercised any rights it has to suspend the performance of any of its obligations under the Subcontract, the Subcontractor must recommence performance of those obligations from the Novation Notice Date or the date on which the cause of the suspension is remedied (whichever is the earlier).
- (d) **(Novation Notice not a Default Event)**: The Subcontractor Parties each acknowledge that the giving of a Novation Notice by the State will not of itself contravene, or constitute a Default Event under, a Subcontractor Document, or entitle the Subcontractor Party to exercise any power (including termination) under it.

8.2 Novation to Substitute Party

- (a) **(Effect of novation)**: Subject to clause 8.3, with effect from the Novation Notice Date:
 - (1) the Substitute Party will assume (and if the Substitute Party is not the State, the State will procure that the Substitute Party assumes):
 - (A) any obligation of Project Co under the Subcontract arising before the Novation Notice Date insofar as it relates to the payment of an amount of money that:
 - 1) is due and payable under the terms of the Subcontract; and
 - 2) is not the subject of a dispute under the Subcontract (or is the subject of a dispute under the Subcontract in which case the Substitute Party will, on the determination of such dispute, assume

such obligations in accordance with that determination); and

- (B) the obligations of Project Co under the Subcontractor Documents arising on and from the Novation Notice Date (including obligations in relation to the payment of amounts which become due and payable in respect of work performed before the Novation Notice Date) subject to any amendments to the Subcontractor Documents agreed in accordance with clause 8.2(a)(6);
 - (2) without prejudice to any then accrued rights against Project Co (other than termination), any Subcontractor's right to suspend under the Subcontract which exists at the Novation Notice Date will be of no further effect;
 - (3) subject to any amendments agreed to the Subcontractor Documents in accordance with clause 8.2(a)(6), the Substitute Party will have all the rights of Project Co under the Subcontractor Documents (excluding any accrued rights of Project Co in respect of any damage, loss, cost, charge, expense, outgoing or payment to the extent that those rights arose prior to the Novation Notice Date and are the subject of any unresolved dispute referred to in clause 8.2(a)(1)(A)2));
 - (4) subject to clause 8.2(a)(3) and any amendments agreed to the Subcontractor Documents in accordance with clause 8.2(a)(6), the Subcontractor Parties will:
 - (A) be bound by and must comply with the provisions of the Subcontractor Documents as if the Substitute Party were Project Co; and
 - (B) be entitled to any extensions of time and other entitlements which accrued to the Subcontractor prior to the Novation Notice Date;
 - (5) Project Co is released from all of its obligations and Liabilities under the Subcontractor Documents, excluding any accrued obligations or Liabilities of Project Co to the extent that those accrued obligations or Liabilities:
 - (A) arose in connection with events occurring prior to the Novation Notice Date; and
 - (B) are not obligations and Liabilities assumed by the Substitute Party under clause 8.2(a)(1);
 - (6) the Subcontractor Parties and the Substitute Party will promptly negotiate in good faith, any amendments to the Subcontractor Documents that are necessary to reflect the termination of the Project Agreement; and
 - (7) for the avoidance of doubt, any caps on Liability in the Subcontractor Documents will continue to apply, but so that any Liability of the Subcontractor Parties incurred to Project Co prior to the Novation Notice Date is taken into account in respect of any ongoing Liability of the Subcontractor Parties to the Substitute Party.
- (b) **(No set off):** Neither Subcontractor Party is entitled to exercise any right of set off, deduction, abatement or counterclaim against the Substitute Party if, and to the extent that, such right arose prior to the Novation Notice Date.



- (c) **(Novation Deed):** Subject to clause 8.3(b), Project Co, the Subcontractor Parties and the Substitute Party must enter into an agreement in form and substance reasonably requested by the Substitute Party reflecting the novation of the Subcontractor Documents as contemplated in clause 8.2(a) and take such other action as is required to vest in the Substitute Party full legal and equitable title to any retention account, bank guarantee, performance bond, letter of credit or other security held by Project Co to secure the obligations of a Subcontractor Party under the Subcontractor Document.
- (d) **(Attorney):** For valuable consideration, Project Co and the Subcontractor Parties each irrevocably appoint the State, on its behalf and in its name or otherwise, as its attorney to do anything which Project Co or a Subcontractor Party is obliged to do (but has not done within 5 Business Days of request) under clause 8.2(c). Each of Project Co and the Subcontractor Parties ratifies and confirms and agrees to ratify and confirm whatever any such attorney lawfully does in the exercise of the power of attorney in this clause 8.2(d).

8.3 Novation to a Substitute Party other than the State

- (a) **(Information to be provided by the State):** If the State gives a Novation Notice that states that Project Co must novate the Subcontract Documents to a Substitute Party other than the State or a State Associate, the State must, at the time it gives the Novation Notice, provide to the Subcontractor Parties the following particulars of the Substitute Party:
 - (1) its name, place of incorporation and identity of shareholder(s) (including, unless a shareholder is listed on a securities exchange, the ultimate shareholders);
 - (2) if available, its most recent published audited accounts; and
 - (3) sufficient particulars of the finance available to the Substitute Party to enable each Subcontractor Party to decide whether to grant its consent to the Substitute Party.
- (b) **(Consent by the Subcontractor):** A novation to, and the giving of a Novation Notice with respect to, a Substitute Party other than the State or a State Associate in accordance with this clause 8 will only be effective, and the Subcontractor Parties will only be required to enter into a novation agreement under clause 8.2(c), if the Subcontractor Parties each consent to that novation (such consent not to be unreasonably withheld or delayed) or are deemed to have consented in accordance with clause 8.3(d).
- (c) **(Further information):** The State must as soon as practicable supply the Subcontractor Parties with such additional information to that provided under clause 8.3(a) as the Subcontractor Parties each reasonably require to enable it to decide whether to grant consent under clause 8.3(b), and the Subcontractor Parties must each consider such information expeditiously and inform the State promptly if it reasonably requires further information.
- (d) **(Deemed consent):** The Subcontractor Parties' consent to the novation will be deemed to be given if the Subcontractor Parties have not notified the State under clause 8.3(e)(2) within 15 Business Days of the later of:
 - (1) the receipt of the Novation Notice; and
 - (2) the receipt of the State's response to the Subcontractor Parties' request for information under clause 8.3(c).
- (e) **(Unreasonably withholding consent):** A Subcontractor Party is not entitled to refuse consent to the novation unless:



- (1) the grounds for refusal are reasonable and are based on:
 - (A) the proposed novation deed referred to in clause 8.2(c) for the Substitute Party to assume the rights and obligations of Project Co under the Subcontractor Documents not being effective to substitute the Substitute Party for Project Co;
 - (B) the Substitute Party not having the legal capacity, power and authorisation to become a party to and perform the obligations of Project Co in accordance with the Subcontractor Documents including any necessary authorisations and consents;
 - (C) the technical competence or financial standing of the Substitute Party being insufficient for it to meet the obligations of Project Co in accordance with the Subcontractor Documents; or
 - (D) a Subcontractor Party being placed in breach of any Laws by the proposed novation; and
 - (2) it has notified the State of such reasons.
- (f) **(If the Subcontractor withholds consent):** If either Subcontractor Party withholds its consent to a Novation Notice under this clause 8.3, this will not prejudice the ability of the State to give one or more subsequent Novation Notices, and information under clause 8.3(a), containing changed particulars relating to the same Substitute Party or particulars relating to another Substitute Party.

8.4 Accrued obligations and liabilities

Clause 8.2 does not operate to:

- (a) **(State not to assume):** require the State to assume any obligations or Liabilities arising from, or which are required to be performed in connection with the Subcontractor Documents prior to the Novation Notice Date unless expressly required to do so in clause 8.2; or
- (b) **(Release Project Co):** release Project Co from such obligations or Liabilities unless expressly provided for in clause 8.2.

9 Dispute Resolution

9.1 Procedure for resolving disputes

- (a) **(Disputes to be resolved):** Any dispute arising under this Deed must be resolved by the parties to that dispute (**Disputing Parties**) in accordance with clause 9 and clause 10.
- (b) **(Procedure):** The procedure that is to be followed to resolve a dispute is as follows:
 - (1) firstly, the dispute must be the subject of negotiation as required by clause 9.2;
 - (2) secondly, if the dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 9.2(c)(1) the Disputing Parties may agree that the dispute will be



referred to an expert for determination in accordance with clauses 9.4 to 9.9 or to arbitration under clause 10; and

- (3) thirdly, if:
 - (A) the dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 9.2(c)(1) and irrespective of whether the Disputing Parties failed to meet as required by that clause or whether having so met the Disputing Parties failed to agree whether the Dispute should be referred to an expert or to arbitration within 20 Business Days after the expiration of the period for negotiation referred to in clause 9.2(c)(1);
 - (B) the dispute has been referred to expert determination and a determination is not made by the expert within 30 days after the expert's acceptance of appointment; or
 - (C) the dispute is referred to expert determination and a notice of dissatisfaction is given in accordance with clause 9.6(a),
- (4) then the dispute must be referred to arbitration in accordance with clause 10.

9.2 Negotiation

- (a) **(Notification)**: If a dispute arises then a party may give notice to each other Disputing Party requesting that the dispute be referred for resolution by negotiation between the Chief Executive Officers (or equivalent) of the Disputing Parties (**Representatives**).
- (b) **(Contents of Notice)**: A notice under clause 9.2(a) must:
 - (1) state that it is a notice under this clause 9; and
 - (2) include or be accompanied by particulars of the matters which are the subject of the dispute.
- (c) **(Attempt to resolve Dispute)**: If a dispute is referred for resolution by negotiation under clause 9.2(a), then:
 - (1) the Representatives must meet and attempt in good faith to resolve the dispute (in whole or in part) within 10 Business Days of the date on which the notice under clause 9.2(a) is received (or such later date as the Disputing Parties may agree); and
 - (2) any agreement reached between the Representatives will be reduced to writing, signed by or on behalf of each Disputing Party and will be contractually binding on the Disputing Parties.

9.3 Expert determination

If:

- (a) **(dispute unresolved by Representatives)**: a dispute which has been referred to the Representatives for negotiation in accordance with clause 9.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 9.2(c)(1); and
- (b) **(referral to expert)**: the Disputing Parties agree within 20 Business Days after the expiration of the period for negotiation referred to in clause 9.2(c)(1), that the dispute be referred to an expert for determination,

then those parts of the dispute which remain unresolved will be referred to an expert for determination under clauses 9.4 to 9.9. For the avoidance of doubt, a dispute may only be referred to an expert for determination by agreement of the Disputing Parties.

9.4 Selection of expert

- (a) **(Exchange of lists of 3 preferred experts):** Within 7 Business Days after the date on which the Disputing Parties agree to refer a dispute to an expert for determination under clause 9.3, the Disputing Parties must exchange lists of 3 persons (in order of preference) who, if appointed, would satisfy the requirements of clause 9.4(d), from whom the expert is to be chosen.
- (b) **(Appointment of person who appears on both lists):** Any person who appears on the list of all Disputing Parties exchanged under clause 9.4(a) will be appointed as the expert to determine a dispute and if more than one person appears on the list of all Disputing Parties, the person given the highest order of priority by the party who gave the notice under clause 9.2(a) will be appointed.
- (c) **(Appointment if no person appears on both lists):** If no person appears on the list of all the Disputing Parties, the party which gave the notice under clause 9.2(a) must procure:
- (1) the president (or the senior non-executive officer, howsoever described) of the institute or governing body for the technical or professional discipline the subject of the relevant dispute to nominate the expert, having regard to, but not being bound by, those persons proposed by the Disputing Parties under clause 9.4(a); or
 - (2) if there is no governing body for the technical or professional discipline the subject of the relevant dispute or the Disputing Parties cannot agree the technical or professional discipline relevant to the dispute or such governing body advises that it will not nominate an expert, the Australian Centre for International Commercial Arbitration to nominate a person to act as the expert, having regard to, but not being bound by, those persons proposed by the Disputing Parties under clause 9.4(a),
- within 7 Business Days of the exchange of notices under clause 9.4(a).
- (d) **(Appropriate skills):** It is the intention of the parties that the expert appointed to determine a dispute will be an independent person with appropriate skills having regard to the nature of the matters in dispute.
- (e) **(No entitlement to challenge appointment):** No Disputing Party will be entitled to challenge the appointment of an expert under this clause 9.4 on the basis that the expert does not satisfy the requirements of clause 9.4(d).
- (f) **(Not an arbitration agreement):** Any agreement for expert determination under this Deed will not constitute an arbitration agreement for the purposes of the *Commercial Arbitration Act 2011* (Vic).
- (g) **(Agreement):** Once an expert is appointed, the Disputing Parties must enter into an agreement with the expert on the terms of the Expert Determination Agreement or such other reasonable terms as the expert may require.

9.5 Rules of expert determination

The expert determination process will be administered, and the expert will be required to act, under the terms of the Expert Determination Agreement.



9.6 Expert finding

- (a) **(Notification):** The determination of the expert must be in writing and will be final and binding on the Disputing Parties unless, within 10 Business Days of receipt of the determination, a Disputing Party gives notice to each other Disputing Party of its dissatisfaction and intention to refer the matter to arbitration in accordance with clause 10.
- (b) **(Amendment to determination):** Upon submission by any Disputing Party, the expert may amend the determination to correct:
 - (1) a clerical mistake;
 - (2) an error from an accidental slip or omission;
 - (3) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
 - (4) a defect in form.

9.7 Liability of expert

- (a) **(Liability of expert):** The Disputing Parties agree:
 - (1) that the expert will not be Liable in connection with the expert determination, except in the case of fraud on the part of the expert; and
 - (2) to indemnify the expert against any Claim or Liability in connection with the expert determination, except in the case of fraud on the part of the expert, in which case a Claim may be made against him or her by any person who is a party to the dispute.
- (b) **(Engagement):** The Disputing Parties will jointly engage the expert services in connection with the expert determination proceedings and each Disputing Party will seek a separate Tax Invoice equal to its share of the cost of the expert.

9.8 Costs

The Disputing Parties must:

- (a) **(own costs):** bear their own costs in connection with the expert determination proceedings; and
- (b) **(engagement):** pay an equal portion of the costs of the expert.

9.9 Proportionate Liability

To the extent permitted by Law, the Expert will have no power to apply or to have regard to the provisions of any proportionate liability legislation which might in the absence of this clause 9.9, have applied to any dispute referred to the Expert in accordance with this clause 9.



10 Arbitration

10.1 Reference to Arbitration

- (a) **(Dispute):** If:
- (1) a dispute:
 - (A) which has been referred to the Disputing Parties' Representatives for negotiation in accordance with clause 9.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 9.2(c)(1); and
 - (B) the Disputing Parties do not agree to refer the dispute to an expert for determination; or
 - (2) in the case of a dispute which the Disputing Parties agree to refer to expert determination under clause 9.3:
 - (A) a determination is not made within 30 days of the expert's acceptance of the appointment; or
 - (B) a notice of dissatisfaction is given in accordance with clause 9.6(a),
- then any Disputing Party may notify the other Disputing Parties that it requires the dispute to be referred to arbitration.
- (b) **(Referral):** Upon receipt by a Disputing Party of a notice under clause 10.1(a), the dispute will be referred to arbitration.

10.2 Arbitration

- (a) **(ACICA Rules):** Arbitration in accordance with this clause 10 will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Rules) as current at the date the Dispute is referred to arbitration and as otherwise set out in this clause 10 with this clause 10 having priority to the extent of any inconsistency.
- (b) **(Seat):** The seat of the arbitration will be Melbourne, Victoria.
- (c) **(Language):** The language of the arbitration will be English.

10.3 Appointment of arbitrator

The parties will endeavour to agree on the arbitrator or arbitrators (if the parties agree to appoint three arbitrators), but if no such agreement is reached within 14 Business Days of the dispute being referred to arbitration in accordance with clause 10.1(b), the arbitrator or arbitrators will be appointed in accordance with the ACICA Rules.

10.4 General Principles for conduct of arbitration

- (a) **(Conduct of arbitration):** The Disputing Parties agree that:
- (1) they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any dispute;
 - (2) any arbitration conducted in accordance with this clause 10 will not necessarily mimic court proceedings of the seat of the arbitration or



the place where hearings take place (if different), and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and

- (3) in conducting the arbitration, the arbitrator must take into account the matters set out in clauses 10.4(a)(1) and 10.4(a)(2).
- (b) **(Evidence in writing)**: All evidence in chief must be in writing unless otherwise ordered by the arbitrator.
- (c) **(Evidence and discovery)**: The rules for evidence and discovery will be the IBA Rules on the Taking of Evidence in International Arbitration current at the date of arbitration (or if there are no current rules, the most recent version of those rules).
- (d) **(Oral hearing)**: The oral hearing must be conducted as follows:
 - (1) any oral hearing must take place in Melbourne, Victoria and all outstanding issues must be addressed at the oral hearing;
 - (2) the date and duration of the oral hearing must be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in clause 10.4(a) when determining the duration of the oral hearing;
 - (3) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
 - (4) the oral hearing must be conducted on a stop clock basis with the effect that the time available to the Disputing Parties must be split equally between the Disputing Parties so that each party has the same time to conduct its case unless, in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the Disputing Parties;
 - (5) not less than 28 days prior to the date fixed for oral hearing each of the Disputing Parties must give notice of those witnesses (both factual and expert) of each other Disputing Party that it wishes to attend the hearing for cross examination;
 - (6) in exceptional circumstances the arbitrator may amend the date of hearing and extend the time for the oral hearing set in accordance with clause 10.4(d)(2);
 - (7) a Disputing Party will not be bound to accept the written evidence of a witness submitted on behalf of an opposing Disputing Party which is not challenged in cross examination; and
 - (8) each Disputing Party is expected to put its case on significant issues in cross examination of a relevant witness called by the other Disputing Party or, where it seeks to challenge the evidence of a witness not called for cross-examination by reference to other evidence, to identify that evidence in its written opening submissions so that the other Disputing Party may know the nature of and basis for the challenge to the witness' written evidence.
- (e) **(Experts)**: Unless otherwise ordered each Disputing Party may only rely upon one expert witness in connection with any recognised area of specialisation.



10.5 Proportional liability

To the extent permitted by Law, the arbitrator will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this clause 10.5, have applied to any dispute referred to arbitration in accordance with this clause 10.

10.6 Extension of ambit of arbitration proceedings

- (a) **(Extending Disputes):** Where:
- (1) a dispute between the Disputing Parties to this Deed is referred to arbitration in accordance with this clause 10; and
 - (2) there is some other dispute also between the Disputing Parties to and in accordance with this Deed (whenever occurring),
- the arbitrator may, upon application being made to the arbitrator by one or more of the Disputing Parties at any time before a final award is made in relation to the first-mentioned dispute, make an order directing that the arbitration be extended so as to include the other dispute.
- (b) **(Arbitrator's order):** An arbitrator may make an order in accordance with clause 10.6(a) on such terms and conditions (if any) as the arbitrator thinks fit.

10.7 Award final and binding

- (a) **(Final and binding):** Subject to clause 10.7(b), any award will be final and binding on the Disputing Parties.
- (b) **(Appeal):** Each Disputing Party consents to any appeal to a court where that appeal is made under the *Commercial Arbitration Act 2011* (Vic) on a question of law arising in connection with an arbitral award made in accordance with this clause 10.

10.8 Continue to perform

Notwithstanding the existence of a dispute, each Disputing Party must continue to carry out its obligations in accordance with this Deed.

10.9 Governing law of arbitration agreement

The Law governing this arbitration agreement is the law of Victoria, Australia.

10.10 Interlocutory relief

Clause 9 and clause 10 do not prevent a Disputing Party from seeking urgent interlocutory relief from a court of competent jurisdiction where, in that Disputing Party's reasonable opinion, that action is necessary to protect that Disputing Party's rights.

11 Termination of this Deed

- (a) **(Satisfaction of obligations under the Subcontract):** This Deed will terminate upon the performance and satisfaction of all of the obligations under the Subcontractor Documents.



- (b) **(Does not affect rights of parties)**: The termination of this Deed does not affect the rights of any party which have accrued to that party before the date of termination.

12 Insurances

- (a) **(Insurances)**: Notwithstanding anything else contained in the Subcontractor Documents or this Deed, the Subcontractor will:
- (1) take out all insurances as are required to be taken out by it under the Subcontract; and
 - (2) otherwise comply with all of its obligations in relation to insurance in the Subcontract.
- (b) **(Not to prejudice)**: Project Co and the Subcontractor must each ensure that it does not do or omit to do anything or does not permit anything to be done or omitted to be done whereby any insurance policy required under the Subcontract may be prejudiced.
- (c) **(Void or Voidable)**: If any default occurs by the Subcontractor in effecting or maintaining such insurance policy or if any such insurance policy becomes void or voidable, the State may (but is not obliged to) effect or maintain that Insurance policy at the cost of the Subcontractor or, failing it, Project Co.
- (d) **(State to be covered)**: If required by the Project Agreement, in respect of any insurance contract entered into by the Subcontractor as contemplated by clause 12(a), the Subcontractor must ensure that the State and the State's Associates are specified as a person to whom the insurance cover provided by that contract extends.
- (e) **(All documents, evidence and information)**: Project Co and the Subcontractor must each do all things necessary and provide all documents, evidence and information necessary to enable the State to collect or recover any moneys due or to become due to the State in respect of any insurance policy required under the Subcontract at the cost of the Subcontractor or, failing it, Project Co.
- (f) **(Cancellation, lapse or material change)**: Without prejudice to clauses 12(a) to 12(e), neither Project Co nor the Subcontractor will cause or take any steps to bring about the cancellation, lapse, material change, reduction or any rescinding of any such insurance policy unless it has first obtained the consent of the State.
- (g) **(Notify the State)**: Project Co and the Subcontractor must each immediately notify the State of any cancellation, lapse, material change, reduction, or any rescinding of any such insurance policy, and of the occurrence of any event giving rise to any claim under any such insurance policy in respect of the Project.
- (h) **(Several obligations)**: Notwithstanding clause 1.3(o), but subject to the obligations of Project Co under the terms of the Project Agreement, the obligations of Project Co and the Subcontractor in this clause 12 are several.

13 Goods and Services Tax (GST)

- (a) **(GST exclusive amounts):** Unless otherwise expressly stated, all amounts referred to in this Deed, the Subcontractor Documents, or any Project Document are exclusive of GST.
- (b) **(GST payable by Supplier):** If GST becomes payable on any Taxable Supply made by a party (**Supplier**) under or in connection with this Deed:
- (1) any amount payable or consideration to be provided in accordance with any other provision of this Deed for that supply (**Agreed Amount**) is exclusive of GST;
 - (2) an additional amount will be payable by the party which is the recipient of the Taxable Supply (**Recipient**), equal to the amount of GST payable on that Taxable Supply as calculated by the Supplier in accordance with the GST Law, payable at the same time and in the same manner as for the Agreed Amount; and
 - (3) the Supplier will provide a Tax Invoice to the Recipient in connection with that supply, either at the time expressly set out in any other provision of this Deed or no later than the time at which the Agreed Amount for that Taxable Supply is to be provided in accordance with this Deed. The Recipient is not obliged to pay any amount in accordance with this clause 13(b) unless and until a Tax Invoice is received by the Recipient in connection with the Taxable Supply except where the Recipient is required to issue the Tax Invoice.
- (c) **(Variation in GST payable):** If for any reason, the GST payable by the Supplier in connection with a supply it makes under or in connection with this Deed (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it received from the Recipient under clause 13(b) in connection with that supply, the Supplier will provide a refund or credit to, or will be entitled to receive from, the Recipient (as appropriate) the amount of this variation. Where an adjustment event occurs in relation to a supply and except where the Recipient is required to issue the Adjustment Note:
- (1) the Supplier will issue an Adjustment Note to the Recipient in connection with that supply within 14 days after becoming aware of that adjustment event occurring; and
 - (2) no additional amount will be payable by the Recipient unless and until an Adjustment Note is received by the Recipient.
- (d) **(GST ceasing to be payable):** No amount is payable by a party in accordance with clause 13(b) or 13(c) to the extent that the GST to which the amount relates has ceased to be payable by or refundable to the Supplier by the Commissioner of Taxation under the GST Law.
- (e) **(Expert determination):** If the Recipient is dissatisfied with any calculation to be made by the Supplier in accordance with this clause 13 the Recipient may, at its own expense and after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the President of the Institute of Chartered Accountants for expert determination, which will be final and binding on all parties (except in the case of manifest error on the face of the expert determination). The expert will act as an expert and not as an arbitrator and must take into account the terms of this Deed, the matters required to be taken into account by the Supplier in accordance with this clause 13 and any other matter considered by the expert to be relevant to the determination. The parties



release the expert from any liability in acting as an expert, except in the case of fraud on the part of the expert.

- (f) **(Revenue net of GST):** Any reference in this Deed to price, value, sales, revenue, profit or a similar amount (**Revenue**) is a reference to the GST exclusive component of that Revenue, unless the contrary intention is expressed.
- (g) **(Cost net of GST):** Any reference in this Deed to cost, expense, liability or other similar amount (**Cost**) of a party is a reference to that Cost reduced by the Input Tax Credits to which the party is entitled in respect of such Cost, unless the contrary intention is expressed.
- (h) **(General obligation):** Each party agrees to do all things, including providing Tax Invoices and other documentation, that may be necessary or desirable to enable or assist the other party in determining its GST payable on any supply made by that other party in connection with this Deed, or any input tax credits, adjustments or refunds in relation to any amount of GST paid or payable in connection with any supply made in connection with this Deed.
- (i) **(GST Groups):** For the purposes of this Deed, a reference to GST payable on a Taxable Supply made by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member and a reference to an input tax credit entitlement of a party includes any corresponding input tax credit entitlement of the representative member of any GST group of which that party is a member.
- (j) **(Project Agreement to prevail):** If clause 59 (*Taxes*) of the Project Agreement would apply in respect of a Taxable Supply to which this clause 13 also applies then clause 59 (*Taxes*) of the Project Agreement will apply in respect of that supply and the provisions of this clause 13 (but for this clause 13(j)) will not apply.
- (k) **(Definitions):** In this clause 13 unless otherwise defined in this Deed, terms used have the meanings given to them in the GST Law.

14 Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Deed:

- (a) **(in writing):** must be in writing;
- (b) **(addressed):** must be addressed as set out below (or as otherwise notified by that party to each other party from time to time);

State:

Attention: [not disclosed]

Address: [not disclosed]

Email: [not disclosed]

Project Co:

Attention: [not disclosed]

Address: [not disclosed]

Email: [not disclosed]



Subcontractor:

Attention: [Insert]

Address: [Insert]

Email: [Insert]

Parent Guarantor:

Attention: [Insert]

Address: [Insert]

Email: [Insert]

- (c) **(signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(form of delivery)**: must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by the parties) to the email address of the addressee set out in clause 14(b); and
- (e) **(taken to be received)**: are taken to be received by the addressee at the address set out in clause 14(b):
 - (1) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00am on the next Business Day;
 - (2) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and
 - (3) in the case of email, the first to occur of:
 - (A) receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - (B) the time that the communication enters an information system which is under the control of the addressee; or
 - (C) the time that the communication is first opened or read by the addressee,
 unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00am on the next Business Day.

15 Confidential Information and disclosure

15.1 Confidential Information and disclosure by the State

The Subcontractor Parties acknowledge and agree that:



- (a) **(Public Disclosure Obligations):** the State or any Authority may disclose any information in connection with the Project (including any Confidential Information) in accordance with its Public Disclosure Obligations and the Subcontractor Parties must use all reasonable endeavours to assist the State or an Authority in meeting its Public Disclosure Obligations;
- (b) **(Other purposes):** the State or any Authority may disclose any information in connection with the Project (including any Confidential Information) in connection with:
 - (1) any Re-franchising; and
 - (2) the requirements of the State Project Documents (including any tender process required to be conducted under the Termination Payments Schedule, or Change Compensation Principles);
- (c) **(State's rights):** subject to clause 15.1(d), in meeting its Public Disclosure Obligations or as otherwise considered necessary by the State, the State may publish, disclose or make generally available each Project Document on a Victorian Government website;
- (d) **(Commercially sensitive information):** the State will not publish, disclose or otherwise make generally available the information which is specified in the Confidential Information Schedule (including the Financial Model), except if required to do so to comply with the Public Disclosure Obligations or as required under clause 15.1(b); and
- (e) **(Exercise of licence):** nothing in this Deed prevents the State and any sublicensees using or disclosing any information (including Confidential Information) to the extent necessary or desirable for, or in connection with, the exercise of any licence granted under clause 56 (*Intellectual Property Rights*) of the Project Agreement.

15.2 Confidential Information and disclosure by Project Co and the Subcontractor Parties

- (a) **(Confidentiality obligation):** Subject to clause 15.2(b), Project Co and the Subcontractor Parties must treat as secret and confidential all Confidential Information in connection with this Deed and any other State Project Document.
- (b) **(Disclosure of Confidential Information):** Without limiting Project Co's and the Subcontractor's obligations under clause 15.2(a) and subject to clause 15.2(c), Project Co and the Subcontractor Parties may each disclose Confidential Information to:
 - (1) its Associates to the extent necessary for the purpose of undertaking the Project;
 - (2) a Rail Franchisee to the extent necessary for the purpose of undertaking the Project and to comply with its obligations in respect of the Rail Franchisee Cooperation Agreements and the Rail Franchisee Arrangements; or
 - (3) any Financier, prospective financier or equity investor of the Project, subject to the State having been provided necessary information in respect of the proposed parties and having carried out any Probity Investigation that the State considers necessary.
- (c) **(Confidentiality deed):** Before disclosing any Confidential Information, Project Co or the Subcontractor Party (whichever is disclosing the Confidential Information) must ensure that the person to whom the information is disclosed:



- (1) except to the extent the person to whom information is disclosed is a Rail Franchisee Interface Party, enters into a confidentiality deed with Project Co or the Subcontractor Party (whichever is disclosing the Confidential Information) on terms reasonably acceptable to the State; and
- (2) to the extent the person to whom information is disclosed is a Rail Franchisee Interface Party, the Rail Franchisee Interface Party agrees to comply with its confidentiality obligations under the relevant Rail Franchisee Cooperation Agreement.

15.3 Disclosure by the Subcontractor

- (a) **(The Subcontractor's disclosure obligations):** Subject to clause 15.3(b), the Subcontractor Parties must:
 - (1) not make any public disclosures, announcements or statements in relation to the Project or the State's or any of the State's Associates' involvement in the Project without the State's prior consent;
 - (2) comply with any terms and conditions the State imposes and must use all reasonable endeavours to agree with the State the wording and timing of all public disclosures, announcements or statements by it or any of its Associates relating to the Project or the State's or any of the State's Associates' involvement in the Project before the relevant disclosure, announcement or statement is made; and
 - (3) as soon as practicable, give to the State a copy of any public disclosure, announcement or statement agreed to or approved by the State in accordance with this clause 15.3(a) or for which the State's consent or approval was not required in accordance with clause 15.3(b).
- (b) **(Permitted disclosure):** For the purposes of clause 15.3(a), the Subcontractor Parties will not be required to obtain the State's consent or approval to the extent that any disclosure, announcement or statement is:
 - (1) required by Law, provided that it:
 - (A) notifies the State of the requirement to make that disclosure; and
 - (B) takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;
 - (2) required to obtain legal or other advice from its advisers;
 - (3) required to be made to a court in the course of proceedings to which any Subcontractor Party is a party; or
 - (4) required by a relevant stock exchange, subject to:
 - (A) such disclosure, announcement or statement not referring to the State's or any of its Associates' involvement in the Project; and
 - (B) the Subcontractor Parties having used all reasonable endeavours to obtain the State's consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant stock exchange; or



- (5) a disclosure by:
 - (A) the Train Franchisee Interface Party made in accordance with clause 21.3(c) of the Train Franchisee Cooperation Agreement; or
 - (B) the Tram Franchisee Interface Party made in accordance with clause 16.3(c) of the Tram Franchisee Cooperation Agreement.

16 Return of documents

Each Subcontractor Party must return to the State copies of all plans, drawings, specifications and other like documents which come into its possession for the purpose of the Subcontractor Documents or this Deed at the expiration of the Subcontractor Documents.

17 Miscellaneous

17.1 Governing Law and jurisdiction

- (a) **(Governing Law):** This Deed is governed by, and must be construed according to, the Laws of Victoria, Australia.
- (b) **(Jurisdiction):** Without limiting clauses 9 to 10, each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Deed.

17.2 Entire agreement

To the extent permitted by Law and in relation to its subject matter, this Deed:

- (a) **(entire understanding):** embodies the entire understanding of the parties and constitutes the entire terms agreed by the parties; and
- (b) **(prior agreements):** supersedes any prior agreement of the parties.

17.3 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to the parties) required by Law or reasonably requested by another party to give effect to this Deed.

17.4 Survival of certain provisions

- (a) **(Surviving clauses):** All provisions of this Deed which, expressly or by implication from their nature, are intended to survive the rescission, termination or expiration of this Deed will survive the rescission, termination or expiration of this Deed, including any provisions in connection with:
 - (1) the State's rights to set-off and recover money;
 - (2) confidentiality or privacy;



- (3) Intellectual Property Rights;
 - (4) any obligation to make any information and records available to the State;
 - (5) any indemnity or financial security given in accordance with this Deed;
 - (6) any right or obligation arising on termination of this Deed; or
 - (7) any limitation of liability.
- (b) **(Interpretation)**: No provision of this Deed which is expressed to survive the rescission, termination or expiration of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the rescission, termination or expiration of this Deed.
- (c) **(Survival of rights and obligations)**: No right or obligation of any party will merge on completion of any transaction under this Deed. All rights and obligations in accordance with this Deed survive the execution and delivery of any transfer or other document which implements any transaction in accordance with this Deed.

17.5 Waiver

- (a) **(Writing)**: A waiver given by a party in accordance with this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver)**: A failure to, a delay in or the partial exercise or enforcement of a right provided by Law or in accordance with this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or in accordance with this Deed.
- (c) **(No waiver of another breach)**: No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

17.6 Consents, approvals and directions

- (a) **(State)**: A consent or approval required in accordance with this Deed from the State may be given or withheld, or may be given subject to any conditions, as the State thinks fit, unless this Deed expressly provides otherwise.
- (b) **(Project Co or Subcontractor Party)**: A consent or approval required in accordance with this Deed from Project Co or a Subcontractor Party may not be unreasonably withheld or delayed, unless this Deed expressly provides otherwise.

17.7 Amendments

Except as otherwise expressly provided in this Deed, this Deed may only be varied by a deed executed by or on behalf of each party.

17.8 Expenses

Except as otherwise expressly provided in this Deed (or as between the State and Project Co in the Project Agreement), each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.



17.9 Severance

If, at any time, a provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) **(under this Deed)**: any other provision of this Deed; or
- (b) **(under another jurisdiction)**: that provision under the Law of any other jurisdiction.

17.10 Counterparts

This Deed may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same deed.

17.11 Moratorium legislation

To the fullest extent permitted by Law, the provisions of all Laws which operate to lessen or affect in favour of a party other than the State any obligation under this Deed, or to prejudicially affect the exercise by the State of any right, power or remedy under this Deed or otherwise, are expressly waived.

17.12 Proportionate liability

- (a) **(Excluded operation of Wrongs Act)**: The operation of Part IVAA of the *Wrongs Act 1958* (Vic) is excluded in relation to all and any rights, obligations or liabilities of any party under this Deed whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) **(Rights, obligations and liabilities)**: Without limiting clause 17.12(a), the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Deed and not otherwise, whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

17.13 Indemnity held on trust

- (a) **(Benefit of indemnities)**: The State holds on trust for its Associates the benefit of:
 - (1) each indemnity and release given by Project Co or the Subcontractor Parties under this Deed in favour of the State's Associates; and
 - (2) each right in this Deed to the extent that such right is expressly provided to be for the benefit of the State or State's Associates.
- (b) **(Project Co and Subcontractor acknowledgement)**: Each of Project Co and the Subcontractor Parties acknowledge the existence of such trusts and consent to:
 - (1) the State exercising rights in relation to, or otherwise enforcing such indemnities, releases and rights on behalf of its Associates; and
 - (2) the State's Associates exercising rights in relation to, or otherwise enforcing the indemnities, releases and those rights as if they were a party to this Deed.



- (c) **(Consent not required)**: The parties agree that the State does not require the consent of its Associates to amend or waive any provision of any Project Document.

17.14 Assignment

Except as expressly contemplated by this Deed, none of Project Co or the Subcontractor Parties may assign or transfer any of its rights or obligations under this Deed or a Subcontractor Document.

17.15 Set off

Without limiting the State's rights under the Project Agreement, all moneys which the State may pay or incur and for which Project Co is liable under the terms of the Project Agreement or in respect of which it is under this Deed liable to make reimbursement to or indemnify the State:

- (a) may be deducted by the State from all moneys due, becoming due, or to become due from it to Project Co under the Project Agreement; or
- (b) may be recovered from Project Co by action at Law or otherwise.

17.16 Limitation of Liability

The Subcontractor Parties' maximum aggregate Liability to Project Co, the State, any other party to a Project Document, and any person to whom a Subcontractor Document is novated or assigned in accordance with the terms of this Deed, will not exceed the Subcontractor Parties' maximum aggregate Liability under each relevant Subcontractor Document.



Signing page

Executed as a deed

[State Note: Execution blocks to be inserted.]



Schedule 15

Novation Deed

[State Note: The form of deed set out in this Schedule 15 will form the base of each novation deed where a Material Subcontractor has been engaged by a Key Subcontractor.]



HERBERT
SMITH
FREEHILLS

Deed

Post preferred

Melbourne Tunnel
Tunnel and Stations PPP

Subcontract Novation Deed

The Minister for [Public Transport] on behalf of the
Crown in right of the State of Victoria

[Insert Key Subcontractor]

[Insert Material Subcontractor]

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1 Definitions and interpretation

1.1 Project Agreement definitions

Unless otherwise expressly defined, expressions used in this Deed have the meanings given to them in or for the purposes of the Project Agreement.

1.2 Definitions

In this Deed, unless the context otherwise requires:

| Term | Meaning |
|--|---|
| Deed | means this deed and includes all Schedules, Exhibits, Attachments and Annexures to it. |
| Default Event | means any: <ol style="list-style-type: none">1 breach by the Key Subcontractor of any of its obligations under the Material Subcontract; or2 other event or circumstance, which alone or with the giving of notice or passage of time or both, would entitle the Material Subcontractor to terminate, rescind, accept the repudiation of, or suspend any or all of its obligations under, the Material Subcontract. |
| Default Event (Key Subcontract) | [State Note: relevant option to be selected.] means a [Default Termination Event (D&C) / Default Termination Event (Maintenance)]. |
| Disputing Parties | has the meaning given in clause 7.1(a). |
| Key Subcontract | means the agreement between Project Co and the Key Subcontractor dated <i>[insert]</i> . |
| Material Subcontract | means the agreement between the Key Subcontractor and the Material Subcontractor dated on or about the date of this Deed. |



| Term | Meaning |
|--------------------------------|--|
| Material Adverse Effect | means a material adverse effect on: <ol style="list-style-type: none">1 the ability of each of the Key Subcontractor or the Material Subcontractor to perform and observe their respective obligations under any Project Document to which it is a party; or2 the rights of the State under any State Project Document, or the ability or capacity of the State to exercise its rights or perform its obligations under a State Project Document. |
| Novation Notice | has the meaning given in clause 5.1(a). |
| Novation Notice Date | means: <ol style="list-style-type: none">1 in relation to clause 5.3, the later of the date that the State gives a Novation Notice and the date the Material Subcontractor consents or is deemed (in accordance with clause 5.3(e)) to have consented to the novation and assignment; and2 otherwise, the date on which the State gives a Novation Notice. |
| Project Agreement | means the document entitled 'Project Agreement' between the State and Project Co dated [insert] . |
| Representatives | has the meaning given in clause 7.2(a). |
| Substitute Party | has the meaning given in clause 5.1(a). |

1.3 Interpretation

In this Deed:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa and a word indicating a gender includes every other gender;
- (c) **(references)**: a reference to:
- (1) a party, clause, Schedule, Exhibit, or Annexure is a reference to a party, clause, Schedule, Exhibit or Annexure of or to this Deed; and
 - (2) a section is a reference to a section of a Schedule;



- (d) **(agreement as amended)**: a reference to this Deed or to any other deed, agreement, document or instrument includes a reference to this Deed or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **(‘includes’)**: ‘includes’ will be read as if followed by the phrase ‘(without limitation)’;
- (j) **(‘or’)**: the meaning of ‘or’ will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) **(‘\$’)**: a reference to ‘\$’, AUD or dollar is to Australian currency;
- (m) **(time)**: a reference to time is a reference to time in Melbourne, Australia;
- (n) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (o) **(obligations and liabilities)**: a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (p) **(‘may’)**: the term ‘may’, when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;
- (q) **(construction)**: where there is a reference to an Authority, institute or association or other body referred to in this Deed which:
 - (1) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or
 - (2) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (r) **(remedy)**: the use of the word ‘remedy’ or any form of it in this Deed means that the event to be remedied must be cured or its effects overcome; and



- (s) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

1.4 Priority of documents

To the extent of any inconsistency, ambiguity or discrepancy between this Deed and the Material Subcontract, this Deed prevails.

1.5 Project Documents

The Material Subcontractor acknowledges that it has received a copy of the Project Agreement, redacted to remove all information specified in the Confidential Information Schedule.

1.6 Inconsistency

Where there is an inconsistency, ambiguity or discrepancy between this Deed and any other State Project Document, then the order of precedence in clause 2.3 (*Inconsistency between State Project Documents*) of the Project Agreement applies.

1.7 Business Day

If the day on or by which anything is to be done in accordance with this Deed is not a Business Day, that thing must be done no later than the next Business Day.

1.8 Prior approval or consent

Where the Key Subcontractor or the Material Subcontractor are required by this Deed to obtain the State's consent or approval to an action, document or thing, unless otherwise expressly stated, that consent or approval must be obtained prior to the actions, document or thing occurring or coming into effect.

1.9 Action without delay

Unless there is a provision in this Deed which specifies a period of time in which something must be done by the parties, all things must be done without undue delay.

1.10 Provisions limiting or excluding liability

- (a) **(No limit)**: A right of the State or any obligation of the Key Subcontractor or the Material Subcontractor under this Deed will not limit or exclude any other right of the State or obligation of the Key Subcontractor or the Material Subcontractor under this Deed unless expressly stated.
- (b) **(Permitted by Law)**: Any provision of this Deed which seeks, either expressly or by implication, to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.

1.11 Relationship of the parties

Unless otherwise expressly provided, this Deed does not:



- (a) **(no additional relationship)**: create a partnership, joint venture, fiduciary, employment or agency relationship between the parties; or
- (b) **(no good faith)**: impose any duty of good faith on the State.

1.12 Approvals, directions and notices in writing

Unless otherwise expressly provided in this Deed or agreed between the parties, all approvals, consents, directions, requirements, requests, claims, notices, agreements and demands given or required to be given under this Deed must be given in writing.

1.13 State's rights and obligations

- (a) **(Acknowledgement)**: The parties acknowledge the substance, operation and potential effect and consequences of clause 2.13 (*State's executive rights and duties*) of the Project Agreement in relation to this Deed.
- (b) **(No Claim)**: Subject to clause 1.13(c), the Key Subcontractor and the Material Subcontractor will not be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its executive or statutory rights or duties.
- (c) **(Liability for breach)**: Clauses 1.13(a) and (b) do not limit any Liability which the State would have had to the Key Subcontractor or the Material Subcontractor under any State Project Document as a result of a breach by the State of a term of any State Project Document but for these clauses.

1.14 Reasonable endeavours of State

Any statement in this Deed providing that the State will use or exercise 'reasonable endeavours' or 'act reasonably' in relation to an outcome, means that the State:

- (a) **(relevant steps)**: will take steps to bring about the relevant outcome so far as it is reasonably able to do so, having regard to its resources and other responsibilities;
- (b) **(no guarantee)**: cannot guarantee the relevant outcome; and
- (c) **(no obligation)**: is not required to:
 - (1) exercise a right of any Government Party, or to influence, over-ride, interfere with or direct any other Government Party in the proper exercise and performance of its legal, executive or statutory rights, duties and functions;
 - (2) exercise a power or discretion in a manner that the State regards as not in the public interest;
 - (3) develop or implement new policy;
 - (4) procure legislation; or
 - (5) act in any way that the State regards as not in the public interest.



2 Conditions precedent

The satisfaction or waiver of the Conditions Precedent in accordance with clause 3 (*Conditions Precedent*) of the Project Agreement, is a condition precedent to the coming into operation of this Deed (other than this clause 2 and clauses 1.1 to 1.3, 1.7, 1.11, 1.12, 1.13, 1.14, 4, 7, 8, 10, and 11).

3 Acknowledgments

3.1 By the Material Subcontractor concerning the State's rights

The Material Subcontractor acknowledges the State's rights under clauses 16.3 (*State's right to enter, inspect and test*), 25 (*Defects*), 28.5 (*Incidents*), 41 (*Step-in by the State*), 44 (*Events of Default*), 45 (*Termination*), 57 (*Confidential Information and disclosure*) and 62.2 (*Probity Investigation*) of the Project Agreement and the other relevant clauses listed in clause 13.3(c) (*Requirements for Subcontracting*) of the Project Agreement.

3.2 By the Key Subcontractor

The Key Subcontractor is bound by, and must cooperate in the implementation of, this Deed. It acknowledges that this Deed is intended to benefit only the Material Subcontractor and the State and does not in any way affect any obligation of the Key Subcontractor under the Material Subcontract or under any Project Document except as expressly set out herein.

4 Representations and warranties by the Material Subcontractor

The Material Subcontractor represents and warrants for the benefit of the State that:

- (a) **(power to execute)**: it has the power to execute, deliver and carry out its obligations under this Deed, the Material Subcontract and each other Project Document to which it is a party and all necessary action has been taken to authorise that execution, delivery and performance;
- (b) **(legality)**: the execution, delivery and performance of this Deed, the Material Subcontract and each other Project Document to which it is a party does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;
- (c) **(validity)**: this Deed, the Material Subcontract and each other Project Document to which it is a party constitutes a valid and legally binding obligation on it in accordance with its terms;
- (d) **(registration)**: it is duly registered, properly constituted and remains in existence;
- (e) **(no trust relationship)**: except as stated in this Deed, it is not the trustee or Responsible Entity of any trust nor does it hold any property subject to or impressed by any trust;



- (f) **(information true and correct)**: all information provided by it to the State is, to the best of its knowledge and belief (having undertaken enquiries reasonably expected of a skilled professional carrying out the obligations of the Material Subcontractor under the Material Subcontract), true and correct as at the date on which it is provided and the Material Subcontractor is not aware of any material facts or circumstances that have not been disclosed to the State and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this Deed or to consent to the entry into the Material Subcontract;
- (g) **(litigation)**: no Claim against it is current or pending or (to its knowledge) is threatened, which will or is likely to have a material adverse effect upon it or its ability to perform its financial and other obligations under this Deed, the Material Subcontract or any other Project Document to which it is a party;
- (h) **(Insolvency Event)**: no Insolvency Event has occurred in respect of it;
- (i) **(no default)**:
 - (1) no default has occurred under any document or agreement binding on it or its assets which relates to financial indebtedness; and
 - (2) nothing else has occurred,which, with the giving of notice or lapse of time, constitute an event of default, cancellation, prepayment event (pursuant to a bona fide right to exercise prepayment) or similar event (whatever called) under any such document or agreement, would have a Material Adverse Effect;
- (j) **(no immunity)**: neither it nor any of its assets enjoys any immunity from set off, suit or execution; and
- (k) **(own investigations)**: in entering into this Deed, the Material Subcontract and any other Project Document to which it is a party it relied upon its own investigations and has not relied upon any representation or warranty about its subject matter by the State, the Key Subcontractor or any other person unless in respect of the Key Subcontractor or any other person, other than the State or any of its Associates, it is expressly permitted to do so in accordance with a Project Document to which it is a party.

5 State's option to novate to the State or Substitute Party

5.1 Option

- (a) **(Novation Notice)**: The State may require a novation of the Material Subcontract if the Project Agreement has been terminated and:
 - (1) the Key Subcontract has been terminated, rescinded, repudiated or suspended; or
 - (2) a Default Event (Key Subcontract) has occurred and has not been remedied,

by giving a notice **(Novation Notice)** to the Material Subcontractor and the Key Subcontractor. The Novation Notice must specify the person to whom the State intends to novate the Material Subcontract and whether this will be the State, any State Associate or any other person **(Substitute Party)**.



- (b) **(Material Subcontractor's obligations to continue):** If the State issues a Novation Notice, then the Material Subcontractor and the Key Subcontractor must comply with this clause 5.1 and, until the Novation Notice Date, the Material Subcontractor must continue to perform its obligations in accordance with the Material Subcontract.
- (c) **(Material Subcontractor to continue work):** If the Material Subcontractor has exercised any rights it has to suspend the performance of any of its obligations under the Material Subcontract, the Material Subcontractor must recommence performance of those obligations from the Novation Notice Date or the date on which the cause of the suspension is remedied (whichever is the earlier).
- (d) **(Novation Notice not a Default Event):** The Material Subcontractor acknowledges that the giving of a Novation Notice by the State will not of itself contravene, or constitute a Default Event under the Material Subcontract or entitle the Material Subcontractor to exercise any power (including termination) in accordance with it.

5.2 Novation

From the Novation Notice Date, subject to clauses 5.3 and 5.4, the novated Material Subcontract will take effect:

- (a) **(agreement):** as an agreement between the Substitute Party and the Material Subcontractor;
- (b) **(as if Substitute Party named as Key Subcontractor):** as if the Substitute Party had been named as the Key Subcontractor in the Material Subcontract;
- (c) **(references to Key Subcontractor):** so that each reference in the Material Subcontract to the Key Subcontractor is a reference to the Substitute Party;
- (d) **(transfer of rights obligations and liabilities):** so that the rights, obligations and liabilities of the Key Subcontractor under the Material Subcontract become the rights, obligations and liabilities of the Substitute Party, excluding any accrued rights or liabilities of the Key Subcontractor to the extent that those rights or liabilities arose prior to the Novation Notice Date;
- (e) **(Material Subcontractor):** so that the Material Subcontractor must comply with all of its obligations under the Material Subcontract for the benefit of the Substitute Party; and
- (f) **(release of Key Subcontractor):** so that the Key Subcontractor is released from the obligations and liabilities under the Material Subcontract assumed by the Substitute Party in accordance with clause 5.2(d) or which relate to events arising after the Novation Notice Date.

5.3 Novation to a Substitute Party

- (a) **(Information to be provided by the State):** If the State gives a Novation Notice that states that the Key Subcontractor must novate the Material Subcontract to a Substitute Party other than the State or a State Associate, the State must, at the time it gives the Novation Notice, provide to the Material Subcontractor the following particulars of that Substitute Party:
 - (1) the name, place of incorporation and identity of the proposed Substitute Party and its shareholder(s) (including, unless a

- shareholder is listed on a securities exchange, the ultimate shareholders);
- (2) if available, its most recent published audited accounts; and
 - (3) sufficient particulars of the finance available to the Substitute Party to enable the Material Subcontractor to decide whether to grant its consent to the Substitute Party.
- (b) **(Consent by Material Subcontractor):** A novation to and the giving of a Novation Notice with respect to, a Substitute Party other than the State or a State Associate in accordance with this clause 5.3 will only be effective if the Material Subcontractor consents to the novation (such consent not to be unreasonably withheld or delayed) or is deemed to have consented in accordance with clause 5.3(e).
- (c) **(Request for further information):** Within 5 Business Days of receiving information from the State in accordance with clause 5.3(a), the Material Subcontractor may make a written request for further information it reasonably requires to enable it to decide whether to grant consent in accordance with clause 5.3(b).
- (d) **(Further information):** The State must (as soon as practicable), in response to a request for further information under clause 5.3(c):
- (1) respond to the request; and
 - (2) supply the Material Subcontractor with such additional information as the Material Subcontractor reasonably requests.
- (e) **(Deemed consent):** The Material Subcontractor's consent to the novation will be deemed to be given if the Material Subcontractor has not notified the State whether it consents to the novation within 15 Business Days of the later of:
- (1) the receipt of the Novation Notice; and
 - (2) the receipt of the State's response to the Maintenance Subcontractor's request for information under clause 5.3(d).
- (f) **(Unreasonably withholding consent):** The Material Subcontractor is not entitled to refuse consent to the novation unless:
- (1) the grounds for refusal are reasonable and are based on:
 - (A) the proposed documentation for the Substitute Party to assume the rights and obligations of the Key Subcontractor in accordance with the Material Subcontract not being effective to substitute the Substitute Party for the Key Subcontractor;
 - (B) the Substitute Party not having the legal capacity, power and authorisation to become a party to and perform the obligations of the Key Subcontractor in accordance with the Material Subcontract including any necessary authorisations and consents;
 - (C) the technical competence or financial standing of the Substitute Party being insufficient for it to meet the obligations of the Key Subcontractor in accordance with the Material Subcontract; or



- (D) the Material Subcontractor being placed in breach of any Laws by the proposed novation and assignment; and
- (2) it has notified the State of such reasons.
- (g) **(If Material Subcontractor withholds consent)**: If the Material Subcontractor withholds its consent to the novation in accordance with this clause 5.3, this will not prejudice the ability of the State to give one or more subsequent Novation Notices containing changed particulars relating to the same Substitute Party or particulars relating to another Substitute Party.

5.4 Accrued obligations and liabilities

Clause 5.3 does not operate to:

- (a) **(State to assume obligations or Liabilities)**: require the State to assume any obligations or Liabilities arising from, or which are required to be performed in connection with, the Material Subcontract prior to the Novation Notice Date unless expressly required to do so in clause 5.3; or
- (b) **(release Key Subcontractor)**: release the Key Subcontractor from such obligations or Liabilities unless expressly provided for in clause 5.3.

6 Security

If the Material Subcontractor has provided or procured the provision of any security (including any performance guarantee) to the Key Subcontractor under the Material Subcontract:

- (a) **(assignable security)**: if the security is capable of assignment, the Key Subcontractor must, at the Novation Notice Date, assign or procure the assignment of the benefit of that security to the Substitute Party; or
- (b) **(non-assignable security)**: if the security is not capable of assignment, at the Novation Notice Date:
 - (1) the Material Subcontractor must provide replacement security to the Substitute Party in the same form and amount and on the same terms; and
 - (2) on satisfaction of clause 6(b)(1), the Key Subcontractor must release or procure the release of that security.

7 Dispute Resolution

7.1 Procedure for resolving disputes

- (a) **(Procedure)**: Any dispute arising under this Deed must be resolved by the parties to that dispute (**Disputing Parties**) in accordance with this clause 7.
- (b) **(Dispute resolution procedure)**: The procedure that is to be followed to resolve a dispute is as follows:



- (1) firstly, the dispute must be the subject of negotiation as required by clause 7.2;
- (2) secondly, if the dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 7.2(c)(1) the Disputing Parties may agree that the dispute be referred to an expert for determination in accordance with clauses 7.4 to 7.9 or to arbitration under clause 8; and
- (3) thirdly, if:
 - (A) the dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 7.2(c)(1) and irrespective of whether the Disputing Parties failed to meet as required by that clause or whether having so met the Disputing Parties failed to agree whether the Dispute should be referred to an expert or to arbitration within 20 Business Days after the expiration of the period for negotiation referred to in clause 7.2(c)(1);
 - (B) the dispute has been referred to expert determination and a determination is not made by the expert within 30 days after the expert's acceptance of appointment; or
 - (C) the dispute is referred to expert determination and a notice of dissatisfaction is given in accordance with clause 7.6(a),then the dispute must be referred to arbitration in accordance with clause 8.

7.2 Negotiation

- (a) **(Notification)**: If a dispute arises then a party may give notice to each other Disputing Party requesting that the dispute be referred for resolution by negotiation between the Chief Executive Officers (or equivalent) of the Disputing Parties (**Representatives**).
- (b) **(Contents of Notice)**: A notice under clause 7.2(a) must:
 - (1) state that it is a notice under this clause 7; and
 - (2) include or be accompanied by particulars of the matters which are the subject of the dispute.
- (c) **(Attempt to resolve Dispute)**: If a dispute is referred for resolution by negotiation under clause 7.2(a), then:
 - (1) the Representatives must meet and attempt in good faith to resolve the dispute (in whole or in part) within 10 Business Days of the date on which the notice under clause 7.2(a) is received (or such later date as the Disputing Parties may agree); and
 - (2) any agreement reached between the Representatives will be reduced to writing, signed by or on behalf of each Disputing Party and will be contractually binding on the Disputing Parties.

7.3 Expert determination

If:



- (a) **(dispute unresolved by Representatives)**: a dispute which has been referred to the Representatives for negotiation in accordance with clause 7.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 7.2(c)(1); and
- (b) **(referral to expert)**: the Disputing Parties agree within 20 Business Days after the expiration of the period for negotiation referred to in clause 7.2(c)(1), that the dispute be referred to an expert for determination,

then those parts of the dispute which remain unresolved will be referred to an expert for determination under clauses 7.4 to 7.9. For the avoidance of doubt, a dispute may only be referred to an expert for determination by agreement of the Disputing Parties.

7.4 Selection of expert

- (a) **(Exchange of lists of 3 preferred experts)**: Within 7 Business Days after the date on which the Disputing Parties agree to refer a dispute to an expert for determination under clause 7.3, the Disputing Parties must exchange lists of 3 persons (in order of preference) who, if appointed, would satisfy the requirements of clause 7.4(d), from whom the expert is to be chosen.
- (b) **(Appointment of person who appears on both lists)**: Any person who appears on the list of all of the Disputing Parties exchanged under clause 7.4(a) will be appointed as the expert to determine a dispute and if more than one person appears on the list of all of the Disputing Parties, the person given the highest order of priority by the party who gave the notice under clause 7.2(a) will be appointed.
- (c) **(Appointment if no person appears on both lists)**: If no person appears on the list of all of the Disputing Parties and the Disputing Parties cannot otherwise agree an expert, the party which gave the notice under clause 7.2(a) must procure:
 - (1) the president (or the senior non-executive officer, howsoever described) of the institute or governing body for the technical or professional discipline the subject of the relevant dispute to nominate the expert, having regard to, but not being bound by, those persons proposed by the Disputing Parties under clause 7.4(a); or
 - (2) if there is no governing body for the technical or professional discipline the subject of the relevant dispute or the Disputing Parties cannot agree the technical or professional discipline relevant to the dispute or such governing body advises that it will not nominate an expert, the President of the Australian Centre for International Commercial Arbitration to nominate a person to act as the expert, having regard to, but not being bound by, those persons proposed by the Disputing Parties under clause 7.4(a),within 7 Business Days of the exchange of notices under clause 7.4(a).
- (d) **(Appropriate skills)**: It is the intention of the parties that the expert appointed to determine a dispute will be an independent person with appropriate skills having regard to the nature of the matters in dispute.
- (e) **(No entitlement to challenge appointment)**: No Disputing Party will be entitled to challenge the appointment of an expert under this clause 7.4 on the basis that the expert does not satisfy the requirements of clause 7.4(d).



- (f) **(Not an arbitration agreement):** Any agreement for expert determination under this Deed will not constitute an arbitration agreement for the purposes of the *Commercial Arbitration Act 2011 (Vic)*.
- (g) **(Agreement):** Once an expert is appointed, the Disputing Parties must enter into an agreement with the expert on the terms of the Expert Determination Agreement or such other reasonable terms as the expert may require.

7.5 Rules of expert determination

The expert determination process will be administered, and the expert will be required to act, under the terms of the Expert Determination Agreement.

7.6 Expert finding

- (a) **(Notification):** The determination of the expert must be in writing and will be final and binding on the Disputing Parties unless, within 10 Business Days of receipt of the determination, a Disputing Party gives notice to each other Disputing Party of its dissatisfaction and intention to refer the matter to arbitration in accordance with clause 8.
- (b) **(Amendment to determination):** Upon submission by any Disputing Party, the expert may amend the determination to correct:
 - (1) a clerical mistake;
 - (2) an error from an accidental slip or omission;
 - (3) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
 - (4) a defect in form.

7.7 Liability of expert

- (a) **(Liability of expert):** The Disputing Parties agree:
 - (1) that the expert will not be liable in connection with the expert determination, except in the case of fraud on the part of the expert; and
 - (2) to indemnify the expert against any Claim or Liability in connection with the expert determination, except in the case of fraud on the part of the expert, in which case a Claim may be made against him or her by any person who is party to the dispute.
- (b) **(Engagement):** The Disputing Parties will jointly engage the expert services in connection with the expert determination proceedings and each Disputing Party will seek a separate Tax Invoice equal to its share of the cost of the expert.

7.8 Costs

The Disputing Parties must:

- (a) **(own costs):** bear their own costs in connection with the expert determination proceedings; and
- (b) **(expert costs):** pay an equal portion of the costs of the expert.



7.9 Proportionate Liability

To the extent permitted by Law, the expert will have no power to apply or to have regard to the provisions of any proportionate liability legislation which might in the absence of this clause 7.9, have applied to any dispute referred to the expert in accordance with this clause 7.

8 Arbitration

8.1 Reference to Arbitration

- (a) **(Dispute):** If:
- (1) a dispute:
 - (A) which has been referred to the Disputing Parties' Representatives for negotiation in accordance with clause 7.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 7.2(c)(1); and
 - (B) the Disputing Parties do not agree to refer the dispute to an expert for determination; or
 - (2) in the case of a dispute which the Disputing Parties agree to refer to expert determination under clause 7.3:
 - (A) a determination is not made within 30 days of the expert's acceptance of the appointment; or
 - (B) a notice of dissatisfaction is given in accordance with clause 7.6,
- then any Disputing Party may notify the other Disputing Parties that it requires the dispute to be referred to arbitration.
- (b) **(Referral):** Upon receipt by a Disputing Party of a notice under clause 8.1(a), the dispute will be referred to arbitration.

8.2 Arbitration

- (a) **(ACICA Rules):** Arbitration in accordance with this clause 8 will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Rules) as current at the date the Dispute is referred to arbitration and as otherwise set out in this clause 8 with this clause 8 having priority to the extent of any inconsistency.
- (b) **(Seat):** The seat of the arbitration will be Melbourne, Victoria.
- (c) **(Language):** The language of the arbitration will be English.

8.3 Appointment of arbitrator

The parties will endeavour to agree on the arbitrator or arbitrators (if the parties agree to appoint three arbitrators), but if no such agreement is reached within 14 Business Days of the dispute being referred to arbitration in accordance with clause 8.1(b), the arbitrator or

arbitrators will be appointed by the Australian Centre for International Commercial Arbitration.

8.4 General Principles for conduct of arbitration

- (a) **(Conduct of arbitration):** The Disputing Parties agree that:
- (1) they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any dispute;
 - (2) any arbitration conducted in accordance with this clause 8 will not necessarily mimic court proceedings of the seat of the arbitration or the place where hearings take place (if different), and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and
 - (3) in conducting the arbitration, the arbitrator must take into account the matters set out in clauses 8.4(a)(1) and 8.4(a)(2).
- (b) **(Evidence in writing):** All evidence in chief must be in writing unless otherwise ordered by the arbitrator.
- (c) **(Evidence and discovery):** The rules for evidence and discovery will be the IBA Rules on the Taking of Evidence in International Arbitration current at the date of arbitration (or if there are no current rules, the most recent version of those rules).
- (d) **(Oral hearing):** The oral hearing must be conducted as follows:
- (1) any oral hearing must take place in Melbourne, Victoria and all outstanding issues must be addressed at the oral hearing;
 - (2) the date and duration of the oral hearing must be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in clause 8.4(a) when determining the duration of the oral hearing;
 - (3) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
 - (4) the oral hearing must be conducted on a stop clock basis with the effect that the time available to the Disputing Parties must be split equally between the Disputing Parties so that each Disputing Party has the same time to conduct its case unless, in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the Disputing Parties;
 - (5) not less than 28 days prior to the date fixed for oral hearing each of the Disputing Parties must give notice of those witnesses (both factual and expert) of each other Disputing Party that it wishes to attend the hearing for cross examination;
 - (6) in exceptional circumstances the arbitrator may amend the date of hearing and extend the time for the oral hearing set in accordance with clause 8.4(d)(2);
 - (7) a Disputing Party will not be bound to accept the written evidence of a witness submitted on behalf of the opposing Disputing Party which is not challenged in cross examination; and



- (8) each Disputing Party is expected to put its case on significant issues in cross examination of a relevant witness called by the other Disputing Party or, where it seeks to challenge the evidence of a witness not called for cross-examination by reference to other evidence, to identify that evidence in its written opening submissions so that the opposing Disputing Party may know the nature of and basis for the challenge to the witness' written evidence.
- (e) **(Experts):** Unless otherwise ordered each Disputing Party may only rely upon one expert witness in connection with any recognised area of specialisation.

8.5 Proportional liability

To the extent permitted by Law, the arbitrator will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this clause 8.5, have applied to any dispute referred to arbitration in accordance with this clause 8.

8.6 Extension of ambit of arbitration proceedings

- (a) **(Extending disputes):** Where:
 - (1) a dispute between the Disputing Parties to this Deed is referred to arbitration in accordance with this clause 8; and
 - (2) there is some other dispute also between the Disputing Parties to and in accordance with this Deed (whenever occurring),the arbitrator may, upon application being made to the arbitrator by one or more of the Disputing Parties at any time before a final award is made in relation to the first-mentioned dispute, make an order directing that the arbitration be extended so as to include the other dispute.
- (b) **(Arbitrator's order):** An arbitrator may make an order in accordance with clause 8.6(a) on such terms and conditions (if any) as the arbitrator thinks fit.

8.7 Award final and binding

- (a) **(Final and binding):** Subject to clause 8.7(b), any award will be final and binding on the Disputing Parties.
- (b) **(Appeal):** Each Disputing Party consents to any appeal to a court where that appeal is made under the *Commercial Arbitration Act 2011* (Vic) on a question of law arising in connection with an arbitral award made in accordance with this clause 8.

8.8 Continue to perform

Notwithstanding the existence of a dispute, each Disputing Party must continue to carry out its obligations in accordance with this Deed.

8.9 Governing law of arbitration agreement

The Law governing this arbitration agreement is the law of Victoria, Australia.



8.10 Interlocutory relief

This clause 8 does not prevent a Disputing Party from seeking urgent interlocutory relief from a court of competent jurisdiction where, in that Disputing Party's reasonable opinion, that action is necessary to protect that Disputing Party's rights.

9 Termination of this Deed

- (a) **(Satisfaction of obligations under the Material Subcontract):** This Deed will terminate upon the performance and satisfaction of all of the obligations under the Material Subcontract.
- (b) **(Does not affect rights of parties):** The termination of this Deed does not affect the rights of any party which have accrued to that party before the date of termination.

10 Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Deed:

- (a) **(in writing):** must be in writing;
- (b) **(addressed):** must be addressed as set out below (or as otherwise notified by that party to each other party from time to time);

State:

Attention: Package Director, Tunnel and Stations PPP
Address: Level 35, Nauru House, 80 Collins Street, Melbourne 3000
Email: PPP@melbournemetro.vic.gov.au

Key Subcontractor:

Attention: **[insert]**
Address: **[insert]**
Email: **[insert]**

Material Subcontractor:

Attention: **[insert]**
Address: **[insert]**
Email: **[insert]**

- (c) **(signed):** must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;



- (d) **(form of delivery)**: must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by both parties) to the email address of the addressee set out in clause 10(b); and
- (e) **(taken to be received)**: are taken to be received by the addressee at the address set out in clause 10(b):
 - (1) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00am on the next Business Day;
 - (2) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and
 - (3) in the case of email, the first to occur of:
 - (A) receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - (B) the time that the communication enters an information system which is under the control of the addressee; or
 - (C) the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00am on the next Business Day.

11 Miscellaneous

11.1 Governing Law and jurisdiction

- (a) **(Governing Law)**: This Deed is governed by, and must be construed according to, the Laws of Victoria, Australia.
- (b) **(Jurisdiction)**: Without limiting clauses 7 to 8, each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Deed.

11.2 Entire agreement

To the extent permitted by Law and in relation to its subject matter, this Deed:

- (a) **(entire understanding)**: embodies the entire understanding of the parties and constitutes the entire terms agreed by the parties; and
- (b) **(prior agreements)**: supersedes any prior agreement of the parties.



11.3 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to both parties) required by Law or reasonably requested by another party to give effect to this Deed.

11.4 Survival of certain provisions

- (a) **(Surviving clauses):** All provisions of this Deed which, expressly or by implication from their nature, are intended to survive the rescission, termination or expiration of this Deed will survive the rescission, termination or expiration of this Deed, including any provisions in connection with:
 - (1) the State's rights to set off and recover money;
 - (2) confidentiality or privacy;
 - (3) Intellectual Property Rights;
 - (4) any obligation to make any information and records available to the State;
 - (5) any right or obligation arising on termination of this Deed; or
 - (6) any limitation of liability.
- (b) **(Interpretation):** No provision of this Deed which is expressed to survive the rescission, termination or expiration of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the rescission, termination or expiration of this Deed.
- (c) **(Survival of rights and obligations):** No right or obligation of any party will merge on completion of any transaction under this Deed. All rights and obligations in accordance with this Deed survive the execution and delivery of any transfer or other document which implements any transaction in accordance with this Deed.

11.5 Waiver

- (a) **(Writing):** A waiver given by a party in accordance with this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver):** A failure to, a delay in or the partial exercise or enforcement of a right provided by Law or in accordance with this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or in accordance with this Deed.
- (c) **(No waiver of another breach):** No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

11.6 Consents, approvals and directions

- (a) **(State):** A consent or approval required in accordance with this Deed from the State may be given or withheld, or may be given subject to any conditions, as the State thinks fit, unless this Deed expressly provides otherwise.



- (b) **(Key Subcontractor or Material Subcontractor)**: A consent or approval required in accordance with this Deed from the Key Subcontractor or the Material Subcontractor may not be unreasonably withheld or delayed, unless this Deed expressly provides otherwise.

11.7 Amendments

Except as otherwise expressly provided in this Deed, this Deed may only be varied by a deed executed by or on behalf of each party.

11.8 Expenses

Except as otherwise expressly provided in this Deed each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

11.9 Severance

If, at any time, a provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) **(under this Deed)**: any other provision of this Deed; or
- (b) **(under another jurisdiction)**: that provision under the Law of any other jurisdiction.

11.10 Counterparts

This Deed may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same deed.

11.11 Moratorium legislation

To the fullest extent permitted by Law, the provisions of all Laws which operate to lessen or affect in favour of a party other than the State any obligation under this Deed, or to prejudicially affect the exercise by the State of any right, power or remedy under this Deed or otherwise, are expressly waived.

11.12 Proportionate liability

- (a) **(Excluded operation of Wrongs Act)**: The operation of Part IVAA of the *Wrongs Act 1958 (Vic)* is excluded in relation to all and any rights, obligations or liabilities of any party under this Deed whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) **(Rights, obligations and liabilities)**: Without limiting clause 11.12(a), the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Deed and not otherwise, whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.



11.13 Indemnity held on trust

- (a) **(Benefit of indemnities)**: The State holds on trust for its Associates the benefit of:
- (1) each indemnity, promise and release given by the Key Subcontractor or the Material Subcontractor under this Deed in favour of the State's Associates; and
 - (2) each right in this Deed to the extent that such right is expressly provided to be for the benefit of the State's Associates.
- (b) **(Key Subcontractor and Material Subcontractor acknowledgement)**: Each of the Key Subcontractor and the Material Subcontractor acknowledge the existence of such trusts and consent to:
- (1) the State exercising rights in relation to, or otherwise enforcing such indemnities, releases and rights on behalf of its Associates; and
 - (2) the State's Associates exercising rights in relation to, or otherwise enforcing the indemnities, releases and those rights as if they were a party to this Deed.
- (c) **(Consent not required)**: The parties agree that the State does not require the consent of its Associates to amend or waive any provision of this Deed.

11.14 Assignment

Except as expressly contemplated by this Deed, none of the Key Subcontractor or the Material Subcontractor may assign or transfer any of its rights or obligations under this Deed or the Material Subcontract.

11.15 Set off

Without limiting the State's rights under the Project Agreement, all moneys which the State may pay or incur and for which the Key Subcontractor is liable under this Deed to make reimbursement to or indemnify the State:

- (a) may be deducted by the State from all moneys due, becoming due, or to become due from it to the Key Subcontractor; or
- (b) may be recovered by the State from the Key Subcontractor by action at Law or otherwise.

11.16 Limitation of liability

[State Note: The drafting of this clause is subject to the structure and drafting of any liability caps under the relevant Material Subcontracts.]

Despite any other provision of this Deed, the Material Subcontractor's maximum aggregate liability to the Key Subcontractor, Project Co, the State, and any person to whom the Material Subcontract is novated or assigned in accordance with the terms of this Deed, in respect of any loss, Claim or other Liability under, arising out of or in connection with the Project, the Material Subcontract or this Deed:

- (a) in contract;
- (b) in tort (including negligence);



(c) under any statute; and

(d) otherwise at Law,

and irrespective of how it arises, is limited to the [General Liability Cap (as defined in the Material Subcontract)], subject to any exclusions from, reductions or increases in, or resets of that liability cap under the Material Subcontract.

Signing page

Executed as a deed

[State Note: Execution blocks to be inserted.]



Schedule 16

Expert Determination Agreement



HERBERT
SMITH
FREEHILLS

Agreement

Metro Tunnel
Tunnel and Stations PPP

Expert Determination Agreement

[insert Party 1]

[insert Party 2]

***[insert name and address of Expert agreed
between the Parties or appointed pursuant to
clause 46.4 (Selection of expert) of the Project
Agreement or the equivalent clause in each
Relevant Agreement]***

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Expert Determination Agreement

Date ►

Between the parties

[Insert party corporate details]

[Insert ACN/ABN] of **[insert address]**

[Insert party corporate details]

[Insert ACN/ABN] of **[insert address]**

Expert

[Insert name of Expert agreed between the Parties or appointed pursuant to clause 46.4 (Selection of expert) of the Project Agreement or the equivalent clause in the Relevant Agreement]

[Insert ACN/ABN] of **[insert address]**

Recitals

- 1 The background to the Project is set out in the Project Agreement.
 - 2 On **[insert]**, the Parties agreed that a Matter described in Schedule 1 be determined by an Expert appointed under clause **[insert relevant clause reference]** of the Relevant Agreement.
 - 3 In accordance with clause **[insert relevant clause reference]** of the Relevant Agreement, the Expert has been appointed to determine the Matter in accordance with the process set out in this Agreement.
-

This agreement witnesses as follows:



1 Definitions and interpretation

1.1 Project Agreement definitions

Unless otherwise expressly defined, expressions used in this Agreement have the meanings given to them in the Project Agreement.

1.2 Definitions

The meanings of the terms used in this agreement are set out below.

| Term | Meaning |
|---|--|
| Agreement | means this agreement and includes all schedules, exhibits, attachments and annexures to it. |
| Code of Conduct | means the code of conduct set out in section 2 of Schedule 2. |
| Matter | means a dispute under, arising out of, or in connection with the Relevant Agreement and referred to expert determination under clause [<i>insert relevant clause reference</i>] of the Relevant Agreement. |
| Party | means each of [<i>insert party names</i>], and 'Parties' means all of them. |
| Project Agreement | means the document entitled 'Project Agreement' between the State and Project Co dated [<i>insert</i>]. |
| Relevant Agreement | means [<i>insert the relevant Project Document under which the Matter arose.</i>] |
| Rules | means the 'Rules for Expert Determination Process' set out in Schedule 2. |
| Schedule of Fees and Disbursements | is contained in Schedule 3. |

1.3 Interpretation

In this Agreement:

- (a) (**headings**): headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;
- and unless the context otherwise requires:
- (b) (**count and gender**): a word importing the singular includes the plural and vice versa and a word indicating a gender includes every other gender;
 - (c) (**references**): a reference to:
 - (1) a party, clause, Schedule, Exhibit, or Annexure is a reference to a party, clause, Schedule, Exhibit or Annexure of or to this Agreement; and
 - (2) a section is a reference to a section of a Schedule;
 - (d) (**document as amended**): a reference to this Agreement or to any other deed, agreement, document or instrument includes a reference to this Agreement or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
 - (e) (**party**): a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
 - (f) (**person**): a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
 - (g) (**legislation**): a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
 - (h) (**definitions**): if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
 - (i) ("**includes**"): "includes" will be read as if followed by the phrase "(without limitation)";
 - (j) ("**or**"): the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
 - (k) (**information**): a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
 - (l) ("**\$**"): a reference to "\$", "AUD" or "dollar" is to Australian currency;
 - (m) (**time**): a reference to time is a reference to time in Melbourne, Australia;
 - (n) (**rights**): a reference to a right includes any benefit, remedy, function, discretion, authority or power;
 - (o) (**obligations and liabilities**): a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
 - (p) ("**may**"): the term "may", when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or

remedy in its absolute and unfettered discretion and the State has no obligation to do so;

- (q) **(construction)**: where there is a reference to an Authority, institute or association or other body referred to in this Agreement which:
 - (1) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Agreement is deemed to refer to that other entity; or
 - (2) ceases to exist, this Agreement is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (r) **(remedy)**: the use of the words 'remedy' 'cure' or any form of such words in this Agreement means that the event to be remedied or cured must be remedied or cured or its effects overcome; and
- (s) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

1.4 Business Day

If the day on or by which anything is to be done in accordance with this Agreement is not a Business Day, that thing must be done no later than the next Business Day.

1.5 Approvals, directions and notices in writing

Unless otherwise expressly provided in this Agreement or agreed between the parties, all approvals, consents, directions, requirements, requests, claims, notices, agreements and demands given or required to be given under this Agreement must be given in writing.

1.6 Action without delay

Unless there is a provision in this Agreement which specifies a period of time in which something must be done by the parties, all things must be done without undue delay.

1.7 Provisions limiting or excluding liability

- (a) **(No limit)**: A right of the State or any obligation of the parties under this Agreement will not limit or exclude any other right of the State or obligation of the parties under this Agreement unless expressly stated.
- (b) **(Permitted by Law)**: Any provision of this Agreement which seeks, either expressly or by implication, to limit or exclude Liability of a party is to be construed as doing so only to the extent permitted by Law.

1.8 Relationship of parties

Unless otherwise expressly provided, nothing in this Agreement:

- (a) **(no additional relationship)**: creates a partnership, joint venture, fiduciary, employment or agency relationship between the parties; or
- (b) **(no good faith)**: imposes any duty of good faith on the State.

1.9 Cost of carrying out obligations

Each party must carry out its obligations under this Agreement at its own cost, unless expressly provided otherwise.

2 Appointment of Expert

- (a) **(Appointment):** The Parties appoint the Expert to determine the Matter in the manner and within the times set out in this Agreement and the Expert accepts the appointment on the basis set out in this Agreement.
- (b) **(Applicable processes and rules):** The Parties agree that:
 - (1) the Expert will act as an expert and not as an arbitrator;
 - (2) neither the determination of the Matter, nor the process required by this Agreement is an arbitration and any conference conducted during the determination is not a hearing conducted under any legislation or rules relating to any form of arbitration;
 - (3) the rules of evidence do not apply to the determination; and
 - (4) the Expert must conduct the determination of the Matter in accordance with the Rules including the Code of Conduct.
- (c) **(Independence and bias):** If, at any time during the determination, the Expert becomes aware of circumstances that might reasonably be considered to adversely affect the Expert's capacity to act independently or impartially, the Expert must inform the Parties immediately and, unless the Parties agree otherwise, terminate this Agreement.

3 Confidentiality

- (a) **(Confidential information):** All proceedings and submissions relating to the determination (including the fact that any step in the determination is occurring), and all documents prepared for the purposes of the determination (including the Expert's determination), must be kept confidential.
- (b) **(Disclosure of information):** No such proceedings, submissions or documents, nor any other information relating to or arising out of the determination, may be divulged to any person, except:
 - (1) with the prior written consent of both Parties;
 - (2) as may be required by Law;
 - (3) for the purpose of subsequent arbitration; or
 - (4) to the extent necessary to give effect to or enforce the Expert's determination.

4 Costs and fees

- (a) **(Parties joint and severally liable):** As between the Parties and the Expert, the Parties are jointly and severally liable for the payment of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements.
- (b) **(Calculation of costs and fees):** The Parties agree, subject to the terms of the Relevant Agreement, as between themselves that:
 - (1) they will each pay one half of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements; and
 - (2) they will each bear their own costs of and incidental to the preparation of this Agreement and their participation in any determination.

5 Exclusion of liability and indemnity

Except in the case of fraud, the Expert will not be liable to either Party for any act or omission by the Expert in the performance or purported performance of this Agreement. The Parties jointly and severally indemnify the Expert against all Claims or Liability in connection with any act or omission by the Expert (except fraud) in the performance or purported performance by the Expert of the terms of this Agreement.

6 Co-operation of the Parties

Each Party agrees to take part in the determination in good faith and to comply with the reasonable requests and directions of the Expert in relation to the conduct of the determination.

7 Governing Law and jurisdiction

- (a) **(Governing law):** This Agreement is governed by, and must be construed according to, the Laws of Victoria, Australia.
- (b) **(Jurisdiction):** Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Agreement.



Schedule 1

The Matter

[State Note: Description of matter to be inserted.]

Schedule 2

Rules for Expert Determination Process

1 Commencement

The expert determination process begins when the Expert accepts an appointment to determine the Matter in accordance with these Rules including the Code of Conduct.

2 Code of Conduct

- (a) **(Expert's function):** The function of the Expert is to make a determination of the Matter in accordance with the Relevant Agreement and this Agreement, including these Rules and the Code of Conduct.
- (b) **(Submissions and responses):** The Expert must receive the written submissions and responses of the Parties in accordance with the procedures specified in these Rules and may require further information or documentation from the Parties which is reasonably necessary to determine the Matter.
- (c) **(Conference):** The Expert must decide whether a conference is necessary to receive further information. The Expert must inform the Parties of the subject matter of any conference and may hear representations only on those matters during any such conference.
- (d) **(Disclosure of material):** The Expert must disclose to both Parties all information and documents received.
- (e) **(No written submission):** If a Party fails to make a written submission, the Expert may continue with the process.
- (f) **(Contact with Expert):** Subject to section 4 of these Rules in relation to conferences, meetings and discussions with the Expert must only take place in the presence of both Parties.

3 Written Submissions

- (a) **(Party who gave notice):** Within 5 Business Days after the date this expert determination process begins, the Party who gave notice under clause **[insert]** of the Relevant Agreement (**Party A**) must give the other Party and the Expert a written statement of the Matter referred for Expert determination, any agreed statement of facts and a written submission on the Matter in support of Party A's contentions.
- (b) **(Other Party):** Within 5 Business Days after the statement in section 3(a) is served, the other Party must give Party A and the Expert a written response to Party A's submissions. If the Expert considers it appropriate, Party A may reply

in writing to the other Party's response given in accordance with section 3(b) within the time allowed by the Expert.

- (c) **(Further material)**: If the Expert decides further information or documentation is required for the determination of the Matter, the Expert may direct one or more Parties to provide such further submissions, information or documents as the Expert may require.
- (d) **(Disclosure of material)**: The Expert must disclose to both Parties all information and documents received.
- (e) **(Failure to make a written submission)**: If a Party fails to make a written submission, the Expert may continue with the process.

4 Conference

- (a) **(Expert to call conference)**: The Expert may, if he or she thinks appropriate, call a conference of the Parties. Unless the Parties agree otherwise, the conference will be held in Melbourne, Australia.
- (b) **(Date, venue and agenda)**: At least 5 Business Days before the conference, the Expert must inform the Parties of the date, venue and agenda for the conference.
- (c) **(Parties to appear)**: The Parties must appear at the conference and may make submissions on the subject matter of the conference. If a Party fails to appear at a conference of which that Party had been notified under section 4(b), the Expert and the other Party may nevertheless proceed with the conference and the absence of that Party will not terminate or discontinue the expert determination process.
- (d) **(Requirements)**: The Parties:
 - (1) may be accompanied at a conference by legal or other advisers; and
 - (2) will be bound by any procedural directions given by the Expert in relation to the expert determination process.
- (e) **(Privacy)**: The conference must be held in private.
- (f) **(Transcripts)**: If required by any Party, transcripts of the conference proceedings must be taken and made available to the Expert and the Parties.

5 General

- (a) **(Governing agreements and Rules)**: In making a determination or calling or holding a conference, the Expert must proceed in accordance with the Relevant Agreement, this Agreement and these Rules.
- (b) **(Contact with Expert)**: Subject to section 4(c), meetings and discussions with the Expert must only take place in the presence of both Parties.
- (c) **(Expert's independence)**: Without limiting clause 2(c) of this Agreement, the Expert must:
 - (1) inform the Parties of:

- (A) any relationship or interest with the Parties or their respective Associates;
 - (B) any interest the Expert has in the matters in dispute; and
 - (C) any circumstance which might reasonably be considered to adversely affect the expert's capacity to act independently or impartially,
- (2) immediately upon becoming aware of any such circumstances; and
 - (3) upon making any disclosure under this section 5(c), unless and until the Parties agree otherwise, terminate the proceedings.

6 The Determination

- (a) **(Timing):** As soon as possible after receipt of the submissions or after any conference and, in any event not later than 30 days after the Expert's acceptance of appointment, the Expert must:
 - (1) determine the Matter between the Parties; and
 - (2) notify the Parties of that determination.
- (b) **(Content and form):** The determination of the Expert must:
 - (1) be in writing stating the Expert's determination and giving reasons;
 - (2) be made on the basis of the submissions (if any) of the parties, the conference (if any) and the Expert's own expertise; and
 - (3) meet the requirements of the Relevant Agreement.
- (c) **(Final and binding):** To the extent permitted by Law, the Expert's determination will be final and binding on the Parties unless a notice of dissatisfaction is given in accordance with clause **[insert]** of the Relevant Agreement.

7 Costs

Security for costs of the Expert must be deposited by both Parties at the commencement of the Expert determination process in accordance with any direction of the Expert.

8 Modification

These Rules may be modified only by agreement of the Parties and, if the Expert has been appointed, the Expert.

9 Proportionate Liability

Notwithstanding anything else, to the extent permissible by Law, the Expert will have no power to apply or to have regard to the provisions of any proportional liability legislation



which might, in the absence of this provision, have applied to any dispute referred to Expert determination pursuant to clause **[insert]** of the Relevant Agreement.



Schedule 3

Schedule of Fees and Disbursements

[State Note: Expert's fees and disbursements to be inserted.]



Signing page

[State Note: Execution blocks to be inserted.]



Schedule 17

Confidential Information Schedule

[not disclosed]



Schedule 18

Finance Documents Schedule

Unless the context requires otherwise, capitalised terms not otherwise defined in this Agreement have the meaning given to them in the Facility Agreement.

Finance Documents means:

- (a) the Facility Agreement;
- (b) the Security Trust Deed;
- (c) each Security;
- (d) the Finance Direct Deed;
- (e) each Direct Deed;
- (f) each Hedging Agreement;
- (g) the Financiers' Certifier Deed;
- (h) any fee letters between the Borrower and a Financier;
- (i) the Subscription Agreement;
- (j) each Substitution Certificate;
- (k) each Beneficiary Accession Deed;
- (l) the Payment Directions Deed;
- (m) any Equity LC Support;
- (n) any other document or agreement agreed to be a Finance Document by the Borrower and the Facility Agent; and
- (o) any document or agreement entered into under or for the purpose of amending, novating or acceding to any of the above.



Schedule 19

Equity Documents Schedule

Unless the context requires otherwise, capitalised terms not otherwise defined in this Agreement have the meaning given to them in the Facility Agreement.

Equity Documents means each of the following documents:

- (a) the Investor Agreement;
- (b) the Partnership Deed; and
- (c) the Subscription Agreement.



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Schedule 20

Ownership Schedule

[not disclosed]

Schedule 21

Permitted Share Capital Dealing Schedule

Permitted Share Capital Dealing means:

- (a) in respect of a Share Capital Dealing relating to a Group Member, any sale, transfer or other disposal after Financial Close by:
- (1) an Initial Equity Investor; or
 - (2) a Related Body Corporate of an Initial Equity Investor,
- in each case to an **Equity Associate** of that Initial Equity Investor of its interest (whether directly or indirectly) in:
- (3) that Group Member; or
 - (4) any company that holds Securities in that Group Member,
- provided that the sale, transfer or disposal is conditional upon the transferred interest being transferred back to that Initial Equity Investor or another Equity Associate of that Initial Equity Investor if the transferee ceases to be an Equity Associate of that Initial Equity Investor (unless, prior to the transferee ceasing to be an Equity Associate of that Initial Equity Investor, the State gives its consent in accordance with the conditions set out in clause 53.5 to either the transferee continuing as the Equity Investor, or to a sale, transfer or other disposal by the transferee of its interest in the relevant Group Member or company that holds securities in that Group Member to a proposed new Equity Investor);
- (b) a Share Capital Dealing which occurs due to the acquisition of a relevant interest (as defined in section 608 of the Corporations Act) in any Entity listed on a stock exchange, of [not disclosed] or less of the Securities of that Entity;
- (c) a Share Capital Dealing which occurs due to the acquisition of a relevant interest (as defined in section 608 of the Corporations Act) relating to the Parent Guarantor of the D&C Subcontractor or the Maintenance Subcontractor, of [not disclosed] or less of the Securities of that Parent Guarantor; and
- (d) provided that a Major Default is not subsisting, a Share Capital Dealing which occurs due to a corporate restructure or reorganisation which results in a relevant interest (as defined in section 608 of the Corporations Act but as though a reference in that section to "securities" were a reference to Securities as defined in this Agreement) in Securities that were held by a person being held by a Wholly Owned Group Member of that person, and in respect of which not less than 5 Business Days prior notice (including details of the restructure) has been given to the State (provided that such restructure does not result in:
- (1) any sale, transfer or other disposal of Securities in a Group Member; or
 - (2) a Parent Guarantor of a Consortium Member ceasing to (directly or indirectly) Control and hold a majority interest in that Consortium Member).

Equity Associate means:

- (a) a Related Body Corporate, Related Trust Entity or Subsidiary;



- (b) any unit trust, investment trust, investment fund, investment company, partnership or any other fund or entity, in each case the business of which includes investment in infrastructure assets of which the Equity Investor or an entity referred to in paragraph (a) of this definition in relation to that Equity Investor is either the general partner, nominee, trustee, manager or investment adviser and, in the case of a manager or investment adviser, that manager or investment adviser has been appointed pursuant to a written mandate for investment management or similar agreement to perform the services of professional manager or professional investment adviser (**Related Fund**) or any company or other entity that is a wholly owned Subsidiary of a Related Fund (not managed or advised by a person different to the general partner, nominee, trustee, manager or investment adviser of the Relevant Fund);
- (c) [not disclosed];
- (d) any body corporate or other entity in which the majority of voting or economic rights vests directly or indirectly in a Related Fund (not managed or advised by a person different to the general partner, nominee, trustee, manager or investment adviser of the Relevant Fund); or
- (e) any general partner, nominee, custodian, trustee or manager (appointed, in the case of a manager, pursuant to a written mandate or investment management or similar agreement to perform the services of professional manager or professional investment adviser) of any entity falling within paragraphs (a), (b), (c) or (d) of this definition acting in such capacity.

Initial Equity Investor means those Equity Investors set out in the Ownership Schedule.

[not disclosed] .

Subsidiary has the same meaning as 'subsidiary' in the Corporations Act, except that an entity may be a subsidiary of a partnership or trust and a trust or partnership may be a Subsidiary of an entity, for the purposes of which a unit or other beneficial or partnership interest will be regarded as a share.

Wholly Owned Group Member of a person (Person A) means:

- (a) a wholly owned Subsidiary of Person A; and
- (b) each person of which Person A is a wholly owned Subsidiary.



Schedule 22

Indexes Schedule

1 Definitions

| Term | Meaning |
|----------------------------------|--|
| CPI | means the All Groups Consumer Price Index Weighted Average of Eight Capital Cities (IECC) published quarterly by the Australian Bureau of Statistics or, if section 3 applies, the Index determined in accordance with section 3. |
| CPI Multiplier Annual (C) | at any time means: (a) the most recently published September Quarter CPI at that time; divided by (b) 111.4, being the CPI for the Quarter ending 30 September 2017. |
| WPI | means the Wage Price Index Australia Total hourly rates of pay excluding bonuses for Australia, private and public, all industries (Series ID A2603609J) published quarterly by the Australian Bureau of Statistics, as long as there is no change in the coverage, periodicity or reference base from those applying at the date of this Agreement or, if section 3 applies, the Index determined in accordance with section 3. |
| WPI Multiplier Annual (C) | at any time means: (a) the most recently published September Quarter WPI at that time; divided by (b) 127.1, being the WPI for the Quarter ending 30 September 2017. |

2 Indexes

In accordance with clause 2.17(a) (*Indexation*) of this Agreement, all amounts to be Indexed under this Agreement are indexed by multiplying the relevant number by:

- (a) the CPI Multiplier Annual (C), where no index is specified; or



- (b) the WPI Multiplier Annual (C), where specified in this Agreement.

3 Changes to Indexes

The following rules apply to all terms identified in section 2 as being referable to an Index published by the Australian Bureau of Statistics:

- (a) **(change in linked Index)**: if there is a change in the coverage of the Index from that applying at the date of this Agreement and the new index is linked to another Index, the defined term is to be referable to the new Index;
- (b) **(change in coverage or periodicity)**: if the Index is published and there is a change in its:
- (1) coverage and it is not linked to another Index; or
 - (2) periodicity,
- the State must, within 20 Business Days of becoming aware of the change or being notified by Project Co, reasonably determine:
- (3) whether the Index remains appropriate as a general indicator of the rate of price change for the relevant goods and services; and
 - (4) if it is not, what other Index should be used as a substitute Index for the purpose of the defined term's use in this Agreement,
- and seek Project Co's agreement as to such Index;
- (c) **(change in reference base)**: if there is a change in the reference base of the Index from that applying at the date of this Agreement and the Australian Bureau of Statistics:
- (1) provides a conversion factor, that conversion factor must be applied to calculate revised figures for the purpose of the defined term's use in this Agreement, in terms of the new reference base; or
 - (2) does not provide a conversion factor, the State must, within 20 Business Days of becoming aware of the change or being notified by Project Co, reasonably calculate a revised Index for the purposes of the defined term's use in this Agreement, and seek Project Co's agreement as to such Index;
- (d) **(Index ceases to be published)**: if the Index ceases to be published and the Australian Bureau of Statistics:
- (1) publishes another Index which is:
 - (A) a replacement of that Index; and
 - (B) linked to the Index,the defined term must be re-calculated to the same reference base as the replacement Index; or
 - (2) does not publish another Index which is linked to or replaces the Index, the State must, within 20 Business Days of becoming aware of the change or being notified by Project Co, calculate or determine a revised Index and seek Project Co's agreement as to such Index;
- (e) **(change in Mandatory Requirements)**: if a Change in Mandatory Requirements causes a material aberration in the Index, the Index must be adjusted to remove the impact of that material aberration in accordance with



any such methodology published by a responsible Authority for adoption by business or, in the absence of such publication within six months of the occurrence of the material aberration, as agreed by the parties; and

- (f) **(expert determination)**: where the parties cannot reach agreement in accordance with sections 3(b) to 3(e), within 20 Business Days, the parties will, notwithstanding clause 46.3 (*Expert determination*) of this Agreement, be deemed to have referred the dispute for determination by an expert in accordance with clause 46.3 (*Expert determination*) of this Agreement and the parties must otherwise comply with clauses 46.4 (*Selection of expert*) to 46.8 (*Costs*) of this Agreement.



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Schedule 23

VIPP Schedule

[not disclosed]



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Schedule 24

Financial Close Adjustment Protocol

[not disclosed]

Schedule 25

Design Review Schedule

1 Definitions

Unless otherwise expressly defined, expressions used in this Schedule have the meanings given to them in or for the purposes of the Agreement.

In this Schedule:

| Term | Meaning |
|--|--|
| Accelerated Design Package | means a Design Package described as such in Attachment 1. |
| Accelerated Design Review Process | means Schedule 7 of the Advanced Works Deed. |
| Address | <p>means:</p> <ol style="list-style-type: none">1 in relation to a non-compliance with the requirements of this Agreement, amend the relevant Design Documentation to resolve the non-compliance;2 in relation to a potential non-compliance with the requirements of this Agreement:<ol style="list-style-type: none">a amend the relevant Design Documentation to resolve the potential non-compliance; orb explain why Project Co does not consider that an amendment is required to the relevant Design Documentation to resolve the potential non-compliance; and3 in relation to a comment which is not a non-compliance or a potential non-compliance with the requirements of this Agreement:<ol style="list-style-type: none">a amend the relevant Design Documentation in response to the comment; orb explain why Project Co does not consider that an amendment should be made to the relevant Design Documentation in response to the comment,<p>noting that Project Co is not required to amend the relevant Design Documentation where the comment does not relate to a non-compliance or potential non-compliance with the requirements of this Agreement.</p> |



| Term | Meaning |
|---|--|
| Architectural Alignment Issues | has the meaning given in section 2.11(c). |
| Architectural Alignment Issue Notice | has the meaning given in section 2.11(c)(1). |
| Certified Design | means, for each Design Package, the stage during which Project Co prepares and submits to the Independent Reviewer the Certified Design Documentation. |
| Certified Design Documentation | means the Design Documentation described in section 7.5.3 of the Design Requirements Section. |
| Design Development Coordinator | means the person identified as such in item 5 of the Contract Particulars subject to replacement in accordance with clause 13.1 of the Agreement. |
| Design Development Presentations | means the presentations conducted by Project Co during the Design Development Process in accordance with the D&C Program and the Design Management Plan. |
| Design Management Plan | means the plan of that name setting out the process for managing the Design Development Process to be prepared by Project Co and containing the information and documentation required by the Agreement (including section 5 of this Schedule), as further developed, reviewed, amended and updated from time to time by Project Co in accordance with the terms of the Agreement. |
| Design Package | means a design package as set out in the Design Management Plan. |
| Design Requirements Section | means section 7 of Part C of the PS&TR. |
| Design Stage | means: <ol style="list-style-type: none">1 Interim Design;2 Certified Design; or3 IFC Design. |



| Term | Meaning |
|---|---|
| Discipline | means each of the following: <ol style="list-style-type: none">1 Underground, groundwater and geotechnical;2 Shafts and retention structures;3 Station planning and pedestrian modelling;4 Station structures;5 Mechanical systems and ventilation;6 Electrical systems and power;7 Land, planning and environment;8 Architecture and urban design;9 Traffic and transport;10 Digital engineering;11 Rail and rail systems; and12 Systems engineering, and any other discipline agreed by Project Co and the State to be a 'Discipline' for the purposes of the Agreement. |
| Discipline Limit | has the meaning given in Attachment 2 to this Schedule. |
| IFC Design Documentation | has the meaning given in the Agreement. |
| Interim Design | means, for each Design Package, the stage during which Project Co prepares and submits to the Independent Reviewer the Interim Design Documentation. |
| Interim Design Documentation | means the Design Documentation described in section 7.5.2 of the Design Requirements Section. |
| Issued For Construction (IFC) Design | means, for each Design Package, the stage during which Project Co prepares and submits to the Independent Reviewer the IFC Design Documentation. |
| Review Period | means: <ol style="list-style-type: none">1 in the case of Interim Design Documentation, 5 Business Days; and2 in the case of Certified Design Documentation, 10 Business Days. |

| Term | Meaning |
|---------------------------|--|
| Stakeholder Groups | means those groups established in accordance with section 6.1. |
| Weekly Limit | 15 Design Packages per week. |

2 Design Development Process

2.1 General

- (a) **(Design Development Process):** The Design Development Process is the process by which Project Co progressively develops the design of the Project Assets and includes all other tasks identified in this Schedule and the Agreement (including the Design Requirements Section) as forming part of the Design Development Process.
- (b) **(Design Packages):** To facilitate the conduct of the Design Development Process, the design work for the Project Assets has been divided into Design Packages as set out in the Design Management Plan.
- (c) **(Design Stages):** The Design Documentation for each Design Package is divided into three Design Stages consisting of:
- (1) Interim Design;
 - (2) Certified Design; and
 - (3) IFC Design.
- (d) Not used.
- (e) **(Copies to State and stakeholders):** At the same time Project Co submits:
- (1) any Design Documentation to the Independent Reviewer, a copy must also be provided to the State; and
 - (2) any IFC Design Documentation to the Independent Reviewer, a copy must also be provided to any relevant stakeholders.
- (f) **(Further information):** If required by the Independent Reviewer or the State, the appropriate design personnel (including the Proof Engineer), must be made available to:
- (1) explain any Design Documentation; and
 - (2) provide such information regarding any Design Documentation as the Independent Reviewer or the State reasonably requests.
- (g) **(Relevant stakeholders):** For the purpose of this Schedule a relevant stakeholder is a member of a Stakeholder Group (including any stakeholder nominated by the State under section 6.1(b) at any time).

2.2 Design Development Coordinator obligations

Project Co must ensure that the Design Development Coordinator:

- (a) convenes and manages meetings with the Independent Reviewer, the State and any relevant stakeholders in respect of the design of the Project Assets;
- (b) convenes and manages all Design Development Presentations;
- (c) manages the submission of the Design Documentation in accordance with this Schedule;
- (d) reviews all of the Design Documentation prior to submission to the Independent Reviewer and ensures that the Design Documentation:
 - (1) is complete, co-ordinated and of a high quality capable of review by the Independent Reviewer in accordance with this Schedule (including ensuring that all Stakeholder Groups' input in respect of the Project Assets is considered); and
 - (2) where required by this Schedule, is updated to reflect and incorporate Stakeholder Groups' input in respect of the Project Assets; and
- (e) otherwise consults with the Independent Reviewer, the State and all relevant stakeholders throughout the Design Development Process as required by the Agreement,

in accordance with this section 2.2, the Design Management Plan, the D&C Program and the remainder of this Schedule.

2.3 Sequence, concurrency and overlap of Design Packages

- (a) Project Co must complete and submit the Design Packages for review by the Independent Reviewer in accordance with the Design Management Plan, the D&C Program and this Schedule.
- (b) Project Co must not submit Design Documentation in respect of a Design Package to the Independent Reviewer for review unless:
 - (1) Project Co has prepared all the Design Documentation in respect of that Design Stage in accordance with the Agreement;
 - (2) without limiting section 2.3(b)(1), Project Co has conducted all design verification activities, risk assessments, risk workshops, stakeholder consultation and all other activities in respect of that Design Stage required by the Design Requirements Section, this Schedule and the Agreement, including the activities referred to in section 2.7; and
 - (3) for Design Stages other than Interim Design:
 - (A) Project Co has submitted all Design Documentation relating to the relevant Design Package and Design Stage for the previous Design Stage in accordance with this Schedule;
 - (B) the Review Period has expired for the previous Design Stage; and
 - (C) subject to section 2.9(b), if the Independent Reviewer has provided comments on the Design Documentation for a previous Design Stage, Project Co has complied with its obligations under this Schedule in connection with such comments (including, if necessary, to Address particular comments or to resubmit Design Documentation).



2.4 Project Co must not proceed with additional Design Packages

- (a) Project Co may divide the design work for the Project Assets into additional Design Packages beyond those specified in the Design Management Plan subject to receiving the State's prior written approval to do so (such approval not to be unreasonably withheld).
- (b) Project Co must submit the following information to the State as part of a request for approval to divide the design work for the Project Assets into additional Design Packages:
 - (1) details of the reasoning for additional Design Packages; and
 - (2) such other information concerning the proposed Design Package reasonably requested by the State.

2.5 Timing for submission of Design Documentation

Project Co:

- (a) must, for each Design Package, submit the complete set of Design Documentation for each Design Stage to the Independent Reviewer in accordance with:
 - (1) the Agreement, including this Schedule and the Design Requirements Section;
 - (2) the Design Management Plan; and
 - (3) the timing set out in the D&C Program;
- (b) must, for each Design Package, submit the Design Documentation for each Design Stage as one complete package of information and not as individual documents, except where:
 - (1) Project Co is required to revise one or more items of the Design Documentation to Address the Independent Reviewer's comments, in which case it may resubmit such documents individually and the submission limits in section 2.5(d) do not apply to a re-submitted document; or
 - (2) the State directs otherwise (acting reasonably) in respect of a Design Package, in which case Project Co must submit such documents as directed;
- (c) acknowledges that the Review Period commences upon receipt by the Independent Reviewer of all of the Design Documentation comprising a Design Package for the relevant Design Stage which complies with the requirements of the Agreement and which is submitted in accordance with section 2.8(a) or section 2.8(c) (as applicable);
- (d) must not, unless otherwise approved in writing by the State, or where to do so would be consistent with the timing for submitting the relevant Design Packages as set out in the D&C Program, submit to the Independent Reviewer for review:
 - (1) subject to section 2.5(d)(1), more than the Weekly Limit; and
 - (2) within the Weekly Limit, more than the Discipline Limit per week for each Discipline as specified in Attachment 2; and
- (e) must submit other additional information reasonably requested by the Independent Reviewer or the State to the Independent Reviewer for review in accordance with this Schedule (with a copy provided to the State).

2.6 Form of Design Documentation

- (a) Project Co must ensure that each of the items of Design Documentation contain or identify the following information (unless otherwise agreed by the State):
- (1) the Design Package to which the Design Documentation relates;
 - (2) the Design Stage to which the Design Documentation relates;
 - (3) details of any Modifications that have arisen during the Design Development Process (including any that have arisen from directions given by the State in accordance with clause 38 of the Agreement)); and
 - (4) any other information reasonably requested by the Independent Reviewer or the State.
- (b) Without limiting section 2.6(a), the Design Documentation must include:
- (1) in the case of the Interim Design Documentation, the information required by section 7.5.2 of the Design Requirements Section;
 - (2) in the case of the Certified Design Documentation, the information required by section 7.5.3 of the Design Requirements Section;
 - (3) in the case of the IFC Design Documentation, the information required by section 7.5.4 of the Design Requirements Section; and
 - (4) any certificates required by the Agreement (including the Design Requirements Section and the Schedule of Certificates and Notices).
- (c) Project Co must highlight all amendments to the Design Documentation and in doing so show all changes to the Design Documentation from those submitted for the previous Design Stage, or in respect of the first Design Stage, from the Technical Solution.

2.7 State and stakeholder review of Interim Design Documentation and Certified Design Documentation

- (a) **(Review of Interim Design):** In respect of the Interim Design Documentation for each Design Package, Project Co must, provided that it has first completed design verification in accordance with section 7.7 of the Design Requirements Section:
- (1) issue the Interim Design Documentation for that Design Package to the Independent Reviewer, the State and all relevant stakeholders (including the Rail Franchisee and the Rail Systems Alliance and Rail Infrastructure Alliance in accordance with the Coordination and Interface Deed Poll), provided that it must not, unless otherwise approved in writing by the State, issue:
 - (A) more than the Weekly Limit; and
 - (B) within the Weekly Limit, more than the Discipline Limit per week for each Discipline as specified in Attachment 2; and
 - (2) allow the Independent Reviewer, the State and the relevant stakeholders a period of 20 Business Days to provide any comments in respect of the Interim Design Documentation.
- (b) **(Review and consolidation of comments on Interim Design):** Project Co must:



- (1) review any comments in respect of the Interim Design Documentation received from the Independent Reviewer, the State or any relevant stakeholders within the 20 Business Day period referred to in section 2.7(a)(2);
 - (2) prepare a consolidated list of the comments; and
 - (3) include the consolidated list of comments in the design report required by section 7.5.2.1 of the Design Requirements Section to be included with the submission of the Interim Design Documentation pursuant to section 2.8(a), together with a description of how these comments have been Addressed.
- (c) **(Review of Certified Design):** In respect of the Certified Design Documentation for each Design Package, Project Co must, provided that it has first completed design verification in accordance with section 7.7 of the Design Requirements Section:
- (1) issue the Certified Design Documentation for that Design Package to the Independent Reviewer, the State and all relevant stakeholders (including the Rail Franchisee and the Rail Systems Alliance and Rail Infrastructure Alliance in accordance with the Coordination and Interface Deed Poll), provided that it must not, unless otherwise approved in writing by the State, issue:
 - (A) more than the Weekly Limit; and
 - (B) within the Weekly Limit, more than the Discipline Limit per week for each Discipline as specified in Attachment 2; and
 - (2) allow the Independent Reviewer, the State and the relevant stakeholders a period of 15 Business Days to provide any comments in respect of the Certified Design Documentation.
- (d) **(Review and consolidation of comments on Certified Design):** Project Co must:
- (1) review any comments in respect of the Certified Design Documentation received from the Independent Reviewer, the State or any relevant stakeholders within the relevant period referred to in section 2.7(c)(2);
 - (2) prepare a consolidated list of the comments; and
 - (3) include the consolidated list of comments in the design report required by section 7.5.3.1 of the Design Requirements Section to be included with the submission of the Certified Design Documentation pursuant to section 2.8(c), together with a description of how these comments have been Addressed.

2.8 Review of Interim Design Documentation and Certified Design Documentation by Independent Reviewer

- (a) **(Review of Interim Design Documentation):** Project Co must submit the Interim Design Documentation for a Design Package to the Independent Reviewer for review in accordance with section 2.5 and following completion of the activities referred to in sections 2.7(a) and 2.7(b) in relation to that Interim Design Documentation. The Independent Reviewer, within the Review Period for Interim Design Documentation, must:



- (1) review the Interim Design Documentation (taking into account any comments from the State and relevant stakeholders included in the design report submitted with the Design Documentation); and
 - (2) notify Project Co:
 - (A) that it may proceed to develop and submit Certified Design Documentation for review by the Independent Reviewer; or
 - (B) of any actual non-compliances and potential non-compliances with the requirements of the Agreement, together with detailed reasons, and whether:
 - (i) the actual non-compliances and, where the Interim Design Documentation relates to Temporary Works only, any potential non-compliances, must be Addressed by Project Co before Project Co may proceed to develop and submit Certified Design Documentation for review by the Independent Reviewer; or
 - (ii) the actual non-compliances and, where the Interim Design Documentation relates to Temporary Works only, any potential non-compliances, must be Addressed by Project Co as part of the submission of Design Documentation for Certified Design.
- (b) **(Response to Interim Design Documentation):** If, in respect of Interim Design Documentation, the Independent Reviewer does not within the Review Period notify Project Co of any actual or potential non-compliances with the requirements of the Agreement which must be Addressed by Project Co in accordance with section 2.8(a)(2)(B)(i), Project Co may proceed to develop and submit Certified Design Documentation for review by the Independent Reviewer.
- (c) **(Review of Certified Design Documentation):** Project Co must submit the Certified Design Documentation for a Design Package to the Independent Reviewer for review in accordance with section 2.5 and following completion of the activities referred to in sections 2.7(c) and 2.7(d) in relation to that Certified Design Documentation. The Independent Reviewer, within the Review Period for Certified Design Documentation, must review the Certified Design Documentation (taking into account any comments from the State and relevant stakeholders included in the design report submitted with the Design Documentation) and:
- (1) subject to section 2.8(c)(2)(B), to the extent the Independent Reviewer considers that all or part of the Design Documentation complies with the requirements of the Agreement, certify the complying parts of the Design Documentation by:
 - (A) including a notation on each document forming part of the complying Design Documentation; and
 - (B) providing to Project Co and the State a certificate in the form set out in the Schedule of Certificates and Notices; and
 - (2) to the extent the Independent Reviewer considers that all or part of the Design Documentation:
 - (A) contains actual non-compliances with the requirements of the Agreement; or



- (B) insofar as the Design Documentation relates to Temporary Works, contains potential non-compliances with the requirements of the Agreement,

notify Project Co of those actual non-compliances and potential non-compliances with the requirements of the Agreement, together with detailed reasons, which must be Addressed by Project Co before Project Co may proceed to develop and issue IFC Design Documentation for that part of the Design Package.

- (d) **(Response to Certified Design Documentation):** If, in respect of Certified Design Documentation, the Independent Reviewer does not within the Review Period either:

- (1) certify all or part of the Design Documentation; or
- (2) notify Project Co of any actual or potential non-compliances with the requirements of the Agreement which must be Addressed by Project Co in accordance with section 2.8(c)(2),

Project Co may, subject to section 2.9, proceed to develop and issue IFC Design Documentation.

- (e) **(Non-compliances):** If:

- (1) the Independent Reviewer notifies Project Co under section 2.8(a)(2)(B)(i) or section 2.8(c)(2) that any Design Documentation contains an actual or potential non-compliance with the requirements of the Agreement which must be Addressed by Project Co before Project Co may proceed to submit Certified Design Documentation or develop and issue IFC Design Documentation (as applicable); or
- (2) the Independent Reviewer notifies Project Co under section 2.8(a)(2)(B)(ii) of any actual non-compliances and potential non-compliances with the requirements of the Agreement which must be Addressed by Project Co as part of the submission of Design Documentation for Certified Design,

then:

- (3) the Independent Reviewer must:
 - (A) identify the relevant requirements or provisions of the Agreement with which it considers that the Design Documentation does not comply or potentially does not comply; and
 - (B) provide such detail as is reasonably necessary to substantiate why it considers that the Design Documentation does not comply or potentially does not comply with those requirements or provisions; and
- (4) Project Co must:
 - (A) where section 2.8(e)(1) applies:
 - (i) amend all relevant parts of the Design Documentation as necessary to Address the non-compliance notified by the Independent Reviewer and re-submit the amended elements in accordance with section 2.5; and

- (ii) the process in section 2.8(a) or section 2.8(c) (as applicable) will be reapplied to the amended parts of the Design Documentation; or
- (B) where section 2.8(e)(2) applies, amend all relevant parts of the Design Documentation as necessary to Address the non-compliance notified by the Independent Reviewer as part of submission of Design Documentation for Certified Design.

2.9 Issue of IFC Design

- (a) The IFC Design Documentation for each Design Package must be developed and issued to the State, the Independent Reviewer and the relevant stakeholders together with all information required by this Schedule to be included with the issue of the IFC Design Documentation and each drawing issued as part of IFC Design Documentation must be clearly marked as “Issued for Construction”.
- (b) Where:
 - (1) the Certified Design Documentation has been submitted for review in accordance with section 2.8;
 - (2) the Independent Reviewer has been given the required number of days to review the Certified Design Documentation; and
 - (3) the Independent Reviewer has not within the Review Period either:
 - (A) certified all or part of the Design Documentation; or
 - (B) notified Project Co of any non-compliances which must be Addressed by Project Co before Project Co may proceed to develop and issue IFC Design Documentation in accordance with section 2.8(c)(2),

Project Co may issue IFC Design Documentation for that Design Package and use the IFC Design Documentation for construction purposes at Project Co’s own risk, including risks associated with:

- (4) proceeding with such construction; and
 - (5) the risk that the relevant Design Documentation is subsequently not certified by the Independent Reviewer and the Independent Reviewer notifies Project Co of any actual or potential non-compliances with the requirements of the Agreement and section 2.9(c) applies.
- (c) If Project Co has used the IFC Design Documentation for construction purposes in accordance with section 2.9(b) and the Independent Reviewer subsequently notifies Project Co of any actual non-compliances or where the IFC Design Documentation relates to Temporary Works only, any potential non-compliances with the requirements of the Agreement:
 - (1) Project Co must immediately cease any construction work being carried out in accordance with the relevant non-compliant element of the IFC Design Documentation but Project Co may commence or continue construction in accordance with any element of the IFC Design Documentation that the Independent Reviewer has not identified as being non-compliant with the Agreement;
 - (2) section 2.8(c) will apply in relation to the non-compliant element of the Design Documentation; and

- (3) Project Co must rectify any construction work carried out in accordance with the relevant non-compliant element of the Design Documentation so that such construction work complies with the requirements of the Agreement.
- (d) Without limiting section 2.9(b), where all or any part of the Certified Design Documentation is certified, Project Co may proceed to develop and issue IFC Design Documentation for those certified parts of a Design Package.

2.10 Changes to the Technical Solution

- (a) The process of developing the design from the Technical Solution to the IFC Design Documentation may result in changes to the Technical Solution.
- (b) Subject to clause 8(b), changes to the Technical Solution must not be made unless:
 - (1) the change:
 - (A) is notified to the Independent Reviewer; and
 - (B) is necessary to comply with the Agreement; or
 - (2) it is demonstrated to the satisfaction of the Independent Reviewer that the change:
 - (A) is minor;
 - (B) is consistent with the design intent in the Technical Solution, otherwise complies with the Agreement and the PS&TR; and
 - (C) does not result in a lessening of any requirement, standard, level of service or scope for any work set out in the Technical Solution (including any reduction in capacity, durability, maintainability, Design Life, quality aesthetics of visual features, whole of life performance, functional performance, environmental protection, sustainability, safety, security, community amenity or benefits, or Customer benefits).
- (c) Any change to the Technical Solution which is not a change of the kind described in section 2.10(b)(2) may only be made if the change is agreed by the State.

2.11 Design Development resolution

- (a) Project Co acknowledges its obligations to consult with stakeholders as required under this Agreement. The following does not detract from or remove these obligations.
- (b) Prior to formal submission of a Design Package there will be presentations and workshops facilitated by Project Co. Following these, the State agrees that it will assist with managing all comments on architectural design development received from its internal Government stakeholders (other than any stakeholder who has carriage of planning or environmental issues) so that Project Co is only required to deal with a single set of consolidated comments from these stakeholders.
- (c) The parties acknowledge the importance of minimising delays in the Design Development Process to protect the overall delivery program of the Project. Accordingly, the parties agree the need for an expedited process to align comments from the aforementioned stakeholders prior to formal submission of

design packages with respect to architectural outcomes (**Architectural Alignment Issues**), as follows:

- (1) Where Project Co identifies that an Architectural Alignment Issue has arisen following feedback from the State as above, Project Co will notify the State in writing of the Architectural Alignment Issue including details as to the nature of the Architectural Alignment Issue and recommendations for options to manage the Architectural Alignment Issue (**Architectural Alignment Issue Notice**);
- (2) 2 Business Days following receipt of the Architectural Alignment Issue Notice the parties will meet to discuss and agree the way forward on the Architectural Alignment Issue; and
- (3) 5 Business Days following this meeting the State will advise Project Co of its required outcome in respect of the Architectural Alignment Issue.

3 Accelerated Design Packages

Other than to the extent set out in the Accelerated Design Review Process:

- (a) the requirements of this Schedule do not apply; and
- (b) the Accelerated Design Review Process continues to apply, to Design Documentation for the Accelerated Design Packages.

4 Initial Design Meeting

As soon as possible and no later than 10 Business Days after Financial Close, Project Co must coordinate and attend an initial design meeting with the Independent Reviewer and the State to:

- (a) commence planning of the Design Development Process; and
- (b) discuss the Design Management Plan.

5 Design Management Plan

5.1 Further updates to Design Management Plan

- (a) Project Co must:
 - (1) submit an updated Design Management Plan or a discrete component of the Design Management Plan (as applicable):
 - (A) if reasonably requested by the State or the Independent Reviewer to do so; and
 - (B) otherwise as it considers necessary to reflect any changes to the nature or the status of the Works; and

- (2) submit any revisions, modifications or updated versions of the Design Management Plan to the State and the Independent Reviewer for review in accordance with the Review Procedures.
- (b) In so far as there is any inconsistency between the Design Management Plan and the Agreement, the requirements of the Agreement will prevail.

5.2 Changes to Design Management Plan

- (a) Project Co must make changes to the Design Management Plan that are reasonably directed by the State.
- (b) Without limiting section 5.2(a), Project Co must make changes to the Design Management Plan that are reasonably directed by the State if the State reasonably forms the view that the approved Design Management Plan does not:
 - (1) adequately reflect or take into account the scope of the Design Development Process;
 - (2) adequately take into account the requirements of the Stakeholder Groups in respect of the Project Assets;
 - (3) effectively or reliably result in the production of Design Documentation that comply with the requirements of the Agreement; or
 - (4) allow the Independent Reviewer sufficient time in which to receive and review the Design Documentation in accordance with the Review Procedures.

6 Stakeholder Groups' involvement in the Design Development Process

6.1 Establishment of Stakeholder Groups

- (a) **(Nomination of members)**: Project Co must nominate members of the Stakeholder Groups in its Communications and Stakeholder Engagement Management Plan submitted to the Independent Reviewer for review in accordance with the Review Procedures.
- (b) **(State nomination)**: The State may nominate additional members of any Stakeholder Groups at any time and in its sole and absolute discretion.
- (c) **(Representatives)**: Stakeholder Groups may be formed for various Design Packages and must include representatives of the State and the Independent Reviewer and those stakeholders as nominated by Project Co in the Community and Stakeholder Engagement Management Plan and may include representatives of Returned Asset Owners and representatives from local government.

6.2 Management of the Stakeholder Group process

Project Co must manage and document the entire Stakeholder Group process, including by:

- (a) liaising with the State and the Independent Reviewer with respect to coordinating Stakeholder Group meetings so they may be conducted on days

and at times that typically enable the Stakeholder Group members to attend the meetings;

- (b) providing the State, the Independent Reviewer and any Stakeholder Group members with at least 10 Business Days' notice of the date, time and location of the meeting;
- (c) prior to each Stakeholder Group meeting, preparing and distributing an agenda and all relevant design documentation and notes to all invitees;
- (d) after each Stakeholder Group meeting, preparing minutes which at a minimum include details of:
 - (1) the date and time of the meeting;
 - (2) persons in attendance and absentee Stakeholder Group members;
 - (3) items discussed at the meeting (including details of any drawing numbers discussed); and
 - (4) proposed outcomes of the meetings;
- (e) providing copies of the proposed minutes of the Stakeholder Group meetings to the invitees, the Independent Reviewer and the State within 3 Business Days of the meeting;
- (f) incorporating any changes or amendments to the proposed minutes of the Stakeholder Group meetings (including with respect to the proposed outcome of the meetings) reasonably requested by the State; and
- (g) creating electronic files for the Stakeholder Group (including agendas, design documentation, minutes any marked up or annotated drawings) so as to facilitate easy access to such information.

6.3 Project Co acknowledgement

- (a) **(No Claim):** Project Co acknowledges and agrees that it is not entitled to make any Claim against the State for Liabilities incurred by Project Co arising out of or in connection with the conduct of the Stakeholder Group meetings, including the time taken to arrange each of the Stakeholder Group meetings and the number and duration of each of the Stakeholder Group meetings.
- (b) **(No Modification):** Project Co acknowledges and agrees that the Stakeholder Group meetings and process of themselves cannot constitute a Modification or be deemed to constitute a State direction to request a Modification Quote. Any Modification requested by the State will be undertaken in accordance with clause 38 of the Agreement.

7 Design Development Presentations

7.1 Purpose of Design Development Presentations

The purpose of the Design Development Presentations is to:

- (a) visually demonstrate the design of the Project Assets (including the progressive development of the design of the Project Assets);
- (b) if requested by the State or the Independent Reviewer, present and explain mock ups (including full scale or scale mock ups) of different components of the Project Assets;

- (c) identify key elevations and sections;
- (d) demonstrate how the design of the Project Assets complements and is otherwise consistent with the purposes of the Project;
- (e) provide updated animations of the Project Assets;
- (f) provide updated sample boards;
- (g) demonstrate that the design is such that the Project Assets are consistent with the design requirements set out in the PS&TR and will satisfy the FFP Warranty; and
- (h) address specific issues otherwise identified by the State or the Independent Reviewer (acting reasonably).

7.2 Frequency, notice and attendance at Design Development Presentations

Project Co must:

- (a) undertake the Design Development Presentations generally in accordance with the D&C Program and otherwise at the request of the Independent Reviewer or the State (acting reasonably) and must give the Independent Reviewer, the State and other proposed attendees approved by the State 10 Business Days' notice of the conduct of a Design Development Presentation;
- (b) ensure that, as a minimum, the relevant Key Subcontractors and the lead designers attend such Design Development Presentations to provide explanations concerning the design and any other relevant supporting information; and
- (c) provide any additional Design Development Presentations requested by the Independent Reviewer or the State (acting reasonably).

8 IFC Design Documentation

- (a) Project Co must only use the IFC Design Documentation for the purposes of construction of the Project Assets.
- (b) Project Co must not amend the IFC Design Documentation that has been reviewed by the Independent Reviewer in accordance with this Schedule unless Project Co has satisfied any requirements set out in the Agreement in relation to the proposed amendment and the proposed amendment has been submitted to the Independent Reviewer for review in accordance with this Schedule.

9 Mock ups and material samples

- (a) As part of the Design Development Process, Project Co must prepare and submit to the Independent Reviewer the project specific material samples and mock ups required by section 7.6 of the Design Requirements Section.
- (b) All material sample and mock up submissions must be accompanied by any information required by section 7.6 of the Design Requirements Section.
- (c) [Not used].



- (d) Project Co must provide the State and the Independent Reviewer with at least 4 weeks' prior notice of the submission of any material samples or mock ups.
- (e) The Independent Reviewer, within 6 weeks of the date of submission of any material sample or mock up, will:
 - (1) review the material sample or mock up; and
 - (2) either:
 - (A) certify the material sample or mock up, in which case Project Co may, subject to the Independent Reviewer certifying any Certified Design Documentation relevant to the material sample or mock up, proceed to construct the Works to which the material sample or mock up relates; or
 - (B) notify Project Co of any actual non-compliances with the requirements of the Agreement, together with detailed reasons, which must be Addressed by Project Co before Project Co may proceed to construction of the Works to which the material sample or mock up relates.



Attachment 1

Accelerated Design Packages

Attachment 2

Discipline Limit

| Discipline | Discipline Limit (number of Design Packages) |
|---|---|
| Underground, groundwater and geotechnical | 6 |
| Shafts and retention structures | 5 |
| Station planning and pedestrian modelling | 5 |
| Station structures | 6 |
| Mechanical systems and ventilation | 6 |
| Electrical systems and power | 5 |
| Land, planning and environment | 3 |
| Architecture and urban design | 5 |
| Traffic and transport | 5 |
| Digital engineering | 5 |
| Rail and rail systems | 5 |
| Systems engineering | 5 |



Schedule 26

Completion Schedule

1 Introduction

- (a) The overriding obligation of Project Co in respect of the Tests is that Project Co must demonstrate, to the extent applicable to achieve either Provisional Acceptance or Final Acceptance (as the case may be), that all of the Project Agreement requirements in respect of the Works have been met and that the Relevant Infrastructure is Fit for Purpose.
- (b) Attachment 1 to this Schedule sets out a non-exhaustive list of Tests that must be successfully completed in order for Project Co to achieve Provisional Acceptance.
- (c) Attachment 2 to this Schedule sets out a non-exhaustive list of Tests that must be successfully completed in order for Project Co to achieve Final Acceptance.
- (d) This Schedule is not an exhaustive list of the tests to be undertaken by Project Co as part of the Tests and does not in any way limit Project Co's overriding obligations as set out in paragraph (a).
- (e) Capitalised terms not defined in this schedule, or this Agreement have the meaning given to them in the PS&TR.

2 Integrated Testing

- (a) The Tests must include, as a minimum, testing which spans across all services disciplines and other inter-package disciplines, as required, to obtain satisfactory operation of an overall system, including 'Level 2 Systems Integration', 'Level 3 Systems Integration' and 'Level 4 Systems Integration' (each as defined in the Final Acceptance Works Schedule) (**Integrated Testing**).
- (b) Without limiting paragraph (a), situations where Integrated Testing is required include, as a minimum:
 - (1) critical operational tests of installations, system interfaces, operationally critical rooms, critical and essential power supply equipment, other plant, back-up system operation and alarming;
 - (2) essential services systems, including fire mode operation tests and reset after fire mode operation; and
 - (3) performance testing of systems or situations that cover more than a single discipline, including energy-metering, air tightness testing, failure simulation tests, security and information and communications technology interfaces.



- (c) Integrated Testing must demonstrate that all systems and interfaces between systems are operating correctly, ensuring that the operation of the system as a whole is successful.
- (d) Project Co and all relevant Subcontractors must:
 - (1) be available for each Integrated Test;
 - (2) provide the staff and resources necessary for each Integrated Test, and
 - (3) provide staff of suitable experience to deal with Defects or programming faults found during Integrated Testing.
- (e) Integrated Testing shall only be carried out on completed systems.

3 Provisional Acceptance

3.1 Conditions precedent

As a condition precedent to Provisional Acceptance, Project Co must:

- (a) deliver to the State and the Independent Reviewer the report described in clause 3.2 of this Completion Schedule;
- (b) assign to the State or its nominee full right, title and interest in and to any part of the Maintained Assets in respect of which property has not already passed to the State or its nominee;
- (c) remove all unused materials and equipment and the Temporary Works from the Site (other than to the extent that Project Co can demonstrate to the satisfaction of the State that unused materials and equipment and the Temporary Works are required to remain on the Site in order to progress the works to Final Acceptance);
- (d) complete and pass the Tests set out in Attachment 1 of this Completion Schedule;
- (e) complete and pass all 'Level 0 Systems Integration', 'Level 1 Systems Integration' and 'Level 2 Systems Integration' (each as defined in the Final Acceptance Works Schedule) in respect of the Works;
- (f) achieve each Progress Milestone;
- (g) in relation to each Returned Asset (other than the Returned Train Works and the Returned VicTrack Works):
 - (1) comply with its obligations under clause 24.4 (*Completion and Handback of Returned Works*) of this Agreement;
 - (2) transfer to the relevant Returned Asset Owner, the Project Co Material relating to the Returned Asset (including all rights, title and interest in them) free from any encumbrances and to the standards required by this Agreement;
 - (3) subject to the Intellectual Property Schedule, grant or procure the grant to each Returned Asset Owner of such Intellectual Property Rights as will enable the Returned Asset Owner or its nominee to operate, maintain and repair the relevant Returned Asset in accordance with Best Maintenance Practices and Best Operating Practices;



- (4) provide to the each Returned Asset Owner all software, hardware, equipment, materials and documentation necessary in order for the State or its nominee to operate, maintain and repair the relevant Returned Asset in accordance with Best Maintenance Practices and Best Operating Practices;
 - (5) subject to the Intellectual Property Schedule, procure for each Returned Asset Owner an assignment or sub-licence of all Third Party Intellectual Property Licences required to operate, maintain and repair the relevant Returned Asset in accordance with Best Maintenance Practices and Best Operating Practices; and
 - (6) do all acts and things reasonably necessary to enable each Returned Asset Owner (or its nominee) to have transferred or obtained all Approvals necessary to operate, maintain and repair the relevant Returned Asset in accordance with Best Maintenance Practices and Best Operating Practices; and
- (h) any other matters or conditions required by this Agreement in order to achieve Provisional Acceptance have been satisfied.

3.2 Provisional Acceptance report

Project Co must provide to the State and the Independent Reviewer a report consisting of the following documents and other information in relation to the Maintained Assets (excluding the Final Acceptance Works) and Returned Works (excluding the Returned Train Works and the Returned VicTrack Works) in a form acceptable to the State:

- (a) As-Built Records required under this Agreement;
- (b) the register of all records/documents required to be held by Project Co in accordance with this Agreement;
- (c) evidence of compliance with all requirements of relevant Authorities in relation to Provisional Acceptance;
- (d) quality reports and records demonstrating compliance with the requirements of this Agreement including evidence that the inspections, test results and audits are in accordance with this Agreement;
- (e) evidence that the Tests for Provisional Acceptance, including Tests undertaken to comply with the Integrated Testing requirements set out in section 2, have been passed in accordance with this Agreement;
- (f) evidence that all Health and Safety Incidents have been addressed in accordance with the relevant Management Plans;
- (g) documents and details proving that all waste materials have been removed from the part of the Site on which D&C Activities have been carried out and disposed of in accordance with this Agreement;
- (h) to the extent not already provided, all manufacturers' and trade warranties required by this Agreement;
- (i) copies of all Approvals (other than Key Approvals) required by this Agreement, including evidence of compliance with all Approvals;
- (j) any certificates of occupancy required under the *Building Act 1993* (Vic) or equivalent legislation;
- (k) evidence of compliance with all Project Co's obligations in connection with the Rail Safety National Law including those under clause 9 (*Rail Safety (Train)*) of this Agreement;



- (l) evidence of compliance with all Project Co's obligations in connection with the Tram Safety Act including those under clause 10 (*Rail Safety (Tram)*) of this Agreement;
- (m) the proposed program to correct any Minor Defects that are included in the list provided pursuant to clause 24.3(a)(3) (*Provisional Acceptance*) of this Agreement along with the details, including contact details, of Project Co's representative who will be responsible for correcting the Minor Defects;
- (n) to the extent not already provided, copies of all relevant pre-construction and post-construction ground and infrastructure survey reports required by this Agreement;
- (o) the LIDP Monitoring Table, a report detailing Project Co's compliance with the Local Content Requirements (Victorian) and the Victorian Jobs Requirements, and a statutory declaration in accordance with clause 60.3(b) (*Reporting*) of this Agreement;
- (p) the Major Projects Skills Guarantee Final Report and a statutory declaration in accordance with clause 61.2(d) (*Reports*) of this Agreement;
- (q) a certificate issued by the Independent Reviewer certifying the percentage of Local Content (ANZ) used and Priority Jobseekers employed by Project Co to the Date of Provisional Acceptance in undertaking the D&C Activities in accordance with clause 60.4(a) (*Adjustment of Quarterly Services Payment*) of this Agreement;
- (r) a certificate issued by the Independent Reviewer certifying the percentage of labour hours performed by Apprentices, Trainees and Engineering Cadets to the Date of Provisional Acceptance in accordance with clause 61.3(a) (*Adjustment of Quarterly Services Payment*) of this Agreement; and
- (s) all other documentation and information which, in the opinion of the Independent Reviewer, is reasonably necessary for the operation, use and maintenance of the Maintained Assets, and which is in a form acceptable to the Independent Reviewer, including lists of depreciable spare parts, warranties, guarantees and services agreements.

4 Final Acceptance

4.1 Final Acceptance

As a condition precedent to Final Acceptance, Project Co must:

- (a) deliver to the State and the Independent Reviewer the report described in clause 4.2 of this Completion Schedule;
- (b) remove all unused materials and equipment and the Temporary Works from the Site (other than to the extent that Project Co can demonstrate to the satisfaction of the State that unused materials and equipment and Temporary Works are required to remain on the Site);
- (c) complete and pass the Tests set out in Attachment 2 of this Completion Schedule;
- (d) complete and pass all 'Level 3 Systems Integration' and 'Level 4 Systems Integration' (each as defined in the Final Acceptance Works Schedule) in respect of the Works;



- (e) carry out all desktop and in-field training of all relevant Train Franchisee Interface Party personnel in the operation of the Maintained Assets, the Returned Train Works and the Returned VicTrack Works in accordance with the requirements of this Agreement;
- (f) obtain all Approvals required for the lawful occupation and use of the Maintained Assets;
- (g) handover the Maintained Assets to the Train Franchisee to the extent necessary to operate the Maintained Assets in accordance with Best Operating Practices;
- (h) to the extent that it has not already been transferred, transfer to the State or its nominee all rights, title and interest in Equipment required to operate the Maintained Assets in accordance with Best Operating Practices;
- (i) update and deliver to the State or its nominee all Project Co Material, records, plans and other information under the control of Project Co which are relevant to the operation of the Maintained Assets;
- (j) in accordance with the Intellectual Property Schedule grant or procure the grant to the State or its nominee of such Intellectual Property Rights necessary to operate the Maintained Assets in accordance with Best Operating Practices;
- (k) provide to the State or its nominee, software, hardware, equipment, materials and documentation necessary or desirable in order to operate the Maintained Assets in accordance with Best Operating Practices;
- (l) procure for the State or its nominee an assignment or sublicense of all licences relating to any software belonging to any third party to be used in connection with the operation of the Maintained Assets in accordance with the Intellectual Property Schedule;
- (m) do all acts and things necessary to enable the State or its nominee to have transferred or obtain all Approvals necessary to operate the Maintained Assets;
- (n) do all other acts and things to enable the State or its nominee to be in a position to deliver the Project to the standards specified in this Agreement, with minimum disruption;
- (o) in relation to the Returned Train Works and the Returned VicTrack Works:
 - (1) comply with its obligations under clause 24.4 (*Completion and Handback of Returned Works*) of this Agreement;
 - (2) transfer to the relevant Returned Asset Owner, the Project Co Material relating to the Returned Asset (including all rights, title and interest in them) free from any encumbrances and to the standards required by this Agreement;
 - (3) subject to the Intellectual Property Schedule, grant or procure the grant to each Returned Asset Owner of such Intellectual Property Rights as will enable the Returned Asset Owner or its nominee to operate, maintain and repair the relevant Returned Asset in accordance with Best Maintenance Practices and Best Operating Practices;
 - (4) provide to the each Returned Asset Owner all software, hardware, equipment, materials and documentation necessary in order for the State or its nominee to operate, maintain and repair the relevant Returned Asset in accordance with Best Maintenance Practices and Best Operating Practices;



- (5) subject to the Intellectual Property Schedule, procure for each Returned Asset Owner an assignment or sub-licence of all Third Party Intellectual Property Licences required to operate, maintain and repair the relevant Returned Asset in accordance with Best Maintenance Practices and Best Operating Practices; and
- (6) do all acts and things reasonably necessary to enable each Returned Asset Owner (or its nominee) to have transferred or obtained all Approvals necessary to operate, maintain and repair the relevant Returned Asset in accordance with Best Maintenance Practices and Best Operating Practices;
- (p) deliver to the State and the Independent Reviewer:
 - (1) a copy of all necessary Approvals from the Regulator required for the lawful occupation and use of the Returned Train Works and the Maintained Assets by the Train Franchisee;
 - (2) written notice of the date that any changes to the Train Franchisee's Accreditation that are required for the Returned Train Works and the Maintained Assets to be used or put into operation by the Train Franchisee, have been made and accepted by the Regulator; and
 - (3) a copy of all documentation provided to the Regulator in relation to the changes referred to in clause 4.1(p)(2);
- (q) demonstrate that all requirements of relevant Authorities have been satisfied;
- (r) in relation to the Maintained Assets and the Returned Train Works, provide documentation necessary to demonstrate compliance with the Rail Transport Operator's Train Safety Management System and the State Project Documents; and
- (s) demonstrate that any other matters, testing results or conditions required by this Agreement in order to achieve Final Acceptance have been satisfied.

4.2 Final Acceptance report

Project Co must provide to the State and the Independent Reviewer a report consisting of the following documents and other information in relation to the Maintained Assets, the Returned Train Works, and the Returned VicTrack Works in a form acceptable to the State:

- (a) As-Built Records required under this Agreement;
- (b) the register of all records/documents required to be held by Project Co in accordance with this Agreement;
- (c) evidence of satisfaction of all requirements of relevant Authorities in relation to Final Acceptance;
- (d) quality reports and records demonstrating compliance with the requirements of this Agreement including evidence that the inspections, test results and audits are in accordance with this Agreement;
- (e) evidence that the Tests for Final Acceptance, including Tests undertaken to satisfy the Integrated Testing requirements set out in section 2, have been passed in accordance with this Agreement;
- (f) evidence that all Health and Safety Incidents have been addressed in accordance with the relevant Management Plans;
- (g) records of all training performed pursuant to the Final Acceptance Schedule.



- (h) documents and details proving that all waste materials have been removed from the part of the Site on which D&C Activities have been carried out and disposed of in accordance with this Agreement;
- (i) updated and final Maintenance Phase Documentation and any other relevant operation and maintenance manuals in accordance with the Project Requirements;
- (j) to the extent not already provided, all manufacturers' and trade warranties required by this Agreement;
- (k) copies of all Approvals (other than Key Approvals) required by this Agreement, including evidence of compliance with all Approvals;
- (l) any certificates of occupancy required under the *Building Act 1993* (Vic) or equivalent legislation;
- (m) evidence of compliance with all Project Co's obligations in connection with the Rail Safety National Law including those under clause 9 (*Rail Safety (Train)*) of this Agreement;
- (n) evidence of compliance with all Project Co's obligations in connection with the Tram Safety Act including those under clause 10 (*Rail Safety (Tram)*) of this Agreement;
- (o) to the extent not already provided, copies of all relevant pre-construction and post-construction ground and infrastructure survey reports required by this Agreement;
- (p) the LIDP Monitoring Table, a report detailing Project Co's compliance with the Local Content Requirements (Victorian) and the Victorian Jobs Requirements, and a statutory declaration in accordance with clause 60.3(b) (*Reporting*) of this Agreement; and
- (q) all other documentation and information which, in the opinion of the Independent Reviewer, is reasonably necessary for the operation, use and maintenance of the Maintained Assets, the Returned Train Works, and the Returned VicTrack Works and which is in a form acceptable to the Independent Reviewer, including lists of depreciable spare parts, warranties, guarantees and services agreements.

5 Returned Existing Network Works

As a condition precedent to Handback of Returned Existing Network Works, Project Co must provide, in relation to the relevant Returned Existing Network Works documentation necessary to demonstrate compliance with the Rail Transport Operator's Train Safety Management System and the State Project Documents.

Provisional Acceptance Tests

In addition to the Project Requirements, Project Co must perform or procure the performance of, and pass (in accordance with clause 23 (*Testing and Commissioning*) of this Agreement) Tests in respect of:

| # | Description of Tests |
|---|--|
| 1 | Environmental Control, including: <ul style="list-style-type: none"> (a) pressure / system integrity tests; (b) flushing and cleaning of pipe and duct systems; (c) duct leakage and air flow balancing; (d) central chilled water control systems; (e) heating hot water control systems; (f) Mechanical Ventilation and Air Conditioning (MVAC) / Environmental Control System (ECS); (g) MVAC & ECS / fire integration tests; (h) stair pressurisation tests; (i) Station hot smoke clearance tests; (j) mechanical / Building Management System (BMS) integration tests; and (k) energy management and metering. |
| 2 | Tunnel Ventilation, including: <ul style="list-style-type: none"> (a) Tunnel Ventilation System (TVS) plant; (b) Tunnel Ventilation Control System (TVCS) integrity; (c) Tunnel air flow and pressurise tests in Tunnels; (d) Tunnel hot smoke clearance tests; (e) Pneumatic control system; (f) TVCS / fire detection integration tests; (g) TVCS / fire fan control panel integration tests; (h) TVCS / BMS integration tests; and (i) Energy management and metering. |
| 3 | Fire Detection and Alarm, including: <ul style="list-style-type: none"> (a) fire detection and alarm systems zoning; (b) mechanical / fire integration tests; (c) Emergency Warning and Intercommunications Systems (EWIS); (d) automatic notification to the Metropolitan Fire Brigade (MFB); and (e) Master Fire Integration Panel (MFIP) / BMS integration tests. |

| # | Description of Tests |
|---|--|
| 4 | <p>Fire Protection Systems, including:</p> <ul style="list-style-type: none"> (a) fire mains pressure and flow test; (b) fire hydrant systems and hose reels coverage; (c) Tunnel hydrant systems coverage; (d) clean gas agent flooding system – including post discharge gas purging; (e) automatic sprinkler system; (f) water tank and fire pump control and monitoring; (g) portable fire protection equipment; and (h) MFIP integration tests. |
| 5 | <p>Plumbing and Drainage, including:</p> <ul style="list-style-type: none"> (a) system integrity and pressure tests; (b) flushing and chemical cleaning of water mains; (c) flow and pressure tests; (d) drainage alignment tests (sanitary, storm and waste water); (e) water storage tanks; (f) waste water treatment plant; (g) pumping systems controls; (h) sump level and pump operation / BMS integration tests; and (i) energy monitoring and metering. |
| 6 | <p>Vertical Transportation (VT), including:</p> <ul style="list-style-type: none"> (a) lifts; (b) escalators; (c) vertical transport / fire integration tests; (d) vertical transport / BMS integration tests; and (e) energy monitoring and metering. |
| 7 | <p>Building and Energy Management and Control Systems, including:</p> <ul style="list-style-type: none"> (a) BMS graphical user interface testing and training; (b) fault monitoring and alarm systems; (c) metering and energy performance monitoring; and (d) metering and water consumption monitoring. |
| 8 | <p>Electrical Services (both AC and DC system), including:</p> <ul style="list-style-type: none"> (a) HV power systems, traction power and Overhead Line Equipment (OHLE) systems, LV power systems and Uninterruptible Power Supply (UPS) systems; (b) substations, switchgear and switchboards tests including insulation resistance, winding resistance, contact resistance, phasing and polarity; (c) protection system tests including overload, fault, discrimination and cascading; |

| # | Description of Tests |
|----|---|
| | <ul style="list-style-type: none"> (d) cable tests including termination, insulation resistance, HV withstands, phasing and continuity; (e) control and monitoring; (f) power quality and harmonics; (g) power failure and automatic change over functionality; (h) power SCADA systems; (i) BMS power monitoring; and (j) energy metering. |
| 9 | <p>Lighting, including:</p> <ul style="list-style-type: none"> (a) insulation resistance; (b) lighting levels, uniformity and glare; (c) emergency lighting and illuminated signage; (d) lighting control systems and BMS integration testing; (e) power failure response; (f) security, task, accent and environmental lighting; and (g) emergency lighting / signage and fire system integration tests. |
| 10 | <p>Earthing and Bonding, including:</p> <ul style="list-style-type: none"> (a) earth resistivity tests; (b) earthing system continuity testing; (c) insulation resistance tests; (d) earth fault loop impedance tests; (e) earth potential rise; (f) step and touch voltages (e.g. platform); (g) stray current; (h) electrolysis and corrosion protection; (i) lightning protection system; and (j) earthing current injection test. |
| 11 | <p>Electro Magnetic Compatibility, including:</p> <ul style="list-style-type: none"> (a) compatibility of electrical and other systems; and (b) electrical interference. |
| 12 | <p>Acoustics and Vibration, including:</p> <ul style="list-style-type: none"> (a) external (environmental) noise and vibration levels; (b) internal noise and vibration levels; (c) speech / communication systems intelligibility testing; and (d) structural sound transmission isolation performance. |
| 13 | <p>Returned Assets, including:</p> |



| # | Description of Tests |
|----|---|
| | (a) in accordance with the requirements of the relevant Returned Asset Owner. |
| 14 | PSO Assets, including: (a) standalone CCTV. |
| 15 | Platform Screen Door (PSD) system, including: (a) mechanical aspect; (b) physical installation; (c) electrical isolation of the PSD system in the tunnel from station earthing system, building services and station civil structures; (d) effectiveness of the PSD system in the tunnel in providing a sealed barrier between the platform and the tunnel; (e) integration of the PSDs with the track, platform and HCMT kinematic envelope; and (f) Integration and acceptance testing. |

Attachment 2

Final Acceptance Tests

In addition to the Project Requirements, Project Co must perform or procure the performance of, and pass (in accordance with clause 23 (*Testing and Commissioning*) of this Agreement) Tests in respect of:

| # | Description of Tests |
|---|---|
| 1 | High Voltage system, including: (a) control and monitoring; (b) emergency trip system test; (c) power quality and harmonics; (d) power failure and automatic change over functionality; (e) power SCADA systems; (f) BMS power monitoring; and (g) energy metering. |
| 2 | Traction power, track, rail and associated works, including: (a) control and monitoring; (b) emergency trip system test; (c) DC short circuit test; (d) load measuring test (HSCB); (e) traction substation failure mode test; (f) regeneration testing; and (g) load sharing test between rectifiers during train acceleration. |
| 3 | OHLE system, track, rails and associated system, including: (a) emergency trip system test; (b) continuity; (c) isolation/de-energised status indication test; (d) OHLE de-energisation test and tunnel lighting switching; and (e) control and monitoring. |
| 4 | Low Voltage system |
| 5 | UPS system |
| 6 | Emergency lighting system |



| # | Description of Tests |
|----|---|
| 7 | Earthing and Bonding system, including: <ul style="list-style-type: none"> (a) traction system and OHLE; (b) HV system; (c) LV system; and (d) rail track. |
| 8 | Tunnel Ventilation System including: <ul style="list-style-type: none"> (a) Tunnel fire tests and MFB requirements; (b) control and monitoring; (c) Tunnel Air flow and pressurise tests in tunnels; (d) inter-system integration with HCMT, CBTC; (e) Tunnel hot smoke clearance tests; and (f) energy management and metering. |
| 9 | VT system including control and monitoring |
| 10 | Fire detection/ fire protection/ fire alarm/ gas suppression including inter-system interfacing such as TVS, Station Smoke Management System (SSMS), VT system, MFB, security and rail systems, etc. |
| 11 | PSD system incorporation and integration with the Station Control Room (SCR), Network Control Centre (NCC), Fire Control Rooms (FCRs) and Incident Control Rooms (ICRs). |
| 12 | ICT/OCS systems integration including: <ul style="list-style-type: none"> (a) Passenger Information Displays (PIDs); (b) Public Address (PA); (c) Audio Frequency Induction Loop (AFIL); (d) Customer Help Points (CHP); (e) intranet; (f) Local Area Network (LAN); and (g) Metrol telephones. |
| 13 | Security system integration, including: <ul style="list-style-type: none"> (a) CCTV system; (b) access control system integration; (c) intruder detection system integration; (d) security / emergency management integration testing; and (e) security / BMS integration testing. |
| 14 | BMS including integration with NCC and SCR. |



| # | Description of Tests |
|----|---|
| 15 | Energy and Water Management System |
| 16 | Stray current and voltage level measurement |
| 17 | EMI/EMC requirements/compliance |
| 18 | Ticketing system integration |
| 19 | Track work systems |



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Schedule 27

Escrow Agreement (Financial Model)



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Deed

Execution Version

Metro Tunnel
Tunnel and Stations PPP

Escrow Agreement (Financial Model)

The Minister for Public Transport on behalf of the
Crown in right of the State of Victoria

Cross Yarra Partnership

Perpetual Corporate Trust Limited



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Escrow Agreement (Financial Model)

Date ►

Between the parties

State **The Minister for Public Transport on behalf of the Crown
in right of the state of Victoria**

Project Co **Cross Yarra Partnership**
ABN 57 956 065 885 of Level 8, 136 Exhibition Street, Melbourne,
Victoria, 3000

Escrow Agent **Perpetual Corporate Trust Limited**
ACN 000 341 533 of Level 18, Angel Place, 123 Pitt Street, Sydney,
NSW 2000

Recitals
The background to this Project is set out in the Project Agreement.
The Escrow Agent has been appointed by the State and Project Co to
hold the Escrow Material in escrow.

This deed witnesses as follows:



1 Definitions and interpretation

1.1 Project Agreement definitions

Unless otherwise expressly defined, expressions used in this Agreement have the meaning given to them in or for the purpose of the Project Agreement.

1.2 Definitions

The meanings of the terms used in this agreement are set out below.

| Term | Meaning |
|--------------------------|---|
| Agreed Amount | has the meaning given in clause 12(b)(1). |
| Agreement | means this agreement and includes all schedules, exhibits, attachments and annexures to it. |
| Commencement Date | means the date of this Agreement. |
| Cost | has the meaning given in clause 12(g). |
| Disputing Parties | has the meaning given in clause 18.1(a). |
| Escrow Fee | means the fees described in Schedule 2. |
| Escrow Material | means: <ol style="list-style-type: none">1 the Financial Model; and2 any Other Material. |
| Other Material | means any data or material provided by Project Co or the State to the Escrow Agent in accordance with the terms of this Agreement (other than the Financial Model provided in accordance with clause 5.1(a)) as varied, added to or replaced from time to time. |
| Project Agreement | means the document entitled 'Project Agreement' between the State and Project Co dated on or around the date of this Agreement. |



| Term | Meaning |
|-----------------------|---|
| Recipient | has the meaning given in clause 12(b)(2). |
| Representative | has the meaning given in clause 18.2(a). |
| Revenue | has the meaning given in clause 12(f). |
| Supplier | has the meaning given in clause 12(b). |

1.3 Interpretation

In this Agreement:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;
- and unless the context otherwise requires:
- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa and a word indicating a gender includes every other gender;
 - (c) **(agreement and schedule references)**: a reference to:
 - (1) a party, clause, Schedule, Exhibit, or Annexure is a reference to a party, clause, Schedule, Exhibit or Annexure of or to this Agreement; and
 - (2) a section is a reference to a section of a Schedule;
 - (d) **(agreement as amended)**: a reference to this Agreement or to any other deed, agreement, document or instrument includes a reference to this Agreement or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
 - (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
 - (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
 - (g) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
 - (h) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
 - (i) **(includes)**: 'includes' will be read as if followed by the phrase '(without limitation)';



- (j) **(or)**: the meaning of 'or' will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) **(\$)**: a reference to '\$', AUD or dollar is to Australian currency;
- (m) **(time)**: a reference to time is a reference to time in Melbourne, Australia;
- (n) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (o) **(obligations and liabilities)**: a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (p) **(may)**: the term 'may', when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;
- (q) **(construction)**: where there is a reference to an Authority, institute or association or other body referred to in this Agreement which:
 - (1) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Agreement is deemed to refer to that other entity; or
 - (2) ceases to exist, this Agreement is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (r) **(remedy)**: the use of the words 'remedy' or 'cure' or any form of such words in this Agreement means that the event to be remedied cured must be remedied or cured or its effects overcome; and
- (s) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

1.4 Business Day

If the day on or by which anything is to be done in accordance with this Agreement is not a Business Day, that thing must be done no later than the next Business Day.

1.5 Approvals, directions and notices in writing

Unless otherwise expressly provided in this Agreement or agreed between the parties, all approvals, consents, directions, requirements, requests, claims, notices, agreements and demands must be given in writing.

1.6 Action without delay

Unless there is a provision in this Agreement which specifies a period of time in which something must be done by the parties, all things must be done without undue delay.

1.7 State's rights and obligations

- (a) **(Acknowledgement):** The parties acknowledge the substance, operation and potential effect and consequences of clause 2.13 (*State's executive rights and duties*) of the Project Agreement in relation to this Agreement.
- (b) **(No Claim):** Subject to clause 1.7(c), Project Co and the Escrow Agent will not be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its executive or statutory rights or duties.
- (c) **(Liability for breach):** Clauses 1.7(a) and (b) do not limit any Liability which the State would have had to Project Co or the Escrow Agent under any State Project Document as a result of a breach by the State of a term of any State Project Document but for these clauses.

1.8 CY Trustee's limitation of liability

- (a) **(Capacity):** The parties acknowledge that the obligations of each CY Trustee under this Agreement are incurred by it solely in its capacity as trustee of the relevant CY Trust other than where expressly provided otherwise, including as contemplated by clause 1.8(c)(1) below.
- (b) **(Limited liability):** Subject to clause 1.8(c), each CY Trustee will:
 - (1) not be liable to pay or satisfy any of its obligations or liabilities under this Agreement in relation to the relevant CY Trust out of any assets held by it personally;
 - (2) only be liable to pay or satisfy any of its obligations or liabilities under this Agreement in relation to the relevant CY Trust out of the assets of that CY Trust out of which it is actually indemnified;
 - (3) not be liable to pay or satisfy any of its obligations or liabilities under this Agreement in its personal capacity out of any asset held by it personally (other than out of the property the subject of the State Securities); and
 - (4) only be liable to pay or satisfy any of its obligations or liabilities under the Project Documents in its personal capacity out of the property the subject of the State Securities held by it personally.
- (c) **(Circumstances where a CY Trustee is personally liable):**
 - (1) Each CY Trustee will be personally liable under this Agreement for any loss or damage which the Escrow Agent or the State (as applicable) may suffer as a result of a breach of this Agreement by that CY Trustee where such breach is caused by:
 - (A) fraud of that CY Trustee;
 - (B) wilful default of that CY Trustee;
 - (C) that CY Trustee having committed a breach of trust;
 - (D) that CY Trustee having been negligent in the performance of its duties as trustee of the relevant CY Trust;
 - (E) a representation or warranty given by that CY Trustee under this Agreement in respect of itself (in any capacity) or the relevant CY Trust being untrue, incorrect or misleading when made or repeated; or

- (F) a breach of any undertaking (other than an undertaking to pay) of that CY Trustee given under this Agreement.
- (2) The Escrow Agent or the State (as applicable) may:
 - (A) do anything necessary to enforce its rights in connection with any representation or warranty (with respect to the relevant CY Trustee or the relevant CY Trust) or undertaking (other than an undertaking to pay) given by any CY Trustee under this Agreement;
 - (B) do anything necessary to enforce its rights under each State Security;
 - (C) take proceedings to obtain an injunction or other order to restrain any breach of this Agreement by any CY Trustee or declaratory relief or other similar judgment or order as to the obligations of any CY Trustee under this Agreement; and
 - (D) prove in any insolvency proceedings in respect of any CY Trustee only in order to protect and enforce its rights in respect of the property of the relevant CY Trust and the Trustee's Indemnity.
- (3) Nothing in this clause 1.8 prevents the Escrow Agent or the State (as applicable) obtaining any injunctive relief, order for specific performance, declaration or similar relief against any CY Trustee.
- (d) **(Limited recourse):** The Escrow Agent and the State must not, except to the extent a CY Trustee is personally liable under clause 1.8(c)(1) and subject to clauses 1.8(c)(2) and 1.8(e):
 - (1) bring any proceeding for the winding up or liquidation of a CY Trustee;
 - (2) appoint, or seek the appointment of, a receiver or receiver and manager or other controller (as defined in the Corporations Act) to a CY Trustee or its assets or the assets of a CY Trust other than one appointed over any property secured by the State Securities;
 - (3) incur, or permit any receiver, receiver and manager appointed under a State Security, attorney appointed under a State Security or any other person to incur, any obligation binding on a CY Trustee unless the obligation is limited in accordance with this clause 1.8;
 - (4) take any action to obtain a judgment against a CY Trustee or to enforce a judgment against a CY Trustee other than:
 - (A) a judgment required to prove the amount of any Secured Moneys (as defined in the State Security);
 - (B) a counterclaim in any proceedings commenced by a CY Trustee; or
 - (C) as permitted by clause 1.8(c)(3); or
 - (5) levy or enforce a levy or distress or other execution upon or against any assets of a CY Trustee other than any property secured by the State Securities or the assets of the relevant CY Trustee or CY Trust.
- (e) **(No limitation on enforcement of security provided under the State Securities):** This clause 1.8 does not limit or affect in any way the enforcement of the State Securities and, for the avoidance of doubt, it is acknowledged and agreed by each CY Trustee (in its personal capacity and as trustee for the relevant CY Trust) that the security granted under the State Securities by it



constitutes a Security Interest over all of the Trust Property and all of its Trustee's Indemnity.

- (f) **(CY Trustee as Partner)**: A reference to a CY Trustee includes a reference to the relevant CY Trustee as a partner in the Cross Yarra Partnership.

2 Purpose of agreement

Subject to the terms and conditions of this Agreement, to secure the interests of the State and Project Co under the Project Agreement:

- (a) **(Deposit of Financial Model)**: Project Co must deposit the Financial Model in accordance with the Project Agreement and any Other Material in accordance with this Agreement, with the Escrow Agent in Melbourne; and
- (b) **(Escrow Material)**: the Escrow Agent must act as escrowee of the Escrow Material.

3 Term of agreement

- (a) **(Commencement)**: Subject to clause 3(b), this Agreement commences on the Commencement Date and will remain in force until this Agreement is terminated.
- (b) **(Conditions Precedent)**: The satisfaction or waiver of the Conditions Precedent in accordance with clause 3 of the Project Agreement is a condition precedent to the coming into operation of this Agreement (other than this clause 3(b)).

4 Conduct of Escrow Agent

Neither the State nor Project Co will be liable for any act or omission of the Escrow Agent.

5 Deposit of Financial Model

5.1 Deposit of Financial Model

- (a) **(At Financial Close)**: Project Co must deposit the Financial Model with the Escrow Agent promptly following Financial Close as required by the Project Agreement and the Escrow Agent must accept custody of the Financial Model.
- (b) **(When updated)**: Upon the occurrence of any of the events set out in clause 54.8 (*Custody of Financial Model*) of the Project Agreement, or when otherwise agreed by the State and Project Co, the State and Project Co may:
- (1) seek the release in accordance with clause 8 or 9 (as the case may be) of the then current version of the Financial Model held by the Escrow Agent; and



- (2) subsequently deposit that Financial Model, or a further updated version of the Financial Model as Other Material in accordance with clause 5.2, with the Escrow Agent.

5.2 Other Material

Project Co and the State may agree Other Material (which may be updated versions of the Financial Model amended in accordance with the Project Agreement or otherwise by agreement between the State and Project Co) to be deposited with the Escrow Agent and the Escrow Agent must accept custody of such Other Material deposited with it.

5.3 Confirmation of receipt

The Escrow Agent must give Project Co and the State confirmation of receipt of all Escrow Material referred to in clauses 5.1 and 5.2 immediately when it is received.

5.4 Storage of Escrow Material

The Escrow Agent must store the Escrow Material in a safe and secure place at the Escrow Agent's premises in Melbourne.

5.5 Escrow Material register

The Escrow Agent must maintain a register of Escrow Material deposited, stored and released under this Agreement in the form agreed by the State, Project Co and the Escrow Agent.

5.6 Information and inspection requests

- (a) **(Requests for inspection):** The Escrow Agent must promptly comply with a request of the State or Project Co to inspect and be furnished with a copy of the register referred to in clause 5.5 and to be furnished with information about storage, safety and security procedures relating to the Escrow Material.
- (b) **(Cost of Escrow Agent):** The reasonable costs of the Escrow Agent complying with a request in this clause 5.6 will be borne by Project Co.
- (c) **(State to reimburse for State requests):** The State will promptly reimburse Project Co for the costs of the Escrow Agent borne by Project Co arising from a request by the State under this clause 5.6.

6 Access to Escrow Material

Subject to this Agreement and unless required by Law, no other person will have access to the Escrow Material unless the Escrow Agent has been notified in advance by Project Co and the State.



7 Loss of Escrow Material

7.1 Loss of Escrow Material

If the Escrow Material or any medium containing the Escrow Material is lost, destroyed or damaged while in the possession, custody or control of the Escrow Agent:

- (a) **(notification)**: the Escrow Agent must promptly notify Project Co and the State; and
- (b) **(obligation to replace)**: Project Co must within 7 Business Days replace the lost, damaged or destroyed Escrow Material to the extent it is replaceable at:
 - (1) the Escrow Agent's cost if the loss, damage or destruction was caused by the Escrow Agent's fraud, negligence, recklessness, act or omission or breach of this Agreement; or
 - (2) Project Co's and the State's cost (shared equally in each case) in all other circumstances.

7.2 Specific performance

Without derogating from any other right to obtain specific performance, Project Co acknowledges that the State is entitled to specific performance of Project Co's obligations in clause 7.1.

8 Release of Escrow Material

The Escrow Agent will immediately release the Escrow Material to:

- (a) **(any nominated person)**: any person nominated by a notice signed by both the State and Project Co; and
- (b) **(State's auditor)**: upon the State's request, the State's auditor (appointed in accordance with clause 54.7 (*Auditing the Financial Model*) of the Project Agreement). The State's auditor will conduct the audit under that clause at the Escrow Agent's premises or, if the Escrow Agent does not have the required equipment or facilities, at Project Co's premises.

9 Release of Escrow Material to State on termination

The Escrow Agent must release the Escrow Material to the State immediately after notice from the State that:

- (a) **(unable or unwilling to perform functions)**: Project Co is unable or unwilling to perform its obligations under this Agreement;
- (b) **(Major Default or Default Termination Event)**: a Major Default or Default Termination Event has occurred under the Project Agreement;
- (c) **(termination)**: the Project Agreement has been terminated; or
- (d) **(expiration)**: the Term of the Project Agreement has expired.

10 Release of Escrow Material to new Escrow Agent

In the event that this Agreement terminates in accordance with clause 15, or the Escrow Agent:

- (a) **(unable to perform functions)**: refuses to or is unable to perform its obligations under this Agreement;
- (b) **(Insolvency Event)**: becomes, threatens to become or is in jeopardy of becoming subject to an Insolvency Event; or
- (c) **(breach)**: is otherwise in breach of this Agreement,

then the Escrow Agent will on instruction from the State and Project Co immediately release the Escrow Material to a new escrow agent agreed by the State and Project Co and notified to the Escrow Agent or, failing agreement, appointed, in accordance with clause 54.9 (*Replacement of Escrow Agent*) of the Project Agreement.

11 Escrow fees and charges

11.1 Payment

During the term of this Agreement, Project Co and the State will each pay 50% of the Escrow Fee to the Escrow Agent without demand in accordance with the payment terms of the Escrow Fee in Schedule 2.

11.2 Increases

The Escrow Agent may increase its fees in accordance with Schedule 2.

11.3 Late payments

- (a) **(Escrow Agent to notify)**: The Escrow Agent will notify the parties within a reasonable period if either of them fails to make any payment to the Escrow Agent by the due date. On receipt of such notice, the other party may pay to the Escrow Agent all amounts for which the defaulting party is in arrears.
- (b) **(Deduction of late payments)**: The State or Project Co may deduct amounts paid or incurred under clause 11.3(a) by the State or Project Co (as the case may be) from any moneys otherwise due from the State or Project Co (as the case may be) under the Project Agreement or otherwise or recover such amounts as a debt.

11.4 Other charges

The Escrow Fee is inclusive of all taxes, duties, fees or other government charges which may be imposed on the storage of the Escrow Material under this Agreement or otherwise.

12 Goods and Services Tax (GST)

- (a) **(GST exclusive amounts):** Unless otherwise expressly stated, all amounts referred to in this Agreement or any Project Document are exclusive of GST.
- (b) **(GST payable by Supplier):** If GST becomes payable on any Taxable Supply made by a party (**Supplier**) under or in connection with this Agreement:
- (1) any amount payable or consideration to be provided in accordance with any other provision of this Agreement for that supply (**Agreed Amount**) is exclusive of GST;
 - (2) an additional amount will be payable by the party which is the recipient of the Taxable Supply (**Recipient**), equal to the amount of GST payable on that Taxable Supply as calculated by the Supplier in accordance with the GST Law, which will be payable at the same time and in the same manner as for the Agreed Amount; and
 - (3) the Supplier will provide a Tax Invoice to the Recipient in connection with that supply, either at the time expressly set out in any other provision of this Agreement or no later than the time at which the Agreed Amount for that Taxable Supply is to be provided in accordance with this Agreement. The Recipient is not obliged to pay any amount in accordance with this clause 12 unless and until a Tax Invoice is received by the Recipient in connection with the Taxable Supply except where the Recipient is required to issue the Tax Invoice.
- (c) **(Variation in GST payable):** If, for any reason, the GST payable by the Supplier in connection with a supply it makes under or in connection with this Agreement (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it received from the Recipient under clause 12(b) in connection with that supply, the Supplier will provide a refund or credit to, or will be entitled to receive from, the Recipient (as appropriate) the amount of this variation. Where an adjustment event occurs in relation to a supply and except where the Recipient is required to issue the Adjustment Note:
- (1) the Supplier will issue an Adjustment Note to the Recipient in connection with that supply within 14 days after becoming aware of that adjustment event occurring; and
 - (2) no additional amount will be payable by the Recipient unless and until an Adjustment Note is received by the Recipient.
- (d) **(GST ceasing to be payable):** No amount is payable by a party in accordance with clause 12(b) or 12(c) to the extent that the GST to which the amount relates has ceased to be payable by or refundable to the Supplier by the Commissioner of Taxation under the GST Law.
- (e) **(Expert Determination):** If the Recipient is dissatisfied with any calculation to be made by the Supplier in accordance with this clause 12 the recipient may, at its own expense and after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the President of the Institute of Chartered Accountants for expert determination, which will be final and binding on all parties (except in the case of manifest error). The expert will act as an expert and not as an arbitrator and must take into account the terms of this Agreement, the matters required to be taken into account by the Supplier in accordance with this clause 12 and any other matter considered by the expert to be relevant to



the determination. The parties release the expert from any liability in acting as an expert, except in the case of fraud on the part of the expert.

- (f) **(Revenue net of GST):** Any reference in this Agreement to price, value, sales, revenue, profit or a similar amount (**Revenue**), will be a reference to the GST exclusive component of that Revenue unless the contrary intention is expressed.
- (g) **(Cost net of GST):** Any reference in this Agreement to cost, expense, liability or other similar amount (**Cost**), will be a reference to that Cost reduced by the Input Tax Credits in respect of such Cost to which the party is entitled in respect of such Cost, unless the contrary intention is expressed.
- (h) **(General obligation):** Each party agrees to do all things, including providing Tax Invoices and other documentation, that may be necessary or desirable to enable or assist the other party in determining its GST payable on any supply made by that other party in connection with this Agreement, or any Input Tax Credits, adjustments or refunds in relation to any amount of GST paid or payable in connection with any supply made in connection with this Agreement.
- (i) **(GST Groups):** For the purposes of this Agreement, a reference to GST payable on a Taxable Supply made by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member and a reference to an Input Tax Credit entitlement of a party includes any corresponding Input Tax Credit entitlement of the representative member of any GST group of which that party is a member, and if a party to this Agreement makes a Taxable Supply by virtue of entering into or performing this Agreement and the 'recipient' of that Taxable Supply (within the meaning of the GST Act) is an Associate of another party to this Agreement (which for this purpose includes, in relation to the State, the Secretary), that other party to this Agreement will be obliged either to pay the amount referred to in clause 12(b)(2) or procure that the actual recipient pays the relevant amount, and the payer of that amount shall be the 'Recipient' for the purposes of this clause 12 in relation to the relevant Taxable Supply.
- (j) **(Project Agreement to prevail):** If clause 59 (*Taxes*) of the Project Agreement would apply in respect of a Taxable Supply to which this clause 12 also applies, then clause 59 (*Taxes*) of the Project Agreement will apply in respect of that supply and the provisions of this clause 12 (but for this paragraph) will not apply.
- (k) **(Definitions):** In this clause 12 unless otherwise defined in this Agreement, terms used have the meanings given to them in the GST Law.

13 Confidentiality

13.1 Confidentiality of Escrow Material

The Escrow Agent acknowledges that the Escrow Material is the property of Project Co or the State and accordingly must treat the Escrow Material which comes into its possession, control or custody, under this Agreement as confidential.



13.2 Prohibited acts

Other than as set out in this Agreement, the Escrow Agent must not copy, reproduce, deal with or in any way use the Escrow Material or disclose it to any person without the permission of both Project Co and the State.

13.3 After termination

The obligations under this clause 13 survive the termination of this Agreement or the release of the Escrow Material.

14 Escrow Agent's further obligations

- (a) **(Obligations):** The Escrow Agent must:
 - (1) retain the Escrow Material in a safe and secure manner and in an environment that minimises degradation of the Escrow Material; and
 - (2) ensure the Escrow Material remains in the same condition it was in at the time of deposit with the Escrow Agent.
- (b) **(Limitations on obligations):** The Escrow Agent has no obligation to verify:
 - (1) the completeness or accuracy of Escrow Materials, or of electronic or other notations on such deposits; or
 - (2) that the Escrow Material is sufficient to enable the State to use the Escrow Material as contemplated by the Project Agreement.

15 Termination of Agreement

This Agreement will immediately terminate if both Project Co and the State give 10 Business Days' notice to the Escrow Agent of such termination or, where the Escrow Material has been released to the State under clause 9 upon termination or expiry of the Project Agreement, if the State gives 10 Business Days' notice to the Escrow Agent of such termination.

16 Assignment

16.1 Assignment by Escrow Agent

The benefit of this Agreement will not be dealt with in any way by the Escrow Agent (whether by assignment or otherwise) without the prior consent of both Project Co and the State.

16.2 Assignment by State and Project Co

The State and Project Co may at any time assign, novate or otherwise transfer all or any part of their rights or liabilities under this Agreement to any person to whom the State or Project Co assign their rights under the Project Agreement.

17 Subcontracting

The Escrow Agent must not subcontract or otherwise arrange for another person to perform any part of this Agreement or to discharge any of its obligations under this Agreement without the prior consent of the State and Project Co.

18 Dispute Resolution

18.1 Procedure for resolving disputes

- (a) **(Disputes to be resolved):** Any dispute arising under this Agreement must be resolved by the parties to that dispute (**Disputing Parties**) in accordance with this clause 18.
- (b) **(Procedure):** The procedure that is to be followed to resolve a dispute is as follows:
 - (1) firstly, the dispute must be the subject of negotiation as required by clause 18.2;
 - (2) secondly, if the dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 18.2(c)(1) the Disputing Parties may agree that the dispute will be referred to an expert for determination in accordance with clauses 18.4 to 18.8 (inclusive) or to arbitration under clause 19; and
 - (3) thirdly, if:
 - (A) the dispute remains unresolved (in whole or in part) and has not been referred to expert determination after the expiration of the period for negotiation referred to in clause 18.2(c)(1) and irrespective of whether the Disputing Parties failed to meet as required by that clause or whether having so met the parties fail to agree whether the Dispute should be referred to an expert or to arbitration within 20 Business Days after the expiration of the period for negotiation referred to in clause 18.2(c)(2);
 - (B) the dispute has been referred to expert determination and a determination is not made by the expert within 30 days after the expert's acceptance of appointment; or
 - (C) the dispute is referred to expert determination and a notice of dissatisfaction is given in accordance with clause 18.6(a),

then the dispute must be referred to arbitration in accordance with clause 19.

18.2 Negotiation

- (a) **(Notification):** If a dispute arises then a party may give notice to each other party requesting that the dispute be referred for resolution by negotiation between the Chief Executive Officers (or equivalent) of the Disputing Parties (**Representatives**).



- (b) **(Contents of Notice)**: A notice under clause 18.2(a) must:
 - (1) state that it is a notice under this clause 18; and
 - (2) include or be accompanied by particulars of the matters which are the subject of the dispute.
- (c) **(Attempt to resolve Dispute)**: If a dispute is referred for resolution by negotiation under clause 18.2(a), then:
 - (1) the Representatives must meet and attempt in good faith to resolve the dispute (in whole or in part) within 10 Business Days of the date on which the notice under clause 18.2(a) is received (or such later date as the Disputing Parties may agree); and
 - (2) any agreement reached between the Representatives will be reduced to writing, signed by or on behalf of each Disputing Party and will be contractually binding on the Disputing Parties.

18.3 Expert determination

If:

- (a) **(dispute unresolved by Representatives)**: a dispute which has been referred to the Representatives for negotiation in accordance with clause 18.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 18.2(c)(1); and
- (b) **(referral to expert)**: the Disputing Parties agree within 20 Business Days after the expiration of the period for negotiation referred to in clause 18.2(c)(1), that the dispute be referred to an expert for determination,

then those parts of the dispute which remain unresolved will be referred to an expert for determination under clauses 18.4 to 18.8. For the avoidance of doubt, a dispute may only be referred to an expert for determination by agreement of the Disputing Parties.

18.4 Selection of expert

- (a) **(Exchange of lists of 3 preferred experts)**: Within 7 Business Days after the date on which the Disputing Parties agree to refer a dispute to an expert for determination under clause 18.3, the Disputing Parties must exchange lists of 3 persons (in order of preference) who, if appointed, would satisfy the requirements of clause 18.4(d), from whom the expert is to be chosen.
- (b) **(Appointment of person who appears on both lists)**: Any person who appears on the list of all of the Disputing Parties exchanged under clause 18.4(a) will be appointed as the expert to determine a dispute and if more than one person appears on the list of all of the Disputing Parties, the person given the highest order of priority by the party who gave the notice under clause 18.2(a) will be appointed.
- (c) **(Appointment if no person appears on both lists)**: If no person appears on the list of all of the Disputing Parties and the Disputing Parties cannot otherwise agree an expert, the party which gave the notice under clause 18.2(a) must procure:
 - (1) the president (or the senior non-executive officer, howsoever described) of the institute or governing body for the technical or professional discipline the subject of the relevant dispute to nominate the expert, having regard to, but not being bound by, those persons proposed by the Disputing Parties under clause 18.3(a); or



- (2) if there is no governing body for the technical or professional discipline the subject of the relevant dispute or such governing body advises that it will not nominate an expert, the President of the Australian Centre for International Commercial Arbitration to nominate a person to act as the expert, having regard to, but not being bound by, those persons proposed by the Disputing Parties under clause 18.4(a).
- (d) **(Appropriate skills):** It is the intention of the parties that the expert appointed to determine a dispute will be an independent person with appropriate skills having regard to the nature of the matters in dispute.
- (e) **(No entitlement to challenge appointment):** No Disputing Party will be entitled to challenge the appointment of an expert under this clause 18.4 on the basis that the expert does not satisfy the requirements of clause 18.4(d).
- (f) **(Not an arbitration agreement):** Any agreement for expert determination under this Agreement will not constitute an arbitration agreement for the purposes of the *Commercial Arbitration Act 2011 (Vic)*.
- (g) **(Agreement):** Once an expert is appointed, the Disputing Parties must enter into an agreement with the expert on the terms of the Expert Determination Agreement or such other reasonable terms as the expert may require.

18.5 Rules of expert determination

The expert determination process will be administered, and the expert will be required to act, under the terms of the Expert Determination Agreement.

18.6 Expert finding

- (a) **(Notification):** The determination of the expert must be in writing and will be final and binding on the Disputing Parties unless, within 10 Business Days of receipt of the determination, a Disputing Party gives notice to each other Disputing Party of its dissatisfaction and intention to refer the matter to arbitration in accordance with clause 19.
- (b) **(Amendment to determination):** Upon submission by any Disputing Party, the expert may amend the determination to correct:
 - (1) a clerical mistake;
 - (2) an error from an accidental slip or omission;
 - (3) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
 - (4) a defect in form.

18.7 Liability of expert

- (a) **(Liability of expert):** The Disputing Parties agree:
 - (1) that the expert will not be liable in connection with the expert determination, except in the case of fraud on the part of the expert; and
 - (2) to indemnify the expert against any Claim or Liability in connection with the expert determination, except in the case of fraud on the part of the expert, in which case a Claim may be made against him or her by any person who is party to the dispute.



- (b) **(Engagement):** The Disputing Parties will jointly engage the expert services in connection with the expert determination proceedings and each Disputing Party will seek a separate Tax Invoice equal to its share of the costs of the expert.

18.8 Costs

The Disputing Parties must:

- (a) bear their own costs in connection with the expert determination proceedings; and
- (b) pay an equal portion of the costs of the expert.

19 Arbitration

19.1 Reference to Arbitration

- (a) **(Dispute):** If:
 - (1) a dispute:
 - (A) which has been referred to the parties' Representatives for negotiation in accordance with clause 18.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 18.2(c)(1); and
 - (B) the Disputing Parties do not agree to refer the dispute to an expert for determination; or
 - (2) in the case of a dispute which the Disputing Parties agree to refer to expert determination under clause 18.3:
 - (A) a determination is not made within 30 days of the expert's acceptance of the appointment; or
 - (B) a notice of dissatisfaction is given in accordance with clause 18.6,then any Disputing Party may notify the other Disputing Parties that it requires the dispute to be referred to arbitration.
- (b) **(Referral):** Upon receipt by a Disputing Party of a notice under clause 19.1(a), the dispute will be referred to arbitration.

19.2 Arbitration

- (a) **(ACICA Rules):** Arbitration in accordance with this clause 19 will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Rules) as current at the date the Dispute is referred to arbitration and as otherwise set out in this clause 19 with this clause 19 having priority to the extent of any inconsistency.
- (b) **(Seat):** The seat of the arbitration will be Melbourne, Victoria.
- (c) **(Language):** The language of the arbitration will be English.



19.3 Appointment of arbitrator

The parties will endeavour to agree on the arbitrator or arbitrators (if the Disputing Parties agree to appoint three arbitrators), but if no such agreement is reached within 14 Business Days of the dispute being referred to arbitration in accordance with clause 19.1(b), the arbitrator or arbitrators will be appointed by the Australian Centre for International Commercial Arbitration.

19.4 General Principles for conduct of arbitration

- (a) **(Conduct of arbitration):** The Disputing Parties agree that:
 - (1) they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any dispute;
 - (2) any arbitration conducted in accordance with this clause 19 will not necessarily mimic court proceedings of the seat of the arbitration or the place where hearings take place (if different), and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and
 - (3) in conducting the arbitration, the arbitrator must take into account the matters set out in clauses 19.4(a)(1) and 19.4(a)(2).
- (b) **(Evidence in writing):** All evidence in chief must be in writing unless otherwise ordered by the arbitrator.
- (c) **(Evidence and discovery):** The rules for evidence and discovery will be the IBA Rules on the Taking of Evidence in International Arbitration current at the date of arbitration.
- (d) **(Oral hearing):** The oral hearing must be conducted as follows:
 - (1) any oral hearing must take place in Melbourne, Victoria and all outstanding issues must be addressed at the oral hearing;
 - (2) the date and duration of the oral hearing must be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in clause 19.4(a) when determining the duration of the oral hearing;
 - (3) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
 - (4) the oral hearing must be conducted on a stop clock basis with the effect that the time available to the parties must be split equally between the parties so that each party has the same time to conduct its case unless, in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the parties;
 - (5) not less than 28 days prior to the date fixed for oral hearing each of the Disputing Parties must give notice of those witnesses (both factual and expert) of each other Disputing Party that it wishes to attend the hearing for cross examination;
 - (6) in exceptional circumstances the arbitrator may amend the date of hearing and extend the time for the oral hearing set in accordance with clause 19.4(d)(2);



- (7) a Disputing Party will not be bound to accept the written evidence of a witness submitted on behalf of the opposing party which is not challenged in cross examination; and
 - (8) each Disputing Party is expected to put its case on significant issues in cross examination of a relevant witness called by the other Disputing Party or, where it seeks to challenge the evidence of a witness not called for cross-examination by reference to other evidence, to identify that evidence in its written opening submissions so that the other Disputing Party may know the nature of and basis for the challenge to the witness' written evidence.
- (e) **(Experts):** Unless otherwise ordered each Disputing Party may only rely upon one expert witness in connection with any recognised area of specialisation.

19.5 Proportional liability

To the extent permitted by Law, the arbitrator will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this clause 19.5, have applied to any dispute referred to arbitration in accordance with this clause 19.

19.6 Extension of ambit of arbitration proceedings

- (a) **(Extending Disputes):** Where:
- (1) a dispute between the Disputing Parties to this Agreement is referred to arbitration in accordance with this clause 19; and
 - (2) there is some other dispute also between the Disputing Parties to and in accordance with this Agreement (whenever occurring),
- the arbitrator may, upon application being made to the arbitrator by one or more of the Disputing Parties at any time before a final award is made in relation to the first-mentioned dispute, make an order directing that the arbitration be extended so as to include the other dispute.
- (b) **(Arbitrator's order):** An arbitrator may make an order in accordance with clause 19.6(a) on such terms and conditions (if any) as the arbitrator thinks fit.

19.7 Award final and binding

- (a) **(Final and binding):** Subject to clause 19.7(b), any award will be final and binding on the Disputing Parties.
- (b) **(Appeal):** Each Disputing Party consents to any appeal to a court where that appeal is made under the *Commercial Arbitration Act 2011* (Vic) on a question of law arising in connection with an arbitral award made in accordance with this clause 19.

19.8 Continue to perform

Notwithstanding the existence of a dispute, each Disputing Party must continue to carry out its obligations in accordance with this Agreement.

19.9 Governing law of arbitration agreement

The Law governing this arbitration agreement is the law of Victoria, Australia.

19.10 Interlocutory relief

This clause 19 does not prevent a Disputing Party from seeking urgent interlocutory relief from a court of competent jurisdiction where, in that Disputing Party's reasonable opinion, that action is necessary to protect that Disputing Party's rights.

20 Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Agreement:

- (a) **(in writing)**: must be in writing;
- (b) **(addressed)**: must be addressed as set out below (or as otherwise notified by that party to each other party from time to time);

State

Attention: [not disclosed]
Address: [not disclosed]
Email: [not disclosed]

Project Co

Attention: [not disclosed]
Address: [not disclosed]
Email [not disclosed]

Escrow Agent

Attention: [not disclosed]
Address: [not disclosed]
Email: [not disclosed] [not disclosed]

- (c) **(signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of that party on its behalf;
- (d) **(form of delivery)**: must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by both parties) to the email address of the addressee in accordance with clause 20(b); and
- (e) **(taken to be received)**: are taken to be received by the addressee:
 - (1) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00am on the next Business Day;
 - (2) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia;
 - (3) in the case of email, the first to occur of:

- (A) receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
- (B) the time that the communication enters an information system which is under the control of the addressee; or
- (C) the time that the communication is first opened or read by the addressee,
- (D) unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00am on the next Business Day.

21 Miscellaneous

21.1 Governing Law and jurisdiction

- (a) **(Governing Law):** This Agreement is governed by, and must be construed according to, the Laws of Victoria, Australia.
- (b) **(Jurisdiction):** Without limiting clauses 18 to 19, each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Agreement.

21.2 Entire agreement

To the extent permitted by Law and in relation to their subject matter, this Agreement:

- (a) **(entire understanding):** embodies the entire understanding of the parties and constitute the entire terms agreed by the parties; and
- (b) **(prior agreement):** supersedes any prior agreement of the parties.

21.3 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to both parties) required by Law or reasonably requested by another party to give effect to this Agreement.

21.4 Survival of certain provisions

- (a) **(Surviving clauses):** All provisions of this Agreement which, expressly or by implication from their nature, are intended to survive the rescission, termination or expiration of this Agreement will survive the rescission, termination or expiration of this Agreement, including any provision in connection with:
 - (1) the State's rights to set-off and recover money;
 - (2) confidentiality or privacy;
 - (3) Intellectual Property Rights;
 - (4) any obligation to make any records available to the State;



- (5) any indemnity or financial security given in accordance with this Agreement; or
- (6) any right or obligation arising on termination of this Agreement.
- (b) **(Interpretation)**: No provision of this Agreement which is expressed to survive the termination of this Agreement will prevent any other provision of this Agreement, as a matter of interpretation, also surviving the termination of this Agreement.
- (c) **(Survival of rights and obligations)**: No right or obligation of any party will merge on completion of any transaction in accordance with this Agreement. All rights and obligations in accordance with this Agreement survive the execution and delivery of any transfer or other document which implements any transaction in accordance with this Agreement.

21.5 Waiver

- (a) **(Writing)**: A waiver given by a party in accordance with this Agreement is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver)**: A failure to, a delay in or the partial exercise or enforcement of a right provided by Law or in accordance with this Agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or in accordance with this Agreement.
- (c) **(No waiver of another breach)**: No waiver of a breach of a term of this Agreement operates as a waiver of another breach of that term or of a breach of any other term of this Agreement.

21.6 Consents, approvals and directions

A consent required in accordance with this Agreement from the State may be given or withheld, or may be given subject to any conditions, as the State thinks fit, unless this Agreement expressly provides otherwise.

21.7 Amendments

Except as otherwise expressly provided in this Agreement, this Agreement may only be varied by a deed executed by or on behalf of each party.

21.8 Expenses

Except as otherwise expressly provided in this Agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Agreement.

21.9 Severance

If, at any time, a provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this Agreement or any other relevant State Project Document; or



- (b) that provision under the Law of any other jurisdiction.

21.10 Counterparts

This Agreement may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same Agreement.

21.11 Moratorium legislation

Without limiting clause 5.3 of the Project Agreement, to the fullest extent permitted by Law, the provisions of all Laws which operate to lessen or affect in favour of a party other than the State any obligation under this Agreement, or to prejudicially affect the exercise by the State of any right, power or remedy under this Agreement or otherwise, are expressly waived.

21.12 Proportionate liability

- (a) **(Excluded operation of Wrongs Act):** The operation of Part IVAA of the *Wrongs Act 1958* (Vic) is excluded in relation to all and any rights, obligations or liabilities of either party under this Agreement whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) **(Rights, obligations and liabilities):** Without limiting clause 21.12(a), the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Agreement and not otherwise, whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.



Schedule 1

Notice details

| | |
|--------------|-----------------|
| State | [not disclosed] |
| Address | [not disclosed] |
| Attention | [not disclosed] |
| Phone | [not disclosed] |
| Fax | [not disclosed] |
| Email | [not disclosed] |

| | |
|-------------------|-----------------|
| Project Co | [not disclosed] |
| Address | [not disclosed] |
| Attention | [not disclosed] |
| Phone | [not disclosed] |
| Fax | [not disclosed] |
| Email | [not disclosed] |

| | |
|---------------------|-----------------|
| Escrow Agent | [not disclosed] |
| Address | [not disclosed] |
| Attention | [not disclosed] |
| Phone | [not disclosed] |
| Fax | [not disclosed] |
| Email | [not disclosed] |
| | [not disclosed] |



Schedule 2

Fees and Charges

The Escrow Fee consists of the following:

Establishment and Annual Fee

- (a) Establishment Fee: [not disclosed] (payable at Financial Close). All applicable GST is payable in addition to the fee; and
- (b) Annual Fee: [not disclosed] per annum (payable annually in advance from Financial Close). The fee is indexed to CPI annually and all applicable GST is payable in addition to the fee.

CPI means the All Groups Consumer Price Index Weighted Average of Eight Capital Cities (IECC) (ABS Cat No. 6401.0 Series ID A2325846C) published quarterly by the Australian Bureau of Statistics or, if there is a change to that index, the index determined in accordance with section 3 of Schedule 22 of the Project Agreement.

Time in Attendance Fee

A time in attendance fee may be charged for:

- (a) amendments to this Agreement;
- (b) significant changes to the scope, nature or frequency of services undertaken by the Escrow Agent, including the restructure of the transaction; and
- (c) work that was not originally contemplated.

The fee will be charged at the Escrow Agent's time in attendance rate applicable at the time of incurring the fee. On request, the applicable time in attendance rate will be provided to the State and / or Project Co.

The Escrow Agent's current time in attendance hourly rates are:

| Simplified for across PCT (excluding GST) | | |
|--|-----------------|--|
| Team Assistant | [not disclosed] | Team Assistant |
| Client Service Officer | [not disclosed] | Client Service Officer Associate |
| Senior Client Service Officer | [not disclosed] | Senior Client Service Officer Senior Associate |
| Manager | [not disclosed] | Senior Client Service Manager Manager Manager Corporate Clients - New Business Client Service Manager |
| Senior Manager | [not | Senior Manager |



| | | |
|--|-----------------|--|
| | disclosed] | Senior Corporate Clients Manager Senior Securitisation Manager Senior Transaction Manager Senior Risk Manager |
| Head of | [not disclosed] | Head of |
| Legal Counsel Senior Legal Counsel | [not disclosed] | Legal Counsel Senior Legal Counsel |
| Group General Counsel Company Secretary | [not disclosed] | Group General Counsel Company Secretary |
| General Manager | [not disclosed] | GM |
| Group Executive | [not disclosed] | GE |
| CEO | [not disclosed] | CEO |

Out of Pocket Expenses

The Escrow Agent must be reimbursed for all out of pocket expenses and costs, subject to the following:

- (a) the expenses and costs have been reasonably and properly incurred for the sole purpose of performing the services under this Agreement;
- (b) where they exceed or are likely to exceed [not disclosed] per annum, have the prior approval of the State and Project Co; and
- (c) are supported by documentation provided to the State and Project Co which is satisfactory to the State and Project Co.



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SMITH
FREEHILLS

Signing page

Executed as a deed

[State Note: Execution blocks to be inserted.]

Schedule 28

Commercial Opportunities Schedule

1 Principles applicable to all Commercial Opportunities Subleases

Project Co must ensure that each Commercial Opportunities Sublease:

- (a) is for a Permitted Commercial Opportunity;
- (b) prohibits any further leasing or licensing and any assignment of rights or novation of any rights and obligations under that Commercial Opportunities Sublease, without the prior written consent of the State;
- (c) imposes a duty of confidentiality on the Commercial Opportunities Tenant in respect of Confidential Information;
- (d) expressly recognises and permits the exercise by State of its rights under this Agreement and in particular under clauses 16.3 (*State's right to enter, inspect and test*), 41 (*Step-in by the State*), 45 (*Termination*), 53 (*Assignment, amendments and change in ownership*) and 62 (*Probity Events and Probity Investigations*);
- (e) provides that each Commercial Opportunities Tenant must not do, or omit to do, anything that would cause or contribute to, or result in, Project Co being in breach of this Agreement;
- (f) provides that subject to the requirements of the *Retail Leases Act 2003* (Vic) (where applicable), Project Co may elect to terminate a Commercial Opportunities Sublease at any time after one or more of the following:
 - (1) the Commercial Opportunities Tenant commits a material default under the Commercial Opportunities Sublease (including causing Project Co to be in breach of clause 37 (*Commercial opportunities and revenue*) of this Agreement) that is not cured or remedied within the applicable cure period or, if it is not capable of being cured or remedied, the Commercial Opportunities Tenant fails to comply with Project Co's requirements;
 - (2) the Commercial Opportunities Tenant commits a material default under the Commercial Opportunities Sublease which is also a Major Default under this Agreement which is not cured or remedied prior to the expiry of the applicable cure period under this Agreement, or, if the Major Default is not capable of being so cured or remedied, the Commercial Opportunities Tenant fails to comply with Project Co's requirements;
 - (3) an Insolvency Event occurs with respect to the Commercial Opportunities Tenant;
 - (4) a prolonged Force Majeure Event; or
 - (5) a Probity Event occurs with respect to the Commercial Opportunities Tenant; and



- (g) provides that each Commercial Opportunities Tenant and any prospective Commercial Opportunities Tenant must:
 - (1) consent to being the subject of a Probity Investigation undertaken in accordance with this Agreement; and
 - (2) comply with all applicable probity obligations set out in clause 62 (*Probity Events and Probity Investigations*) of this Agreement.

2 Commercial Opportunities Guiding Principles

The '**Commercial Opportunities Guiding Principles**' means in relation to a commercial opportunity:

- (a) is consistent with Project Co's obligations under this Agreement;
- (b) contributes to the State achieving the Project vision and objectives (as set out in this Agreement, the PS&TR and the Services Specification);
- (c) enhances amenity for the public and Users;
- (d) does not cause disruption, inconvenience, or risk to Users;
- (e) maximises asset utilisation taking into account the delivery of Rail Services and the urban design outcomes of the Maintained Assets;
- (f) does not intentionally attract additional people into the Maintained Assets unless consistent with paragraph 2(b);
- (g) does not compromise or increase the risk of the Project, be financially sustainable and do not increase State risks or limit the State's flexibility with respect to the Project;
- (h) delivers a financial benefit to the State and demonstrably achieves value for money taking into account associated risks;
- (i) does not compromise or increase the risk of the core Project;
- (j) is financially sustainable, and does not increase State risks;
- (k) complies with any PTV policy in relation to advertising content and location including the Advertising Principles set out in section 3;
- (l) is not a betting agency, brothel or tattoo parlour;
- (m) is not an outlet offering:
 - (1) alcohol, tobacco products or, lottery tickets (except outside of the ticketed areas, in locations approved by the State); or
 - (2) guns, firearms, explosives or offensive weapons, sexually explicit or pornographic goods, or items of a similar nature;
- (n) in relation to the location of advertising, the location has been approved by the State;
- (o) contributes to providing for a variety of commercial opportunities within each Station; and
- (p) does not adversely affect:
 - (1) the performance of the Services;
 - (2) the performance of Train Operations;



- (3) the occupation and operation of any Returned Asset by the relevant Returned Asset Owner;
- (4) the ability of Project Co to obtain, maintain or comply with any Accreditation, Approvals or Standards; or
- (5) the ability of the Train Franchisee to obtain, maintain or comply with any Accreditation.

3 Advertising Principles

- (a) Any advertising must:
 - (1) comply with all applicable Law;
 - (2) comply with voluntary codes of conduct established by the advertising industry;
 - (3) not:
 - (A) depict any subject matter that is offensive;
 - (B) condone or provoke anti-social behaviour;
 - (C) promote or relate to alcohol or gambling;
 - (D) use sexualised images or gender objectification;
 - (E) portray images or events that may cause distress to children;
 - (F) be used to promote a political party, parties or a political cause;
 - (G) use offensive language;
 - (H) demean any person or group on the basis of ethnicity, nationality, race, gender, age, sexual preference, religion or mental or physical disability; or
 - (I) disparage or diminish the reputation of public transport or the public transport system in Victoria; and
 - (4) not resemble, be capable of confusion with, or obstruct directional or informational signs or otherwise compromise wayfinding in any way.
- (b) Any advertising must not:
 - (1) be audible to passengers on-board services or on platforms;
 - (2) be hung from or placed on the Station ceilings or any Station asset used to deliver passenger information (excluding poster cases and existing hoardings);
 - (3) be visible on digital applications which provide service information to passengers;
 - (4) in the case of digital media, pose a health and safety risk as a result of flickering or other visual imagery;
 - (5) impede pathways or passenger flows or create safety issues in the event of an emergency evacuation;



- (6) use a public announcement system and other audio to advertise products unrelated to the public transport network; or
 - (7) be hung from or placed on hand rails or platform screen doors.
- (c) Any question as to whether any advertising complies or does not comply with paragraph (a) or (b) is to be determined by the State or PTV in its discretion. If the Project Co considers that there may be any uncertainty as to whether advertising it proposes to apply in Stations or on any Relevant Infrastructure complies with paragraph (a) or (b), Project Co should submit the advertising to the State or PTV for approval prior to proceeding.
- (d) Any advertising material that the State or PTV considers (acting reasonably) does not comply with paragraph (a) or (b) must, at the direction of the State or PTV, be removed within the time frame set by the State or PTV and in a manner reasonably acceptable to the State or PTV, as applicable.
- (e) All costs associated with the removal of any advertising material pursuant to paragraph (d) must be paid by Project Co.



4 Initial Permitted Commercial Opportunities

[not disclosed]



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Schedule 29

Reviewable Services Schedule

[not disclosed]

Schedule 30

Critical Interface Milestone Schedule

Capitalised terms used in this Schedule have the meanings given to them in this Agreement, the Design Review Schedule and the PS&TR.

The Step number refers to the IDS baseline established on 13 December 2017. IDS step which is already in use will not be repeated for a new step in the future, i.e. If a new step needs to be added between Step 9 and Step 10 then new Step number would be 9.5. Unless such IDS changes impact the dates or content of the CIMs, it is not intended to update this Schedule 30.

| Interface Definition Sheet | | Step | Critical Interface Milestone | Critical Interface Milestone Date | Dependent Party (Project Co / RSA / RIA) | Responsible Party (Project Co / RSA / RIA) |
|----------------------------|------------------------|------|---|-----------------------------------|---|---|
| 1.1.1.1.3-1 | TBM/Mined Tunnel (All) | 4 | PPP-RSA: Provide Interim Design for review | [not disclosed] | RSA | Project Co |
| 1.1.1.1.3-1 | TBM/Mined Tunnel (All) | 5 | RSA-PPP: Provide Interim Design review feedback | [not disclosed] | Project Co | RSA |
| 1.1.1.3 | ARD (Civil - Station) | 3 | PPP-RSA: Provide Draft Certified Design for review | [not disclosed] | RSA | Project Co |
| 1.1.1.3 | ARD (Civil - Station) | 4 | RSA-PPP: Provide Design review feedback . Confirming adequate space has been provided by PPP for RSA equipment. | [not disclosed] | Project Co | RSA |
| 1.1.1.3 | CBN (Civil - Station) | 3 | PPP-RSA: Provide Draft Certified Design for review | [not disclosed] | RSA | Project Co |
| 1.1.1.3 | CBN (Civil - Station) | 4 | RSA-PPP: Provide Design review feedback . Confirming adequate space has been provided by PPP for RSA equipment. | [not disclosed] | Project Co | RSA |

| Interface Definition Sheet | | Step | Critical Interface Milestone | Critical Interface Milestone Date | Dependent Party (Project Co / RSA / RIA) | Responsible Party (Project Co / RSA / RIA) |
|----------------------------|-----------------------|------|---|-----------------------------------|--|--|
| 1.1.1.3 | CBS (Civil - Station) | 3 | PPP-RSA: Provide Draft Certified Design for review | [not disclosed] | RSA | Project Co |
| 1.1.1.3 | CBS (Civil - Station) | 4 | RSA-PPP: Provide Design review feedback . Confirming adequate space has been provided by PPP for RSA equipment. | [not disclosed] | Project Co | RSA |
| 1.1.1.3 | DMN (Civil - Station) | 3 | PPP-RSA: Provide Draft Certified Design for review | [not disclosed] | RSA | Project Co |
| 1.1.1.3 | DMN (Civil - Station) | 4 | RSA-PPP: Provide Design review feedback . Confirming adequate space has been provided by PPP for RSA equipment. | [not disclosed] | Project Co | RSA |
| 1.1.1.3 | PKV (Civil - Station) | 3 | PPP-RSA: Provide Draft Certified Design for review | [not disclosed] | RSA | Project Co |
| 1.1.1.3 | PKV (Civil - Station) | 4 | RSA-PPP: Provide Design review feedback . Confirming adequate space has been provided by PPP for RSA equipment. | [not disclosed] | Project Co | RSA |
| 1.1.5.3 | ARD (Underground OCS) | 8 | PPP-RSA: Provide Underground Interim Design for review | [not disclosed] | RSA | Project Co |
| 1.1.5.3 | ARD (Underground OCS) | 9 | RSA-PPP: Provide Underground Interim Design review feedback | [not disclosed] | Project Co | RSA |
| 1.1.5.3 | ARD (Underground OCS) | 10 | RSA-PPP: Provide estimated BoM - Final cable types - Estimated quantities | [not disclosed] | Project Co | RSA |
| 1.1.5.3 | ARD (Underground OCS) | 20 | PPP-RSA: Provide installation, ITP & asset records | [not disclosed] | RSA | Project Co |

| Interface Definition Sheet | | Step | Critical Interface Milestone | Critical Interface Milestone Date | Dependent Party (Project Co / RSA / RIA) | Responsible Party (Project Co / RSA / RIA) |
|----------------------------|-----------------------|------|---|-----------------------------------|--|--|
| 1.1.5.3 | CBN (Underground OCS) | 8 | PPP-RSA: Provide Underground Interim Design for review | [not disclosed] | RSA | Project Co |
| 1.1.5.3 | CBN (Underground OCS) | 9 | RSA-PPP: Provide Underground Interim Design review feedback | [not disclosed] | Project Co | RSA |
| 1.1.5.3 | CBN (Underground OCS) | 10 | RSA-PPP: Provide estimated BoM - Final cable types - Estimated quantities | [not disclosed] | Project Co | RSA |
| 1.1.5.3 | CBN (Underground OCS) | 20 | PPP-RSA: Provide installation, ITP & asset records | [not disclosed] | RSA | Project Co |
| 1.1.5.3 | CBS (Underground OCS) | 8 | PPP-RSA: Provide Underground Interim Design for review | [not disclosed] | RSA | Project Co |
| 1.1.5.3 | CBS (Underground OCS) | 9 | RSA-PPP: Provide Underground Interim Design review feedback | [not disclosed] | Project Co | RSA |
| 1.1.5.3 | CBS (Underground OCS) | 10 | RSA-PPP: Provide estimated BoM - Final cable types - Estimated quantities | [not disclosed] | Project Co | RSA |
| 1.1.5.3 | CBS (Underground OCS) | 20 | PPP-RSA: Provide installation, ITP & asset records | [not disclosed] | RSA | Project Co |
| 1.1.5.3 | DMN (Underground OCS) | 8 | PPP-RSA: Provide Underground Interim Design for review | [not disclosed] | RSA | Project Co |
| 1.1.5.3 | DMN (Underground OCS) | 9 | RSA-PPP: Provide Underground Interim Design review feedback | [not disclosed] | Project Co | RSA |
| 1.1.5.3 | DMN (Underground OCS) | 10 | RSA-PPP: Provide estimated BoM - Final cable types | [not disclosed] | Project Co | RSA |

| Interface Definition Sheet | | Step | Critical Interface Milestone | Critical Interface Milestone Date | Dependent Party (Project Co / RSA / RIA) | Responsible Party (Project Co / RSA / RIA) |
|----------------------------|--------------------------|------|--|-----------------------------------|--|--|
| | | | - Estimated quantities | | | |
| 1.1.5.3 | DMN (Underground OCS) | 20 | PPP-RSA: Provide installation, ITP & asset records | [not disclosed] | RSA | Project Co |
| 1.1.5.3 | PKV (Underground OCS) | 8 | PPP-RSA: Provide Underground Interim Design for review | [not disclosed] | RSA | Project Co |
| 1.1.5.3 | PKV (Underground OCS) | 9 | RSA-PPP: Provide Underground Interim Design review feedback | [not disclosed] | Project Co | RSA |
| 1.1.5.3 | PKV (Underground OCS) | 10 | RSA-PPP: Provide estimated BoM - Final cable types - Estimated quantities | [not disclosed] | Project Co | RSA |
| 1.1.5.3 | PKV (Underground OCS) | 20 | PPP-RSA: Provide installation, ITP & asset records | [not disclosed] | RSA | Project Co |
| 1.1.5.5.1 | Security-Tunnel (All) | 7 | RSA-PPP: Provide estimated BoM - Final cable types - Estimated quantities | [not disclosed] | Project Co | RSA |
| 1.1.5.5.1 | Security-Tunnel (All) | 15 | PPP-RSA: Provide installation & ITP records | [not disclosed] | RSA | Project Co |
| 1.1.5.5.3 | ARD (Security - Station) | 9 | RSA-PPP: Provide Bill of Materials (BoM) - Equipment schedule and specifications - Cable Schedule and specifications including estimated cable lengths | [not disclosed] | Project Co | RSA |
| 1.1.5.5.3 | ARD (Security - Station) | 17 | PPP-RSA: Provide installation & ITP records | [not disclosed] | RSA | Project Co |

| Interface Definition Sheet | | Step | Critical Interface Milestone | Critical Interface Milestone Date | Dependent Party (Project Co / RSA / RIA) | Responsible Party (Project Co / RSA / RIA) |
|----------------------------|--------------------------|------|--|-----------------------------------|--|--|
| 1.1.5.5.3 | CBN (Security - Station) | 9 | RSA-PPP: Provide Bill of Materials (BoM) - Equipment schedule and specifications - Cable Schedule and specifications including estimated cable lengths | [not disclosed] | Project Co | RSA |
| 1.1.5.5.3 | CBN (Security - Station) | 17 | PPP-RSA: Provide installation & ITP records | [not disclosed] | RSA | Project Co |
| 1.1.5.5.3 | CBS (Security - Station) | 9 | RSA-PPP: Provide Bill of Materials (BoM) - Equipment schedule and specifications - Cable Schedule and specifications including estimated cable lengths | [not disclosed] | Project Co | RSA |
| 1.1.5.5.3 | CBS (Security - Station) | 17 | PPP-RSA: Provide installation & ITP records | [not disclosed] | RSA | Project Co |
| 1.1.5.5.3 | DMN (Security - Station) | 9 | RSA-PPP: Provide Bill of Materials (BoM) - Equipment schedule and specifications - Cable Schedule and specifications including estimated cable lengths | [not disclosed] | Project Co | RSA |
| 1.1.5.5.3 | DMN (Security - Station) | 17 | PPP-RSA: Provide installation & ITP records | [not disclosed] | RSA | Project Co |
| 1.1.5.5.3 | PKV (Security - Station) | 9 | RSA-PPP: Provide Bill of Materials (BoM) - Equipment schedule and specifications - Cable Schedule and specifications including estimated cable lengths | [not disclosed] | Project Co | RSA |
| 1.1.5.5.3 | PKV (Security - Station) | 17 | PPP-RSA: Provide installation & ITP records | [not disclosed] | RSA | Project Co |
| 1.1.7 | Ventilation (All) | 5 | PPP-RSA: Provide draft ventilation subsystem Certified Design for review | [not disclosed] | RSA | Project Co |

| Interface Definition Sheet | | Step | Critical Interface Milestone | Critical Interface Milestone Date | Dependent Party (Project Co / RSA / RIA) | Responsible Party (Project Co / RSA / RIA) |
|----------------------------|-------------------|------|---|-----------------------------------|--|--|
| 1.1.7 | Ventilation (All) | 6 | RSA-PPP: Provide draft ventilation subsystem Certified Design review feedback | [not disclosed] | Project Co | RSA |
| 1.1.9 | Power (All) | 6 | PPP-RSA: Provide Power subsystem Interim design for review | [not disclosed] | RSA | Project Co |
| 1.1.9 | Power (All) | 9 | RSA-PPP: Provide draft Power subsystem Certified design and test plans review feedback | [not disclosed] | Project Co | RSA |
| 1.2.5 | MMRP CMS | 6 | PPP-RSA: Provide Project Wide control systems Interim Design: Control system design - CMS related interface | [not disclosed] | RSA | Project Co |
| 1.2.5 | MMRP CMS | 9 | RSA-PPP: Provide draft Certified Design review feedback | [not disclosed] | Project Co | RSA |
| 1.2.7 | Control Centre | 6 | PPP-RSA: Provide Interim Design: Control system design - interface | [not disclosed] | RSA | Project Co |
| 1.2.7 | Control Centre | 9 | RSA-PPP: Provide draft Certified Design review feedback | [not disclosed] | Project Co | RSA |
| 1.2.8 | ARD (PSD) | 6 | PPP-RSA: Provide Station Interim design for review | [not disclosed] | RSA | Project Co |
| 1.2.8 | ARD (PSD) | 11 | PPP-RSA: Provide draft Station Certified design for review | [not disclosed] | RSA | Project Co |
| 1.2.8 | ARD (PSD) | 12 | RSA-PPP: Provide draft Station Certified design review feedback | [not disclosed] | Project Co | RSA |
| 1.2.8 | ARD (PSD) | 15 | RSA-PPP: Provide PSD, installation process, special tools, installation test criteria & ITPs | [not disclosed] | Project Co | RSA |

| Interface Definition Sheet | | Step | Critical Interface Milestone | Critical Interface Milestone Date | Dependent Party (Project Co / RSA / RIA) | Responsible Party (Project Co / RSA / RIA) |
|----------------------------|-----------|------|--|-----------------------------------|--|--|
| 1.2.8 | CBN (PSD) | 11 | PPP-RSA: Provide draft Station Certified design for review | [not disclosed] | RSA | Project Co |
| 1.2.8 | CBN (PSD) | 12 | RSA-PPP: Provide draft Station Certified design review feedback | [not disclosed] | Project Co | RSA |
| 1.2.8 | CBN (PSD) | 15 | RSA-PPP: Provide PSD, installation process, special tools, installation test criteria & ITPs | [not disclosed] | Project Co | RSA |
| 1.2.8 | CBN (PSD) | 18 | PPP-RSA: Provide ITP & installation records | [not disclosed] | RSA | Project Co |
| 1.2.8 | CBS (PSD) | 6 | PPP-RSA: Provide Station Interim design for review | [not disclosed] | RSA | Project Co |
| 1.2.8 | CBS (PSD) | 11 | PPP-RSA: Provide draft Station Certified design for review | [not disclosed] | RSA | Project Co |
| 1.2.8 | CBS (PSD) | 12 | RSA-PPP: Provide draft Station Certified design review feedback | [not disclosed] | Project Co | RSA |
| 1.2.8 | CBS (PSD) | 15 | RSA-PPP: Provide PSD, installation process, special tools, installation test criteria & ITPs | [not disclosed] | Project Co | RSA |
| 1.2.8 | DMN (PSD) | 6 | PPP-RSA: Provide Station Interim design for review | [not disclosed] | RSA | Project Co |
| 1.2.8 | DMN (PSD) | 11 | PPP-RSA: Provide draft Station Certified design for review | [not disclosed] | RSA | Project Co |
| 1.2.8 | DMN (PSD) | 12 | RSA-PPP: Provide draft Station Certified design review feedback | [not disclosed] | Project Co | RSA |
| 1.2.8 | DMN (PSD) | 15 | RSA-PPP: Provide PSD, installation process, special tools, installation test criteria & ITPs | [not disclosed] | Project Co | RSA |

| Interface Definition Sheet | | Step | Critical Interface Milestone | Critical Interface Milestone Date | Dependent Party (Project Co / RSA / RIA) | Responsible Party (Project Co / RSA / RIA) |
|----------------------------|--------------------------|------|---|-----------------------------------|--|--|
| 1.2.8 | PKV (PSD) | 6 | PPP-RSA: Provide Station Interim design for review | [not disclosed] | RSA | Project Co |
| 1.2.8 | PKV (PSD) | 11 | PPP-RSA: Provide draft Station Certified design for review | [not disclosed] | RSA | Project Co |
| 1.2.8 | PKV (PSD) | 12 | RSA-PPP: Provide draft Station Certified design review feedback | [not disclosed] | Project Co | RSA |
| 1.2.8 | PKV (PSD) | 15 | RSA-PPP: Provide PSD, installation process, special tools, installation test criteria & ITPs | [not disclosed] | Project Co | RSA |
| 1.2.9(3,4,5)-1 | Signalling Wayside (All) | 7 | PPP-RSA: Provide SER civil, building services, wayside cabling & cable containment Interim Design for review | [not disclosed] | RSA | Project Co |
| 1.2.9(3,4,5)-1 | Signalling Wayside (All) | 9 | RSA-PPP: Provide estimated Bill of Materials (BoM) - Cable (types & estimated qty.) - Equipment | [not disclosed] | Project Co | RSA |
| 1.2.9.3.2-1 | Balise PPP | 5 | RSA-PPP: Provide preliminary Balise location plan to Project Co | [not disclosed] | Project Co | RSA |
| 1.2.9.3.2-1 | Balise PPP | 9 | PPP-RSA: Provide ITP, installation & asset records | [not disclosed] | RSA | Project Co |
| 1.2.9.3.3 | HCS Radio | 8 | RSA-PPP: Provide the HCS Radio location plan, equipment, installation process, special tools, materials, installation test criteria and ITPs. | [not disclosed] | Project Co | RSA |
| 1.2.9.3.3 | HCS Radio | 10 | PPP-RSA: Provide ITP, installation and asset records | [not disclosed] | RSA | Project Co |

| Interface Definition Sheet | | Step | Critical Interface Milestone | Critical Interface Milestone Date | Dependent Party (Project Co / RSA / RIA) | Responsible Party (Project Co / RSA / RIA) |
|----------------------------|--------------------|------|--|-----------------------------------|--|--|
| 1.2.9.5.2.1-1 | Axle Counter | 7 | RSA-PPP: Provide Axle Counter location plan, equipment, install process, special tools/materials, test criteria & ITPs | [not disclosed] | Project Co | RSA |
| 1.2.9.5.2.1-1 | Axle Counter | 9 | PPP-RSA: Provide ITP, installation & asset records | [not disclosed] | RSA | Project Co |
| 1.2.9.5.3-1 | Signal Power | 4 | RSA-PPP: Provide Signal Power loading & backup time requirements | [not disclosed] | Project Co | RSA |
| 1.2.9.5.3-1 | Signal Power | 6 | PPP-RSA: Provide advice on Signal Power readiness | [not disclosed] | RSA | Project Co |
| 1.2.9.5.5-1 | Signalling Cabling | 3 | RSA-PPP: Provide estimated Bill of Materials (BoM) - Cable Schedule and specifications including estimated cable lengths | [not disclosed] | Project Co | RSA |
| 1.2.9.5.5-1 | Signalling Cabling | 8 | PPP-RSA: Provide installation & ITP records | [not disclosed] | RSA | Project Co |
| 1.2.9.5.7-1 | ARD (SER) | 5 | RSA-PPP: Provide SER civil, building services & cable containment Interim Design & ITPs review feedback | [not disclosed] | Project Co | RSA |
| 1.2.9.5.7-1 | ARD (SER) | 12 | PPP-RSA: Advise SER (including power and comms for the SER and cabling to its associated devices) ready for installation | [not disclosed] | RSA | Project Co |
| 1.2.9.5.7-1 | CBN (SER) | 5 | RSA-PPP: Provide SER civil, building services & cable containment Interim Design & ITPs review feedback | [not disclosed] | Project Co | RSA |
| 1.2.9.5.7-1 | CBN (SER) | 12 | PPP-RSA: Advise SER (including power and comms for the SER and cabling to its associated devices) ready for installation | [not disclosed] | RSA | Project Co |

| Interface Definition Sheet | | Step | Critical Interface Milestone | Critical Interface Milestone Date | Dependent Party (Project Co / RSA / RIA) | Responsible Party (Project Co / RSA / RIA) |
|----------------------------|------------------|------|--|-----------------------------------|--|--|
| 1.2.9.5.7-1 | CBS (SER) | 5 | RSA-PPP: Provide SER civil, building services & cable containment Interim Design & ITPs review feedback | [not disclosed] | Project Co | RSA |
| 1.2.9.5.7-1 | CBS (SER) | 12 | PPP-RSA: Advise SER (including power and comms for the SER and cabling to its associated devices) ready for installation | [not disclosed] | RSA | Project Co |
| 1.2.9.5.7-1 | DMN (SER) | 5 | RSA-PPP: Provide SER civil, building services & cable containment Interim Design & ITPs review feedback | [not disclosed] | Project Co | RSA |
| 1.2.9.5.7-1 | DMN (SER) | 12 | PPP-RSA: Advise SER (including power and comms for the SER and cabling to its associated devices) ready for installation | [not disclosed] | RSA | Project Co |
| 1.2.9.5.7-1 | PKV (SER) | 5 | RSA-PPP: Provide SER civil, building services & cable containment Interim Design & ITPs review feedback | [not disclosed] | Project Co | RSA |
| 1.2.9.5.7-1 | PKV (SER) | 12 | PPP-RSA: Advise SER (including power and comms for the SER and cabling to its associated devices) ready for installation | [not disclosed] | RSA | Project Co |
| 1.2.9-1 | Signalling (All) | 4 | PPP-RSA: Provide track & cable route Interim Design to RSA for review | [not disclosed] | RSA | Project Co |
| 1.2.9-1 | Signalling (All) | 7 | RSA-PPP: Provide draft track & cable route Certified Design to RSA review feedback | [not disclosed] | Project Co | RSA |
| 1.3.1.1 | DAS (All) | 7 | RSA-PPP: Provide Critical DAS design for review | [not disclosed] | Project Co | RSA |
| 1.3.1.1 | DAS (All) | 15 | PPP-RSA: Provide installation & ITP records | [not disclosed] | RSA | Project Co |

| Interface Definition Sheet | | Step | Critical Interface Milestone | Critical Interface Milestone Date | Dependent Party (Project Co / RSA / RIA) | Responsible Party (Project Co / RSA / RIA) |
|----------------------------|-------------------------------|------|--|-----------------------------------|--|--|
| 1.3.2.2 | Cable Containment-Underground | 3 | RSA-PPP: Provide Cable Containment Underground Interim Design review feedback | [not disclosed] | Project Co | RSA |
| 1.3.2.2 | Cable Containment-Underground | 4 | PPP-RSA: Provide draft Cable Containment Underground Certified Design for review | [not disclosed] | RSA | Project Co |
| 1.3.3-1 | Backbone Cabling | 9 | RSA-PPP: Provide Critical Design | [not disclosed] | Project Co | RSA |
| 1.3.3-1 | Backbone Cabling | 15 | PPP-RSA: Provide ITP & installation records | [not disclosed] | RSA | Project Co |
| 1.3.5-1 | ARD (CER) | 5 | RSA-PPP: Provide CER civil, building services & cable containment Interim Design & ITPs review feedback | [not disclosed] | Project Co | RSA |
| 1.3.5-1 | ARD (CER) | 11 | PPP-RSA: Advise CER (including power and comms for the CER and cabling to its associated devices) ready for installation | [not disclosed] | RSA | Project Co |
| 1.3.5-1 | CBN (CER) | 5 | RSA-PPP: Provide CER civil, building services & cable containment Interim Design & ITPs review feedback | [not disclosed] | Project Co | RSA |
| 1.3.5-1 | CBN (CER) | 11 | PPP-RSA: Advise CER (including power and comms for the CER and cabling to its associated devices) ready for installation | [not disclosed] | RSA | Project Co |
| 1.3.5-1 | CBS (CER) | 5 | RSA-PPP: Provide CER civil, building services & cable containment Interim Design & ITPs review feedback | [not disclosed] | Project Co | RSA |
| 1.3.5-1 | CBS (CER) | 11 | PPP-RSA: Advise CER (including power and comms for the CER and cabling to its associated devices) ready for installation | [not disclosed] | RSA | Project Co |

| Interface Definition Sheet | | Step | Critical Interface Milestone | Critical Interface Milestone Date | Dependent Party (Project Co / RSA / RIA) | Responsible Party (Project Co / RSA / RIA) |
|----------------------------|---------------------------|------|---|-----------------------------------|--|--|
| 1.3.5-1 | DMN (CER) | 5 | RSA-PPP: Provide CER civil, building services & cable containment Interim Design & ITPs review feedback | [not disclosed] | Project Co | RSA |
| 1.3.5-1 | DMN (CER) | 11 | PPP-RSA: Advise CER (including power and comms for the CER and cabling to its associated devices) ready for installation | [not disclosed] | RSA | Project Co |
| 1.3.5-1 | PKV (CER) | 5 | RSA-PPP: Provide CER civil, building services & cable containment Interim Design & ITPs review feedback | [not disclosed] | Project Co | RSA |
| 1.3.5-1 | PKV (CER) | 11 | PPP-RSA: Advise CER (including power and comms for the CER and cabling to its associated devices) ready for installation | [not disclosed] | RSA | Project Co |
| 1.1.1.1.4-1 | EP (Cut and Cover Tunnel) | 1 | PPP-RIA: Provide RIA Interface Package (Interim design) | [not disclosed] | RIA | Project Co |
| 1.1.1.1.4-1 | EP (Cut and Cover Tunnel) | 3 | PPP-RIA: Provide RIA Interface Package (IFC design) | [not disclosed] | RIA | Project Co |
| 1.1.1.1.4-1 | EP (Cut and Cover Tunnel) | 4 | RIA-PPP: Review and provide comments on IFC design | [not disclosed] | Project Co | RIA |
| 1.1.1.1.4-1 | EP (Cut and Cover Tunnel) | 9 | RIA-PPP: Provide the C&C Tunnel draft Certified Design (temporary and permanent works) including cast-in items, and alignment provisions to PPP for review | [not disclosed] | Project Co | RIA |
| 1.1.1.1.4-1 | EP (Cut and Cover Tunnel) | 10 | PPP-RIA: Provide review feedback on C&C draft Certified Design (temporary and permanent works) & confirm that it meets PPP's spatial and technical requirements | [not disclosed] | RIA | Project Co |
| 1.1.1.1.4-1 | EP (Cut and Cover Tunnel) | 14 | PPP-RIA: Hand over C&C worksite to RIA | [not disclosed] | RIA | Project Co |

| Interface Definition Sheet | | Step | Critical Interface Milestone | Critical Interface Milestone Date | Dependent Party (Project Co / RSA / RIA) | Responsible Party (Project Co / RSA / RIA) |
|----------------------------|---------------------------|------|---|-----------------------------------|--|--|
| 1.1.1.1.4-1 | EP (Cut and Cover Tunnel) | 15 | RIA-PPP: Hand over C&C Tunnel to PPP including RTO provisional/stage acceptance documentation, QA documentation and As Built records. | [not disclosed] | Project Co | RIA |
| 1.1.1.1.4-1 | WP (Cut and Cover Tunnel) | 1 | PPP-RIA: Provide RIA Interface Package (Interim design) | [not disclosed] | RIA | Project Co |
| 1.1.1.1.4-1 | WP (Cut and Cover Tunnel) | 3 | PPP-RIA: Provide RIA Interface Package (IFC design) | [not disclosed] | RIA | Project Co |
| 1.1.1.1.4-1 | WP (Cut and Cover Tunnel) | 4 | RIA-PPP: Review and provide comments on IFC design | [not disclosed] | Project Co | RIA |
| 1.1.1.1.4-1 | WP (Cut and Cover Tunnel) | 9 | RIA-PPP: Provide the C&C Tunnel draft Certified Design (temporary and permanent works) including cast-in items, and alignment provisions to PPP for review | [not disclosed] | Project Co | RIA |
| 1.1.1.1.4-1 | WP (Cut and Cover Tunnel) | 10 | PPP-RIA: Provide review feedback on C&C draft Certified Design (temporary and permanent works) & confirm that it meets PPP's spatial and technical requirements | [not disclosed] | RIA | Project Co |
| 1.1.1.1.4-1 | WP (Cut and Cover Tunnel) | 14 | PPP-RIA: Hand over C&C and covered section of Decline work area | [not disclosed] | RIA | Project Co |
| 1.1.1.1.4-1 | WP (Cut and Cover Tunnel) | 15 | RIA-PPP: Hand over C&C Tunnel to PPP including RTO provisional/stage acceptance documentation, QA documentation and As Built records. | [not disclosed] | Project Co | RIA |
| 1.1.1.2 | EP (Decline Structure) | 7 | RIA-PPP: Provide the Decline Structure draft Certified Design (temporary and permanent works) to PPP for review | [not disclosed] | Project Co | RIA |

| Interface Definition Sheet | | Step | Critical Interface Milestone | Critical Interface Milestone Date | Dependent Party (Project Co / RSA / RIA) | Responsible Party (Project Co / RSA / RIA) |
|----------------------------|-------------------------|------|---|-----------------------------------|--|--|
| 1.1.1.2 | EP (Decline Structure) | 8 | PPP-RIA: Provide review feedback on C&C draft Certified Design (temporary and permanent works) & confirm that it meets PPP's spatial and technical requirements | [not disclosed] | RIA | Project Co |
| 1.1.1.2 | WP (Decline Structure) | 7 | RIA-PPP: Provide the Decline Structure draft Certified Design (temporary and permanent works) to PPP for review | [not disclosed] | Project Co | RIA |
| 1.1.1.2 | WP (Decline Structure) | 8 | PPP-RIA: Provide review feedback on C&C draft Certified Design (temporary and permanent works) & confirm that it meets PPP's spatial and technical requirements | [not disclosed] | RIA | Project Co |
| 1.1.9.2.2 | EP (OHLE - Underground) | 7 | PPP-RIA: Provide QA documentation, As Built records and RTO stage/provisional acceptance to RIA. | [not disclosed] | RIA | Project Co |
| 1.1.9.2.2 | EP (OHLE - Underground) | 8 | RIA-PPP: Provide QA documentation, As Built records and RTO stage/provisional acceptance to PPP after RIA's Overhead installation work. | [not disclosed] | Project Co | RIA |
| 1.1.9.2.2 | WP (OHLE - Underground) | 7 | PPP-RIA: Provide QA documentation, As Built records and RTO stage/provisional acceptance to RIA. | [not disclosed] | RIA | Project Co |
| 1.1.9.2.2 | WP (OHLE - Underground) | 8 | RIA-PPP: Provide QA documentation, As Built records and RTO stage/provisional acceptance to PPP after RIA's Overhead installation work. | [not disclosed] | Project Co | RIA |



Schedule 31

Final Acceptance Schedule

1 Definitions

Unless otherwise expressly defined, expressions used in this Schedule have the meanings given to them in this Agreement:

| Term | Meaning |
|---|---|
| FAW Performance Failure | means a 'FAW Failure Event' or a 'FAW Quality Failure' (each as defined in the Payment Schedule). |
| Help Desk | means the facility established and maintained by as described in paragraph 2.7(a). |
| Help Desk Services | means the services to be provided by the Help Desk as described in paragraph 2.7. |
| Integration and Operational Readiness Activities | means: <ol style="list-style-type: none">1 any Metro Tunnel Interface Works;2 the Ticketing Works; and3 any other activities required to be undertaken by the State, a State's Associate, a Metro Tunnel Package Contractor, the High Capacity Metro Train Project, the Train Franchisee Interface Party or other third parties such that the Metro Tunnel (including the Tunnel and all Stations) can be brought into service. |
| Level 0 Systems Integration | means all works and testing required to ensure the design of: <ol style="list-style-type: none">1 the Works; and2 the Metro Tunnel Interface Works, is compatible and Fit For Purpose. |
| Level 1 Systems Integration | means all works and testing required to ensure that each individual system and subsystem of the Works (and each component of them) is Fit For Purpose. |



| Term | Meaning |
|---|--|
| Level 2 Systems Integration | means all works and testing required to ensure that: <ol style="list-style-type: none">1 each individual system and subsystem forming part of the Works; and2 each other relevant system and subsystem forming part of the Works, are compatible and Fit For Purpose, including interface testing between those systems and subsystems. |
| Level 3 Systems Integration | means all works and testing required to ensure that: <ol style="list-style-type: none">1 each system and subsystem forming part of the Works; and2 each system and subsystem forming part of:<ul style="list-style-type: none">– the Metro Tunnel Interface Works;– the Ticketing Works;– the High Capacity Metro Train Project; and– each other third party system and subsystem necessary for the Metro Tunnel to be brought into service, are compatible and Fit For Purpose, including interface testing between those system and subsystems. |
| Level 4 Systems Integration | means all other works and testing necessary for the acceptance of the Metro Tunnel into service by the Train Franchisee. |
| Monthly FAW Performance Report | the report prepared in accordance with paragraph 3.1. |
| Quarterly FAW Performance Report | the report prepared in accordance with paragraph 3.2. |
| Rail Systems Assets | has the meaning given in the PS&TR. |
| Training | means the training to be delivered pursuant to section 2.6. |

2 Final Acceptance Works

2.1 Availability of Relevant Infrastructure

Project Co must:



- (a) maintain and repair the Relevant Infrastructure so that it continues to be Fit For Purpose;
- (b) maintain the Relevant Infrastructure in accordance with Best Maintenance Practices, all Laws and all Standards;
- (c) where it is required to replace or repair any part of the Relevant Infrastructure, ensure that the replacement or repair (as relevant) will be:
 - (1) performed using parts of at least equal quality to those parts being repaired or replaced;
 - (2) performed in accordance with Best Maintenance Practices and where applicable, Best D&C Practices and Best Operating Practices; and
 - (3) Fit For Purpose; and
- (d) keep the Relevant Infrastructure clean and reasonably free from waste and pests.

2.2 Acknowledgement

Project Co acknowledges and agrees that:

- (a) all Level 0 Systems Integration, Level 1 Systems Integration and Level 2 Systems Integration must be completed; and
- (b) the Relevant Infrastructure must ready for the commencement of Level 3 Systems Integration and Level 4 Systems Integration,

prior to Provisional Acceptance.

2.3 Relevant Infrastructure excluding Rail Systems Assets

For all Relevant Infrastructure other than the Rail Systems Assets, Project Co must perform and pass:

- (a) all Level 3 Systems Integration; and
- (b) all Level 4 Systems Integration,

which was not completed by the Date of Provisional Acceptance.

2.4 Rail Systems Assets

In respect of the Rail Systems Assets, Project Co must:

- (a) provide support to the Rail Systems Alliance in performing and passing:
 - (1) all Level 3 Systems Integration; and
 - (2) all Level 4 Systems Integration;
- (b) review and provide input into test documentation for Level 3 Systems Integration and Level 4 Systems Integration prepared by the Rail Systems Alliance (including test plans, test procedures and test results);
- (c) attend and witness all tests for Level 3 Systems Integration and Level 4 Systems Integration; and
- (d) review and provide input into material detailing the satisfaction or failure of each Level 3 Systems Integration and Level 4 Systems Integration.



2.5 Train Accreditation and management of change

Project Co must do all things necessary to provide information, documentation, advice and other support in relation to the Works and the Project Activities as required by the Train Franchisee Interface Party for the purpose of amending its Train Safety Management System or obtaining a variation to its Train Accreditation required in connection with the Metro Tunnel.

2.6 Training

- (a) Project Co must develop and provide a program of Training for relevant personnel of the State, the State's Associates, Project Co, Project Co's Associates and the Train Franchisee and provide it to the State and the Independent Reviewer for review in accordance with the Review Procedures.
- (b) The Training must:
 - (1) familiarise personnel with the Maintained Assets, the Returned Train Works and the Returned VicTrack Works (as appropriate);
 - (2) address the operation and maintenance of the Maintained Assets, the Returned Train Works and the Returned VicTrack Works (as appropriate);
 - (3) explain the respective roles of each of Project Co, the Train Franchisee, VicTrack, PTV and the State in relation to the operation and maintenance of the Maintained Assets, the Returned Train Works and the Returned VicTrack Works, including providing guidance in relation to the application of any operating protocols;
 - (4) address emergency management procedures to ensure:
 - (A) the Maintained Assets are able to be operated and maintained in accordance with the relevant Management Plans; and
 - (B) the Returned Train Works and the Returned VicTrack Works are able to be operated and maintained in accordance with the relevant Handback documentation;
 - (5) be conducted by people who are appropriately skilled, qualified, experienced and competent in the field involved, have sufficient knowledge and understanding of the assets and systems and who have completed formal training in instruction techniques;
 - (6) include 'train the trainer' courses and material; and
 - (7) include provision to the State and the Train Franchisee full sets of training aids and materials for use in future training.
- (c) Wherever possible, the Training must be provided at the relevant part of the Station, Tunnel or other part of the Relevant Infrastructure.
- (d) Where the Training is not provided in accordance with 2.6(c), the Training must:
 - (1) be provided:
 - (A) in the Melbourne metropolitan region at a venue to be agreed with the State and the Train Franchisee (acting reasonably);
 - (B) where appropriate, on equivalent or duplicate equipment or systems; and



- (2) be supplemented with visits to the Site including to view relevant installed equipment or systems.
- (e) Project Co must plan and coordinate all training activities with the training activities to be performed by other Metro Tunnel Package Contractors.
- (f) Project Co must keep a record of all training sessions and a register of attendance at training.

2.7 Help Desk Services

- (a) Project Co must establish a help desk (**Help Desk**) to support efficient delivery of:
 - (1) the Works; and
 - (2) the Integration and Operational Readiness Activities (by third parties).
- (b) The Help Desk must:
 - (1) be effective, flexible and efficient in coping with varying demands;
 - (2) facilitate responses to reported FAW Performance Failures as soon as reasonably practicable; and
 - (3) marshal resources to the maximum benefit of the State.
- (c) The Help Desk must form the day-to-day notification interface between the State, the Train Franchisee and other parties undertaking Integration and Operational Readiness Activities (on the one hand) and Project Co (on the other) in relation to the following matters:
 - (1) the reporting of all queries and requests relating to the Works;
 - (2) requests for additional Project Co support in accordance with the requirements of this Schedule;
 - (3) the notification of FAW Performance Failures and potential FAW Performance Failures;
 - (4) monitoring of alarms, security systems, the building management system and other systems; and
 - (5) providing progress update regarding any issue notified to the Help Desk.
- (d) Project Co must provide the Help Desk Services 24 hours a day, 365(6) days per calendar year in accordance with the requirements of this Section 2.7.
- (e) The Help Desk must comprise a staffed facility receiving, logging and responding appropriately to communications via (as a minimum) telephone, email and intranet/internet based requests (of a format to be agreed with the State), automatically notifying each user when a job is logged and liaising with users on the progress of work.
- (f) The Help Desk must effectively respond to all received issues and calls, including by ensuring that any issues or calls not related to the Works are communicated expediently to the most appropriate representative of the State or the Train Franchisee.
- (g) Project Co must log all communications and FAW Performance Failures reported to the Help Desk. The Help Desk must record all relevant details, including the following information:
 - (1) unique reference number;



- (2) name and location of the person logging the query or FAW Performance Failure;
 - (3) date and time the request was made or FAW Performance Failure was reported;
 - (4) location of the FAW Performance Failure;
 - (5) nature of the request or FAW Performance Failure;
 - (6) any assets or systems affected by the FAW Performance Failure;
 - (7) any scheduled Final Acceptance Works or Integration and Operational Readiness Activities affected by the FAW Performance Failure;
 - (8) the action required to address the FAW Performance Failure;
 - (9) action taken to address the FAW Performance Failure;
 - (10) details of any further action or monitoring required to ameliorate the risk of future or consequential FAW Performance Failures;
 - (11) the time taken to address or resolve the FAW Performance Failure (if applicable); and
 - (12) the name/names of the person/people acting on behalf of Project Co to address or resolve the FAW Performance Failure (if applicable).
- (h) Project Co's obligation to capture FAW Performance Failures described in paragraph 2.7(g) extends to all FAW Performance Failures to which Project Co becomes aware, including those observed by Project Co or its Associates either visually, by the building management system, or by an alarm.
- (i) Once information has been logged with the Help Desk, Project Co must ensure that entries cannot be amended unless there is a system in place to record the:
- (1) exact nature and impact of the amendment;
 - (2) reason for the amendment;
 - (3) name of the person who made the amendment; and
 - (4) name of the person who authorised the amendment.
- (j) Project Co must ensure that the Help Desk provides an appropriate and timely acknowledgment of each communication, having regard to the nature and importance of the request for assistance and including by ensuring that the Help Desk:
- (1) provides a personal, non-automated answer to each telephone call within 30 seconds for 75% of the calls in any month, and within a maximum of 45 seconds for all calls; and
 - (2) confirms receipt of email or other digital communications within five minutes.
- (k) Project Co must ensure that the State and the Train Franchisee are given full live electronic (read and print only) access to all Help Desk records at all times and are able to track the progress of all requests and FAW Performance Failures.
- (l) Project Co must ensure that all live Help Desk data will need to be available to 10 concurrent users (excluding Project Co and Project Co's Associates).
- (m) Project Co must ensure that an appropriate back-up system is in place to ensure that Help Desk data and records cannot be lost or destroyed as a result



- of software or systems failure or any other occurrence. The back-up system need not be maintained on a real-time basis but must be backed up daily.
- (n) At the end of each Month, Project Co must provide the State with a soft copy of the Help Desk data and records for that Month.

3 Performance assessment and reporting

3.1 Monthly FAW Performance Report

The Monthly FAW Performance Report must provide sufficient information to enable the State to calculate the Final Acceptance Works Payment for each Month of the relevant Quarter, including the following information (or as otherwise agreed with the State):

- (a) a management overview which summarises overall performance and discusses key issues experienced during the reporting period, in respect of the Final Acceptance Works;
- (b) a summary of all FAW Performance Failures and events reported to the Help Desk within the relevant Month;
- (c) with respect to each FAW Performance Failure:
- (1) the unique request reference (if relevant);
 - (2) the unique FAW Performance Failure number;
 - (3) a short description of the FAW Performance Failure;
 - (4) the date and time of the FAW Performance Failure;
 - (5) the specific location of the FAW Performance Failure;
 - (6) the consequences of the FAW Performance Failure;
 - (7) a short description of how the FAW Performance Failure was rectified;
 - (8) any additional works required;
 - (9) Project Co's estimate of the deduction to be made from the Quarterly Service Payments; and
 - (10) any mitigating circumstances Project Co wishes the State to consider;
- (d) progress against relevant plans and programs, including an outline of any departures and reasons for these, including actions required to ensure delivery in accordance with the requirements of this Agreement;
- (e) an occupational health and safety report summarising safety performance and initiatives;
- (f) the minutes of any meetings held with the State, other Metro Tunnel Package Contractors, the Ticketing Works Contractor or the Train Franchisee;
- (g) any other information required to be provided in accordance with this Project Agreement; and
- (h) other reasonable requirements of the State,
- during, for or in respect of, the relevant Month.



3.2 Quarterly FAW Performance Report

The Quarterly FAW Performance Report must summarise:

- (a) the information provided in each Monthly FAW Performance Report submitted in respect of the Months comprising that Quarter, required to substantiate the Payment Claim; and
- (b) any other information required to be provided in accordance with this Agreement.

Schedule 32

Returned Works Schedule

1 Returned Works

1.1 City Square Works

The City Square Works are the Works described in section 4.6.5 of Part A of the PS&TR.

1.2 Returned Tram Works

The Returned Tram Works are:

- (a) the new tram stop on Royal Parade (directly north of Grattan Street);
- (b) the new tram curves at the intersection of Flinders Street and Elizabeth Street;
- (c) any new track on Flinders Street directly east of the Elizabeth Street intersection;
- (d) the new train/ tram interchange at Domain;
- (e) the reinstated St Kilda Road track on the legacy alignment; and
- (f) all other necessary track tie ins, track reinstatement and ancillary works to facilitate Tram Operations.

1.3 Returned Train Works

The Returned Train Works are:

- (a) any tunnel drainage elements above the first stage concrete and any pipes (including associated fixings and brackets) that are fixed to the wall of the Tunnel or located in the portals;
- (b) the following elements of the trackwork:
 - (1) track slab (second stage concrete);
 - (2) rail; and
 - (3) fixings;
- (c) the following ICT/ OCS equipment:
 - (1) Passenger Information Displays (PIDs);
 - (2) public address equipment;
 - (3) audio frequency induction loops;
 - (4) customer help points;
 - (5) Metrol telephones;
 - (6) CCTV system;



- (7) access control systems including door alarms; and
 - (8) data cabling, excluding data cabling, connecting Maintained Assets to Maintained Assets.
- (d) Tunnel lighting, excluding controllers shared with Station lighting;
- (e) the following emergency management assets:
 - (1) hydrants;
 - (2) hose reels
 - (3) extinguishers;
 - (4) fire blankets;
 - (5) gaseous suppression system;
 - (6) automatic fire detection and alarm system;
 - (7) occupant warning systems;
 - (8) intercommunication systems; and
 - (9) emergency lighting and directional signage in the Tunnel and portals.
- (f) the following traction power assets:
 - (1) overhead line equipment (OHLE);
 - (2) traction substations;
 - (3) all DC cabling between traction substations and OHLE
 - (4) sectionalising switch Rooms;
 - (5) traction protection;
 - (6) traction earthing and bonding; and
 - (7) traction power control and monitoring.
- (g) Platform Screen Doors System;
- (h) the following signalling equipment:
 - (1) axle counters;
 - (2) balise;
 - (3) cabling; and
 - (4) signal power assets downstream of the 'Signalling Equipment Room' (as defined in the PS&TR); and
- (i) the following communications equipment:
 - (1) RF distributed antenna; and
 - (2) 'Combined Services Route' (as defined in the PS&TR) in the Tunnel.

1.4 Returned VicTrack Works

The Returned VicTrack Works are the backbone cabling in the Tunnel.



Schedule 33

City Square Requirements

[not disclosed]



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Schedule 34

RSA Equipment Pricing

[not disclosed]



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Execution Version

Schedule 35

Pre-Agreed Modifications Schedule



Pre-Agreed Modifications

| Title | Scope of Pre-Agreed Modification | Pre-Agreed Modification Election Date | Pre-Agreed Modification Cost / Pre-Agreed Modification Saving |
|------------------------|--|---------------------------------------|--|
| 1 Parkville OSD | Amend the edge of the Parkville Station box footprint immediately to the south of the existing Triradiate Building (Building 181) by removing the retail along the northern edge of the Station box, such that that Station box does not encroach into or otherwise impact the development potential of University of Melbourne land at this location (~495m ²). | 22 nd December 2017 | <ul style="list-style-type: none">• [not disclosed] payable by Project Co to the State, inclusive of all Design Base Costs, D&C Base Costs, D&C Subcontractor Preliminaries and D&C Margin. Unless otherwise expended by the State on Modifications this amount is to be paid as a lump sum on the Date of Provisional Acceptance and will not result in an adjustment to the Quarterly Services Payment.• No Maintenance Base Costs or other Costs.• In recognition of the change in commercial opportunities, the Quarterly Services Payments will be adjusted in accordance with the schedule provided in Attachment A. |
| 2 AS5100 | Comply with AS 5100.5-2004 Clause 9.2 (inclusive of sections 9.2.1 to 9.2.4 and with reference to Clause 8.2 as appropriate) rather than AS 5100.5-2017 Clause 9.2 (inclusive of sections 9.2.1 to 9.2.4 and with reference to Clause 8.2) as appropriate in respect of Strength of Slabs in Shear. | 31 st January 2018 | <p>[not disclosed] payable by Project Co to the State, inclusive of all Design Base Costs, D&C Base Costs, D&C Subcontractor Preliminaries and D&C Margin.</p> <p>Recurrent cost component: no change.</p> |



| Title | Scope of Pre-Agreed Modification | Pre-Agreed Modification Election Date | Pre-Agreed Modification Cost / Pre-Agreed Modification Saving |
|---|--|---|---|
| 3 St Kilda Road Central Bike Lane | <p>Amend PS&TR Part A section 11.6.2(b) and 11.6.3(a)(iii) to replace the words "(an) on-road cycle lane in each direction" with the words "(a) central on-road cycle lane", such that the Works include a two-way cycle lane in the centre of St Kilda Road in accordance with the St Kilda Road Safety Improvement Study, instead of Copenhagen style lanes on the outside of the vehicular traffic lanes.</p> <p>Limits of the works are defined as:</p> <ul style="list-style-type: none">• Northern limits – in and outbound lanes, south of the intersection with St Kilda Road and Dorcas St; and• Southern limits – outbound lane, south of the intersection with Toorak Road and inbound lanes, 240m south of the intersection with Toorak Road. | 28 th February 2018 | <ul style="list-style-type: none">• D&C Base Costs of [not disclosed]; and• Design Base Costs of [not disclosed]. <p>No Maintenance Base Costs or other Costs.</p> |
| 4 CCTV Cameras | <p>Adjustment to the quantity of CCTV cameras required to be supplied and installed by Project Co as set out in section 5.2.1 of part D3 of the Technical Solution, including an adjustment to the quantity of ethernet switches and / or equipment racks attributable to the adjustment in the quantity of CCTV cameras.</p> | <p>Prior to Project Co initiating procurement of CCTV cameras and associated equipment.</p> | <ul style="list-style-type: none">• PTZ camera (inc. 100m length of CAT 6 cable), supply and install: [not disclosed];• Fixed camera (inc. 100m length of CAT 6 cable), supply and install: [not disclosed];• Ethernet switch, supply and install: [not disclosed]; and• Equipment rack, supply and install: [not disclosed], <p>which are D&C Base Costs.</p> <p>No Design Base Costs, Maintenance Base Costs or other Costs.</p> |



| Title | Scope of Pre-Agreed Modification | Pre-Agreed Modification Election Date | Pre-Agreed Modification Cost / Pre-Agreed Modification Saving |
|-------------------------------|---|---------------------------------------|--|
| 5 Tunnel Segment Naming | <p>Stamping of individual names in up to 50,000 pre-cast tunnel segments, including:</p> <ul style="list-style-type: none">• preparation of custom stamp template;• fixing stamp template to the segment mould;• removal and storage of the stamp template; and• preparation and postage of certificate including segment details and photograph of segment. | 31 st January 2018 | <p>D&C Base Costs of [not disclosed] per segment.</p> <p>No Design Base Costs, Maintenance Base Costs or other Costs.</p> |
| 6 6 Green Star (all stations) | <p>Project Co must achieve a 6 star certified rating under the GBCA GS Rating Tool for all Stations. PS&TR Part B section 15.2.1, PS&TR Part C section 4.2.3.1(a) and Annexure 5 5.1.3 (d) will be amended to this effect</p> <p>The above is subject to the State achieving for each station:</p> <ul style="list-style-type: none">- minimum 1 Green Star Points for Credit #14.3; and- minimum 1 Green Star Points for #14.4; and- minimum 1 Green Star Points for #21.1; and- providing written confirmation from GBCA that Stormwater Credit #30.1 and #30.2 are applicable to the below ground Stations. | 3 months from Contract Close | <p>[not disclosed], inclusive of all Design Base Costs, D&C Base Costs, D&C Subcontractor Preliminaries and D&C Margin.</p> <p>No Maintenance Base Costs or other Costs.</p> |
| 7 6 Green Star | Project Co must achieve a 6 star certified rating under | 3 months from Contract Close | [not disclosed], inclusive of all Design Base |



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| Title | Scope of Pre-Agreed Modification | Pre-Agreed Modification Election Date | Pre-Agreed Modification Cost / Pre-Agreed Modification Saving |
|------------------------------------|--|---------------------------------------|---|
| (Arden and Domain Stations) | the GBCA GS Rating Tool for Arden (North Melbourne) and Domain (Anzac) Stations. PS&TR Part B section 15.2.1, PS&TR Part C section 4.2.3.1(a) and Annexure 5 5.1.3 (d) will be amended to this effect. | | Costs, D&C Base Costs, D&C Subcontractor Preliminaries and D&C Margin. No Maintenance Base Costs or other Costs. |



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ATTACHMENT A: QSP ADJUSTMENTS FOR PARKVILLE OSD

Note that the following amounts are in nominal dollars. For ease in administration the adjustment will be made once annually unless otherwise required.

| Quarter Ending | QSP Adjustment |
|----------------|-----------------|
| 30-Jun-24 | [not disclosed] |
| 30-Jun-25 | [not disclosed] |
| 30-Jun-26 | [not disclosed] |
| 30-Jun-27 | [not disclosed] |
| 30-Jun-28 | [not disclosed] |
| 30-Jun-29 | [not disclosed] |
| 30-Jun-30 | [not disclosed] |
| 30-Jun-31 | [not disclosed] |
| 30-Jun-32 | [not disclosed] |
| 30-Jun-33 | [not disclosed] |
| 30-Jun-34 | [not disclosed] |
| 30-Jun-35 | [not disclosed] |
| 30-Jun-36 | [not disclosed] |
| 30-Jun-37 | [not disclosed] |
| 30-Jun-38 | [not disclosed] |
| 30-Jun-39 | [not disclosed] |
| 30-Jun-40 | [not disclosed] |
| 30-Jun-41 | [not disclosed] |
| 30-Jun-42 | [not disclosed] |
| 30-Jun-43 | [not disclosed] |
| 30-Jun-44 | [not disclosed] |
| 30-Jun-45 | [not disclosed] |
| 30-Jun-46 | [not disclosed] |
| 30-Jun-47 | [not disclosed] |
| 30-Jun-48 | [not disclosed] |
| 30-Sep-48 | [not disclosed] |



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Schedule 36

SMPC Adjustment Protocol

[not disclosed]

Schedule 37

Meanwhile Metro Scope

[not disclosed]

Attachment 1

Creative Response

[not disclosed]

Schedule 38

Steps Plan Schedule

1 Steps to support approval of Planning Scheme Amendment No 2

Project Co must:

- (a) By no later than [not disclosed], complete the design and proposed construction methodology for the Metro Tunnel Project to the extent required to identify land required for Planning Scheme Amendment No 2, including the location of rock anchors, soil nails and all other ground support structures and measures (Completed Design and Construction Method).
- (b) By no later than [not disclosed], use the Completed Design and Construction Method to identify which:
 - (1) land, including strata of land beneath the ground surface, will be temporarily and permanently occupied for the Metro Tunnel Project (**Project Land**); and
 - (2) Project Land falls outside the plans included in Appendix 1 of the May 2017 Incorporated Document for the Metro Tunnel Project (**Additional Land**).
- (c) By no later than [not disclosed], describe the Project Land in a list and depict the Project Land on three sets of draft plans that:
 - (1) differentiate between the existing approved Project Land as described in the Incorporated Document and the Additional Land, with the intention that these plans be included in the explanatory report for Planning Scheme Amendment No 2, to be provided by no later than [not disclosed];
 - (2) depict the updated Project Land and meet the requirements of the Department of Environment, Water, Land and Planning, so that they can be inserted into Appendix 1 of the updated Incorporated Document proposed to be incorporated into the relevant Planning Schemes through Planning Scheme Amendment No 2, to be provided by no later than [not disclosed]; and
 - (3) depict the updated Project Land and meet the requirements of the Office of the Surveyor-General Victoria's *Plan Requirements: Major Transport Project Area Designation* so that they can be signed by the Surveyor-General and form the basis of a decision to vary the designated project area under section 96 of the MTPF Act, to be provided by no later than [not disclosed].
- (d) On [not disclosed], provide the documents listed below prepared on the basis of the draft plans referred to in 1(c)(1) and 1(c)(2):
 - (1) the project description report required for Planning Scheme Amendment No 2;

- (2) the risk assessment of Project Co's proposed works on the Additional Land and for the Project;
 - (3) the impact assessment of proposed works on the Additional Land and for the Project, specifically historic cultural heritage, noise and vibration, social and business, and land use planning and any other issue arising from the risk assessment; and
 - (4) the State will prepare an approved Cultural Heritage Management Plan for the Additional Land in accordance with the requirements of the *Aboriginal Heritage Act 2006 (Vic)*.
- (e) Finalise the plans and documents referred to in paragraphs 1(c) and 1(d) above on the basis of feedback from the State. For the avoidance of doubt, any changes proposed to the Completed Design and Construction Method or to the Additional Land made after [not disclosed] will not form part of Planning Scheme Amendment No 2.

2 Steps to support Land Availability

- (a) Project Co must prepare the following plans (which meet any requirements of the Land Victoria for registration as relevant) in accordance with the time for delivery of the 'Plans' in clause 6.3(h) of the Project Agreement and the Land Availability Plan, as relevant:
- (1) **(Draft Plans)** At least 15 Business Days prior to the date for delivery of the final plans identified in the Land Availability Plans, a draft plan meeting the specific requirements in 2(a)(2), 2(a)(3) or 2(a)(4) (as relevant) of each part of a parcel identified in the Land Description for review and comment by the State;
 - (2) **(Final Survey Plans for Permanent Land)** On or before the date for delivery of the final 'Plans' for each parcel of Permanent Land as identified in the Land Availability Plans, an accurate survey plan of each part of a parcel that meet the requirements for issuing and publishing notices for the acquisition of interests in land under the *Major Transport Projects Facilitation Act 2009 (MTPF Act)* or *Land Acquisition and Compensation Act 1986 (LAC Act)*;
 - (3) **(Final Survey Plans for Temporary Land)** On or before the date for delivery of the final 'Plans' for each parcel of Temporary Land as identified in the Land Availability Plan, accurate plans of each part of a parcel that meet the requirements for issuing a notice to occupy land under section 75 of the LAC Act; and
 - (4) **(Final Plans for 'Tunnels', 'Adits' and 'Construction Ground Support Land' parcels)** On or before the date for delivery of the final 'Plans' for 'Tunnels', 'Adits' and 'Construction Ground Support Land' parcels as identified in the Land Availability Plans (being such parcels not otherwise separately listed in the Land Availability Plans) (which is 12 months prior to the Permanent Land Availability Date for 'Tunnels', 'Adits' and 'Construction Ground Support Land' parcels), a three-dimensional strata design shape in GIS which meets the requirements of the State (acting reasonably) to assist the preparation of the underground land plans that the State will prepare to satisfy the Surveyor General.

Note (a): In accordance with Clause 6.3 of the Project Agreement, delay in delivering a 'Plan' by the dates for delivery of a 'Plan in the Land Availability Plans will delay, by a corresponding period, the Land Availability Dates (as relevant).

3 Steps to support the State's exercise of Road Management Powers

Process for roads listed in the attached Road Management Power Request Schedule, in respect of which the State has agreed in principle to exercise road management powers under Division 8 of Part 6 of the MTPF Act:

- (a) At least ten (10) Business Days prior to the 'Approx Start Date' identified in the Road Management Power Request Schedule, Project Co must submit to the State's reasonable satisfaction the following information:
 - (1) traffic management plan outlining the changes to traffic conditions, road, lane and footpath closures and traffic detours which will arise from the proposed exercise of the State's road management power in accordance with Schedule 7, section 3 of the *Road Management Act 2004* and section 99A of the *Road Safety Act 1986*;
 - (2) evidence of satisfactory consultation with affected landowners, occupiers and the relevant road authority, and details of the alternative access available to each landowner or occupier affected by the exercise of the State's road management power;
 - (3) certification by Project Co that the documents and proposed exercise of the State's road management power comply with the Project Agreement, Environmental Performance Requirements and Project Co's Community and Stakeholder Engagement Management Plan;
 - (4) copy of the plan showing the dimensions of land over which the State's road management power is requested to be exercised; and
 - (5) draft notification of the State's intended exercise of the road management power to the coordinating road authority.
- (b) Project Co must give written notice to the State prior to the commencement of consultation with landowners, occupiers and the relevant road authority in respect of the proposed exercise of a State road management power for a road in the Road Management Power Request Schedule.
- (c) Where required to do so by the State, Project Co must provide reasonable assistance to the State in relation to the State's participation in the traffic and transport working group required under the EPR.
- (d) Where the exercise of the State road management power is to open a road, Project Co must provide the State a survey plan of sufficient quality to be published with the government gazette notice.
- (e) Where the State exercises a road management power in relation to all or part of a road identified in the Road Management Power Request Schedule, the State (acting reasonably) may impose conditions on the exercise of that power, having regard to any obligation owed by, or any potential liability of, the State to any relevant landowner, occupier or Council in respect of that road.

Note (a): In accordance with Clause 6.3 of the Project Agreement, delay in complying with the required actions by the dates set out above will delay, by a

corresponding period, the exercise of the relevant requested road management power.

Note (b): Prior to the commencement of Works on roads identified in the Road Management Power Request Schedule, Project Co must obtain any Approvals necessary to undertake the Works, including any consent to works or works agreement with the relevant road authority.

4 Reasonable endeavours to assist with VicRoads Road Management Act powers

- (a) Where Project Co is requesting from VicRoads the exercise of a Road Management Act road closure power in relation to the roads listed at 4(c) below, the State will use reasonable endeavours to assist Project Co with negotiations with VicRoads to achieve the required timeframes.
- (b) For the avoidance of doubt, the State's reasonable endeavours to assist Project Co does not require the use of any statutory process under the MTPF Act by the State.
- (c) The roads for which the State will use reasonable endeavours to assist Project Co with negotiations with VicRoads are:
 - (1) Royal Parade between Howard Florey Institute and Grattan Street ([not disclosed]);
 - (2) Royal Parade between Grattan Street and Story Street ([not disclosed]);
 - (3) Elizabeth Street between VCCC and Grattan Street ([not disclosed]);
 - (4) Elizabeth Street between Haymarket Roundabout and Grattan Street ([not disclosed]);
 - (5) St Kilda Road between Toorak Road and Government House Drive;
 - (6) Kings Way between Bowen Lane and Palmerston Crescent ([not disclosed]);
 - (7) Flemington Road at Grattan Street intersection ([not disclosed]); and
 - (8) Swanston Street between Little La Trobe Street and A'Beckett Street.

Schedule 1

Road Management Power Request Schedule

| | Precinct | Road Name | All or part of the Road in the vicinity of | | Type of temporary road management power requested | Approx Start Date |
|---|----------------|----------------------------------|--|----------------------|---|-------------------|
| 1 | Western Portal | Childers Street | Kensington Road and | Ormond St | Full Closure | [not disclosed] |
| 2 | Western Portal | Tennyson Street or Ormond Street | Altona Street and | Childers Street | Opening of road | [not disclosed] |
| 3 | Parkville | Grattan Street West | Flemington Road and | Royal Parade | Partial Closure | [not disclosed] |
| 4 | Parkville | Grattan Street East | Royal Parade and | Leicester Street | Full Closure | [not disclosed] |
| 5 | Parkville | Berkeley Street | Grattan Street and | Alan Gilbert carpark | Full Closure | [not disclosed] |
| 6 | Parkville | Barry Street | Grattan Street and | Pelham Street | Full Closure | [not disclosed] |

Schedule 1 Road Management Power Request Schedule

| | | | | | | |
|----|-----------|-----------------------|----------------------|--|---|-----------------|
| 7 | CBD North | Franklin Street West | Elizabeth Street and | Swanston Street | Westbound Lane closures | [not disclosed] |
| 8 | CBD North | Franklin Street West | Elizabeth Street and | Swanston Street | Half road and Centre Carpark closures | [not disclosed] |
| 9 | CBD North | Literature Lane | Little Latrobe St | - | Intermittent Full Closures/ Partial closures | [not disclosed] |
| 10 | CBD North | Little Latrobe Street | Swanston St and | 25m West of Literature Lane | Full Closure | [not disclosed] |
| 11 | CBD South | Flinders Street | Chapter House Lane | St Kilda Road | Westbound Left Turn Lane Closure | [not disclosed] |
| 12 | CBD South | Flinders Street | Elizabeth Street | Swanston Street | Eastbound Closure | [not disclosed] |
| 13 | CBD South | Scott Alley | Flinders Lane | N/A | Partial Closure | [not disclosed] |
| 14 | CBD South | Cocker Alley | Flinders Lane | North of the land contained in GP23697 | Partial Closure | [not disclosed] |
| 15 | Domain | Bowen Lane | - | St Kilda Road | Intersection Closed | [not disclosed] |

| | | | | | | |
|----|----------------|----------------------------------|---------------|----------------|-------------------------------------|-----------------|
| 16 | Domain | Albert Road North and South Legs | St Kilda Road | Kings Way | Lane Closures/intersection closures | [not disclosed] |
| 17 | Eastern Portal | Osborne Street | Toorak Road | Fawkner Street | Partial Closure | [not disclosed] |

Summary of Claims Obligations

Schedule 39

Insurance Claims Protocol

[not disclosed]



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Schedule 40

Design Optimisation Land and PSA2

[not disclosed]

METRO TUNNEL

TUNNEL AND STATIONS PUBLIC PRIVATE PARTNERSHIP

Project Scope and Technical Requirements (PS&TR)
Part A: Project Scope



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1 General

1.1 Structure of the Project Scope and Technical Requirements (PS&TR)

1.1.1 The PS&TR comprises the following parts:

Table 1-1: Overview of the PS&TR Structure

| Part | Heading | Description |
|------|---------------------------------|---|
| A | Project Scope | <p>Part A sets out an overview of the State's minimum requirements for the Works and the Project Activities.</p> <p>Part A includes a non-exhaustive list of:</p> <ul style="list-style-type: none"> (a) the scope of the Works; (b) the D&C Activities; and (c) Reference Documents. |
| B | Technical Requirements | <p>Part B sets out the State's Technical Requirements for the Works. Notwithstanding that this Part is divided into chapters for ease of navigation and that those sections are aligned with Part A in relation to specific parts of the Works, the requirements listed in each section may have application across multiple parts of the Works.</p> |
| C | Project Management Requirements | <p>Part C describes:</p> <ul style="list-style-type: none"> (d) the requirements for the processes and systems to be developed and implemented by Project Co; (e) the requirements for how the Works should be undertaken; (f) the Management Plans to be prepared, finalised, implemented and updated by Project Co; and (g) the various other plans, manuals, reports, programs, documents and systems that must be prepared, finalised, implemented and updated by Project Co; <p>for the purposes of, and in order for Project Co to undertake, the D&C Activities.</p> |
| D | Glossary of Terms | <p>Part D sets out the meanings for the terms contained in the PS&TR. Terms used in this PS&TR have the meaning given to them in the Project Agreement unless otherwise expressly defined in Part D.</p> |

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| 2 | Reference Documents | 83793 |
| 2.1 | General | 83794 |
| 2.1.1 | The Works and the Project Activities must comply with the requirements of the Reference Documents, unless the Project Requirements specify a different requirement, standard, quality, level of service, quantum or scope, in which case the higher requirement will prevail. | 83795 |
| 2.1.2 | An indicative, non-exhaustive list of Reference Documents is provided in Appendix A1: Reference Documents. Project Co must determine all Laws, standards and regulations which are applicable to the delivery of the Works and the Project Activities. | 83796 |
| 2.1.3 | In the event of any inconsistency, ambiguity or discrepancy between the Reference Documents, the hierarchy of Reference Documents will be in the following order: <ul style="list-style-type: none"> (a) in relation to the Tunnel, the Tunnel Reference Documents; (b) in relation to a Returned Asset, the relevant published standards of the relevant Returned Asset Owner; (c) the operating standards of the accredited Rail Transport Operator (RTO); (d) Public Transport Victoria (PTV) policies as referenced in this PS&TR; (e) VicRoads publications; (f) Austroads publications; (g) the relevant published standards of Victorian Government Authorities; (h) the relevant standards, codes and guides of Standards Australia; (i) the relevant standards, codes and guides published by Safe Work Australia; (j) the relevant Eurocode; (k) the relevant international standards or codes; and (l) all other publications, codes, references, guidelines, manuals and other technical documents which are relevant to the performance of the Project Activities. | 83797 |
| 2.1.4 | Project Co must: <ul style="list-style-type: none"> (a) comply with the PTV Systems Engineering Policy; (b) comply with the PTV Strategic Asset Management Policy and Guidance; (c) comply with the ONRSR Major Project Guidelines; (d) comply with the ONRSR SFAIRP Guidance; (e) obtain any and all waivers from the accredited RTOs operating standards needed in order to achieve compliance with Project Requirements; and (f) make its own determination as to whether the requirements of the Agreement are satisfied by the Reference Documents and if any additional or varied measures are required, in which case Project Co must incorporate such additional measures. | 83798 |
| 2.1.5 | Where an item, approach or option is referred to in a Reference Document and it is expressed in terms such as 'should', 'may be', 'recommended', 'suggested', 'desirable', 'advisable', the item, approach or option referred to is deemed to be a requirement and must not be varied unless otherwise agreed by the State. | 83805 |
| 2.1.6 | Where a Reference Document provides for: <ul style="list-style-type: none"> (a) a 'desirable' and an 'absolute' design limit, the desirable design limit is to apply unless other design limits are approved by the State; (b) the specification of material properties or mix designs for materials, such material properties or mix designs must be specified in the design report and on the drawings in the Certified Design Documentation; (c) the approval of construction procedures by a superintendent or representative, such procedures must be included in the Construction Documentation submitted in accordance with Part C of the PS&TR; (d) the release of Hold Points by a superintendent or representative, this responsibility must be exercised by the relevant Nominated Authority identified in the Quality Management Plan; | 83806 |

- (e) the acceptance of non-conforming works or materials by a superintendent or representative, such non-conforming works must be notified as Defects in accordance with clause 25.1(b) of the Agreement; 83811
 - (f) the approval of alternative construction methods or materials by a superintendent or representative, any such methods or materials must be notified to the State and the Independent Reviewer in the Design Documentation in accordance with the Project Agreement and the Design Review Schedule; 83812
 - (g) the determination of classification of earthworks materials or approval to reduce the frequency of testing of materials, such determinations and approvals must be authorised by a Nominated Authority with the necessary knowledge and experience to verify compliance with relevant standards and specification requirements; 83813
 - (h) any other determination, direction, or agreement by a superintendent, such determinations, directions, or agreements must be notified to the State and the Independent Reviewer in the Design Documentation in accordance with the Project Agreement and the Design Review Schedule; and 83814
 - (i) the approval for the adoption or variance to a particular standard, code, reference, guideline, manual or other technical document, the standard must not be adopted or varied without the prior written approval of the Independent Reviewer. 83815
- 2.1.7 If a requirement in a Reference Document: 83816
- (a) does not impose an obligation on any particular party, then it will be deemed to impose an obligation on Project Co; and 83817
 - (b) would or seeks to impose an obligation on the State or the Independent Reviewer, then that obligation will be deemed to be imposed on Project Co unless: 83818
 - (i) expressly stated otherwise in the Agreement; or 83819
 - (ii) only the State or the Independent Reviewer (as applicable) can perform the obligation. 83820

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| 3 | Overview of the Works | 83821 |
| 3.1 | General | 83822 |
| 3.1.1 | Subject to section 3.1.3, Project Co must deliver the Works to facilitate Train Operations, which includes, for the avoidance of doubt, performing all activities necessary to manage, design, develop, construct, integrate, test, deliver, install and commission the Works in accordance with the Project Documents. | 83823 |
| 3.1.2 | The System Breakdown Structure (SBS) in Appendix A2: System Breakdown Structure provides a non-exhaustive breakdown of the Works to be delivered by Project Co. | 83824 |
| 3.1.3 | The Train Franchisee will procure that the Maintained Assets are operated in accordance with clause 14.2 of the Franchise Cooperation Agreement (Train). | 150527 |
| 3.2 | Summary of the Works | 83825 |
| 3.2.1 | The Works include: | 83826 |
| | (a) design and construction of: | 83827 |
| | (i) twin nine-kilometre rail tunnels from Kensington to South Yarra that facilitate connection of the Pakenham – Cranbourne line to the Sunbury line to form the Sunshine – Dandenong line; | 83828 |
| | (ii) five new underground stations at Arden, Parkville, CBD North, CBD South and Domain, including at-grade station entrances and ventilation shafts; | 83829 |
| | (iii) track within the Tunnel, Stations and Portals, including first stage concrete, track slab (second stage concrete), rail and fasteners; | 83830 |
| | (iv) substations for intake, Station and Tunnel power and traction power; | 83831 |
| | (v) the traction power system, including overhead line equipment, throughout the Tunnel, Stations and in the Portals to the end of the cut and cover structures and the connection of the contact wire to the overhead isolation point within the decline structure; | 83832 |
| | (vi) a range of mechanical and electrical systems within the Tunnel and Stations, and within the Portals including emergency egress structures, required to support Train Operations, including fire and life safety equipment, lighting, line-wide tunnel ventilation systems, vertical transportation, line-wide earthing and bonding, access and maintenance activities and a range of services, information and communications technology and management control systems; | 83833 |
| | (vii) surface transport works, including at-grade train / tram and train / bus interchanges and reinstatement of roads; | 83834 |
| | (viii) public realm areas adjacent to Station entrances or otherwise occupied by Project Co during the Works, including rehabilitation and reinstatement of those areas; | 83835 |
| | (ix) all Temporary Works; and | 83836 |
| | (x) all Utility Infrastructure Works; | 83837 |
| | (b) in respect of Rail Systems Assets within the Tunnel and Stations and in the Portals including emergency egress structures: | 83838 |
| | (i) design, supply and installation of: | 83839 |
| | (1) Combined Services Route (CSR); and | 83840 |
| | (2) civil supports, power and fixings for Rail Systems Assets. | 83841 |
| | (ii) supply and installation of: | 83842 |
| | (1) Information and Communications Technology (ICT) / Operational Control System (OCS) equipment; | 83843 |
| | (2) security equipment; | 83844 |
| | (3) communications equipment (excluding within the CER); and | 83845 |
| | (4) cables from termination to termination (to SER/ CER up to a 400m run length outside the Portals); | 150512 |
| | (iii) installation of: | 83846 |
| | (1) signalling equipment; and | 83847 |
| | (2) Platform Screen Doors (PSDs); and | 83848 |

- (c) all other requirements as set out in this PS&TR to be undertaken in order to facilitate Train Operations. 83849
- 3.2.2 Project Co must undertake all necessary testing and commissioning activities in relation to the Works. 83850
- 3.2.3 Project Co must handback those assets forming part of the Returned Works to the relevant Returned Asset Owner and must satisfy any Handback requirements, including provision of any necessary spares and training. 83851

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| 4 | Urban Design and Public Realm | 83852 |
| 4.1 | Design Excellence | 83853 |
| 4.1.1 | Melbourne is proud of its architectural and urban design history and is internationally recognised for design quality in the built environment. It is a city where elegant Victorian buildings sit comfortably alongside contemporary forms, creating a living example of the layered evolution of great design. | 83854 |
| 4.1.2 | It is also a city of outstanding public spaces. Its legacy of grand, tree lined boulevards, formal gardens and orderly central city grid provides an easily understood framework for navigating the city. | 83855 |
| 4.1.3 | This legacy is not an accident. Since the City of Melbourne won its first Australia Award for Urban Design in 1996 (for the CBD Revitalisation Project) there has been a sustained commitment from all levels of government to promote and deliver the highest quality in urban design and architecture. | 83856 |
| 4.1.4 | Understood in this context, the Metro Tunnel is more than an engineering and transport project; it is also a major urban design challenge that will enrich urban amenity and contribute to the culture of design excellence that is a hallmark of Melbourne. | 83857 |
| 4.1.5 | The Project will transform how people move through, use and perceive the city. Ensuring that the public experience of the journey is memorable and engaging will be a key design outcome. | 83858 |
| 4.1.6 | Beyond the experience of the new infrastructure, each new Station precinct will also be transformed as a result of the project: | 83859 |
| | (a) Arden will be one of Melbourne’s biggest and most ambitious urban renewal projects, with the new Station providing the catalyst for activating future development; | 83860 |
| | (b) a station at Parkville will provide the nucleus for Victoria’s Parkville Precinct, long recognised both within Australia and internationally as a hub of excellence in healthcare, research and education; | 83861 |
| | (c) CBD North will establish a new northern gateway for Melbourne’s CBD and will cater to the growing needs of the burgeoning resident and student population; | 83862 |
| | (d) a station at CBD South will connect in to Flinders Street Station, the State’s premier interchange, and allow for two of the city’s most important civic squares (City Square and Federation Square) to be reimagined and better connected; and | 83863 |
| | (e) Domain will become the network’s third busiest tram/train interchange providing direct access to several of Melbourne’s key tourist attractions - the Shrine and the city’s most significant parks and gardens, including the Royal Botanic Gardens. | 83864 |
| 4.1.7 | Meeting this challenge will require vision and a commitment to high quality and integrated design that contributes to and enhances Melbourne’s reputation for design excellence – it demands a collaborative and multi-disciplinary approach with a high level of expertise in urban design, architecture, landscape architecture, industrial design and integrated urban identity features. | 83865 |
| 4.2 | General | 83866 |
| 4.2.1 | The Works include all adjustments, reinstatement and reasonable improvements necessary to existing pavements and landscaping affected by the Works, including: | 83867 |
| | (a) street fixings and furniture; | 83868 |
| | (b) road kerbs and paving; | 83869 |
| | (c) installation of hard landscaping and passive irrigation to accommodate the placement of soil and planting of trees by a specialist contractor to be engaged by the State or local council; and | 83870 |
| | (d) precinct surface works as described throughout this section. | 83871 |
| 4.2.2 | All Works are to be delivered in accordance with the relevant local authority standards. | 83872 |
| 4.3 | Arden Precinct | 83873 |
| 4.3.1 | Arden represents the next frontier in Melbourne’s evolution as a world-class capital city. Built around a new underground railway station, the new Arden precinct will be a model for a future smart city — incorporating the latest in technology, sustainability and urban design. | 83874 |

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| 4.3.2 | The Metro Tunnel will catalyse transformation of the area around the proposed Arden Station. From 2026, when the Station opens, it will attract thousands of new workers and residents. | 83875 |
| 4.3.3 | The Station entrance must provide a sophisticated design response to ensure presence, ease of access, legibility and connectivity. | 83876 |
| 4.3.4 | The urban design at Arden must create an inviting, safe and comfortable public environment that sets the standard for future development and supports the use of the Station before (and during) the wider redevelopment of the site. | 83877 |
| 4.3.5 | The Works include the creation of a high quality, landscaped forecourt (that can integrate with future development and serves as a benchmark for subsequent development) and installation of hard landscaping to support fast-growing planting to provide shelter and amenity for public spaces. | 83878 |
| 4.3.6 | Public Realm works at Arden Station must include: | 83879 |
| | (a) a single Station entry and forecourt; | 83880 |
| | (b) landscaping; | 83881 |
| | (c) street furniture, paving and lighting; | 83882 |
| | (d) signage and wayfinding; | 83883 |
| | (e) cultural and community identity infrastructure; | 83884 |
| | (f) streetscape upgrades along Laurens Street from Arden Street to Queensberry Street in accordance with the road functional layout; | 83885 |
| | (g) reconstruction of Barwise Street; and | 83886 |
| | (h) removal of any buildings and structures following construction and application of dust suppression surface treatment for the balance of the construction staging site. | 83887 |
| 4.3.7 | All areas of the Site which are not part of the Station and public environment (outside of the infrastructure lease) must be reinstated according to the requirements of the licensing agreement. | 83888 |
| 4.4 | Parkville Precinct | 83889 |
| 4.4.1 | The urban design at Parkville must contribute to the creation on a new civic heart for the academic / biomedical precinct that includes an integrated transport interchange between the Metro Tunnel and tram and bus services, a superior public transport / cycle / pedestrian connection along Grattan Street and a seamless connection between the University of Melbourne and the soon to be upgraded University Square. | 83892 |
| 4.4.2 | In particular, Grattan Street must be reinvented as a transport spine for the city's north, university and biomedical precinct, with priority given to active transport modes and intermodal transfers, and to the creation of an activated and people oriented public realm. | 83893 |
| 4.4.3 | Public realm works at Parkville Station must be consistent with the Parkville Public Realm Concept Plan (refer to Appendix A4) and include: | 83894 |
| | (a) reinstatement of all areas affected by works in a manner consistent with the Parkville Public Realm Design Brief and the City of Melbourne University Square Master Plan; | 83895 |
| | (b) water sensitive urban design infrastructure, tree and landscaping plots, street furniture, bicycle infrastructure, bicycle hire infrastructure, paving and lighting (including replacing bus shelters); | 83896 |
| | (c) cultural and community identity infrastructure; | 83897 |
| | (d) signalised crossings across Grattan Street between Leicester Street and Flemington Road in locations to be agreed with stakeholders; | 83898 |
| | (e) appropriate way finding infrastructure; | 117988 |
| | (f) reconfiguration and reconstruction of footpaths, bike lanes, traffic lanes and parking bays along: | 117989 |
| | (i) both sides of Grattan Street between Flemington Road and Leicester Street; and | |
| | (ii) Royal Parade and Elizabeth Street: | |
| | (1) between Story and Pelham Streets on the eastern side; and | |
| | (2) between Story Street and Flemington Road on the western side; | |
| | including appropriate transition of traffic and bicycle lanes into the Haymarket roundabout/ intersection. | |
| (g) | chiller plant, access shaft and ventilation structures that are sensitively integrated into the overall precinct design and the City of Melbourne University Square Master Plan. | 83907 |

Ventilation and access structures will be coordinated with existing ventilation and access structures for the underground car park and with the layout of proposed features in Barry, Leicester and Grattan Streets.

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| 4.5 | CBD North Precinct | 83908 |
| 4.5.1 | CBD North must establish a new northern gateway for Melbourne’s CBD and must cater to the growing needs of the burgeoning resident and student population. While physically spread over a wide area, the design of physical improvements at CBD North must contribute to an integrated local identity. | 83909 |
| 4.5.2 | The Station entry at Swanston and La Trobe Streets must be integrated into an oversite development (OSD) that supports the animation and amenity of adjoining street spaces, and that makes a positive civic architectural contribution to the precinct. | 83910 |
| 4.5.3 | The Station entry at Franklin Street East must be designed to be integrated with the street. It must provide a central public realm area within the spine of Franklin Street and create a plaza on the southern side, with improved pedestrian movements and links to RMIT Building 14 and the New Academic Street (NAS). | 83911 |
| 4.5.4 | Existing and valued qualities and features must be maintained in the re-imagined plan for the precinct that: | 83912 |
| | (a) celebrates and enhances its role as the northern gateway to the CBD; | 83913 |
| | (b) enhances the regeneration of the precinct at a macro level; | 83914 |
| | (c) increases green open spaces; | 83915 |
| | (d) improves connectivity to key institutions, including RMIT and the University of Melbourne; | 83916 |
| | (e) improves pedestrianisation and safe cycling of Franklin and Swanston Streets; and | 83918 |
| | (f) activates Franklin Street. | 83919 |
| 4.5.5 | Public realm works at CBD North must be consistent with the CBD North Public Realm Concept Plan (refer to Appendix A4) and include: | 83920 |
| | (a) ventilation and emergency access structures in Franklin Street; | 83921 |
| | (b) design and reconstruction of Franklin Street from Victoria Street to Elizabeth Street; Street (refer to section 11.4.6); | 83922 |
| | (c) streetscape upgrades (including provision for landscaping and tree planting) for the extent of areas affected by the Works, including on: | 83926 |
| | (i) Franklin Street from Victoria Street to Elizabeth Street; | 83927 |
| | (ii) Swanston Street from Victoria Street to LaTrobe Street; | 83828 |
| | (iii) La Trobe Street (north side) between Elizabeth Street and Swanston Street; | 83929 |
| | (iv) Victoria Street (south side) between Franklin Street and Swanston Street; | 83930 |
| | (v) A’Beckett Street, from Swanston Street to Stewart Street; | 83931 |
| | (d) street furniture, paving and lighting; | 83923 |
| | (e) cultural and community identity infrastructure; and | 83924 |
| | (f) signage and wayfinding. | 83925 |
| 4.6 | CBD South Precinct | 83932 |
| 4.6.1 | Public realm designs for CBD South must contribute to the creation of a world class civic space that is built on a foundation of high quality urban design that reflects the identity of Melbourne. Designs must incorporate vibrant and lively streets that can accommodate a vast number of roles from gathering spaces, event and ceremony spaces and specialised food / retail precincts. Streets and public places must allow people to browse, linger and rest. | 83933 |
| 4.6.2 | Designs must respect and build upon the heritage of the city, the street, the buildings and civic events that take place and will welcome visitors. | 83934 |
| 4.6.3 | Surface works at CBD South Station must also link three of Melbourne’s most iconic places, Flinders Street Station, Federation Square and City Square, and the urban design must reflect the importance of this precinct as Melbourne’s civic heart. | 83935 |
| 4.6.4 | Flinders Street and Swanston Street | 83936 |
| | (a) The Station entry at Flinders and Swanston Streets must be integrated into an OSD that supports the animation and amenity of adjoining street spaces, and that makes a positive civic architectural contribution to the precinct. | 83937 |

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| | (b) Specifically, public realm works at CBD South will include, for the extent of areas affected by the Works: | 83938 |
| | (i) streetscape upgrades to new and existing laneways; | 83939 |
| | (ii) landscaping including provision for replanting of trees; | 83940 |
| | (iii) street furniture, paving and lighting; | 83941 |
| | (iv) cultural and community identity infrastructure; and | 83942 |
| | (v) signage and wayfinding. | 83943 |
| 4.6.5 | City Square | 83944 |
| | (a) Existing valued qualities and features of City Square must be designed in accordance with the City Square Background Paper (refer to Appendix A4) and include: | 83945 |
| | (i) a 24/7 public open space that celebrates informal and formal activities; | 83946 |
| | (ii) a civic centrepiece for the precinct between the Town Hall and St Paul's Cathedral; | 83947 |
| | (iii) a flexible event space in the central city; | 83948 |
| | (iv) wide footpath and provision for Swanston Street tree arbour; | 83949 |
| | (v) occupiable edges and seating opportunities; | 83950 |
| | (vi) greenery in the city; | 83951 |
| | (vii) activity fronting the square; | 83952 |
| | (viii) opportunities for unstructured play; | 83953 |
| | (ix) accessibility, permeability and visibility; and | 83954 |
| | (x) community identity infrastructure and civic markers. | 83955 |
| 4.6.6 | Federation Square | 83956 |
| | (a) St Paul's Court must be maintained and enhanced in accordance with the aims of the original design for Federation Square to build on relationships with the surrounding city and to create a variety of adaptable spaces for civic events. | 83957 |
| | (b) Specifically, surface works at Federation Square must include: | 83958 |
| | (i) reconstruction of the Western Shard to accommodate the Station entry; | 83959 |
| | (ii) paving and lighting to match existing; and | 83960 |
| | (iii) signage and wayfinding that is sensitively designed into the overall design of Federation Square. | 83961 |
| 4.7 | Domain Precinct | 83962 |
| 4.7.1 | Surface works at Domain must enhance St Kilda Road's status as one of Melbourne's iconic boulevards, a key transport interchange and the gateway to Melbourne's arts and culture precinct, and must facilitate the movement of millions of transport users and visitors as they pass through the formal landscaped setting on their way to work, schools, the Shrine of Remembrance and the Royal Botanic Gardens. The Station precinct must be improved as a high quality pedestrian environment with better connectivity and opportunities for casual recreational use, and as a green link between Albert Park and the Domain parklands. | 83963 |
| 4.7.2 | Public realm designs for the precinct must be consistent with the Domain Public Realm Concept Plan (refer to Appendix A4) and: | 83964 |
| | (a) provide a cohesive and unifying design response that knits together the two distinct characters of St Kilda Road that meet at the interchange; | 83965 |
| | (b) restore the grandness of St Kilda Road by consolidating access for all modes and strengthening the rhythm of mature canopy trees; | 83966 |
| | (c) enhance the crescent shape and strong forms of the Albert Road Reserve and reveal the South African Soldiers' Memorial; | 83967 |
| | (d) create a flexible and highly useable urban space in the Albert Road Reserve, one that caters to its many roles: reflection; respite and passive recreation; formal green space; | 83968 |
| | (e) coordinate engineering with landscape architecture so that new infrastructure contributes to the formality of the boulevard; and | 83969 |
| | (f) reduce east-west severance effect of St Kilda Road by shortening crossing times. | 83970 |
| 4.7.3 | Specifically, surface works at Domain must include: | 83971 |
| | (a) three Station entries and associated forecourts / paving; | 83972 |
| | (b) relocation of tram interchange and associated passenger facilities and trackwork; | 83973 |

- (c) the reinstatement of the South African Soldiers' Memorial and the Cockbill Fountain (each previously dismantled and stored by the Early Works Managing Contractor) to their permanent positions, noting the requirement to undertake conservation works as required by any heritage permits in respect of these monuments; 83974
- (d) landscaping including provision for replanting of trees along St Kilda Road (between Dorcas Street and Toorak Road) and reimagined public space at Albert Reserve that celebrates the formal heritage significance of the reserve and includes South African Soldiers' Memorial as a focal point; 83975
- (e) street furniture, paving and lighting; 83976
- (f) cultural and community identity infrastructure; 83977
- (g) signage and wayfinding; 83978
- (h) streetscape upgrades for the extent of areas affected by the Works, including: 83979
 - (i) on St Kilda Road (between Dorcas Street and Toorak Road); 83980
 - (ii) on Albert Road (between St Kilda Road and Kings Way); 83981
 - (iii) on Domain Road; and 83932
 - (iv) on Bowen Crescent and Bowen Lane; 83983
- (i) Unpaid pedestrian subway beneath St Kilda Road and signalised crossing above; and 83984
- (j) chiller plant and ventilation structures that are sensitively integrated into the overall precinct design, giving consideration to the maximum extent possible to any integrated solutions which could contain the structures within an existing or proposed development. 83985

5 Civil and structural works

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| 5.1 | Trackwork | 83987 |
| 5.1.1 | The Works include design and construction of trackwork and ancillary structures including provisions for permanent services in the Tunnel, Stations and Portals as follows: | 83988 |
| | (a) first stage concrete; | 83989 |
| | (b) track slab concrete (second stage concrete); and | 83990 |
| | (c) rail and fasteners; | 83991 |
| | but excludes track tie-ins to the existing lines which will be undertaken by the Rail Infrastructure Alliance (RIA). | 83992 |
| 5.2 | Tunnel | 83993 |
| 5.2.1 | The Works include design and construction of the Tunnel as follows: | 83994 |
| | (a) twin nine-kilometre long rail tunnels from Kensington to South Yarra that facilitate connection of the Pakenham – Cranbourne line to the Sunbury line to form the Sunshine – Dandenong line, including: | 83995 |
| | (i) cross passages; | 83996 |
| | (ii) intervention shafts; | 83997 |
| | (iii) ventilation shafts; | 83998 |
| | (iv) egress shafts; | 83999 |
| | (v) tunnel service walkways; | 84000 |
| | (vi) emergency egress pathways; | 84001 |
| | (vii) tunnel drainage system; | 84002 |
| | (viii) cable ducts; | 84003 |
| | (ix) integrated cabling and pipework; | 84004 |
| | (x) tunnel power and lighting; | 84005 |
| | (xi) civil supports and fixings for Rail Systems Assets in the Tunnel as set out in section 6; and | 84006 |
| | (xii) CSR (service containments) in the Tunnel and the Portals including emergency egress structures as set out in section 6.4.3; | 84007 |
| | (b) an alignment that passes below the existing CityLink road tunnels between CBD South and Domain Stations; | 114504 |
| | (c) containment routes for services through Tunnel and Station interfaces; | 84008 |
| | (d) cross-passage interfaces; | 84009 |
| | (e) provision of space in cross passages to house equipment required by the Rail Systems Alliance (RSA); | 84010 |
| | (f) all additional infrastructure necessary to facilitate safe and efficient Train Operations whilst maintaining continuity of the existing surface train lines; | 84011 |
| | (g) consideration of any plans for developing the Arden precinct where the development may have an impact on the Tunnel or Station infrastructure; and | 84012 |
| | (h) any Temporary Works to facilitate the above including: | 84013 |
| | (i) ground treatment, improvement or replacement; and | 84014 |
| | (ii) temporary intervention shafts. | 84015 |
| 5.3 | Stations | 84016 |
| 5.3.1 | The Works include design and construction of underground Stations and ancillary above ground structures including: | 84017 |
| | (a) appropriate rooms, areas and ancillary structures including all joinery and loose furniture in the Stations to support Train Operations including those rooms, areas and ancillary structures as set out in Appendix B3 to Part B of the PS&TR; | 84018 |
| | (b) underground and above ground CSR (service containments) in the Stations and ancillary structures as described in section 6.4.3; | 84019 |
| | (c) supports and fixings for Rail Systems Assets in the Stations as set out in section 6; | 84020 |

- (d) defined and coordinated delivery routes for all permanent plant, equipment, vertical transportation, tunnel fixtures and fittings (including cross-passages) and any temporary routes and / or provisions to facilitate the Works and ongoing operations and maintenance activities; 84021
- (e) Station fit out in accordance with principles of safe and efficient wayfinding (including urban design and human factors considerations); 84022
- (f) signage and wayfinding equipment; 84023
- (g) in-station commercial opportunities, including in-station retail, advertising and amenity offerings, and retail and hospitality to activate the Stations and street frontages around the new Station entrances; and 84024
- (h) any Temporary Works to facilitate the above. 84025

5.4 Portals 84026

- 5.4.1 Project Co must: 84027
 - (a) specify any spatial requirements and other technical requirements for the cut and cover tunnel sections and decline structures at both Portals to enable the RIA to design and construct the cut and cover tunnel sections and decline structures, which must consider both temporary and permanent Works requirements; 84028
 - (b) adopt 'Option B5' at the Western Portal; 84029
 - (c) design and construct service facilities / shafts at both Portals or other location(s) to be determined by Project Co; 84030
 - (d) provide any relevant specification or design information reasonably required to enable the RIA to design and construct its works; 84031
 - (e) achieve breakthrough between the shafts and the cut and cover structures;
 - (f) design, supply and install active flood protection (1:1000 year event); 150513
 - (g) within the Portals to the top of the decline structures, design and construct the trackwork; 84032
 - (h) within the Portals: 84033
 - (i) design, supply and install: 84034
 - (1) mechanical and electrical systems (including traction power); 84035
 - (2) CSR; 84036
 - (3) civil supports, power and fixings (excluding cast in supports in the cut and cover tunnel sections, which will be designed and constructed by the RIA, and for which Project Co must provide the relevant requirements to the RIA) for Rail Systems Assets; 84037
 - (ii) supply and install: 84038
 - (1) security equipment; 84039
 - (2) communications equipment excluding CSR (as designed by the RSA); and 84040
 - (iii) install signalling equipment (as designed and supplied by the RSA); and 84041
 - (i) complete connection of the contact wire to the overhead isolation point beyond the end of the cut and cover structures. 150514

6 PPP Support for Rail System Alliance 84042

6.1 General 84043

Project Co must: 84044

6.1.1 design, supply or install (as noted in the relevant sections) the Rail Systems Assets within the Tunnel, Stations (for ICT/OCS and security equipment this may include some above ground locations adjacent to Station entrances) and in the Portals including emergency egress structures; 84045

6.1.2 provide any relevant specification or design information (including as set out in sections 6.3.1, 6.4.1, 6.5.3 and 6.6.1) or operational requirements reasonably required to enable the RSA to specify, design or supply the Rail Systems Assets; 84046

6.1.3 provide access to equipment and Station rooms with associated building services (e.g. LV no break power, lighting, air conditioning, ventilation and cable containment systems) and furniture as required for complete or partial fit out with equipment by the RSA in accordance with Appendix B3 to Part B of the PS&TR; 84047

6.1.4 make provision for the RSA to install ICT/OCS complex equipment assemblies in equipment rooms, Station offices and cross passages as required; 84048

6.1.5 install the Rail Systems Assets in accordance with installation procedures and inspection test plans agreed with the RSA; 84049

6.1.6 make provision for the RSA to witness installation activities to the extent required for the RSA to accept the Rail Systems Assets as part of the total ICT/OCS, security, communications, signalling, PSD or rail control system; 84050

6.1.7 undertake installation checks and fulfil its testing obligations in relation to the Rail Systems Assets; 84051

6.1.8 provide all necessary support to allow the RSA to undertake its works, including testing, commissioning and integration obligations in relation to Rail Systems Assets; and 84052

6.1.9 provide installation records to the RSA as evidence of successful installation. 84053

6.2 Supporting Equipment 84054

6.2.1 Project Co must design, supply and install all equipment necessary to support the function of the Rail Systems Assets, including: 84055

(a) all mounting arrangements; 84056

(b) all cabling arrangements, including all associated conduit, brackets, trunking and inter-room cables; 84057

(c) local communication equipment including joints and tee offs from the fibre backbone, fibre termination cubicles, local fibre and power over Ethernet (**PoE**) network cabling and local active network devices; 84058

(d) power supply, backup and distribution; 84059

(e) locks (including during construction); 84060

(f) earthing and bonding; and 84061

(g) lighting for CCTV cameras and Passenger Information Displays (**PIDs**); 84062

as specified by the RSA. 84063

6.3 ICT/OCS and Security Equipment 84064

Project Co must: 84065

6.3.1 design Tunnel and Station layout and architectural details associated with the ICT/OCS and security assets and provide this design to the RSA to enable the RSA to determine the required locations of ICT/OCS and security assets; 84066

6.3.2 incorporate ICT/OCS and security asset locations determined by the RSA into the Tunnel and Station layout plans, noting that this must also include above ground locations at interconnecting tram stops adjacent to Station entrances; 84067

6.3.3 supply and install the following equipment: 84068

(a) intranet and office IT systems for Station rooms and associated cabling; 84069

- (b) ICT/OCS assets, including: 84070
 - (i) PIDs; 84071
 - (ii) Public Address (**PA**) equipment; 84072
 - (iii) customer help points; 84073
 - (iv) audio frequency induction loop; and 84074
 - (v) Metrol telephones; and 84075
 - (c) security assets, including: 84076
 - (i) distributed CCTV cameras (noting that [not disclosed]); and 84077
 - (ii) physical security equipment (such as doors and locks) to be interfaced to an access control system by RSA; 84078
- in accordance with the specification and design provided by the RSA. 84079

6.4 Communications Equipment 84080

Project Co must: 84081

- 6.4.1 specify its backbone cabling and managed services requirements to the RSA; 84082
 - 6.4.2 design and construct the Communication Equipment Rooms (**CER**) and telephone equipment rooms including building services installation and cable containment in accordance with specifications provided by the RSA; 84083
 - 6.4.3 design, supply and install the CSR in accordance with the specification provided by the RSA; 84084
 - 6.4.4 supply and install the following communications equipment: 84085
 - (a) fibre backbone cabling; 84086
 - (b) radio frequency (**RF**) distributed antenna cabling; 84087
 - (c) cable joints; and 84088
 - (d) cable termination panels; 84089
- in accordance with the specification and design provided by the RSA; and 84090

- 6.4.5 install the RF distributed antenna equipment as specified, designed and supplied by the RSA. 84091

6.5 Signalling Equipment 84092

Project Co must: 84093

- 6.5.1 specify to the RSA signalling elements that are affected by underground mechanical systems operations stated in section 9, including: 84094
 - (a) Tunnel ventilation constraints; and 84095
 - (b) platform stopping point. 84096
 - 6.5.2 design and construct the Signalling Equipment Room (**SER**) including building services installation (e.g. LV no-break power, power distribution, lighting, air conditioning, ventilation, cable containment/management and inter room cables) in accordance with specifications provided by the RSA; 84097
 - 6.5.3 design, supply and install the following elements associated with signalling equipment: 84098
 - (a) LV no-break signal power supply; and 84099
 - (b) power distribution; 84100
- in accordance with the specifications provided by the RSA; and 84101
- 6.5.4 supply and install common wayside cabling as specified and designed by the RSA; 84102
 - 6.5.5 install the following signalling wayside equipment: 84103
 - (a) balise; 84104
 - (b) axle counters; 84105
 - (c) LV signalling power subsystem; and 84106
 - (d) HCS radio subsystem (radio units, antennas, cabling and supporting / bracket system) as described in the section D3 Appendix 11 of the Technical Solution. 150515

to be specified, designed and supplied by the RSA. 84107

6.6 Platform Screen Doors (PSDs) 84108

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| Project Co must: | 84109 |
| 6.6.1 specify and design elements associated with PSD system and provide this design to the RSA as follows: | 84110 |
| (a) platform mounting arrangements for PSDs (including the distance from train and distance along platform) based on PSD fixing details to be provided by the RSA; | 84111 |
| (b) platform civil works (including dimensions); | 84112 |
| (c) earthing and bonding arrangement; | 84113 |
| (d) Station inter-room cables and cable mounts; | 84114 |
| (e) platform cables and cable routes; and | 84115 |
| (f) architectural and structural design to accommodate PSDs; | 84116 |
| 6.6.2 install all components of the PSD system, including the PSDs and local control panels designed and supplied by the RSA, in accordance with installation procedures and inspection test plans agreed with the RSA; | 84117 |
| 6.6.3 conduct its testing and integration obligations in relation to the PSD system, including: | 84118 |
| (a) electrical isolation of the PSD system in the Tunnel from Station earthing system, building services and Station civil structures; | 84119 |
| (b) effectiveness of the PSD system in the tunnel in providing a sealed barrier between the platform and the tunnel; and | 84120 |
| (c) integration of the PSDs with the track, platform and HCMT kinematic envelope. | 84121 |
| 6.7 Rail Control Systems | 84122 |
| Project Co must: | 84123 |
| 6.7.1 provide to the RSA for incorporation into the development of the Control and Monitoring System the design of mechanical systems and control described in section 9; and | 84124 |
| 6.7.2 collaborate and co-ordinate with the RSA for Control and Monitoring System testing and commissioning, system integration and acceptance which will be carried out by the RSA. | 84125 |

7 Stations 84126

7.1 General 84127

Project Co must ensure that the Stations: 84128

7.1.1 facilitate safe and efficient Train Operations; 84129

7.1.2 achieve the State's commitment to high quality integrated design outcomes; 84130

7.1.3 achieve a minimum 5 star GBCA Green Star certified rating; 84131

7.1.4 provide capacity to support the forecast patronage levels and pedestrian movements set out in Appendix B1 of Part B of the PS&TR; 84132

7.1.5 facilitate the efficient movement of passengers; 84133

7.1.6 provide a highly functional transport environment; 84134

7.1.7 provide bicycle parking as set out in Part B of the PS&TR, giving consideration where possible to provision of bicycle parking that is convenient to Station entries and in locations identified both within Station infrastructure and on-street; and 84135

7.1.8 integrate with the public realm designs to ensure a considered and complementary architectural design treatment between the platform and the precinct. 84136

7.2 Arden Station 84137

Arden Station must: 84138

7.2.1 be located west of Laurens Street; 84139

7.2.2 be located and designed to maximise redevelopment potential of the precinct and facilitate the scale of urban renewal anticipated in the Arden Vision and Framework; 84140

7.2.3 include an entrance at Laurens Street (eastern entrance); 84141

7.2.4 include future design provision for proposed entrances on the north and south sides of the Station (western entrances) to tie in with future north south extension of Fogarty Street; 84142

7.2.5 not have any above ground Station infrastructure which could constrain the future extension of Fogarty Street or Queensberry Street; 84143

7.2.6 confine all ancillary ground structures to the entrance/egress locations to minimise negative impacts on the public realm; 84144

7.2.7 locate Station infrastructure underground except where as a result of doing so, there are significant impacts to the efficiency of the infrastructure, maintainability or the footprint of the Station; 84145

7.2.8 be developed to not preclude an OSD (designed and constructed by others) of mixed used development up to 150 metres in height, sited over the Station and Station entrance; and 84146

7.2.9 be developed to support the PS&TR demand with exception of the supply and installation of a third escalator and three gates within the Laurens Street entrance. Future provision of space only for the third escalator and three gates is required to be provided.

7.3 Parkville Station 84147

Parkville Station must: 84148

7.3.1 be located beneath Grattan Street, east of Royal Parade; 84149

7.3.2 include an entrance at Victorian Comprehensive Cancer Centre (VCCC entrance); 84150

7.3.3 include an entrance on the northeast corner of the Royal Parade and Grattan Street intersection (Royal Parade entrance); 84151

7.3.4 include an entrance on the north Grattan Street frontage of the University of Melbourne between the Gate Keeper's Cottage and the Medical Faculty Building 181 (University entrance); 84152

7.3.5 configure the Royal Parade and University entrances to allow all access directly to Grattan Street and/or Royal Parade road reserves, without crossing University of Melbourne land; 84153

7.3.6 include an Unpaid pedestrian subway under Royal Parade; 84154

7.3.7 make design provision for a future 30 metre wide connection to the basement of the proposed re-development of the Medical Faculty Building 181 site; 84155

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| 7.3.8 | make design provision for a future entrance into Barry Street to the south of Grattan Street; | 84156 |
| 7.3.9 | make design provision for a platform to platform connection to the future station on the Clifton Hill Metro Tunnel; | 84157 |
| 7.3.10 | provide a design and construction solution at the Royal Parade entrance that does not preclude the construction of 60 metre high OSD and does not preclude OSD with a clearance of eight metres above the existing natural surface; | 84158 |
| 7.3.11 | provide a design and construction solution at the University entrance that does not preclude OSD with a clearance of eight metres above the existing natural surface; and | 84159 |
| 7.3.12 | if any part of the main Station box is located on land acquired from the University of Melbourne, provide a design and construction solution which does not preclude the construction of 60 metre high OSD over the portion of the Station box which is on acquired land. | 84160 |
| 7.4 | CBD North Station | 84161 |
| | CBD North Station must: | 84162 |
| 7.4.1 | be located beneath Swanston Street and north of La Trobe Street; | 84163 |
| 7.4.2 | include an entrance at Franklin Street east (northern entrance); | 84164 |
| 7.4.3 | not preclude a future entry directly into RMIT either through Building 14 or to Bowen Street; | 84165 |
| 7.4.4 | include an entrance at the west side of Swanston Street from corner of La Trobe Street (southern entrance), including Paid pedestrian subway connection to existing Melbourne Central Station concourse and platforms 3 and 4; and | 84166 |
| 7.4.5 | provide for OSD that is integrated with the southern entrance. | 84167 |
| 7.5 | CBD South Station | 84168 |
| | CBD South Station must: | 84168 |
| 7.5.1 | be beneath Swanston Street between Collins Street and Flinders Street; | 84170 |
| 7.5.2 | include an entrance at Federation Square; | 84171 |
| 7.5.3 | include an entrance at City Square – corner Swanston Street and Collins Street (north eastern entrance), and not preclude a future Unpaid pedestrian subway connection to the north-east side of the Collins Street / Swanston Street intersection; | 84172 |
| 7.5.4 | include an entrance at the west side Swanston / Flinders Street (southern entrance), including Paid pedestrian subway connection to existing Flinders Street Station as described in Appendix A5; | 84173 |
| 7.5.5 | make suitable design provision for a potential future station entrance on Collins Street, west of Swanston Street; and | 150516 |
| 7.5.6 | provide for OSD. | 84174 |
| 7.6 | Domain Station | 84175 |
| | Domain Station must: | 84176 |
| 7.6.1 | be located beneath St Kilda Road and south of Park Street; | 84177 |
| 7.6.2 | include an entrance at the Shrine; | 84178 |
| 7.6.3 | include new central island platform (CIP) tram stop on St Kilda Road with Station interchange; | 84179 |
| 7.6.4 | include an entrance at Albert Reserve; | 84180 |
| 7.6.5 | include an Unpaid pedestrian subway connecting east and west sides of St Kilda Road (including gate closure); and | 84181 |
| 7.6.6 | not preclude a future entrance at the southern end of the Station. | 114506 |
| 7.7 | Ticketing Works | 84182 |
| | Project Co must: | 84183 |
| 7.7.1 | specify any necessary spatial or other technical requirements, including requirements for ticketing gate arrangements and location of other ticketing assets such as card vending machines, to enable the Ticketing Works Contractor to design the Ticketing Works; | 84184 |
| 7.7.2 | provide access to and space within the CER to allow the Ticketing Works Contractor to install ticketing racks; | 84185 |

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| 7.7.3 | make all other necessary provisions to enable the Ticketing Works Contractor to install the Ticketing Works, including design and installation of: | 84186 |
| (a) | all mounting arrangements; | 84187 |
| (b) | all cabling arrangements, including all associated conduit, brackets, trunking and inter-room cables; | 84188 |
| (c) | power supply, backup and distribution; and | 84189 |
| (d) | earthing and bonding. | 84190 |

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| 8 | Fire and Life Safety | 84191 |
| 8.1 | General | 84192 |
| 8.1.1 | Project Co must: | 84193 |
| | (a) develop the fire engineering design in accordance with AS4825:2011, the International Fire Engineering Guidelines 2005 (IFEG) and L1-CHE-INS-056: Fire Engineering Design for Metropolitan Railway Stations; | 84194 |
| | (b) develop a Fire Engineering Brief (FEB) that defines the scope of work for the fire engineering analysis and the basis for analysis that has been agreed with the Metropolitan Fire Brigade (MFB) and all relevant stakeholders; | 84195 |
| | (c) develop a Fire Engineering Report (FER) specific to the Works, including a Trial Design; and | 84196 |
| | (d) certify that the FEB and the FER comply with the PS&TR; | 84197 |
| | in accordance with section 7.12 of Part C of the PS&TR. | 84198 |
| 8.1.2 | Project Co must deliver the Works to meet the objectives and performance requirements set out in section 8 of Part B of the PS&TR, including: | 84199 |
| | (a) fire and life safety systems and infrastructure to: | 84200 |
| | (i) support the emergency management system; | 84201 |
| | (ii) facilitate a safe environment for all people; | 84202 |
| | (iii) facilitate safe evacuation of all people in the event of emergency, including meeting emergency and firefighting access and operational requirements; | 84203 |
| | (iv) support operator safety systems and operating procedures; and | 84204 |
| | (v) minimise the impact of incidents on the existing and new infrastructure. | 84205 |
| | (b) emergency equipment in the Tunnel, Stations and Portals, which may include: | 84206 |
| | (i) wayfinding equipment; | 84207 |
| | (ii) fire detection and alarm system equipment; | 84208 |
| | (iii) occupancy warning and intercom system equipment; | 84209 |
| | (iv) fire hydrants, boosters and hose reel systems; | 84210 |
| | (v) sprinklers; and | 84211 |
| | (vi) fire suppression systems; and | 84212 |
| | (c) the emergency management system. | 84213 |

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| 9 | Mechanical systems and control | 84214 |
| 9.1 | General | 85807 |
| 9.1.1 | Project Co must provide appropriate mechanical systems within the Tunnel and Stations, and within the Portals and within any emergency egress structures, including: | 84215 |
| | (a) Station Environmental Control Systems (ECS); | 84216 |
| | (b) Mechanical Ventilation and Air Conditioning (MVAC) systems; | 84217 |
| | (c) Station Smoke Management System (SSMS); | 84218 |
| | (d) Tunnel Ventilation Systems (TVS); | 84219 |
| | (e) Tunnel Ventilation Control System (TVCS); | 84220 |
| | (f) Building Management and Control Systems (BMS); | 84221 |
| | (g) Energy and Water Management Systems (E&WMS); | 84222 |
| | (h) interface with central control and monitoring system; | 84223 |
| | (i) vertical transportation system, including lifts and escalators; | 84224 |
| | (j) plumbing and drainage systems, including drainage pumps (excluding installation of a 1:200 transverse drain within the decline structure and the drainage system downstream of the transverse drain); and | 84225 |
| | (k) Utilities. | 84226 |
| 9.1.2 | Mechanical systems must be integrated with RSA control systems as required. | 84227 |

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| 10 | Electrical power systems | 84228 |
| 10.1 | Low Voltage (LV) electrical systems | 84229 |
| 10.1.1 | Project Co must provide LV electrical systems, including: | 84230 |
| | (a) LV main switchboards; | 84231 |
| | (b) main distribution boards and distribution boards; | 84232 |
| | (c) mains, submains and sub circuits cabling system; | 84233 |
| | (d) lighting and general power requirements; | 84234 |
| | (e) emergency lighting and exit signage; | 84235 |
| | (f) lighting control systems; | 84236 |
| | (g) uninterrupted power supply (UPS) system; | 84237 |
| | (h) earthing, bonding and surge protection system; and | 84238 |
| | (i) RSA system power supply. | 84239 |
| 10.2 | High Voltage (HV) electrical systems | 84240 |
| 10.2.1 | Project Co must provide the HV system including: | 84241 |
| | (a) power supply related works within terminal stations; | 84242 |
| | (b) 66kV bulk power supply system; | 84243 |
| | (c) intake substation and associated works; | 84244 |
| | (d) 22kV distribution to Tunnel and Stations; | 84245 |
| | (e) 22kV Emergency Power Supply works; | 84246 |
| | (f) Station substations; | 84247 |
| | (g) control and monitoring system; | 84248 |
| | (h) earthing and bonding system; and | 84249 |
| | (i) EMC requirements. | 84250 |
| 10.3 | Traction power | 84251 |
| 10.3.1 | Project Co must provide the traction power system within the Tunnel, Stations and in the Portals to the end of the cut and cover tunnels, including: | 84252 |
| | (a) traction substations; | 84253 |
| | (b) overhead line system and equipment (including the connection of the contact wire to the overhead isolation point within the decline structure); | 84254 |
| | (c) traction power regeneration system; | 84255 |
| | (d) protection system; | 84256 |
| | (e) control and monitoring system; | 84257 |
| | (f) earthing and bonding system; and | 84258 |
| | (g) EMC requirements. | 84259 |

11 Road Works

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11.1 General

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The Works includes the delivery of all necessary road works, including:

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- 11.1.1 the location specific road works described in sections 11.2 to 11.6; 84263
- 11.1.2 all adjustments to any existing roads, footpaths, shared paths, cycleways, tramways, parks, or other publicly accessible areas or streets which are: 84264
 - (a) necessary as a consequence of the Works, the Temporary Works, the Utility Infrastructure Works and Project Activities; or 84265
 - (b) required by the Environmental Requirements; 84266
 - (c) including, as a minimum, reconstruction (to prior condition) or resurfacing of affected parts of streets and roads; 84267
- 11.1.3 all fencing, drainage including subsurface drainage, erosion and sediment control works, earthworks, all structures (including retaining walls and bridges), pavements and planting; 84268
- 11.1.4 all provisions to allow pedestrians, cyclists and disabled persons to use the surrounding transport networks, including footpaths, shared paths, cycleways, bus and road networks, affected by the Works and the Project Activities; 84269
- 11.1.5 all permanent arrangements to allow people and vehicles access to property affected by the Project; 84270
- 11.1.6 access and space, including loading bays, for staff and service vehicles within each Station precinct; 84271
- 11.1.7 adjustments to pavement markings, signs, sign support systems, traffic control signals and street lighting; 84272
- 11.1.8 re-sheeting (but not rebuilding) of all roads where pavement markings are altered; 84273
- 11.1.9 items of street furniture to improve safety (particularly safety barriers) and all fencing and other security measures necessary to prevent unlawful or accidental access to the Works; and 84274
- 11.1.10 all environmental safeguards necessary to mitigate environmental impacts which might arise as a consequence of the use of the roads, as identified in the Environmental Requirements. 84275
- 11.1.11 as a minimum, hardstand areas for parking emergency vehicles at: 137061
 - (a) the Western and Eastern Portals; and
 - (b) entrances to access shafts and Stations.

The location of on-street parking facilities shall be as defined unless otherwise agreed with the State.

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11.2 Arden

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The road works at Arden include:

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- 11.2.1 two Disability Discrimination Act (**DDA**) compliant parking spaces in the vicinity of the Station; 84278
- 11.2.2 provision of two car parking spaces for Train Franchisee staff; 84279
- 11.2.3 Laurens Street (Between Arden Street and Queensberry Street): 84280
 - (a) one general traffic lane each way; 84281
 - (b) on-road cycle lane in each direction; 84282
 - (c) bus zones for northbound and southbound buses within 100 metres of the Station entrance; 84283
 - (d) new signalised pedestrian crossing outside Station; 84284
 - (e) train / tram replacement bus zone for one standard 12.5 metre bus; 84285
 - (f) two taxi spaces / drop off areas; 84286
 - (g) two Kiss and Ride spaces; and 84287
 - (h) one dedicated loading zone. 84288
- 11.2.4 Barwise Street (between Laurens Street and Maintenance Vehicle Access Road): 84289

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| (a) | one general traffic lane each way; | 84290 |
| (b) | emergency access between Barwise Street and the egress points of the Station; | 84291 |
| (c) | pedestrian footpath on the south side; and | 84292 |
| (d) | maintenance access from Barwise Street to the delivery points of the Station. | 150518 |
| 11.3 | Parkville | 84293 |
| | The road works at Parkville include: | 84294 |
| 11.3.1 | provision of two car parking spaces for Train Franchisee staff; | 84295 |
| 11.3.2 | Grattan Street (between Flemington Road and Leicester Street): | 84296 |
| (a) | one general traffic lane in each direction; | 84297 |
| (b) | on-road bicycle lane in each direction; and | 84298 |
| (c) | footpaths both sides. | 84299 |
| 11.3.3 | Grattan Street (between Flemington Road and Elizabeth Street): | 84300 |
| (a) | bus bays on north and south side for 12.5 metre buses; | 84301 |
| (b) | combined loading and drop off spaces for the VCCC; | 84302 |
| (c) | taxi spaces / drop off areas; | 84303 |
| (d) | space for at least four ambulances on north side; and | 84304 |
| (e) | 5-minute parking spaces. | 84305 |
| 11.3.4 | Grattan Street (between Elizabeth Street and Leicester Street): | 84306 |
| (a) | bus bays for 12.5 metre buses; | 84307 |
| (b) | train / tram replacement bus zone for one standard 12.5 metre bus; | 84308 |
| (c) | loading areas for emergency/maintenance vehicles; | 84309 |
| (d) | Barry Street to be closed to traffic between Grattan Street and Pelham Street; and | 84310 |
| (e) | new enhanced crossing between in a location to be agreed with stakeholders. | 84311 |
| 11.3.5 | Elizabeth Street (between Grattan Street and Haymarket Roundabout/ intersection): | 84312 |
| (a) | two general traffic lanes in each direction, transitioning to three lanes to ensure satisfactory operation of Haymarket Roundabout/ intersection; | 84313 |
| (b) | separate northbound motor vehicle right turn lane into Grattan St (not on tram tracks); | 84314 |
| (c) | on-road cycle lane in each direction; | 84315 |
| (d) | no parking on the west side; | 84316 |
| (e) | loading zone on the nearside kerb on the eastern side (as existing); | 84317 |
| (f) | pedestrian access to Haymarket Walk permitted on the eastern side; and | 84318 |
| (g) | VCCC access on western side of Royal Parade to be maintained. | 84319 |
| 11.3.6 | Royal Parade (between Grattan Street and Melbourne Private Hospital access): | 84320 |
| (a) | two general traffic lanes in each direction; | 84321 |
| (b) | on-road cycle lane in each direction (bluestone pitcher channel removed on both sides of the road); | 84322 |
| (c) | no parking on the east side; | 84323 |
| (d) | one bus stop on the eastern side; | 84324 |
| (e) | two bus stops on the western side (north of Melbourne Private access route); | 84325 |
| (f) | one pedestrian crossing removed and one added between Grattan Street and Story Street; | 84326 |
| (g) | access to Melbourne Private Hospital permitted on the western side; | 84327 |
| (h) | retained functionality of Royal Melbourne Hospital car park access; and | 84328 |
| (i) | ambulance entrance into Royal Melbourne Hospital emergency department. | 84329 |
| 11.4 | CBD North | 84330 |
| | The road works at CBD North, subject to public consultation, include: | 84332 |
| 11.4.1 | provision of three car parking spaces for Train Franchisee staff; | 84333 |
| 11.4.2 | train / tram replacement bus zone for one standard 12.5 metre bus; | 84334 |
| 11.4.3 | Swanston Street (between Victoria Street and Franklin Street): | 84335 |

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| | (a) one traffic lane in each direction; | 84336 |
| | (b) on-road cycle lane in each direction; and | 84337 |
| | (c) indented parking/loading zone on the east side outside City Baths as agreed with the City of Melbourne. | 84338 |
| 11.4.4 | Swanston Street (between Franklin Street and La Trobe Street): | 84339 |
| | (a) no motor vehicle access between Franklin Street and Little La Trobe Street; | 84340 |
| | (b) between Little La Trobe Street and La Trobe Street: | 84341 |
| | (i) one northbound traffic lane allowing one way left turn access into Little La Trobe Street from Swanston Street; | 84342 |
| | (ii) no motor vehicle access southbound between Little La Trobe Street and La Trobe Street; | 117984 |
| | (iii) indented loading zone on the west side; and | 84343 |
| | (iv) one DDA compliant parking space on the west side; | 84344 |
| | (c) sufficient loading bays to service businesses on Swanston Street; | 117985 |
| | (d) dedicated bicycle lanes in each direction; and | 84345 |
| | (e) tram stops extended closer to the new pedestrian crossing on Franklin Street. | 84346 |
| 11.4.5 | Franklin Street (between Victoria Street and Swanston Street): | 84347 |
| | (a) one dedicated eastbound bicycle lane and (subject to Station design) one westbound bicycle lane; | 84348 |
| | (b) one traffic lane in each direction (westbound lane shared use by motorists and cyclists); | 84349 |
| | (c) two indented DDA compliant parking spaces on the north side; | 84350 |
| | (d) indented parking on the north side as agreed with the City of Melbourne; and | 84351 |
| | (e) angled driveway into RMIT access at Building 14. | 84352 |
| 11.4.6 | Franklin Street (between Swanston Street and Elizabeth Street): | 84353 |
| | (a) one traffic lane in each direction; | 84354 |
| | (b) on-road dedicated bicycle lane in each direction; | 84355 |
| | (c) indented parking / loading on both sides of road as agreed with the City of Melbourne; and | 84356 |
| | (d) existing central parking removed. | 84357 |
| 11.4.7 | A'Beckett Street (between Swanston Street and Stewart Street): | 84358 |
| | (a) no vehicle access between Stewart Street and Swanston Street; | 84359 |
| | (b) existing on-street parking (3x north side and 2x south side) to be removed; | 84360 |
| | (c) appropriate access provided to RMIT and Citipower on south side; and | 117995 |
| | (d) vehicle access provided to the A'Beckett Towers carpark on south side. | 84361 |

11.5 CBD South

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| | The road works at CBD South include: | 84363 |
| 11.5.1 | train / tram replacement bus zone for one standard 12.5 metre bus; | 84364 |
| 11.5.2 | provision of four car parking spaces for Train Franchisee staff; | 84365 |
| 11.5.3 | Collins Street / Swanston Street intersection: | 84366 |
| | (a) wider pedestrian crossings at the intersection; and | 84367 |
| | (b) change method of control to a scramble crossing as agreed with PTV and the City of Melbourne. | 84368 |
| 11.5.4 | Flinders Street: | 84369 |
| | (a) Not used; | 84370 |
| | (b) provision for right turning trams into Elizabeth Street; and | 84371 |
| | (c) integration with proposed streetscape improvements in the immediate vicinity of the Works, including: | 84372 |
| | (i) the Elizabeth Street South Streetscape Improvement Plan (City of Melbourne); and | 84373 |
| | (ii) the Flinders Street Station upgrade project (PTV). | 84374 |

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| 11.6 Domain | 84375 |
| The road works at Domain include: | 84376 |
| 11.6.1 construction staging road works to facilitate construction of Domain Station, including multiple temporary configurations of St Kilda Road from Construction Stage 4 onwards; | 118080 |
| 11.6.2 provision of two car parking spaces for Train Franchisee staff; | 84377 |
| 11.6.3 St Kilda Road (between Dorcas Street and Park Street): | 84378 |
| (a) a road layout that provides an appropriate transition from the existing layout to the new configuration; | 84379 |
| (b) on-road cycle lane in each direction of a standard commensurate with St Kilda Road's status as a Bicycle Priority Route (BPR) and aligned with the St Kilda Road Safety Improvement Study; and | 84380 |
| (c) existing parking (all types) to be maintained where possible. | 84381 |
| 11.6.4 St Kilda Road (between Park Street and Toorak Road West / Kings Way): | 84882 |
| (a) a road functional layout that: | 84383 |
| (i) is in accordance with the modal priorities set out in Appendix B4 to Part B of the PS&TR; | 84384 |
| (ii) is to the satisfaction of relevant stakeholders including VicRoads, the City of Melbourne, the City of Port Phillip; the Tram Franchisee and PTV; | 84385 |
| (iii) provides an on-road cycle lane in each direction of a standard commensurate with St Kilda Road's status as a BPR and aligned with the St Kilda Road Safety Improvement Study; | 84386 |
| (iv) enhances the St Kilda Road boulevard; and | 84387 |
| (v) provides a maximum of three general traffic lanes in each direction (final lane configuration to be agreed with VicRoads); | 84388 |
| (b) pedestrian crossings at either end of the CIP tram stop; | 84389 |
| (c) removal of pedestrian crossings at Domain Interchange; | 84390 |
| (d) removal of redundant existing pedestrian crossings at the new CIP tram stop; | 84391 |
| (e) one emergency vehicle stopping area; | 84392 |
| (f) provision of off peak car parking; and | 84393 |
| (g) one bus stop in each direction south of Albert Road (south) intersection. | 84394 |
| 11.6.5 Albert Road (North and South Section of the Triangle): | 84395 |
| (a) North Section: | 84396 |
| (i) one traffic lane in each direction; | 84397 |
| (ii) one cycle lane in each direction; | 84398 |
| (iii) north side of the road as reconfigured; | 84399 |
| (iv) train/tram replacement bus zone for one standard 12.5 metre bus; | 84400 |
| (v) 30 metre taxi zone; | 84401 |
| (vi) two loading bays for Station service vehicles; and | 84402 |
| (vii) one DDA compliant drop off bay. | 150520 |
| (b) South Section: | 84403 |
| (i) no access to and from St Kilda Road, except as specified in (ii) below; | 84404 |
| (ii) allow for local access from Albert Road South to St Kilda Road, including from Domain Apartments (1 Albert Road); | 84405 |
| (iii) parking removed on both sides; and | 84406 |
| (iv) one traffic lane in each direction including as part of a shared zone between Albert Road North and 91 Albert Road. | 84408 |

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| 12 | Tram Works | 84409 |
| 12.1 | General | 84410 |
| 12.1.1 | All overhead power works will be undertaken by the Tram Franchisee. | 84411 |
| 12.2 | Parkville | 84412 |
| | The tram works at Parkville include: | 84413 |
| 12.2.1 | construction staging tram works at Royal Parade to facilitate construction of Parkville Station pedestrian underpass linking to the VCCC entry/exit, including: | 84414 |
| | (a) reconfiguration of the road layout to manage traffic flow around the Station; and | 84415 |
| | (b) removal of the existing tram stops directly north and directly south of Grattan Street along Royal Parade; and | 84416 |
| 12.2.2 | replacement of stop 10 on tram route 19 with a new DDA compliant platform stop serving trams in both directions on Royal Parade. | 84417 |
| 12.3 | CBD South | 84418 |
| | The tram works at CBD South include: | 84419 |
| 12.3.1 | new tram curves at the intersection of Flinders Street and Elizabeth Street to allow trams to move between Elizabeth Street and Flinders Street (East of Elizabeth Street) in both directions, with analysis to confirm pedestrian priority is maintained at the Elizabeth / Flinders Street intersection and that tram delays through the intersection are minimised as far as practicable, to the satisfaction of PTV. The Works are to maintain existing east-west tram movements along Flinders Street however no allowance should be made for an east and/ or west bound dedicated track at the intersection of Elizabeth and Flinders Street; | 84420 |
| 12.3.2 | Not used; and | 84421 |
| 12.3.3 | tram overhead works on Swanston Street to provide overhead wire support structures currently connected to buildings proposed to be acquired and demolished as part of the Works at the southern entrance. | 84422 |
| 12.4 | Domain | 84423 |
| | The tram works at Domain include: | 84424 |
| 12.4.1 | construction staging tram works on St Kilda Road to facilitate construction of Domain Station, including multiple temporary configurations of dual track (including a section of triple track south of Park Street suitable for two B class trams clear of the main line, including allowance for 2.0m clearance between trams); | 84425 |
| 12.4.2 | reinstatement of tram tracks along St Kilda Road to their legacy alignment following construction of Domain Station, including 770m of new dual track along St Kilda Road between Kings Way and Park Street; | 84426 |
| 12.4.3 | new CIP at-grade DDA compliant Domain Interchange tram stop south of St Kilda Rd/ Domain Road intersection to replace the existing interchange that will be removed as part of the construction staging works; and | 84427 |
| 12.4.4 | reinstatement of tram infrastructure along Domain Road once the relevant part of the Works is completed unless otherwise agreed with PTV. | 84428 |

13 Utility Infrastructure Works

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13.1.1 Project Co must design and construct all necessary Utility Infrastructure Works including:

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- (a) the protection, repair, relocation or adjustment of Utility Infrastructure and infrastructure related to Utility Infrastructure that is affected by the D&C Activities; 84431
- (b) the permanent reinstatement of Utility Infrastructure temporarily relocated by the Early Works Managing Contractor as set out in Appendix B5 to Part B of the PS&TR, noting in particular that all temporary utility diversions through the University of Melbourne and the Shrine of Remembrance grounds must be reinstated in the road reserve where possible; 84432
- (c) all environmental safeguards and measures necessary to mitigate environmental effects which may arise during the design and construction of the Utility Infrastructure Works; 84433
- (d) the preservation of Utility Infrastructure and infrastructure related to Utility Infrastructure throughout the construction of the Works and the Temporary Works; and 84434
- (e) the provision of all Utility Infrastructure connections required to undertake the Works. 84435

Appendix A1: Reference Documents

| | | |
|---|---|-------|
| 1 | State and Commonwealth Legislation and Regulations | 85116 |
| | ▪ <i>Rail Safety National Law Application Act 2013 (Vic)</i> | 85117 |
| | ▪ Office of National Rail Safety Regulator (ONRSR) - Guideline Meaning of Duty to Ensure Safety So Far As Is Reasonably Practicable, National Transport Commission Australia & Rail Safety Regulators' Panel, June 2008 | 85118 |
| | ▪ Office of National Rail Safety Regulator (ONRSR) - Major Projects Guideline | 85119 |
| | ▪ <i>Occupational Health and Safety Act 2004 (Vic)</i> | 85120 |
| | ▪ <i>Occupational Health and Safety Regulations 2007 (Vic)</i> | 85121 |
| | ▪ <i>Building Act 1993 (Vic)</i> | 85122 |
| | ▪ <i>The Building Regulations 2006 (Vic)</i> including subordinate legislation, codes of practice and standards | 85123 |
| | ▪ <i>National Construction Code (NCC)</i> | 85124 |
| | ▪ <i>Disability Discrimination Act 1992 (Cth)</i> | 85125 |
| | ▪ <i>Disability Standards for Accessible Public Transport (DSAPT) 2002 (Cth)</i> | 85126 |
| | ▪ <i>Electricity Act 1996</i> | 85127 |
| | ▪ <i>Electricity Safety Act 1998 (Vic)</i> | 85128 |
| | ▪ <i>Electricity Safety Regulations 2009 (Vic)</i> | 85129 |
| | ▪ <i>Code of Practice of Electrical Safety for Work on or near High Voltage electrical Apparatus (The Blue Book) (Vic) 2005</i> | 85130 |
| | ▪ Code of Practice of Electrical Safety Victorian Traction Industry (The Orange Book) (Vic) 2013 | 85131 |
| | ▪ <i>Railways of Australia - "Code of Standards and Guidelines for Electrification of Main Lines"</i> | 85132 |
| | ▪ <i>Electricity Supply (Safety and Networks Management) Regulation</i> | 85133 |
| | ▪ <i>Electricity Supply (Corrosion Protection) Regulation 2008</i> | 85134 |
| | ▪ <i>Environment Protection Act 1970 (Vic)</i> | 85135 |
| | ▪ <i>Environmental Protection & Biodiversity Conservation Act 1999 (Cth)</i> | 85136 |
| | ▪ Environment Protection Agency Guidelines | 85137 |
| | ▪ <i>Flora & Fauna Guarantee Act 1988 (Vic)</i> | 85138 |
| | ▪ <i>Gas Industry Act 2001 (Vic)</i> | 85139 |
| | ▪ <i>Health Act 1958 (Vic)</i> | 85140 |
| | ▪ <i>Heritage Act 1995 (Vic)</i> | 85141 |
| | ▪ Victorian Government Passenger Rail Infrastructure Noise Policy (April 2013). | 85142 |
| | ▪ <i>Radio Communications Act 1992 (Cth)</i> | 85143 |
| | ▪ <i>Road Management Act 2004 (Vic)</i> | 85144 |
| | ▪ State Environment Protection Policy (Control of Noise from Industry, Commerce and Trade) No. N-1 | 85145 |
| | ▪ <i>Telecommunications Act 1997 (Cth)</i> | 85146 |
| | ▪ National Emergency Risk Assessment Guidelines | 85147 |
| | ▪ COAG National Code of Practice for CCTV Systems for Mass Passenger Transport Sector for Counter Terrorism | 85148 |
| | ▪ <i>Terrorism (Community Protection) Act 2003 (Vic)</i> | 85149 |
| | ▪ Crime Prevention Through Environmental Design (CPTED) | 85150 |
| | ▪ <i>Transport (Compliance and Miscellaneous) Act 1983 (Vic)</i> | 85151 |
| | ▪ <i>Transport Integration Act 2010 (Vic)</i> | 85152 |
| | ▪ <i>Transport Legislation (Further Amendment) Act 2006 (Vic)</i> | 85153 |

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| ▪ | <i>Transport Legislation (Safety Investigations) Act 2006 (Vic)</i> | 85154 |
| ▪ | <i>Victorian Government 178/2009 Public Health and Wellbeing Regulations 2009</i> | 85155 |
| ▪ | <i>Victorian Government 46/2008 Public Health and Wellbeing Act 2008</i> | 85156 |
| ▪ | <i>Victorian Service & Installation Rules (SIR) 2014</i> | 85157 |
| ▪ | <i>Water Act 1989 (Vic)</i> | 85158 |
| ▪ | Victorian Protective Data Security Framework (VPDSF) | 85159 |
| ▪ | Victorian Protective Data Security Framework (VPDSF) - Information Security Guide | 85160 |
| ▪ | Victorian Compliance Code for Workplace amenities and work environment. | 85161 |
| ▪ | National Occupational Health and Safety Commission (NOHSC) | 85162 |
| 2 | PTV Policies and Standards | 85163 |
| ▪ | PTV Strategic Asset Management Policy | 85164 |
| ▪ | PTV Systems Engineering Policy | 85165 |
| ▪ | PTV Infrastructure Drafting Standard | 150521 |
| 3 | Rail Franchisee Standards, Guidelines and Publications | 85166 |
| | Rail Franchisee Publications | 137062 |
| ▪ | L0-CEO-POL-005 vP5 Environmental and Sustainability Policy | 85167 |
| ▪ | L0-CEO-POL-025 v4 Metro Asset Management Policy | 85168 |
| ▪ | L0-OPS-PRO-019 v2 Metropolitan Rail Network Security Access Key Card Procedure | 85169 |
| ▪ | L0-SQE-PLA-006 v3 Environmental Monitoring and Measurement Plan | 85170 |
| ▪ | L0-SQE-PRO-014 v4 Safety and Environmental Requirements for Contractors Working On MTM Premises | 85171 |
| ▪ | L0-SQE-PRO-031 v4 Enterprise Risk Management Procedure | 85172 |
| ▪ | L0-SQE-PRO-035 v2 Waste Management | 85173 |
| ▪ | L0-SQE-PRO-046 v2 Human Factors Integration Procedure | 150522 |
| ▪ | L1-AMS-GDL-009 v1 Generic Rams Requirements and Guidelines | 85174 |
| ▪ | L1-AMS-MAN-005 v1 RAMS Manual | 85175 |
| ▪ | L1-AMS-PLA-007 v2 Asset Information Strategy | 85176 |
| ▪ | L1-AMS-PRO-003 v1 RAMS Procedure | 85177 |
| ▪ | L1-ASY-MAN-001 v4 Asset Management Manual | 85178 |
| ▪ | L1-ASY-PRO-002 v2 Safety Critical Item (SCI) Procedure | 85180 |
| ▪ | L1-ASY-PRO-003 v2 Service Critical Assets (SCA) Procedure | 85181 |
| ▪ | L1-ASY-PRO-005 v2 Asset Obsolescence Management Procedure | 85182 |
| ▪ | L1-CHE-GDL-005 v5 Engineering Standards Listing | 85183 |
| ▪ | L1-CHE-GDL-017 v1 Removal of Redundant Signalling Wiring and Equipment | 85184 |
| ▪ | L1-CHE-POL-023 v1 Operational Control System (OCS) Strategy Guiding Principles | 85217 |
| ▪ | L1-CHE-STD-033 v1 Rail Lubrication | 150523 |
| ▪ | L1-NAM-PRO-003 v1 Infrastructure As-Built Drawing Management | 85246 |
| ▪ | L1-PRJ-PRO-002 v2 Gate Procedure for Projects | 85248 |
| ▪ | L1-PRJ-PRO-003 v5 Occupation Management Procedure (Planning and Schedule Change Control) | 85249 |
| ▪ | L1-SQE-PRO-001 v5 Management of Change Procedure | 85255 |
| ▪ | L1-SQE-PRO-003 v5 Legislative and Standards Codes Compliance | 85256 |
| ▪ | L1-SQE-PRO-048 v1 System Safety Assurance Procedure | 85257 |
| ▪ | L2-ELN-PRO-002 v1 Commission Decommission Place Into Or Out Of Servicer Alter Or Handover Assets | 85258 |
| ▪ | L2-ELN-PRO-009 v1 Testing And Commissioning Of Electrical Equipment And Systems Substations | 85259 |

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| ▪ | L2-ELN-REP-002 v1 | RAMS Requirements-MTM SubStation Standardisation | 85260 |
| ▪ | L2-INF-PLA-004 v6 | Vegetation Management Plan 2016-17 | 85272 |
| ▪ | L2-PRJ-GDL-008 v4 | MTM Projects - Risk Management Process Guideline | 85273 |
| ▪ | L2-SQE-PLA-004 v4 | Fire Prevention Plan 2015-16 | 85274 |
| ▪ | L4-ASY-FOR-001 v4 | Engineering Change Control Form (Template) | 85275 |
| ▪ | L4-CHE-FOR-015 v1 | Electrical Networks Form - Overhead Line Electrification Functional Requirements | 85276 |
| ▪ | L4-CHE-GDL-001 v1 | Engineering (Type Approval – Engineering Change – Waiver) Process Map | 85277 |
| ▪ | L4-NPD-FOR-007 v5 | Work readiness Committee Checklist | 85278 |
| ▪ | L4-SQE-FOR-064 v4 | Risk Assessment Template | 85279 |
| ▪ | L4-TRK-INF-005 v1 | Welded Track Management Manual Index | 85280 |
| ▪ | PPAMA0113547262 | Franchise Agreement Public Version Volume 2 of 2 | 85285 |
| ▪ | | All other relevant Rail Franchisee standards, publications and guidelines. | 150524 |

Engineering Standards

All standards as listed in the Metro Tunnel Project Train Franchisee Engineering Standards Register DOC/17/41477. This register is maintained by MMRA and new versions will be provided to Project Co as Train Franchisee standards are assessed and deemed applicable to the project.

4 VRIOG Standards 85291

| | | | |
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| ▪ | VRIOGS 000.1 | VRIOGS Policy Documentation | 85292 |
| ▪ | VRIOGS 000.2 | VRIOGS Development Processes and Procedures | 85293 |
| ▪ | VRIOGS 001 | Structural Gauge Envelopes - Minimum Clearances for Infrastructure Adjacent To The Railway | 85294 |
| ▪ | VRIOGS 002.1 | Railway Station Design Standard and Guidelines | 85295 |
| ▪ | VRIOGS 002.6 | Lifts – General Requirements | 85296 |
| ▪ | VRIOGS 005 | Tram Track Standards (Set) | 85297 |
| ▪ | VRIOGS 007.1.1 | Train PASS Assets Data Requirements | 85298 |
| ▪ | VRIOGS 007.1.2 | Tram PASS Assets Data Requirements | 85299 |
| ▪ | VRIOGS 008.2– | Car Park General Requirements | 85301 |
| ▪ | VRIOGS 008.2.1 | Car Park Signs General Requirements | 85302 |
| ▪ | VRIOGS 010.3 | Railway Traction Substation Design Standard | 85303 |
| ▪ | VRIOGS 010.4 | Railway Traction Substation Construction Standard | 85304 |
| ▪ | VRIOGS 010.4 | Railway Traction Substation Construction Standard | 85305 |
| ▪ | VRIOGS 010.7 – | Track Bonding, Track Circuit Connections and Traction Interfaces | 85306 |
| ▪ | VRIOGS 012.0 | Victorian Signalling Principles | 85307 |
| ▪ | VRIOGS 012.0.1 | Victorian Signalling Principles - Overlaps | 85308 |
| ▪ | VRIOGS 012.0.2 | Victorian Signalling Principles - Signal Enforcement | 85309 |
| ▪ | VRIOGS 012.0.3 | Signalling Principles - Axle Counter Application | 85310 |
| ▪ | VRIOGS 012.0.4 | Standard Rail Signalling Naming & Symbol Conventions | 85311 |
| ▪ | VRIOGS 012.1 | Standard for Signalling Design and Documentation | 85312 |
| ▪ | VRIOGS 012.2 | Specification for Signalling Supply, Construction and Installation | 85313 |
| ▪ | VRIOGS 012.2.1 | Standard for Construction of Cable Route and Signalling Civil Works | 85314 |
| ▪ | VRIOGS 012.3 | Computer Based Interlocking | 85315 |
| ▪ | VRIOGS 012.4 | Signal Box Workstation Specification | 85316 |
| ▪ | VRIOGS 012.5 | Testing and Commissioning of Safety Related Railway Signalling Services | 85317 |
| ▪ | VRIOGS 012.6 - | Signal Cable Specifications | 85318 |
| ▪ | VRIOGS 012.7 – | Signal Equipment Technical Specifications | 85319 |
| ▪ | VRIOGS 012.8 – | Signal Equipment Housings (draft) | 85320 |

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| ▪ | VRIOGS 013.1 – Communications Room Brief | 85321 |
| ▪ | VRIOGS 013.2 - CCTV Development Standards for Fixed Installations | 85322 |
| ▪ | VRIOGS 013.3 – Generic ICT Communications Pathways Specification | 85323 |
| ▪ | VRIOGS 013.4 - ICT Nomenclature Specification | 85324 |
| ▪ | Victorian Rail Industry Standard Drawing STD_R0008 | 85325 |
| ▪ | Victorian Rail Industry Standard Drawing STD_R0009 | 85326 |
| ▪ | All other relevant VRIOG standards. | 85327 |
| 5 | VicRoads & Local Government Standards and Guidelines | 85328 |
| ▪ | VicRoads Integrated Water Management Guidelines | 85329 |
| ▪ | VicRoads - RC500.22 Code of Practice for Selection and Design of Pavements and Surfacing | 85330 |
| ▪ | VicRoads Design Guidelines | 85331 |
| ▪ | VicRoads Road Design and Bridgeworks Guidelines | 85332 |
| ▪ | VicRoads Standard Specification for Roadworks and Bridgeworks | 85333 |
| ▪ | VicRoads Supplements to Austroads Guides | 85334 |
| ▪ | VicRoads - TCS 034 Variable Message Signs for Arterial Roads Standard | 85335 |
| ▪ | VicRoads - TCS 042 Internally Illuminated Message Signs Standard | 85336 |
| ▪ | VicRoads Traffic Engineering Manual | 85337 |
| ▪ | Water Sensitive Road Design guidelines | 85338 |
| ▪ | all other relevant VicRoads and Local Government standards, guidelines, publications and technical notes. | 85339 |
| 6 | Tunnel Reference Documents | 85340 |
| ▪ | British Tunnelling Society and the Institution of Civil Engineers, Specification for Tunnelling | 85341 |
| ▪ | British Tunnelling Society and the Institution of Civil Engineers, Tunnel Lining Design Guide | 85342 |
| ▪ | British Tunnelling Society and the Institution of Civil Engineers, Closed-Face Tunnelling Machines and Ground Stability: A guideline for best practice | 85343 |
| ▪ | BS 6164 Code of practice for health and safety in tunnelling in the construction industry | 85344 |
| 7 | Other Victorian Government Authority Standards | 85345 |
| ▪ | DOT SISD CCTV-ICT Drawing Guide. | 85346 |
| ▪ | DOT SISD ICT Systems Specification and Statement of Work | 85347 |
| ▪ | DOT SISD ICT Systems Specification: Cabling Infrastructure | 85348 |
| ▪ | DOT SISD ICT Systems Specification: CCTV (New Station) | 85349 |
| ▪ | DOT SISD ICT Systems Specification: CCTV (Upgraded Station) | 85350 |
| ▪ | DOT SISD ICT Systems Specification: Communications Equipment Room | 85351 |
| ▪ | DOT SISD ICT Systems Specification: Communications Pathways | 85352 |
| ▪ | DOT SISD ICT Systems Specification: Customer Help Point | 85353 |
| ▪ | DOT SISD ICT Systems Specification: Field LAN Switch | 85354 |
| ▪ | DOT SISD ICT Systems Specification: Lifts | 85355 |
| ▪ | DOT SISD ICT Systems Specification: Passenger Information Displays System | 85356 |
| ▪ | DOT SISD ICT Systems Specification: Platform Clocks | 85357 |
| ▪ | DOT SISD ICT Systems Specification: Public Address and AFIL System | 85358 |
| ▪ | DOT SISD ICT Systems Specification: Security Intruder Detection and Access Control System | 85359 |
| ▪ | DOT SISD ICT Systems Specification: Train Control (SEPA) Phone | 85360 |
| ▪ | EPA Environmental Guidelines for Major Construction Sites | 85361 |
| ▪ | EPA Noise Control Guidelines | 85362 |
| ▪ | EPA Noise from Industry in Regional Victoria Guidelines | 85363 |

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| ▪ VicTrack Commercial External Plant Nomenclature Standard, TS-SP-028 | 85364 |
| ▪ VicTrack Accessing Telecommunications Assets, TS-SP-047 | 85365 |
| ▪ VicTrack Check List for Access to Communications Rooms, TS-SF-047 | 85366 |
| ▪ VicTrack Civil Specification, CM-SP-091 | 85367 |
| ▪ VicTrack Commercial Internal Plant Nomenclature Standard, TS-SP-026 | 85368 |
| ▪ VicTrack Commercial Location Nomenclature Standard, TS-SP-024 | 85369 |
| ▪ VicTrack Commercial Nomenclature Standard, TS-SP-023 | 85370 |
| ▪ VicTrack Communications Room Earthing Standards (draft) | 85371 |
| ▪ VicTrack Draft Rack Standard | 85372 |
| ▪ VicTrack Fibre Termination Specification, TS-SP-014 | 85373 |
| ▪ VicTrack Hut Specification, CM-SP-088 | 85374 |
| ▪ VicTrack Joint Jelly Filled Cables, TS-WI-039 | 85375 |
| ▪ VicTrack Land and Infrastructure Specification, CM-SP-090 | 85376 |
| ▪ VicTrack Permit to Work Form, TS-SP-049 | 85377 |
| ▪ VicTrack Radio Tower Lease, TS-WI-034 | 85378 |
| ▪ VicTrack TS-SP-013 V3G Installation and Maintenance Specification, Telecommunications External Plant | 85379 |
| ▪ VicTrack TS-SP-015 V3G Telecommunications Network Protection Plan | 85380 |
| ▪ VicTrack VTGL001 Installation of ground water monitoring wells and associated soil sampling in VicTrack land and | 85381 |
| ▪ Security of Critical Infrastructure – Control Systems for Trains. Victorian Auditor-General’s Report 2015 – 17:6. | 118553 |
| ▪ Security of Critical Infrastructure – Control Systems for Water and Transport. Victorian Auditor-General’s Report October 2010 – 11:15. | 118554 |
| ▪ Critical Infrastructure Resilience Strategy, Emergency Management Victoria, 2015 | 118555 |
| ▪ Austel Customer Premises Cabling Manual Customer Premises Cabling Manual, including specifically the following standards: | 85382 |
| - TS 001 Safety requirements. | 85383 |
| - TS 002 Analogue internetworking and non-interference requirements. | 85384 |
| - TS 003 Customer switching system connections requirements. | 85385 |
| - TS 006 General requirements for customer equipment connected to the non-switched public network. | 85386 |
| - TS 008 Permitted cabling products. | 85387 |
| - TS 009 Wiring rules for customer premises cabling. | 85388 |
| - TS 010 General premises cables registration requirements. | 85389 |
| - TS 011 Abbreviations, definitions and terms used by TS 001 to TS010 | 85390 |
| ▪ SAA HB 29 Communications cabling handbook | 85391 |
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| ▪ ISO 5136 Acoustics -- Determination of sound power radiated into a duct by fans and other air-moving devices -- In- duct method | 85694 |
| ▪ ISO 5801 Industrial fans - Performance testing using standardized airways | 85695 |
| ▪ ISO 5802 Industrial fans - Performance testing in situ | 85696 |
| ▪ ISO 6385 Ergonomic principles in the design of work systems | 85697 |
| ▪ ISO 7235 Acoustics. Laboratory measurement procedures for ducted silencers and air-terminal units. Insertion loss, flow noise and total pressure loss | 85698 |
| ▪ ISO 7810 Identification Cards - Physical characteristics | 85699 |
| ▪ ISO 7812 Identification cards - Identification of issuers | 85700 |
| ▪ ISO 7816 Identification cards - Integrated circuit cards | 85701 |
| ▪ ISO 9001 Quality management systems | 85702 |
| ▪ ISO 9241 Ergonomic requirements for office work with Visual Display Terminals (VDTs) | 85703 |
| ▪ ISO 9241-210 Ergonomics of human-system interaction - Part 210: Human-centred design for interactive systems | 85704 |
| ▪ ISO 10007 Quality Management Systems - Guidelines for Configuration Management | 85705 |
| ▪ ISO 10373 Identification cards | 85706 |
| ▪ ISO 10816-1 Mechanical vibration -- Evaluation of machine vibration by measurements on non-rotating parts - Part 1: General guidelines | 85707 |
| ▪ ISO 11064 Ergonomic design of control centres | 85708 |
| ▪ ISO 13350 Industrial fans -- Performance testing of jet fans | 85709 |
| ▪ ISO 14001 Environmental Management Systems - Requirements with guidance for use | 85710 |
| ▪ ISO 14443 Identification Cards - Contactless integrated circuit Cards - Proximity Cards | 85711 |
| ▪ ISO 15392 - Sustainability in Building Construction | 85712 |
| ▪ ISO 15408 Information technology - Security techniques | 85713 |
| ▪ ISO 15457 Identification cards | 85714 |
| ▪ ISO 20000-1 Information technology - Service management - Service management system requirements | 85715 |
| ▪ ISO 22320 – Societal Security – Emergency Management – Requirements for Incident Response. | 85716 |
| ▪ ISO 27000 ISMS Family of Standards for information security | 85717 |
| ▪ ISO 55000 Asset management. Overview, principles and terminology | 85718 |
| ▪ ISO 55001 Asset management. Management systems. Requirements | 85719 |
| ▪ ISO 55002 Asset management. Management systems. Guidelines for the application of ISO 55001 | 85720 |
| ▪ ISQC1 International Standard on Accounting Quality Control | 85721 |
| ▪ S1371 London Underground Standard - Station Planning Standard | 85722 |
| ▪ 2-01105-001 London Underground Standard - Platform Edge Doors | 85723 |
| ▪ MIL-HDBK 472 Maintainability Prediction | 85724 |

- MIL-STD 498 Software Development and Documentation (software development) 85725
- MIL-STD 882C System Safety 85726
- NFF 16101 Railway Rolling Stock - Fire Behaviour - Choice of materials 85727
- NFF 16102 Fire Behaviour - Material choosing, application for electric system 85728
- NFPA 101 Life Safety Code 85729
- NFPA 130 Standard for Fixed Guideway Transit and Passenger Rail Systems. 85730
- Technical Specification for Interoperability (Draft), Safety in Railway Tunnels; Annex to Document No. C(2007)6450; Ref.2008/163/EC; 85731
- December 2007; Directives 2001/16/EC and 96/48/EC. 85732
- Technical Specification for Interoperability, Accessibility for Persons with Reduced Mobility; Annex to Document No. C(2007)6633; Ref.2008/164/EC; December 2007; Directives 2001/16/EC and 96/48/EC. 85733
- TRANS/AC.9/9; Recommendations of the Multidisciplinary Group of Experts on Safety in Tunnels (Rail); Economic and Social Council; United Nations; 1 December 2003. 85734
- NFPA 220 Standards on Types of Building Construction 85735
- NFPA 750 Standard on Water Mist Fire Protection Systems 137124
- PAS 55 Asset management. Specification for the optimized management of physical assets 85737
- PAS 555 Cyber Security Risk - Governance And Management – Specification 85738
- PAS 1192-2: Specification for information management for the capital/ delivery phase of construction projects using building information modelling. 137125
- PAS 1192-3: Specification for information management for the operational phase of assets using building information modelling. 137126
- PAS 1192-5: Specification for security minded building information modelling, digital built environments and smart asset modelling. 137127
- SEDH VOLUME 1 Subway Environmental Design Handbook Volume 1, Principles and Applications (USA Department of Transportation) 85739
- SEDH VOLUME 2 Subway Environmental Design Handbook Volume 2, Subway Environment Simulation Program SES Part 1 User's Manual 85740
- TCRP Report 71, Volume 6: Direct Fixation Track Design Specifications, Research, and Related Material 85741
- TCRP Report 100 Transit Capacity and Quality Service Manual 85742
- UL 555S Underwriters laboratory smoke damper testing and rating standard 85743
- UIC 564-2 Regulations relating to fire-protection and fire-fighting measures in passenger carrying railway vehicles or assimilated vehicles on international services 85744
- UL 1685 Vertical-Tray Fire-Propagation and Smoke-Release Test for Electrical and Optical-Fibre Cables 85745
- WCAG20 Web Content Accessibility Guidelines (WCAG) 2.0 85746
- Engineering Safety Management (UK Yellow Book) volumes 1 and 2: Fundamentals and Guidance, issue 4 85747
- All other relevant international standards and guidelines. 85748

10 Utility Provider Standards 85749

- APA Group Records of Underground Mains and Protection of Assets, document reference PROENG-07--5 85750
- Communications Alliance Ltd Industry Code C524 External Telecommunication Cable Networks 85751
- Melbourne Water's relevant standard (namely Water Transfer Pipelines Design Requirements) 85752
- Melbourne Waters Utility Installation Near Melbourne Water Assets Guide. 85753
- Melbourne Water Build Over Guide 85754
- Melbourne Water Construction - Pipelines and Structures standards and specifications 85755
- Melbourne Water Corporation Flood Mapping Projects Guidelines and Technical 85756

Specifications

- Victorian Service and Installation Rules 85757
- All other relevant Utility Provider standards and guidelines. 85758

Appendix A2: System Breakdown Structure

1 The Metro Tunnel system

85760

The Metro Tunnel system delivered by the Metro Tunnel and the scope allocation between Work Packages is captured in a SBS, together with an associated Scope Allocation Matrix (**SAM**). The SBS represents a physical hierarchical breakdown of the Metro Tunnel to a sufficient level of detail to support the scope and requirements allocation between Work Packages. The SBS and SAM contain the same information; the SAM takes precedence in the event there is an inconsistency. They assign the scope for each system element to the responsible party or parties for each Lifecycle stage of the Metro Tunnel. The party responsible for Operating and Maintaining each system element is also captured. Due to the allocation of scope in some instances varying by geographic area, some system elements may be allocated to multiple parties for specific Lifecycle stages.

85762

The physical breakdown of the Metro Tunnel captured in the SBS is broken into significant system segments as follows:

85763

(a) Underground area

85764

This system segment is the new greenfield component of the Metro Tunnel, creating new Tunnel and Stations, and integrating a range of systems and civil works with the existing Sunbury line and the Pakenham / Cranbourne line, to form the new Sunshine – Dandenong Line. Project Co has scope in this system segment.

(b) Surface areas (Sunshine – Dandenong Line)

85765

This system segment comprises the brownfield environment along the rail corridor and integrates a range of upgrades and new works, supporting delivery of the overall Metro Tunnel. Project Co does not have scope in this system segment.

(c) Rail control systems

85766

This system segment integrates applicable rail network control systems. It includes the extension and upgrade of existing systems and operational support capabilities for the Sunshine – Dandenong Line. It also includes the establishment of new control systems including a High Capacity Signalling (**HCS**) system. Project Co has scope in this system segment.

(d) HCS initial implementation

85767

This system segment includes HCS works on the South Morang line, which contributes to the initial implementation of Communications Based Train Control (**CBTC**) on the Metropolitan Rail Network. Project Co does not have scope in this system segment.

(e) Other lines

85768

The general uplift of train services available as a result of Metro Tunnel includes scope on other rail corridors to realise service benefits. Project Co does not have scope in this system segment.

(f) Other modes

85769

Other transport modes such as bus, train, road and bicycle.

Each system segment is broken down into a lower set of systems/subsystems to facilitate scope definition. Project Co is responsible and must further develop the relevant parts of the SBS to a sufficient level of detail in order to identify individual configuration items. The individual items identified in the SBS are referred to as system elements. A system element may be a configuration item, a component, an assembly, subsystem or entire system.

85770

2 Lifecycle Phases

85771

The system Lifecycle phases are shown in Figure 1 below, and have the meaning given in Table 2 only for the purposes of this Appendix A2 (which includes the SBS and the SAM) and Appendix A3 (which includes the IDS).

85772

It is important to note that due to the iterative and incremental nature of testing and integration these stages may occur at different times and in different sequence dependent on the situation. Likewise, the system following the Acceptance stage enters the Operate and Maintain phases concurrently.

Figure 1: System Lifecycle stages

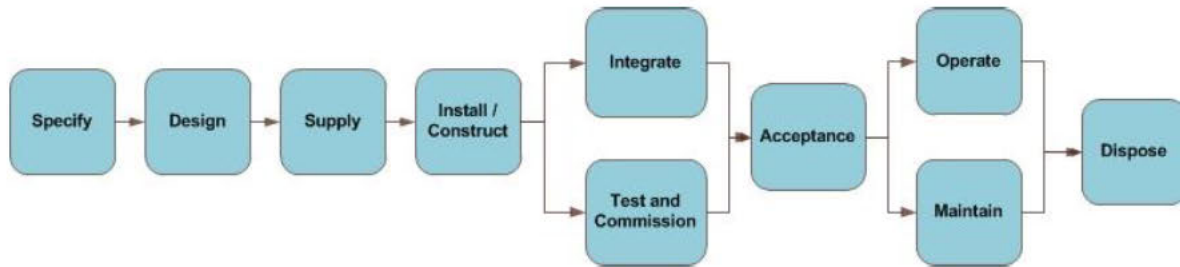


Table 2: Lifecycle phases

| Phase | Description |
|----------------------------|---|
| Specify | The Specify phase involves the development of detailed interface, safety, function, performance and operational requirements for a particular system element, as required to ensure the Design phase is fully informed and has all relevant inputs. In some cases, the Specify phase requires the provision of interface and operational information from one Work Package to another. In these cases, the level of information required needs to be resolved jointly between the parties. |
| Design | <p>The Design phase:</p> <ul style="list-style-type: none"> (a) is the process of taking the input specification through an engineering process of analysis, investigation of alternatives against selection criteria and evaluation of the requirements to develop an optimal solution; (b) may also include the design of interfaces with other Work Packages or external stakeholders, and this has to be coordinated between both interface parties; (c) output is captured typically as part of a design package delivering drawings, reports, installation, construction or product specifications to enable the design to be implemented/constructed; (d) must take into account all applicable Lifecycle stages of a system or subsystem from procurement, deployment or construction, testing, operation, maintenance, obsolescence, replacement and disposal; and (e) includes a number of stages each requiring delivery of Verified design artefacts that are subject to external Stakeholder and client review. The final stage of the Design phase is the acceptance of the design as ready to construct and delivery of Issued For Construction (IFC) design packages and applicable construction or installation specifications. |
| Supply | The Supply phase involves the process of procuring products and services based on specifications developed through the Design phase. It also includes delivery of procured items to required locations in a timely manner. |
| Install | The Install phase is the process of implementing an approved design or designs using design package information including specifications, drawings, processes and procedures. It includes installation, construction activities, equipment checks, and inspections as required. It also includes completion and Verification of installation works via associated Inspection and Test Plans. |
| Test and Commission | The Test and Commission phase involves setting the subsystem equipment to work, and conducting Verification and Validation of the requirements with either factory or site testing. Commissioning is the process of handing over the subsystem equipment over to the Rail Transport Operator (RTO) for use. The RTO may be able to use the asset for use in revenue services if all the Integration activities associated with the subsystem have been completed. |

| Phase | Description |
|---|---|
| Integrate/ Integration | The Integrate phase involves the process of interconnecting multiple internal and external subsystems through undertaking Verification and Validation of the system interfaces to establish higher level functionality. |
| Acceptance | The Acceptance phase includes the fulfilment of all relevant completion activities and formal acceptance of a system or parts thereof by the Asset Owner. This follows the completion of all required works and includes testing witnessed by the applicable Stakeholders. Acceptance generally follows the Test and Commission and Integrate phases and may be achieved in stages, incrementally and/or iteratively depending on how system functionality is delivered and integrated. |
| Maintain | The Maintain phase concerns the preventative and corrective maintenance of all installed assets to ensure the reliability and availability targets are achieved. |
| Operate | The Operate phase concerns the day to day operation of the assets. |
| Decommissioning and Disposal | As part of the Lifecycle, certain existing equipment is made redundant by the new systems and is not required to be retained. This equipment is decommissioned and removed from service. As part of the Decommission and Disposal phase, the decommissioned equipment is suitably disposed. This may involve the reuse of the equipment elsewhere (where this option is available) through to the environmentally friendly disposal of the equipment. |

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The legend for the party responsible for the system segments and system elements for each Lifecycle stage is illustrated in the SBS and in Figure 2 below:

85776

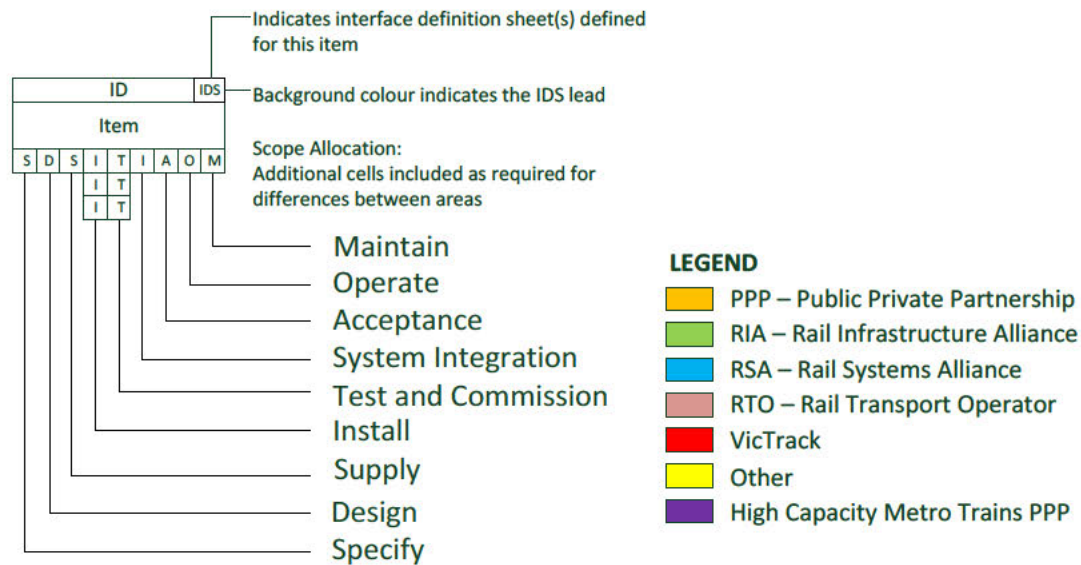


Figure 2: SBS LEGEND

3 [Not disclosed]

85777

4 [Not disclosed]

85779

Appendix A3: [Not disclosed]

Appendix A4: [Not disclosed]

Appendix A5: [Not disclosed]

METRO TUNNEL

TUNNEL AND STATIONS PUBLIC PRIVATE PARTNERSHIP

Project Scope and Technical Requirements (PS&TR)
Part B: Technical Requirements



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| | | |
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| 1 | Reference Datum | 85808 |
| 1.1 | Coordinates and Levels | 85809 |
| 1.1.1 | Co-ordinates | 85810 |
| | All co-ordinates must be related to Metro Tunnel Survey Control Network, MGA Zone 55, Map Grid of Australia 1994 (Universal Transverse Mercator (UTM) Zone 55 projection based on Geocentric Datum of Australia 1994 (GDA94)). | 85811 |
| 1.1.2 | Levels | 85812 |
| (a) | All levels for the Tunnels, Stations and Portals must be to the Melbourne Metro Height Datum (MMHD). | 85813 |
| (b) | The MMHD datum (i.e. origin) must be distinguished from the associated levels (i.e. height values) as follows: | 85814 |
| i. | Datum | 85815 |
| | MMHD must be 100m below Australian Height Datum (AHD) so that all level values are positive (i.e. MMHD = AHD - 100m). | |
| ii. | Reduced level | 85816 |
| | Where the MMHD is adopted all reduced levels must refer to the Melbourne Metro Reduced Level (MMRL) (i.e. MM RL = AHD RL + 100m). | |
| (c) | The datum (MMHD and AHD) and reduced level (MMRL and RL) must be clearly shown on the Design Documentation together with the correlations as described above. | 85817 |
| (d) | All design rail levels must be that of the low rail. | 85818 |
| (e) | All levels of the existing rail network that must be to AHD. | 85819 |
| | | 85820 |
| 1.2 | Kilometrage (Chainage) | |
| 1.2.1 | General | 85821 |
| | Kilometrage must be quoted in metres to three decimal places as measured along the control string located centrally between the gauge points at top of each rail in plan with no correction for differences in elevation. | 85822 |
| 1.2.2 | Datum | 85823 |
| (a) | A datum point for the new line section between South Kensington and South Yarra must be established at Maribyrnong River Bridge on the Main Suburban line based on the existing kilometrage value at the centre of the bridge as defined in PTV PASS Assets (Kilometrage: 4.240km, Easting: 316560.190, Northing: 5814536.713). | 85824 |
| (b) | The new line section between South Kensington and South Yarra must adopt a line prefix of "MDE" for the eastern track and "MDW" for the western track. | 85825 |
| (c) | In the absence of a track alignment between the datum point and the start of the Project Co track system, Project Co must assume a track alignment that runs parallel to the existing Main Suburban Line. | 85826 |
| (d) | New signalling, track and electrical assets must adopt the existing naming convention of line prefix plus asset kilometrage value in 100s of metres. | 85827 |
| (e) | Track, signalling, overhead and any other relevant assets must adopt the same kilometrage datum. | 85828 |
| (f) | The new line section between South Kensington and South Yarra must adopt track code for eastern track 745555 and for the western track 746666. | 85829 |

| | | |
|------------|--|-------|
| 2 | General Technical Requirements | 85830 |
| 2.1 | Passenger Demand | 85831 |
| 2.1.1 | Project Co must utilise the passenger demand forecasts and parameters provided in Appendix B1 for the purpose of Station planning and determining pedestrian Levels of Service. | 85832 |
| 2.1.2 | Project Co must demonstrate that Station designs satisfy the Level of Service requirements listed in section 7.4. | 85833 |
| 2.2 | Service and Operations | 85834 |
| 2.2.1 | General | 85835 |
| | (a) The Tunnels, Stations and Portals must support service levels of 24 trains per hour. | 85836 |
| | (b) The Tunnels, Stations and Portals must be capable of continuous 24-hour operation: | 85837 |
| | i. between the first timetabled service on Friday and the last timetabled service on Sunday; | 85838 |
| | ii. on five (5) single days of the year; | 85839 |
| | iii. over four (4) consecutive days; and | 85840 |
| | iv. at Peak Service levels. | 85841 |
| | (c) The design of the Tunnels, Stations and Portals must support the operation of, and be compatible with: | 85842 |
| | i. High Capacity Metro Trains (HCMTs); | 85843 |
| | ii. a progressive change to the future operation from HCMTs to Extended HCMTs without interruption to services; | 85844 |
| | iii. mixed HCMT and Extended HCMT operations; and | 85845 |
| | iv. Extended HCMTs. | 85846 |
| | (d) [Not disclosed] | 85847 |
| | (e) The traction power system must be designed based on the operation of Extended HCMTs. | 85848 |
| 2.2.2 | Transit times | 85849 |
| | The design of the Tunnels, Stations and Portals must support the achievement of the following start to stop transit times when measured from departure station to arrival station for HCMTs: | 85850 |
| | (a) West direction: | 85851 |
| | i. Hawksburn to Domain must not exceed 210 seconds; | 85852 |
| | ii. Domain to CBD South must not exceed 140 seconds; | 85853 |
| | iii. CBD South to CBD North must not exceed 80 seconds; | 85854 |
| | iv. CBD North to Parkville must not exceed 110 seconds; | 85855 |
| | v. Parkville to Arden must not exceed 110 seconds; and | 85856 |
| | vi. Arden to Footscray must not exceed 200 seconds. | 85857 |
| | (b) East direction: | 85858 |
| | i. Footscray to Arden must not exceed 200 seconds; | 85859 |
| | ii. Arden to Parkville must not exceed 110 seconds; | 85860 |
| | iii. Parkville to CBD North must not exceed 110 seconds; | 85861 |
| | iv. CBD North to CBD South must not exceed 80 seconds; | 85862 |
| | v. CBD South to Domain must not exceed 150 seconds; and | 85863 |
| | vi. Domain to Hawksburn must not exceed 200 seconds. | 85864 |
| | (c) The above start to stop transit times are modelled based on the following HCMT | 85865 |

| | | |
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| | parameters: | |
| | i. average acceleration = 0.88m/s^2 ; and | 85866 |
| | ii. average braking = -0.88m/s^2 . | 85867 |
| 2.2.3 | Inherent Availability | 85868 |
| | The Tunnels, Stations and Portals must support Inherent Availability as follows: | 85869 |
| | (a) track system: [Not disclosed] %; | 85870 |
| | (b) traction system: [Not disclosed]%; and | 85871 |
| | (c) ventilation system: [Not disclosed]%. | 85872 |
| 2.2.4 | Operational Availability | 85873 |
| | (a) The Tunnels, Stations and Portals must be designed to achieve an aggregate Operational Availability of: | 85874 |
| | i. [Not disclosed]% or greater, where a service-affecting failure is defined as one or more Fitted revenue train trips individually accumulating a 3 to 5-minute delay beyond the timetabled runtime for duration of the asset outage causing the delays, in one or both traffic directions; | 85875 |
| | ii. [Not disclosed]% or greater, where a service-affecting failure is defined as one or more Fitted revenue train trips individually accumulating a greater than 5-minute delay beyond the timetabled runtime for duration of the asset outage causing the delays, in one or both traffic directions; | 85876 |
| | iii. [Not disclosed]% or greater, where a service-affecting failure is defined as one or more Fitted revenue trains being held continuously at stop for duration of the asset outage causing the stoppage, in one traffic direction; and | 85877 |
| | iv. [Not disclosed]% or greater, where a service-affecting failure is defined as one or more Fitted revenue trains being held continuously at stop for duration of the asset outage causing the stoppage, in both traffic directions. | 85878 |
| | (b) The Project Assets in each Station must achieve an aggregate Operational Availability of: | 85879 |
| | i. [Not disclosed]%, where a Station Operation failure is defined as any passengers using escalators within a station being delayed for greater than 1 minute, caused by an asset outage; | 85880 |
| | ii. [Not disclosed]%, where a Station Operation failure is defined as any mobility impaired passengers moving between levels using a lift within a station being delayed for greater than 3 minutes, caused by an asset outage; and | 85881 |
| | iii. [Not disclosed]%, where a Station Operation failure is defined as station closure for any period, caused by an asset outage. | 85882 |
| | (c) The Tunnels, Stations and Portals must be designed to support the Operational Control Systems for the Design Year services at Day-1. | 85883 |
| 2.2.5 | Resilience | 85884 |
| | (a) The design must incorporate resilience to allow for continued operation (either partial or complete services), and must consider operational interventions that mitigate the impact of incidents on customers and facilitate restoration of scheduled service so far as is reasonably practicable (SFAIRP). | 85885 |
| | (b) Systems automation in all operating modes must support the safe and efficient outcome with minimal human involvement and be informed by a human factors study. | 85886 |
| | | 85887 |
| 2.3 | Infrastructure and Systems | |
| 2.3.1 | New or modified infrastructure and systems forming part of the Works must: | 85888 |
| | (a) adopt solutions that are based on industry standards that are established and non-proprietary; | 85889 |
| | (b) integrate with the existing infrastructure and systems; | 85890 |
| | (c) be compatible with the existing infrastructure and systems; | 85891 |

| | | |
|------------|--|--------|
| | (d) not result in a degradation of service delivery performance of existing infrastructure, including during construction; | 85892 |
| | (e) not degrade the system performance of the existing infrastructure and systems; | 85893 |
| | (f) use common system architectures and components; | 85894 |
| | (g) be accessible for maintenance and renewals; and | 85895 |
| | (h) provide safe access for maintenance and renewals. | 85896 |
| 2.3.2 | The monitoring and control systems provided for the Tunnels, Stations and Portals must be compatible with existing systems. | 85897 |
| 2.3.3 | The design of the Tunnels, Stations and Portals must provide access to existing infrastructure and services at Melbourne Central Station (MCS) and Flinders Street Station (FSS). | 85898 |
| 2.3.4 | Existing infrastructure made redundant by the Works must be removed. | 85899 |
| 2.3.5 | [Not disclosed] | 85900 |
| 2.3.6 | The design of new systems must minimise, where reasonable to do so, the propagation of a failure of one system onto others. | 85901 |
| 2.3.7 | Any new assets (products) in the design that are: | 85902 |
| | (a) deemed safety or service critical must obtain Type Approval in accordance with MTM standard L1-CHE-PRO-004 - Type Approval Procedure and AS 7702 – Rail Equipment Type Approval; or | 85903 |
| | (b) not deemed safety or service critical must obtain Engineering Product Approval in accordance with MTM standard L1-CHE-PRO-004 - Type Approval Procedure. | 85904 |
| 2.3.8 | Project Co must actively liaise with the HCMT team to develop the design of the Works in accordance with High Capacity Metro Trains Project Interface Control Document and ensure that the Works support safe and reliable operation of HCMTs under all operating modes. | 118049 |
| 2.4 | Future Development | 85905 |
| 2.4.1 | Infrastructure and systems must be designed to support planned upgrades and improvements, including: | 85906 |
| | (a) the design of the Tunnels and Stations must make provision for the Clifton Hill Metro Tunnel, including future heavy rail interchange at Parkville Station; and | 85907 |
| | (b) the design of the Tunnels and Stations must not preclude a future underground rail tunnel from Domain to Caulfield connecting in the vicinity of St Kilda Road and Fawkner Park. | 85908 |
| 2.4.2 | The design of the Tunnel and Stations must not preclude a future South Yarra Station interchange. | 122795 |
| 2.4.3 | Future development options identified for the network must be facilitated and preserved, and the design must not preclude: | 85909 |
| | (a) a future grade separated connection to Rowville at Huntingdale; | 85910 |
| | (b) a future connection to Melbourne Airport at Albion; and | 85911 |
| | (c) a future connection to Clyde at Cranbourne. | 85912 |
| 2.5 | Access and Maintenance | 85913 |
| 2.5.1 | The design must support access, inspection, maintenance and renewal activities. | 85914 |
| 2.5.2 | The design must consider practical inspection methods within the operating constraints of the railway, and must be approved by the RTO. | 85915 |
| 2.5.3 | The design must ensure all equipment installed (as far as is reasonably practical): | 85916 |
| | (a) is accessible during operational hours; | 85917 |
| | (b) mitigates against adverse impacts in the event of replacement, including impacts on operations; and | 85918 |
| | (c) does not require access through third party land. | 85919 |
| 2.5.4 | Access to critical railway infrastructure must be provided for in the design of all | 85920 |

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| | infrastructure. | |
| 2.5.5 | [Not disclosed] | 85921 |
| 2.5.6 | [Not disclosed] | 85922 |
| 2.5.7 | The design must consider the requirements for replacement services in the event of planned works, including maintenance, planned cancellations or line closures, where appropriate. | 85923 |
| 2.5.8 | The design must ensure that the access arrangements in the temporary and permanent condition do not worsen the level of service for customers. | 85924 |
| 2.5.9 | Maintenance access to retained public transport infrastructure that existed prior to the Works must be the same, improved or as otherwise agreed with the State. | 85925 |
| 2.5.10 | [Not disclosed] | 85926 |

3 Design Life and Residual Life

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3.1 Design Life

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3.1.1 General

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- (a) Each Design Life Asset must have a minimum Design Life as set out in Table 3-1 unless a Reference Document specifies a higher Design Life, in which case the Reference Document will prevail. 85930
- (b) Notwithstanding the minimum Design Life requirements, the components listed in Table 3-2 may have a Design Life as detailed in Table 3-2.
- (c) If a Design Life Asset is not listed in Table 3-1 or 3-2 then its Design Life must be equal to the Design Life of the Asset of which it forms a part, as outlined in Table 3-1. 85931
- (d) If a Design Life Asset can be classified in more than one Design Life Asset description, then the higher Design Life must apply to that Design Life Asset. 85932
- (e) When a Design Life Asset or Design Life Asset component is replaced, the replacement Design Life Asset or Design Life Asset component must meet the Design Life requirement of the Design Life Asset or Design Life Asset component it has replaced. 85933
- (f) Where part of a Design Life Asset is not readily accessible, it must satisfy the Design Life requirements of the Asset of which it forms a part. 85934
- (g) All Returned Assets must have ongoing supplier support for mechanical, electrical and control Design Life Assets at Handback. 85935

3.2 Residual Life

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3.2.1 General

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- (a) Residual Life means, in respect of an Asset, the remaining Design Life at the end of the Term. 85938
- (b) Each Asset must have a Residual Life as follows: 85939
 - i. for Assets with a required Design Life greater than the duration of the Maintenance Phase, the greater of: 85940
 - (1) the required Design Life for that Asset less the duration of the Maintenance Phase; and 85841
 - (2) 5 years; and 85842
 - ii. for any other Assets, the greater of: 85843
 - (1) 50 percent of the Design Life requirement; and 85844
 - (2) 5 years. 85845
- (c) Tables 3-1 and 3-2 below outline indicative component Design Life. Where applicable, selected equipment Design Life will need to satisfy the RAMS requirements outlined in Volume 2, Part B, Section 2.2.3, 2.2.4 and 2.2.5. 150432

Table 3-1: Asset Minimum Design Life Requirements

| Asset Description | Design Life |
|---|-------------|
| Civil | |
| All underground structures and foundation elements in the Tunnels, Stations and Portals, including Station / Tunnel waterproofing systems, structural linings, portal structures, decline structures, retaining structures, shafts, cross passages and drainage elements. | 100 years |
| All above ground building structures | 50 years |
| Earthing and bonding system | 100 years |
| Architectural | |
| Architectural cladding | 40 years |
| Internal and external paint finishes | 10 years |
| Ceramic tiles, Quarry tiles, Terrazo, Marble Floor Finishes | 50 years |
| Mechanical Plant | |
| Tunnel ventilation fans | 30 years |
| Fire main pipework | 30 years |
| Sprinkler systems | 20 years |
| Drainage pumps | 15 years |
| Electrical Equipment | |
| Switchgear | 20 years |
| Transformers | 30 years |
| UPS sets | 15 years |
| Batteries | 5 years |
| Vertical Transportation | |
| Escalators | 20 years |
| Lifts | 20 years |
| Track | |
| Ballast-less track-form / track-bed, including floating slab track, resilient bearings and derailment containment | 100 years |
| First Stage Concrete | 100 years |
| Trackwork, including rail, fixings and fasteners (excluding resilient rail fasteners for high noise and vibration attenuation), concrete sleepers and bearers, ballast, turnouts and crossings | 50 years |
| Resilient rail fasteners for high noise and vibration attenuation | 30 years |
| Floating slab track bearings | 50 years |
| Communications | |
| Power SCADA (for traction power and HV power systems) | 20 years |
| Fire Alarm and Detection Systems | |
| Control equipment | 20 years |
| Detectors – in Tunnels | 5 years |
| Detectors – in Stations and elsewhere | 10 years |
| Sound absorption | |

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| Components and materials | 25 years |
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Table 3-2: Component Design Life Requirements

| Component | Sub-component | Design Life |
|---|-----------------------------------|------------------------|
| Ventilation System – Tunnel Ventilation | | |
| Ventilation Fans - Jet Fans and Axial Fans | | |
| | Support steel | 30 years |
| | Fan Motor | 20 years |
| | Bearings | L10 40000h or 10 years |
| | Impeller | 30 years |
| | Vibration Sensor | 10 years |
| | Winding temperature sensor | 10 years |
| | Bearing temperature sensor | 10 years |
| | Differential Pressure Transmitter | 10 years |
| Sound Attenuators | | |
| | Structure | 26 years |
| | Attenuator splitter | 26 years |
| | Attenuator fixings | 26 years |
| Dampers | | |
| | Damper | 30 years |
| | Actuator | 10 years |
| | Bearings | 10 years |
| | Limit switches | 10 years |
| Hydraulic Pumping – Pump Station | | |
| General | | |
| | Level Sensor | 10 years |
| | pH sensor | 10 years |
| | Pressure sensor | 10 years |
| | Hydrocarbon sensor | 10 years |
| Pump | | |
| | Bearings | 4 years |
| | Gasket | 4 years |
| | Motor | 15 years |
| Valves | | 20 years |
| Pipework | | 20 years |
| Building and Plant Equipment - Mechanical Ventilation Air Conditioning | | |
| Fan coil units | | 20 years |
| Air handling units | | 20 years |
| Air cooled chillers | | 20 years |
| Water cooled chillers | | 20 years |
| Filters | | up to 12 months |
| Cooling towers | | 15 years |
| Expansion tanks | | 20 years |
| Fans | | 26 years |
| Pumps | | 15 years |
| Water heaters | | 15 years |
| Dampers | | 20 years |
| Actuators | | 10 years |

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| Sensors | | 10 years |
| BMS | | 20 years |
| Fire Suppression System | | |
| General | | |
| | Pressure Gauges | 20 years |
| | Valves | 20 years |
| | Sprinkler Heads | 20 years |
| | Hose Reel System | 20 years |
| Gas Suppression | | |
| | Gauges | 20 years |
| | Pipework | 20 years |
| | Valves | 20 years |
| HV System | | |
| HV Switchboard | | |
| | Protection Relays | 10 years |
| | Current Transformers | 20 years |
| | Voltage Transformers | 20 years |
| Battery Charger | | |
| | Battery Charger | 10 years |
| Traction Power | | |
| | Rectifiers | 20 years |
| Cabling and Cables | | 30 years |
| LV System | | |
| LV Switchboard | | |
| | Protection Relays | 10 years |
| | Power Monitoring Device | 10 years |
| | Current Transformers | 20 years |
| | Voltage Transformers | 20 years |
| | Indication lamps | 10 years |
| VSD | VSD | 20 years |
| Cabling and Cables | | 30 years |
| Uninterruptable Power Supplies | | |
| | Inverter | 15 years |
| | Batteries | 5 years |
| | Static Bypass | 20 years |
| | Maintenance Bypass | 20 years |
| | Harmonic Filter | 15 years |
| | Ventilation Fans | 2 years |
| | Filters | 0.5 years |
| Lighting System | | |
| Tunnel Lighting - LED | | |
| | LED Lamp | 10 years |
| | Electric Ballast | 10 years |
| Station Lighting - LED | | |
| | LED Lamp | 10 years |
| | Electric Ballast | 10 years |
| Fire Detection System | | |

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| Control Monitoring and detection | | |
| | Fire Panel | 20 years |
| Cabling | | |
| | System/Fibre | 20 years |
| Fire Doors | | |
| | Fire Door - Side Hung | 20 years |
| | Fire Door - Sliding | 20 years |

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| 4 | Urban Design and Public Realm | 85948 |
| 4.1 | Project Urban Design | 85949 |
| 4.1.1 | General | 85950 |
| (a) | The urban design must ensure a cohesive identity for all above ground elements along the project alignment while sensitively responding to the local context of each precinct (the public realm). | 85951 |
| (b) | The design must be consistent with the Urban Design Strategy (UDS). | 85952 |
| (c) | The urban design must: | 85953 |
| i. | maximise the city shaping potential of the project by providing enduring benefits to the people and urban structure of Melbourne; | 85954 |
| ii. | deliver a design response that affords the highest level of value for money for the community, particularly as it relates to travel experience, architecture, engineering and urban integration; | 85955 |
| iii. | have a consistent line-wide style but the design of each station precinct will maintain individuality that is derived from its local context; | 85956 |
| iv. | embrace the character of the places it connects; | 85957 |
| v. | facilitate safe and convenient interchange between modes with clear open spaces that maximise visual connectivity, legibility, safety and amenity; | 85958 |
| vi. | integrate signage, wayfinding, creative infrastructure, weather protection and other elements to avoid visual clutter; | 85959 |
| vii. | maximise useable public space; | 85960 |
| viii. | protect identified heritage structures, settings and view lines; and | 85961 |
| ix. | deliver an ecologically conscious design outcome that is adaptable to climate change and minimises resource use, and energy and potable water consumption. | 85962 |
| 4.1.2 | Arden Public Realm | 85963 |
| | The urban design of the Arden Precinct must: | 85964 |
| (a) | act as a catalyst for redevelopment of the overall precinct and facilitate and support a significant urban renewal project; | 85965 |
| (b) | address the short-term aim of providing an entry within an open space that provides access for the population working and living in surrounding neighbourhoods; | 85966 |
| (c) | address the long term vision of the Station incorporated in the overall masterplan that acts as a focal point of the intensive transit-oriented mixed-use development of the VicTrack site and the Arden-Macaulay Precinct as a whole; | 85967 |
| (d) | facilitate the future intensive redevelopment of the publicly owned (VicTrack) land; | 85968 |
| (e) | facilitate the integration of the station with future over-site development and redevelopment of surrounding areas; and | 85969 |
| (f) | provide a high standard of amenity at and near the station before any wider redevelopment of the publicly owned (VicTrack) land. | 85970 |
| 4.1.3 | Parkville Public Realm | 85971 |
| | The urban design of the Parkville Precinct must: | 85972 |
| (a) | be consistent with the Parkville Public Realm Concept Plan and the University Square Master Plan; | 85973 |
| (b) | create an integrated transport interchange between train, tram and bus services; | 85974 |
| (c) | protect and enhance the heritage structures, view lines and character of the Precinct, including the key vista from Gate 10 toward the CBD; | 85975 |
| (d) | maintain avenue tree planting for the length of Royal Parade, where practicable; | 85976 |
| (e) | in consultation with the relevant local government authority, make provision for new trees spaced in response to the existing rhythm of canopy tree planting; | 85977 |

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| | (f) ensure any infrastructure or landscaping maintains a simple and uncluttered eye-level appearance along street vistas to give a visual dominance to the tree canopy; | 85978 |
| | (g) consolidate infrastructure and breaks in the median to best protect the legibility of the avenue planting; | 85979 |
| | (h) ensure larger structures such as chiller plants and emergency access structures: | 85980 |
| | i. are sensitively designed to integrate with the heritage character of the precinct and respect important view lines; | 85981 |
| | ii. are optimised to minimise visual impact; | 85982 |
| | iii. do not interfere with pedestrian movements across or along Grattan Street or impact the access of University Square; | 85983 |
| | iv. are designed in accordance with Crime Prevention Through Environmental Design (CPTED) principles; and | 85984 |
| | v. are architecturally treated to encourage activation of the surrounding space; | 85985 |
| | (i) ensure that any infrastructure to be permanently located in Barry Street must maintain emergency vehicle access; | 85986 |
| | (j) consider integrating larger elements into existing or proposed structures, or collocating elements to reduce the visual impact; | 85987 |
| | (k) demonstrate regard for the future redevelopments options within the University of Melbourne land holdings to integrate with the project; | 85988 |
| | (l) create clearly visible and publicly accessible Station entries where they are located within University of Melbourne land in a manner that respects the existing character of the area; and | 85989 |
| | (m) create Station entries that are sympathetic to the surrounding historic context and minimise the impacts on the Vice Chancellor's Residence, the Gate Keeper's Cottage and their heritage curtilage. | 85990 |
| 4.1.4 | CBD North Public Realm | 85991 |
| | The urban design of the CBD North Precinct must: | 85992 |
| | (a) be consistent with the CBD North Public Realm Concept Plan and the Queen Victoria Master Plan; | 85993 |
| | (b) create a cohesive precinct design that treats all of the main elements (Franklin Street, A'Beckett Street, Little Latrobe Street, Swanston Street) as separate but integrated and complementary elements with their own character and identity; | 85994 |
| | (c) maximise public open space in the precinct; | 85995 |
| | (d) facilitate an integrated, transit oriented over site development; | 85996 |
| | (e) prioritise pedestrian flow, safety and amenity; | 85997 |
| | (f) integrate with existing open spaces, monuments and other public art works; | 85998 |
| | (g) include provision for a double row of avenue planting along Franklin Street; | 85999 |
| | (h) ensure larger structures such as chiller plants and emergency access structures are sensitively designed; | 86000 |
| | (i) consider integrating larger elements into existing or proposed structures, or collocating elements to reduce visual impact; | 86001 |
| | (j) demonstrate regard for options for future redevelopments within RMIT and other major land holdings to integrate with the project; and | 86002 |
| | (k) create clearly visible and publicly accessible station entries. | 86003 |
| 4.1.5 | CBD South Public Realm | 86004 |
| | The urban design of the CBD South Precinct must: | 86005 |
| | (a) support passenger interchange between train services at CBD South Station with FSS, the trams (Flinders Street, St Kilda Road, Swanston Street, Collins Street and Elizabeth Street) and other public transport services; | 86006 |
| | (b) create a station entry that is integrated with the precinct built form while clearly defining the Station entries; | 86007 |
| | (c) be integrated with any oversite development that supports the animation and amenity of adjoining street spaces, and that makes a positive civic architectural contribution | 86008 |

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| | to the precinct; | |
| (d) | protect and enhance the heritage significance of nearby heritage buildings, structures and vistas; | 86009 |
| (e) | facilitate the redevelopment of properties acquired for the project to improve land utilisation and urban amenity in the precinct; | 86010 |
| (f) | accommodate a mixture of uses that contribute to: | 86011 |
| | i. the accessibility and amenity of the station entries; | 86012 |
| | ii. retail activation of adjoining streetscapes; | 86013 |
| | iii. complementary civic and community purposes; and | 86014 |
| | iv. commercial returns from the properties; | 86015 |
| (g) | ensure an integrated public realm treatment for Federation Square that: | 86016 |
| | i. enhances St Paul's Court's role as the transition space from Flinders Street to Federation Square; | 86017 |
| | ii. respects the Western Shard's original design intent to hold the corner and perform an important visual and spatial function; | 86018 |
| | iii. respects the Eastern and Western Shards' original design intent as exposed, freestanding elements within the overall design of the square; | 86019 |
| | iv. ensures materials are of a similar vocabulary to the rest of the site; | 86020 |
| | v. adequately addresses the pedestrian congestion at Swanston and Flinders Street corner; and | 86021 |
| | vi. adequately addresses existing and future loading requirements to ensure the on-going operational efficiency of Federation Square; | 86022 |
| (h) | create a cohesive new design for the City Square that is consistent with the City Square Background Paper and that: | 86023 |
| | i. ensures stairs do not exceed the width of other civic stairs on Swanston Street – indicatively, Town Hall Portico 16m, State Library central stairs 12m, St Paul's Cathedral 10.5m; | 86024 |
| | ii. ensures pedestrian access, egress and dispersal from the station primarily occurs from a street and not through the body of the Square to maintain the integrity of the space in keeping with its status as a capital city open space (as described in the City of Melbourne Open Space Strategy); | 86025 |
| | iii. ensures above ground station elements are minimised and do not compromise the Square's useable open space at street level; | 86026 |
| | iv. provides a singular ground level open public space (City Square) of approximately 1500m ² area; | 86027 |
| | v. ensures skylights or other treatments to improve the internal quality of basement level must not result in any reduction of useable open space; | |
| | vi. ensures that structural slab design (e.g. loading capacity and setdown) must not restrict future works in the square. This includes no level changes or upturns at the slab which introduce additional grade differences at the ground level; | 86028 |
| | vii. ensures that event mode of City Square allows for everyday use of the Square as an intimate open space to continue; | 86029 |
| | viii. ensures large vehicle access is provided from either Collins Street or Flinders Lane for events bump in and out (Flinders Lane is preferred); and | 86030 |
| | ix. includes a re-imagined John Mockridge fountain (water wall). | 86031 |
| 4.1.6 | Domain Public Realm | 86032 |
| | The urban design of the Domain Precinct must: | 86033 |
| (a) | create a cohesive precinct design that treats the main elements (St Kilda Road, Shrine Station entry, Albert Road and the Albert Road Reserve) as separate, but complementary, elements each with its own character, context, materiality and identity; | 86034 |

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| (b) | create an integrated multi-modal transport interchange; | 86035 |
| (c) | enhance walking and cycling links through the area; | 86036 |
| (d) | enhance the extent and amenity of usable public open space; | 86037 |
| (e) | minimise the extent of Shrine of Remembrance Reserve land encroachment and visual impact; | 86038 |
| (f) | ensure that signage and wayfinding must be kept to a minimum, preferring intuitive design responses where signs are a last resort; | 86039 |
| (g) | respects and enhance the formal boulevard character of St Kilda Road by: | 86040 |
| | i. providing for four rows of trees for the extent of St Kilda Road that has been affected by the Works between Toorak Road and Dorcas Street; | 86041 |
| | ii. ensuring all new tree plots along St Kilda Road are spaced to respond to the existing rhythm of canopy tree planting; | 86042 |
| | iii. minimising loss of open space and heritage impacts in Albert Road and Shrine Reserves by consolidating all transport infrastructure toward St Kilda Road; | 86043 |
| | iv. designing all transport infrastructure located within the carriageway to maintain a simple and uncluttered eye-level appearance along the St Kilda Road vista giving visual dominance to the tree canopy; | 86044 |
| | v. designing all transport infrastructure located within the carriageway to respond to the existing horizontal rhythm established by the canopy trees; and | 86045 |
| | vi. consolidating infrastructure and breaks in the planted median to best protect the legibility of the avenue planting; | 86046 |
| (h) | ensure that the South African Soldiers' Memorial: | 86047 |
| | i. is the focal point of the Albert Road Reserve; | 86048 |
| | ii. maintains a visual relationship with St Kilda Road and Kings Way, but it is not a 'grand gesture'; | 86049 |
| | iii. is accessible from all sides; | 86050 |
| | iv. include a modest congregation space around the memorial; | 86051 |
| | v. maintains a landscaped setting in a manner that respects the heritage qualities of the precinct; | 86052 |
| | vi. as far as practicable, should be separated from the Station entry; and | 86053 |
| | vii. is sited to celebrate the solidity and strength of the memorial; | 86054 |
| (i) | ensure that the Albert Road Reserve public realm design: | 86055 |
| | i. incorporates the length of Albert Road from St Kilda Road to Kings Ways; | 86056 |
| | ii. maintains the formality of the Reserve's crescent shape and structure; | 86057 |
| | iii. minimises loss of car parking; | 86058 |
| | iv. maintains a visual connection between Kings Way and Albert Road Reserve that contributes to the landscape character of the precinct and incorporates transport infrastructure in a way that sensitively responds to the character of the precinct; | 86059 |
| | v. respects the Reserve's original intent as a 'tree reserve'; | 86060 |
| | vi. sensitively incorporates all heritage elements and monuments; | 86061 |
| | vii. incorporates a similar provision for current barbeques and seating areas; and | 86062 |
| | viii. consider larger structures such as chiller plants and emergency access structures so that they are sensitively designed to integrate with the heritage character and respect important view lines. | 86063 |
| (j) | The location of the emergency egress exit must avoid building access areas and disrupting the road and tram services at St Kilda Road. | 86064 |
| 4.1.7 | Portals Public Realm | 118088 |
| | The urban design of the Eastern and Western Portals must ensure all structures are sensitively designed to respond to the adjoining streetscape by: | 118089 |

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| (a) | minimising the visual impact of all structures particularly on adjoining residential areas and public spaces; | 118090 |
| (b) | avoiding fragmentation of open space; | 118091 |
| (c) | considering co-location/ integration of existing and/ or proposed structures or co-locating elements of the structures; and | 118092 |
| (d) | where possible, including screen plantings that are consistent in character with the site. | 118093 |
| 4.2 | Safety | 86065 |
| 4.2.1 | The Stations and public realm must: | 86066 |
| (a) | create safe environments using the principles of CPTED to facilitate activation; | 86067 |
| (b) | provide environments that are accessible, inclusive, support safe behaviour and are perceived as being safe at all times of the day through passive surveillance and maximising visual connectivity; | 86068 |
| (c) | provide CCTV coverage, lighting, security systems and CPTED review that is coordinated with adjacent land managers; | 86069 |
| (d) | provide an efficient and enjoyable passenger experience and a quality working environment for staff; | 86070 |
| (e) | not impede ground plane movement networks and not have negative impacts on the safety of the surrounding public realm functionality; | 86071 |
| (f) | demonstrate for all alterations to pedestrian and cyclist movements consideration of personal safety; and | 86072 |
| (g) | minimise the physical impact of services by integrating into the building form and public realm elements. All servicing is to be hidden from view both by the location and use of screening. | 86073 |
| 4.3 | Pedestrian and Intermodal Connectivity | 86074 |
| 4.3.1 | Pedestrian Focused | 86075 |
| | The public realm must: | 86076 |
| (a) | integrate and build upon the wider pedestrian network to enable all passengers to disperse with ease into the hierarchy of pedestrian linkages that exist in each precinct. This includes connectivity to laneways as well as major streets; and | 86077 |
| (b) | arrange station entrances to address the direction and quantum of pedestrian movements based on passenger modelling, particularly allowing for peak flows and major events in order to minimise the impact on the existing pedestrian network. | 86078 |
| 4.3.2 | Intermodal Connectivity | 86079 |
| | The public realm and Stations must support multi modal transport along the street space by providing: | 86080 |
| (a) | proximity of boarding / alighting points to the station entrances; | 86081 |
| (b) | safe pedestrian pathways and road crossings between tram and bus stops and station entrances; and | 86082 |
| (c) | clear lines of sight between tram and bus stops and the station entrance/s. | 86083 |
| 4.4 | Cultural and Community Identity Infrastructure | 86084 |
| 4.4.1 | Stations and public realm must incorporate cultural and community identity infrastructure and enhancements in the public realm that: | 86085 |
| (a) | are tailored to the needs of each local area; | 86086 |
| (b) | are coordinated with local public arts programmes; and | 86087 |
| (c) | offer meaningful additions to the precinct. | 86088 |
| 4.4.2 | All artwork, memorials or monuments impacted by the Project (including those that have been removed and stored as part of the scope of works of the Early Works Managing Contractor) must be retained, relocated or stored, and reinstated by Project Co to an appropriate location (subject to relevant asset owner approval). Project Co must ensure that an integrated approach is applied to the management of such artwork, memorials, or | 86089 |

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| | monuments (including in respect of the transition of care, custody or control of such artwork, memorials or monuments, from the Early Works Managing Contractor to Project Co), and provide relevant asset owners with reasonable access to inspect such artwork, memorials, or monuments, whilst under the care, custody or control of Project Co. | |
| 4.4.3 | Stations and the public realm must ensure all cultural and community identity enhancements: | 86090 |
| | (a) present the best of innovation and excellence; | 86091 |
| | (b) are located to ensure there is no conflict with future expansions; | 86092 |
| | (c) consider the potential impact on the Station precinct identities; | 86093 |
| | (d) consider the customer experience; and | 86094 |
| | (e) consider the use of local content. | 86095 |
| 4.4.4 | Stations and the public realm must incorporate cultural and community identity enhancements or installations that consider lighting, safety and security issues in compliance with CPTED principles. | 86096 |
| 4.4.5 | Cultural and community identity infrastructure is not static and must consider future changes over time. | 86097 |
| 4.5 | Oversite Development | 86098 |
| 4.5.1 | Where an oversite development (OSD) is proposed, a suitable platform must be provided between the OSD and the Tunnel and Stations to support construction and permanent OSD loads without having an adverse impact on the operation, safety and security of the Tunnel, Stations or any other rail infrastructure. | 86099 |
| 4.5.2 | Stations must provide a structural arrangement that facilitates the construction of a functional OSD to the maximum permissible building envelope of the relevant planning provisions. | 86100 |
| 4.5.3 | Ancillary OSD infrastructure must not impact station operations or emergency access and egress, including the operational capacity or arrangement of Station entrances, Station maintenance access points or emergency services requirements. | 86101 |
| 4.5.4 | The design arrangement and architectural treatments of an OSD: | 86102 |
| | (a) must not diminish the visibility of the station entrances; and | 86103 |
| | (b) must not compromise the identification of the Station entrances as being separate to the OSD. | 86104 |

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| 5 | Civil and Structural Works | 86105 |
| 5.1 | Trackwork | 86106 |
| 5.1.1 | General | 86107 |
| | (a) The Tunnels, Stations and Portals trackwork must be designed to support Day-1 and Design Year service levels in all Operating States. | 86108 |
| | (b) The track must maintain geometry and stability, line and level under all expected environmental and operational conditions. | 86109 |
| | (c) The trackwork must support a maximum defined operating speed of 80km/h. | 86110 |
| | (d) The trackwork must support an appropriate over-speed allowance that exceeds the defined operating speed in order to facilitate the maximum throughput of trains operating under CBTC. | 118095 |
| | (e) The trackwork design must maximise train speed and the consistency of the speed profile along the alignment. | 86111 |
| | (f) The trackwork must be “broad gauge” (1600mm (nominal)). | 86112 |
| | (g) All trackwork components must be of standard type, proven in a similar metro network for a period of at least 5 years and compatible with the existing line. | 86113 |
| | (h) All trackwork components must: | 86114 |
| | i. be currently Type Approved for use within the Metropolitan Rail Network; or | 86115 |
| | ii. obtain Type Approval in accordance with MTM standard L1-CHE-PRO-003 - Type Approval Process and AS 7701:2015 – Rail Equipment Type Approval. | 86116 |
| | (i) The trackwork must be compatible and integrated with other related systems including electrical and mechanical requirements of traction power and signalling systems (including earthing and bonding / stray current), cable paths (including telecommunications and signalling), fire hydrants and drainage. | 86117 |
| | (j) Where required to meet noise and vibration requirements, Project Co must review track stiffness to determine the appropriate track fastening system or track structure. | 86118 |
| | (k) The track must be able to resist all quasi-static, vertical, lateral and impact loads resulting from rail traffic at prescribed axle loads with no assembly, component or material failures. | 86119 |
| | (l) Curve compensated vertical gradients must be suitable for all HCMT, Extended HCMT, as well as maintenance vehicles and equipment certified in accordance with: | 86120 |
| | i. MTM STD L1-CHE-STD-007 Track Vehicle Standard; and | |
| | ii. AS 7510.4:2014 Railway Rolling Stock – Braking Systems Infrastructure. | |
| | (m) Any proposed changes to occupation limits should consider that new crossovers may be needed to be included as part of the works. | 86121 |
| 5.1.2 | Alignment Design | 86122 |
| | (a) General | 86123 |
| | i. The trackwork design speed must consider the proposed defined operating speed including changes as a result of train service frequency over the Design Life. | 86124 |
| | ii. The trackwork must ensure the safety and comfort of passengers and personnel while travelling on the train. | 86125 |
| | iii. The trackwork design must optimise the total life of expendable track materials and components. | 86126 |
| | (b) Horizontal Geometry | 86127 |
| | i. The trackwork through each Station platform must be tangent track for the entire platform length with sufficient length at each end to prevent train throw from affecting platform offset. | 86128 |
| | (c) Horizontal Curves | 86129 |

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| i. | Horizontal curves must be used between all changes of constant bearing. | 86130 |
| ii. | All horizontal curves must be circular type. | 86131 |
| iii. | The minimum horizontal curve radius is: | 86132 |
| (1) | 380 metres (desirable); and | |
| (2) | 300 metres (absolute). | |
| iv. | Compound curves comprising two or more horizontal curves of different radii (in the same direction) must be avoided where a single radius can be used. | 86133 |
| (d) | Transition Spirals | 86134 |
| | Transition spirals must: | 86135 |
| i. | be used at the start and end of each circular curve; | 86136 |
| ii. | be clothoid type; and | 86137 |
| iii. | have a minimum length of 20 metres. | 86138 |
| (e) | Cant | 86139 |
| i. | Equilibrium cant must be as follows: | 86140 |
| (1) | Calculated as $13.1354 \times (V^2/R)$ (where V = design speed, and R = horizontal curve radius); | 86141 |
| (2) | Equal to the applied cant plus cant deficiency. | 86142 |
| ii. | Cant must be applied at a uniform rate along the length of the transition spiral. | 86143 |
| iii. | The steepest allowable cant gradient / ramping rate for trackwork is 1:600. | 86144 |
| iv. | The applied cant must be applied in 5mm increments. | 86145 |
| v. | The maximum allowable rate of change of applied cant is: | 86146 |
| (1) | 37.5 mm/s (desirable); and | |
| (2) | 55 mm/s (absolute). | |
| vi. | The maximum allowable rate of change of cant deficiency is: | 86147 |
| (1) | 37.5 mm/s (desirable); and | |
| (2) | 55 mm/s (absolute). | |
| vii. | The maximum allowable non-compensated sustained lateral acceleration for plain track is: | 86148 |
| (1) | 0.52 m/s/s (normal limit); and | |
| (2) | 0.67 m/s/s (maximum limit). | |
| viii. | The maximum allowable jerk is: | 86149 |
| (1) | 0.20 m/s/s/s (normal limit); and | |
| (2) | 0.30 m/s/s/s (maximum limit). | |
| (f) | Vertical Curves | 86150 |
| i. | Vertical curves must be used between all changes of constant grade. | 86151 |
| ii. | Vertical curves must be of quadratic parabola type. | 86152 |
| iii. | A minimum distance of 25 metres at constant grade must be provided between vertical curves. | 86153 |
| iv. | Co-location or overlapping of horizontal transition spirals and vertical curve elements must be avoided where practical. | 86154 |
| (g) | Sag Curve | 86155 |
| i. | The minimum vertical curve radii for a sag curve is 26.50 minimum 'K' value, where 'K' = vertical radius/100 (i.e. approximately 2, 650 metres equivalent radius). | 86156 |
| (h) | Crest Curve | 86157 |
| i. | The minimum vertical curve radii for a crest curve is 17.00 minimum 'K' value, where 'K' = vertical radius/100 (i.e. approximately 1, 700 metres equivalent radius). | 86158 |
| (i) | Gradients | 86159 |

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| | i. | The use and length of steep gradients must be minimised. | 86160 |
| | ii. | The maximum grade of the track through Station platforms is: | 86161 |
| | | (1) 0.00% (flat) (desirable); | |
| | | (2) 0.33% (1 in 300) (maximum); and | |
| | | (3) 0.67% (1 in 150) (absolute). | |
| | iii. | The maximum grade of the track elsewhere must not exceed 3.6% (curve compensated). | 86162 |
| | iv. | There must be a reduction in allowable maximum grade where a horizontal curve is coincident with a vertical grade. Reduction in the applicable maximum grade must be applied at a rate of (60.96%) / horizontal radius. | 86163 |
| | v. | Outside the Stations there must be longitudinal fall along the track to achieve positive fall of water towards drainage outlet (from any source) and prevent water pooling. | 86164 |
| 5.1.3 | | Gauging and Clearances | 86165 |
| | (a) | All infrastructure must ensure space provision for the maximum rolling stock kinematic envelope, services, emergency egress, maintenance requirements and minimum standard air gap between the maximum kinematic envelope and tunnel structure. | 86166 |
| | (b) | Appropriate standards and specifications must be established for the determination and management of gauging and clearances based on the dimensions and dynamics of the rolling stock based on: | 86167 |
| | | i. the static outline and rolling stock configuration in accordance with the Victorian Rail Industry Standard Drawing STD_R0008; | 86168 |
| | | ii. the rolling stock parameters including lateral translation, clearance (worn wheel to new rail) and lateral deflection of primary suspension as per Victorian Rail Industry Standard Drawing STD_R0009; | 86169 |
| | | iii. the infrastructure parameters including rail side wear, gauge tolerance of the track, cross level tolerance and track alignment tolerances as per Victorian Rail Industry Standard Drawing STD_R0009; | 86170 |
| | | iv. the maximum swept path parameters including centre throw of the rolling stock on curved track (inside curve) and end throw of the rolling stock on curved track (outside curve); | 86171 |
| | | v. an agreed safety clearance margin (or air gap) beyond the worst case kinematic outline; and | 86172 |
| | | vi. a maintained floor height at the passenger bodyside doors of 1170mm from the top of rail. | 86173 |
| | (c) | Track clearances must be maximised wherever practicable. | 86174 |
| 5.1.4 | | Rail Track Components | 86175 |
| | (a) | General | 86176 |
| | | i. All rail track components must be designed in accordance with 77% 300LA (nom. 23 t axles) loading as specified in AS5100.2 in both static, dynamic and 'fault condition' loadings. Where calculations are based on speed, 90 km/h should be adopted regardless of design or proposed operating speed except for determining noise and vibration effects which shall be based on 85 km/h. | 86177 |
| | | ii. Trackform components must retain their mechanical properties and Design Life in the presence of rail lubricants, grease, water or other contaminants. | 86178 |
| | (b) | Rail | 86179 |
| | | i. New rail must be head hardened rail of AS60 (60kg/m) size (as per AS1085.1), continuously welded and inclined at an angle of 1 in 20 (from vertical) towards the centre of the track. | 86180 |
| | | ii. Rail lengths formed by flashbutt welding in a controlled environment should be maximised. | 86181 |

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| iii. | The welding of rail must comply with AS1085.20 and MTIS 033000-Welded Track Management Manual. | 86182 |
| iv. | In-situ aluminothermic welds should be minimised. | 86183 |
| v. | A target rail profile must be jointly agreed and implemented with the HCMT contractor, PTV and the Train Franchisee. | 86184 |
| vi. | A wheel / rail interface study must be conducted in a timely manner, jointly with the contractor for the HCMT Project, PTV, Rail Systems Alliance (RSA), Rail Infrastructure Alliance (RIA) and the Train Franchisee. A Wheel / Rail Interface Management Sub-Plan is to be developed, implemented and updated by Project Co in accordance with Annexure 8, section 8.1.2 (p) (6) of Part C of the PS&TR. | 86185 |
| vii. | The optimal stress free temperature must be assessed and implemented considering the predicted maximum and minimum temperature of the rail over the life of the asset (including considerations of climate change impacts). | 86186 |
| viii. | An assessment of longitudinal rail movement must be conducted with the HCMT contractor and the Train Franchisee. | 86187 |
| ix. | The design must include an assessment on the need for broken rail detection, and all recommendations must be implemented. | 86188 |
| x. | Rail must be compatible with all equipment required (earthing loops, axle counters, track circuits, noise absorbing panels, maintenance crossing panels etc.) and their connection to the track as used by the RSA. | 86189 |
| xi. | Rails used for return current protective provisions in the ballastless track systems must be in accordance with EN 50122-2. | 86190 |
| (c) | Rail fasteners and baseplates | 89191 |
| i. | The rail fastening system must comply with AS1085.19 and be a resilient type appropriate for the operational conditions. | 86192 |
| ii. | Rail creep due to traction and braking forces on long, steep grades must be minimised. | 86193 |
| (d) | Trackform / Trackbed | 86194 |
| i. | The trackform / trackbed must be ballastless. | 86195 |
| ii. | The ballastless track systems must comply with the requirements of EN 16432. | 86196 |
| iii. | Preventative and typical maintenance including: | 86197 |
| | (1) replacement of rails; | 86198 |
| | (2) grinding of rails; and | 86199 |
| | (3) adjustment of track geometry, etc., | 86200 |
| | on the trackform/trackbed must be able to be conducted without significant modification to the trackform/trackbed. | 86201 |
| iv. | The trackform/trackbed and associated rail fasteners and baseplates must form the primary attenuation measure to meet the noise and vibration Environmental Performance Requirements (EPRs). | 86202 |
| v. | Operational ground borne noise must be at least 2dB(A) lower than the minimum ground borne/ structure borne noise requirements in the EPRs, and targeted to be at least 5dB(A) at the design stage. | |
| vi. | The trackform/trackbed and associated rail fasteners and baseplates must form part of the primary attenuation measures to ensure that average Inter-station in-car noise levels (Leq) inside the train do not exceed the acceptable limits set out in section 5.3.6. | 86203 |
| vii. | Continuous (to the extent practical) reinforced concrete derailment guard/s that are fully integral to the trackform/trackbed, must be provided for all ballastless track, which must: | 86206 |
| | (1) maintain the train in an upright position in the event of derailment; | 86207 |

- (2) limit lateral displacement in the event of derailment; 86208
- (3) minimise damage to track and supporting structures (including elevated walkway); and 86209
- (4) be designed for a 250 kN horizontal impact load applied uniformly over a length of 1 metre at the top of the kerb / upstand acting at any angle away from the track centerline. 86210
- viii. The trackform / trackbed must provide a gradual stiffness transition at each location where a change in track form is required including: 86211
 - (1) interface with ballasted track; 86212
 - (2) interface with Stations; and 86213
 - (3) interface between different track forms. 86214
- ix. Project Co must demonstrate through a wheel-rail interface study that the trackwork system stiffness will: 86215
 - (1) Be capable of delivering a Mean Comfort Level (Nmv) of between 1.5 and 2.5 in accordance with BS EN12299:2009; and
 - (2) not be the primary cause of failure or excessive deterioration of track or rolling stock assemblies, components or materials, rail corrugation, excessive noise or vibration under normal operational conditions.
- x. The track must be constructed to tolerances not exceeding the following: 86216
 - (1) gauge: -0mm, +2mm; 86217
 - (2) alignment: +/-2mm from true over any 10m chord length; 86218
 - (3) cross level: 86219
 - (i) straight track: +/-2mm from true over any 10m chord length; 86220
 - (ii) curved track: +/-2mm from true over any 10m chord length; and 86221
 - (4) top: +/-2mm from true over any 10m chord length. 86222
- xi. A track maintenance standard must be developed that minimises the train – platform interface (horizontal and vertical) to reduce the effective gap between train, platform, Platform Screen Door (**PSD**) and whole life costs SFAIRP. 86225
- (e) Track must be designed to minimise stray current leakage. 86226
- (f) The design must take into account access to key components and bearings for inspection and maintenance purposes. 86227
- (g) The trackform width beyond the outermost edge of the base plates on each side of the running rails must be maximised at the level of the slab under the rails. 86228
- (h) The track must be designed to ensure that cant transitions are not located on vertical curves. This is to reduce the likelihood of twist faults. 86229
- (i) Track Lubrication 118104
 - i. A linewide track lubrication strategy must be established in a timely manner, jointly with the HCMT Project, PTV, Rail Systems Alliance (RSA), Rail Infrastructure Alliance (RIA) and the Train Franchisee. A track lubrication strategy for gauge face and top of rail friction modifiers (**TORFM**), is to be developed, implemented (including design and construction) and updated by Project Co. The track lubrication strategy must: 118106
 - (1) include the tunnel, stations and portal approaches; 118107
 - (2) be integrated with the broader RTO network lubrication strategy (to be developed); 118108
 - (3) provide lubrication equipment at locations which can be accessed and maintained during operational hours without impact to train operations; 118109
 - (4) provide lubrication locations positioned as close to the running track SFAIRP; 118110

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| | (5) | include both the lubrication locations which will be activated for Day 1 operations and those installed but not activated; | 118111 |
| | (6) | include a risk assessment, testing and commissioning plan, lubricator monitoring plan and technical maintenance plan; and | 118112 |
| | (7) | be reviewed and approved by a subject matter expert. | 118113 |
| | ii. | Gauge face lubrication must: | 118114 |
| | (1) | allow remote monitoring; | 118116 |
| | (2) | achieve a target gauge face coefficient of friction of <0.25 over the extent of the system; | 118117 |
| | (3) | recommend and implement design safeguards for lubrication migration to top of rail; and | 118118 |
| | (4) | include spatial and servicing allowance for TORFM lubrication equipment at all locations where gauge face lubrication equipment is installed. | 118119 |
| | iii. | In addition to the lubrication strategy, spatial and servicing allowance must be made for individual gauge face and TORFM lubrication equipment, which allows independent lubrication of both tracks, at the following locations: | 118120 |
| | (1) | both ends of each underground station; and | 118121 |
| | (2) | the eastern portal ventilation structure. | 118123 |
| 5.1.5 | | [Not disclosed] | 86230 |
| 5.1.6 | | Infrastructure track signage and monuments | 86236 |
| | (a) | Track signage and monuments must be provided (including signage in accordance with the general requirements of AS 1743): | 86237 |
| | i. | at every 50m chainage / kilometrage; | 86238 |
| | ii. | at permanent speed restriction signs on curves; and | 86239 |
| | iii. | at changes in track geometry (e.g. start of transition spiral, start of curve, end of curve, end of transition spiral). | 86240 |
| | (b) | Track signage and monuments must not hinder operations or maintenance activities. | 86241 |
| | | | 86242 |
| 5.2 | | Underground Structures | |
| 5.2.1 | | General | 86243 |
| | (a) | All underground structures must be designed in accordance with AS5100 (Set), unless otherwise noted. | 86244 |
| | (b) | Soil supporting structures must be designed to in accordance with AS5100.3, unless otherwise noted. | 86245 |
| | (c) | All structures beneath tramlines must be designed and constructed in accordance with VRIOGS Tram Track Standards (Set) in addition to the requirements of AS5100 (Set). | 86246 |
| | (d) | All structures associated with railway lines must be designed in accordance with the Standards of the RTO in addition to the requirements of AS5100 (Set). | 86247 |
| | (e) | All structures must consider construction tolerances as part of spaceproofing. | 86248 |
| | (f) | All permanent underground Works must be a minimum of 1.5m below finished ground level. Where this is not achievable, a corridor of minimum depth of 1.5m below finished ground level for future utilities must be identified in the design with the exception of the following locations, subject to agreement from the relevant authority: | 86249 |
| | i. | the CBD South Station connection below Flinders Street where it joins to the existing Degraeves Street tunnel; | |
| | ii. | the roof of the City Square building at CBD South which is located at ground level; and | |
| | iii. | the southern portion of Domain Station as agreed with the State. | |

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| | (g) | Any beneficial long term contribution or load distribution from temporary works left in the ground must not be considered in the permanent Works design , unless the temporary works components are incorporated into the permanent Works and meet the design life performance requirements for the element and all other requirements of the PS&TR. | 86250 |
| | (h) | All temporary and permanent support systems for ground supporting structures must include redundancy. | 86251 |
| | (i) | All retaining walls adjacent to the railway track required to withstand collisions from derailed trains must met the requirements of MTM DPN - L1-CHE-INS-013: Soil retaining structures adjacent to rail. | 86252 |
| | (j) | Anchor bolts and similar structural fixings into concrete elements which are reliant on adhesion must not be used to resist tensile loads where the failure of the anchorage may result in a risk to life or a reduction in operational performance. | 86253 |
| | (k) | Where the Works alters, connects to, or is adjacent to an existing structure, Project Co must ensure that the structural capacity, stability, durability and watertightness of the existing structure is not adversely affected. The impacts to the existing structure must be analysed as part of the design. | 86254 |
| | (l) | Structural concrete linings for underground structures which could be exposed to fire must be designed to resist explosive and progressive spalling when exposed to fire. | 86255 |
| | (m) | All gaps must be effectively sealed to prevent debris from entering gaps between structural elements. | 86256 |
| | (n) | Unless otherwise noted, all loads in this PS&TR must be treated as unfactored. | 118050 |
| 5.2.2 | | Durability | 86257 |
| | (a) | Early age thermal cracking must be calculated in accordance with the methodology set out within EN 1992-3:2006 (Eurocode 2 Part 3 for Liquid Retaining Structures) and Guidance set out within CIRIA C660. The crack width must be calculated at a distance equal to the durability cover (referred to as Cdur) from the reinforcement within any concrete element. | 86258 |
| | (b) | Flexural crack widths must be calculated in accordance with Eurocode 2 Part 1 – BS EN 1992-1-1:2004. The flexural crack width must be calculated at a distance equal to the durability cover (referred to as Cdur in EC2 terminology) from the reinforcement preventing the crack in any element. | 86259 |
| | (c) | The maximum crack width in concrete elements (inclusive of tunnel linings), irrespective of whether additional protection is adopted must be as follows: | 86260 |
| | i. | concrete elements adjacent to or in contact with the ground which have water restricting or excluding functions, must have a maximum crack width of 0.25mm (wk = 0.25mm); | 86261 |
| | ii. | concrete elements adjacent to or wholly in contact with the ground which do not have water restricting or excluding functions, must have a maximum crack width of 0.3mm (wk = 0.3mm); | 86262 |
| | iii. | concrete elements exposed only to an internal environment, must have a maximum crack width of 0.3mm (wk = 0.3mm); | 86263 |
| | iv. | concrete elements exposed to external atmosphere and weather, must have a maximum crack width of 0.25mm (wk = 0.25mm); | 86264 |
| | v. | pre-cast elements containing pre-stressed tendons and exposed to weather must have a maximum crack width of 0.10mm (wk = 0.1mm). | 86265 |
| | (d) | There must be no adverse effects of groundwater chemistry on the overall integrity of structures and the reliability and performance of the drainage system, including the potential for the precipitation of insoluble salts to reduce the effectiveness of the drainage system, over the required Design Life. | 86266 |
| | (e) | Steel sheet piles must not be considered as permanent Works. | 86267 |
| | (f) | There must be no adverse effects on the overall integrity of structures and the reliability and performance of the drainage system, over the required Design Life, due to variation in groundwater levels in response to climate variability or change. | 86268 |
| | (g) | Concrete structures with a 100 year design life must account for the effects of | 86269 |

increased temperatures, temperature ranges and CO₂ concentrations on the rate of carbonation-induced corrosion.

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| 5.2.3 | Design Loads | 86270 |
| | (a) Seismic loads used for the design of all structures except bridges and earth retaining structures, must be earthquake design category 'Type III' in accordance with AS1170. | 86271 |
| | (b) All structures supporting roads and emergency vehicle access paths must be designed for SM1600 loads to AS5100. | 86272 |
| | (c) Aerodynamic forces from passing trains must be considered in accordance with BS EN 1991:2:2003. | 86273 |
| | (d) Air pressure acting on the structural elements resulting from the operation of trains and mechanical equipment must be applied. | 86274 |
| | (e) [Not disclosed] | 86275 |
| | (f) [Not disclosed] | 86276 |
| | (g) [Not disclosed] | 86277 |
| | (h) [Not disclosed] | 86278 |
| | (i) [Not disclosed] | 86279 |
| | (j) [Not disclosed] | 86280 |
| | (k) [Not disclosed] | 86281 |
| | (l) [Not disclosed] | 86282 |
| | (m) All handrailing and balustrades not located on bridges must be designed to resist the minimum live loads specified within AS 1170. | 86285 |
| | (n) Structural elements must be designed to support equipment loads at any reasonable position likely to be experienced during or after installation, including access routes for installation, maintenance or replacement. | 86286 |
| | (o) The dynamic effects due to the operation of equipment must be included when determining equipment loads. | 86287 |
| | (p) Partially and fully underground structures must be designed to resist buoyancy at all stages of construction and throughout the Design Life, including accounting for the effects of climate change and other influences. | 86288 |
| | (q) Groundwater levels used in design must be based on the most adverse high and low water levels both during construction and throughout the Design Life, including accounting for the effects of climate change and other influences. | 86289 |
| | (r) The structural weight resisting buoyancy must only include the minimum structural weight of that part of the underground structure that will remain in place for the time period under consideration. | 86290 |
| | (s) Any loads from oversite developments or from elements that could be altered or removed must not be considered in the buoyancy assessment. | 86291 |
| | (t) All components of underground structures must be proportioned to withstand the most onerous combination of the applied loads and actions. These must include railway loads in accordance with AS5100 and future infrastructure loads. | 86292 |
| 5.2.4 | Future Proofing | 86293 |
| | (a) The design must accommodate any impact from developments that have been approved by all relevant Authorities, current at the date of the Agreement. Where these loads differ from the allowances listed in the following sections, the more unfavourable loading cases must apply. | 86294 |
| | (b) An additional future vertical loading provision must be included for tunnels, caverns, cross passages, adits and pedestrian subways to accommodate developments not currently known, and future modifications of surface levels as follows: | 86295 |
| | i. [Not disclosed] | 86296 |
| | ii. [Not disclosed] | 86297 |
| | (c) An additional future excavation loading provision must be included for tunnels, caverns, cross passages, adits and pedestrian subways as follows: | 86298 |

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| i. | excavation up to 7 metres below natural surface to allow for future development, but limited to land that can be developed, and subject to maintaining a minimum of 7 metres residual ground cover above the tunnel/cavern/cross passage crown; and | 86299 |
| ii. | excavation of basements adjacent to the Tunnel and Stations, and to a depth below the invert line of the Tunnel and Station structure, with a horizontal deflection at the face of the excavation limited to 20 mm with horizontal separations as follows: | 86300 |
| (1) | TBM tunnels: 3 metres; | 86301 |
| (2) | mined tunnels: 4 metres; and | 86302 |
| (3) | caverns: 7 metres. | 86303 |
| (d) | While not applying unloading or loading above these cases, the design should facilitate individual footings being constructed to the following minimum clearances: | 86304 |
| i. | TBM tunnels: 2 metres; | 86305 |
| ii. | mined tunnels: 3 metres; and | 86306 |
| iii. | caverns: 7 metres. | 86307 |
| | The above offsets are defined on the assumption that the future developer can demonstrate acceptable measures if redundant rock bolts are encountered, both for the development and avoiding damage of the permanent tunnel/ adit/ cavern lining and waterproofing system. | 86308 |
| (e) | An additional future vertical loading provision must be included for cut and cover Stations and other entrance or access shafts as follows: | 86309 |
| i. | [Not disclosed]; | 86310 |
| ii. | all civil infrastructure structural elements must be designed to withstand vibrations induced by future works. | 86311 |
| 5.2.5 | Watertightness | 86312 |
| (a) | Detailed, regional and local scale, hydrogeological modelling and sensitivity analyses must be undertaken to determine potential impacts to groundwater flow regimes and levels and inform mitigation measures for groundwater control of all structures in the construction and operational phases. | 86313 |
| (b) | Models must consider and be calibrated to the results of the hydrogeological investigation completed during design and other hydrogeological information available to the Project. | 86314 |
| (c) | The detailed hydrogeological impact assessment must demonstrate that the potential impacts from construction and operation of the Tunnels, Stations and Portals complies with the EPRs. | 86315 |
| (d) | The permanent works must be Undrained, except for embankments and above ground retaining walls above the water table. | 86316 |
| (e) | Tunnels, caverns, adits and cross passages must achieve the following minimum degree of watertightness against the ingress of groundwater: | 86317 |
| i. | 0.1 litres per square metre of tunnel surface area per day for any 100 m length of tunnel, cavern, adit and cross passage; and | 86318 |
| ii. | 0.2 litres per square metre of tunnel surface area per day for any 10 m length of tunnel, cavern, adit and cross passage. | 86319 |
| (f) | As a minimum a waterproofing membrane must be installed with all insitu concrete or sprayed concrete linings in tunnels, over the full circumference of the opening. | 86320 |
| (g) | Where a cast in situ secondary tunnel lining is used, a sheet waterproofing system must be provided. Sheet waterproofing systems must incorporate compartmentalisation and a geotextile layer at regular spacing in longitudinal and circumferential directions. | 86321 |
| (h) | Cross passages must be provided with a water proofing membrane. | 86322 |
| (i) | Cut and cover underground structures must adopt a waterproofing system, in accordance with BS 8102, combining a minimum of two of the following types: | 86323 |

- i. barrier protection; 86324
- ii. structurally integral protection (crack width controlled); and 86325
- iii. internal drained seepage cavity protection (connected and channelled to the drainage system). 86326
- (j) Where Undrained structures are designed they must comply with 5.2.5(d). 86327
- (k) Permanent structures must achieve the minimum degree of watertightness against the ingress of groundwater listed in Table 5-1. 86328

Table 5-1: Watertightness Verification Requirements

| Structural Element | Interior in Service Condition | Water tightness verification requirements |
|---|--------------------------------------|--|
| <p>Any element to which finishes are to be adhered to an interior face, including but not limited to roof slabs for Stations, entrances and ancillary buildings.</p> <p>Suspended slabs over tracks, concourses, and any other similar sensitive zones, which are subject to wash down, train air conditioning condensate, leakage or rain water.</p> | Completely dry | <p>Free from all seepage, damp patches and visible leaks.</p> <p>Average leakage must be less than 0.01 l/m² per day for any 1000m² of surface area.</p> <p>Average leakage must be less than 0.02 l/m² per day for any 100m² of surface area.</p> |
| <p>Any elements which form the perimeter to an open habitable space upon which no finishes are to be adhered, including but not limited to in situ base slabs, in situ walls, submerged perimeter retaining walls and abutments.</p> | Substantially dry | <p>Leaks must be restricted to minor damp patches with no visible leaks and no trickling water.</p> <p>Average leakage must be less than 0.05 l/m² per day for any 1000m² of surface area.</p> <p>Average leakage must be less than 0.10 l/m² per day for any 100m² of surface area.</p> |
| <p>Any elements which form the perimeter to non-habitable space, including but not limited to diaphragm walls, secant or contiguous piled walls, bored soldier piles, shotcrete infill walls and sheet piles.</p> | Capillary penetration of moisture | <p>Leaks must be restricted to damp patches on the face of the concrete and at horizontal construction joints.</p> <p>Leaks must be restricted to minor weeping of vertical construction joints in walls.</p> <p>No trickling of water is acceptable.</p> <p>Average leakage must be less than 0.10 l/m² per day for any 1000m² of surface area.</p> <p>Average leakage must be less than 0.20 l/m² per day for any 100m² of surface area.</p> |
| <p>All Station water excluding structural elements in contaminated soil or groundwater</p> | As required by special investigation | <p>Water tightness must satisfy occupation, health and safety standards and the values stated above.</p> |

- (l) The watertightness requirement at joints between structures must be taken as the most onerous requirement of the individual structures. 86331
- (m) Access covers must be provided that achieve the specified watertightness requirement of structures in which they are installed. 86332

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| | (n) There must be no drips from structures onto areas that contain mechanical or electrical equipment and rail track. | 86333 |
| 5.2.6 | Groundwater Control | 86334 |
| | (a) The Works must not affect groundwater to the extent that it creates adverse impacts in terms of ground settlement or impacts on groundwater dependent ecosystems. | 86335 |
| | (b) Permanent dewatering and recharge systems must not be used. | 86336 |
| | (c) The Works must manage and mitigate contamination plume migration. | 150508 |
| 5.2.7 | Drainage and Flood Control | 86337 |
| | (a) The drainage system must collect and discharge all water that enters the Tunnels, Stations and Portals, including water from hydrological events, groundwater seepage, emergency fire hydrant water, tunnel wash-down water and incidental water. | 86338 |
| | (b) Discharge of the drainage system must be made in accordance with relevant environmental regulations and requirements of the statutory authorities. | 86339 |
| | (c) A pressure relief path, directed to the drainage system, must be provided between all Tunnel structural linings and the first stage concrete. | 86340 |
| | (d) All sumps and pumps must be located in readily maintainable and accessible locations. They must not be located beneath the trackwork. | 86341 |
| | (e) The Tunnels, Stations and Portals must be protected from flooding through the most effective, practicable means. Active flood control may be required to prevent flooding into the Portals and some Stations. Passive means must be used where appropriate. | 86342 |
| | (f) Protection from surface water flooding must be provided as follows: | |
| | i. A freeboard that is 300mm above the 1:200 year Average Recurrence Interval (ARI) rainfall event level (plus provision for climate change) must be provided at all openings into the Tunnels and Stations to protect against surface water or other non-river flooding event. | 86343 |
| | ii. At the Portals, transverse drainage must be placed across the entrance to the Tunnels to capture the 1:200 year ARI flood event (plus climate change considerations for rainfall) in the decline structures and discharge the storm water in a controlled fashion to the local drainage system in accordance with the requirements of the statutory authorities. | 86344 |
| | (g) Where the design reduces flood storage, compensatory flood storage must be provided within the local area of the flood zone. The compensatory flood storage must typically be provided upstream of the Works and be subject to approval by statutory authorities. | 86345 |
| | (h) To protect against a river flooding event, a freeboard that is 600mm above the 1:1000 year ARI flood event level (plus provision for climate change considerations for rainfall and sea level rise) must be provided at all openings into the Tunnels and Station. | 86346 |
| | (i) Any flood waters from the Yarra and Maribyrnong Rivers must be prevented from entering the Portals. The design must: | 86348 |
| | i. determine appropriate warning systems; | 86349 |
| | ii. determine likely warning times; | 86350 |
| | iii. determine active responses which may include a manual or automatic responses; and | 86351 |
| | iv. consider the ease of tunnel closure in the case of a large flood event. | 86352 |
| | (j) Subsurface drainage systems must be able to be readily maintained. | 86355 |
| 5.2.8 | Settlement | 86356 |
| | Settlement, as a result of the Works in the temporary and permanent condition, must not adversely impact the Tunnels, Stations and Portals, Rail Operations, existing infrastructure or buildings. Settlement includes but is not limited to differential settlement, vertical and horizontal ground displacement and consolidation settlement. | 86357 |

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| 5.3 | Tunnels | 86358 |
| 5.3.1 | General | 86359 |
| | All tunnels including primary lining, secondary lining, waterproofing, groundwater control and ground stabilisation must be designed in accordance with the "Specification for Tunnelling, Third Edition", British Tunnelling Society and The Institute of Civil Engineers. | 86360 |
| 5.3.2 | Tunnel Spaceproofing | 86361 |
| | (a) Underground structures must be of sufficient size to accommodate all infrastructure and space allowances to support Train Operations. | 86362 |
| | (b) Project Co must ensure the civil structures provide adequate space for mechanical / electrical elements and all rail systems forming part of the Rail Systems Alliance Works (refer to Section 6). | 86363 |
| 5.3.3 | Tunnel Walkway | 86364 |
| | (a) An elevated walkway must: | 86365 |
| | i. be designed in accordance with HB 197:1999; | 86366 |
| | ii. be provided throughout the entire length of each Tunnel; | 86367 |
| | iii. provide a minimum clear width of 850mm and minimum clear headroom of 2100 mm; | 86368 |
| | iv. [Not disclosed]; | 86369 |
| | v. provide clear and step free access to the cross passages; and | 86370 |
| | vi. provide clear and step less connection to/from the Station platforms and/or exit points from the tunnels at the portals as required. | 86371 |
| | (b) The vertical and horizontal stepping distance between the stationary HCMT rolling stock floor and the elevated walkway in an emergency egress situation must be minimised so far as is reasonably practicable. | 86372 |
| | (c) A handrail must be provided at the Tunnel side of the elevated walkway that: | 86373 |
| | i. is clear of Tunnel services; | 86374 |
| | ii. does not project into the emergency egress envelope; and | 86375 |
| | iii. is not less than 900mm or greater than 1100mm vertically above the walkway surface; | 86376 |
| | iv. does not provide access or foothold to any unsafe or secured areas; and | 86377 |
| | v. does not impact on access to fire services, including hydrants, communications and fire service equipment. | 137131 |
| | (d) A means for personnel to descend and ascend between the elevated walkway and the track level must be provided at the cross passages, Station ends and a minimum of one in between each cross passage or cross passage and a Station. The structure must not encroach into the structure gauge of the train or impact services. | 86378 |
| 5.3.4 | TBM Driven Tunnels | 86379 |
| | In segments with bar reinforcement, dimples must be formed on the intrados of the segments indicating where drilling may be carried out for the fixing of Tunnel furniture to maintain the design cover to the reinforcement. Anchor bolts and similar structural fixings which are reliant on adhesion must not be used to resist tensile loads where the failure of the anchorage may result in a risk to life or a reduction in operational performance. | 86380 |
| 5.3.5 | Mined Tunnels, Caverns, Adits and Cross Passages | 86381 |
| | (a) Rockbolts, where installed, must not be considered as part of permanent Works. | 86382 |
| | (b) Formed surfaces of secondary linings must be finished to Class 3 in accordance with AS 3610. | 86383 |
| | (c) Finishes to sprayed concrete secondary linings must be regular, even and free of: | 86384 |
| | i. sharp projections; and | 86385 |
| | ii. edges with a curvature radius of less than 200mm. | 86386 |
| | (d) In areas accessible by persons, permanent lining must not have protruding fibres. | 86387 |

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| | (e) The cross passages and shafts must provide space in accordance with section 6.5.1. | 86388 |
| | (f) The cross passages and shafts must not degrade the systems performance of new and existing infrastructure, including new and existing communication systems (especially wireless based). | 86389 |
| 5.3.6 | Noise and Vibration in Tunnel | 86390 |
| | Project Co must demonstrate through a wheel-rail interface study that the Works will be capable of achieving the requirements set out in 5.3.6(a) and (b). | 150433 |
| | (a) Noise and vibration in the Tunnel must be mitigated in accordance with the project statutory approvals, including: | 86391 |
| | i. the requirements of the Victorian Government Passenger Rail Infrastructure Noise Policy (April 2013) must be complied with; and | 86392 |
| | ii. EPRs developed as part of the Environmental Management Framework (EMF) approved by the Minister for Planning under the Incorporated Document must be complied with, including design criteria for addressing noise and vibration in Tunnels. | 86393 |
| | (b) Average Inter-station in-car noise levels (Leq) inside the train must not exceed: | 118128 |
| | i. 75dB(A) in the train interior, with all auxiliary systems operating normally. The noise levels must be measured at any point along the centre-line of the car at both 1200mm and 1600mm above the car floor and not less than 600mm from the end walls; and | 86396 |
| | ii. 72dB(A) in the driver's cab, with all auxiliary systems operating normally. The noise levels must be measured at any point 1000mm above the car floor and 200mm from any wall. | 86397 |
| | (c) All in-car noise level measurements must be made in accordance with BSEN ISO3381. Measurements will be undertaken as sequential periods of LAeq, 5 sec, with the specified levels not to be exceeded for more than 20% of the individual 5 second recordings. | 118129 |
| | (d) Project Co must actively collaborate with the HCMT team to manage in-car noise in accordance with the PS&TRs and the High Capacity Metro Trains Project Interface Control Document (Metro Infrastructure). | 118130 |
| 5.3.7 | Sound Absorption in Tunnel | 86394 |
| | If sound absorption is required to reduce reflected noise within the Tunnels: | 86398 |
| | (a) all sound absorbing materials, including dust membranes, must be inert, non-combustible, non-hygroscopic, rot and vermin proof. The material must not emit toxic nor hazardous fumes if ignited. The effect of any vapour barrier must be included in meeting the specified acoustic performance; and | 86399 |
| | (b) dust membranes must be fixed to the inside of the perforated metal facing. The dust membrane must prevent dust, airborne train brake material and other foreign matter from entering the absorptive panels. The acoustic performance of the absorptive panels must include the dust membrane. | 86400 |
| 5.4 | Cut and Cover (Stations, Shafts, Portals) | 86401 |
| 5.4.1 | Load combinations that include unbalanced lateral loadings by applying the most adverse loading combination of minimum and maximum loadings on opposite sides must be used. | 86402 |
| 5.4.2 | The resistance to uplift/buoyancy must be checked at all stages throughout the Design Life for the highest credible long term water levels, including accounting for the effects of climate change. | 86403 |
| 5.4.3 | Resistance to uplift/buoyancy must be checked for the structure overall and for each cross-section where applicable. Where the resistance to flotation is not coincident with the restraining force, the structure must be designed for the resulting internal forces. | 86404 |
| 5.4.4 | The resultant total restraining force must be at least 1.2 times greater than the calculated uplift/buoyancy force. The restraining force comprises: | 86405 |
| | (a) the weight of structural elements reduced by a factor calculated in accordance with | 86406 |

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| | AS 5100; | |
| | (b) backfill / soil over the structure below 2.0m below ground. Soil within 2.0m of the surface must be ignored to allow for future excavations; and | 86407 |
| | (c) Soil friction acting on the perimeter retention systems or foundations as appropriate, must be multiplied by the appropriate geotechnical strength reduction factor calculated in accordance with AS 2159 | 86408 |
| 5.4.5 | For extreme stage, in association with the highest credible water level, the combination of 0.9 times the structural weight resisting buoyancy plus the geotechnical strength reduction factor times the ultimate geotechnical strength resisting buoyancy must be greater than 1.05 times the uplift force due to buoyancy. | 86409 |
| 5.4.6 | Tension piles used to resist buoyancy must be cast insitu reinforced concrete piles. | 86410 |
| 5.4.7 | Cut and cover structures must be structurally continuous without movement joints. | 86411 |
| 5.4.8 | Interface points within Station walls to accommodate future connection to future infrastructure (refer to section 2.4) must be provided. The interface points must be covered by knockout panels that can be removed without compromising the structural integrity, serviceability and operational requirements of the affected Station. | 86412 |
| 5.5 | Earthwork and Embankments | 86413 |
| 5.5.1 | Earthworks must be protected from scour and erosion. | 86414 |
| 5.6 | Retaining Structures | 86415 |
| 5.6.1 | All soil supporting structures must be designed in accordance with the requirements of AS5100.3. | 86416 |
| 5.6.2 | All piles must be designed in accordance with the requirements of AS2159. | 86417 |
| 5.6.3 | Water pressure build-up as a result of blocked drainage must be considered in the design of all retaining structures and structural elements. | 86418 |
| 5.6.4 | All retaining structures, batters and embankments must be designed to support a minimum 25kPa superimposed dead load surcharge immediately behind their crest. | 86419 |
| 5.6.5 | Reinforced concrete walls must be maintenance free and must not contain any permanent pre-stressed elements that require restressing and servicing for the Design Life. | 86420 |
| 5.6.6 | Permanent structural elements, including ground anchors, soil nails and batters must not extend outside the Licenced Construction Area. | 86421 |
| 5.6.7 | The design of all retaining walls and earth batters must allow for future 1 m deep excavation in front of the retaining walls. | 86422 |
| 5.7 | Above Ground Structures (Excluding OSD and Bridges) | 86423 |
| 5.7.1 | Above ground structures that do not support earth loads or resist road, rail or tram loads or span over roads or railways or tram tracks, must be in accordance with AS3600 and AS4100. | 86424 |
| 5.7.2 | Above ground structures that support earth loads or resist road, rail or tram loads or span over roads or railways or tram tracks, must be in accordance with AS5100. | 86425 |
| 5.7.3 | Anchor bolts and similar structural fixings into concrete elements which are reliant on adhesion must not be used to resist tensile loads where the failure of the anchorage may result in a risk to life or a reduction in operational performance. | 86426 |
| 5.7.4 | Wind loads for above ground structures, excluding bridges, must be in accordance with AS 1170 with an average return interval of 1000 years for ultimate limit states and 25 years for serviceability limit states. | 86427 |
| 5.7.5 | Above ground structures and support elements that may be impacted by road traffic or railway traffic must comply with the provisions of collisions protection in section 11 of AS5100.1, and the relevant loading requirements in section 10 of AS5100.2. | 86428 |
| 5.8 | Particular Location Requirements | 86429 |
| 5.8.1 | Arden | 86430 |

- (a) Groundwater control measures and monitoring systems must be developed and implemented as part of the temporary works to mitigate against adverse impacts on groundwater in the influence zone of Arden Station. The design of these elements and the monitoring system must be based on a detailed hydrogeological impact assessment. 86431
- (b) At Arden Station, to provide levels consistent with surrounding properties designed in accordance with the “Melbourne Water Guidelines for Development in Flood Prone Areas”, entrances and all openings must be as a minimum 600mm above the Moonee Ponds Creek 1:100 year ARI river flooding event level (plus provision for climate change). 86347
- 5.8.2 CBD North 86432
 - (a) Temporary measures must be included to mitigate the migration of known pollution plume at the former Carlton and United Breweries (**CUB**) Site. 86433
 - (b) The design of temporary and permanent reinstatement Works at CBD North Station must maintain the existing overland flow capacity whilst protecting the Temporary Works and Permanent Works from inundation. 86434
 - (c) Floodwaters from the Yarra River must be prevented from entering the CBD North Station via the connection to Melbourne Underground Rail Loop (**MURL**) at platform level. 86353
- 5.8.3 CBD South 86435
 - (a) Temporary injection wells screened in the Moray Street Gravel and Holocene Sand aquifers must be included as part of the temporary works designs for the shaft, adit and cavern excavations for CBD South Station. 86436
 - (b) The temporary injection wells must be installed and commissioned prior to excavation below the groundwater table in order to mitigate against adverse impacts on groundwater. The design of these elements must be based on a detailed hydrogeological impact assessment. 86437
 - (c) The temporary injection well system must include redundancy for the failure of one or multiple injection wells. 86438
 - (d) The groundwater re-charge system described in (a), (b), and (c) above must be the primary mitigation measure against excessive groundwater drawdown and resulting consolidation settlement (as per EPR requirements GM1 to GM 6, GW1, GW3 and CH2). Appropriate additional controls, such as grouting, must be implemented as necessary to ensure compliance with EPR requirements, limit excessive groundwater drawdown and ensure safe progress of the Works. 86439
 - (e) A monitoring programme must be developed that: 86440
 - i. defines staged alert levels and the specified remedial actions that should be implemented if an alert level is reached or exceeded; 86441
 - ii. monitors the effective working of the temporary injection wells and any pre-grouting; and 86442
 - iii. monitors the effectiveness of the remedial measures in limiting any changes in the ground water systems to within the acceptable limits. 86443
 - (f) The connection to FSS must ensure that there is no degradation of service delivery performance of existing infrastructure, including during construction. 86444
 - (g) The design of temporary and permanent reinstatement Works at CBD South Station must maintain the existing overland flow capacity whilst protecting the Temporary Works and Permanent Works from inundation. 86445
- 5.8.4 Domain 86446
 - (a) The design of temporary and permanent reinstatement Works at Domain Station must maintain the existing overland flow capacity whilst protecting the Temporary Works and Permanent Works from inundation. 86447
 - (b) The design of Domain Station must accommodate and protect the re-routed South Yarra Main Sewer. 86448
 - (c) Project Co must liaise with Melbourne Water to agree mitigation measures to be adopted to reduce the risk of damaging the re-routed South Yarra Main Sewer. 86449

- (d) Project Co must liaise with the Early Works Managing Contractor to co-ordinate the design of Domain Station with the re-routed South Yarra Main Sewer. 86450
 - (e) The design of the Domain Station retaining wall termination depth above the extrados of the re-routed South Yarra Main Sewer must be agreed with Melbourne Water. 86451
 - (f) The Domain Station must be structurally independent of the re-routed South Yarra Main Sewer. 86452
 - (g) Groundwater control measures must be developed and implemented as part of the temporary works to mitigate against adverse impacts on groundwater in the influence zone of Domain Station. The design of these elements and the monitoring system must be based on a detailed hydrogeological impact assessment. 86453
- 5.8.5 Western Portal 86454
- (a) An additional future vertical loading provision must be included for Western Portal cut and cover structures as follows: 86455
 - i. 50 kPa (unfactored superimposed dead load) in uniform and patterned (including symmetric and unsymmetrical) arrangements applied at the surface on the northern side of Childers Street where future development could occur; and 86456
 - ii. Load combinations that include a general allowance for a build-up of surface level with a minimum of 20 kPa (unfactored load) in uniform and patterned (including symmetric and unsymmetrical) arrangements applied at ground level. 86457
 - (b) The design must restore equivalent or better access to South Kensington Station facilities. 86458
 - (c) Groundwater control measures must be developed and implemented as part of the temporary works to mitigate against adverse impacts on groundwater in the influence zone of the Western Portal. The design of these elements and the monitoring system must be based on a detailed hydrogeological impact assessment. 86459

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| 6 | PPP Support for Rail Systems Alliance Works | 86460 |
| 6.1 | [Not disclosed] | 86461 |
| 6.2 | Cable Containment | 86464 |
| 6.2.1 | Cable containment must be as a minimum in accordance with VRIOGS 012.2.1, VRIOGS 013.3 and TS-SP-013. | 86465 |
| 6.2.2 | Cable containment must be provided throughout the Tunnels and Stations for all RSA systems and equipment. | 86466 |
| 6.2.3 | Cable containment must be provided from the Platform Screen Door System (PSDS) to the track to facilitate bonding. | 86467 |
| 6.2.4 | Track crossing cable containment must provide a covered under track cable path at the following locations: | 86468 |
| | (a) both Station ends; and | 86469 |
| | (b) cross passages and at every 300m along the Tunnels, whichever is the lesser. | 86470 |
| 6.3 | Supports and Fixing | 86471 |
| 6.3.1 | All the supports and fixings must be provided throughout the Tunnel, Station and Portals for all RSA systems and equipment. | 86472 |
| 6.4 | Platform Screen Doors | 86473 |
| 6.4.1 | Project Co must provide the civil and architectural requirements for the PSDS and coordinate with RSA. Refer to the IDS for specific obligations. | 86474 |
| 6.4.2 | Project Co must install the PSDS as designed by the RSA. | 86475 |
| 6.4.3 | [Not disclosed]. | 86476 |
| 6.4.4 | [Not disclosed]. | 86477 |
| 6.4.5 | All the supports and fixings must be provided by Project Co for the PSD installation. | 86478 |
| 6.4.6 | Markings must be provided on the platforms in front of PSDs to delineate waiting/queuing locations to reduce alighting / loading conflicts, and improve dwell times must be provided in consultation with the Train Franchisee. | 86479 |
| 6.5 | Equipment Rooms | 86480 |
| 6.5.1 | Space must be provided in Stations and cross passages to house equipment required by RSA. | 86481 |
| 6.5.2 | Equipment rooms must support top or bottom cable entry into equipment, as required by RSA. | 86482 |
| 6.5.3 | Electrical power must be provided for RSA equipment to be terminated at an appropriately sized distribution board housed in equipment rooms. | 86483 |
| 6.5.4 | [Not disclosed]. | 86484 |
| 6.5.5 | Appropriate air conditioning, ventilation provisions, fire protection and detection systems, flooring, ceiling, fixed lighting, emergency lighting and emergency signage must be provided for RSA equipment rooms. | 86485 |
| 6.5.6 | Earthing and bonding connections must be provided for RSA equipment. Earthing and bonding connections to be terminated at common bonding terminal plates housed in equipment rooms. | 86486 |

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| 6.6 | ICT/OCS, Security and Communications | 86487 |
| 6.6.1 | The specifications and preliminary designs for the Tunnels, Stations and Portals information and communications technology (ICT) and Operational Control System (OCS) assets are provided by RSA. The ICT/OCS systems include the CCTV, passenger information display screens (PIDS), public address (PA) system, audio-frequency induction loop (AFIL) and customer help point (CHP) assets. | 86488 |
| 6.6.2 | Project Co must develop the preliminary design for Tunnels, Stations and Portals ICT/OCS in collaboration with RSA to provide the design. | 86489 |
| 6.6.3 | The design must be in accordance with RSA specifications and preliminary designs. | 86490 |
| 6.6.4 | The design must include: | 86491 |
| | (a) the mountings, mounting locations and all cable routes, conduits, pits, foundations, clearances, accesses; | 86492 |
| | (b) integration with the architectural arrangements; and | 86493 |
| | (c) the safe access and maintenance of the systems. | 86494 |
| 6.6.5 | [Not disclosed]. | 86495 |
| 6.6.6 | Communication systems must ensure compatibility with current licensing requirements, system design and interfaces. | 86496 |
| 6.6.7 | All new fibre infrastructure supporting telecommunications must be constructed in accordance with relevant VicTrack standards. | 86497 |
| 6.6.8 | All logging (voice and data) and management systems provided must integrate with existing systems. | 86498 |
| 6.6.9 | OCS cabling must be compliant with VicTrack and Australian cabling standards and the Generic ICT Communications Pathways Specification. | 86499 |
| 6.6.10 | Network Time Protocol (NTP) standard and Coordinated Universal Time (UTC) must be utilised for all equipment where practicable. | 86500 |
| 6.6.11 | [Not disclosed]. | 86501 |
| 6.6.12 | [Not disclosed]. | 86502 |
| 6.6.13 | The design of Station rooms, as specified by the RSA, must provide the Train Franchisee with adequate space for efficient operations, and must consider: | 86503 |
| | (a) control room layouts; | 86504 |
| | (b) locations of workstations; | 86505 |
| | (c) number of workstations; | 86506 |
| | (d) number of roles required to deliver the services; | 86507 |
| | (e) systems required by each role; and | 86508 |
| | (f) desk design and layouts. | 86509 |
| 6.6.14 | Project Co must collaborate with the RSA to ensure the design of the Station rooms and systems are compatible with RSA supplied systems and equipment. | 86510 |
| 6.6.15 | Project Co must address human factors engineering principles in the design of the rooms. | 86511 |
| 6.6.16 | Project Co must collaborate with RSA to enable integration of functions, systems and equipment used within the control centre(s), SCRs, ICRs and FCRs; and support the operator(s) to perform the tasks identified by RSA. | 86512 |
| 6.6.17 | The following telephone and data services are to be provided at the Stations: | 86513 |
| | (a) Station telephone and extension lines for voice and fax communications; | 86514 |
| | (b) [Not disclosed]; and | 86515 |
| | (c) Train Franchisee WAN. | 86516 |
| 6.6.18 | Space and data/power provision must be made for the future installation of PTV Network Status Boards. | 86517 |
| 6.6.19 | [Not disclosed]. | 86518 |
| 6.6.20 | The mobile phone system designed by the RSA must be installed within the Tunnels, Stations and Portals. | 86519 |

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| 6.6.21 | [Not disclosed] | 86520 |
| 6.7 | Platforms, Concourse and Tunnels | 86521 |
| 6.7.1 | Appropriate power supplies must be provided for RSA equipment installed in the Tunnel and Stations. | 86522 |
| 6.7.2 | Appropriate cable containment must be provided for RSA equipment and cabling to be installed in the Tunnel and Stations. | 86523 |

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| 7 | Stations | 86524 |
| 7.1 | Delivering Great Design | 86525 |
| 7.1.1 | Design Excellence | 86526 |
| | (a) The Station must provide a cohesive design for the public realm that: | 86527 |
| | i. facilitates a journey experience that is engaging and memorable; | 86528 |
| | ii. balances line wide consistency with site responsive design; | 86529 |
| | iii. provides a balance of function integrated landscape, architectural, urban design and precinct response; | 86530 |
| | iv. has an integrated palette for forms, treatments and responses across the project; and | 86531 |
| | v. includes an integrated and coordinated cultural and community identity response. | 86532 |
| | (b) Stations must embed design solutions that are adaptable to change through the lifecycle to ensure that introduced infrastructure and systems merge with the existing design in a cohesive manner. | 86533 |
| | (c) The design must: | 86534 |
| | i. comply with all requirements resulting from approvals including the EPRs; and | 86535 |
| | ii. provide a design balance of function, performance and personality; and | 86536 |
| | (d) Project Co must: | 86537 |
| | i. investigate and implement potential alternatives to potable municipal supplied water for the proposed stations and portals including options to use rainwater, stormwater, wastewater, groundwater and greywater; | 86538 |
| | ii. implement potential decentralised energy networks based on a cost-benefit analysis and investigate as a minimum, cogeneration and trigeneration alternative energy sources at a precinct level; | 86539 |
| | iii. review and investigate the opportunities to implement integrated waste management at precincts; and | 86540 |
| | iv. optimise the design such that environmental and social outcomes are achieved across stations the public realm and OSD. | 86541 |
| 7.1.2 | Project Identity and Legibility | 86542 |
| | The design strategy must: | 86543 |
| | (a) provide a distinctive system wide identity for the whole Project that strengthens the Project's identity in order to enhance the customer experience; | 86544 |
| | (b) incorporate signage that provides a consistent brand across the whole Project and wider rail network; | 86545 |
| | (c) demonstrate a clear distinction between the station and surrounding precincts; | 86546 |
| | (d) provide intuitive access and way finding around the Station precincts, at station entrances and to and from surrounding destinations; | 86547 |
| | (e) provide and strengthen valued view and sightlines to provide visual orientation to and from Station entrances and to landmarks or features; | 86548 |
| | (f) provide integrated way finding signage that assists people with intermodal transport connectivity. The signage must be clear without being visually dominant; | 86549 |
| | (g) be designed to function at all times with adequate lighting at night to promote the safe use of the area and contribute to a 24 hour city; and | 86550 |
| | (h) adopt lighting design in the urban environment with the local authorities that contributes positively to the character of the area, provides a safe environment, including for the visually impaired, incorporates feature lighting in the public realm, is sensitive to surrounding areas and minimises light spill into adjacent properties. | 86551 |

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| 7.2 | Architectural Principles | 86552 |
| 7.2.1 | The architecture of Stations must achieve high quality and integrated design outcomes that contribute to and enhance Melbourne’s reputation for design excellence. | 86553 |
| 7.2.2 | Stations must: | 86554 |
| | (a) contribute positively to the built and landscape environments through a well-considered design approach, design resolution and construction detail; | 86555 |
| | (b) provide a user friendly environment and be appropriately sized, both in area and volume to facilitate pleasant, safe and efficient flows of passengers and the general public through both Paid and Unpaid public areas; and | 86556 |
| | (c) provide design arrangements that address architectural themes at all times of the day (i.e. day and night). | 86557 |
| 7.2.3 | Designs must address the placement of displays, queuing space, customer circulation routes and viewing distances in order to maximise passive visibility throughout the Station and Station precincts. | 86558 |
| 7.2.4 | Station environments must provide appropriate and sufficiently sized access and circulation spaces for operational, maintenance and emergency staff to perform their tasks in a safe and effective manner. | 86559 |
| 7.2.5 | Stations must provide efficient and convenient organisational arrangements that address passenger and user dwell and circulation patterns. | 86560 |
| 7.2.6 | Stations must be designed with a lineal spatial arrangement, such that customers approaching the Stations can navigate their way through and around in a logical manner. The sequence is defined as follows: | 86561 |
| | (a) identifying the Station; | 86562 |
| | (b) entering the Station; | 86563 |
| | (c) gather information; | 86564 |
| | (d) purchase a ticket or add value to a travel card; | 86565 |
| | (e) validate a fare; | 86566 |
| | (f) proceed to waiting area(s); and | 86567 |
| | (g) board a service. | 86568 |
| 7.2.7 | Utility manhole covers must: | 86569 |
| | (a) not be located where they can impact the operation of the Stations; | 86570 |
| | (b) be recessed and have the same infill material as the surrounding pavement; | 86571 |
| | (c) use black tinted concrete infill material where they are located in asphalt; and | 86572 |
| | (d) have inspection openings and manholes of the same or a matching material to the surrounding cladding. | 86573 |
| 7.3 | Universal Design | 86574 |
| 7.3.1 | Stations must: | 86575 |
| | (a) provide Disability Discrimination Act (DDA) compliant general arrangements that: | 86576 |
| | i. cater for people with mobility, physical, sensory and cognitive restrictions; | 86577 |
| | ii. provide information on services and facilities for users from linguistically diverse backgrounds; | 86578 |
| | iii. provide continuous spatial navigation with visual and auditory augmentation and tactile aids; | 86579 |
| | iv. provide step-free access to all public areas and train boarding; | 86580 |
| | v. provide ticketing assets at accessible locations; and | 86581 |
| | vi. provide customers with accessibility and mobility needs to be able to board and alight the trains without operational staff support; | 86582 |
| | (b) include equitable routes for non-ambulant and others users requiring lifts from the platform to the street with redundancy provision that provides equitable access; | 86583 |

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| (c) | provide tactile ground surface indicators (TGSIs) to all door thresholds for the PSDS in accordance with AS1428.4 at the station platforms; | 86584 |
| (d) | provide a minimum of two unisex accessible toilets (mirrored to suit both left and right handed operation) with child/baby facilities and compliant with AS1428.1:2009 located in the Paid areas and in close proximity to toilet facilities for users with ambulant disabilities; | 86585 |
| (e) | be compliant with the Disability Standards for Accessible Public Transport (DSAPT); and | 86586 |
| (f) | encourage customers with reduced mobility to board the train at the doors nearest to the driver's cabin. A visual indication at ground surface and on the PSD must advise customers of this boarding location. | 86587 |
| 7.4 | Passenger Circulation and Queuing | 86588 |
| 7.4.1 | General | 86589 |
| (a) | Stations must be designed to: | 86590 |
| | i. meet the passenger demand defined in Appendix B1; and | 86591 |
| | ii. [Not disclosed] | 86592 |
| (b) | Level of Service (LoS) designations of LoS A through to LoS F must be used to assess pedestrian density and circulation as prescribed in Appendix B2 for the following categories: | 86593 |
| | i. queueing; | 86594 |
| | ii. circulation – uni-directional; | 86595 |
| | iii. circulation – bi-directional; | 86596 |
| | iv. stairways – uni-directional up; | 86597 |
| | v. stairways – bi-directional up; | 86598 |
| | vi. stairways – uni-directional down; and | 86599 |
| | vii. stairways – bi-directional down. | 86600 |
| (c) | Static Calculations must be undertaken for all stations for the AM and PM peak hour periods using the passenger demand characteristics in Appendix B1 to determine preliminary requirements for circulation and queuing areas, ticket gates and vertical transport. | 86601 |
| (d) | Dynamic Modelling, using pedestrian simulation software acceptable to the State, must be undertaken for all stations for the AM and PM peak hour periods using the passenger demand characteristics defined in Appendix B1. The average LoS must be calculated for all publicly-accessible station areas (excluding toilets) for the peak 15-minute interval using dynamic modelling. | 86602 |
| (e) | The peak 15-minute flow in the AM and PM peaks must be calculated using the arrival and departure time profiles specified in Appendix B1. | 86603 |
| (f) | For the purposes of calculating Levels of Service, the following cases must be considered: | 86604 |
| | i. Normal Operations – where trains arrive at scheduled headways of 150 seconds; | 86605 |
| | ii. [Not disclosed] | 86606 |
| | iii. [Not disclosed]. | 86607 |
| | iv. [Not disclosed]. | 86608 |
| | v. [Not disclosed]. | 86609 |
| (g) | [Not disclosed] | 86610 |
| Table 7-1: [Not disclosed] | | |
| (h) | [Not disclosed] | 86611 |
| (i) | Dynamic modelling must take into account passengers waiting on platforms who may choose not to board the next arriving train if it does not travel directly to their desired destination, but instead wait for a later train that does travel directly to their | 86615 |

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| | destination. | |
| | (j) Ticket gate capacity for static calculations and dynamic modelling must be based on a throughput of 28 passengers per minute. | 86616 |
| | (k) Stations and the public realm must ensure that circulation areas and vertical transport elements have run-offs and queuing zones that: | 86617 |
| | i. accommodate the maximum number of expected customers using the elements; and | 86618 |
| | ii. do not impact on customer circulation paths. | 86619 |
| | (l) Connections between Station entry and exit points, transfer points and boarding points must be designed to be efficient, including minimising pedestrian travel times, number of vertical circulation elements, and directional changes. | 86620 |
| | (m) Stations must minimise the use of turns greater than 180 degrees for travel paths. | 86621 |
| | (n) [Not disclosed] | 86622 |
| | (o) Passenger movement must consider existing commercial facilities and spatial constraints within MCS and FSS. | 86623 |
| | (p) The Station design must assist with the distribution of passengers along platforms to encourage even usage of train doors and minimisation of alighting and boarding times. | 86624 |
| | (q) Stations must provide passenger circulation space surrounding or adjacent to the vertical transportation connecting the Station entrance to the Station concourse.[Not disclosed]. | 86625 |
| | (r) [Not disclosed]. | 150434 |
| | (s) [Not disclosed] | 150440 |
| | (t) [Not disclosed] | 150441 |
| 7.4.2 | Special Event Mode | 86626 |
| | (a) The design must allow for the delivery of 24-hour passenger services to support special events in the city on five (5) days of the year. | 86627 |
| | (b) [Not disclosed] | 86628 |
| | (c) [Not disclosed] | 86632 |
| | (d) [Not disclosed] | 86633 |
| | | 86634 |
| 7.5 | Vertical Transport | |
| 7.5.1 | General | 86635 |
| | (a) All lifts, escalators and moving walkways (if provided) must be procured from a single manufacturing entity with a minimum of 10 years manufacturing experience of heavy duty lifts, escalators and moving walkways in a metro, railway or similar environments. | 86636 |
| | (b) [Not disclosed]. | 86637 |
| | (c) [Not disclosed]. | 86638 |
| | (d) All station formed lift, escalator and moving walk pits are to be provided with drainage in accordance with Section 5.2.7. | 86639 |
| | (e) Vertical transport to platforms must be designed to optimise journey time and, where possible, encourage passengers to spread out along the platform subject to first ensuring that the requirements for equitable access are met. | 86640 |
| 7.5.2 | Station specific vertical transport requirements | 86641 |
| | (a) Domain Station | 86642 |
| | i. Vertical transport provision at Domain Station western entrance (Albert Road) from the concourse / underpass level to ground level must be provided by a minimum of two escalators and supplemented by a staircase/s that provides compliance with the nominated LoS for the passenger demand of the Design Case and the nominated headway for normal mode operation with all escalators available. | 86643 |
| | ii. A minimum of two escalators must be provided for Domain Station at the | 86644 |

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| | tram island platform entrance from concourse/underpass level to ground level and provision for an additional escalator to meet passenger demand of the Design Case. | |
| | (b) CBD South Station | 86645 |
| | Vertical transport provision for customers at the CBD South Station northern City Square entrance from Level B1 to Ground must be provided with a minimum of two escalators and supplemented by a staircase that provides compliance with the nominated LoS for the passenger demand of the Design Case and the nominated headway for normal mode operation with one escalator unavailable. | 86646 |
| | (c) Additional Provisions | 86647 |
| | [Not disclosed] | 86648 |
| 7.5.3 | Lifts | 86649 |
| | (a) Stations must include robust, and reliable lift systems to provide vertical transport services for the customers, staff and equipment, with particular emphasis on: | 86650 |
| | i. persons with restricted mobility and special needs; | 86651 |
| | ii. support for fire authority intervention; and | 86652 |
| | iii. maneuvering plant, equipment and material to support cleaning, maintenance and/or replacement of small plant and component parts. | 86653 |
| | (b) When determining the number and size of lifts Project Co must consider registered users, unregistered users, elderly, parents, and tourist projections. | 86654 |
| | (c) Stations must include two types of lift being: | 86655 |
| | i. Type 1 – public lift; or | 86656 |
| | ii. Type 2 – Back of House (BOH) / Goods. | 86657 |
| | (d) Through lift car operation must be provided between principle entering and departing stop levels unless the physical constraints of a through car arrangement significantly compromises operational arrangements or imposes significantly increased area requirements. | 86658 |
| | (e) All lifts must: | 86659 |
| | i. be gearless machine roomless lifts rated for a minimum 240 starts per hour; | 86660 |
| | ii. have a minimum capacity of 26 people and a minimum car load capacity of 1950kg; | 86661 |
| | iii. provide a minimum clear internal lift car dimension of 2400mm (L) x 1600mm (W) (taken from any handrail, skit rail, fixture or fitting) and have a minimum lift car ceiling height of 3000mm with the exception of the platform to adit-level lifts at CBD stations for which the minimum lift car ceiling height is 2400mm (subject to demonstrating that all plant and replacements can be undertaken); and | 86662 |
| | iv. have a minimum clear lift car and landing door opening of 1200mm(W) X 2400mm(H). | 86663 |
| | v. include appropriate treatments for corrosion protection systems, waterproof fittings and fixtures and slip resistant floor finishes. All primary construction must be IP65 rated. Secondary construction (for example, fixtures, fittings and lighting) must be IP rated in discussion with the Train Franchisee; | 86664 |
| | vi. have lift pits that are waterproof and have the ability to drain any water at the base. The drainage system must include an automatic pump system to extract out any ingress of water where gravity drainage cannot be achieved. Oil separators must be included within the pits; | |
| | vii. provide climate control systems for all glass lift shafts exposed to solar heat loads to ensure the environment is within acceptable design and code conditions; | 86665 |
| | viii. provide ICT/OCS provisions that comply with the requirements of MTM Standard MCST 031301-01 L1-CHE-STD-008 L; | 86666 |
| | ix. not contain proprietary parts so far as is practical; | 86667 |
| | x. be transparent or provide for an element of transparency (as a minimum | 86668 |

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| | 75% both doors) for safety and security reasons; | |
| | xi. be constructed of vandal proof material, and be provided with an anti-graffiti finish; | 86669 |
| | xii. be compliant with DSAPT; | 86670 |
| | xiii. where transparent lifts are provided located central to platform privacy manifestations must be provided around the lower 25% of the lift car to provide privacy from persons at a lower level; | 86671 |
| | xiv. where placed centrally on platforms, have doors on two sides that open central to the platform; | 86672 |
| | xv. provide lift car doors that open away from the track; | 86679 |
| | xvi. [Not disclosed] | 86673 |
| | xvii. [Not disclosed] | 86674 |
| | xviii. not consider the use of inclined lifts at CBD Stations; | 86675 |
| | xix. not be hydraulic lifts; and | 86676 |
| | xx. not allow maintenance lifts to be used whilst determining redundancy for passenger lifts. | 86677 |
| | (f) Service cabling must be provided in the lift shaft and must be run in enclosed, segregated, secure ducts or cable trays with 30% free space by volume. | 86678 |
| | (g) Non lift service cabling must not be installed in lift shafts. | 118560 |
| 7.5.4 | [Not disclosed] | 86680 |
| 7.5.5 | Escalators | 86686 |
| | (a) For the purpose of calculating escalator provision for normal operation with all escalators available an escalator carrying capacity of 100 persons per minute for a 1000 mm wide step at 0.5 m/s must be used (noting 7.5.5(e)iv). | 86687 |
| | (b) For the purpose of calculating escalator provision for normal operation with one escalator unavailable, an escalator carrying capacity of 121 persons per minute for a 1000 mm wide step at 0.65m/s must be used. | 86688 |
| | (c) Escalators must have an IP rating of all parts not less than IP 65. | 86689 |
| | (d) Stations must: | 86690 |
| | i. include escalators with capacity to allow customers to move between the different levels of the Station in a safe and efficient manner; | 86691 |
| | ii. include escalators capable of carrying a minimum of 100 passengers per minute; | 86692 |
| | iii. escalators must be manufactured of low flame, low smoke and toxicity and halogen free materials; and | 86693 |
| | iv. include fire suppression to escalator pits. | 86694 |
| | (e) Stations must include escalators with the following minimum operational and physical attributes: | 86695 |
| | i. heavy duty, transport system escalators capable of operating 24 hours a day 7 days a week; | 86696 |
| | ii. capable of achieving a minimum design life of 20 years; | 86697 |
| | iii. capable of achieving a 16% running time at 100% loading, 34% of running time at 50% loading, 50% of running time at 25% loading; | 86698 |
| | iv. minimum stair tread width of 1000 mm with the exception of the CBD South Station paid connection to FSS at the FSS eastern concourse; | 86699 |
| | v. four flat steps at the upper and lower landing levels; | 86700 |
| | vi. step chains external to the step rollers; | 86701 |
| | vii. stainless steel or glass balustrades; | 86702 |
| | viii. skirting material based on the following minimums: | 86703 |
| | (1) 316 grade stainless steel for externally rated escalator units; and | 86704 |

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| | (2) | 304 grade stainless steel for internally rated escalator units; | 86705 |
| | ix. | step demarcation consisting of the following minimum: | 86706 |
| | (1) | bright yellow lines on both the sides and the front edges of each step; and | 86707 |
| | (2) | lighting within the step band at each landing. | 86708 |
| | | Plastic demarcation step treads are not to be installed as part of the escalator step construction. | 118561 |
| 7.5.6 | | Moving Walks (if provided) | 86709 |
| | (a) | Where internal station pedestrian travel times benefit, Stations may include moving walks. Where provided, moving walks must: | 86710 |
| | i. | have an inclination less than 1 in 14; | 86711 |
| | ii. | be externally rated where the moving walk unit is subject to rainfall or wind driven rain; and | 86712 |
| | iii. | include fire suppression to moving walk pits. | 86713 |
| | (b) | Moving walks must include the following operational and physical attributes: | 86714 |
| | i. | be heavy duty, transport system moving walks capable of operating 24 hours a day 7 days a week; | 86715 |
| | ii. | be capable of achieving a 16% running time at 100% loading, 34% of running time at 50% loading, 50% of running time at 25% loading; | 86716 |
| | iii. | have a minimum pallet width of 1200 mm; | 86717 |
| | iv. | have pallet chains external to the pallet rollers; | 86718 |
| | v. | have stainless steel or glass balustrades; | 86719 |
| | vi. | be variable pallet speed moving walks with a minimum rated pallet speed of 0.75m/sec; | 86720 |
| | vii. | have variable voltage/ variable frequency regenerative drive systems; | 86721 |
| | viii. | automatic restart in compliance with clause 5.12.2.4.2 a) of EN115; | 86722 |
| | ix. | be high specification frequency drive units capable of undertaking a controlled stop and similarly a controlled acceleration under full load in emergency evacuation times; | 86723 |
| | x. | [Not disclosed]; and | 86724 |
| | xi. | include real time remote monitoring and control via the BMS. | 86725 |
| 7.5.7 | | Stairs – Publicly Accessible | 86726 |
| | (a) | Stairs must be weather protected, taking into account the effects of wind driven rain. | 86727 |
| | (b) | Stations must include stairs arrangements that enable sightlines over the full extent of the stair to assist with passive surveillance. | 86728 |
| | (c) | Stair tread materials must be in accordance with 'HB 198:2014 Guide to the Specification and Testing of Slip Resistance of Pedestrian Surfaces' as a minimum. | 86729 |
| | (d) | Stairs located above occupied areas must be provided with solid side protectors to prevent objects falling to the level/s below. | 86730 |
| | (e) | Contrast stair nosings must be set flush to the top face of the stair tread. | 86731 |
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| 7.6 | | Station specific requirements | |
| 7.6.1 | | CBD North Station | 86733 |
| | (a) | CBD North Station must: | 86734 |
| | i. | include a Paid access connection between CBD North and MCS with capacity to support the passenger demand of 2031 and the Design Case; | 86735 |
| | ii. | include direct access between the Paid area of CBD North Station and the surface independent of the shared CBD North / MCS concourse area; | 86736 |
| | iii. | design the Northern station entrance not precluding the New Academic Street (NAS) development of RMIT, on the Swanston Street and Franklin | 86737 |

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| | Street frontages; | |
| iv. | not preclude a future entry directly into RMIT either through Building 14 or to Bowen Street; | 86738 |
| v. | consider the location of RMIT entry points into the NAS and Building 14 onto Franklin Street when determining the location of lifts, escalators and other above ground Station infrastructure; | 86739 |
| vi. | enable customers to move between CBD North and MCS without having to touch off and on through barriers as follows: | 86740 |
| | (1) passengers must be able to transfer between CBD North Station platforms and MCS without transiting a gate line; and | 86741 |
| | (2) a passenger barrier must be provided to use, if required, to prevent the transfer between CBD North Station and MCS and for the purposes of crowd management at the concourse and platform levels; and | 86742 |
| vii. | provide a connection between CBD North and MCS tunnels that can be closed to prevent water ingress in the case of flooding in MURL. | 86743 |
| (b) | The Paid access connection between CBD North and MCS must not degrade concourse circulation relative to the conditions prior to Day 1 without Melbourne Metro, including: | 86744 |
| i. | emergency egress capacity, as assessed accordance with MTM - L1-SQE-PRO-001 Management of Change Procedure and MTM – Structures and facilities standard – Metropolitan Railway Station Section 13 – Station Refurbishment; | 150444 |
| ii. | accessibility of existing vertical transport; | 86748 |
| iii. | existing revenue sources i.e. vending machines and advertising (unless otherwise agreed); and | 86749 |
| iv. | maintainability of existing services and infrastructure. | 86750 |
| | Assessment of the items above must be made prior to commencement of Works. | 86751 |
| (c) | [Not disclosed] | 86752 |
| 7.6.2 | CBD South Station | 86753 |
| (a) | CBD South Station must: | 86754 |
| i. | reinstate and make good: | 86755 |
| | (1) the areas affected by construction at Federation Square in a manner consistent with the requirements of section 4.1.5(g), including the Western Shard to an architectural form and finish and to meet servicing or other requirements approved by Federation Square Management; | 86756 |
| | (2) components of the Nicholas Building affected by demolition of the KFC Building at 27 Swanston Street, including at Level 3 and Basement level to form and finish approved by the owners of the Nicholas Building; | 86757 |
| | (3) the balcony to the Westin Hotel in accordance with Schedule 33; and | 86758 |
| ii. | provide an access connection between the Paid area of CBD South and the Paid area of FSS with capacity to support the passenger demand of 2031 and the Design Case, and, subject to land availability, provide lift access at the existing Degraeves Street entrance to Campbell Arcade; | 86760 |
| iii. | enable customers to move between CBD South and FSS without having to touch off and on through barriers: | 86761 |
| | (1) passengers must be able to transfer between stations without transiting a gateline; and | 86762 |
| | (2) a passenger barrier must be incorporated for use to prevent the transfer between stations for the purposes of crowd management; and | 86763 |

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| iv. | provide a direct connection to the Paid area of FSS that must not degrade, relative to the conditions prior to Day 1 without Melbourne Metro, including: | 86764 |
| (1) | [Not disclosed] | 150446 |
| (2) | existing revenue sources i.e. vending machines and advertising (unless otherwise agreed); and | 86769 |
| (3) | maintainability of existing services and infrastructure. | 86770 |
| | Assessment of the items above must be made prior to commencement of Works. | 86772 |
| | Project Co must demonstrate that reasonable endeavours have been used to minimise the potential impact of introducing new localised areas of congestion or exacerbating existing conditions, including within runoff zone on the FSS platforms as described by MTM – Structures and facilities standard – Metropolitan Railway Station for vertical transport. | |
| | In additional to the assessment defined above, Project Co must, by way of pedestrian modelling, demonstrate the impact of passenger circulation to and from the interchange with CBD South on FSS platform circulation for review by the State and Train Franchisee. | |
| (b) | CBD South Station northern entrance must provide a reinstated City Square in accordance with a design developed in consultation with the City of Melbourne, including: | 86773 |
| i. | a primary shared entrance to CBD South Station and any subterranean public/ retail space to be provided by Project Co at the corner of Collins and Swanston Streets; | 86774 |
| ii. | a structure that allows for a range of surface types and landscape elements to be installed above; | 86775 |
| iii. | provision for a surface level cafe; | 86776 |
| iv. | maintaining access to the retail tenancies at the Westin Hotel promenade level; | 86777 |
| v. | vents, stairs, tree locations and raised surfaces located at the perimeter of City Square; and | 86778 |
| vi. | a set-down in the City Square slab, in close proximity to the location of the existing water feature, to allow for the provision of a water feature. | 86779 |
| (c) | [Not disclosed] | 86780 |
| (d) | The existing FSS Swanston Street eastern concourse toilets must be relocated to a position in accordance with PTV/MTM requirements to accommodate a paid side passenger connection between CBD South Station. | 86781 |
| (e) | Use of the Cocker Alley (South) laneway under the western portion of 222-224 Flinders Street building in the final design should consider the building history. Any changes to the building are to be with agreement from the building owner. | 86782 |
| 7.6.3 | Domain Station | 86783 |
| (a) | Domain station design must not preclude a future extension of the proposed subway continuing under the Shrine Grounds and beyond. | 86784 |
| (b) | The Domain Station pedestrian subway must be designed so that it can be closed to access at night. | 86785 |
| (c) | Every effort must be made to locate the chiller plant within or next to an existing or proposed building. | 86786 |
| 7.7 | Station design requirements | 86787 |
| 7.7.1 | General | 86788 |
| (a) | Station rooms that interface with the RSA, operator(s) or the Train Franchisee must be provided in accordance with the requirements set out in Appendix B3. | 86789 |
| (b) | All necessary furniture, fittings and equipment must be provided for the Train Franchisee Day-1 occupancy and operations and as required to interface with the RSA. | 86790 |

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| | (c) Stations must provide shelter and seating for customers in Station forecourts, waiting areas, concourses and Paid areas. | 86791 |
| | (d) Stations must minimise the need for screens and barriers in the design of the infrastructure. Where screens and barriers are necessary they must be treated as components in the overall design composition and align with the character and design intent of the place. | 86792 |
| | (e) The design must eliminate: | 86793 |
| | i. where practical, voids that may be inhabited by vermin; | 86794 |
| | ii. exposed beams or structures where birds may perch, where this cannot be satisfied deterrents must be installed; | 86795 |
| | iii. voids or fenced areas that cannot be accessed for de-littering; and | 86796 |
| | iv. [Not disclosed]. | 86797 |
| | (f) The design must eliminate gaps which might allow rubbish to accumulate (e.g. between stairs and balustrades, allowing ingress of rubbish into void under stairs) where practical. | 86798 |
| | (g) Confined spaces must be avoided in the design SFAIRP. | 86799 |
| | (h) Materials must provide adequate durability, vandal proofing and comply with the Building Code of Australia (BCA) and NFPA 130. | 86800 |
| | (i) Synchronised clocks in the Stations must be provided in the paid and unpaid areas. | 86801 |
| | (j) Each station must provide facilities for Station and to train Station staff to support operation. | 86802 |
| | (k) [Not disclosed]. | 86803 |
| | (l) [Not disclosed]. | 86804 |
| | (m) Architectural elements associated with the smoke management system must not come within the structural gauge or affect passenger handling areas (including escalator shafts, walkway / approach areas etc.). | 86805 |
| | (n) Any sprinkler system must be installed in such a way to be easily maintained and without requirement for overhead isolations. | 86806 |
| 7.7.2 | Entrances | 86807 |
| | (a) [Not disclosed]. | 86808 |
| | (b) The design must eliminate opportunities for rubbish to be thrown onto entrance roof tops, causing blockages to gutters and down pipes. | 86809 |
| | (c) [Not disclosed] | 86810 |
| | (d) Station entrances must be weather protected, taking into account the effects of wind driven rain. | 86811 |
| | (e) Station entrances must include a free draining non-slip section. | 86812 |
| 7.7.3 | Concourses | 86813 |
| | (a) Station concourses must provide integrated general arrangements (location, lighting, accessibility, shelter) and highly visible ticketing and fare infrastructure. | 86814 |
| | (b) [Not disclosed] | 86815 |
| | (c) Public phones in the unpaid area of the station must be at an accessible height for wheelchair customers and with a sign displaying the PTV TTY number for hearing impaired customers. | 86816 |
| | (d) Telephone and data services for the operation of commercial facilities including retail kiosks and vending machines must be provided. | 86817 |
| 7.7.4 | Customer Service Centres | 86818 |
| | Customer Service Centres (CSCs) must: | 86819 |
| | (a) be positioned to service both paid and unpaid concourse areas; | 86820 |
| | (b) be located in a conspicuous area of the concourse with sightlines across the concourse and gate line areas, and provide either: | 86821 |
| | i. a readily accessible connection to a dedicated unisex toilet and tea point/meal preparation amenities (i.e. sink, microwave, small fridge); or | |

- ii. [Not disclosed]
- (c) have windows which offer an open, approachable appearance; 86822
- (d) have an intuitive queuing system; 86823
- (e) not have queuing arrangement that impacts on horizontal circulation; 86824
- (f) [Not disclosed] 86825
- (g) [Not disclosed] 86826
- (h) allow staff working in CSCs at any of the primary or Accessible service counters to have a clear and direct line of sight of the entire gate line from their normal working position (without having to stand, bend, lean or turn); 86827
- (i) have at least two ticket windows at each concourse. Additional CSC windows must be provided to reflect the station entry passenger demand, and ticket windows numbers to the Unpaid side of the concourse based on the following formula: 86828

No. of Ticket Windows⁽¹⁾ = $2046 \text{ Peak 1 hour Station Entry Demand} \times 1.55\%^{(2)} \times 95\%^{(3)} \times 45 \text{ (sec)}^{(4)}$
3600⁽⁵⁾

where:

- (1) = No. of Ticket Windows rounded up to a whole number
- (2) = Percentage of passengers requiring tickets at ticket windows
- (3) = Percentage of passengers requiring tickets during the peak hour of ticket sale not waiting more than 3 minutes
- (4) = Average transaction time
- (5) = 20 (No. of 3 minute periods in 1 hour) X 180 (No. of seconds in 3 minutes)

- (j) include one accessible service counter located on the unpaid side of the gate line, external height must comply with AS 1428.2 Clause 24.1.1 and internal height to comply with AS/NZS 4443:1997 (680mm-735mm, with a preferred height of 710mm-720mm); 86829
- (k) include an accessible service counter located on the paid side of the gate line; 86830
- (l) have service counters that all face in the same direction to enable a single operator to monitor all windows at once; 86831
- (m) make spatial allowance and provide services for Myki ticket office terminals (**TOTs**) at each service counter; 86832
- (n) Provide services for one EFTPos machine per TOT; 86833
- (o) [Not disclosed] 86834
- (p) [Not disclosed] 86835
- (q) [Not disclosed] 86836
- (r) [Not disclosed] 86837
- (s) [Not disclosed] 86838
- (t) [Not disclosed] 86839
- (u) [Not disclosed] 86843
- (v) make spatial provision and services for a Myki Winterm, located to ensure that the gate line is visible whilst operating the Winterm; 86844
- (w) provide a station landline telephone; 86845
- (x) provide a SEPAC telephone (the Train Franchisee's train control telephone system); 86846
- (y) provide data/communication points and general purpose outlets (**GPOs**) as required for the ticket office equipment; 86847
- (z) provide carpet floor with underlay in ticket offices; 86848
- (aa) provide a bulletin board; and 86849
- (bb) provide a waste bin. 86850

7.7.5 [Not disclosed] 86851

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| 7.7.6 | Customer Services and Ticketing | 86853 |
| | Stations must provide: | 86854 |
| | (a) services and cable trunking routes and provide spatial provision for ticket gate control assets (LEOS and GAC) within each station entry in proximity to the fare barrier line; | 86855 |
| | (b) adequate numbers of ticketing assets to allow customers to touch on and off without causing congestion to meet the LoS requirements; | 86856 |
| | (c) revenue protection gates (i.e. ticket gates) throughput efficiency at the Stations must support station operation at Day-1; | 86857 |
| | (d) for the installation of systems to provide customers with access to reliable, clear, consistent, timely and accurate service information in the event; | 86858 |
| | i. of unplanned disruptions, including the nature of the disruption, what services are being impacted and provided with transport alternatives to complete their journey, where possible; and | 86859 |
| | ii. information on planned works or events which may impact travel times or normal operation of services, or create significant noise disruption; and | 86860 |
| | (e) customer service counters that provide: | 86861 |
| | i. ticket purchasing; | 86862 |
| | ii. information on the next available train; | 86863 |
| | iii. network connections; | 86864 |
| | iv. basic tourist information on the surrounding precinct; | 86865 |
| | v. special event related information prior to the event; | 86866 |
| | vi. special event fares and ticketing options; and | 86867 |
| | vii. digital displays that provide tourism and event information. | 86868 |
| 7.7.7 | Gatelines | 86869 |
| | (a) For the purposes of fare protection barrier gate number calculations, passenger throughput must be based on 28 passengers per minute. | 86870 |
| | (b) Day-1 gate numbers must be based on the 2031 Project Case passenger demand forecasts set out in Appendix B1. | 86871 |
| | (c) The arrangement of gatelines must provide for an ultimate gate arrangement and barrier numbers based on the Design Case passenger demand forecasts set out in Appendix B1 for each station concourse. | 86872 |
| | (d) The total number of gates must provide a minimum redundancy of 1 gate for every 8 gates or 1 gate where less than 8 gates are required. | 86873 |
| | (e) Spatial provisions for two (2) wide barrier gates must be provided per gateline. Wide barrier gates must be provided at the end of the gateline closest to the CSC. | 86874 |
| | (f) Stations must provide services and cable trunking routes and provide spatial provision for ticket gates and control assets. | 86875 |
| | (g) Spatial provision for a gate attendant control (GAC) with manual control functionality (individually, and grouped) is to be provided adjacent to each gateline in proximity to the wide gate. | 86876 |
| | (h) [Not disclosed] | 86877 |
| | (i) Passenger counting technology must be installed at the gateline and interchange adits to inform the SCR and NCC of passenger influx. | 86878 |
| | (j) A bypass gate must: | 86879 |
| | i. [Not disclosed] | 86880 |
| | ii. be no less than 1.2m wide or such width determined appropriate for the passage of maintenance plant and equipment; | 86881 |
| | iii. not mimic the appearance of the gateline but that of the adjacent fixed delineation barrier; and | 86882 |

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| | iv. [Not disclosed] | 86883 |
| | (k) Customers requiring access with children, those with luggage or bulky items and anyone having difficulty using the barriers, must have an alternative way to enter the Paid area. | 86884 |
| | (l) The design must include provision for digital overhead signage at wide barrier gate locations for use during heavy passenger flow times where the location is not immediately visible at ground level. Signage must be controlled from nearest CSC and SCR. | 86885 |
| 7.7.8 | First Aid Room | 86886 |
| | All Stations must provide a dedicated first aid treatment facility. | 86887 |
| 7.7.9 | Parents Room | 86888 |
| | Parents Rooms must: | 86889 |
| | (a) be provided at all stations; | 86890 |
| | (b) be a room separate to the rest room facilities, in proximity of the CSC with a separate entrance located off the paid concourse; | 86891 |
| | (c) [Not disclosed] | 86892 |
| | (d) [Not disclosed]; and | 86893 |
| | (e) display the room status at the external entrance. | 86894 |
| 7.7.10 | Passenger Toilets and Facilities | 86895 |
| | (a) Publicly accessible toilets must not be located on station platforms. | 86896 |
| | (b) Male and Female sanitary facilities for passengers must be based on “BCA Table F2.3, Class 9b – Public halls, function rooms or the like”. | 86897 |
| | (c) The number of persons for each of the stations must be calculated based on the maximum peak 3 minute passenger numbers of the passenger demand of the Design Case. | 86898 |
| | (d) Sanitary facilities must be provided on the basis of equal numbers of males and females. | 86899 |
| | (e) As a minimum: | 86900 |
| | i. male and female sanitary facilities must be provided for Arden, Parkville and Domain Stations; | 86901 |
| | ii. CBD North must provide male and female sanitary facilities to both the Franklin Street and Swanston Street entrances; and | 86902 |
| | iii. CBD South Station must provide male and female sanitary facilities at both the City Square and the Southern entrances. | 86903 |
| | (f) Male and female toilets must: | 86904 |
| | i. [Not disclosed] | 86905 |
| | ii. provide door-less entry arrangements to toilets for users with ambulant disabilities; | 86906 |
| | iii. be designed with simple architectural detailing, with robust materials and standard fixtures and fittings that are readily available; | 86907 |
| | iv. have cubicle doors and door catches designed to enable emergency escape and emergency access from the outside; | 86908 |
| | v. be designed such that exposed fixings, subject to human contact, must be recessed, smooth and flush. Domed heads must be used where flush countersunk heads are not practicable; and | 86909 |
| | vi. include integrated bins, sanitary disposal units, needle disposal containers and hand dryers. | 86910 |
| | (g) All Stations must provide: | 86911 |
| | i. in addition to the two unisex accessible toilets described in 7.3.1(d), a minimum of one toilet that is suitable for users with ambulant disabilities, located in the male and female sanitary facilities; | 86912 |

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| | ii. | automated cavity sliding, DDA compliant toilet doors with privacy locking system, mushroom head activation buttons, braille control plates, toilet status indicators and key operated emergency opening from external side to all unisex accessible toilets; and | 86913 |
| | iii. | DDA compliant toilets with an emergency call button linked directly to station staff or other emergency support. | 86914 |
| (h) | | Changing Places Facilities (CPF) | 150447 |
| | | A minimum of one Changing Places Facility must be provided at Arden, Parkville, CBD North, CBD South and Domain Stations. The facilities must: | 150448 |
| | i. | where possible, be located in close proximity to the Customer Service Centre (CSC); | 150449 |
| | ii. | be visible from the CSC [Not disclosed]; | 150450 |
| | iii. | be provided with a lockable automatic sliding door operable by MLAK locking system and a secure access release (interlocked to prevent opening when occupied) from the CSC; | 150451 |
| | iv. | display the room status at the external entrance; | 150452 |
| | v. | be located at street level or in the Unpaid area for the convenience of mobility impaired users, where possible; | 150453 |
| | vi. | not obstruct passenger circulation; | 150454 |
| | vii. | be designed and constructed in compliance with the “Changing Places, Transforming Lives –Information Guide & Technical Standard” (June 2017) – Option 1A or Option 1B, unless otherwise agreed with the relevant authority; and | 150455 |
| | viii. | be additional to the required disability accessible toilets and parent’s room. | 150456 |
| 7.7.11 | | Commercial / Retail Concessions | 86915 |
| | (a) | Station retail and retail queueing areas must not obstruct passenger circulation, emergency egress or operations and maintenance requirements. | 86916 |
| | (b) | Retail facilities must not be located on the station platform. | 86917 |
| | (c) | [Not disclosed] | 86918 |
| | (d) | [Not disclosed] | 86919 |
| | (e) | All commercial / retail concessions must be separately metered. | 86920 |
| 7.7.12 | | Vending Machines | 86921 |
| | (a) | The proposed location and number of vending machines in the Stations must be assessed and approved by stakeholders. | 86922 |
| | (b) | Vending machines must be housed with the front face flush with wall surfaces or within architecturally designed cladding units when free-standing. Concealed services connections must be provided for vending machines. | 86923 |
| | (c) | Vending machines and vending queueing areas must not obstruct passenger circulation, emergency egress or operations, maintenance requirements and must comply with DSAPT. | 86924 |
| | (d) | Where applicable Vending machines must be fully weather protected, located in proximity to high traffic areas and preferably recessed to prevent vandalism and eliminate blind spots. [Not disclosed]. | 86925 |
| | (e) | Each vending machine location must be provided with suitable footings, a lockable IP66 double GPO and concealed data pathway. | 86926 |
| | (f) | Vending machine sockets must be mounted out of reach of public and captive screw type. | 86927 |
| | (g) | A secure data point must be installed at each vending machine location for the provider to manage payment systems and remote monitoring of the asset maintenance and stock levels. | 86928 |
| | (h) | Remote monitoring is a feature necessary to avoid unnecessary station visits by external suppliers during operational hours. | 86929 |
| | (i) | Vending machines must only utilise a card payment facility. | 86830 |

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| | (j) Provision must be made for vending machines to be anchored to the floor, platform or wall to prevent tipping. | 86831 |
| 7.7.13 | ATMs | 86932 |
| | (a) The ATM and associated queueing areas must not obstruct passenger circulation. | 86933 |
| | (b) ATMs must: | 86934 |
| | i. be located at concourse level in the Unpaid area for the convenience of passengers; | 86935 |
| | ii. be provided with line of sight to the CSC. [Not disclosed]; and | 86936 |
| | iii. be housed with the front face flush with wall surfaces or within architecturally designed cladding units when free-standing. Concealed services connections must be provided for ATMs. | 86937 |
| 7.7.14 | [Not disclosed] | 86938 |
| 7.7.15 | [Not disclosed] | 86941 |
| 7.7.16 | [Not disclosed] | 86949 |
| 7.7.17 | General Offices | 86953 |
| | General offices must: | 86954 |
| | (a) have a one-way window which provides a direct view from the workstations into the CSC and of the service counters. A user in the normal seated position must not have to turn to view the service counters; | 86955 |
| | (b) provide a minimum of one general use workstation with Train Franchisee intranet access, office chair and mobile storage caddy. Provision must be made for future installation of a second workstation (with office chair and mobile storage caddy); | 86956 |
| | (c) provide a station landline telephone; | 86957 |
| | (d) provide data/communication points and GPOs, as required for general office equipment; | 86958 |
| | (e) include a bulletin board; | 86959 |
| | (f) include a white board; | 86960 |
| | (g) include cupboards, drawers for stationery storage and appropriate loose furniture; and | 86961 |
| | (h) provide carpeted floor with underlay. | 86962 |
| 7.7.18 | [Not disclosed] | 86963 |
| 7.7.19 | Myki Equipment | 86975 |
| | Myki equipment cabinets must: | 86976 |
| | (a) be located in a low risk location that will not interfere with passenger flows; | 86977 |
| | (b) be located such that maintenance can be safely undertaken during operational hours; | 86978 |
| | (c) [Not disclosed]; | 86979 |
| | (d) not be located in the Station offices or amenities areas; | 86980 |
| | (e) provide adequate clearances for maintenance; and | 86981 |
| | (f) be provided separately from the CER. Myki ticketing will only operate at the station. | 86982 |
| 7.7.20 | Platforms | 86983 |
| | (a) The platform length must support operation of the Extended HCMT, the platforms must be a minimum of 225 metres in length. | 86984 |
| | (b) Platforms must be designed to accommodate a PSDS incorporating PSDs to the full extent of the active platform length. | 86985 |
| | (c) The PSDS must be a full height, fully closed system. | 86986 |
| | (d) The PSDS and PSDs must maximise the extent of full height transparent glazing and minimise the extent of glazing manifestations in order to improve customers' sightlines from platform to train and train to platform. | 86987 |
| | (e) The PSDS top guide assembly and drive system must be concealed within a continuous linear bulkhead system located above the PSDS. | 86988 |

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| (f) | The PSDS and PSDs must minimise the extent of vertical support structures. | 86989 |
| (g) | Active and static wayfinding and information systems and signage (where present) must be integrated in the design arrangement of the bulkhead system above the PSDS. | 86990 |
| (h) | The train – platform interface (horizontal and vertical) must be determined in collaboration with HCMT contractor, PTV and RSA SFAIRP to reduce the effective gap between train, platform and PSD. | 86991 |
| (i) | The HCMT contractor must provide a dynamic gauging model of HCMT moving through MMRA stations based on proposed station alignment, track maintenance standards and speed data as input. | 86992 |
| (j) | The proposed effective gap between train, platform and PSD must be assessed via formal risk assessment in collaboration with HCMT contractor, PTV and the RSA. | 86993 |
| (k) | An assessment of compliance with DSAPT must be completed in collaboration with the contractor for the HCMT Project, PTV and the RSA. | 86994 |
| (l) | The station platform coping trackside edge must be constructed to the agreed offsets and the following tolerances measured from the as-constructed track position: | 86995 |
| | i. vertical (above top of rail) +0, -2mm; and | 86996 |
| | ii. horizontal (from centreline) +2, -0mm. | 86997 |
| (m) | Platforms must: | 86998 |
| | i. use a coping to the platform edge at the PSD threshold that: | 86999 |
| | (1) is integral to the platform, (i.e. level with the non-coping platform); | 87000 |
| | (2) provide 30 percent luminance contrast at the PSD door threshold; and | 87001 |
| | (3) extend from the customer side face alignment of the PSDS to the platform coping, track side edge; | 87002 |
| | ii. be level across the traverse section; | 87003 |
| | iii. facilitate unassisted boarding from the normal stopping position; | 87004 |
| | iv. provide a clear platform width, free of all structure, equipment, furniture and fixtures of at least 4.0 metres from the customer side face of the PSDS at CBD North, CBD South and Parkville Stations; | 87005 |
| | v. provide a clear platform width, free of all structure, equipment, furniture and fixtures of at least 3.0 metres from the customer side face of the PSDS at Arden and Domain Stations; and | 87006 |
| | vi. provide egress routes from the Tunnel to the Stations for escape of people in the event of an emergency situation. | 87007 |
| (n) | Stations must provide safe zones at the Station platform level that: | 87008 |
| | i. contain a CHP; | 87009 |
| | ii. are lit; and | 87010 |
| | iii. [Not disclosed]. | 87011 |
| (o) | Train door locations must be demarcated on the platform to improve boarding and alighting. | 87012 |
| (p) | Passenger facilities must be distributed along the platform to encourage passenger to board all carriages on the train and not congregate in one area. | 87013 |
| (q) | [Not disclosed]. | 87014 |
| 7.7.21 | [Not disclosed] | 87015 |
| 7.7.22 | [Not disclosed] | 87021 |
| 7.7.23 | [Not disclosed] | 87041 |
| 7.7.24 | Waste Management | 87043 |
| | (a) Station waste infrastructure must: | 87044 |
| | i. facilitate the efficient collection, storage and removal of waste; | 87045 |

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| | ii. | influence changes in behaviour to reduce overall levels of waste collected and change behaviours to increase levels of recycling; and | 87046 |
| | iii. | [Not disclosed] | 87047 |
| (b) | | Cleaners Rooms | 87048 |
| | i. | A main cleaners' store room for cleaning sundries and equipment of no less than 20m ² , with hot / cold running water and wash facilities must be provided to the main concourse; | 87049 |
| | ii. | Each interstitial floor containing primarily BOH or equipment rooms must be provided with a cleaners' store room for cleaning sundries and equipment of no less than 10m ² with hot/cold running water and wash facilities fitted with a waste sump; and | 87050 |
| | iii. | Floor access to and within cleaners' store rooms must be level. | 87051 |
| (c) | | Refuse collection room must: | 87052 |
| | i. | be of no less than 12m ² and must be provided in the back of house/operational area; | 87053 |
| | ii. | be situated in close proximity to the service lift from platform to concourse, and concourse to ground; and | 87054 |
| | iii. | have an extraction fan. | 87055 |
| (d) | | Separate transparent waste bins for recyclables and general waste must be provided in the Stations. | 87056 |
| (e) | | Waste bins must be provided throughout the Station environment at a frequency agreed with the Train Franchisee. | 87057 |
| (f) | | Waste bins must be provided with lids to prevent access by vermin. | 87058 |
| 7.7.25 | | Project Co must not degrade the existing precinct waste collection services. | 87060 |
| 7.7.26 | | Precinct waste infrastructure must, where practical: | 87062 |
| | (a) | improve functionality; | 87063 |
| | (b) | improve amenity; | 87064 |
| | (c) | reduce noise; | 87065 |
| | (d) | reduce congestion and CO2 emissions; | 87066 |
| | (e) | increase levels of recycling; | 87067 |
| | (f) | increase safety; | 87068 |
| | (g) | influence changes in behaviour; | 87069 |
| | (h) | provide for both Station and over site development in a single location; and | 87070 |
| | (i) | provide for local precinct waste management to assist decluttering streets and laneways connected to Station entries. | 87071 |
| 7.7.27 | | Precinct waste infrastructure must utilise: | 87073 |
| | (a) | precinct traffic management / site areas; and | 87074 |
| | (b) | corridors / space from Utility Provider relocations, protection, local connections. | 87075 |
| 7.7.28 | | [Not disclosed] | 87076 |
| | | | 87100 |
| 7.8 | | Materials, Finishes and Components | |
| 7.8.1 | | Project Co must: | 87101 |
| | (a) | not use materials and finishes in proximity of the rail tracks that present reflections or glare from the sun or artificial light sources that could distract operational staff from their tasks; | 87102 |
| | (b) | not use or locate assets, equipment or materials that may distract or confuse train driver interpretation of movement authority; | 87103 |
| | (c) | utilise materials and components that are fit for purpose, are robust and resistant to vandalism when located in accessible zones and require low maintenance. Specification and detailing of finishes and surfaces must be appropriate for the intended function of the area; | 87104 |
| | (d) | incorporate maintenance access requirements that minimise or negate the impact | 87105 |

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| | on operational functionality or passenger/user amenity; | |
| (e) | use material types and detailing based on the whole of life considerations that include: | 87106 |
| | i. maintenance; | 87107 |
| | ii. replacement / renewal; | 87108 |
| | iii. cleaning; | 87109 |
| | iv. repair; | 87110 |
| | v. accessibility and tampering by the public; and | 87111 |
| | vi. thermal and structural movement; | 87112 |
| (f) | minimise the use of material types and detailing that require specialised cleaning regimes, access and equipment; | 87113 |
| (g) | design elements to prevent scaling (climbing) of surfaces; | 87114 |
| (h) | design elements to deter urban sports activities; and | 87115 |
| (i) | design elements to eliminate recesses in cladding systems. | 87116 |
| 7.8.2 | Floors and Paving | 87117 |
| | Stations must: | 87118 |
| (a) | include pedestrian trafficable floor and paving materials in accordance with 'HB 198:2014 Guide to the Specification and Testing of Slip Resistance of Pedestrian Surfaces' as a minimum; | 87119 |
| (b) | include coordinated control, movement and expansion joints to be aligned with paving and tiling modules; and | 87120 |
| (c) | eliminate trip hazards, including exposed structural base plates within pedestrian areas. | 87121 |
| 7.8.3 | Walls and Façades | 87122 |
| (a) | Station walls and facades must: | 87123 |
| | i. minimise the area of horizontal surfaces for vertical surfaces (walls and facades) for the Stations; and | 87124 |
| | ii. allow integration of the façade with maintenance and cleaning processes to ensure safe, efficient and cost effective façade maintenance and cleaning. | 87125 |
| (b) | Stations must include facade glazing systems (i.e. "low E" coatings) within occupied zones to maximise thermal performance. | 87126 |
| (c) | Crash rails and/or wall protection must be provided to protect walls and doorway from impact damage from trolleys and mobile equipment including both sides of all corridors with high to moderate trolley traffic. | 87127 |
| 7.8.4 | Ceilings and Soffits | 87128 |
| (a) | The design and construction of all ceilings and associated works within stations must: | 87129 |
| | i. remain stable without deflection, distortion, looseness or rattling due to fluctuations in air pressures; | 87130 |
| | ii. have sufficient adjustment to accommodate long-term base-structure deflection; | 87131 |
| | iii. ensure seal joints and junctions to adjacent work to maintain the integrity of fire, smoke, acoustic and moisture barriers; | 87132 |
| | iv. provide appropriate access to services located above; and | 87133 |
| | v. provide a 'monolithic' flush ceiling system for CSCs and publicly visible office areas within the Stations. | 87134 |
| (b) | Ceiling and soffit heights within the stations and associated infrastructure must: | 87135 |
| | i. provide a 3.5 metre minimum ceiling/headroom height above the finished floor level for 75% of any customer accessible platform area for the stations; | 87136 |
| | ii. provide a 3.5 metre minimum ceiling/headroom height above the finished floor level for 75% of the customer accessible areas where a passenger floor | 87137 |

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| | level is provided above the platform level; | |
| iii. | provide a 3.0 metre minimum ceiling/headroom height above the following areas: | 87138 |
| | (1) public toilet facilities; | 87139 |
| | (2) nosing of stairs; | 87140 |
| | (3) escalators; and | 87141 |
| | (4) passages between unpaid and paid customer/public accessible areas (with the exception of the Paid subway connection to FSS concourse) to the top of the escalator; | 87142 |
| iv. | provide a 4.5 metre minimum ceiling/headroom height above the finished floor level for 75% of the customer accessible concourse area for the following stations: | 87143 |
| | (1) Arden; | 87144 |
| | (2) Parkville; | 87145 |
| | (3) CBD North; and | 87146 |
| | (4) CBD South; | 87147 |
| v. | provide a 4.0 metre minimum ceiling/headroom height above the finished floor level for 75% of the customer accessible concourse area at Domain Station; | 87148 |
| vi. | provide a 2.7 metre minimum ceiling/headroom height above the finished floor level for all other areas within a Station with the exception of areas below escalators and stairs; | 87149 |
| vii. | provide a 5.0 metre minimum ceiling/headroom height above the finished floor level for 75% of the publicly accessible entrances for the Stations; | 87150 |
| viii. | enclose areas under escalators and stairs to a height of 2.4 meters above the finished floor level within stations; | 87151 |
| ix. | provide a 2.7 metre minimum ceiling/headroom height above the finished floor level for PSO facilities (including the Handover Room); | 87152 |
| x. | provide a 3.0 metre minimum ceiling/headroom height above the finished floor level for the CSC and all other visible customer facing staff operations rooms; and | 87153 |
| xi. | provide a ceiling with a minimum height above floor level in accordance with the BCA for back of house and station staff areas within the Stations (unless noted otherwise or as required for operations and maintenance). | 87154 |
| 7.8.5 | Doors and Shutters | 87155 |
| | (a) All doors and door-frames must: | 87156 |
| | i. provide widths, appropriate to facilitate unhindered maintenance and replacement access and withstand impact from equipment moving through the doorway, without denting or distorting; | 87157 |
| | ii. have an acoustic rating to ensure that the adjoining walls and partitions are in accordance with the acoustic requirements set out in Section 7.10; | 87158 |
| | iii. [Not disclosed] | 87159 |
| | iv. provide kickplates to BOH doors to a minimum 300mm above finished floor level. | 87160 |
| | (b) [Not disclosed] | 87161 |
| 7.8.6 | Balustrades and Glazed Screens | 87169 |
| | (a) Stations must include balustrades to a minimum height of 1200mm from floor level in paid and unpaid public/customer accessible areas. | 87170 |
| | (b) [Not disclosed] | 87171 |
| | (c) Stations must provide a minimum of one (1) 1800mm wide, 180 degree swing, manually operated, unlocked drop bolt, secured by-pass maintenance gate adjacent to the fare barriers at each concourse level. | 87172 |

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| | (d) All balustrades must comply with AS1735 and AS1288. | 118562 |
| 7.8.7 | Lighting | 87173 |
| | (a) Stations and precincts must provide lighting levels that can be tailored to provide varying light levels. | 87174 |
| | (b) Stations must provide lighting that can vary light levels gradually. | 87175 |
| 7.8.8 | Fittings and Equipment | 87176 |
| | (a) Stations must provide furniture that incorporates functionality, levels of comfort, convenience, safety, encourages activity and is DDA compliant. | 87177 |
| | (b) Station precincts must adopt the City of Melbourne Design Standards in relation to furniture materials and finishes for the design of the public realm within the City of Melbourne and the City of Port Phillip municipal boundaries. | 87178 |
| | (c) Stations and the public realm must incorporate street furniture in such a manner that it provides clear pathways for pedestrians and gives priority to circulation along the building line. | 87179 |
| | (d) All Station platform areas must be designed to have a consistent architectural aesthetic by use of common fittings and equipment | 87180 |
| | (e) Fitting and equipment must not impede circulation through all station areas. | 87181 |
| | (f) Station areas must provide sufficient general rubbish and recycling bins throughout the station facility at both platform and concourse levels. | 87182 |
| | (g) Where galvanised fittings are applied they must be hot dip galvanised. | 87183 |
| 7.8.9 | Seating | 87184 |
| | (a) Seating must be provided based on passenger demand, circulation and optimal layout. | 87185 |
| | (b) No seats must be positioned in locations where they will impact on horizontal circulation. | 87186 |
| | (c) Seating must be provided within 5m of the passenger lifts. | 87187 |
| | (d) [Not disclosed] | 87188 |
| | (e) Seating must be vandal resistant but easily replaceable if required. | 87189 |
| | (f) Seating must be in accordance with MTM standard MCST 020100-01 sections 12.8.2 and 12.8.3, and Part 7 of the DSAPT. | 87190 |
| | (g) Seating in the Stations must be four-person seat, bench type units. | 87191 |
| | (h) Parkville, CBD North, CBD South and Domain Station platforms must provide armrest seating evenly distributed along the platform length and accommodate 5% of the Design Case peak boarding three-minute period for each platform face. | 87192 |
| | (i) Arden Station must provide a minimum of 40 seats, evenly distributed along the platform length. | 87193 |
| | (j) On island platforms, seating must be located in the centre of the platform and integrated, as appropriate, with other platform fittings such as signage and help points. | 87194 |
| | (k) One DDA compliant, priority seat must be provided in proximity to each public lift or group of lifts at each lift level served. | 87195 |
| | | 87196 |
| 7.9 | Signage and Wayfinding | |
| 7.9.1 | Key Principles | 87197 |
| | (a) Wayfinding, advertising and signage for the Stations must be in accordance with an overarching strategy for the entire alignment, inclusive of Stations and the public realm. | 87198 |
| | (b) The PIDS must to be positioned in areas that will be most effective by being easily visible to passengers. Both single side and double side (back to back) PIDS units must be provided for placement depending on the particular location at each Station. | 87199 |
| | (c) The Stations and the public realm way finding strategy, information systems and active signage must: | 87200 |

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| | i. | represent an outstanding example of international best practice; | 87201 |
| | ii. | be provided at all Stations and tram stops; | 87202 |
| | iii. | be fully integrated with the overall design of the Station architecture; | 87203 |
| | iv. | address the overall spatial organisation and circulation strategy; | 87204 |
| | v. | ensure all signage is designed to be integrated with the facility design; and | 87205 |
| | vi. | ensure that information screens provide customers information across multiple modes of transport. | 87206 |
| | (d) | Multimodal service information must be provided at the Unpaid / Paid concourse at the Stations. | 87207 |
| 7.9.2 | | Static Signage | 87208 |
| | (a) | Static signage must be used to indicate to customers the locations of fixed customer facilities. | 87209 |
| | (b) | Permanent (static) signage must be installed where signage is not subject to change. | 87210 |
| 7.9.3 | | Digital Signage | 87211 |
| | (a) | Dynamic digital signage must be installed where flexibility is necessary in displaying wayfinding content or instruction. | 87212 |
| | (b) | [Not disclosed] | 87213 |
| | (c) | Digital dynamic signage must be provided to support special event modes of operation. | 87216 |
| 7.9.4 | | Statutory Signage | 87217 |
| | | Statutory signage must be integrated with the overall signage strategy to provide a consistent style and arrangement. | 87218 |
| 7.9.5 | | Corporate Signage | 87219 |
| | (a) | Stations and Station precincts must: | 87220 |
| | i. | provide line and Station identity signage in accordance with the relevant authority branding and style guide requirements; | 87221 |
| | ii. | provide maps at appropriate locations to indicate the location of customers for the following: | 87222 |
| | | (1) within the Station; and | 87223 |
| | | (2) on the public transport network (including local bus and tram routes); | 87224 |
| | iii. | provide display public transport network maps at station entrances, concourse and platforms to approval of the relevant authority; | 87225 |
| | iv. | provide way finding at Stations and stops indicating the location of ramps, lifts, escalators, and disability facilities; | 87226 |
| | v. | provide signage to clearly indicate actions required to be undertaken by customers in the event of an emergency; | 87227 |
| | vi. | use symbols that conform to internationally recognised conventions; | 87228 |
| | vii. | provide customer wayfinding signage at Stations / stops that is clearly legible and positioned where customers need it most so that they can find their way around the Station / stop and the local area; | 87229 |
| | viii. | provide information on local amenities, facilities and destinations near the Station; | 87230 |
| | ix. | provide way finding information for visually impaired customers; | 87231 |
| | x. | provide signage to indicate: | 87232 |
| | | (1) the location of customer service counters at Stations; | 87233 |
| | | (2) the locations of ticket machines and other ticketing assets; | 87234 |
| | | (3) the name of the Station on platforms such that it is visible from trains entering and leaving the Station; | 87235 |
| | | (4) exit points on the Station platforms including exit point information; | 87236 |

| | | |
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| | (5) areas that are not accessible to customers in the stations; | 87237 |
| | (6) to customers that video surveillance is in use; | 87238 |
| | (7) the location of CHPs within the stations; and | 87239 |
| | (8) that bicycles are not permitted on the front carriage of trains; | 87240 |
| | xi. inform customers that smoking is not permitted at stations and stops via prominently displayed 'no smoking' signs; and | 87241 |
| | xii. provide variable digital displays to provide customers with real time information. | 87242 |
| | (b) Within BOH areas Stations must provide a room numbering and naming convention system, on the door or wall adjacent to the room entrance door, that uniquely identifies the floor level and room in a manner that: | 87243 |
| | i. is discreet but readily accessible; | 87244 |
| | ii. logical and easily identifiable; | 87245 |
| | iii. relates to the asset management system; and | 87246 |
| | iv. accommodates changes that maintain consistency of the signage system, room numbering and naming conventions. | 87247 |
| 7.9.6 | Advertising | 87248 |
| | (a) Where advertising is provided in the Stations and Station Precincts, infrastructure must be incorporated sensitively within the overall design. Advertising must be located as second order element that does not negatively impact on the user's experience. | 87249 |
| | (b) Stations and Station Precincts must incorporate advertising sensitively into the Station precincts in accordance with the Urban Design Strategy and local government planning requirements. | 87250 |
| | (c) Digital advertising may be installed where it enhances the customer experience. | 87251 |
| | (d) Digital advertising is preferred as it minimises the need for regular intervention. | 87252 |
| | (e) Digital advertising must: | 87253 |
| | i. enhance the customer experience and provides an outlet for entertainment; | 87254 |
| | ii. minimise the need for regular intervention; | 87255 |
| | iii. be programmable to display evacuation information in an emergency event; and | 87256 |
| | iv. if provided alongside escalators, be non-continuous advertising and comply with the fire and life safety strategy. The digital advertising must not extend to areas within 5 metres of the escalator ends. | 87257 |
| 7.10 | Noise and Vibration | 87258 |
| 7.10.1 | General | 87259 |
| | Noise and vibration must be mitigated in accordance with the project statutory approvals, including: | 87260 |
| | (a) the requirements of the Victorian Government Passenger Rail Infrastructure Noise Policy (April 2013) must be complied with; and | 87261 |
| | (b) EPRs developed as part of the Environmental Management Framework (EMF) approved by the Minister for Planning under the Incorporated Document must be complied with, including design criteria for addressing noise and vibration. | 87262 |
| 7.10.2 | [Not disclosed] | 87263 |

8 [Not disclosed]

87275

9 Mechanical Systems and Control

87766

9.1 General

87767

- 9.1.1 Project Co must provide mechanical systems, to achieve the functional and operational requirements. Mechanical systems include: 87768
- (a) Station Environmental Control Systems (**ECS**); 87769
 - (b) Mechanical Ventilation and Air Conditioning (**MVAC**) Systems; 87770
 - (c) Station Smoke Management Systems (**SSMS**); 87771
 - (d) Tunnel Ventilation Systems (**TVS**); 87772
 - (e) fire detection, alarm and suppression systems; 87773
 - (f) plumbing and drainage systems; 87774
 - (g) lifts and escalators; 87775
 - (h) associated acoustic treatment and accessories; 87776
 - (i) vibration treatment and accessories; 87777
 - (j) associated motor control centre (**MCC**) rooms; 87778
 - (k) associated electrical sub-main distribution systems and earthing systems; 87779
 - (l) power factor correction facilities; 87780
 - (m) control systems and associated software; 87781
 - (n) associated cable containment systems, and 87782
 - (o) Building Management System (**BMS**) and Energy and Water Management Systems (**E&WMS**). 87783
- 9.1.2 All mechanical systems must satisfy the requirements of the National Construction Code (BCA). 87784
- 9.1.3 Mechanical systems must be sized to cater for the peak facility loads with due allowance to accommodate future adaptability, expansion and climate change. 87785
- 9.1.4 All mechanical systems provided must be robust, safe, energy efficient, simple to operate and easy to maintain as well as comply with the project sustainability requirements. 87786
- 9.1.5 Exhaust dispersion modelling must be completed for all exhaust discharges that are intended to discharge smoke and/or Type A and Type B effluents (AS1668.2). Exhaust dispersion modelling must use proven CFD modelling software and must satisfactorily demonstrate that the discharge location, size and configuration of each exhaust discharge: 87787
- (a) is appropriate for use based on the surrounding topography, adjacent buildings and prevailing wind speed and direction; 87788
 - (b) minimises the risk of effluents being drawn into adjacent air intakes, station entrances and/or other adjacent building openings; 87789
 - (c) is able to safely discharge effluents (including smoke) so as not to create adverse environmental impact to surrounding pedestrianised areas; 87790
 - (d) gives due consideration to existing adjacent land uses; and 87791
 - (e) [Not disclosed]. 118064
- [Not disclosed] 118151
- 9.1.6 [Not disclosed] 87792
- 9.1.7 At no time should the operation of any ventilation system create an air velocity that would hinder the safe movement and evacuation of occupants, including persons with restricted mobility. 87793
- 9.1.8 TVS must be designed, installed and commissioned to control air quality, dust, heat, humidity, air pressure transients and smoke in the tunnels and platform trackways. 87794
- 9.1.9 All mechanical systems must include painting and identification in accordance with AS2311, AS2312 and AS1345. 87795

- 9.1.10 Mechanical system installation fixings must be compatible with AS1170 (earthquake restraint requirements). 87796
- 9.1.11 All mechanical systems must have the appropriate IP and IK ratings for the expected environmental conditions and locations. 87797
- 9.1.12 All ductwork systems must be designed in accordance with AS4254. Duct leakage must not exceed the following. 87798

Table 9-1: Duct pressure class

87799

| Duct Pressure Class | Static Pressure | | Leakage |
|---------------------|-----------------|----------|--------------------------------------|
| | Positive | Negative | L/s/m ² duct surface area |
| <i>Class A</i> | 500Pa | 500Pa | 0.027.Δp ^{0.65} |
| <i>Class B</i> | 1000Pa | 750Pa | 0.009.Δp ^{0.65} |
| <i>Class C</i> | 2000Pa+ | 750Pa+ | 0.003.Δp ^{0.65} |

- 9.1.13 Air leakage from/to builders work shafts and concrete ducts must not exceed 0.003. Δp^{0.65}. L/s/m² duct surface area at the maximum expected system pressure. 87800
- 9.1.14 Mechanical electrical works installations must be in accordance with section 10. 87801

9.2 Climate Control and Ventilation 87802

- 9.2.1 Station ECS must be provided throughout all public areas of the stations to provide a comfortable and safe environment for occupants. 87803
- 9.2.2 MVAC systems must be provided throughout all non-public areas to maintain a comfortable and safe environment for staff and support the reliable operation of equipment. 87804
- 9.2.3 The ECS and MVAC systems must be coordinated with the fire and smoke management system design. 87805
- 9.2.4 The ECS and MVAC system must be arranged and protected to allow for individual starting and shutdown of equipment groups and areas with varying hours of operation, sequence of automatic/ manual starting and needs for load balancing, shedding and energy saving. 87806
- 9.2.5 All central energy plant (chillers, refrigeration plant, heat pumps, heating plant and the like) must be designed to meet the peak expected load with at least 20% installed allowance for future expansion. 87807
- 9.2.6 Water cooled heat rejection plant design must comply with; 87808
 - (a) The Public Health and Wellbeing Act 2008, and 87809
 - (b) Health and Wellbeing Regulations 2009. 87810
- 9.2.7 All plant using refrigerants must be selected for zero ozone depleting and low hydrocarbon global warming potential. 87811
- 9.2.8 In the event of failure of any single plant item, the central energy plant must be capable of maintaining 24hr uninterrupted coverage for all critical equipment rooms and operational rooms at 100% load and all remaining facilities at a minimum 50% load. 87812
- 9.2.9 [Not disclosed] 87813
- 9.2.10 Project Co must calculate air-conditioning system loads using IES or other industry recognised approved program. 87826
- 9.2.11 ECS and MVAC systems must be sized to achieve design indoor environmental conditions at the following ambient conditions: 87827
 - (a) Critical Areas: 87828
 - i. Summer 37.5°C DB, 21.5°C WB and full solar load; and 87829
 - ii. Winter 3.5°C DB 100% RH; 87830

- (b) Other areas: 87831
 - i. Summer 34.3°C DB, 19.4°C WB and full solar load; and 87832
 - ii. Winter 3.5°C DB 100% RH. 87833
- 9.2.12 All plant and equipment must be able to maintain continuous operation without loss of installed capacity when exposed to the following extreme ambient conditions: 87834
 - (a) Summer 50°C DB, 28°C WB and full solar load; and
 - (b) Winter 0.0°C DB 100% RH.
- 9.2.13 ECS systems must be sized to be able to maintain comfortable internal conditions within the Station public areas, based on the Design Case (2046 plus 25 percent) pedestrian loads. 87835
- 9.2.14 The ECS must be capable of maintaining the temperature at the platform and concourse at 27°C DB at the above summer design ambient condition. 87836
- 9.2.15 The ECS systems must have the ability to vary the platform and concourse temperatures in response to changing ambient temperatures as set out in Table 9-2. 87837

Table 9-2: Acceptable platform and concourse temperatures.

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| Ambient Air Temperature | Acceptable platform and concourse temperature |
|--|---|
| Greater than 34.3°C DB, | 7°C +/- 1.5°C DB below the measured ambient temperature |
| 34.3°C DB to 30°C DB | 27°C +/- 1.5°C DB; |
| 30.0°C DB to 21°C DB | 3°C +/- 1.5°C DB below the measured ambient temperature |
| 21.0°C DB to 18°C DB | 18°C +/- 1.5°C DB; |
| Less than 18°C DB | Not greater than 18°C +/- 1.5°C DB |
| Final temperatures to be agreed with the Franchisee. | |

- 9.2.16 The ECS system must form an acceptable temperature gradient between the outside air temperature and concourse temperature at all times. 87839
- 9.2.17 The temperature and direction of air supplied to a given space must be arranged to prevent condensation forming on or within fixtures and fittings in direct contact with the air supply. 87840
- 9.2.18 Permanently occupied spaces located in public areas (such as CSCs etc.) must be provided with local comfort air conditioning capable of providing internal temperatures of: 87841
 - (a) Cooling: 23°C +/- 1.5°C DB; and 87842
 - (b) Heating: 22.0°C +/- 1.0°C DB. 87843
- 9.2.19 MVAC systems to Critical Areas (excluding transformer rooms and electrical switch rooms) must be capable of sustained 24-hour operation at the following environmental conditions. 84844
 - (a) Cooling: 23°C +/- 1.0°C DB, 50-60% +/- 5% RH; and 87845
 - (b) Heating: 22.0°C +/- 1.0°C DB, 50-60% +/- 5% RH. 87846
 (Specific humidity control to be provided as required to match equipment specifications). 87847
 MVAC systems to transformer rooms and electrical switch rooms must be capable of maintaining appropriate environmental conditions to sustain 24 hour operation. 118576
- 9.2.20 MVAC systems to other areas must be capable of maintaining the following internal conditions: 87848
 - (a) Cooling: 23°C +/- 1.5°C DB; and 87849
 - (b) Heating: 22.0°C +/- 1.0°C DB. 87850

| | | |
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| 9.2.21 | All ventilation systems must provide an effective means to control air quality and safely disperse dust, heat, humidity, noxious gases, contaminants and smoke to the outside in accordance with the SEPP (Air Quality Management) and the SEPP (Ambient Air Quality). | 87851 |
| 9.2.22 | All ventilation rates must be in accordance with the minimum requirements of AS1668.2. Where required, the minimum ventilation rates must be increased to meet the requirements of the targeted sustainability ratings. | 87852 |
| 9.2.23 | Except for BoH plant rooms, all systems used to supply outside air for the ventilation of the Stations must incorporate demand control ventilation in accordance with AS1668.2. Minimum outside air flow rates must be maintained to: <ul style="list-style-type: none"> (a) ensure adequate make air supplies for exhaust systems; (b) keep critical equipment rooms and operational rooms at relative pressure to prevent ingress of dust and/or other airborne particles; and (c) ensure a positive air flow from the platform to the outside. | 87853 87854 87855 87856 |
| 9.2.24 | Air movement within the occupied spaces must be in accordance with ASHRAE standards 55 and 62.1, and AS1668.2. | 87857 |
| 9.2.25 | Indoor air quality must be maintained at all times in accordance with the minimum National Occupational Health and Safety Commission (NOHSC) requirements and to meet all Occupational Health and Safety requirements for workplace exposure of airborne contaminants. | 87858 |
| 9.2.26 | The ECS and MVAC systems must include appropriate air filtration in accordance with AIRAH Technical Handbook. ECS systems must have a minimum filtration level of F5. | 87859 |
| 9.2.27 | The ECS and MVAC systems must maintain acceptable levels of humidity within an acceptable range for the functions of the space. | 87860 |
| 9.2.28 | All refrigeration systems must be selected to ensure the maximum refrigerant concentrations in any room (in the event of system leak) does not exceed safe levels and, as a minimum, is in accordance with AS1677. | 87861 |
| 9.2.29 | The ECS design must take into account air leakage through the PSDs created by train movements through the Tunnels. The PSD leakage rates and tunnel environmental conditions must be confirmed by the TVS specialist. | 87862 |
| 9.2.30 | The following services must be provided to all commercial and retail services in the Stations to support the subsequent fit out by future tenants: <ul style="list-style-type: none"> (a) dedicated chilled water drawn from the Station's centralised chilled water system; (b) dedicated centralised mechanical ventilation that is separate to the Station's centralised ventilation system (outside air and kitchen exhaust if required); and (c) dedicated smoke exhaust duct which can be isolated from the centralised Station Smoke Management System, but shares the central fans. <p>All base building connections must include metering systems to record energy use.</p> | 87863 |
| 9.2.31 | External lift shafts exposed to solar radiation must be provided with climate control systems to maintain internal shaft temperatures not greater than 35°C (or temperature as specified by the lift supplier). | 87864 |
| 9.2.32 | All lift cars must be able to maintain internal ambient conditions equivalent to the areas they serve. | 87865 |
| 9.2.33 | Lift shafts must be ventilated or air conditioned to support maintaining passenger safety as per EN 81. | 118577 |

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| 9.3 | [Not disclosed] | 87866 |
| 9.4 | [Not disclosed] | 87892 |
| 9.5 | [Not disclosed] | 87961 |
| 9.6 | [Not disclosed] | 87992 |
| 9.7 | Plumbing and Drainage | 88051 |
| 9.7.1 | All plumbing and drainage systems must comply with AS3500, the National Construction Code (BCA) and water authority regulations. | 88052 |
| 9.7.2 | The design and installation must promote excellence in water conservation, including promoting and incorporating the latest technologies and systems to reduce water consumption and drainage impacts. | 88053 |
| 9.7.3 | All incoming water supplies must be metered in accordance with the local water authority requirements. All retail facilities must be separately metered. | 88054 |
| 9.7.4 | [Not disclosed] | 88055 |
| 9.7.5 | [Not disclosed] | 88065 |
| 9.7.6 | [Not disclosed] | 88066 |
| 9.7.7 | [Not disclosed] | 88072 |
| 9.7.8 | [Not disclosed] | 88073 |
| 9.7.9 | [Not disclosed] | 88074 |
| 9.7.10 | [Not disclosed] | 88075 |
| 9.7.11 | [Not disclosed] | 88076 |
| 9.7.12 | [Not disclosed] | 88081 |
| 9.7.13 | [Not disclosed] | 88082 |
| 9.7.14 | [Not disclosed] | 88083 |
| 9.7.15 | [Not disclosed] | 88084 |
| 9.7.16 | [Not disclosed] | 88085 |
| 9.7.17 | [Not disclosed] | 88086 |
| 9.7.18 | [Not disclosed] | 88087 |
| 9.7.19 | [Not disclosed] | 88088 |
| 9.7.20 | [Not disclosed] | 88096 |
| 9.7.21 | [Not disclosed] | 88097 |
| 9.7.22 | [Not disclosed] | 88098 |
| 9.7.23 | [Not disclosed] | 88099 |
| 9.7.24 | [Not disclosed] | 88100 |
| 9.7.25 | [Not disclosed] | 88101 |
| 9.7.26 | [Not disclosed] | 88102 |
| 9.7.27 | [Not disclosed] | 88103 |
| 9.7.28 | [Not disclosed] | 88104 |
| 9.7.29 | [Not disclosed] | 88105 |
| 9.7.30 | [Not disclosed] | 88106 |
| 9.7.31 | [Not disclosed] | 88107 |
| 9.7.32 | [Not disclosed] | 88108 |
| 9.7.33 | [Not disclosed] | 86354 |

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| 9.8 | Lifts | 88109 |
| 9.8.1 | The mechanical systems for lifts must comply with Section 7: Stations and provide the following minimum operational and physical attributes. | 88110 |
| | (a) Lifts must: | 88111 |
| | i. be of Type 1 – Public lifts and Type 2 – Back of House (BOH)/Goods/ intervention lifts; | 88112 |
| | ii. have lift doors with high speed door operators that include continuous infrared door safety edge protection; | 88113 |
| | iii. have rated lift car speeds of >1.0m/sec where the overall vertical lift rise distance is less than or equal to 10 metres; | 88114 |
| | iv. have rated lift car speeds of >2.5m/sec where the overall vertical lift rise distance is greater than 10 metres, with the exception of dedicated material management lifts; | 88115 |
| | v. use lifts with variable voltage/ variable frequency drive systems; | 88116 |
| | vi. be provided with Automatic Rescue Device (ARD) for emergency operation c/w appropriate UPS backup; | 88117 |
| | vii. locate all lift controllers at the upper most level served by the lift; | 88118 |
| | viii. include real time remote monitoring and control via the BMS; and | 88119 |
| | ix. facilitate remote homing / park control via the BMS. | 88120 |
| | (b) Lifts used for the evacuation of PRMs must be designed in accordance with the requirements of MFB Fire Safety Guidelines and the ABCB handbook. | 137191 |
| | (c) Lift operation must be interfaced with the automatic fire detection and alarm system to ensure the lift car is prevented from stopping and discharging persons to a landing in a fire zone where a fire detector has been activated. | 88121 |
| | (d) Incorporate a group controller for all groups of two or more side by side lifts that provides full collective group control. | 88122 |
| | (e) Project Co must: | 88123 |
| | i. provide hall lanterns at each floor for each lift providing information on the location and status of each lift; and | 88124 |
| | ii. ensure all lifts have lift annunciation panels located at the following points: | 88125 |
| | (1) adjacent to the lift landing doors at all landing levels; and | 88126 |
| | (2) at the FCR. | 88127 |
| 9.8.2 | Upgrade works to existing lift wells at MCS to facilitate passenger connectivity with CBD North must be: | 88128 |
| | (a) carried out and reinstated in accordance with Train Franchisee standards; and | 88129 |
| | (b) must be completed in such a manner that one lift remains functioning at all times during operational hours. | 88130 |
| 9.9 | Escalators | 88131 |
| 9.9.1 | Escalators must comply with section 7, and must, as a minimum: | 88132 |
| | (a) be capable of variable step speed with a design rated step speed of 0.75m/sec; | 88133 |
| | (b) incorporate variable voltage/ variable frequency regenerative drive systems; | 88134 |
| | (c) be capable of undertaking a controlled stop and reversal with a controlled deceleration and acceleration under full load; | 88135 |
| | (d) have emergency stop buttons at the top and bottom landings, and at regular intervals over the length of the escalator; | 88136 |
| | (e) have digital dynamic signage at each escalator to display the status and direction of each landing; | 88137 |
| | (f) be capable of automatically restricting access to the individual escalator, including the provision of audial and visual alarms; | 88138 |
| | (g) allow automatic restart of escalators in compliance with Clause 5.12.2.4.2 (a) of | 88139 |

| | | |
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| | EN115; | |
| (h) | provide controller / drive units located within the top of the machine space of the escalator truss pit with secure and safe access integrated within the truss construction; | 88140 |
| (i) | be high specification frequency drive units capable of undertaking a controlled stop and similarly a controlled acceleration under full load in emergency evacuation times; | 88141 |
| (j) | [Not disclosed]; | 88142 |
| (k) | include real time remote monitoring and control via the BMS; | 88143 |
| (l) | have an IP 65 rating; | 88144 |
| (m) | be capable of bi-directional operation to ensure the operator can reduce asymmetrical wear; and | 88145 |
| (n) | provide sleep mode and/ or energy saving mode. | 118578 |
| 9.9.2 | Extended runoffs should be considered to allow for the installation of automated gates which enable remote closure/reversal of escalators. | 88146 |
| 9.9.3 | Motor rooms must be designed to provide restricted access to authorised persons only. | 88147 |
| 9.9.4 | [Not disclosed] | 88148 |
| 9.9.5 | Project Co must develop procedures for the reversal of direction of escalators, in accordance with NFPA130 as well as relevant statutory requirements and work health and safety considerations. | 88149 |
| 9.10 | [Not disclosed] | 88150 |
| 9.11 | Energy and Water Management | 88195 |
| 9.11.1 | Energy and Water Management System (E&WMS) must be capable of metering, monitoring and trending energy and water consumption for the Station and Tunnel building. | 88196 |
| 9.11.2 | The E&WMS must have sufficient storage capacity to retain operational data over a complete annual operating cycle. | 88197 |
| 9.11.3 | The E&WMS must be capable of producing detailed reports presenting information on instantaneous usage, usage trends over selected periods, total consumption, and comparisons with previous periods. | 88198 |
| 9.11.4 | [Not disclosed] | 88199 |
| 9.12 | Miscellaneous | 88229 |
| 9.12.1 | Commercial /retail tenancies | 88230 |
| (a) | Project Co must provide the following mechanical services to each individual tenancy space: | 88231 |
| | i. chilled water supply (metred); | |
| | ii. potable water (metred); | |
| | iii. general exhaust; and | |
| | iv. drainage. | |
| (b) | Each tenancy must be provided with facilities (including cable trays, distribution boards or similar) to obtain power and communications direct from the relevant Utility Provider, complete with independent metering. | 118585 |
| 9.12.2 | Noise and Vibration | 88232 |
| (a) | Mechanical systems must include all necessary acoustic treatments to achieve the design ambient noise levels in accordance with section Error! Reference source not found. | 88233 |
| (b) | Acoustic treatments must address: | 88234 |
| | i. noise generated through air movement, moving parts and structural vibration; | 88235 |

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| | ii. | break out of sound energy from shafts and/or ductwork system; | 88236 |
| | iii. | plant noise transmitted to occupied spaces via airborne and/or structure borne noise paths through building elements; | 88237 |
| | iv. | noise radiated directly to the spaces from plant located within the occupied space; and | 88238 |
| | v. | transfer of noise between acoustically rated rooms. | 88239 |
| (c) | | Mechanical systems must be selected to minimise tonal noise and pulsing noise where: | 88240 |
| | i. | Tonal noise is defined as noise that contains narrow band frequency components; and | 88241 |
| | ii. | Pulsing noise is defined as any noise characteristic that is evidenced by rapid changes in noise level. | 88242 |
| | iii. | Equipment will be deemed to be tonal based on the tonality assessment methodology outlined in ISO1996-2:2007, Annex. D. | 150481 |
| (d) | | In locations where the noise from mechanical systems is expected to include a subjectively identifiable tonal and/or pulsing character, the ambient noise levels in that area must be lowered by a minimum of 5dB; | 88243 |
| 9.12.3 | | Planning and Coordination | 88244 |
| | (a) | Air intakes and exhaust discharged must be located to minimise the risk of air recirculation. | 88245 |
| | (b) | Systems containing water, must not be located and/or routed through or be placed near or above water sensitive equipment including electrical switch rooms, SERs, CERs, lifts shafts, escalator chambers and the like. | 88246 |
| | (c) | Secure and vandal proof plant enclosures must be provided for operational critical infrastructure. | 88247 |
| | (d) | All lifting and materials handling systems required to replace plant must be fit for purpose. | 88248 |
| | (e) | Plant replacement staging areas must be provided to temporary store replacement, or old equipment where future plant replacement cannot be demonstrated to be completed in a single ALBF period. | 88249 |
| | (f) | All Mechanical and electrical services risers must be provided with permanent flooring to enable access to services at each floor. | 88250 |

10 Electrical Power Systems

88251

10.1 Low Voltage Electrical Systems

88252

10.1.1 General

88253

- (a) The scope of the low voltage (**LV**) electrical systems includes the following major components:
 - i. LV main switchboards; 88255
 - ii. LV distribution switchboards; 88256
 - iii. power supplies to mechanical equipment and systems; 88257
 - iv. submains and sub circuits; 88258
 - v. lighting and general power requirements; 88259
 - vi. emergency lighting and exit signage; 88260
 - vii. lighting control systems; 88261
 - viii. UPS system; 88262
 - ix. earthing, bonding and surge protection; and 88263
 - x. power supplies to support RSA and RSI equipment. 88264
- (b) Electrical power supply must be provided with appropriate distribution and protection systems. 88265
- (c) The LV distribution system which supplies power to all interfacing systems must be provided at 400V, 3-phase or 230V, single phase. 88266
- (d) Electrical systems must be designed, installed and commissioned to limit the cascade of equipment faults to the minimum number of locations. 88267
- (e) A safe and reliable source of electrical power supply must be provided and must ensure that a first order failure of any part of the power supply network will not impact on the operation of any system connected to the Stations and/or tunnel LV distribution power supply network. 88268
- (f) All electrical systems must achieve the minimum requirements of:
 - i. the FER; 88270
 - ii. EMC; and 88271
 - iii. section 15.
- (g) Electrical systems must be common across all Stations and Tunnels, SFAIRP, to reduce numbers of types and availability of spares. 88273
- (h) Electrical systems must be capable of running services continuously for 5 single event days between the first timetabled service on Friday and the last timetabled service on Tuesday. 88274
- (i) Electrical system zoning must align with the earthing and bonding equipotential zoning requirements. 88275
- (j) Dual power supplies must be provided to all operational critical systems and systems supporting rail operations as provided by the RSA. The dual power supplies must be terminated at final distribution boards located in the associated equipment room, as specified by the RSA. 88276
- (k) All dual power supplies must be capable of being simultaneously energised to maintain system operation with a minimum interruption time required for automatic change over in the event of first and second order failures in any part of the distribution power supply. 88277
- (l) Where new electrical systems are required to interface with existing electrical systems, the existing system must be upgraded to form a fully integrated system. 88278
- (m) Electrical systems used to provide power to the services and assets within the Stations and Tunnels must not be impacted by any abnormal operating modes from adjacent existing electrical systems and networks. 88279

| | | |
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| (n) | Existing railway electrical system functions must not be rendered inoperable due to the introduction of the Stations and Tunnels and associated systems. | 88280 |
| (o) | Electrical infrastructure and assets, must be able to withstand, 20 mm/sec vibrations, unless otherwise required. | 88281 |
| (p) | Noise generated by electrical equipment must not exceed the requirements set out in section 7.10. At no time should any tonal (single frequency) or pulsating noise cause interference with passenger communication announcements or distract operational staff. Equipment will be deemed to be tonal based on the tonality assessment methodology outlined in ISO1996-2:2007, Annex. D. | 88282 |
| (q) | [Not disclosed] | 88283 |
| (r) | Power quality requirements must be coordinated with the interfacing systems provider to ensure power requirements of equipment are understood and provided for. | 88287 |
| (s) | Electrical systems must reduce environmental impact and be designed and installed to support sustainability and climate change objectives. | 88288 |
| (t) | Electrical systems must be arranged to allow repair or replacement whilst the system remains fully functional. | 88289 |
| (u) | The design and layout of systems and equipment must limit or eliminate vandalism so far as is practical. | 88290 |
| (v) | All plant and equipment must have the appropriate IP and IK rating to account for the environmental conditions (bugs, dust, and moisture) and potential exposure to mechanical damage (vandalism, foot traffic). | 88291 |
| (w) | Electrical plant room locations must be selected considering access and maintenance strategy to allow for safe, easy and unobstructed route for the replacement of electrical equipment during both planned and reactive maintenance. | 88292 |
| 10.1.2 | [Not disclosed] | 88293 |
| 10.1.3 | [Not disclosed] | 88338 |
| 10.1.4 | [Not disclosed] | 88352 |
| 10.1.5 | [Not disclosed] | 88370 |
| 10.1.6 | [Not disclosed] | 88448 |
| 10.1.7 | [Not disclosed] | 88464 |
| 10.2 | [Not disclosed] | 88482 |
| 10.3 | Earthing and Bonding | 88681 |
| 10.3.1 | General | 88682 |
| (a) | Project Co must provide all necessary earthing, bonding and stray current mitigation systems to: | 88683 |
| i. | ensure the safety of all users and staff; | 88684 |
| ii. | enhance the operational resilience of sensitive electrical and electronic equipment and/or systems from the impacts of stray current; and | 88685 |
| iii. | mitigate the effects of electrolysis and provide corrosion protection of structural assets and operating equipment. | 88686 |
| (b) | Project Co must develop an earthing, bonding and stray current mitigation strategy to: | 88687 |
| i. | mitigate electrolytic corrosion risk to the Project Assets and third party utilities and structures. | 88688 |
| ii. | outline how the electrolytic corrosion risk to the Project Assets from existing street level 750V DC tram networks is mitigated; | 88689 |
| iii. | ensure that step and touch potential hazards from AC and DC short circuits are mitigated to safe levels; | 88690 |
| iv. | inform all other design disciplines, construction, testing, commissioning and | 88691 |

- operating and maintenance teams to ensure compliance with this strategy;
and
- v. establish an interdisciplinary review process to ensure the design development is consistent with the strategy. 88692
- (c) Project Co must carry out soil electrical resistivity measurements and modelling along the entire alignment to provide input into the high voltage earthing design and stray current mitigation design. 88693
- (d) Project Co must provide lightning protection systems to: 88694
- i. ensure the safety of all users and staff; 88695
 - ii. protect sensitive electrical and electronic equipment from the potential damage resulting from lightning strikes; and 88696
 - iii. support operational resilience of sensitive electrical and electronic systems by minimising disruption from potential lightning strikes. 88697
- (e) Project Co must liaise with all relevant stakeholders and interfacing parties to coordinate and provide appropriate earthing and bonding systems for all operating systems, including: 88698
- i. communication systems; 88699
 - ii. controls and SCADA systems; 88700
 - iii. PSDS / PSD; 88701
 - iv. security and CCTV systems; 88702
 - v. signaling / CBTC Systems; 88703
 - vi. ticketing; 88704
 - vii. OHLE; 88705
 - viii. traction power substation; 88706
 - ix. 66kV / 22kV power supply system;
 - x. LV distribution system;
 - xi. electrolysis mitigation; and
 - xii. stray current management.
- (f) The earthing and bonding strategy must allow for dividing the Stations and Tunnel into a discrete number of equipotential zones. 88707
- (g) The final equipotential zoning arrangement must be consistent with the final electrical distribution systems, traction power systems and OHLE. 88708
- (h) Each equipotential zone must be connected to rail via a monitored voltage limiting device. 88709
- (i) The earthing and bonding must be seamlessly integrated into the existing earthing and bonding systems for the existing Metropolitan Rail Network. 88710
- (j) The final equipotential zoning arrangement must be electrically segregated from all adjoining third party assets. 88711
- (k) Electronic test points must be provided throughout the Stations and Tunnel as required. 88712
- (l) Stations that have: 88713
- i. a transport interchange with an existing rail station; 88714
 - ii. a transport interchange with an existing tram stop; or 88715
 - iii. subway connections to adjoining properties and/or precincts, 8816
- must be physically separated from metallic structures of other parties by a minimum distance of 2 metres to prevent inadvertent bridging between adjacent equipotential zones at all times. 88717
- (m) All external metallic services and/or fixtures, including water pipes, sewer mains, handrails, walkways, floors etc., must incorporate minimum 2 metre insulated sections with insulated flanges/ connections at the equipotential zone interface within the station box. 88718

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| | (n) | All steel reinforcement within individual concrete elements and electrical bonding between adjacent structural elements and/or structure sections must be made electrically continuous by appropriate welding or providing mechanical couplers specifically designed to support the electrical continuity of reinforcing. Continuity must ensure that any anticipated levels of current (AC or DC) can be safely managed by the continuity system throughout the Design Life of the structure. | 88719 |
| | (o) | All steel reinforcement is to provide a large metallic cross sectional area to dissipate stray current into the general mass of the earth and minimise the HV/LV earth grid impedance. | 88720 |
| | (p) | Project Co must provide a system of embedded copper earth grids(s) installed under the raft / base slabs where ever possible. | 88721 |
| | (q) | All earthing electrodes, ferrules, connectors, connection cables and the like must be capable of dissipating the full fault current protection clearance time. | 88722 |
| | (r) | All electrodes/ earthing rods associated with the earthing and/or lightning protection systems must be appropriately sized and installed to achieve the minimum Design Life requirements, and be arranged to prevent damage to installed liners. | 88723 |
| 10.3.2 | | Traction System | 88724 |
| | (a) | All earthing and bonding systems must be suitable for both 1500V DC and 3000v DC traction supply systems. | 88725 |
| | (b) | Earthing connection plates / common bonding terminal are to be provided within each traction power substation in accordance with the traction power system requirements. | 88726 |
| 10.3.3 | | OHLE | 88727 |
| | (a) | Adequate clearances must be maintained at all times between the OHLE and adjacent structural soffits to take account of the pantograph zone as defined by EN50122.1. | 88728 |
| | (b) | Where a structural steel member is installed in proximity to the OHW: | 88729 |
| | i. | the OHW must, as a minimum, be double insulated from all structural steel members used to support any part of the OHLE; | 88730 |
| | ii. | the LV side of the primary insulation must be directly bonded to rail; | 88731 |
| | iii. | the steel members located in the DC fault zone must be bonded to rail and comply with L1-CHE-STD-016; | 88732 |
| | iv. | the steel member must be electrically isolated from adjacent metallic items at the ends; and | 88733 |
| | v. | other metallic structures or services must have a minimum 2 metre long insulating space or two 100 mm gaps spaced 2 metres apart. | 88734 |
| 10.3.4 | | Platform Screen Door System | 88735 |
| | (a) | All PSD assemblies must be electrically bonded directly to rail to ensure the safety of persons and resilience in installation and operation. | 88736 |
| | (b) | The PSDS must be electrically isolated from the Station earth, including all interconnecting power, control and communications cable systems. | 88737 |
| | (c) | Any metallic part of the PSD assembly that can be touched by a person must be protected by electrical isolation zones. The zones must extend: | 88738 |
| | i. | vertically, as a minimum of 2.5m from the platform floor; | 88739 |
| | ii. | Transversely, as a minimum of 2.5m from the inner face of the platform screen; and | 88740 |
| | iii. | Longitudinally, as a minimum of 1.8m beyond the platform screen returns. | 88741 |
| | | The electrical isolation zone must protect persons on the platform against inadvertently touching the PSD at rail potential and any metallic component at earth potential. | 118647 |
| | (d) | Where the minimum requirements for providing the PSD electrical isolation zone cannot be achieved, alternative protection measures must be provided (for example, the zone between the PSD and the ceiling services zone over the platform). The alternative protection measures must protect maintenance persons | 88742 |

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| | from inadvertently touching the PSD at rail potential and therefore bridging any metallic component at earth potential. | |
| | (e) The platform area immediately adjacent to the PSD assembly must be provided with a high resistivity platform capping material or embedded epoxy membrane covering an area of at least 2.5m from the face of the PSD. | 88743 |
| 10.3.5 | Station Box | 88744 |
| | (a) All reinforcement of the entire Station structure must be electrically continuous. | 88745 |
| | (b) Where precast elements are used, each precast element must be provided with appropriate ferrules and/or starter bars to facilitate electrical bonding of all neighbouring elements. | 88746 |
| | (c) Earthing connection ferrules must be welded to the reinforcing on both sides of the Station / Tunnel interfaces, and used to interconnect the Tunnel and Station sections. Earthing connection ferrules must be coordinated with the waterproofing membrane and any secondary lining. | 88747 |
| | (d) All Station metallic services, including pipework, ductwork, cable containment /ladders and the like, must be: | 88748 |
| | i. bonded to the Station reinforcement; and | 88749 |
| | ii. located a minimum of 2m away from any metallic fixing or fixture that is bonded to live rail. | 88750 |
| | (e) Where the minimum 2m separation cannot be achieved alternative protection measures must be provided. | 88751 |
| 10.3.6 | Track Work | 88752 |
| | (a) As a minimum, all track/rail installation must be double insulated from the track slab. Standard rail fastening devices designed for DC traction systems must be used. | 88753 |
| | (b) Project Co must determine the most appropriate required resistance of each electrical insulation layer between: | 88754 |
| | i. the rail fasteners and baseplates; and | 88755 |
| | ii. the baseplate and the track slab. | 88756 |
| | (c) Project Co must determine the minimum resistance levels to achieve compliance with the Electrical Resistance Test as per Transit Cooperative Research Program (TCRP) Report 71, Volume 6: Direct Fixation Track Design Specifications, Research, and Related Material, Section 3, Part A, Section 4.03. Test G (Page 35). | 88757 |
| | (d) Project Co must not use a direct fixed or ballasted rail system without appropriate electrical insulation. | 88758 |
| | (e) Project Co must provide stray current monitoring facilities within the track slabs. The stray current monitoring facilities must comprise of a steel reinforcement cage made electrically continuous and installed in nominal 100m long sections. | 88759 |
| | (f) Where fibre reinforced concrete is used in the track slab, a layer of metallic reinforcement mesh must be installed solely to provide stray current monitoring. | 88760 |
| | (g) Each stray current monitoring facility must include a connection ferrule at each end for testing purposes and, if required, connection of a stray current mitigation bond cable. | 88761 |
| | (h) Stray current monitoring facilities must maintain 100mm ² cross section and 0.5 Ohm longitudinal resistance per km of slab length. | 88762 |
| 10.3.7 | Tunnels, Cross Passages, Shafts | 88763 |
| | (a) Each Tunnel lining segment must be electrically isolated from the adjacent segment/s. | 88764 |
| | (b) All metallic materials installed throughout the Tunnel must be segmented at the ends of each equipotential zone. The segmentation detail must be arranged to prevent inadvertent bridging between adjacent equipotential zones. | 88765 |
| | (c) Where plant and/ or equipment in the tunnels and cross passages cannot be earthed via respective Station/ Tunnel equipotential zones, appropriate local earthing electrodes must be installed to provide local earthing. | 88766 |

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| | (d) Project Co must provide rail insulating joints approximately 1m into the ballasted track outside every tunnel portal, bridged across by lugged and bolted bonding cable under normal operation conditions. | 88767 |
| | (e) Metallic structures associated with the Works must be physically separated from metallic structures of other parties by a minimum distance of 2 metres to prevent inadvertent bridging between adjacent equipotential zones. | 118648 |
| 10.3.8 | Miscellaneous Structures | 88768 |
| | (a) Project Co must ensure that steel components of any elevated structures, retaining walls and shotcrete include measures to mitigate the effects of stray currents. | 88769 |
| | (b) Project Co must ensure that all anchor rods, soil nails, rock bolts and or whalers, used to stabilise retaining structures / walls which are in contact with continuous reinforcement; | 88770 |
| | i. remain electrically isolated from any supplementary reinforcement in the retaining wall; | 88771 |
| | ii. the reinforcement mesh must be electrically segregated at not greater than 30m sections; and | 88772 |
| | iii. whalers must not be continuous for more than 30m length and must not bridge between the 30m reinforcement sections. | 88773 |
| | (c) Project Co must ensure that steel bar / mesh reinforcement used in shotcrete walls and/or linings, is electrically segregated, at not greater than 30m spacing's along the wall / lining. | 88774 |
| 10.3.9 | Tram Works | 88775 |
| | Project Co must ensure that the earthing systems of the Tram Franchisee infrastructure remain electrically isolated from the Tunnel and Stations earthing and rail systems at all times. | 88776 |
| | | 88777 |
| 10.4 | Electromagnetic Compatibility (EMC) | |
| 10.4.1 | General | 88778 |
| | (a) Systems, including electrical plant, must be electromagnetically compatible with their surrounding environment and other systems. Where required Project Co must introduce appropriate EMI mitigation measures to ensure compatibility is met. | 88779 |
| | (b) Systems, including electrical plant must not generate unacceptable levels of electro-magnetic interference, in accordance with EN50121. | 88780 |
| | (c) Systems (throughout the systems lifecycle), when interfaced with and operating in conjunction with systems from the RSA, the RIA, the HCMTs and existing railway infrastructure, must not generate unacceptable levels of electro-magnetic interference that affect: | 88781 |
| | i. existing infrastructure and systems; | 88782 |
| | ii. third party EMI sensitive equipment / receivers; or | 88783 |
| | iii. other systems. | 88784 |
| 10.4.2 | EMC Technical Requirements | 88785 |
| | (a) The following EMC standards and regulations must be complied with: | 88786 |
| | i. IEC 62236-4 (within the 3 m zone); | 88787 |
| | ii. IEC (outside of the 3 m zone); | 88788 |
| | iii. IEC 61000-6-4; and | 88789 |
| | iv. IEC 61000-3-2 and IEC 61000-3-3; | 88790 |
| | Zoning principles for within the 3 m zone and outside of the 3m zone are according to IEC 62236-4. | 88791 |
| | (b) Project Co must ensure electro-magnetic fields produced by its systems, including electrical plant, complies with the recommended exposure limits defined in the ICNIRP guidelines for time varying fields up to 300 GHz, regarding passengers, personnel (occupational) and other people in the vicinity of the railway environment (i.e. 20 m from the nearest track or substation wall). | 88792 |

- (c) All systems and equipment that are placed outside of the railway environment (i.e. 20 m from the nearest track or substation wall) must comply with the following EMC standards and regulations: 88793
 - i. IEC 61000-6-3; and 88794
 - ii. IEC 61000-6-1. 88795
- (d) Communications system equipment placed outside of the railway environment (i.e. 20 m from the nearest track or substation wall) must comply with the following EMC standards and regulations: 88796
 - i. EN 50130-4 (immunity) for alarm systems; 88797
 - ii. IEC 55103-1 1(emissions) and IEC 55103-2 (immunity) for PA systems; 88798
 - iii. EN 50132-2-1 (immunity) for CCTV system; and 88799
 - iv. EN 55022 (emissions) and EN 55024 (immunity) for IT equipment. 88800
- (e) Traction power system equipment must comply with the following EMC standards and regulations: 88801
 - i. IEC 62236-5; 88802
 - ii. IEC 61000-6-4; 88803
 - iii. IEC61000-3-2 and IEC 61000-3-3; and 88804
 - iv. IEC 61000-3-6 and IEC 61000-3-7. 88805
- (f) Radiated emissions generated by the traction substations, as a whole, must comply with the limits defined in IEC 62236-5. 88806
- (g) Radiated emissions generated by the railway infrastructure, as a whole, must comply with the limits defined in IEC 62236-2. 88807
- (h) The HV system and traction power systems must not generate unacceptable induced voltages, above the limits stated in IEC 62128-1 on other systems (including electrical equipment, electrical plant and cables). 88808
- (i) The HV system must comply with the power quality requirements (fluctuation in voltage, harmonic content) as specified by the HV supply authority. 88809
- (j) Electrical and electro-mechanical system equipment must comply with the following EMC standards and regulations: 88810
 - i. IEC 62236-5; 88811
 - ii. IEC 61000-3-6 and IEC 61000-3-7; 88812
 - iii. EN 50152-1; 88813
 - iv. IEC 60255; 88814
 - v. EN 62271-1; and 88815
 - vi. IEC 62040-2. 88816

11 [Not disclosed]

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| 12 | Surface Transport | 88847 |
| 12.1 | General | 88848 |
| 12.1.1 | All Road Functional Layouts for each precinct must optimise transport movements based upon the transport modal priorities provided in Appendix B4. | 88850 |
| 12.1.2 | Standards | 88851 |
| | (a) Project Co must ensure that all road, bus, cycle facilities and footpath design and construction is undertaken in accordance with the applicable standards of the Responsible Road Authority, unless agreed otherwise by the approving authority. | 88852 |
| | (b) Project Co must design and construct all VicRoads infrastructure in compliance with VicRoads standards, other than existing infrastructure which will be as agreed with the relevant road authority. | 88853 |
| | (c) Project Co must construct or reinstate all relevant local council assets, including roads, kerb and channels, footpaths, medians, drainage, public lighting, pavement marking and signage, in accordance with plans and specifications approved by the relevant local council. | 888534 |
| 12.1.3 | Overview | 88855 |
| | (a) The design of tram works must be fully coordinated with road design to provide an integrated outcome. | 88856 |
| 12.1.4 | Interchanges | 88857 |
| | (a) Project Co must minimise walking distance between interchange points with existing bus and tram services and new stations, and ensure the route and interchange can be used by people who are mobility impaired. | 88858 |
| | (b) Transfer routes between interchange stations must be designed to reduce conflicts in customer flow. | 88859 |
| | (c) Bi-directional routes between interchange stations must be provided with overhead and surface level signage indicating the passenger flow direction to improve circulation and reduce conflicts, i.e. signage advising customers to keep to the left. | 88860 |
| 12.1.5 | Lighting and signage | 88861 |
| | (a) Street lighting and traffic signal lanterns at VicRoads intersections must be upgraded to light emitting diodes (LEDs) where an intersection remodel requires more than 50% new/reconfigured lighting to be installed. | 88862 |
| | (b) Lighting pole heights must not exceed 6.0m | 88863 |
| | (c) Passive or active way finding information and signage must be provided where access and egress to properties is obscured, changed or visually impacted. | 88864 |
| | (d) A minimum of 50% of all pedestrian lanterns installed as part of the Works must use female pedestrian symbols, unless otherwise approved by the State. | 150496 |
| 12.1.6 | Accessibility, location, functionality and interchange opportunities of bus and tram stops must be maintained except by formal agreement with PTV. | 88866 |
| 12.2 | Station Specific Requirements | 88867 |
| 12.2.1 | Arden | 88868 |
| | (a) The design of Arden Station must be integrated into the precinct in a manner that encourages and facilitates interchange to/from other nearby public transport access points, including other mode stops and North Melbourne Station. | 88869 |
| 12.2.2 | CBD North | 88870 |
| | (a) The design must support customer interchange between train services at CBD North Station and MCS and bus services at adjacent bus stops (Lonsdale Street). | 88871 |
| | (b) The design must support operation of bus services on Lonsdale Street at Day-1. | 88872 |
| 12.2.3 | Parkville | 88873 |

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| | (a) | The design must support customer interchange between train services at Parkville Station and tram services at adjacent tram stops (Royal Parade, Flemington Road/Grattan Street). | 88874 |
| | (b) | The design of the platforms stops in Royal Parade must discourage passengers from crossing outside the designated pedestrian crossing points to ensure the safety of customers. | 88875 |
| | (c) | A bus interchange facility must be provided at Parkville Station to provide for interchange between train and bus and tram and bus. | 88876 |
| | (d) | Access, connectivity, frequency and functionality must be provided within the precinct for up to six bus routes at Day-1. Bus stop provisions shall be in accordance with the requirements of Part A section 11.3 and Part B Appendix B4: Modal Priorities. Bus stops must be independently operable and accommodate a minimum 10.0m spacing between buses so as to not degrade the functionality or operation of scheduled bus services. Rail replacement bus services if integrated with scheduled bus facilities must not degrade the functionality or operation of scheduled bus services. | 88878 |
| | (e) | The final arrangement of University of Melbourne's Gate 10 must accommodate pre-construction pedestrian capacity and vehicle access capability, except to the extent that pedestrian and vehicle access requirements: | 88879 |
| | | i. will change as a result of the University of Melbourne's permanent closure of the South Lawn carpark; and | |
| | | ii. are predicted by Project Co to change as a result of the Project. | |
| 12.2.4 | Domain | | 88880 |
| | (a) | The current operational functionality of Domain Interchange infrastructure must be maintained at Day-1 whether or not the track alignment is retained along Toorak Road after the completion of the construction activities. This includes the functionality enabling the turn back of trams clear of the through tram tracks on St Kilda Road. | 88881 |
| | (b) | The road and tram legacy design must support the reinstatement of the tram service along Domain Road unless otherwise agreed by PTV. | 88882 |
| | (c) | The Domain tram interchange must be designed to accommodate two 33 metre trams in each direction simultaneously. | 88883 |
| | (d) | The current level of connectivity must be maintained for customers at Domain Interchange at Day-1. | 88884 |
| | (e) | The design must support operation of bus services along St Kilda Road. | 88885 |
| 12.2.5 | Bicycle Parking | | 88886 |
| | (a) | Safe and secure bicycle parking spaces must be provided. Minimum provision is as follows: | 88887 |
| | | i. Arden – 100 spaces; | 88888 |
| | | ii. Parkville – 200 spaces; | 88889 |
| | | iii. CBD North – 50 spaces; | 88890 |
| | | iv. CBD South – 50 spaces; and | 88891 |
| | | v. Domain – 100 spaces; and | 88892 |
| | (b) | Project Co must make provision in the design for future additional bicycle parking as follows: | 88893 |
| | | i. Arden – additional 200 spaces; | 88894 |
| | | ii. Parkville – additional 200 spaces; | 88895 |
| | | iii. CBD North – additional 200 spaces; | 88896 |
| | | iv. CBD South – additional 200 spaces; and | 88897 |
| | | v. Domain – additional 200 spaces. | 88898 |
| | (c) | Bicycle parking at Parkville Station must not obstruct access to the VCCC. | 88899 |
| 12.2.6 | Passenger drop off and pick up spaces must be provided at Arden, Parkville and Domain Stations. | | 88900 |

12.3 Roadworks

88901

12.3.1 Design Vehicle

88902

- (a) Roads layouts must be based on the design vehicle, including accommodation of vehicles swept paths for all through lanes, turning and deceleration lanes and intersections.

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Table 12-1: Typical Design and Checking Vehicle

88904

| ELEMENT | DESIGN VEHICLE | CHECKING VEHICLE ⁽¹⁾ |
|--|----------------------------------|--|
| Intersections between Arterial / Arterial Road | 19.0m Prime mover / semi-trailer | 25.0m Prime mover / long semi-trailer ⁽²⁾ |
| Intersections between Arterial / Collector Road and Collector / Collector Roads | 12.5m Single unit truck / bus | 19.0m Single articulated vehicle |
| Intersections between other road types | 8.8m Service vehicles | 12.5m Single unit truck / bus |
| Intersections with multiple turn lanes | As appropriate from above | 19.0m semi-trailer in one turn lane turning concurrently with cars in the other turn lane(s) |
| 1 5kph minimum intersection turning speed | | |
| 2 Vehicle assumed permitted to intrude into adjacent traffic lanes to negotiate turn | | |

- (b) Road intersection layouts must accommodate the swept path of the design vehicle with a minimum offset of 0.5m from the extremities of the vehicle path to a line of kerb, pavement edge or centreline, unless otherwise agreed with the relevant road authority.

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- (c) Road layouts must ensure that opposing movements within an intersection allow for 1.0m clearance and 2.0m clearance where at least one of the movements has two vehicles side by side, except where split phasing is agreed with the relevant road authority.

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- (d) Road layouts must ensure that swept paths are assessed at a minimum speed of 5 kph.

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- (e) Road layout design must ensure that vehicle swept path are carried out in accordance with:

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i. Austroads Guide to Road Design (AGRD) Part 4;

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ii. VicRoads Supplement to AGRD Part 4; and

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iii. Austroads Design Vehicle and Turning Path Templates Guide.

88911

12.3.2 Horizontal Clearance

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- (a) Roadside furniture must be located a minimum of 500mm clear of the swept path of the design vehicles and not be within 500mm behind the face of kerb and channel, or otherwise in accordance with the standards of the Returned Asset Owner.

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12.3.3 Sight Distance Criteria

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- (a) Sight distance must be in accordance with the:

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i. Austroads Guide to Road Design (AGRD) Part 3; and

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ii. VicRoads supplement to AGRD Part 3.

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12.3.4 Horizontal and Vertical Alignments

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- (a) The horizontal and vertical alignment must be in accordance with the:

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i. Austroads Guide to Road Design (AGRD) Part 3; and

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ii. VicRoads supplement to AGRD Part 3,

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| | other than for existing infrastructure which will be as agreed with VicRoads or the relevant road authority. | 150497 |
| 12.3.5 | Post Speeds and Design Speeds | 88922 |
| | (a) The road design speed must be equal to the current posted speed limit or otherwise as agreed with the Responsible Road Authority, with the exception of Grattan Street where a 40kph speed limit is to be instated between Flemington Road and Leicester Street. | 88923 |
| 12.3.6 | Cross Section and Lane Widths | 88924 |
| | (a) The effective footpath width on Collins Street, Franklin Street, Flinders Street and La Trobe Street must not be reduced from its pre-construction width, and must be a minimum of 3 metres unless otherwise agreed with the City of Melbourne. | 88925 |
| | (b) The effective footpath width on Swanston Street in areas of new and modified roadworks or a station entry must be a minimum of 4.5 metres unless otherwise agreed with the City of Melbourne, with the exception of the following areas where effective footpath width must be maximised within the available space: | 88926 |
| | i. north of Franklin Street; and | |
| | ii. the western footpath south of Little LaTrobe Street adjacent to the proposed parking spaces. | |
| | (c) Pedestrian crossing widths should be widened based upon pedestrian flows and comfort. | 88927 |
| | (d) Pedestrian crossings must be a minimum of 2.5 metres wide, except where otherwise noted. | 88928 |
| 12.3.7 | Bicycles | 88929 |
| | (a) Project Co must ensure that any changes to intersections includes provision of advanced stop line areas for cyclists in accordance with VicRoads design standards. | 88930 |
| | (b) Space must be provided for bike share schemes at Stations in agreement with the bike scheme operator. | 88931 |
| | (c) Bicycle pathways must not conflict with pedestrian pathway desire lines or otherwise impede traffic flow, with interfaces designed in accordance with Austroads Guide to Road Design Part 6A Paths for Walking and Cycling and Part 4 Intersections and Crossings, cycling aspects of Austroads Guides and AS1742.9:2000 'Manual of uniform traffic control devices', Part 9: Bicycle facilities and associated VicRoads Supplements to AGRD and Traffic Engineering Manuals. | 88932 |
| 12.3.8 | Buses | 88933 |
| | (a) The road layout must ensure that the design vehicle for buses must be a 12.5m bus except at Parkville, where an allowance for at least one 18m articulated bus within each bus interchange must be accommodated. | 88934 |
| | (b) Rail replacement services where integrated with existing facilities must not degrade the functionality or operation of the existing arrangements. | 88935 |
| | (c) Consistent bus stops, shelters and seating must be provided for all new infrastructure. | 88936 |
| | | 88937 |
| 12.4 | Tram works | |
| 12.4.1 | General | 88938 |
| | (a) New and modified tram infrastructure must be designed for Day-1 operations. | 88939 |
| | (b) New tram stops must provide capacity to support passenger demand levels and pedestrian movements forecast at Day-1. | 88940 |
| | (c) The new and modified assets must not preclude the operation of all vehicle types supported on the existing tram network at the date of the Agreement, with the exception of the Parkville outbound tram stop which must provide a minimum 60m platform. | 150502 |
| | (d) The new and modified assets must not result in a degradation of service delivery performance as far as reasonably practicable to the satisfaction of the State. | 88941 |
| | (e) The design of new tram stops and termini must not preclude future extensions or | 88942 |

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| | modifications to accommodate longer trams. | |
| (f) | New and redesigned tram tracks and stops must be designed and constructed in accordance with standards prescribed by PTV, VicRoads and the Tram Franchisee. | 88943 |
| (g) | A tram terminus must: | 88944 |
| | i. be incorporated at the end points of any new tram lines introduced as part of the Works; | 88945 |
| | ii. be designed to accommodate two 33m trams simultaneously; and | 88946 |
| | iii. provide facilities for the staff required at each new tram terminus (including drivers and customer service employees) to support the operation. | 88947 |
| (h) | In the event that there is a need to relocate / remove platforms at a tram stop, the spacing and change in location of tram stops must be between 200m and 400m unless agreed with TfV, PTV and the Tram Franchisee. | 88948 |
| (i) | ICT/OCS and security assets must be provided at tram/ train interchanges and at new tram terminuses provided at end points of new tram lines introduced as part of the Works. | 88949 |
| (j) | New tram track must be separated from road traffic where a segregated tram track reserve is available. | 88950 |
| 12.4.2 | Transport Integration | 88951 |
| (a) | Customers must be able to easily understand and navigate the network changes associated with the Metro Tunnel. | 88952 |
| 12.4.3 | Customer Experience | 88953 |
| (a) | Any new tram infrastructure must provide appropriate access for maintenance vehicles and personnel. | 88954 |
| (b) | Tram stops that are replaced or redesigned must provide the same or greater level of safety than the existing stop that has been replaced. | 88955 |
| (c) | Functionality and accessibility of tram stops in the vicinity of Flinders Street and CBD South Stations must be maintained. | 88956 |
| (d) | Tram stop design must assist with distributing passengers for even rollingstock loading and minimising alighting and boarding times. | 88957 |
| (e) | Sufficient general rubbish and recycling bins must be provided at major tram stops. | 88958 |
| 12.4.4 | Tram Infrastructure | 88959 |
| (a) | The design must provide for new tram curves at the intersection of Flinders Street and Elizabeth Street to allow these routes to continue east into Flinders Street with analysis to confirm tram delays through the intersection for all movements are minimised as far as practicable while maintaining pedestrian priority to the satisfaction of PTV. | 88960 |
| (b) | Seating and shelter for customers in waiting areas and platforms must be provided on modified or new tram stops. | 88961 |
| (c) | Weather protection must be provided at tram platforms where new or redesigned tram stops are installed as part of the project. The extent of the weather protection must be agreed with stakeholders. | 88962 |
| 12.4.5 | Performance | 88963 |
| (a) | The operational functionality and passenger connectivity of the tram network must be maintained at Day-1. | 88964 |
| (b) | Future upgrades to the tram network must not be precluded in accordance with the Tram Concept of Operation (CoO). | 88965 |
| (c) | New tram stops must be capable of supporting 33m trams. | 88967 |
| (d) | Any new or modified tram tracks must allow services to be delivered as prescribed in the Tram Concept of Operation (CoO) at Day-1. | 88968 |
| (e) | New tram stops must be sized based upon standard tram stop designs consistent with the tram corridor they are constructed on. | 88969 |
| (f) | If there is a need to relocate/remove platforms at a tram stop, the spacing and change in location of tram stops must be agreed with the Tram Franchisee. | 88970 |

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| 12.4.6 | Operational Resilience | 88971 |
| | (a) The design must allow tram services to be delivered in line with the Tram Concept of Operation (CoO) from pre-construction up to Day-1. | 88972 |
| | (b) The design must allow tram services to be delivered in line with the Tram Concept of Operation (CoO) at Day-1. | 88973 |
| | (c) The design must allow operational resilience of the tram network to be maintained to ensure degraded mode operations are accommodated. | 88974 |
| 12.4.7 | Civil Works – General | 88975 |
| | (a) Design loads must comply with: | 88976 |
| | i. AS/NZS 1170: Structural Design Actions Set; | 88977 |
| | ii. AS1657: Fixed platforms, walkways, stairways and ladders – Design, construction and installation; | 88978 |
| | iii. AS4678: Earth Retaining Structures; and | 88979 |
| | iv. AS5100: Bridge Design Set. | 88980 |
| | (b) Track infrastructure must be capable of supporting a maximum of 70km/hr operating speed, or in accordance with the regulatory roadway speed applicable to trams. | 88981 |
| | (c) As a minimum, track infrastructure for curved tracks must be capable of supporting a speed equal to the proposed operating speed. | 88982 |
| | (d) Trams tracks must be provided with a standard gauge (1435mm) that is measured between the running edges on the inside of the rails. | 88983 |
| | (e) Standard tram track components must be used. | 88984 |
| | (f) Track components currently approved for use within the Melbourne Tram Network must be used. | 88985 |
| | (g) E-Class (33.45m) length trams must be able operate on new or modified tram tracks. | 88986 |
| 12.4.8 | Alignment Design | 88987 |
| | (a) The design must ensure that any tram works associated with the project provide for the comfort of tram occupants. | 88988 |
| | (b) The design must ensure that any tram works associated with the project provide for the safety of tram occupants (both customers and staff) in both normal and abnormal operating modes. | 88989 |
| | (c) The design of any tram works associated with the project must demonstrate the total life of expandable track materials and components are optimised by providing a whole of life costing analysis. | 88990 |
| | (d) The design of the any tram works associated with the project must comply with the requirements of VRIOGS 005.1 – Tram Track Design Manual. | 88991 |
| 12.4.9 | Gauging and Clearances | 88992 |
| | Tram tracks must maintain clearances in line with the requirements of VRIOGS 005.1 – Tram Track Design Manual. | 88993 |
| 12.4.10 | Rail Track Components | 88994 |
| | Modified tram tracks must be as follows: | 88995 |
| | (a) embedded track - Ri57A grooved profile; and | 88996 |
| | (b) ballasted track – 41kg/m standard T rail. | 88997 |
| 12.4.11 | Track Structure | 88998 |
| | (a) The tram track construction must comply with the VRIOGS 005.2 – Tram Track Construction Part 1 to 4. | 88999 |
| | (b) Tram track structure must be as specified by Tram Franchisee (Standard Drawing STD_T9010 Rev D). | 89000 |
| 12.4.12 | Turnouts and Crossings | 89001 |
| | (a) Tram tracks must use switches that are Tram Franchisee standard design (SL45 or SR45 as required). | 89002 |

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| | (b) Turnouts must conform to the Tram Franchisee standard drawing (STD_T9010 Rev D). | 89003 |
| 12.4.13 | Tram Platforms | 89004 |
| | Tram platforms must comply with VRIOGS 005.2 – Tram Stop Infrastructure. | 89005 |
| 12.4.14 | Tram Roadmarking | 89006 |
| | All road markings must comply with the VicRoads Traffic Engineering Manual Volume 2 – Sections 16, 17 and 18. | 89007 |
| 12.4.15 | Tram Track Drainage | 89008 |
| | (a) Track drainage must cater for a 1 in 100 year ARI flood event (including the effects of climate change). | 89009 |
| | (b) Tram tracks must have drainage points at geometric low points. | 89010 |
| | (c) Tram track drainage must provide all aspects of the track system so as to provide for free drainage of all surfaces, trackwork, rail grooves and ancillary equipment for example electrical and mechanical equipment associated with switches and turnouts and expansion joints | 89011 |
| | (d) Tram track drainage must be positioned to intercept water that would otherwise enter in major crossroads and / or customer areas. | 89012 |
| | (e) Tram track drainage designers must identify all existing drainage services, charted or uncharted. Where this may conflict with the new tram track works or temporary works the drainage must be protected, relocated and/or adjusted. | 89013 |
| 12.4.16 | Electrical Requirements | 89014 |
| | Tram electrical works must comply with VRIOGS 005.1 – Tram Track Design Manual – Section 9. | 89015 |

13 Utility Infrastructure Works

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13.1 General Requirements

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- 13.1.1 Project Co must deliver all utility infrastructure required to support the operation of the Tunnel, Stations and Portals and must undertake any utility diversions in accordance with the relevant Utility Provider's requirements. 89018
- 13.1.2 Project Co must reinstate utility infrastructure temporarily relocated by the Early Works Managing Contractor as set out in Appendix B5. 89019
- 13.1.3 All minimum clearances (horizontal and vertical) must be maintained between Utility services, unless otherwise agreed with the relevant Utility Provider in writing in advance of commencement of the relevant Works. 89020
- 13.1.4 All utility infrastructure Works must have a safe means of access and egress. 89021
- 13.1.5 Project Co must provide the gas, telecommunications, electrical, water sewerage and drainage connections from the Stations to local networks. The connections must provide sufficient future capacity, including for any retail or commercial areas. 89022
- 13.1.6 Project Co must ensure that designs account for future servicing of any compulsorily acquired land which is identified for future development. 89023
- 13.1.7 Physical protection from damage must be provided for all new, relocated or existing utility infrastructure assets which are impacted upon or delivered as part of the design. 89024
- 13.1.8 Protection supported by structural assessments must be provided against, but not limited to, the following: 89025
- (a) ground vibration; 89026
 - (b) vehicle and plant movements; 89027
 - (c) excavation; and 89028
 - (d) access (operational and maintenance). 89029
- 13.1.9 The design must not result in load transfer onto existing or new utility infrastructure, unless otherwise agreed with the relevant Authority. Loading includes, but is not limited to, loads resulting from new construction, vehicle movements and construction storage. 89030
- 13.1.10 The design must not reduce or adversely impact the capacity of any existing utilities, including relocated, diverted or protected Utility Infrastructure. 89031
- 13.1.11 Temporary relocations must be avoided, where possible. 89032
- 13.1.12 The design of the Tunnels, Stations and Portals must ensure that any utility relocations maintain the structural independence of all other assets. 89033
- 13.1.13 All utility infrastructure must be earthed and bonded, as a minimum in accordance with the Utility Provider's requirements. 89034
- 13.1.14 The design must account for future Utility Provider servicing of developments on property acquired for the project and on property developed in close proximity to the project. 89035
- 13.1.15 The design of the Tunnels, Stations and Portals must be compatible with the existing storm water and sewer systems. 89036
- 13.1.16 Existing assets must not be rendered inoperable due to the performance of the Works. 89037
- 13.1.17 Project Co must design utility infrastructure and assets to withstand 20 mm/sec peak particle velocity, unless otherwise agreed with the each Utility Provider in writing prior to commencement of the Utility Infrastructure Works. 89038

13.2 Gas

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- 13.2.1 The design of the Tunnels, Stations and Portals must comply with the: 89040
- (a) Pipelines Act for any works performed on gas transmission assets; 89041
 - (b) Gas Safety Act 1997 Victoria for any works conducted on gas assets; 89042
 - (c) AusNet Technical Standard 2607.2 Conditions for Works Near Gas Transmission Pipelines; and 89043

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| | (d) AusNet Technical Standard 2607.3 Conditions for the Use of Explosives Near Gas Transmission Pipelines and Mains. | 89044 |
| 13.2.2 | A minimum clearance of 300mm horizontally and 150mm vertically must be provided between gas and other underground assets (with the exception of electricity). | 89045 |
| 13.2.3 | A minimum 1000mm clearance must be provided between gas mains and parallel electrical underground assets. | 89046 |
| 13.2.4 | A minimum 1200mm cover must be provided to gas mains under tram tracks. | 89047 |
| | | 89048 |
| 13.3 Telecommunications | | |
| 13.3.1 | The design of the Tunnels, Stations and Portals must comply with the: | 89049 |
| | (a) Communications Alliance Ltd Industry Code C524:2013 External Telecommunication Cable Networks; | 89050 |
| | (b) Telecommunications Network Protection Plan, TS-SP-015_V03_R1.1 for all Works on VicTrack infrastructure. | 89051 |
| | (c) Telecommunications Specification; and | 89052 |
| | (d) VicTrack Telecommunications Department; | 89053 |
| 13.3.2 | The design of all relocated telecommunications assets must ensure they are relocated outside of tram reserves. | 89054 |
| 13.3.3 | All installed cable joints must be easily accessible and comply with Utility Providers standards, or as a minimum adopt the relevant Telstra standards. | 89055 |
| 13.3.4 | Project Co must ensure adequate provision is made, including cable containment through the stations to allow future retail and/or commercial tenants to apply for and install dedicated telecommunication / data lines for their own use. | 89056 |
| | | 89057 |
| 13.4 Electrical | | |
| 13.4.1 | Temporary power sub-station kiosk earthing grid design must be coordinated with Utility Provider earthing grids where induced voltage potential exists between grids. | 89058 |
| 13.4.2 | Any temporary power sub-station kiosk which supplies 3 rd party properties must be located on the boundary of the Site such that the Utility Provider has unimpeded access. | 89059 |
| 13.4.3 | The Victorian Electrical Distribution Networks (VEDN) management system and rules for any electrical services works must be followed. | 89060 |
| 13.4.4 | The design must maintain supply to all properties affected by removal and or modification of any substations within the designated project area. | 89061 |
| 13.4.5 | Project Co must ensure adequate provision is made, including metering space and cable containment through the stations to allow future retail and/or commercial tenants to apply for and install dedicated power supplies. | 89062 |
| | | 89063 |
| 13.5 Water | | |
| 13.5.1 | All incoming water supply pipes must provide secure but accessible isolation valves and pits located within the Stations. The pits must be positioned and detailed such that a water pipe cannot drain into the station. | 89064 |
| 13.5.2 | The design must provide the minimum cover to water mains in accordance with MRWA-W-202. Any reduced cover proposed by Project Co for water mains must be agreed with the Utility Provider, taking into account road manager or road user requirements, the adequacy of the proposed protection measures, minimum heights required for fittings (such as valves and hydrants) and the pipe's embedment zone remains intact (see MRWA-W-202 for dimensions) prior to the commencement of the Works. | 89065 |
| 13.5.3 | The design of any concrete encasement of water assets must be undertaken in accordance with relevant Utility Provider requirements. | 89066 |
| 13.5.4 | Where a City West Water asset is agreed with City West Water to be installed within 1 metre of property boundary the creation of an easement/licence encumbrance must be facilitated. The easement/licence must be recorded on any property title. | 89067 |
| 13.5.5 | The design must provide adequate offsets from property lines (or title boundary) for all | 89068 |

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| relocated water assets including: | |
| (a) the angle of repose of the building; | 89069 |
| (b) depth of trench construction; | 89070 |
| (c) any underground footing or ground anchors that protrude out from the property boundary; | 89071 |
| (d) overhanging building aspects; | 89072 |
| (e) potential for third party damage by failure of the asset; | 89073 |
| (f) the provision of adequate access for operation and maintenance of pipelines; | 89074 |
| (g) the outside diameter of manhole or any other pipeline protrusions; and | 89075 |
| (h) City West Water's "build over" process. | 89076 |
| 13.5.6 Relocated assets must not be under electricity or tram lines, except for transverse crossings (with appropriate clearances). | 89077 |
| 13.5.7 The design must provide continuity of fire-fighting water supplies at all times, with all connections/hydrants to be identified prior to the Works. | 89078 |
| 13.5.8 The design must account for, and the relevant Authority must be advised of: | 89079 |
| (a) future land use; and | 89080 |
| (b) any surplus land post construction that may require the relevant Authority to declare that surplus land as having 'serviced properties'/future development. | 89081 |
| 13.5.9 Relocated water reticulation mains must have firefighting services supplied directly from the water mains and have no less than the current capability of fire service connections (same number of hydrants/valves, capacity, pressure, maximum spacing and meet the Fire Safety Code during and after construction of the works). This applies to temporary and permanent water main relocations and associated fire-fighting connections (hydrants, valves). | 89082 |
| All relocated or replaced hydrants must be reviewed by the combined Fire Protection Committee (Utility Providers, MFB and the local government authorities). | |
| 13.5.10 New or temporary road hydrants relocated or installed must be placed so they are accessible at all times to emergency vehicles and personnel, to the satisfaction/ approval of the asset owner, MFB and the local government authorities. | 89083 |
| 13.5.11 Existing, temporary and new road hydrants impacted by the Works must be able to be maintained. | 89084 |
| 13.5.12 A minimum of 1.5 metres cover must be provided above water pipes. A minimum of 2 metres cover must be provided above the DN750Ø and DN450Ø water mains respectively (allowing for water main saddle seating on top of the station box, water main and valves/spindle) to provide an acceptable permanent traverse of relevant assets. | 89085 |
| 13.5.13 A minimum of 1 metre clearance must be provided between water and power assets unless otherwise agreed with the relevant Authority. | 89086 |
| 13.5.14 City West Water pipeline assets within the construction zone at Parkville that are to be temporarily or permanently relocated must be renewed to at least a 10 metre clearance beyond the construction zone in each case to minimise operational disruption during the Utility service relocation works and minimise risk to the Site. | 89087 |
| 13.5.15 Isolation valves (remotely actuated) and flow and pressure monitoring instruments must be provided on major water main diversions (DN750Ø and DN450Ø) where they are diverted over the Parkville Station construction site and on other temporarily relocated water mains as agreed with City West Water. | 89088 |
| 13.5.16 Isolation valves and pressure / flow monitoring must be provided on water distribution mains where there they are within a combined services trench (including in Grattan St). | 89089 |
| 13.5.17 Water mains must be relocated under footpaths (and at least 1m from a property boundary) rather than in roads, under electricity or tram lines, unless agreed with the relevant Authority. | 89090 |
| 13.6 Sewer | 89091 |
| 13.6.1 All sewers must be structurally independent of the Works at all times. | 89092 |

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| 13.6.2 | Minimum horizontal clearance of 2 metres must be allowed for between the outside of the sewer and the Station boxes, adits, caverns and Tunnel. | 89093 |
| 13.6.3 | Relocated sewer assets must have a sufficient number of appropriately sized sewer manholes provided, notably at significant changes of direction, as agreed with the relevant Authority. | 89094 |
| 13.6.4 | Sewerage services located under, above or adjacent to any part of the Station box must: | 89095 |
| | (a) be sized for the relevant authorities' ultimate capacity for that part of the network; and | 89096 |
| | (b) provide acceptable future access for operational and maintenance purposes. | 89097 |
| 13.6.5 | A risk assessment of all water and sewerage assets within the Station box and the zone of influence around it must be undertaken and all sewer assets with a category 3 or 4 risk rating (based on relevant Authorities asset management system) must be relined for a minimum manhole to manhole length of 30 metres or treated as otherwise agreed with the relevant Utility Provider. Ground stabilisation may be required if settlement is at risk. | 89098 |
| 13.6.6 | Protection must be provided to the existing MEL and the new replaced/relocated section of the MEL as agreed with City West Water. | 89099 |
| 13.6.7 | The design of the Parkville Station box sewer outlets must be connected to a City West Water sewer on the south side of the Station box (not a sewer on private land). | 89100 |
| 13.6.8 | The vertical and horizontal clearances (to all other assets forming part of the Tunnels and Stations) of the new South Yarra Main diversion sewer running through the cavity traversing under the Station box must be agreed with Melbourne Water. | 89101 |
| 13.6.9 | The Station box design around the South Yarra Main Sewer relocated by the Early Works Managing Contractor must be supported by appropriate structural and where necessary hydraulic analysis, including: | 89102 |
| | (a) horizontal clearance of minimum 1.0 metre between pipe structure spring-lines; | 89103 |
| | (b) nominal vertical clearance of outer GRP to underside of bearing structure of 0.3m; | 89104 |
| | (c) no impedance of space directly under the protected area to allow for future optional use by Melbourne Water; and | 89105 |
| | (d) an appropriate allowance within sewer envelope for the effects of future jacking or boring (vibration, heave, etc.). | 89106 |
| 13.6.10 | Sewer assets within the rock / soil anchor zone of the Tunnel, Stations, Portals, adits and shafts must be assessed and appropriately protected / relocated. | 89107 |
| 13.7 | Drainage | 89108 |
| 13.7.1 | The following freeboard must be provided for relocated drains (in order of precedence): | 89109 |
| | (a) freeboard of 300mm between the hydraulic grade line and the top of drainage pits; or | 89110 |
| | (b) freeboard as close as possible to 300mm; or | 89111 |
| | (c) maintain the freeboard as currently exists for the drain as a minimum. | 89112 |
| 13.7.2 | Physical protection must be provided to all drainage assets delivered as part of the Works. The extent of the protection must be agreed with the asset owner. | 89113 |
| 13.7.3 | Drainage pump stations within the Stations must not cause an increase of flow in the downstream drainage system. | 89114 |
| 13.7.4 | The drainage system must interface to existing storm water systems and ensure that it does not exceed the maximum allowable flow rates for these systems. | 89115 |
| 13.7.5 | The relocation of drainage assets must not cause an increase of peak flow rate to the downstream drainage system. | 89116 |
| 13.7.6 | A 32% increase in rainfall intensity due to climate change must be allowed for in all hydrological analysis for drainage. | 89117 |
| 13.7.7 | New drainage pipe diversions must be designed to a 1:20 ARI standard or other agreed standard. | 89118 |
| 13.7.8 | The drainage system must be designed with a pit inlet capacity blockage factor of 50% and ensure no loss of existing hydraulic capacity. | 89119 |

- 13.7.9 City of Melbourne drainage pipes must be constructed from reinforced concrete pipe (rubber ring jointed) class 4 minimum. 89120
- 13.7.10 The maximum allowable spacing between drainage pits must be 90m, unless otherwise approved by the relevant Authority. 89121
- 13.7.11 The creation of an easement or licence over all City of Melbourne drainage assets in favour of the City of Melbourne must be facilitated, where the drainage diversion is located on land not under the control of the City of Melbourne. 89122
- 13.7.12 The drainage system must not have pipe joints located within the footprint of any existing or proposed structure. 89123
- 13.7.13 New or upgraded drainage infrastructure (pipe systems and overland flow) associated with tram line relocation must be designed for a 1:100 ARI storm event. 89124
- 13.7.14 Where drainage infrastructure is replaced or relocated within the Elizabeth Street drainage catchment, it should be designed for a minimum 1:20 ARI flow capacity. 89125
- 13.7.15 Existing surface flooding issues in the Peter Doherty Institute delivery bay at the corner of Grattan Street and Elizabeth Street must not be exacerbated as a result of the Works. 89126

14 Environment

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14.1 General

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14.1.1 The following must be complied with:

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- (a) Minister for Planning’s assessment of the Environment Effects Statement (**EES**) prepared under the Environmental Effects Act 1978; 89130
- (b) Incorporated Document; 89131
- (c) Environment Management Framework (**EMF**) approved by the Minister for Planning under the Incorporated Document, including the EPRs and 89132
- (d) EPBC Particular Manner Decision including conditions. 89133

14.1.2 Project Co must design the Works and the Temporary Works in compliance with all EPRs contained in the EMF endorsed by the Minister for Planning, except for the following:

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- (a) CH22. 89136

14.1.3 The State is responsible for achieving the following nominated EPRs:

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- (a) AR2. 89144
- (b) B1 – only in relation to “direct acquisition”; 89140
- (c) SC1 – only in relation to “direct acquisition”; 89141
- (d) SC3 118160
- (e) SC11 118161
- (f) SC12; 118649
- (g) T1 118162
- (h) T6; 89138
- (i) T8 – only in relation to items 1 and 5; 89139

14.1.4 Project Co must implement the outcomes for the above nominated EPRs, as follows:

89145

Table 14-1: EPR Implementation

| EPR | Project Co responsibility |
|------|--|
| AR2 | Prepare and implement designs that address the requirements of section 15.3.1(c) of the PS&TR. |
| B1 | All activities other than “direct acquisition”. |
| SC1 | All activities other than “direct acquisition”. |
| SC3 | Prepare and maintain a Communication and Stakeholder Engagement Management Plan that addresses CSEMF requirements. |
| SC11 | Attend group meetings, consult with group and respond to actions arising from the group. |
| SC12 | Attend group meetings, consult with group and respond to actions arising from the group. |
| T1 | Attend group meetings, consult with group and respond to actions arising from the group. |
| T6 | Prepare and implement designs and activities that address the MMRA TDM strategy requirements. |
| T8 | Prepare and implement designs that address the requirements arising from resolution of items 1 and 5 of this EPR. |

14.1.5 In relation to EPR AE5, the relevant flood management requirements to inform initial design are found in section 5.2.7 (Drainage and Flood Control).

89153

14.1.6 In relation to EPRs EMI1 and EMI2, the relevant Electro-Magnetic Interference requirements are found in section 10.4 (Electromagnetic Compatibility).

118163

14.1.7 In relation to EPR GM1, the relevant tunnel design requirements in sub-item 1(b) are found in section 5.2.8(Settlement).

89149

| | | |
|---------|---|----------------|
| 14.1.8 | In relation to EPR GM2, the appropriate acceptability criteria for initial discussion with relevant stakeholders are found in section 5.2.7(i) (Settlement). | 89150 |
| 14.1.9 | In relation to EPR GW1, GW2 and AE6, the relevant groundwater requirements are found in section 5.2.5 (Watertightness) and section 5.2.6 (Groundwater Control). | 89147 89148 |
| 14.1.10 | In relation to EPR SW1, the relevant management requirements to inform initial design and flood immunity risk assessment are found in section 5.2.7 (Drainage and Flood Control). | 89151 |
| 14.1.11 | In relation to EPR SW2, the relevant flood management requirements to inform modelling are found in section 5.2.7 (Drainage and Flood Control). | 89152 |
| 14.1.12 | In relation to EPR T7, the relevant design standards in item 1 are found in section 12: Surface Transport. | 89146 |

| | | |
|-------------|--|-------|
| 15 | Sustainability and Climate Change | 89155 |
| 15.1 | General | 89156 |
| 15.1.1 | Project Co must ensure that sustainability principles are embedded into the design of the Tunnel, Stations and Portals. | 89157 |
| 15.1.2 | The design must meet the outcomes specified in the MMRA Sustainability Strategy and support the Sustainability Targets as applicable to the Tunnel, Stations and Portals. | 89158 |
| 15.2 | Excellence | 89159 |
| 15.2.1 | Project Co must adopt green building practices and achieve a minimum 5 star certified rating under the GBCA GS Rating Tool for all Stations. | 89160 |
| 15.2.2 | Project Co must achieve a certified 'Design' and 'As Built' rating with a minimum IS score of 84 ("LEADING") under the IS Rating Tool (v1.2) for the Works. | 89161 |
| 15.2.3 | Project Co must achieve a minimum of 3 points under the ISCA Innovation Credit. | 89162 |
| 15.3 | Urban Ecology and Vegetation | 89163 |
| 15.3.1 | Project Co must: | 89164 |
| | (a) demonstrate excellence in the design, construction and management of urban landscapes and ecosystems by applying the principles outlined in the Living Infrastructure Plan to deliver resilient, climate-proof urban landscapes; | 89165 |
| | (b) deliver a post-construction net increase in vegetated surfaces, whereby Project Co must: | 89166 |
| | i. construct at least one tree plot for every tree removed either as part of the Works or as part of any works undertaken by the Early Works Managing Contractor in an area subsequently occupied by Project Co. Tree plots must: | 89167 |
| | (1) be in the same location or an alternative location in the nearest viable vicinity (to be determined in consultation with the relevant local government authority) of the removed tree; | 89168 |
| | (2) be at least one third of the projected mature canopy volume; | 89169 |
| | (3) be prepared to a depth of one metre, or 1.5 metres if the tree plot is positioned over an underground structure; | 89170 |
| | (4) be continuous between avenues of trees and be supported by structural cells and lateral trenches; | 89171 |
| | (5) include subsurface drainage and supporting media; | 89172 |
| | (6) be of a sufficient size to accommodate any underground services without comprising root growth; | 89173 |
| | (7) be supported by rainwater and stormwater runoff from adjacent surfaces to provide passive irrigation; and | 89174 |
| | (8) include any necessary finishing treatment such as grates, footpaths and kerbs. | 89175 |
| | ii. construct ground cover vegetation plots that are: | 89176 |
| | (1) appropriately integrated into the urban design of the Works; | 89177 |
| | (2) of sufficient volume to support diverse, multi-story plantings; | 89178 |
| | (3) created in or near the Metro Tunnel areas of work and equivalent in size to at least 10% of the area defined as the 'extent of landscape works'; and | 89179 |
| | (4) supported by rainwater and stormwater runoff from adjacent surfaces to provide passive irrigation; | 89180 |
| | iii. also consider the implementation of vegetated surfaces including vegetated roofs, walls or facades; | 89181 |

| | | |
|-------------|---|-------|
| (c) | implement Water Sensitive Urban Design (WSUD) measures in accordance with the Melbourne Water ' <i>Water Sensitive Urban Design Guidelines</i> ' and ' <i>WSUD Engineering Procedures</i> '; | 89182 |
| (d) | deliver a post-construction net increase in public amenity space; and | 89183 |
| (e) | consider biophilic design initiatives at all Stations in accordance with the Biophilic Design Guidelines. | 89184 |
| 15.3.2 | The clearing of biodiversity sensitive land must be performed in accordance with the Victorian Department of Environment, Land, Water and Planning document entitled "Permitted clearing of native vegetation - Biodiversity assessment guidelines." | 89185 |
| 15.3.3 | All biodiversity offsets must be placed on land that is not owned by VicTrack. | 89186 |
| 15.4 | Climate Resilience | 89187 |
| 15.4.1 | The design must include measures for all high and extreme climate change risks to ensure the infrastructure, Stations and precincts are resilient to the projected impacts of a changing climate over the relevant asset's Design Life. This should be in accordance with the adopted climate change projections and scenarios within the MMRA Climate Change Risk Assessment and Climate Change Adaptation Plan. | 89188 |
| 15.4.2 | Project Co must implement flooding adaptation measures in accordance with section 5.2.7. | 89189 |
| 15.5 | Energy | 89190 |
| 15.5.1 | Project Co must, to the maximum extent possible, limit energy demand and minimise greenhouse gas emissions through optimization of design initiatives investigating as a minimum the best practice GHG abatement initiatives in the ISCA Carbon and Energy 'Reference Design' Footprint. | 89191 |
| 15.5.2 | All systems must be designed to support energy efficient operation. | 89192 |
| 15.5.3 | Project Co must achieve reductions in greenhouse gas emissions (Scope 1 and 2 emissions) by a minimum of 30% below Project Co's ISCA base case, excluding traction power and the use of renewable energy, for the infrastructure lifecycle through best practice design and construction initiatives. | 89194 |
| 15.5.4 | The design must provide a minimum installed capacity of 125kW from renewable sources within the Licensed Maintenance Area for the Maintenance Phase for generation of onsite renewable energy. | 89196 |
| 15.5.5 | The design must provide the ability to maximise the use of regenerative braking during the infrastructure lifecycle (100 years) to enable a minimum 20% peak energy saving. | 89198 |
| 15.5.6 | The energy efficiency of electrical and mechanical systems, including lighting and ventilation, must be maximised. | 89199 |
| 15.5.7 | Energy consuming equipment must meet the Minimum Energy Performance Standards (MEPS) of the Australian Greenhouse and Energy Minimum Standards Regulator. | 89200 |
| 15.5.8 | Energy consuming equipment must have an energy star rating of at least 5 stars, as rated by the Australian Greenhouse and Energy Minimum Standards Regulator. | 89201 |
| 15.5.9 | New information technology equipment must be Energy Star accredited to the most recent applicable specification of the U.S.A Government's Environmental Protection Agency. | 89202 |
| 15.6 | Materials and Waste | 89206 |
| 15.6.1 | Project Co must minimise, to the maximum extent possible, materials volumes. | 89207 |
| 15.6.2 | Project Co must achieve a minimum 24% reduction in materials lifecycle impacts (measured through Enviropoints) below Project Co's base case in accordance with the ISCA Materials Lifecycle Impact Credit. | 89209 |
| 15.6.3 | Portland cement content must be reduced by 44%, measured by mass across all concrete used in the Works compared to the base case mix as defined by the ISCA Materials Lifecycle Impact Base Case v1.2. | 89211 |
| 15.6.4 | Project Co must specify and source 95% of all timber products used for permanent Works from re-used timber, post-consumer recycled timber or from Forest Stewardship Council. | 89212 |

| | | |
|-------------|--|--------|
| 15.6.5 | Project Co must specify and source at least 80% of steel used in construction from suppliers certified under Australasian Certification Authority for Reinforcing Steels or similar international association or organisation. | 89213 |
| 15.6.6 | Project Co must specify and source at least 80% of fabricated structural steelwork from a steel fabricator / steel contractor which is accredited to the Environmental Sustainability Charter of the Australian Steel Institute (ASI) or similar international association or organisation. | 89214 |
| 15.6.7 | Where shell and core infrastructure is provided the provisions must be coordinated with stakeholders to ensure access and future connections to networks. | 89215 |
| 15.7 | Water | 89216 |
| 15.7.1 | Project Co must utilise rainwater and/or stormwater to support vegetation health by applying the principles outlined in the Living Infrastructure Plan. | 89217 |
| 15.7.2 | Infrastructure Sustainability Council of Australia (ISCA) | 118164 |
| | (a) Project Co must demonstrate a minimum of 40% reduction in total water use below Project Co's ISCA base case in accordance with the ISCA Wat-1 Credit. | 89219 |
| | (b) The Works must achieve a minimum of 20% replacement of the total water use in accordance with the ISCA Wat-2 Credit. | 89220 |
| 15.7.3 | Green Building Council of Australia (GBCA) | 118165 |
| | (a) Project Co must provide infrastructure to reduce operational railway station use of potable water by a minimum of 30% compared with a GBCA Reference Building. | 89221 |
| | (b) Project Co must manage stormwater runoff from new or reinstated ground surfaces and roof areas to achieve the best practice water quality performance objectives inclusive of water sensitive urban design measures as set out in the CSIRO Urban Stormwater Best Practice Environmental Management Guidelines (Victoria). | 89222 |
| 15.7.4 | Best-practice performance objectives for the environmental management of stormwater for post-construction must be achieved. | 89223 |
| 15.7.5 | The design must meet the performance objectives of the State Environment Protection Policy (SEPP) (Waters of Victoria and Groundwaters of Victoria). | 89224 |

Appendix B1: [Not disclosed]

Appendix B2: Level of Service Designations

Level of Service designations indicating minimum and maximum thresholds for each level.

| | Level of Service | | | | | |
|---|------------------|------|------|------|------|------|
| | A | B | C | D | E | F |
| Forecourts, Entrances, Concourse, Ticket Halls and Platforms (Queuing) | | | | | | |
| Minimum (m ² /person) | 1.21 | 0.93 | 0.65 | 0.28 | 0.19 | 0.00 |
| Maximum (m ² /person) | N/A | 1.21 | 0.93 | 0.65 | 0.28 | 0.19 |
| Circulation (Walkways) | | | | | | |
| Minimum (m ² /person) | 3.25 | 2.32 | 1.39 | 0.93 | 0.46 | 0.00 |
| Maximum (m ² /person) | N/A | 3.25 | 2.32 | 1.39 | 0.93 | 0.46 |
| Stairways | | | | | | |
| Minimum (persons/minute per m width) | 0.0 | 16.4 | 23.0 | 32.8 | 42.7 | 55.8 |
| Maximum (persons/minute per m width) | 16.4 | 23.0 | 32.8 | 42.7 | 55.8 | N/A |

Appendix B3: [Not disclosed]

Appendix B4: Modal Priorities

With reference to the Tables below:

- One tick (✓) = limited provisions
- Two ticks (✓✓) = adequate provisions
- Three ticks (✓✓✓) = abundant provisions
- Encircled ticks (✓✓✓) and question mark? = discussion ongoing / further analysis required / further comment required / priority not certain
- Dashed line (–) = not applicable / not considered

Parkville Precinct Modal Priorities and Provisional Summary

| Features | Grattan Street (Flemington Road to Royal Parade) | Grattan Street (Royal Parade to Swanston Street) | Elizabeth Street & Royal Parade |
|---|--|--|------------------------------------|
| Moving modes | | | |
| Pedestrian access | ✓✓✓ | ✓✓✓ | ✓✓✓ |
| Bikes | ✓✓ | ✓✓ | ✓✓✓ |
| Buses (3.0m wide lane minimum) | ✓✓ | ✓✓ | ✓ |
| Trams (Stop length to be as close to 66m as possible to the satisfaction of the State) | – | – | ✓✓✓ |
| Local Traffic to Local Destinations | ✓✓ | ✓✓ | ✓ |
| Through Traffic | ✓ | ✓ | ✓✓✓ |
| Trucks (through movement) | – | – | ✓ |
| Ambulance | ✓✓✓ | ✓✓ | ✓✓✓ |

Kerbside/Footpath Provision

| Features | Grattan Street (Flemington Road to Royal Parade) | Grattan Street (Royal Parade to Swanston Street) | Elizabeth Street & Royal Parade |
|----------|--|--|------------------------------------|
| Taxis | ✓✓ | – | ✓ (Melbourne Private Hospital) |

| | | | |
|---|--|--|---|
| Bike Parking (On road reserve) | - | ✓ (Leicester St/Barry St) | ✓ |
| Trees | - | ✓✓ | ✓✓✓ |
| DDA Car Parking – Long Term | ✓ | - | - |
| Parking | - | ✓ (south side, east of Leicester Street only) | - |
| Delivery vehicles refuse/ loading bay | ✓ (Night time only) | ✓ North side near station entrance. | ✓ (VCCC: varies time of day) (Peter Doherty Institute: 24/7) |
| Emergency vehicles other than ambulances | ✓✓✓ | ✓✓ | ✓ |
| Patient Drop Off/Short Stay | ✓✓✓ | - | ✓ (Melbourne Private) |
| Ambulance layby | ✓✓ (must be as close as possible to emergency department) | - | ✓ |
| Pedestrian Crossings | ✓✓✓ | ✓✓✓ | ✓✓ |
| Bus stop | ✓✓ (one bay each way) | ✓✓ (three bays each way plus bus replacement*) | ✓ (consistent with existing provisions) |

*Note: bus replacement bay may be located elsewhere within the precinct subject to agreement with the State and the relevant authorities.

CBD North Precinct Modal Priorities and Provisional Summary

89274
89275

| FEATURES | FRANKLIN STREET | FRANKLIN STREET | SWANSTON STREET | SWANSTON STREET | LA TROBE STREET | LA TROBE STREET |
|---|------------------------------------|-------------------------------------|---|------------------------------------|-------------------------------------|-----------------------------------|
| | (btw. Swanston St and Victoria St) | (btw. Swanston St and Elizabeth St) | (btw. Victoria St and Franklin St) | (btw. Franklin St and La Trobe St) | (btw. Elizabeth St and Swanston St) | (btw. Swanston St and Russell St) |
| Moving Modes | | | | | | |
| Pedestrian access | ✓✓✓ | ✓✓✓ | ✓✓✓ | ✓✓✓ | ✓✓✓ | ✓✓✓ |
| Bikes | ✓ | ✓ | ✓✓✓ | - | ✓✓✓ | ✓✓✓ |
| Buses | ? | ? | - | - | - | - |
| Trams | - | - | ✓✓✓ | ✓✓✓ | ✓✓✓ | ✓✓✓ |
| Local Vehicle Traffic to Local Destinations | ✓✓ | ✓✓ | Consider various options of closing Swanston St/Franklin St | Lower Priority | ✓✓ | ✓✓ |
| Motorcycles | - | - | | | - | - |
| Trucks (local access) | ✓ | ✓ | | | - | - |
| Through Vehicle Traffic | ✓✓ | ✓✓ | | | - | - |
| Trucks (through movement) | - | - | | | - | - |
| Kerbside/Footpath Provision | | | | | | |
| Taxis | - | - | - | - | - | - |
| Bike Parking | ✓✓ | ✓✓✓ | - | - | - | - |
| Trees | ✓✓✓ | ✓✓✓ | - | - | - | - |
| DDA Car Parking / Drop Off | ✓ | ✓ | - | - | ✓✓ | - |
| Parking | - | ✓ | - | - | ✓✓ | - |
| Delivery vehicles refuse/ loading bay | - | ✓ | ✓ | - | - | - |
| Other emergency | (use of other space) | - | - | - | - | - |

| | | | | | | |
|---------------------------|--------------------|---|---|---|---|---|
| vehicles | e.g. loading zone) | | | | | |
| Rail replacement bus stop | - | - | - | - | - | - |
| Bus stops | ? | - | - | - | - | - |
| Motorcycle parking | - | - | - | - | - | - |
| Others | - | - | - | - | - | - |

CBD South Precinct Modal Priorities and Provisional Summary (1)



89276
89277

| FEATURES | SWANSTON STREET | COLLINS STREET | COLLINS STREET | FLINDERS STREET | FLINDERS STREET | ELIZABETH STREET |
|----------|-----------------------------------|-------------------------------------|-----------------------------------|-------------------------------------|--------------------------------|------------------------------------|
| | (btw. Collins St and Flinders St) | (Btw. Swanston St and Elizabeth St) | (btw. Russell St and Swanston St) | (btw. Swanston St and Elizabeth St) | (btw. Russell and Swanston St) | (btw. Flinders St and Flinders Ln) |

Moving Modes

| | | | | | | |
|---|-----|-----|-----|-------------------|----------------------|------------------------|
| Pedestrian access | ✓✓✓ | ✓✓✓ | ✓✓✓ | ✓✓✓ | ✓✓✓ (along the road) | ✓✓✓ |
| Bikes | ✓✓✓ | ✓✓ | ✓✓ | ? | - | ✓? |
| Buses | - | - | - | ✓? (Route 605) | ✓✓ (Coaches) | - |
| Trams | ✓✓✓ | ✓✓✓ | ✓✓✓ | ✓✓✓ | ✓✓✓ | ✓✓✓ |
| Local Vehicle Traffic to Local Destinations | - | ✓ | ✓ | ✓✓ | ✓✓ | |
| Motorcycles | - | - | - | - | - | |
| Trucks (local access) | - | ✓ | ✓ | ✓✓ | ✓✓ | ✓ (northbound only) |
| Through Vehicle Traffic | - | ✓ | ✓ | ✓ | ✓✓ | |
| Trucks (through movement) | - | ✓ | ✓ | ✓ | ✓✓ | |

Kerbside/Footpath Provision

| FEATURES | SWANSTON STREET | COLLINS STREET | COLLINS STREET | FLINDERS STREET | FLINDERS STREET | ELIZABETH STREET |
|---------------------------------------|-----------------------------------|-------------------------------------|---|---|--------------------------------|------------------------------------|
| | (btw. Collins St and Flinders St) | (Btw. Swanston St and Elizabeth St) | (btw. Russell St and Swanston St) | (btw. Swanston St and Elizabeth St) | (btw. Russell and Swanston St) | (btw. Flinders St and Flinders Ln) |
| Taxis | - | √? | √ (Hotel?) | √? | √? | ? |
| Bike Parking | - | - | - | - | - | - |
| Trees | √√√ | √√√ | √√√ |  Constraints | √√ | √√√ |
| DDA Car Parking / Drop Off | - | - | - (Steep grade) | - | - | - |
| Parking | - | √? | √ Short Term | - | - | - |
| Delivery vehicles refuse/ loading bay | √ | √√ | √√ | √√ | √√ | √ |
| Other emergency vehicles | - | - | - | - | - | - |
| Rail replacement bus stop | - | - | - | - | - | - |
| Bus stops | - | - | - | - | - | - |
| Motorcycle parking | - | - | - | - | - | - |
| Others – Police | ? | - | - | - | - | - |
| Others – Horses | - | - | - | - | - | - |
| Others - Coaches | - | - |  | - | √√ | - |

Domain Precinct Modal Priorities and Provisional Summary

| FEATURES | Domain Road | ST KILDA ROAD | ALBERT ROAD |
|---|-------------|---|---|
| | | (btw. Domain Road and Toorak Road West (Interchange)) | (btw. St Kilda Road and Kingsway) |
| Moving Modes | | | |
| Pedestrian access | ✓✓ | ✓✓✓ (✓✓ within the precinct) | ✓✓✓ |
| Bikes | ✓ | ✓✓✓ | ✓✓ (enable right turn from St Kilda Rd into Albert Road) |
| Buses | ✓ | ✓ (adequate) | - |
| Trams | - | ✓✓✓ | - |
| Local Motor Traffic to Local Destinations | ✓✓✓ | - | ✓✓ |
| Motorcycles | - | - | - |
| Trucks (local access) | - | - | - |
| Through Motor Traffic | - | ✓✓ (aspiration) (✓) | ✓ |
| Trucks (through movement) | - | - | - |

Kerbside/Footpath Provision

| FEATURES | Domain Road | ST KILDA ROAD | ALBERT ROAD |
|----------------------------|---------------------|---|-----------------------------------|
| | | (btw. Domain Road and Toorak Road West (Interchange)) | (btw. St Kilda Road and Kingsway) |
| Taxis | - | ✓ | ✓✓ |
| Bike Parking | - | ✓ | ✓✓✓ |
| Trees | - | ✓✓✓ | - |
| DDA Car Parking / Drop Off | - | - | ✓✓ |
| Parking | ✓✓✓ (School, Shops) | ✓ | ✓ (Short term only) |
| Delivery vehicles | ✓✓✓ (South | - | - |

| | | | |
|---------------------------|-------------|---|---|
| refuse/ loading bay | side) | | |
| Other emergency vehicles | - | - | - |
| Rail replacement bus stop | - | ✓ | ✓ |
| Bus stops | ✓ (Schools) | - | - |
| Motorcycle parking | - | - | - |
| Other | - | - | - |

Appendix B5: Temporary Utility Diversions

89280

This Appendix B5 contains an indicative, non exhaustive list of the utilities to be temporarily relocated by the Early Works Managing Contractor and reinstated to their permanent position by Project Co.

89281

Table B5.1: Utility reinstatement works in the Parkville Precinct

89282

| Asset Owner | Asset ID | Affected Asset | Drawing Reference | Temporary (T) or Permanent (P) relocation | Managing Contractor – Enabling Works | Managing Contractor – EES Assessed Early Works | PPP Works |
|--|----------|-------------------------------------|---------------------------|---|--------------------------------------|--|--|
| Telstra / Optus / Vernet / NBN / NextGen | PV-T04 | P100 telecommunications conduits | MMR-AJM-UGPV-DR-CU-412411 | P & T | T | | P, refer to Note 1. |
| Telstra / Vernet / NBN / NextGen | PV-T06 | P100 telecommunications conduits | MMR-AJM-UGPV-DR-CU-412411 | P & T | T | | P, refer to Note 1. |
| Optus | PV-T07 | P100 telecommunications conduits | MMR-AJM-UGPV-DR-CU-412411 | P & T | T | | P, refer to Note 1. |
| CitiPower | PV-E10 | High voltage cables | MMR-AJM-UGPV-DR-CU-412111 | P & T | T | | P, refer to Note 1. |
| CitiPower | PV-E11 | High voltage and low voltage cables | MMR-AJM-UGPV-DR-CU-412111 | P & T | | T | P |
| CitiPower | PV-E13 | Low voltage cables | MMR-AJM-UGPV-DR-CU-412111 | P & T | | T | Permanent reinstatement if required by Citipower |

| | | | | | | | |
|-------------|--------|-------------------------------|---------------------------|-------|------------------------|-------------------|----------------------------|
| APA | PV-G01 | DN300 high pressure gas main. | MMR-AJM-UGWP-DR-CU-412211 | P & T | T | | P, refer to Note 1. |
| UoM - sewer | PV-S04 | DN225 Vitrified Clay sewer | MMR-AJM-PWPV-DR-CU-412311 | P & T | T | | P, refer to Note 2. |
| CWW- water | PV-W04 | DN225/150 water mains | MMR-AJM-PWPV-DR-CU-412511 | P & T | T | T | P, refer to Note 3. |
| CWW- water | PV-W08 | DN225/150 water mains | MMR-AJM-PWPV-DR-CU-412511 | P & T | T (excluding Barry St) | P (Barry St only) | P (excluding Barry Street) |

Note 1. PPP works include permanent relocation of the utility, as well as removal (or decommissioning subject to UoM acceptance) of the redundant temporary utility from UoM grounds in line with the UoM Handback Works Deed.

Note 2. Sewer pits to replace bends after the removal of the temporary power cables inside the University of Melbourne (PV-E10).

Note 3. Certain extents of PV-W04 within UoM land will be retained as permanent assets, and the remainder is removed (or decommissioned subject to UoM acceptance) from UoM. PPP works include reconnecting the Medical Building supply from the main water feed from Grattan street.

89283

Table B5.2: Utility reinstatement works in the CBD North Precinct

| Asset Owner | Asset ID | Affected Asset | Drawing Reference | Temporary (T) or Permanent (P) relocation | Managing Contractor – Enabling Works | Managing Contractor – EES Assessed Early Works | PPP Works |
|-------------|----------|--|---------------------------|---|--------------------------------------|--|-----------|
| Citipower | CN-E05 | High voltage cables | MMR-AJM-PWCN-DR-CU-413111 | P & T | | T | P |
| Citipower | CN-E05 | 11 kV high voltage & supervisory cables / low voltage cables | MMR-AJM-PWCN-DR-CU-413111 | P & T | | T | P |
| Citipower | CN-E05 | Low voltage cables | MMR-AJM-PWCN-DR-CU-413111 | P & T | | T | P |

| | | | | | | | |
|--------------|--------|---|---------------------------|-------|--|---|---|
| APA | CN-G03 | DN150 high pressure gas main | MMR-AJM-PWCN-DR-CU-413211 | P & T | | T | P |
| CoM | CN-D01 | DN100 stormwater drain | MMR-AJM-PWCN-DR-CU-413011 | P & T | | T | P |
| CoM | CN-D02 | DN450/375/300 stormwater drain | MMR-AJM-PWCN-DR-CU-413011 | P & T | | T | P |
| CoM | CN-D06 | DN100 Stormwater drain | MMR-AJM-PWCN-DR-CU-413011 | P | | | P |
| Telstra/RMIT | CN-T09 | P100 telecommunications conduits (copper & fibre) | MMR-AJM-PWCN-DR-CU-413401 | P & T | | T | P |
| CWW - water | CN-W03 | DN200 water main | MMR-AJM-PWCN-DR-CU-413511 | P & T | | T | P |
| CWW - water | CN-W05 | DN100 water connection | MMR-AJM-PWCN-DR-CU-413511 | P & T | | T | P |
| CWW - water | CN-W06 | DN150 water main | MMR-AJM-PWCN-DR-CU-413511 | P & T | | T | P |
| CWW - water | CN-W08 | DN150 water main | MMR-AJM-PWCN-DR-CU-413511 | P & T | | T | P |

Table B5.3: Utility reinstatement works in the Domain Precinct

89284

| Asset Owner | Asset ID | Affected Asset | Drawing Reference | Temporary (T) or Permanent (P) relocation | Managing Contractor – Enabling Works | Managing Contractor – EES Assessed Early Works | PPP Works |
|-----------------------|------------------|----------------------------------|--|---|---|--|---|
| SEWL – water | DM-W01 | DN300 water | MMR-AJM-UGDM-DR-CU-416501 | P & T | T | | P |
| City of Melbourne | DM-D01 | DN900 stormwater drain | MMR-AJM-UGDM-DR-CU-416001, MMR-AJM-UGDM-DR-CU-416002 | P & T | Permanent relocation for all areas except for temporary route in the Shrine grounds | | Permanent relocation of asset out of the Shrine grounds |
| City of Melbourne | DM-D02 | DN750 stormwater drain | MMR-AJM-UGDM-DR-CU-416001, MMR-AJM-UGDM-DR-CU-416002 | P & T | Permanent relocation for all areas except for temporary route in the Shrine grounds | | Permanent relocation of asset out of the Shrine grounds |
| Telstra/Optus/Nextgen | DM-T02 DM-T03 | P100 telecommunications conduits | MMR-AJM-UGDM-DR-CU-416401, MMR-AJM-UGDM-DR-CU-416402 | P & T | Permanent relocation of the existing conduits | | Spare conduits above the station box |
| CitiPower | DM-E01 | 22 kV cables | MMR-AJM-UGDM-DR-CU-416101 | P & T | Permanent relocation for all areas except for temporary route in the Shrine grounds | | Permanent relocation of asset out of the Shrine grounds |
| CitiPower | DM-E03 | 11kV cables | MMR-AJM-UGDM-DR-CU-416101 | P & T | Permanent relocation for all areas except for temporary route in the Shrine grounds | | (permanent relocation of asset out of the Shrine grounds) |

METRO TUNNEL

TUNNEL AND STATIONS PUBLIC PRIVATE PARTNERSHIP

Project Scope and Technical Requirements (PS&TR)
Part C: Project Management Requirements



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| 1 | Process Requirements | 89336 |
| 1.1 | Systems Engineering | 89337 |
| 1.1.1 | Introduction | 89338 |
| 1.1.1.1 | Project Co must prepare and update the Systems Engineering and Assurance Management Plans described in Annexure 3. | 89339 |
| 1.1.1.2 | Project Co must employ a systems lifecycle process model (SLPM) to manage the delivery of the Project, in accordance with: | 89340 |
| | (a) AS/NZS ISO/IEC 15288:2015 (the Systems Engineering Standard); | 89341 |
| | (b) Public Transport Victoria's 'System Engineering Policy', version G dated 14 August 2014, as updated from time to time (the System Engineering Policy); and | 89342 |
| | (c) the other requirements of the Agreement. | 94222 |
| 1.1.1.3 | A suitably experienced and qualified person must be appointed as 'Systems Engineering Manager' for the Project. | 89343 |
| 1.1.2 | Tailoring of the Systems Engineering Standard | 89344 |
| 1.1.2.1 | Project Co must tailor the Systems Engineering Standard to the Project. | 89345 |
| 1.1.2.2 | Project Co must record any tailoring of processes from the Systems Engineering Standard in the Systems Engineering Management Plan. | 89346 |
| 1.1.3 | Project Systems | 89347 |
| 1.1.3.1 | Project Co must define the breakdown structure of the System in sub-sub-systems and System Elements that map to the Project Assets based upon the Systems Breakdown Structure in Appendix A2 to Part A. | 89348 |
| 1.1.4 | Project Lifecycle Stages | 89348 |
| 1.1.4.1 | Project Co must define the Lifecycles for the Project, the System and Assets, which must include discrete Lifecycle Stages with defined deliverables and Stage Gate Reviews, noting that multiple Lifecycles may run in parallel. | 89350 |
| 1.1.5 | Project Processes | 89351 |
| 1.1.5.1 | The System Lifecycle Processes are classified in the Systems Engineering Standard as Agreement Processes, Organisational Enabling Processes, Project Processes and Technical Processes. | 89352 |
| 1.1.5.2 | Project Co must develop and structure its Management Plans to accord with the Systems Life Cycle Processes defined in the Systems Engineering Standard. | 89353 |
| 1.1.6 | Stage Gate Reviews | 89354 |
| 1.1.6.1 | Project Co must conduct the Stage Gate Reviews at the timeframes set out in Table 1-1. | 89355 |
| 1.1.6.2 | Project Co must conduct Stage Gate Reviews in a manner consistent with the Stage Gate Review Guide. | 89356 |
| 1.1.6.3 | The entry and exit criteria associated with each Stage Gate Review are set out in Appendix C1. | 89357 |

Table 1-1: Stage Gate Reviews

| Stage Gate Review | Timeframe | 89358 |
|--|--|-------|
| System Definition Review (SDR) | Within 90 Business Days of Financial Close unless otherwise agreed with the State. | |
| Preliminary Design Review (PDR) | Following the submission and review of Interim Design Documentation. | |
| Critical Design Review (CDR) | Following the submission and review of Certified Design Documentation. | |
| Issued for Construction Review (IFCR) | Following the submission and review of IFC Design Documentation. | |

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| Test Readiness Review (TRR) | Prior to the commencement of testing and commissioning activities. |
| Integration Readiness Review (IRR) | Prior to Provisional Acceptance. |
| System Acceptance Review (SAR) | Prior to Final Acceptance. |

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| 1.1.7 | Requirements Management | 89359 |
| | Project Co must ensure that the requirements set out in this PS&TR are mapped and linked in the Dynamic Object-Oriented Requirements System (DOORS NG®) to manage and maintain traceability through all Lifecycle Stages. | 89360 |
| 1.2 | Management Plans | 89361 |
| 1.2.1 | General Requirements | 89362 |
| 1.2.1.1 | The intended purposes of the Management Plans include to: | 89363 |
| | (a) demonstrate to the State and the Independent Reviewer how Project Co will meet its obligations under the State Project Documents in relation to the D&C Activities; | 94223 |
| | (b) document: | 94224 |
| | (1) the processes and procedures that Project Co will adopt for the management of the D&C Activities; and | 94225 |
| | (2) the management accountabilities for ensuring effective implementation of such processes and procedures; and | 94226 |
| | (c) demonstrate how the requirements of each of the processes within the Systems Engineering Standard are met. | 94227 |
| 1.2.1.2 | The Management Plans must be configured in a logical integrated structure and avoid overlapping content. | 89364 |
| 1.2.2 | Preparation and Review of Management Plans | 89365 |
| 1.2.2.1 | Project Co must prepare and submit the Management Plans and all other plans, manuals, documents, programs and systems at the times set out in Column 2 of the table contained in Annexure 1 and as otherwise required by the Agreement. | 89366 |
| 1.2.2.2 | Where there is a prior version of a Management Plan, all updates to that Management Plan must be consistent with, and not limit or reduce the requirements or obligations of Project Co under the relevant Management Plan, other than the extent necessary to comply with the State Project Documents or as otherwise agreed by the State. | 89367 |
| 1.2.2.3 | Compliance by Project Co with its obligations under this section 1.2 is not evidence of compliance by Project Co with its other obligations under the State Project Documents and does not ensure that Project Co will fulfil all of the requirements of the State Project Documents. | 89368 |
| 1.2.3 | Updating and Revision of Management Plans | 89369 |
| 1.2.3.1 | Each Management Plan must be reviewed and updated: | 89370 |
| | (a) throughout the period identified in Column 3 of the table contained in Annexure 1; | 89371 |
| | (b) at a frequency no less than the frequency specified for each Management Plan in Column 4 of the table contained in Annexure 1; and | 89372 |
| | (c) as otherwise required by this section 1.2 or the Agreement. | 89373 |
| 1.2.4 | Audit Procedures and Intervals | 89374 |
| 1.2.4.1 | Project Co must: | 89375 |
| | (a) audit its and its Subcontractors' compliance with each Management Plan in accordance with the requirements of AS/NZS ISO 19011: 2014 at intervals appropriate to the nature of the D&C Activities being performed; | 89376 |
| | (b) provide the State and the Independent Reviewer with at least 5 Business Days' prior notice of an audit under this section 1.2.4, as well as audits under sections 3.5, 4.7 and 6.2; and | 89377 |

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| | (c) deliver copies of each audit report together with proposed and/or implemented actions for addressing any non-conformances identified in the report to the State and the Independent Reviewer within 5 Business Days of completion of the audit. | 89378 |
| 1.2.4.2 | The Construction Environmental Management Plan and the Health and Safety Management Plan are subject to additional auditing requirements under sections 3.5 and 6.2 respectively. | 89379 |
| 1.3 | Records | 89380 |
| 1.3.1 | Construction Packages | 89381 |
| 1.3.1.1 | Project Co must subdivide the Works into Construction Packages that will be used as a basis for: | 89382 |
| | (a) the D&C Program; | 89383 |
| | (b) packaging of Construction Documentation and construction records; and | 89384 |
| | (c) progressive closure of As-Built Records. | 89385 |
| 1.3.1.2 | As a minimum, there must be separate Construction Packages for each construction zone including for the: | 89386 |
| | (a) Preparatory Works; | 89387 |
| | (b) Returned Works; | 89388 |
| | (c) manufactured precast components or fabricated components; | 89389 |
| | (d) Temporary Works; and | 89390 |
| | (e) significant items of plant or equipment. | 89391 |
| 1.3.1.3 | A Construction Package must not be related to more than one submission of Interim or Certified Design Documentation. | 89392 |
| 1.3.2 | Access to records | 89393 |
| 1.3.2.1 | During the D&C Phase, the State and the Independent Reviewer must be provided with electronic access to the design and construction records indexed by Construction Package including: | 89394 |
| | (a) Construction Records as set out in section 1.3.4; | 89395 |
| | (b) Design Documentation as set out in section 7.5; | 89396 |
| | (c) Construction Documentation as set out in section 10.4; | 89397 |
| | (d) testing and commissioning records as set out in section 11.1.5; | 89398 |
| | (e) Monthly D&C Phase Progress Reports required by section 1.4; | 89399 |
| | (f) the Defects List required by section 1.3.9; and | 89400 |
| | (g) closed As-Built Records as set out in 1.3.5. | 89401 |
| 1.3.2.2 | Electronic access to records must: | 89402 |
| | (a) be made available during the D&C Phase; | 89403 |
| | (b) be accessible by web based interface; and | 89404 |
| | (c) enable searching and selection of records. | 89405 |
| 1.3.2.3 | Project Co must, in accordance with the Digital Engineering Management Plan, submit on a weekly basis during the design development, and on a fortnightly basis thereafter: | 89406 |
| | (a) published native data files (issued via a network interface); | 89407 |
| | (b) published federated models; | 89408 |
| | (c) published visualisations, presentation models, 3D imagery, animated models and fly-through models; | 89409 |
| | (d) GIS data updates accompanied by a change register; | 89410 |
| | (e) Asset registers. | 89411 |
| 1.3.3 | Submission of Records | 89412 |
| 1.3.3.1 | Construction Records must be provided to the State as a complete electronic record as a condition precedent to each of Provisional Acceptance and Final Acceptance. | 89413 |
| 1.3.3.2 | A complete electronic copy of the As-Built Records for each Construction | 89414 |

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| | Package (including the final revised electronic versions of IFC Design Documentation) must be supplied to the State and Independent Reviewer prior, and as a condition precedent, to Final Acceptance. | |
| 1.3.3.3 | A complete electronic copy of the As-Built Records for each Returned Works Construction Package (including the final revised electronic versions of the IFC Design Documentation) must be supplied to the State and the Independent Reviewer no later than 60 days after the date of completion of the Returned Works and as a condition precedent to Handback of Returned Works. As-Built Records for Returned Works must also include the relevant inspection and maintenance records for the Returned Works during construction. | 89415 |
| 1.3.3.4 | Complete electronic copy includes all the final CAD drawings for the Works in the format identified in section 1.3.11 and the final GIS data in the format identified in section 1.3.12. | 89416 |
| 1.3.4 | Construction Records | 89417 |
| 1.3.4.1 | General | 89418 |
| | Accurate and complete Construction Records must be maintained at all times during the D&C Phase for every Asset, Asset Component and Asset Sub-Component identified in the Asset Inventory in a form that is readily accessible to the State and the Independent Reviewer. | 89419 |
| 1.3.4.2 | Construction Records system | 89420 |
| | The system used to maintain Construction Records must: | 89421 |
| | (a) ensure that all Construction Records are compiled in Work Lots and that each Work Lot is clearly referenced to the relevant Asset, Asset Component or Asset Sub-Component; and | 89422 |
| | (b) ensure that each certificate issued by the Quality Manager clearly identifies the relevant Asset, Asset Components and Asset Sub-Components to which it relates and their constituent Work Lots. | 89423 |
| 1.3.4.3 | Contents of Construction Records | 89424 |
| | (a) Construction Records for each Construction Package must include: | 89425 |
| | (1) all quality assurance records required by the Inspection and Test Plans (ITPs); | 89426 |
| | (2) site instructions and any Design Change Notices (DCNs); | 89427 |
| | (3) non-conformance reports; and | 89428 |
| | (4) current versions of the IFC Design Documentation with as-built changes (including repaired Defects) marked up to scale and referenced to the applicable DCN. | 89429 |
| | (b) If a drawing is amended and issued as a new revision before completion of the Construction Package, any changes recorded as mark-ups prior to that amendment must be incorporated in the new revision and the traceability to the relevant DCN must be preserved. | 89430 |
| 1.3.5 | As-Built Records | 89431 |
| 1.3.5.1 | General | 89432 |
| | (a) As-Built Records must include the final versions of the Construction Records together with associated feature survey/ laser scans/ point cloud data. | 89433 |
| 1.3.5.2 | Closure of As-Built Records | 89434 |
| | (a) The As-Built Records for a Construction Package or part of a Construction Package must be completed and closed as soon as practicable, in accordance with the Quality Management Plan, so as to ensure that after Provisional Acceptance, the As-Built Records represent the Works as completed. | 89435 |
| | (b) Closure of As-Built Records cannot occur until: | 89436 |
| | (1) all inspections and tests required for the Work Lots represented by As-Built Records have been completed and the results recorded; | 89437 |
| | (2) any non-conformances and Defects of a non-material nature that | 89438 |

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| | cannot be corrected promptly have been notified and recorded on the Defects List in accordance with section 1.3.9 and the non-conformance report marked accordingly; | |
| | (3) the final marked-up copy of every drawing relevant to the Construction Package or the part of the Construction Package, including drawings without change, have been checked for completeness and signed by a person with responsibility for supervision of the work; | 89439 |
| | (4) the complete set of As-Built Records for the Construction Package or the part of the Construction Package has been made available to the State and the Independent Reviewer; and | 89440 |
| | (5) the Independent Reviewer has certified (in the form required by the Schedule of Certificates and Notices) compliance with the requirements of this section 1.3.5. | 89441 |
| | (c) As-Built Records must be closed before: | 89442 |
| | (1) the Works represented by the As-Built Records are covered up or subsequent Works are undertaken which would, in the opinion of the Independent Reviewer, prevent inspection or repairs; | 89443 |
| | (2) manufactured components, including precast and fabricated components, are erected or incorporated into the Works; and | 89444 |
| | (3) in the case of Returned Works, any notice required by the Agreement has been issued for the Returned Works represented by the As-Built Records. | 89445 |
| | (d) The requirements in section 1.3.5.2(c) will not apply where it is either not practicable to undertake testing required for closure of As-Built Records before Works are covered up (e.g. flushing of subsoil drains) or in particular situations where test results are available. Where these circumstances apply, any additional inspection or testing arrangements required by the Independent Reviewer must be included in the applicable ITP, and the As-Built Records must be closed as soon as practicable after the test results are available. | 89446 |
| 1.3.5.3 | Revisions of As-Built Records | 89447 |
| | The electronic CAD files and associated models for the As-Built Records must be revised after the relevant Construction Packages have been closed to incorporate all changes to enable production of the final electronic CAD files and associated models for the As-Built Records. | 89448 |
| 1.3.6 | PASS Assets and DMS Requirements | 89449 |
| 1.3.6.1 | Prior to Final Acceptance, Project Co must book all relevant As-Built Records into the PTV Drawings Management System (PTV DMS) in accordance with the PTV Infrastructure Drafting Standard. Project Co must obtain any necessary certification and authorisation from the RTO. Where applicable, superseded drawings being booked back in to the PTV DMS must be appropriately marked and booked in as 'superseded'. | 89450 |
| 1.3.6.2 | Prior to Final Acceptance, Project Co must update the State GIS application PASS Assets in respect of the Works. PASS Asset requirements are further detailed in the PTV PASS Assets Data Requirements. | 89451 |
| 1.3.6.3 | Project Co must provide all information and assistance that the Train Franchisee requires to update its asset management system (currently Ellipse) together with PASS Assets. | 89452 |
| 1.3.7 | Asset Inventory | 89453 |
| 1.3.7.1 | The Asset Inventory compiled in accordance with this section must be used as the basis for: | 89454 |
| | (a) the Work Breakdown Structure throughout the D&C Phase; and | 89455 |
| | (b) the Asset Management System during the Maintenance Phase. | 89456 |
| 1.3.7.2 | The Asset Inventory must be structured in layers comprising Assets, classified by type, Asset Components and Asset Sub-Components where: | 89457 |

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| | (a) Asset Components and Asset Sub-Components are the constituent parts of an Asset which need to be separately identified in the design; and | 89458 |
| | (b) Asset Component types are identifiable elements of an Asset type which have differing characteristics and inventory data requirements. | 89459 |
| 1.3.8 | Asset Management | 89460 |
| | Project Co must maintain, or must ensure the D&C Subcontractor maintains, accreditation to ISO 55001 (or equivalent should ISO 55001 be replaced) for the duration of the D&C Activities. | 89461 |
| 1.3.9 | Defects List | 89462 |
| 1.3.9.1 | Project Co must establish and maintain an electronic defect management system, including a Defects List, for monitoring the rectification of any Defects or other non-conformances. | 89463 |
| 1.3.9.2 | The defect management system must be: | 89464 |
| | (a) integrated with the overall Asset Management System; | 89465 |
| | (b) capable of exporting all required data to the Train Franchisee's systems in respect of Returned Train Works; and | 89466 |
| | (c) integrated with the Failure Reporting, Analysis and Corrective Action System (FRACAS). | 89467 |
| 1.3.9.3 | Where Defects or other non-conformances are notified by the State or the Independent Reviewer, the Defects List must record the party that notified the Defect or other non-conformance and a reference to the notification. | 89468 |
| 1.3.9.4 | The Defects List must identify any Defects proposed to be accepted by the State in accordance with the Agreement and must include references to any correspondence between the State and Project Co in respect of such Defects. | 89469 |
| 1.3.9.5 | Records of Defects or other non-conformances must not be deleted from the Defects List. | 89470 |
| 1.3.9.6 | The Defects List must be maintained during the Term. | 89471 |
| 1.3.9.7 | Every Defect and other non-conformance must be identified against the relevant asset component or sub-component and the location and nature of each Defect or other non-conformance must be described in sufficient detail to enable subsequent inspection, repair and monitoring. | 89472 |
| 1.3.9.8 | Non-conformances which are notified by the State or the Independent Reviewer must be closed out to the satisfaction of the State or the Independent Reviewer as applicable. | 89473 |
| 1.3.10 | Format of manuals, plans, drawings and reports | 89474 |
| | Any manuals, plans, drawings, programs, reports or associated information, or any updates or revisions of such manuals, plans, drawings, programs, reports or associated information required to be submitted must be submitted as a hard copy and as an electronic copy in the form agreed between Project Co and the State (or failing such agreement, in such form as the State or the Independent Reviewer may require). | 89475 |
| 1.3.11 | Format of CAD Data and drawings | 89476 |
| 1.3.11.1 | The format of published CAD data and drawings issued to the State and Independent Reviewer during the design delivery phase must be in accordance with the Digital Engineering Management Plan. | 89477 |
| 1.3.11.2 | The format of the CAD drawings and model files issued to the State and Independent Reviewer as As-Built Records must be in accordance with the PTV Infrastructure Drafting Standards v1.0. | 89478 |
| 1.3.11.3 | The CAD drawings must include: | 89479 |
| | (a) all issued drawings; | 89480 |
| | (b) all 2D and 3D model files; and | 89481 |
| | (c) all reference or x-ref files. | 89482 |
| 1.3.12 | Format of GIS Data | 89483 |
| | The format of the GIS data issued to the State and the Independent Reviewer must be as follows: | 89484 |

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| 1.3.12.1 | Vector: geodatabase format (.gdb): | 89485 |
| | (a) Raster: grid (elevation data) or ECW (aerial photography); | 89486 |
| | (b) Symbology: layer files (.lyr) defining layer symbology for each GIS layer; | 89487 |
| | (c) Metadata: in accordance with the GIS Management Plan; and | 89488 |
| | (d) Catalogue: An index of available GIS layers, grouped by major themes; and | 89489 |
| 1.3.12.2 | Horizontal and vertical coordinate systems must be in accordance with the requirements set out in Part B, section 1.1 of this PS&TR. | 89490 |
| 1.3.13 | Format of Federated Data | 89491 |
| | The format of federated data issued to the State and Independent Reviewer during the design delivery phase and as As-Built Records must be in accordance with the Digital Engineering Management Plan. | 89492 |
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| 1.4 | Reporting | |
| 1.4.1 | Project Co must prepare Monthly D&C Phase Progress Reports in accordance with the Agreement and the requirements of section 1.4.2. | 89494 |
| 1.4.2 | The Monthly D&C Phase Progress Report must include the following: | 89495 |
| 1.4.2.1 | a management overview which addresses overall progress and key D&C Phase issues; | 89496 |
| 1.4.2.2 | photographs and video records of the progress of the D&C Activities; | 89497 |
| 1.4.2.3 | a report on the D&C Activities which addresses: | 89498 |
| | (a) non-conformances identified in any audit including evidence of the close out of any non-conformances; | 89499 |
| | (b) for each part of the Works, progress towards: | 89500 |
| | (1) completion of Design Documentation; | 89501 |
| | (2) completion of Certified Design Documentation; | 89502 |
| | (3) Acceptance; and | 89503 |
| | (4) closure of As-Built Records; | 89504 |
| | (c) the D&C Program and progress relative to the D&C Program, including Progress Milestones, Interface Milestones and other key milestones; | 89505 |
| | (d) key risks to the conduct of the Work being those that have broader Metro Tunnel wide implications, including interface risks and risks to the reputation of the State; | 89506 |
| | (e) contractual and financial issues (including any Claims lodged under clause 63.3 of the Agreement); | 89507 |
| | (f) progress claims paid under the D&C Subcontract; | 89508 |
| | (g) commissioning and completion progress of the Works including procurement and performance; | 89509 |
| | (h) key occupational health and safety, environment, quality, project organisation structure and staffing, industrial relations, contractor and subcontractor issues, and Project Co's response to these issues; | 89510 |
| | (i) stakeholder issues covering property and authorities/utilities; | 89511 |
| | (j) traffic management issues; | 89512 |
| | (k) rail access issues; | 89513 |
| | (l) incidents notified to the State or the Independent Reviewer and outcomes of investigations or responsive actions; | 89514 |
| | (m) identification and progress on rectification work; | 89515 |
| | (n) trends regarding entries to the Site by Union Officials; | 89516 |
| | (o) updates on the status of any actual, potential or threatened Industrial Action; and | 89517 |
| | (p) planning and implementation of Final Acceptance Works prior to Provisional Acceptance and of the Services prior to Final Acceptance; | 89518 |
| 1.4.2.4 | a Program Summary Report (refer to section 2.2.2); | 89519 |
| 1.4.2.5 | an Interface Issues Register (refer to section 2.4.5); | 89520 |

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| 1.4.2.6 | a Workforce Development and Training Report (refer to section 2.5.2); | 89521 |
| 1.4.2.7 | a Social Procurement Report (refer to section 2.6.2); | 89522 |
| 1.4.2.8 | an Environmental Report (refer to section 3.3.1); | 89523 |
| 1.4.2.9 | a Sustainability Report (refer to section 4.5.2); | 89524 |
| 1.4.2.10 | a Communications and Stakeholder Engagement Report (refer to section 5.9.1); | 89525 |
| 1.4.2.11 | a Health and Safety Performance Report (refer to section 6.1.5); and | 89526 |
| 1.4.2.12 | other reasonable requirements of the State or the Independent Reviewer. | 89527 |

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| 2 | Project Management Requirements | 89528 |
| 2.1 | Quality Management | 89529 |
| 2.1.1 | Project Co must: | 89530 |
| 2.1.1.1 | prepare and update the Quality Management Plan; | 89531 |
| 2.1.1.2 | ensure that quality management is addressed throughout the performance of the D&C Activities; | 89532 |
| 2.1.1.3 | ensure the Works are undertaken in accordance with a certified Quality Management System which meets requirements of all current and relevant AS/NZS ISO Standards for Quality Management Systems as and when they are published; | 89533 |
| 2.1.1.4 | appoint a suitably experienced and qualified person as the 'Quality Manager' who is responsible for: | 89534 |
| | (a) the application and operation of the Quality Management System; and | 89535 |
| | (b) ensuring that the requirements of the Quality Management Plan are implemented and maintained. | 89536 |
| 2.1.1.5 | ensure that the Quality Manager has no direct responsibility for the management and/or execution of the Works; and | 89537 |
| 2.1.1.6 | ensure that the Quality Manager provides appropriate management input into the rectification of any Defects. | 89538 |
| 2.2 | Program Management | 89538 |
| 2.2.1 | D&C Program Requirements | 89540 |
| 2.2.1.1 | Project Co must prepare the D&C Program. | 89541 |
| 2.2.1.2 | The D&C Program must, in addition to the requirements of the Agreement, include the entire scope, deliverables and all stages of the Works (both permanent and temporary) including but not limited to: | 89542 |
| | (a) key milestones; | 89543 |
| | (b) Critical Interface Milestones with the RSA and the RIA; | 89544 |
| | (c) key constraints; | 89545 |
| | (d) Management Plans, Design Documentation and Construction Documentation including due allowance for review, comment and approval timeframes required by the Agreement; | 89546 |
| | (e) planning and statutory approvals and secondary consents; | 89547 |
| | (f) external interfaces, reviews, permits and approvals; | 89548 |
| | (g) procurement of long lead time items; | 89549 |
| | (h) procurement of subcontractors; | 89550 |
| | (i) preparation and submission of Design Documentation; | 89551 |
| | (j) dates for possession of land; | 89552 |
| | (k) off-Site fabrication and assembly; | 89553 |
| | (l) site mobilisation and establishment; | 89554 |
| | (m) dates and durations for: | 89555 |
| | (1) any local tram and traffic disruption and closures, including as a result of tram works on St Kilda Road and Royal Parade; | 89556 |
| | (2) any disruptions to the existing train network, including as a result of construction impacts to Melbourne Central Station and Flinders Street Station; | 89557 |
| | (3) major road disruptions; and | 89558 |
| | (4) other access requirements such as service outages; | 89559 |
| | (n) construction and installation; | 89560 |
| | (o) testing and commissioning; | 89561 |
| | (p) systems integration; | 89562 |

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| | (q) operational readiness; | 89563 |
| | (r) dates for Handback of Returned Works to the relevant Returned Asset Owners; and | 89564 |
| | (s) satisfaction of all Handback and Acceptance requirements. | 89565 |
| 2.2.1.3 | Work Breakdown Structure (WBS) and coding | 89566 |
| | Project Co must: | 94229 |
| | (a) group the full scope of the D&C Program as activities and milestones in accordance with the WBS provided in Appendix C3; and | 94230 |
| | (b) develop the WBS provided in Appendix C3 to the necessary lower levels to include all discrete D&C Activities. | 94231 |
| 2.2.1.4 | Relationships and logic | 89567 |
| | Project Co must ensure that: | 89568 |
| | (a) except for the designated date of Contract Close and Date for Final Acceptance, all activities and milestones have a predecessor and successor; | 89569 |
| | (b) logic drives D&C Program dates; | 89570 |
| | (c) the D&C Program minimises the use of positive lags, and excludes the use of negative lags, between activities; | 89571 |
| | (d) Finish to Start relationships are used for the majority of the relationships between task dependent activities; | 89572 |
| | (e) Start to Finish relationships are not used; and | 89573 |
| | (f) retained logic is used (not progress override). | 89574 |
| 2.2.1.5 | Critical path(s) | 89575 |
| | Project Co must ensure that: | 89576 |
| | (a) clear, identifiable, continuous and realistic critical path(s) exist between the current Data Date and completion date(s); | 89577 |
| | (b) there is no negative float in the initial D&C Program; and | 89578 |
| | (c) any subsequent D&C Program revisions or updates that contain negative float must be followed by a migration plan, to be submitted within 10 Business Days, to remove the negative float. | 89579 |
| 2.2.1.6 | Activities and durations | 89580 |
| | Project Co must ensure that: | 89581 |
| | (a) the D&C Program contains an adequate number of activities to accurately plan and model the scope of Works without introducing too much detail that would make it difficult to use as an effective tool during delivery of the Works; | 89582 |
| | (b) activity descriptions are brief but clearly convey the nature and the scope. Any abbreviation used must be explained; | 89583 |
| | (c) activities generally do not exceed 20 Business Days in duration, and activities with duration of less than 5 Business Days must be kept to a minimum. This must not be applied to procurement of long lead time items; | 89584 |
| | (d) percentage complete types are 'physical % complete' and recorded for each in progress activity as well as remaining duration; and | 89585 |
| | (e) the D&C Program does not contain: | 89586 |
| | (1) actual dates ahead of the Data Date; | 94232 |
| | (2) out of sequence activities; | 94233 |
| | (3) activities with unsatisfied constraints; and | 94234 |
| | (4) activities with unsatisfied relationships. | 94235 |
| 2.2.1.7 | Calendars | 89587 |
| | Project Co must ensure that: | 89588 |
| | (a) calendars identify holidays, rostered days off, Christmas shutdown and any other shutdowns; | 89589 |
| | (b) calendars are kept to a minimum; and | 89590 |

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| | (c) working hours between different calendars are kept to a minimum and where possible kept consistent between each calendar. | 89591 |
| 2.2.1.8 | Contingency | 89592 |
| | Project Co must ensure that: | 89593 |
| | (a) the contingent time allowance is included in the D&C Program for inherent risks and for any potential unplanned events that might cause delays; and | 89594 |
| | (b) a report on the allocation and usage of contingency and forecast of the remaining contingency is provided in each reporting period. The format and contents of the report must be agreed to by the State. | 89595 |
| 2.2.1.9 | Resources | 89596 |
| | Project Co must identify any activities which involve the State, the Independent Reviewer or external Stakeholders for the purpose of assessing resource demand to support the D&C Program. | 89597 |
| 2.2.2 | Program Summary Report | 89598 |
| | Project Co must: | 89599 |
| 2.2.2.1 | prepare and submit to the State and Independent Reviewer with each update to the D&C Program a Program Summary Report that lists the planning assumptions that underpin the D&C Program; | 89600 |
| 2.2.2.2 | ensure that the Program Summary Report functions as a narrative and communication tool to translate the underlying planning principles and development assumptions incorporated into the Bid D&C Program and any revised or updated D&C Program; and | 89601 |
| 2.2.2.3 | ensure that the Program Summary Report includes: | 89602 |
| | (a) an executive summary; | 89603 |
| | (b) key milestones and dates including the following columns: | 89604 |
| | (1) baseline finish date; | 89605 |
| | (2) last month's forecast finish date; | 89606 |
| | (3) this month's forecast finish date; | 89607 |
| | (4) variance to baseline; | 89608 |
| | (5) variance to last month; | 89609 |
| | (6) reason for variance; and | 89610 |
| | (7) risk in meeting baseline finish date; | 89611 |
| | (c) a summary of D&C Program changes for each month including proposed and/or adopted measures to mitigate any actual and/or forecast delays and slippage; | 89612 |
| | (d) a summary of D&C Program issues, risks and opportunities for each month; | 89613 |
| | (e) progress against Critical Interface Milestones (or any issues in relation to these); | 89614 |
| | (f) activities completed this month; | 89615 |
| | (g) activities forecast to finish next month; | 89616 |
| | (h) planned % complete consistent with the Bid D&C Program and actual % complete based on objective measures; | 89617 |
| | (i) resource histograms for both key work crews and total crews; | 89618 |
| | (j) justification for any constraints used; | 89619 |
| | (k) summary and commentary of critical path activities and milestones; | 89620 |
| | (l) summary of any contingency used and forecast remaining contingency; and | 89621 |
| | (m) D&C Program assumptions and notes that underpin the D&C Program including: | 89622 |
| | (1) long lead time items; | 89623 |
| | (2) approvals and permits; | 89624 |
| | (3) calendars, working hours and shifts; | 89625 |

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| | (4) production rates, crew sizes, cycle times and measured quantities used for all major Work elements; and | 89626 |
| | (5) staging, sequencing and delivery strategy. | 89627 |
| 2.2.3 | D&C Program submissions and updates | 89628 |
| 2.2.3.1 | Project Co must: | 89629 |
| | (a) submit to the State and the Independent Reviewer for review updates of the D&C Program in accordance with the Agreement; | 89630 |
| | (b) with each update of the D&C Program, provide the following: | 89631 |
| | (1) electronic format of the D&C Program in Oracle Primavera P6 Project Management software in native (*.XER) format that permits 100% data and format transfer with Oracle Primavera P6 Release 7.0 including the layout and filter (*.PLF) file, and allows interrogation by the State and the Independent Reviewer; | 89632 |
| | (2) PDF submissions of the following: | 89633 |
| | (i) summary D&C Program (no more than two A3 pages); | 89634 |
| | (ii) full D&C Program; | 89635 |
| | (iii) critical path filter applied to the full D&C Program; | 89636 |
| | (iv) time chainage diagram (if applicable); and | 89637 |
| | (v) staging diagrams (if applicable). | 89638 |
| 2.2.3.2 | PDF submissions must: | 89639 |
| | (a) be clear, neat and legible. Each sheet of the D&C Program must be numbered sequentially and contain a title block. They must be in A3 format and be in colour; | 89640 |
| | (b) show the following columns in the column view: | 89641 |
| | (1) activity ID; | 89642 |
| | (2) activity name; | 89643 |
| | (3) remaining duration; | 89644 |
| | (4) start; | 89645 |
| | (5) finish; | 89646 |
| | (6) approved baseline finish; | 89647 |
| | (7) variance to approved baseline finish; | 89648 |
| | (8) physical % complete; and | 89649 |
| | (9) total float; and | 89650 |
| | (c) show the following in the Gantt chart view: | 89651 |
| | (1) actual duration bars; | 89652 |
| | (2) remaining duration bars; | 89653 |
| | (3) baseline duration bars; and | 89654 |
| | (4) critical bars (in red). | 89655 |
| | | 89656 |
| 2.3 | Risk Management | |
| 2.3.1 | Project Co must: | 89657 |
| 2.3.1.1 | prepare and update the Risk Management Plan; | 89658 |
| 2.3.1.2 | ensure risk management is addressed throughout the performance of the D&C Activities; | 89659 |
| 2.3.1.3 | ensure that the D&C Activities are performed in accordance with: | 89660 |
| | (a) AS/NZS ISO 31000: 2009 - Risk Management and ISO/IEC 31010: 2009; | 89661 |
| | (b) AS4292 – Rail Safety Management; and | 89662 |
| | (c) the Risk Management Plan; | 89663 |
| 2.3.1.4 | implement risk management techniques to determine risks which could affect the Project and develop and implement risk management strategies to manage these risks. These risk management strategies must be documented in the Risk | 89664 |

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| | Management Plan; | |
| 2.3.1.5 | ensure that all risks arising from or associated with the implementation of the Works are identified and mitigated, and safety risks reduced so far as is reasonably practicable (SFAIRP); and | 89665 |
| 2.3.1.6 | ensure that no residual risks exceed the safety tolerability limits. | 89666 |
| 2.3.2 | Risk Register | 89667 |
| 2.3.2.1 | Project Co must develop and maintain a risk register that includes all hazards and risks associated with the Project Activities. The risk register must be referred to from the Risk Management Plan and must include: | 89668 |
| | (a) a description of all hazards and risks and their likely impact; | 89669 |
| | (b) the risk rating assessed for each hazard and risk; | 89670 |
| | (c) specific control measures to be implemented to eliminate or reduce the risk rating; | 89671 |
| | (d) the residual risk rating following mitigations; | 89672 |
| | (e) the personnel responsible for monitoring implementation of the control measures; | 89673 |
| | (f) consultative processes employed by Project Co in relation to the risk and the personnel involved in the consultative process; and | 89674 |
| | (g) demonstration that risks to safety have been eliminated, so far as is reasonably practicable, and where elimination of risks to safety is not reasonably practical, those risks to safety have been minimised so far as is reasonably practicable. | 89675 |
| 2.3.2.2 | Project Co must also develop, maintain and submit for review a Design Risk Register in accordance with section 7.4. | 89676 |
| | | 89677 |
| 2.4 | Interface Management | |
| 2.4.1 | General | 89678 |
| 2.4.1.1 | Project Co must: | 89679 |
| | (a) prepare and update the PPP Interface Management Plan; | 89680 |
| | (b) appoint (a) suitably experienced and qualified person(s) as the 'Interface Manager(s)', following consultation with the State and without limiting any obligation of Project Co, who is responsible for: | 89681 |
| | (1) compliance with this section; | 89682 |
| | (2) the implementation of the PPP Interface Management Plan; | 89683 |
| | (3) ongoing coordination with all interfacing parties; | 89684 |
| | (4) maintaining an Interface Issues Register; and | 89685 |
| | (5) monitoring the status of Critical Interface Milestones; and | 89686 |
| | (c) develop and implement processes for identifying and managing all interfaces associated with the Project Activities, including any design, construction, testing, commissioning and program interfaces that exist between Project Co and any other party, | 89687 |
| | in each case in a manner consistent with the Framework Coordination and Interface Principles. | 89688 |
| 2.4.2 | Interfacing parties | 89689 |
| | Project Co must identify all interfacing parties in relation to the Works. Interfacing parties include: | 89690 |
| 2.4.2.1 | Metro Tunnel Package Contractors, meaning each of: | 89691 |
| | (a) the RSA; and | 89692 |
| | (b) the RIA; | 89693 |
| 2.4.2.2 | the Train Franchisee Interface Party; | 89694 |
| 2.4.2.3 | the Tram Franchisee Interface Party; | 89695 |
| 2.4.2.4 | VicRoads; | 89696 |
| 2.4.2.5 | Public Transport Victoria; | 89697 |

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| 2.4.2.6 | the Ticketing Works Contractor; | 89698 |
| 2.4.2.7 | the CityLink Manager; | 89699 |
| 2.4.2.8 | any parties undertaking Related State Project Works, which include: | 89700 |
| | (a) the Level Crossing Removal Project; | 89701 |
| | (b) the High Capacity Metro Trains Project; | 89702 |
| | (c) Western Distributor; and | 89703 |
| | (d) Flinders Street Station Redevelopment; | 89704 |
| 2.4.2.9 | any parties undertaking Oversight Development Works, including: | 89705 |
| | (a) the CBD North OSD Developer; and | 89706 |
| | (b) the CBD South OSD Developer; | 89707 |
| 2.4.2.10 | Utility Providers; | 89708 |
| 2.4.2.11 | the Victorian Planning Authority (in relation to the development of the Arden Urban Renewal Precinct); | 89709 |
| 2.4.2.12 | any other parties undertaking any work, services, activities and functions: | 89710 |
| | (a) in connection with the Project Assets or the Metro Tunnel; | 89711 |
| | (b) otherwise in connection with the Project Activities; or | 89712 |
| | (c) adjacent to or in the vicinity of the Works, the Project Assets or the Metro Tunnel, the Site or the Victorian Rail Network, including those described as Appendix C2.3, | 89713 |
| | simultaneously with Project Co's performance of the Project Activities. | 89714 |
| 2.4.3 | Interface documentation | 89715 |
| | Project Co must, jointly with other parties to the JCC, develop, update and implement: | 89716 |
| 2.4.3.1 | relevant Management Plans – including details of how the parties will work together to identify and manage direct package-to-package interfaces in accordance with the Framework Co-ordination and Interface Principles; | 89717 |
| 2.4.3.2 | Interface Definition Sheets (IDSs) – which will identify and manage package to package deliverables and support coordination between the respective packages; | 89718 |
| 2.4.3.3 | Critical Interface Definition Sheets (CIDS) – which are IDSs that contain Critical Interface Milestones (not all IDSs will contain Critical Interface Milestones); | 89719 |
| 2.4.3.4 | Interface Control Documents (ICDs) – which document the package to package interface and integration requirements and deliverables through all lifecycle stages at a more detailed and technical level; and | 89720 |
| 2.4.3.5 | Interface Programs – which set out the relevant activities, dependencies and timeframes in relation to package-to-package interfaces. | 89721 |
| 2.4.4 | Interface obligations | 89722 |
| | To the extent that any interfaces exist between the Works and any work, services, activities and functions to be undertaken by any interfacing party, including but not limited to those parties set out in section 2.4.2, Project Co must, in a manner consistent with the Framework Coordination and Interface Principles: | 89723 |
| 2.4.4.1 | co-operate with interfacing parties in good faith to assist in achieving the successful implementation and completion of the Project; | 89724 |
| 2.4.4.2 | co-ordinate with interfacing parties to resolve any issues with regard to scheduling, access, exchange of relevant design information and other such matters; | 94236 |
| 2.4.4.3 | work with other parties to eliminate or reduce SFAIRP risks to health and safety associated with technical interfaces (such as the potential for passenger entrapment between the Platform Screen Door System (PSDS) and HCMT); | 89725 |
| 2.4.4.4 | perform all obligations in a diligent and prompt manner; | 89726 |
| 2.4.4.5 | plan, program and carry out the Works in a manner so as to minimise any interference with other interfacing parties; | 89727 |
| 2.4.4.6 | if there is a delay in the performance of another Metro Tunnel Package Contractor's works, use reasonable endeavours to overcome any resulting | 89728 |

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| | delay, taking a whole of project perspective; | |
| 2.4.4.7 | notify interfacing parties of any proposed works that might impact them, prior to the commencement of such works; | 89729 |
| 2.4.4.8 | not unduly interfere with, obstruct, impede, damage or delay the works being carried out by an interfacing party; | 89730 |
| 2.4.4.9 | work with other parties to ensure that the Works are appropriately integrated with any interfacing systems or assets and are capable of being accepted into service by the Train Franchisee; | 89731 |
| 2.4.4.10 | monitor, manage and co-ordinate the integration of relevant Works; and | 89732 |
| 2.4.4.11 | cooperate with the State and relevant Authorities to accommodate any changed traffic flows associated with any adjacent works or a Special Event in any areas directly or indirectly affected by the Works or the Temporary Works, noting that restrictions on construction traffic may be implemented during Special Events. | 89733 |
| 2.4.5 | Interface Issues Register | 89734 |
| | Project Co must: | 89735 |
| 2.4.5.1 | develop, maintain and update an Interface Issues Register, and record interfacing issues and resolutions throughout the Works; and | 89736 |
| 2.4.5.2 | ensure that the latest version of the Interface Issues Register is provided to the State with the Monthly D&C Phase Progress Report in both (.XLSX) and PDF formats and made available via the Information Exchange System (IES). | 89737 |
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| 2.5 | Workforce Development and Training | |
| 2.5.1 | Project Co must: | 89739 |
| 2.5.1.1 | prepare and update the Workforce Development and Training Management Plan; | 89740 |
| 2.5.1.2 | meet all statutory obligations in relation to training, including in respect of health and safety and environmental matters; | 89741 |
| 2.5.1.3 | ensure that all persons undertaking the D&C Activities have been adequately trained and provide structured training programs (noting the particular requirements regarding heavy vehicle driver training set out in section 6.3.2), and are appropriately qualified and experienced, to address the requirements of the Agreement; | 89742 |
| 2.5.1.4 | ensure that all persons undertaking the D&C Activities have undergone an appropriate induction program in respect of specific risks and the required management and mitigation measures in relation to health and safety, quality, risk, information management, site and traffic management, construction techniques and Work methods, design management, environmental management, sustainability management and stakeholder and community relations, including compliance with all relevant statutory obligations, policies and procedures; | 89743 |
| 2.5.1.5 | utilise Victoria registered apprentices, Victorian registered trainees or engineering cadets for at least 10% of the Works' total estimated labour hours in accordance with the Major Projects Skills Guarantee; | 89744 |
| 2.5.1.6 | achieve the Aboriginal Employment Target of 2.5% of the Works' estimated total labour hours and demonstrate how performance against this target will be measured; | 89745 |
| 2.5.1.7 | achieve the Priority Jobseeker Requirements; | 89746 |
| 2.5.1.8 | implement initiatives which improve the participation of Priority Jobseekers and underrepresented groups in the industry; | 89747 |
| 2.5.1.9 | implement workforce development initiatives which result in: | 89748 |
| | (a) Priority Jobseekers and underrepresented groups in the industry, advancing in the workforce to more senior roles; | 89749 |
| | (b) talented young trade and professional workers being identified and developed; | 89750 |
| 2.5.1.10 | develop and implement nationally recognised accredited training and skill | 89751 |

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| | development programs and ensure that 20% of the workforce participate in nationally recognised accredited training; | |
| 2.5.1.11 | actively participate in evaluation processes to support continuous improvement in workforce development and training; and | 89752 |
| 2.5.1.12 | provide the State with access to all training material, training management records and induction records upon request. | 89753 |
| 2.5.2 | Reporting | 89754 |
| 2.5.2.1 | Project Co must prepare the Workforce Development and Training Report in a format and structure agreed with the State for inclusion in the Monthly D&C Phase Progress Report. | 89755 |
| 2.5.2.2 | The Workforce Development and Training Report must include as a minimum: | 89756 |
| | (a) total workforce; | 89757 |
| | (b) total workforce Full Time Equivalent; | 89758 |
| | (c) total project hours; | 89759 |
| | (d) the Major Projects Skills Guarantee Performance Report; | 89760 |
| | (e) the number of apprentices, trainees and engineering cadets aged over 21 years; | 89761 |
| | (f) the total number of Aboriginal people employed and/or working; | 89762 |
| | (g) the number of Priority Jobseekers employed, and their role, start date and end date; | 89763 |
| | (h) the number of Priority Jobseekers, underrepresented groups, apprentices, trainees and engineering cadets who are promoted to more senior roles; | 89764 |
| | (i) a workforce gender and diversity report including a breakdown by profession, seniority and annual income over \$110,000; | 89765 |
| | (j) the number of people working part time house (less than 30 hours per week over fewer than four days); | 89766 |
| | (k) board diversity report including breakdown by gender, Aboriginal representation, cultural background and representatives aged under 55 years; | 89767 |
| | (l) initiatives developed and implemented to achieve the Priority Jobseekers Requirements, the Major Projects Skills Guarantee, the Aboriginal Employment Target and in relation to the development of an innovative and inclusive workforce; | 89768 |
| | (m) identification of training and skills gaps in the workforce and initiatives to respond to the training and skills gaps; and | 89769 |
| | (n) details of training undertaken including: | 89770 |
| | (1) list of all individuals and positions who have participated in training; | 89771 |
| | (2) the training undertaken; | 89772 |
| | (3) the period of the training; | 89773 |
| | (4) the qualification achieved; and | 89774 |
| | (5) the trainer. | 89775 |
| 2.5.3 | Resourcing | 89776 |
| 2.5.3.1 | Project Co must ensure that a suitably qualified and experienced person is appointed as the 'Workforce and Training Manager'. | 89777 |
| 2.5.3.2 | The Workforce and Training Manager must: | 89778 |
| | (a) be employed in a full-time capacity on the Project until the Date of Provisional Acceptance; | 89779 |
| | (b) be responsible for implementing, monitoring and reporting on Project Co's performance against the Workforce Development and Training Management Plan and the Major Projects Skills Guarantee Compliance Plan; and | 89780 |
| | (c) attend monthly meetings with the State's skills and workforce development representatives. | 89781 |

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| 2.6 | Social Procurement | 89782 |
| 2.6.1 | Project Co must: | 89783 |
| 2.6.1.1 | prepare and update the Social Procurement Management Plan; and | 89784 |
| 2.6.1.2 | achieve positive social outcomes through the implementation of procurement initiatives. | 89785 |
| 2.6.2 | Reporting | 89786 |
| 2.6.2.1 | Project Co must prepare the Social Procurement Report in a format and structure agreed with the State for inclusion in the Monthly D&C Phase Progress Report. | 89787 |
| 2.6.2.2 | The Social Procurement Report must include as a minimum: | 89788 |
| | (a) the number of small and medium enterprises. Aboriginal businesses and social enterprises engaged by Project Co and its Key Subcontractors and the overall the capital spend for each of these; | 89789 |
| | (b) a description of any procurement initiatives implemented to achieve positive social outcomes; | 89790 |
| | (c) a description of initiatives and activities undertaken to develop social procurement opportunities in Victoria; and | 89791 |
| | (d) metrics of positive social outcomes achieved through implementation of social procurement initiatives. | 89792 |
| | | 89793 |
| 2.7 | Information Management | |
| 2.7.1 | General | 89794 |
| 2.7.1.1 | Project Co must comply with all applicable requirements of all Authorities in respect of the preparation, updating, revision, transmittal, storage, and retention of Project Co Material. | 89795 |
| 2.7.1.2 | Project Co must prepare and update the Information Management Plan. | 89796 |
| 2.7.2 | Information Exchange System (IES) | 89797 |
| 2.7.2.1 | Project Co must upload to the IES: | 89798 |
| | (a) all contractual correspondence sent by Project Co to the State and the Independent Reviewer which includes the State as a “To” or a “cc”; | 89799 |
| | (b) all documents that have been submitted to the State for review or approval in accordance with the Agreement; or | 89800 |
| | (c) all documents otherwise submitted to the State in accordance with the Agreement or the Project Requirements including: | 89801 |
| | (1) Design Documentation; | 89802 |
| | (2) IFC Design Documentation; | 89803 |
| | (3) As-Built Records; | 89804 |
| | (4) Management Plans; | 89805 |
| | (5) minutes, agendas and associated reports for any meetings involving the State; | 89806 |
| | (6) Monthly D&C Phase Progress Reports; | 89807 |
| | (7) progress claims; and | 89808 |
| | (8) Handback Documentation as set out in section 11.2.1 | 89809 |
| 2.7.2.2 | Project Co may use the IES to upload documents in addition to those described in section 2.7.2.1. | 89810 |
| 2.7.2.3 | Project Co must use the IES for the transmission of documentation to and from other Metro Tunnel Package Contractors. | 89811 |
| 2.7.2.4 | Project Co staff will receive training in the use of the IES by representatives of the system vendor and/ or the State. | 89812 |
| 2.7.3 | Naming Convention | 89813 |
| 2.7.3.1 | Project Co must comply with the Technical Document Numbering System provided in Appendix C6. | 89814 |

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| 2.8 | Digital Engineering | 89815 |
| 2.8.1 | Project Co must establish a live digital engineering environment to enable collaboration and coordination of information, data sharing and enhanced communication on the project. | 89816 |
| 2.8.2 | The live digital engineering environment is on a non-reliance basis. | 89817 |
| 2.8.3 | Project Co must: | 89818 |
| 2.8.3.1 | prepare and update the Digital Engineering Management Plan; and | 89819 |
| 2.8.3.2 | implement the live digital engineering environment. | 89820 |
| 2.8.4 | The live digital engineering environment must include as a minimum: | 89821 |
| 2.8.4.1 | GIS; | 89822 |
| 2.8.4.2 | a common data environment including an electronic data management system; | 89823 |
| 2.8.4.3 | a network interface to the common data environment supporting native data files accessible to the State and the Independent Reviewer; and | 89824 |
| 2.8.4.4 | a web-based user interface to the common data environment supporting design review files accessible to the State, the Independent Reviewer and by agreement interfacing parties. | 89825 |
| 2.8.5 | The web-based user interface to the common data environment must as a minimum provide access to: | 89826 |
| 2.8.5.1 | GIS; | 89827 |
| 2.8.5.2 | published monitoring data; | 89828 |
| 2.8.5.3 | published geotechnical data; | 89829 |
| 2.8.5.4 | published federated models; | 89830 |
| 2.8.5.5 | published photograph logs; and | 89831 |
| 2.8.5.6 | records submitted in accordance with section 1.3.3. | 89832 |
| 2.8.6 | Project Co must provide training sessions on the web-based user interface to the common data environment to the State, the Independent Reviewer and by agreement interfacing parties. | 89833 |
| 2.8.7 | Project Co must undertake a compliance audit of the implemented digital engineering strategy against future State or Federal digital engineering (BIM) related standards or guidelines and report its findings to the State and the Independent Reviewer. | 89834 |
| 2.8.8 | Project Co must engage with the State and the Train Franchisee throughout the project lifecycle to define the operational and maintenance information requirements (including but not limited to asset information, asset classes, asset attributes and component definition) required by the State to support a digital asset management system. | 150442 |
| 2.8.9 | Project Co must issue to the State federated asset information models with sufficient embedded or linked data and information to satisfy the operational and maintenance information requirements to support a digital asset management system. | 150443 |
| 2.8.10 | Project Co must adopt digital engineering technologies including but not limited to virtual reality, augmented reality, and simulation facilities to support an effective design review process. | 150445 |
| 2.9 | State Requirements | 89835 |
| | Project Co must develop a Local Industry Development Plan (LIDP) in accordance with the Victorian Industry Participation Policy (VIPP) that establishes a strategy to meet or exceed an overall minimum of 84% local content and specifies proposed percentages for each of the contestable items identified by Industry Capability Network Victoria (ICN). | 89836 |

3 Environmental Management Requirements 89837

3.1 General 89838

- 3.1.1 Project Co must carry out the Works so as to: 89839
 - 3.1.1.1 address and achieve the environmental commitments and responsibilities set out in the MMRA Environmental Policy to the extent that they relate to the Works; 89840
 - 3.1.1.2 comply with the Environmental Management Framework (**EMF**) and Environmental Performance Requirements (**EPRs**) as approved by the Minister for Planning from time to time; 89841
 - 3.1.1.3 achieve the environmental requirements as outlined in Part B of this PS&TR; and 89842
 - 3.1.1.4 as far as is reasonably practicable, implement measures to mitigate impacts to key institutional stakeholders as determined in accordance with section 5.2.1.7. 89843
- 3.1.2 Project Co must prepare and update the Environmental Management Plans (**EMPs**), including the Construction Environmental Management Plan (**CEMP**) and the Site Environmental Implementation Plans (**SEIPs**). 89844
- 3.1.3 Project Co must attend and prepare materials for all internal and external environmental management groups, or related technical or coordination working groups, as requested by the State. Environmental management groups include, but are not limited to: 89845
 - 3.1.3.1 Precinct Reference Groups, such as the Parkville Precinct Reference Group, as referenced in EPR SC11 and SC12; and
 - 3.1.3.2 Traffic and Transport Working Group as referenced in EPR T1. 89846

3.2 Environmental Management System 89846

- 3.2.1 Project Co must establish, implement and maintain a certified Environmental Management System (**EMS**) in accordance with the requirements set out in this section 3.2. 89847
- 3.2.2 The EMS must be a single-volume, overarching document for the whole of the design and construction of the Works, including Temporary Works. As a minimum, it must: 89848
 - 3.2.2.1 be developed and delivered in accordance with the EMF; 89849
 - 3.2.2.2 be developed, implemented and maintained to align with and comply with the EMF and be certified to ISO 14001:2015; 89850
 - 3.2.2.3 provide a structured approach for leadership endorsement, planning, risk management, support, performance evaluation and improvement of the EMS during project delivery; 89851
 - 3.2.2.4 ensure that objectives and targets are consistent with the objectives of the MMRA Environmental Policy and identified significant risks, and provide plans to achieve the targets; 89852
 - 3.2.2.5 include processes for considering environmental hazards, risks and opportunities in accordance with the risk management standard AS/NZS/ISO31000:2009 and must include assessment of residual risks and opportunities; 89853
 - 3.2.2.6 include details of all monitoring, incident management and reporting requirements; and 89854
 - 3.2.2.7 ensure processes are in place to continuously improve the suitability, adequacy and effectiveness of the EMS, including responding if necessary to any amendment of the EMF or EMS. 89855

3.3 Environmental monitoring and reporting 89856

- 3.3.1 Project Co must prepare the Environmental Report for inclusion in the Monthly D&C Phase Progress Report to show progress against environmental requirements in Part B, section 14 of this PS&TR for the Works and specified in the CEMP, including: 89857
 - 3.3.1.1 monthly data records detailing relevant monitoring required by the EPRs or Environmental Management Plans in graphical format; 89858
 - 3.3.1.2 if monitoring indicates that a trigger level for any measurable effect has been reached, details as to mitigation measures undertaken, their effectiveness to the time of reporting, and outline of further monitoring scheduled to confirm effectiveness; 89859

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| 3.3.1.3 | details of mitigation measures undertaken to rectify any impacts highlighted by monitoring; | 89860 |
| 3.3.1.4 | external and internal audit findings; | 89861 |
| 3.3.1.5 | details of any incidents; and | 89862 |
| 3.3.1.6 | details of any nonconformities. | 89863 |
| 3.3.2 | Project Co must provide reports on the progress against environmental objectives and targets and notification of significant incidents as per the EMS requirements. | 89864 |
| 3.3.3 | Project Co must monitor and report on environmental indicators to be determined in consultation with key institutional stakeholders in accordance with section 5.2.1.7. | 89865 |
| 3.3.4 | Project Co must cooperate with any reasonable requests from the State or any relevant government agency to provide records of environmental management or compliance with approvals. | 89866 |
| 3.4 | Resourcing | 89867 |
| 3.4.1 | Project Co must ensure that a suitably qualified and experienced person is appointed as the 'Environment Manager'. The Environment Manager must: | 89868 |
| 3.4.1.1 | be employed in a full-time capacity on the Project; | 89869 |
| 3.4.1.2 | report to the Project Director of the D&C Subcontractor (for the D&C Phase) and provide evidence of updates provided to the senior management team on a monthly basis; | 89870 |
| 3.4.1.3 | as a minimum, have had suitable experience on major infrastructure construction projects as an environmental professional and a minimum of eight years' relevant environmental management experience; | 89871 |
| 3.4.1.4 | be responsible for monitoring Project Co's compliance with the CEMP; and | 89872 |
| 3.4.1.5 | attend monthly meetings with the State's environment and sustainability representatives to report on progress against the EPRs, the CEMP and any other related matters as determined by the State. | 89873 |
| 3.4.2 | Project Co must ensure that a suitably qualified and experienced person is appointed as an 'Environment Coordinator'. The Environment Coordinator must: | 89874 |
| 3.4.2.1 | be employed in a full-time capacity on the Project; | 89875 |
| 3.4.2.2 | as a minimum, have had suitable experience as a professional in implementation of environmental management on construction projects for at least five years and possess the required technical skills and knowledge to perform the role; | 89876 |
| 3.4.2.3 | be able to demonstrate competence, experience and training in implementing the CEMP as outlined in Annexure 4; and | 89877 |
| 3.4.2.4 | report to the Environment Manager. | 89878 |
| 3.4.3 | Project Co must ensure that the Environment Manager and Environment Coordinator are adequately supported by additional resources to meet the requirements of this PS&TR. | 89879 |
| 3.5 | Environmental Audits | 89880 |
| 3.5.1 | Project Co must engage an Independent Environmental Auditor to: | 89881 |
| 3.5.1.1 | review and verify, prior to commencement of work, that Project Co has complied with relevant EPRs and Approval Conditions; | 89882 |
| 3.5.1.2 | carry out the following audits: | 89883 |
| | (a) 6-monthly audits of compliance with the EMF and the EMS; | 89884 |
| | (b) quarterly audits of: | 89885 |
| | (1) compliance with the EPRs; | 89886 |
| | (2) compliance with the CEMP (during the D&C Phase); and | 89887 |
| | (3) implemented SEIPs including auditing the effectiveness of SEIPs. | 89888 |
| 3.5.2 | Results of all environmental audits must be promptly provided to the State, the Independent Reviewer and any relevant government agency as required by the State. | 89889 |
| 3.5.3 | Project Co must undertake corrective and preventative actions arising as a result of environmental audits undertaken and within the timeframe specified in the audit report. | 89890 |

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| 4 | Sustainability Management Requirements | 89891 |
| 4.1 | General | 89892 |
| 4.1.1 | Project Co must: | 89893 |
| 4.1.1.1 | ensure that sustainability is addressed throughout the performance of the D&C Activities, including in the development of appropriate design and construction responses, consistent with the MMRA Sustainability Policy and in accordance with the requirements of the MMRA Sustainability Strategy and the MMRA Sustainability Management Plan to the extent that they relate to the D&C Activities; | 89894 |
| 4.1.1.2 | prepare and update the Sustainability Management Plan; and | 89895 |
| 4.1.1.3 | attend and prepare materials for MMRA’s sustainability coordination group, monthly meetings, and any follow up interim meetings, as outlined in the MMRA Sustainability Management Plan. | 89896 |
| 4.2 | Sustainability rating tools | 89897 |
| 4.2.1 | Project Co must register to use the following industry rating tools: | 89898 |
| 4.2.1.1 | the ISCA IS Rating Tool; and | 89899 |
| 4.2.1.2 | the GBCA GS Rating Tool. | 89900 |
| 4.2.2 | IS Rating Tool | 89901 |
| 4.2.2.1 | Project Co must: | 89902 |
| | (a) achieve a certified ‘Design’ and ‘As Built’ rating with a minimum IS Rating Tool score of 84 (“LEADING”) under the IS Rating Tool (version 1.2) for the Works; | 89903 |
| | (b) submit all evidence to ISCA for independent verification of ISCA rating scores in accordance with the IS rating process described in the IS rating scheme; | 89904 |
| | (c) make available information relating to the Works that may be required in order to achieve an ISCA IS Rating in subsequent phases or on other work packages of the Metro Tunnel Project; | 89905 |
| | (d) develop credit interpretation requests, technical clarifications, credit allocation and scope requirements related to the IS Rating Scheme for approval by ISCA; | 89906 |
| | (e) submit the IS Rating Tool Scorecard to the State prior to formal submission to ISCA as follows: | 89907 |
| | (1) the ‘Design’ IS Rating Tool Scorecard as part of the Sustainable Design Report described in section 7.18.1.4; and | 89908 |
| | (2) the ‘As-Built’ IS Rating Tool Scorecard one month prior to the Date for Provisional Acceptance in accordance with the Review Procedures; and | 89909 |
| | (f) submit any proposed changes to the ISCA Materials Lifecycle Impact Base Case and the ISCA Carbon and Energy Base Case for review in accordance with the Design Review Process or Review Procedures (as relevant) prior to submission to ISCA for re-verification; | 89910 |
| | (g) develop a design materials footprint model which demonstrates the achievement of requirements of section 15.6.2 of Part B from the base case provided in the ISCA Materials Lifecycle Impact Base Case; | 89911 |
| | (h) demonstrate that, as a minimum, the materials reduction initiatives detailed in the ISCA Materials Lifecycle Impact ‘Reference Design’ Footprint have been investigated; | 89912 |
| | (i) develop a design greenhouse gas footprint which models construction and operational forecast greenhouse gas emissions to demonstrate the reduction from the base case, excluding renewable energy, as required by section 15.5.3 of Part B in accordance with MMRA Energy and Carbon Base Case and Reductions Model; | 89913 |
| | (j) develop an as-built materials footprint model which demonstrates the achievement of the requirements of section 15.6.2 of Part B from the base case provided in the ISCA Materials Lifecycle Impact Base Case; | 89914 |
| | (k) achieve reductions in greenhouse gas emissions (Scope 1 and 2 emissions) by a minimum of 30% below Project Co’s ISCA base case, excluding traction power | 89916 |

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| | and the use of renewable energy, for the infrastructure lifecycle through best practice design and construction initiatives; | |
| | (l) develop an as-built greenhouse gas footprint which measures construction and models operational greenhouse gas emissions to demonstrate the reduction from the base case, excluding renewable energy, as required by section 15.5.3 of Part B in accordance with the MMRA Energy and Carbon Base Case and Reductions Model; and | 89917 |
| | (m) develop a water base case in accordance with the ISCA IS rating scheme to be used in the ISCA Water Credits. | 89918 |
| 4.2.3 | GS Rating Tool | 89919 |
| | 4.2.3.1 Project Co must: | 89920 |
| | (a) achieve a minimum GS Rating Tool score of 5 stars and target 6 stars for each Station; | 89921 |
| | (b) develop credit interpretation requests, technical clarifications and scope requirements related to the GS Rating Tool Scorecard for approval by GBCA; and | 89922 |
| | (c) submit the GS Rating Tool Scorecard prior to formal submission to GBCA as follows: | 89923 |
| | (1) the 'Design' GS Rating Scorecard as part of the Sustainable Design Report described in section 7.18.1.4; and | 89924 |
| | (2) the 'As-Built' GS Rating Scorecard one month prior to the Date for Provisional Acceptance in accordance with the Review Procedures. | 89925 |
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| 4.3 | Water | |
| 4.3.1 | Project Co must: | 89927 |
| | 4.3.1.1 model the storm water treatment performance of new and reinstated areas using industry recognised software to achieve the stormwater objectives required by local government planning provisions; | 89928 |
| | 4.3.1.2 work with the State on legacy water offsetting projects in accordance with the MMRA Sustainability Strategy; | 89929 |
| | 4.3.1.3 optimise water sensitive urban design opportunities across the project footprint and implement feasible initiatives set out in the 'WSUD Opportunities Assessment'; and | 89930 |
| | 4.3.1.4 investigate and implement feasible rainwater and stormwater harvesting systems at Stations and Portals with consideration to OSD opportunities. | 89931 |
| | | 89932 |
| 4.4 | Urban Ecology and Vegetation | |
| 4.4.1 | Project Co must: | 89933 |
| | 4.4.1.1 comply with the City of Melbourne's Tree Protection Policy across the Works; | 89934 |
| | 4.4.1.2 coordinate with and make provision for a specialist contractor engaged by the local council to place soil and plant trees at all sites; | 89935 |
| | 4.4.1.3 provide information to the community at least 7 days prior to removal advising of the timing, process and possible attendance of tree removals; and | 89936 |
| | 4.4.1.4 develop management manuals outlining maintenance, stormwater protection and (if necessary) irrigation requirements for ongoing maintenance of sites and landscaping, and provide any relevant training for the land manager. | 89937 |
| | | 89938 |
| 4.5 | Sustainability monitoring and reporting | |
| 4.5.1 | Project Co must provide data and inputs to inform annual State and Rail Franchisee public or internal reporting and to support operational ratings for the IS Rating Tool or GS Rating Tool on sustainability performance throughout the design, construction and operation phases of the project. | 89939 |
| 4.5.2 | Project Co must prepare the Sustainability Report for inclusion in the Monthly D&C Phase Progress Report, which as a minimum must include: | 89940 |
| | 4.5.2.1 progress against the sustainability requirements; | 89941 |
| | 4.5.2.2 compliance with the Sustainability Management Plan; | 89942 |

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| 4.5.2.3 | an update on the progress against the IS Rating Tool target score and an outline of any key issues and opportunities; | 89943 |
| 4.5.2.4 | an update on the progress against the GS Rating Tool Scorecard; | 89944 |
| 4.5.2.5 | monthly data records relating to tracking against targets in graphical format, including: | 89945 |
| | (a) where applicable, the current level of potable and non-potable water usage consumed and performance against water targets specified in the water credits in the IS Rating Tool and the GS Rating Tool; | 89946 |
| | (b) the volume and details of the sources of non-potable water harvested; | 89947 |
| | (c) the current level of greenhouse gas emissions, energy and fuel usage consumed and performance against carbon targets specified in the energy and materials credits in each of the IS Rating Tool and GS Rating Tool; and | 89948 |
| | (d) the volumes of materials used in the Works, particularly concrete and steel. | 89949 |
| 4.5.2.6 | The Sustainability Report must be prepared in a format that is consistent with the MMRA PPP Sustainability Reporting Template. | 89950 |
| | | 89951 |
| 4.6 | Resourcing | |
| 4.6.1 | Project Co must ensure that a suitably qualified and experienced person be appointed as the 'Sustainability Manager'. The Sustainability Manager must: | 89952 |
| 4.6.1.1 | be employed in a full-time capacity on the Project until the 'As-Built' IS Rating Score and the 'As-Built' GS Rating Score have been obtained; | 89953 |
| 4.6.1.2 | have demonstrated experience on construction projects as a sustainability professional and a minimum of eight years' relevant sustainability experience; | 89954 |
| 4.6.1.3 | be an ISCA Accredited Professional and Green Star Accredited Professional; | 89955 |
| 4.6.1.4 | report to the Project Director of the D&C Subcontractor and provide evidence of updates provided to the senior management team on a monthly basis; | 89956 |
| 4.6.1.5 | be responsible for implementing and monitoring Project Co's compliance with the Sustainability Management Plan prepared in accordance with Annexure 5; | 89957 |
| 4.6.1.6 | not be the same person as the Environment Manager; and | 89958 |
| 4.6.1.7 | attend monthly meetings with the State's environment and sustainability representatives to report on progress against the sustainability requirements in this PS&TR. | 89959 |
| 4.6.2 | Project Co must ensure that a suitably qualified and experienced person is appointed as 'Sustainability Coordinator'. The Sustainability Coordinator must: | 89960 |
| 4.6.2.1 | be employed in a full-time capacity on the Project until the 'As-Built' IS Rating Score and the 'As-Built' GS Rating Score have been obtained; | 89961 |
| 4.6.2.2 | have demonstrated experience on construction projects as a sustainability professional and a minimum of three years' relevant sustainability experience; | 89962 |
| 4.6.2.3 | be an ISCA Accredited Professional and Green Star Accredited Professional; and | 89963 |
| 4.6.2.4 | report to the Sustainability Manager. | 89964 |
| 4.6.3 | Project Co must ensure that the Sustainability Manager and Sustainability Coordinator are adequately supported by additional resources to meet the requirements of this PS&TR. | 89965 |
| | | 89966 |
| 4.7 | Sustainability Audits | |
| | Project Co acknowledges that the State (or an associate or a third party engaged by the State) may reasonably conduct audits against the Sustainability Management Plan in accordance with the Agreement. | 89967 |

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| 5 | Communications and Stakeholder Engagement Management Requirements | 89968 |
| 5.1 | General | 89969 |
| 5.1.1 | Project Co must, at all times, act in a manner consistent with safeguarding and enhancing positive community and stakeholder sentiment towards the Project. | 89970 |
| 5.1.2 | Project Co must prepare and update a Communications and Stakeholder Engagement Management Plan which: | 89971 |
| 5.1.2.1 | implements procedures to: | 89972 |
| | (a) keep the community properly informed in relation to the Project and the Works; and | 89973 |
| | (b) maintain the reputation of the State; and | 89974 |
| 5.1.2.2 | has regard to the fact that the Works are: | 89975 |
| | (a) to be conducted in areas of great importance to many people, including local residents, community groups, stakeholders and businesses; and | 89976 |
| | (b) of a high profile in the community generally, and of a particularly high profile in communities surrounding and adjacent to the Site; and | 89977 |
| 5.1.2.3 | complies with the requirements of this section 5. | 89978 |
| | | 89979 |
| 5.2 | Community and stakeholder engagement | |
| 5.2.1 | Project Co must: | 89980 |
| 5.2.1.1 | achieve a minimum of Level 2 for each of the ISCA Community Health, Wellbeing and Safety Credits and the ISCA Stakeholder Participation Credits; | 89981 |
| 5.2.1.2 | establish and maintain effective relationships with local residents, businesses and stakeholders along the project corridor, wherever Works are taking place; | 89982 |
| 5.2.1.3 | provide timely and relevant information to the community and relevant stakeholders about the Works, including milestones, design and construction impacts; | 89983 |
| 5.2.1.4 | provide adequate means for people with a disability or who speak a language other than English to request and receive information or to make a complaint; | 89984 |
| 5.2.1.5 | consider reduction of disruption to affected stakeholders and the wider community as a key element in decision-making around timing and methodology of construction works; | 89985 |
| 5.2.1.6 | consider stakeholder operational requirements, plans and events during planning for construction activities and incorporate these constraints into construction plans and timetables; | 89986 |
| 5.2.1.7 | identify and consult with key institutional stakeholders, including health, research and educational institutions, to determine: | 89987 |
| | (a) potential impacts to their operations arising from the construction and operation of the Works; and | 89988 |
| | (b) the measures necessary to acceptably mitigate these impacts. | 89989 |
| | In determining acceptable mitigation measures, Project Co must consider any information or agreements prepared by the State prior to Financial Close. A register must be maintained for each key institutional stakeholder documenting the identified impacts and mitigation measures; | 89990 |
| 5.2.1.8 | at least 20 Business Days prior to the commencement of construction activities in respect of any Returned Asset for which the University of Melbourne is the Returned Asset Owner: | 150457 |
| | (a) provide Construction Documentation to the University in respect of that part of the Works; | 150458 |
| | (b) engage with the University regarding completion of that part of the Works; and | 150459 |
| | (c) consider and, where reasonably possible, adopt the University's suggestions and/ or requirements for the purposes of completing that part of the Works; | 150460 |

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| 5.2.1.9 | prepare and implement a business disruption plan for non-acquired businesses in accordance with EPR B2, to engage with and provide support to businesses and property owners throughout the Works, and mitigate and manage impacts to businesses; | 89991 |
| 5.2.1.10 | submit for approval by the State any proposals and associated promotional activities or events for naming competitions for the new Stations, construction equipment (including TBMs) or other aspects of the Works, noting that these must not be undertaken without the State's prior written consent; | 89992 |
| 5.2.1.11 | establish and manage community and stakeholder advisory groups across the Works to facilitate meaningful engagement and address concerns; | 89993 |
| 5.2.1.12 | attend meetings and provide regular project updates to community or stakeholder advisory groups established by the State; and | 89994 |
| 5.2.1.13 | to the extent relevant to St. Paul's Cathedral, provide to the Melbourne Anglican Trust Corporation (MATC) for comment, a draft version of the Dust Management Plan prepared under EPR AQ1, the Heritage Management Plan prepared under EPR CH2, and the Community and Stakeholder Engagement Management Plan, at least 20 Business Days prior to submitting each draft plan to the Independent Reviewer. | 137209 |
| 5.3 | Community notification and advice | 89995 |
| 5.3.1 | Project Co must: | 89996 |
| 5.3.1.1 | prepare accurate and high quality written notices and other content for public distribution, and provide to the State all written notices and other content for public distribution at least three Business Days prior to distribution, for review and approval; | 89997 |
| 5.3.1.2 | where unplanned or emergency Works are required to be undertaken at short notice, provide to the State all written notices and other content for public distribution as soon as reasonably practicable prior to distribution; | 89998 |
| 5.3.1.3 | consult with the key institutional stakeholders identified in accordance with 5.2.1.7 to determine specific minimum notification periods and notice requirements, and provide Works notification accordingly; | 89999 |
| 5.3.1.4 | notify households and businesses likely to be materially affected by the Works, including noise, dust, changed conditions (including traffic and access) in accordance with the minimum time periods in Table 5-1. Special consideration and management plans must be established for notifications and door knocks in large apartment buildings. Written notices must include, as a minimum: | 90000 |
| | (a) a description of relevant Works; | 90001 |
| | (b) the dates, times and durations of the relevant disruptions; | 90002 |
| | (c) the expected impact of the Works on private property or access; | 90003 |
| | (d) alternative access arrangements; and | 90004 |
| | (e) Project contact details including the Metro Tunnel Telephone Information Line, social media accounts and website; | 90005 |

Table 5-1: Minimum notification period for households and businesses affected by the Works

| Timing of works | Notification period in advance of works | Type of notification |
|---|---|------------------------|
| Daytime works: 7am to 6pm weekdays and 8am to 5pm Saturday | 5 Business Days | Written |
| Out of hours and night works: all Works after 6pm weekdays, after 5pm Saturday or any time on Sundays or public holidays | 7 Business Days | Written and door knock |
| Unplanned / emergency works | As soon as reasonably practicable | Written and door knock |

- 5.3.1.5 include the Metro Tunnel Telephone Information Line on all written notices and other content for public distribution. Project Co may establish an email address for use on written and online materials for public distribution but must not establish a separate project information line; 90007
- 5.3.1.6 develop and implement specific communications plans for road closures, rail and tram disruptions, including radio, print and digital advertising, and any mandatory obligations to rail customers required under network operator franchise agreements, detailing notification timeframes in agreement with the State, and work with the State and relevant transport providers/Authorities to ensure road and public transport users are informed of any closures or disruptions in accordance with agreed timeframes; 90008
- 5.3.1.7 develop and implement specific communications plans for Utility Infrastructure relocations or disruptions, in consultation with the relevant asset owner, which must detail: 90009
- (a) notification methods (including, but not limited to, by way of radio print and digital advertising) and timeframes in agreement with the State; 90010
 - (b) how Project Co will work with the State and affected stakeholders to ensure stakeholders and the community are informed of any service disruptions prior to the commencement of the relevant Works; and 90011
 - (c) where the Works are likely to affect critical business operations, alternative arrangements to reduce impacts including provision of sufficient advance notification of the Works in agreement with those stakeholders; and 90012
- 5.3.1.8 to the extent that undertaking the Works described in Part A section 13.1.1(a) and (b) is likely to result in any disruption to services to the University of Melbourne, use reasonable endeavours to obtain the University's prior written consent in advance of undertaking such Works; 150461
- 5.3.1.9 book Works notification advertising through the appointed media agency (currently Zenith Optimedia) under the Victorian Government Master Agency Media Services (MAMS) contract and in line with the following requirements: 90013
- (a) all Project Co advertising must be functional. Functional advertising typically has a low creative content and is generally text based with limited design elements, pictures, maps or images. It seeks to impart specific information in a direct and unembellished manner and is generally for immediate or short-term appearance. Examples of activities Project Co would be expected to advertise for include road closures, public transport disruptions and major works impacting public open space; 90014
 - (b) all Project Co advertising must comply with the State's style and branding guidelines and be laid out by a suitably qualified graphic designer. Final layouts must be provided to the State for approval at least 24 hours prior to the printing/publishing deadline; 90015
 - (c) the Department of Premier and Cabinet requires MMRA to submit a 12 month advertising look-ahead plan, outlining the next financial year's proposed 90016

advertising strategy.

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| | | 90017 |
| 5.4 | Community issues management | |
| 5.4.1 | Project Co must in good faith seek to enable community issues to be resolved by: | 90018 |
| 5.4.1.1 | meeting with affected householders and/or businesses; | 90019 |
| 5.4.1.2 | exchanging information; | 90020 |
| 5.4.1.3 | considering all reasonably available alternatives; and | 90021 |
| 5.4.1.4 | if necessary, considering changes to the design/construction methodology in consultation with the State and subject to complying with the requirements of the Agreement. | 90022 |
| 5.4.2 | Project Co must: | 90023 |
| 5.4.2.1 | document all meetings, interactions and agreements with affected stakeholders and maintain records of these in the Stakeholder Management Database; | 90024 |
| 5.4.2.2 | acknowledge all community and stakeholder enquiries received via email within two hours and, where possible, resolve on the same day. Where resolution cannot be achieved within this timeframe, enquiries are to be resolved within three Business Days; | 90025 |
| 5.4.2.3 | acknowledge all allocated enquiries from the Metro Tunnel Telephone Information Line within 15 minutes, and where possible, resolve within 30 minutes. Where resolution cannot be achieved within this timeframe, enquiries are to be resolved within three Business Days; | 90026 |
| 5.4.2.4 | respond to letters received from stakeholders within seven Business Days; | 90027 |
| 5.4.2.5 | provide the State's communications and engagement team details of any complaints received within two hours of receipt, including name and address of the complainant; date, time and location; method of contact (email, phone call, etc.); nature of the complaint; and action taken to address the complaint; | 90028 |
| 5.4.2.6 | inform and provide details to the State of any enquiries from Members of Parliament or councillors within two hours of receipt; | 90029 |
| 5.4.2.7 | develop a noise and vibration modelling tool to be used in advance of works to inform community mitigation measures and the extent of notification required; | 90030 |
| 5.4.2.8 | develop and implement protocols that include measures to evaluate the effectiveness of the noise and vibration mitigation, including field monitoring and community feedback, and publish these protocols; and | 90031 |
| 5.4.2.9 | develop and implement protocols in relation to how community impacts associated with construction will be managed including consistent triggers for mitigation measures such as alternative accommodation, and publish these protocols. | 90032 |
| | | 90033 |
| 5.5 | Respite, relocation and business disruption | |
| 5.5.1 | Project Co must: | 90034 |
| 5.5.1.1 | comply with the Construction Management Plan and the Noise and Vibration Management Plan including notification, respite and relocation measures in respect of Works that may disrupt residents; | 90035 |
| 5.5.1.2 | comply with the requirements of the Residential Impact Mitigation Guidelines including funding and managing logistics for alternative accommodation; and | 90036 |
| 5.5.1.3 | comply with the requirements of the Business Support Guidelines for Construction. | 90037 |
| 5.5.2 | Notwithstanding that it may otherwise have satisfied its obligations under the EPRs and the PS&TR with respect to noise levels, Project Co must provide alternative accommodation for any residents who request relocation on the basis of noise levels cause by the Works that are considered to be excessive. Project Co must make reasonable provision to fund and manage such requests, and must ensure that this process is managed efficiently so as not to unduly delay the Works. | 118650 |
| | | 90038 |
| 5.6 | Communications materials, branding and signage | |
| 5.6.1 | Project Co must: | 90039 |
| 5.6.1.1 | comply with the State's style and branding guidelines for all written and digital | 90040 |

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| | publications, including appropriate use of logos, branding and styles; | |
| 5.6.1.2 | supply and install construction signage and banners in accordance with section 10.8.6; | 90041 |
| 5.6.1.3 | prepare and implement a Culturally and Linguistically Diverse (CALD) Engagement Strategy, with reference to the overarching MMRA CALD Engagement Strategy, demonstrating how communities in the vicinity of the Works will be engaged and notified about construction impacts and progress of Works; | 90042 |
| 5.6.1.4 | translate communications materials into the top six languages in the local area, with the languages to be reviewed annually in line with local council data and data from the Australian Bureau of Statistics Census of Population and Housing and the Department of Social Services' Settlement Reporting Database; | 90043 |
| 5.6.1.5 | provide for reasonable access to interpreters or translated information when communicating with stakeholders from CALD backgrounds; | 90044 |
| 5.6.1.6 | provide quarterly (or as required and agreed) photography (still, timelapse and video including aerial) updates showing the progress of the Works to assist in promotion of the Works and for inclusion in social media, newsletters, eNews and other collateral as required. Project Co must use a photographer approved by the State and the State will contribute 50 per cent of the agreed costs. Timelapse locations must be agreed with the State; | 90045 |
| 5.6.1.7 | prepare accurate and high quality written information about the Works for publishing on the State's website and social media channels, and provide copies of all printed communications materials prior to distribution in a format suitable for publishing on the State's website. Project Co must not create their own online channels (such as website, social media, eNews); and | 90046 |
| 5.6.1.8 | provide the State with detailed design files for the Project to enable development of the State's 3D modelling system. Project Co must not create 3D animations or videos for public use, without agreement with the State. | 90047 |
| | | 90048 |
| 5.7 | Media and events | |
| 5.7.1 | Project Co must: | 90049 |
| 5.7.1.1 | develop and implement protocols for media management, recognising that Project Co must not provide media comment or release media materials other than in accordance with the Agreement; | 90050 |
| 5.7.1.2 | forward any media queries received by Project Co to the State's designated media contact within 15 minutes of contact; | 90051 |
| 5.7.1.3 | provide initial information for media responses to the State as soon as practicable; | 90052 |
| 5.7.1.4 | identify and train Project Co staff to act as media spokespeople where asked to do so by the State; | 90053 |
| 5.7.1.5 | allow provision for communications and engagement, design and technical staff availability to attend community or stakeholder meetings, information sessions, open days and other public events; | 90054 |
| 5.7.1.6 | plan and provide community forums or events in each project precinct (Western Portal, Arden, Parkville, CBD, Domain and Eastern Portal) in respect of the Works. The first forum must be held ahead of the Works commencing in each precinct to provide an overview of the Works. Subsequent forums must be held during the Works to provide an update on progress and key milestones; | 90055 |
| 5.7.1.7 | work in conjunction with the State to organise events to celebrate appropriate key milestones and promote the Project, including an official opening event to commemorate the commencement of Train Operations; | 90056 |
| 5.7.1.8 | allow safe access to sites (including Tunnel and Stations) for site visits by media, stakeholders and community and representatives of the State, for photography and filming (including for the filming of a project documentary) as reasonably requested and agreed with the State; | 90057 |
| 5.7.1.9 | provide group tours of the sites under construction (including the Tunnel, Stations and TBMs) as reasonably requested by the State; | 150462 |
| 5.7.1.10 | create spaces such as viewing platforms for the public to safely view the Works under construction; | 90058 |

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| 5.7.1.11 | plan and implement appropriate traffic and transport management measures for any major community or media events that occur during the D&C Activities; | 90059 |
| 5.7.1.12 | allow safe access to the station mockups prepared under section 7.6 for media, stakeholders, members of the community and representatives of the State, and ensure that any branding elements used comply with the Metro Tunnel branding requirements; | 118328 |
| 5.7.1.13 | work with the State on award submissions that the State applies for relating to the Works or the Project and seek approval from the State before submitting for any awards for the Works or Project; and | 90060 |
| 5.7.1.14 | inform the State of any requests to present at public speaking engagements and seek approval to present from the State at least two weeks' prior to the event. All presentations must be approved by the State at least three Business Days prior to the event. | 90061 |
| 5.8 | Resourcing | 90062 |
| 5.8.1 | Project Co must ensure that a suitably qualified and experienced person is appointed as the 'Communications and Stakeholder Engagement Manager' who: | 90063 |
| 5.8.1.1 | is employed in a full-time capacity on the Project; | 90064 |
| 5.8.1.2 | has at least five years' demonstrated experience in communications, stakeholder engagement, issues management or a related field; | 90065 |
| 5.8.1.3 | is responsible for: | 90066 |
| | (a) communications and stakeholder engagement in respect of the D&C Activities; and | 90067 |
| | (b) the implementation of the Communications and Stakeholder Engagement Management Plan; and | 90068 |
| 5.8.1.4 | is readily available and contactable during the D&C Activities and able to respond appropriately to urgent enquires and requests. | 90069 |
| 5.8.2 | Project Co must ensure that an adequate number of suitably qualified and experienced communications and stakeholder engagement professionals are appointed who: | 90070 |
| 5.8.2.1 | have a minimum of three years' experience in managing community enquiries and stakeholder management; and | 90071 |
| 5.8.2.2 | are responsible for: | 90072 |
| | (a) key stakeholder liaison; | 90073 |
| | (b) local business and social welfare liaison; | 90074 |
| | (c) community engagement for different precincts; | 90075 |
| | (d) media response support; | 90076 |
| | (e) preparing communications materials for online, print and CALD formats as required; | 90077 |
| | (f) monitor and manage phone calls received through the Metro Tunnel Telephone Information Line and enquiries received through the online contact form for the duration of the Works and in line with approved construction hours; and | 90078 |
| | (g) completion and Handback. | 90079 |
| 5.8.3 | The State will establish a Project Information Hub and Project Co must: | 90080 |
| 5.8.3.1 | provide two suitably qualified staff to support the State to resource the Project Information Hub during its opening hours (weekdays and at least on weekend day). | 90081 |
| 5.8.3.2 | provide suitable high quality material for the Project Information Hub at least every six months for the duration of the Works and updates to materials as requested. | 90082 |
| 5.9 | Reporting and information management | 90083 |
| 5.9.1 | Project Co must prepare a Communications and Stakeholder Engagement Report for inclusion in the Monthly D&C Phase Progress Report, which as a minimum must detail: | 90084 |
| 5.9.1.1 | any community and stakeholder issues related to the Works including current status of complaints; | 90085 |
| 5.9.1.2 | status of community and stakeholder engagement activities; | 90086 |
| 5.9.1.3 | milestones and potential media opportunities for the next three months; | 90087 |

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| 5.9.1.4 | notifications issued for Works; | 90088 |
| 5.9.1.5 | upcoming Works requiring development of specific communications plans; | 90089 |
| 5.9.1.6 | Works in the next three months requiring notification; and | 90090 |
| 5.9.1.7 | progress against ISCA credits for stakeholder participation and community health and wellbeing. | 90091 |
| 5.9.2 | Project Co must: | 90092 |
| 5.9.2.1 | update and maintain the Stakeholder Management Database to accurately report all enquiries from the public regarding the Works or Metro Tunnel, within 24 hours of receipt of enquiry including: | 90093 |
| | (a) names (where provided); | 90094 |
| | (b) contact details (where provided); | 90095 |
| | (c) time and date of enquiry; | 90096 |
| | (d) nature of enquiry; and | 90097 |
| | (e) response provided; and | 90098 |
| 5.9.2.2 | comply at all times with the Privacy Principles and any associated policies, and notify the State immediately of any suspected breaches of privacy. | 90099 |
| 5.9.3 | Project Co must chair and minute meetings held at least quarterly with the State detailing: | 90100 |
| 5.9.3.1 | summary of community and stakeholder issues related to the Works: | 90101 |
| 5.9.3.2 | status of community and stakeholder engagement activities; | 90102 |
| 5.9.3.3 | upcoming milestones and potential media opportunities for the next three months; and | 90103 |
| 5.9.3.4 | upcoming Works for the next three months. | 90104 |

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| 6 | Occupational Health and Safety Management | 90105 |
| 6.1 | General | 90106 |
| 6.1.1 | Project Co must consider the following principles throughout the performance of the D&C Activities: | 90107 |
| 6.1.1.1 | an overriding commitment to preventing catastrophic incidents, fatalities and serious injuries; | 90108 |
| 6.1.1.2 | safety is not a priority that can be reordered, but is a value associated with every priority; | 90109 |
| 6.1.1.3 | development of a work environment based on employee involvement, accountability, team work, education, training and visible safety leadership; | 90110 |
| 6.1.1.4 | continuous improvement, innovation, knowledge sharing and learning from incidents; | 90111 |
| 6.1.1.5 | reinforcement of the need for employees to actively care about their co-workers; and | 90112 |
| 6.1.1.6 | recognition of group and individual achievement. | 90113 |
| 6.1.2 | Prior to the preparation of the Health and Safety Management Plan and in addition to its obligations under clause 15.2 (d) of the Agreement, Project Co must conduct a Safety Strategy and Culture Workshop. Project Co must ensure that: | 90114 |
| 6.1.2.1 | key Stakeholders and any personnel nominated by the State are invited to attend the Safety Strategy and Culture Workshop; | 90115 |
| 6.1.2.2 | the Safety Strategy and Culture Workshop covers, as a minimum, the following: | 90116 |
| | (a) how Project Co's safety culture will initially be fostered and maintained throughout the Works; | 90117 |
| | (b) proposed lead indicators which align with Project Co's safety culture and planned strategic activities; and | 90118 |
| | (c) identification of role specific safety accountabilities and deliverables for senior leaders, management and workforce; and | 90119 |
| 6.1.2.3 | at least one full day is allocated for the Safety Strategy and Culture Workshop. | 90120 |
| 6.1.3 | Safety Forums | 90121 |
| | Project Co must ensure the following personnel attend any Project related safety forums that are coordinated by the State and held throughout the D&C Phase: | 90122 |
| 6.1.3.1 | key personnel employed or engaged by the Subcontractors responsible for project management of health and safety issues; | 90123 |
| 6.1.3.2 | the Site health and safety professional(s); | 90124 |
| 6.1.3.3 | safety and management representatives from any Subcontractors; and | 90125 |
| 6.1.3.4 | any other relevant safety or management representatives from Project Co and Subcontractors, who are requested to attend by the State. | 90126 |
| 6.1.4 | Health and Safety Risk Assessment | 90127 |
| | Project Co maintain a current and thorough written risk assessment detailing all significant health and safety risks, and provide the assessment to the State when requested. | 90128 |
| 6.1.5 | Notification and Reporting | 90129 |
| | For the purpose of facilitating the sharing of health and safety information across work packages, Project Co must: | 90130 |
| 6.1.5.1 | promptly enter into the State's Incident Management System details of all Health and Safety Incidents, any associated reports and any updates to information in respect of a Health and Safety Incident; and | 90131 |
| 6.1.5.2 | each month upload to the Incident Management System a report in the form of the Health and Safety Performance Report Template. | 90132 |

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| 6.2 | Health and Safety Audits | 90133 |
| 6.2.1 | Independent Safety Auditor | 90134 |
| | The Independent Safety Auditor appointed by Project Co under the Agreement must: | 90135 |
| 6.2.1.1 | be approved by the State (acting reasonably); | 90136 |
| 6.2.1.2 | be a contractor independent of Project Co, and free of any other separate commitment or obligation to Project Co or its Subcontractors (noting however that the Independent Safety Auditor may also act as the Independent Environmental Auditor); | 90137 |
| 6.2.1.3 | not have been involved in the development of the Health and Safety Management Plan or any associated sub-plan; and | 90138 |
| 6.2.1.4 | have demonstrated competence, experience and training in workplace health and safety and audits in road, rail and tunnel construction or a related discipline. | 90139 |
| 6.2.2 | Health and Safety Management Plan Audit | 90140 |
| 6.2.2.1 | The Independent Safety Auditor must perform Health and Safety Management Plan Audits that verify that the Health and Safety Management Plan: | 90141 |
| | (a) appropriately addresses the risks identified in the risk assessment; and | 90142 |
| | (b) is in accordance with the requirements specified in the PS&TR and the Agreement. | 90143 |
| 6.2.2.2 | Project Co must ensure that the Independent Safety Auditor provides it with the following: | 90144 |
| | (a) a report regarding the Health and Safety Management Plan Audit; and | 90145 |
| | (b) a declaration, which includes: | 90146 |
| | (1) details of the Independent Safety Auditor's skills, qualifications and expertise; | 90147 |
| | (2) a statement that the Health and Safety Management Plan complies with the requirements of the Agreement; and | 90148 |
| | (3) a statement that all non-conformances identified in the report described in item (a) have been rectified. | 90149 |
| 6.2.2.3 | The declaration must be submitted to the State at the same time the Health and Safety Management Plan is submitted to the State. | 90150 |
| 6.2.2.4 | Any amendment(s) to the Health and Safety Management Plan after submission of the declaration must be referred to the Independent Safety Auditor for review and written confirmation that the declaration remains valid. | 90151 |
| 6.2.3 | Health and Safety Compliance Audits | 90152 |
| 6.2.3.1 | The Independent Safety Auditor must perform Health and Safety Compliance Audits that verify that the Works are being performed in compliance with: | 90153 |
| | (a) OHS Legislation and the health and safety requirements of the State Project Documents; and | 90154 |
| | (b) the Health and Safety Management Plan. | 90155 |
| 6.2.3.2 | The Health and Safety Compliance Audits must, as a minimum, include: | 90156 |
| | (a) review of relevant documentation and records generated as a result of implementing the Health and Safety Management Plan; | 90157 |
| | (b) inspection of all parts of the Site where the Works, or part thereof, are being performed; | 90158 |
| | (c) a sample of observations of the Works being performed, including a sample of high risk work being performed; | 90159 |
| | (d) consultation with a sample of the workforce performing the Works in relation to the Health and Safety Management Plan and its implementation; and | 90160 |
| | (e) review of actions and close-out of previous non-conformances. | 90161 |
| 6.2.3.3 | Following a Health and Safety Compliance Audit the Independent Safety Auditor must prepare a report that: | 90162 |
| | (a) provides evidence of or a detailed summary of the audit methodology; | 90163 |
| | (b) identifies any non-conformances or areas for improvement; | 90164 |

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| | (c) provides recommendations as to appropriate control measures to address those non-conformances; | 90165 |
| | (d) nominates the timeframes for resolution of any non-conformances identified; and | 90166 |
| | (e) conform to the State's requirements for classification of non-conformances, and any other reasonable reporting requirements of the State. | 90167 |
| 6.2.3.4 | Project Co must provide evidence of the close out of any non-conformances identified as a result of the audit in the Health and Safety Performance Report. | 90168 |
| 6.2.3.5 | Project Co must ensure a Health and Safety Compliance Audit is performed by an Independent Safety Auditor once within the first 3 months following commencement of the Works and at least every 6 months thereafter. | 90169 |
| 6.2.3.6 | Project Co must submit an audit and compliance schedule within the Health and Safety Management Plan and Health and Safety Performance Report. | 90170 |
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| 6.3 | Road Safety | |
| 6.3.1 | Safety equipment on vehicles | 90172 |
| | Without limiting Project Co's obligations under the Heavy Vehicle National Law, Project Co must ensure that all heavy vehicles used during the performance of the D&C Activities have: | 90173 |
| 6.3.1.1 | side under run guards fitted (unless Project Co can demonstrate to the satisfaction of the State and the Independent Reviewer that the vehicle will not perform the function for which it is intended if side under run guards are fitted); | 90174 |
| 6.3.1.2 | front, rear and side blind spots completely eliminated or minimised as far as practical and possible, through the use of fully operational direct and indirect vision aids, sensors and audible or visual driver alerts; | 90175 |
| 6.3.1.3 | equipment fitted with an audible means of warning other road users of a left manoeuvre; and | 90176 |
| 6.3.1.4 | prominent signage on the vehicle to warn cyclists and other road users of the dangers of passing the vehicle on the inside or of getting too close to the vehicle. | 90177 |
| 6.3.2 | Driver training | 90178 |
| | Throughout the performance of the D&C Activities, Project Co must ensure that all heavy vehicle drivers, including drivers employed by Project Co's subcontractors, undergo training (to include a mix of theoretical, e-learning, practical and on the job training) and continuous professional development covering the safety of vulnerable road users and on-road hazard awareness. | 90179 |
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| 6.4 | Hazardous Materials | |
| 6.4.1 | Prior to the commencement of the Works, Project Co must engage an independent hazardous materials auditor to perform an audit of any structures at each relevant Site in accordance with the requirements of Division 6, Part 4.3 – Asbestos, of the <i>Occupational Health and Safety Regulations 2007 (Vic)</i> . | 90181 |
| 6.4.2 | Project Co must promptly provide a copy of the hazardous materials audit to the State. | 90182 |
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| 6.5 | Emergency Response and Incident Management | |
| 6.5.1 | Emergency Contacts | 90184 |
| | Project Co must advise the State of the names and telephone numbers of employees or representatives who can be contacted in an emergency and out of hours and keep this list current. | 90185 |
| 6.5.2 | Emergency Response and Incident Management Workshop | 90186 |
| 6.5.2.1 | Project Co must facilitate an Emergency Response and Incident Management Workshop with the State prior to finalising the Emergency Response and Incident Management Plan. | 90187 |
| 6.5.2.2 | Project Co must: | 90188 |
| | (a) invite nominees of the State to attend the Emergency Response and Incident Management Workshop; | 90189 |
| | (b) ensure that the key persons and, so far as is practicable, key representatives | 90190 |

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| | from Project Co's Subcontractors attend the Emergency Response and Incident Management Workshop; and | |
| | (c) take into consideration the views expressed by attendees of the Emergency Response and Incident Management Workshop when finalising the Emergency Response and Incident Management Plan to be submitted to the State and the Independent Reviewer. | 90191 |
| 6.5.3 | Emergency Service Organisations | 90192 |
| | Project Co must establish consultation arrangements with the Emergency Service Organisations within 20 Business Days of Contract Close. This consultation must, as a minimum: | 90193 |
| 6.5.3.1 | outline the D&C Program and any potential disruptions to emergency services travel routes, road closures and the like; | 90194 |
| 6.5.3.2 | establish a notification process whereby the Emergency Service Organisations receive no less than 10 Business Days' notification of anticipated potential disruptions to emergency services travel routes (including but not limited to road closures); | 90195 |
| 6.5.3.3 | reach a joint understanding of the capability of Project Co, its Subcontractors and Emergency Service Organisations which must be included in the Emergency Response and Incident Management Plan and the risk assessment; and | 90196 |
| 6.5.3.4 | develop a process for ongoing consultation between Project Co, the Emergency Service Organisations and the State regarding Works throughout the Term. | 90197 |
| 6.5.4 | Project Co must coordinate with the key institutional stakeholders that have an emergency management responsibility to ensure that their emergency response capabilities are not hindered. | 90198 |
| 6.5.5 | Project Co must coordinate with relevant stakeholders to ensure that alternative arrangements for on street emergency assembly points are in place where existing emergency assembly points are impacted by the Works. | 90199 |
| 6.5.6 | Project Co must establish protocols in the event that the Parkville Precinct is required to respond to a major emergency, including identifying any authority by which state emergency management agencies may suspend the Works or coordinate activities for the duration of the emergency. | 90200 |
| 6.6 | Harmful Ionising Radiation | 150463 |
| 6.6.1 | Project Co must: | 150464 |
| 6.6.1.1 | consult with the current Victorian State radiation licensing authority (currently the Team Leader, Radiation in the Environmental Health Regulation and Compliance Team at the Department of Health and Human Services) to determine if there are any radiation sources that present a human health risk during the construction and/or operation of the Tunnel and Stations; | 150465 |
| 6.6.1.2 | if the radiation licencing authority identifies a radiation risk, Project Co must cooperate with the licensed radiation facility responsible for the risk to allow the licence holder to comply with their obligations under Section 22 of the Victorian Radiation Act 2005, and any other obligations arising from the standards and regulations listed in section 6.6.2; and | 150466 |
| 6.6.1.3 | if a licenced radiation facility determines that, as a result of the Project, mitigation measures are required to be introduced to ensure compliance with relevant regulations and standards, Project Co must work with the licence holder to determine and implement the lowest cost mitigation measure. | 150467 |
| 6.6.2 | The mitigations measures introduced are to be at the cost of the licensed radiation facility responsible for the radiation risk in accordance with clause 16.9 of the Agreement. | 150468 |
| 6.6.3 | Ionising Radiation Technical Requirements | 150469 |
| | The following standards and regulations must be complied with: | 150470 |
| 6.6.3.1 | Radiation Act 2005; | 150472 |
| 6.6.3.2 | Radiation Regulations 2007; and | 150473 |
| 6.6.3.3 | Australian Radiation Protection and Nuclear Safety Act 1998. | 150474 |

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| 7 | Design Requirements | 90201 |
| 7.1 | General | 90202 |
| 7.1.1 | Project Co must prepare and update the Design Management Plan. | 90203 |
| 7.1.2 | The design of the Works must: | 90204 |
| 7.1.2.1 | be developed and completed in accordance with: | 90205 |
| | (a) this section 7; | 90206 |
| | (b) the Design Review Schedule; and | 90207 |
| | (c) the State Project Documents; | 90208 |
| 7.1.2.2 | consider and minimise asset life cycle costs; | 90209 |
| 7.1.2.3 | follow a User Centred design process; | 90210 |
| 7.1.2.4 | satisfy the Train Franchisee in respect of joinery and location, quantity and quality of fixed and loose furniture provided in areas to be occupied by the Train Franchisee; and | 90211 |
| 7.1.2.5 | consider the operation and maintenance strategy for normal, degraded and emergency operations including the interface between new and existing stations. | 90212 |
| 7.1.3 | Project Co must: | 90213 |
| 7.1.3.1 | attend design review meetings as described in section 7.3; | 90214 |
| 7.1.3.2 | liaise with Stakeholder Groups during the Design Review Process as set out in the Design Review Schedule, including but not limited to Emergency Service Organisations and disability advocacy groups; | 90215 |
| 7.1.3.3 | attend and prepare materials for the wheel/ rail interface committee meetings as required by the State; and | 90216 |
| 7.1.3.4 | comply with the wheel/ rail interface committee meetings Terms of Reference. | 90217 |
| | | 90218 |
| 7.2 | Design Package Register | |
| 7.2.1 | The Design Package Register must be submitted with the Design Management Plan and must: | 90219 |
| 7.2.1.1 | identify the drawings and other documentation that will comprise the Design Documentation to be submitted for each Design Package; | 90220 |
| 7.2.1.2 | identify the dates on which the Design Documentation will be submitted; and | 90221 |
| 7.2.1.3 | list the Design Documentation and include the following information in respect of each item: | 90222 |
| | (a) Design Package name; | 90223 |
| | (b) drawing/document/model number; | 90224 |
| | (c) title; | 90225 |
| | (d) current revision; | 90226 |
| | (e) date; | 90227 |
| | (f) percent complete; and | 90228 |
| | (g) status/comments. | 90229 |
| 7.2.2 | The Design Package Register must be provided via the IES. | 90230 |
| | | 90231 |
| 7.3 | Design Review Meetings | |
| 7.3.1 | Design review meetings must be held at least fortnightly, or as otherwise agreed by the State, throughout the D&C Phase to review: | 90232 |
| 7.3.1.1 | progress in submitting Design Documentation against the D&C Program; | 90233 |
| 7.3.1.2 | an updated four week forecast for Design Documentation submission to assist in scheduling design reviews; | 90234 |
| 7.3.1.3 | a register of issues affecting design progress and actions to resolve such issues; and | 90235 |
| 7.3.1.4 | any other issues arising out of the design of the Works. | 90236 |
| 7.3.2 | Design review meetings must involve representatives from the State, Project Co, the | 90237 |

Independent Reviewer, the D&C Subcontractor and its designers, including urban and landscape designers where required, the Maintenance Subcontractor and, where relevant, the Proof Engineer.

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| | | 90238 |
| 7.4 | Design Risks Register | |
| 7.4.1 | Project Co must: | 90239 |
| 7.4.1.1 | establish a Design Risk Register to record design risks during the design process; | 90240 |
| 7.4.1.2 | ensure that the Design Risk Register is continuously reviewed and updated by Project Co throughout the D&C Phase; and | 90241 |
| 7.4.1.3 | provide a copy of the latest Design Risk Register to the State and Independent Reviewer every two weeks in electronic (*.XLSX) and PDF formats via the Information Exchange System. | 90242 |
| | | 90243 |
| 7.5 | Design Documentation | |
| 7.5.1 | General | 90244 |
| 7.5.1.1 | For each Design Package, Project Co must submit: | 90245 |
| | (a) Interim Design Documentation; | 90246 |
| | (b) Certified Design Documentation; and | 90247 |
| | (c) IFC Design Documentation; | 90248 |
| | to the State and the Independent Reviewer for review in accordance with the Design Review Schedule. | 90249 |
| 7.5.2 | Interim Design Documentation must include: | 90250 |
| 7.5.2.1 | an interim design report which: | 90251 |
| | (a) identifies the Design Package(s) to which the Interim Design Documentation relates, including any Design Packages that have been issued for Preparatory Works; | 90252 |
| | (b) identifies the aspects of the Design Management Plan to which the Interim Design Documentation relates; | 90253 |
| | (c) identifies all Reference Documents used in the preparation of the Interim Design Documentation; | 90254 |
| | (d) demonstrates that all relevant performance requirements including constructability, maintenance and operations requirements have been met and integrated into the Interim Design Documentation; | 90255 |
| | (e) documents any changes to the Technical Solution and the justification for such changes; | 90256 |
| | (f) confirms that any changes to the Technical Solution have been dealt with in accordance with the Design Review Schedule; | 90257 |
| | (g) identifies all key decisions made in the design development to date; | 90258 |
| | (h) provides results of any additional modelling, investigations or testing; | 90259 |
| | (i) provides evidence that comments on the Interim Design Documentation were sought from stakeholders and the Maintenance Subcontractor; | 90260 |
| | (j) provides written confirmation from the urban and landscape designer that the Interim Design Documentation meets the intent of the urban and landscape design; | 90261 |
| | (k) to the extent required by the Design Management Plan, includes written confirmation from the Lead Architect that the Interim Design Documentation meets the intent of the architectural design and is consistent with the architectural requirements of the PS&TR; | 150475 |
| | (l) identifies any relevant Interim Design Documentation for Preparatory Works; | 90262 |
| | (m) to the extent relevant to the Design Package, demonstrates the Interim Design Documentation is in accordance with the requirements of the approved FEB; | 90263 |
| | (n) includes, as appendices to the interim design report (where relevant to the Design Package): | 90264 |
| | (1) the approved FEB; | 90266 |
| | (2) any relevant tunnel ventilation documentation as set out in section 7.13.3; | 90267 |

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| (3) | a report documenting the outcomes of a formal SiD assessment as described in section 7.14; | 90268 |
| (4) | [Not disclosed] | 90269 |
| (5) | [Not disclosed] | 90270 |
| (6) | [Not disclosed] | 90271 |
| (7) | a Sustainable Design Report as described in section 7.18; | 90272 |
| (8) | an assessment on deficiency and vehicle curving to demonstrate that potential flange contact on curves has been minimised; | 90273 |
| (9) | a wheel/ rail interface study as set out in PS&TR Part B, section 5.1.4 (b)(vi); | 90274 |
| (10) | a 'Train Protection Risk Report' that addresses: | 90275 |
| | (i) derailment risk within the tunnels; and | 90276 |
| | (ii) collision risk, | 90277 |
| | for all rolling stock (including maintenance) in the Tunnel; | 90278 |
| (11) | a Transport Design Report and Transport Modelling Report as described in sections 9.2.3 and 9.2.4; | 90279 |
| (12) | if relevant, a road safety audit report including all dispositions to the audit recommendations and an explanation as to the manner in which those dispositions have been addressed; | 90280 |
| (13) | a flood impact assessment and treatment strategy for any Design Package that could affect patterns of stormwater drainage; | 90281 |
| (14) | all relevant geotechnical and hydrogeological information and the results of any analysis required for the design, including: | 90282 |
| | (i) any Durability Assessment required by section 7.10; | 90283 |
| | (ii) the Geotechnical Interpretive Report, Hydrogeological Interpretive Report and Contaminated Land Assessment Interpretive Report described in section 7.11; | 90284 |
| | (iii) any assessment of tunnel, embankment or excavation stability; | 90285 |
| | (iv) any assessment of ground water settlements and ground water movements, including movement of known contaminants; | 90286 |
| | (v) predicted settlement extents and any treatments and monitoring controls required to achieve the requirements of the State Project Documents; | 90287 |
| | (vi) any assessment of the capacity of recommended foundations for structures; and | 90288 |
| | (vii) details of the geotechnical and hydrogeological parameters employed in the design together with details of the sensitivity analysis conducted for all elements in contact with the ground; | 90289 |
| (15) | construction sequence drawings which show key steps in the construction of the element being considered; | 90290 |
| (16) | a noise and vibration impact assessment and mitigation strategy for any Design Package that could affect sensitive receivers identified in the EES; | 90291 |
| (17) | in addition to item (14)(iv) above and Part B, section 5.2.5, a detailed hydrogeological model showing where works are proposed below the water table at CBD South, Arden, Domain and the Western Portal or where the works include drained temporary works. Hydrogeological modelling is to include mitigated, unmitigated, construction phase and operational phase scenarios; | 90292 |
| (18) | waterproofing design details including interface treatments at connections between like and/or differing waterproofing systems and at geometric interfaces; | 90293 |
| (19) | reinforcement layouts including bar sizes, layers of reinforcement, and connection details (laps, couplers, welds etc.) where the Design Package includes reinforced concrete elements; | 90294 |
| (20) | an AGI file of design lux levels for all locations; | 90295 |

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| | (21) | a contingency plan to replace or augment the baseplate hold down bolts in the event of unexpected failure; | 90296 |
| | (22) | a decommissioning and disposal plan for the proposed trackform; and | 90297 |
| | (23) | a Station Planning and Passenger Modelling Report which must include, as a minimum: | 118651 |
| | (i) | details of the proposed modelling approach used including clear identification of and justification for the parameters and assumptions adopted, including those set out in the PS&TR. Where variations to any data or parameters set out in the PS&TR have been proposed, justification must also be provided; | 118652 |
| | (ii) | maps of station average Levels of Service in accordance with the requirements in section 7.4 of Part B, and calculated in accordance with Appendix C7 which states that the area must be calculated to exclude intervals with zero pedestrian flow; and | 118653 |
| | (iii) | journey times for average, minimum and maximum journey times from platform to street for each walk route (i.e. exit), for each modelled scenario and time period at each station. | 118654 |
| 7.5.2.2 | | all necessary drawings, reports and specifications bound separately for each Design Package to which the Interim Design Documentation relates, including: | 90298 |
| | (a) | demonstration that the relevant elements of the Maintained Assets are wholly contained within the Licensed Construction Area; | 90299 |
| | (b) | a schedule of Assets, Asset Components and Asset Sub-Components to which the report and layout drawings relate, showing the location of each Asset; | 90300 |
| | (c) | a list of the applicable Reference Documents and any additions to the requirements in the Reference Documents; and | 90301 |
| | (d) | a list of interface design requirements and inclusions from key stakeholders, RSA and other relevant interfaces; and | 90302 |
| 7.5.2.3 | | any other information required by the State Project Documents. | 90303 |
| 7.5.3 | | Certified Design Documentation must include: | 90304 |
| | 7.5.3.1 | a design report which: | 90305 |
| | (a) | identifies the Design Packages to which the Certified Design Documentation relates, including any Design Packages that have been issued for Preparatory Works; | 90306 |
| | (b) | identifies the aspects of the Design Management Plan to which the Certified Design Documentation relates; | 90307 |
| | (c) | identifies all Reference Documents used in the preparation of the Certified Design Documentation; | 90308 |
| | (d) | documents any changes to the design since the Interim Design report was issued; | 90309 |
| | (e) | defines the land boundaries of each Returned Asset to which the Certified Design Documentation relates; | 90310 |
| | (f) | includes all key decisions made in the design development to date; | 90311 |
| | (g) | confirms that any changes to the Technical Solution have been dealt with in accordance with the Design Review Schedule; | 90312 |
| | (h) | provides results of any additional modelling, investigations or testing; | 90313 |
| | (i) | demonstrates that all relevant requirements of the State Project Documents including constructability, maintenance and operations requirements have been met and integrated into the Certified Design Documentation; | 90314 |
| | (j) | provides evidence that comments on the Certified Design Documentation were sought from Stakeholders and the Maintenance Subcontractor; | 90315 |
| | (k) | provides written confirmation from the urban and landscape designer that the Certified Design Documentation meets the intent of the urban and landscape design; | 90316 |
| | (l) | to the extent required by the Design Management Plan, includes written confirmation from the Lead Architect that the Certified Design Documentation meets the intent of the architectural design and is consistent with the architectural requirements of the PS&TR; | 150477 |

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| | (m) identifies any relevant Certified Design Documentation for Preparatory Works; | 90317 |
| | (n) provides dispositions to all comments provided on the Interim Design Documentation; | 90318 |
| | (o) provides evidence of any required Approvals that have been obtained; | 90319 |
| | (p) to the extent relevant to the Design Package, demonstrates that the Certified Design Documentation is in accordance with the requirements of the approved FER; | 90320 |
| | (q) includes as appendices to the design report (where relevant to the Design Package): | 90321 |
| | (1) a report and accompanying drawings identifying proposed protection zones around new surface infrastructure; | 90323 |
| | (2) the approved FER; | 90324 |
| | (3) a strategy that demonstrates how Rail Network Emergency Response Vehicles (RNERVs) will be capable of being deployed to facilitate intervention at all locations within the tunnels; | 118329 |
| | (4) any relevant tunnel ventilation documentation as set out in section 7.13.3; | 90325 |
| | (5) the outcomes of a SiD assessment as described in section 7.14; | 90326 |
| | (6) [Not disclosed] | 90327 |
| | (7) [Not disclosed] | 90328 |
| | (8) a Sustainable Design Report as described in section 7.18, including the water balance study as described in section 7.18.1.5; | 90329 |
| | (9) a Transport Design Report and Transport Modelling Report as described in sections 9.2.3 and 9.2.4; | 90330 |
| | (10) if relevant, a road safety audit report including all dispositions to the audit recommendations and, if relevant, an explanation as to the manner in which those dispositions have been addressed; | 90331 |
| | (11) an AGI file of design lux levels for all locations; and | 90332 |
| | (12) any appendices to the Interim Design Documentation including reports, studies and modelling, that have been amended or updated; | 90333 |
| 7.5.3.2 | all necessary drawings, reports and specifications bound separately for each Design Package to which the Certified Design Documentation relates, including: | 90334 |
| | (a) demonstration that the relevant elements of the Maintained Assets are wholly contained within the Licensed Construction Area; | 90335 |
| | (b) a schedule of Assets, Asset Components and Asset Sub-Components to which the report and layout drawings relate, showing the location of each Asset; | 90336 |
| | (c) a list of the applicable Reference Documents and any additions to the requirements in the Reference Documents; and | 90337 |
| | (d) a list of interface design requirements and inclusions from key stakeholders, RSA and other relevant interfaces; and | 90338 |
| 7.5.3.3 | any other information required by the State Project Documents. | 90339 |
| 7.5.4 | IFC Design Documentation must include: | 90340 |
| 7.5.4.1 | all items required to be submitted as Certified Design Documentation up revised to 'Issued for Construction'; | 90341 |
| 7.5.4.2 | a report documenting the outcome of the Issued for Construction Review conducted by Project Co in accordance with section 1.1.6; | 90342 |
| 7.5.4.3 | any amendments to the approved FER; and | 90343 |
| 7.5.4.4 | subject to the Design Review Schedule, evidence of the Independent Reviewer's certification of the Certified Design Documentation in accordance with the Design Review Schedule. | 90344 |
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| 7.6 | Mock ups and material samples | |
| 7.6.1 | General | 90346 |
| 7.6.1.1 | As part of the Design Review Process, Project Co must prepare and submit to the Independent Reviewer the following project specific material samples and mock ups: | 90347 |
| | (a) one full scale mock-up of a section of a typical station concourse level, | 90348 |

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| | incorporating all proposed wall, floor and ceiling materials and finishes; lighting, signage and advertising panels; ticket barriers; ticket vending machine; card vending machine, fare payment device and stand-alone enquiry Machine; PIDS, PA, CCTV and antennas. Any variation between materials and/ or configuration in stations to be addressed by provision of material samples and/ or 3D rendered imagery; | |
| | (b) in relation to station platforms: | 90349 |
| | (1) one full scale mock-up covering both CBD stations: 10m in length (2 bays) by 1/2 combined platform/ concourse width of a station platform, including Platform Screen Door System and all proposed wall, floor and ceiling materials and finishes; lighting, signage and advertising panels; PIDS, PA, CCTV and antennas; customer help point. Any variation between materials and/ or configuration in stations to be addressed by provision of material samples and/ or 3D rendered imagery; and | |
| | (2) one full scale mock-up covering the Domain, Parkville and Arden Stations: 10m in length by ½ platform width of station platform level including Platform Screen Door System and all proposed wall, floor and ceiling materials and finishes; lighting, signage and advertising panels; PIDs, PA, CCTV and antennas; customer help points. Any variation between materials and/ or configuration in stations to be addressed by provision of material samples and/ or 3D rendered imagery; | |
| | (c) full scale mock-up of a typical tunnel cross-section, including trackwork; walkways; mechanical and electrical services; communication and signalling equipment; and overhead line; and | 90350 |
| | (d) full scale mock-up of station interior and exterior way-finding and signage which must be representative of the proposed signage positioning, dimensions and visibility. | 90351 |
| 7.6.1.2 | Project Co must coordinate the production of the samples and mock ups with the Rail Systems Alliance in accordance with the Framework Co-ordination and Interface Principles. | 90352 |
| 7.6.1.3 | The material samples and mock-ups are to be submitted so as to: | 90353 |
| | (a) demonstrate that the materials and detailing selected in respect of the relevant Works complies with the requirements of the Agreement; | 90354 |
| | (b) to demonstrate aesthetic effects of the relevant Works; and | 90355 |
| | (c) to establish the standard to be achieved in the relevant Works. | 90356 |
| 7.6.1.4 | The material samples and mock-ups must be representative of the relevant completed Works in terms of colour, texture and finish (including material and colour variations), aesthetic effects, detailing and workmanship. | 90357 |
| 7.6.1.5 | All material sample and mock up submissions must be accompanied by any information otherwise required by this section 7. | 90358 |
| 7.6.1.6 | Once certified by the Independent Reviewer, the material samples and mock-ups will become the required standard or quality to be achieved in the Works. | 90359 |
| 7.6.1.7 | All material samples and mock ups must, once certified by the Independent Reviewer, be securely stored by Project Co in a dedicated facility for the duration of the D&C Phase, unless otherwise agreed with the State. | 90360 |
| 7.6.2 | Submission of material samples and mock ups | 90361 |
| 7.6.2.1 | Material samples in respect of any Works comprised in a Design Package must be submitted to the Independent Reviewer at the same time as the Interim Design Documentation in respect of that Design Package. | 90362 |
| 7.6.2.2 | Mock-ups must be available for inspection by the Independent Reviewer within three months of the Independent Reviewer issuing a notification or certification under clauses 2.8(a) and 2.8(c) of the Design Review Schedule in relation to all Design Packages relevant to the mock-up. | 150480 |
| 7.7 | Design Verification | 90363 |
| 7.7.1 | Project Co must perform all design verification and validation required in accordance with the State Project Documents, AS 4292 Rail Safety Management and AS/NZS ISO 9000 Quality | 90364 |

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| | Management and quality assurance standards. | |
| 7.7.2 | Project Co must appoint a suitably experienced and qualified person as the Lead Verifier following consultation with the State. The Lead Verifier must be independent of those having direct responsibility for the design. | 90365 |
| 7.7.3 | Design Documentation for each Design Package must be subject to a process of design verification that covers all aspects of the design before submission of Certified Design Documentation. | 90366 |
| 7.7.4 | The Lead Verifier must verify that the Design Documentation complies with all requirements of the State Project Documents and that detail in drawings, reports and specifications accurately and adequately conveys the design. | 90367 |
| 7.7.5 | Complete records of the scope and outcomes of design verification must be retained and signed by the designated Lead Verifier. | 90368 |
| 7.8 | Proof Engineering | 90369 |
| 7.8.1 | Project Co must ensure that, in the performance of the D&C Activities, the Proof Engineer: | 90370 |
| 7.8.1.1 | undertakes an independent detailed check and certifies (in the form set out in the Schedule of Certificates and Notices) the adequacy of the Design Documentation for all: | 90371 |
| | (a) civil structures consisting of primary structure and primary structural connections of stations, station canopies and station entrances (i.e. beams; columns, ties (tension columns), slabs and foundations, and PSD embedded connections). Excludes cladding, glazing, fixings, balustrades and secondary structures (e.g. maintenance access walkways and internal non-load bearing walls); | 90372 |
| | (b) tunnel structures including all tunnel support and primary and secondary linings, all relevant fire and life safety considerations and OHW primary fixing and jet fan primary fixing into the tunnel lining. Checking does not include brackets or elements not embedded into the tunnel lining for OHW and jet fans; | 90373 |
| | (c) bridges and underpasses comprising primary structure and primary structural connections (i.e. girders, piers, decks and foundations); | 90374 |
| | (d) earth retaining structures with earth retained height greater than 1m; | 90375 |
| | (e) engineered design directional sign gantries (i.e. large signage as defined in Section 1.4 of the VicRoads Road Structures Inspection Manual June 2014), including all foundations; | 90376 |
| | (f) load bearing falsework; | 90377 |
| | (g) Temporary Works, comprising: | 90378 |
| | (1) primary structural excavation support (e.g. propping and waling); | |
| | (2) primary and secondary temporary excavation support for all mined caverns, tunnels and adits; | |
| | (3) station temporary decking (i.e. primary and intermediate); | |
| | (4) crane foundations; | |
| | (5) hoardings and structures (i.e. acoustic sheds) with public interface; | |
| | (6) TBM launch and receiving elements and TBM traversing frames; | |
| | (7) tower crane and gantry crane free stand installation structure and foundations; | |
| | (8) "Critical Risk" category mobile crane lifts as per the John Holland Lift Planning Matrix (Reference JH-FRM-WHS-030-01 Lift Planning Matrix, Rev. No. 3, 5 July 2017); | |
| | (9) structural works associated with temporary traffic management; | |
| | (10) other Temporary Works design elements assessed to constitute a safety risk by Project Co, the State or the Independent Reviewer; | |
| | (11) ground improvement works; and | |
| | (12) strengthening or stabilising works (e.g. propping, underpinning etc.). | |
| | (h) formwork required for concrete pours higher than 2 metres; | 90379 |
| | (i) [Not disclosed] | 90380 |

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| | (j) geotechnical designs including earth retaining structures (soil nailing and rock anchoring), embankment and formation, excluding landscaping areas with batters gentler than 1:5; | 90381 |
| | (k) drainage design (excluding the proof engineering of standard proprietary products that meet Industry acceptable performance criteria) and flood modelling as determined by the relevant authority; | 90382 |
| | (l) groundwater settlement, groundwater movement predicted extents analysis and proposed mitigation measures; and | 90383 |
| | (m) elements designed to AS5100; | |
| 7.8.1.2 | prior to any load being applied to load bearing falsework: | 90384 |
| | (a) inspects all such load bearing falsework and formwork required for concrete pours higher than 2 metres prior to the application of loading; and | 90385 |
| | (b) certifies (in the form set out in the Schedule of Certificates and Notices) that the falsework or formwork (as applicable) has been erected in accordance with the IFC Design Documentation. | 90386 |
| 7.8.2 | Project Co must ensure that: | 90387 |
| 7.8.2.1 | proof engineering includes a full and independent assessment of all factors influencing the final integrity of the specified components of the Works; | 90388 |
| 7.8.2.2 | proof engineering must be undertaken by a Proof Engineer who is prequalified under the VicRoads Consultant Pre-qualification Scheme; | 90389 |
| 7.8.2.3 | proof engineering is based on the designer's drawings and specifications without reference to the designer's computations; | 90390 |
| 7.8.2.4 | the Proof Engineer must be independent of Project Co and its designers; and | 90391 |
| 7.8.2.5 | all advice and comments including calculations exchanged with the Proof Engineer must be in writing. | 90392 |
| 7.8.3 | The Proof Engineer must stamp and sign all relevant drawing(s) and documents and provide a Proof Engineering Certificate of Compliance as evidence of the Proof Engineer's detailed check and acceptance prior to their issue of the Certified Design. The Proof Engineering Certificate of Compliance must be in accordance with the form set out in the Schedule of Certificates and Notices. | 90393 |
| 7.8.4 | All amendments to the design after issue of the Proof Engineering Certificate of Compliance must be reviewed by the Proof Engineer and the Proof Engineer must provide written confirmation that the certificate remains valid. Project Co must provide evidence of this confirmation not less than five Business Days prior to the commencement of the relevant Works. | 90394 |
| 7.8.5 | Each Proof Engineering Certificate of Compliance is to be forwarded to the State and Independent Reviewer with the Certified Design Documentation. | 90395 |
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| 7.9 | Preparatory Works | |
| 7.9.1 | Certified Design Documentation for Preparatory Works must include: | 90397 |
| 7.9.1.1 | a Preparatory Works design report which: | 90398 |
| | (a) clearly defines the scope of the proposed Preparatory Works; | 90399 |
| | (b) confirms that Interim Design Documentation has been submitted for any Works to which the Preparatory Works relate; and | 90400 |
| | (c) provides evidence that any required Approvals have been obtained; | 90401 |
| 7.9.1.2 | marked up design drawings clearly defining the scope of the Preparatory Works; | 90402 |
| 7.9.1.3 | relevant reports and specifications for the Preparatory Works; and | 90403 |
| 7.9.1.4 | any certificates required by the Schedule of Certificates and Notices. | 90404 |
| 7.9.2 | Subject to clause 4.12 of the 'Melbourne Metro Rail Project Incorporated Document December 2016', and unless otherwise approved in writing by the State, Preparatory Works must be limited to: | 90405 |
| 7.9.2.1 | survey and site investigations; | 90406 |
| 7.9.2.2 | site clearing and grubbing; | 90407 |
| 7.9.2.3 | site establishment; | 90408 |
| 7.9.2.4 | fencing; | 90409 |

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| 7.9.2.5 | preliminary earthworks and drainage; and | 90410 |
| 7.9.2.6 | relocation of, or modifications to, Utility Infrastructure in line with the 'Melbourne Metro Rail Project Incorporated Document December 2016'. | 90411 |
| | | 90412 |
| 7.10 | Durability Assessment | |
| | The durability assessment must: | 90413 |
| 7.10.1 | be undertaken and submitted as part of the Design Documentation; | 90414 |
| 7.10.2 | demonstrate how the selected design, materials, construction and maintenance methods will achieve the durability requirements for each Asset and Asset Component and the specified Design Life for each Asset and Asset Component specified; and | 90415 |
| 7.10.3 | establish performance criteria for materials giving consideration to factors including: | 90416 |
| 7.10.3.1 | the micro-environment to which the element is exposed including: ground and groundwater conditions; and contamination and exposure conditions including temperature, humidity, CO2 level and atmospheric pollution; | 90417 |
| 7.10.3.2 | potential deterioration mechanisms in this micro-environment including penetration of aggressive substances into structural cracks, joints or wick action; | 90418 |
| 7.10.3.3 | operational conditions including drying and wetting, vibration, heat and stray current effects; | 90419 |
| 7.10.3.4 | the likely material life; | 90420 |
| 7.10.3.5 | the feasibility and cost of in situ monitoring, maintenance and/or repair; | 90421 |
| 7.10.3.6 | the necessity and cost-effectiveness of providing additional protection; | 90422 |
| 7.10.3.7 | the rate and significance of deterioration; | 90423 |
| 7.10.3.8 | risk and variability of the constructed product; | 90424 |
| 7.10.3.9 | the feasibility and cost of in-situ monitoring, maintenance and/or repair and replacement; | 90425 |
| 7.10.3.10 | the necessity of providing additional protection including coatings; and | 90426 |
| 7.10.3.11 | the significance of failure. | 90427 |
| | | 90428 |
| 7.11 | Geotechnical, Hydrogeological and Contamination Reports | |
| 7.11.1 | General | 90429 |
| 7.11.1.1 | Project Co must prepare: | 90430 |
| | (a) a Geotechnical Interpretative Report (GIR) that presents the design geotechnical models and associated geotechnical parameters for each part of the Works; | |
| | (b) a Hydrogeological Interpretative Report that presents the hydrogeological models and associated hydrogeological parameters for each part of the Works; and | |
| | (c) a Contaminated Land Assessment – Interpretive Report; | |
| | and submit the each of these as part of the Interim Design Documentation. | |
| 7.11.1.2 | The GIR must include a description of the stratigraphy along the alignment, the design geotechnical parameters adopted for each stratigraphic unit (including a discussion on the derivation of these values), the design groundwater levels, the foundation levels for the works and any other information that is relevant to the Works. | 90431 |
| 7.11.1.3 | All available geological, geotechnical and hydrogeological data must be taken into account of in the GIR. If any new data or information becomes available which is materially relevant to GIR, the GIR must be updated accordingly. | 90432 |
| 7.11.1.4 | Project Co must undertake any other investigations which it deems necessary, including but not limited to any additional geotechnical investigations required for the purpose of assessing the geological, hydrogeological and geotechnical conditions and developing the design geotechnical model and associated parameters. | 90433 |
| 7.11.1.5 | Project Co must prepare a Geotechnical and Hydrogeological Investigation Factual Report for any additional investigations which it deems necessary. | 118334 |
| 7.11.2 | Reporting | 90434 |

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| 7.11.2.1 | The GIR must include but not be limited to the following: | 90435 |
| | (a) outline of the Works; | 90436 |
| | (b) plan and longitudinal profile of the alignment; | 90437 |
| | (c) summary of the investigation works considered in the preparation of the GIR; | 90438 |
| | (d) description of the geological and hydrogeological ground conditions; | 90439 |
| | (e) geotechnical and engineering geological characteristics of the various layers; | 90440 |
| | (f) interpretation of the ground conditions as related to the design and construction of the Works; | 90441 |
| | (g) development of the design geotechnical sections; | 90442 |
| | (h) development of geotechnical parameters for design and construction; | 90443 |
| | (i) assessment of groundwater levels for design and construction; | 90444 |
| | (j) sensitivity assessment of the geotechnical parameter values and the impact on the Works design; and | 90445 |
| | (k) identification of key geotechnical risks associated with the Works and discussion on how these will be addressed in the design and construction process. | 90446 |
| 7.11.2.2 | Geological and geotechnical longitudinal sections and transverse cross-sections at key locations must be prepared for the full alignment of the Works. The longitudinal and transverse sections must include groundwater levels, boreholes and any other relevant information. | 90447 |
| 7.11.3 | Design Geotechnical Parameters | 90448 |
| 7.11.3.1 | The types and selected values of the design geotechnical parameters must be appropriate for the ground conditions and proposed depths of where the Works are to be performed. They must take into consideration the type, extent and geometry of underground and other structures, the construction methods and the requirements of the proposed analysis methods, and any other relevant factors. A discussion of the derivation of the design parameters adopted is required to be included in the GIR. | 90449 |
| 7.12 | [Not disclosed] | 90450 |
| 7.13 | Tunnel Ventilation | 90503 |
| 7.13.1 | Project Co must appoint a suitably qualified tunnel ventilation specialist/s to undertake the development, documentation, installation, testing and commissioning of the tunnel ventilation systems. | 90504 |
| 7.13.2 | The responsibilities of the tunnel ventilation specialist/s include, but are not limited to: | 90505 |
| 7.13.2.1 | the development, documentation and implementation of the tunnel ventilation systems and strategies; | 90506 |
| 7.13.2.2 | planning, preparing and submission of documentation detailing the requirements of the tunnel ventilation systems; | 90507 |
| 7.13.2.3 | modelling studies of the tunnel ventilation systems to confirm the functional and performance requirements under the various operational modes (normal / degraded / congested / incident); | 90508 |
| 7.13.2.4 | modelling studies of the station smoke exhaust systems to confirm the functional and performance requirements under the various operational modes; | 90509 |
| 7.13.2.5 | exhaust dispersion modelling studies of all ventilation shaft-associated discharges; | 90510 |
| 7.13.2.6 | the development of tunnel ventilation electrical power supply strategies and requirements; | 90511 |
| 7.13.2.7 | the development of the tunnel ventilation system control systems, including the pneumatic control systems and associated interfaces with the station smoke management systems, fire detection systems and communications based train control (CBTC) systems; | 90512 |
| 7.13.2.8 | the development and submission of the plant status for each operational mode of the tunnel ventilation systems and station smoke management systems under all scenarios; | 90513 |
| 7.13.2.9 | the development and incorporation of the functional and operational interfaces between the tunnel ventilation systems and other systems, including but not limited | 90514 |

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| | to: | |
| | (a) the CBTC system; | 90515 |
| | (b) the HCMT fire detection systems (RSA/HCMT); | 90516 |
| | (c) the Station fire detection systems; | 90517 |
| | (d) the Station Smoke Management Systems; | 90518 |
| | (e) the building and energy management systems; | 90519 |
| | (f) operator work stations in the Network Control Centre; and | 90520 |
| | (g) the tunnel fire detection system. | 137210 |
| 7.13.3 | Project Co must prepare the following documentation: | 90521 |
| | 7.13.3.1 tunnel ventilation and exhaust dispersion modelling plan; | 90522 |
| | 7.13.3.2 tunnel ventilation modelling analysis report; | 90523 |
| | 7.13.3.3 tunnel ventilation system design report/s; | 90524 |
| | 7.13.3.4 exhaust dispersion modelling report; | 90525 |
| | 7.13.3.5 tunnel ventilation system control and systems integration report; | 90526 |
| | 7.13.3.6 tunnel ventilation system drawings; and | 90527 |
| | 7.13.3.7 tunnel ventilation system specification and equipment schedules. | 90528 |
| 7.13.4 | Project Co must prepare a modelling plan that outlines the parameters and methodologies to be used in the modelling and includes: | 90529 |
| | 7.13.4.1 description of the analysis to be undertaken; | 90530 |
| | 7.13.4.2 the methodology; | 90531 |
| | 7.13.4.3 input data for both the one-dimensional (1D) and three-dimensional (CFD) models; | 90532 |
| | 7.13.4.4 standards on which the system is to be modelled and designed; | 90533 |
| | 7.13.4.5 a description of the used software; and | 90534 |
| | 7.13.4.6 acceptance criteria and how results will be presented. | 90535 |
| 7.13.5 | Project Co must utilise industry recognised modelling software that is validated and proven for the application for which it is intended. | 90536 |
| 7.13.6 | Project Co must provide a tunnel ventilation modelling analysis report that must include the following: | 90537 |
| | 7.13.6.1 air flow requirements to maintain acceptable tunnel temperatures and environmental conditions under all normal, degraded and congested operations; | 90538 |
| | 7.13.6.2 air flow requirements to maintain acceptable tunnel temperatures and environmental conditions during maintenance operations; | 90539 |
| | 7.13.6.3 air flow requirements to remove smoke and maintain tenable conditions under all incident operations; | 90540 |
| | 7.13.6.4 air flow velocities and pressures within the tunnels during evacuation and fire intervention; | 90541 |
| | 7.13.6.5 pressure transients and forces exerted on the PSDS due to train movement approaching and leaving station; | 90542 |
| | 7.13.6.6 PSDS leakage analysis between the trackway and station platforms to ascertain the amount of air exchange and thermal loads on the platforms; | 90543 |
| | 7.13.6.7 CFD analysis for train fire at the station with PSDS opened to ascertain the capacity of the smoke extraction system; and | 90544 |
| | 7.13.6.8 CFD analysis for station fires in public areas to ascertain the capacity of the smoke extraction system. | 90545 |
| 7.13.7 | All numerical criteria proposed to be used must be provided to the Train Franchisee for review and approval in accordance with the timeframes set out in the Design Development Process. The numerical criteria must satisfy the air velocity requirements and must be justified to minimise risk SFAIRP. | 137211 |
| 7.13.8 | All engineering analysis of the ventilation system must include a validated subway analytical simulation program augmented as appropriate by a quantitative analysis of airflow dynamics produced in the fire scenario, such as would result from the application of validated computational fluid dynamics (CFD) techniques. The results of the analysis must include the no-fire (or cold) air velocities that can be measured during commissioning to confirm that a | 137212 |

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| | mechanical ventilation system as built meets the requirements determined by analysis. | 137213 |
| 7.13.9 | The no-fire (or cold) airflows provided by the installed mechanical ventilation system must be measured during commissioning to confirm that the airflows meet the requirements determined by analysis. | 90546 |
| 7.14 | Safety in Design | |
| 7.14.1 | Project Co must ensure that design of the Works complies with the obligations of the <i>Rail Safety National Law Application 2013</i> and the <i>Occupational Health & Safety Act 2004 (Vic)</i> and all associated regulation, as may be amended from time to time, or successor legislation, which include to, so far as is reasonably practicable, incorporate all safety considerations associated with the full life cycle of each element of the design. | 90547 |
| 7.14.2 | Project Co must facilitate Safety in Design (SiD) Workshops with the Independent Reviewer, the State and the Rail Franchisee to discuss the risk profile and assessment of the planned Works, including safety associated with construction, installation, operation, maintenance, repair and modification. | 90548 |
| 7.14.3 | The SiD Workshops must be attended by Project Co's key personnel and by selected Subcontractor personnel. | 90549 |
| 7.14.4 | Project Co must: | 90550 |
| 7.14.4.1 | undertake SiD Workshops for each Design Stage; | 90551 |
| 7.14.4.2 | appoint a suitably qualified SiD Workshop Facilitator; | 90552 |
| 7.14.4.3 | advise the Independent Reviewer and the State of the date, time and location of the SiD Workshops not less than 5 Business Days prior to the SiD Workshops; | 90553 |
| 7.14.4.4 | prior to each SiD Workshop, undertake desktop analysis to consider past and relevant hazards, controls, accidents and incidents; | 90554 |
| 7.14.4.5 | ensure that the SiD Workshops: | 90555 |
| | (a) identify the hazards and risks associated with the Works including Operation; | 90556 |
| | (b) assess the likelihood of occurrence and severity of the risks so that the risks can be prioritised; | 90557 |
| | (c) recommend actions and strategies to eliminate or reduce, so far as reasonably practicable, the risks occurring and their impacts; and | 90558 |
| | (d) cover all hazards and risks associated with the Works; | 90559 |
| 7.14.4.6 | provide the State at least 2 Business Days prior to the SiD Workshops with a draft SiD Risk Register to assist with the identification of risks for the Safety in Design Workshops; | 90560 |
| 7.14.4.7 | facilitate the handover of information from the State in relation to specific geographic hazards associated with each of the Work locations; | 90561 |
| 7.14.4.8 | within 5 Business Days of completion of the SiD Workshops, prepare and submit to the State and the Independent Reviewer a report that details the outcomes of the SiD Workshop including assessed risks and recommendations; | 90562 |
| 7.14.4.9 | incorporate the recommendations from the SiD Workshops into the Design Documentation; and | 90563 |
| 7.14.4.10 | record hazards and risks in the hazard log. | 90564 |
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| 7.15 | [Not disclosed] | |
| | | 90599 |
| 7.16 | [Not disclosed] | |
| | | 90627 |
| 7.17 | [Not disclosed] | |
| | | 90657 |
| 7.18 | Sustainability in Design | |
| 7.18.1 | Project Co must: | 90658 |
| 7.18.1.1 | address the sustainability requirements within all relevant Design Packages at each Design Stage; | 90659 |
| 7.18.1.2 | produce a sustainability benchmarking report two months after Contract Close which | 90660 |

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| | demonstrates lessons learnt and best practice initiatives to be applied to the Works; | |
| 7.18.1.3 | ensure that the sustainability requirements for the D&C Activities are allowed for and addressed in: | 90661 |
| | (a) design briefings for all personnel involved in the preparation of design documentation; | 90662 |
| | (b) processes for the development of design documentation; and | 90663 |
| | (c) relevant Management Plans and documents for the design, procurement, delivery, operation, maintenance and management of the Works; | 90664 |
| 7.18.1.4 | produce a Sustainable Design Report at each Design Stage which: | 90665 |
| | (a) includes a table demonstrating the status of the compliance with relevant sustainability requirements from section 15 of Part B; | 90666 |
| | (b) includes a consolidated list of initiatives to be implemented in relation to the sustainability themes in the MMRA Sustainability Strategy; | 90667 |
| | (c) demonstrates that climate change mitigation and adaptation measures or changes have been implemented in design; | 90668 |
| | (d) includes other life cycle assessments, including concrete and steel, and details of where the lifecycle assessments have informed design, selection of materials and materials sourcing; | 90669 |
| | (e) includes a detailed design Materials Calculator to demonstrate the achievement of the materials requirements in this PS&TR; | 90670 |
| | (f) includes greenhouse gas footprinting assessments including details of where low carbon initiatives have been implemented in the design and construction of the Works and Temporary Works; | 90671 |
| | (g) describes how the MMRA Sustainability Strategy and sub-strategy requirements are being investigated and implemented; | 90672 |
| | (h) includes IS rating tool and GS rating tool scorecards with information on progress against each credit; | 90673 |
| | (i) describes how initiatives are integrated in other discipline design reports and drawings; | 90674 |
| | (j) includes a demonstration and description of innovative sustainable design initiatives; and | 90675 |
| | (k) includes other studies as required by the State; and | 90676 |
| 7.18.1.5 | develop a water balance study to inform Certified Design that models the sources, uses and estimated quantities of potable and non-potable water which will be created and used in the construction and operational phases for the Works to demonstrate achievements of requirements in Part B sections 15.7.2, 15.7.3, and 15.7.4. | 90677 |

7.19 Electromagnetic Compatibility

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| 7.19.1 | Project Co must: | 90678 |
| 7.19.1.1 | Comply with EPRs EMI1 and EMI2; | 90679 |
| 7.19.1.2 | undertake a system wide Electromagnetic Interference (EMI)/ Electromagnetic Compatibility (EMC) impact assessment investigation for existing infrastructure, system and equipment considering all phases of the project, in compliance with relevant stakeholder requirements; | 90680 |
| 7.19.1.3 | have regard to the specific stakeholder concerns as set out in Appendix C2 with respect to EMI/EMC; | 90681 |
| 7.19.1.4 | take into account the impact of the electromagnetic emissions generated by the operation of any electrical or electronic equipment used for D&C Activities; | 90682 |
| 7.19.1.5 | demonstrate EMC for intra-system, inter-system and extra-system EMC in accordance with the EMC Management Plan; | 90683 |
| 7.19.1.6 | manage direct electrical interfaces with third party stakeholders in accordance with the EMC Management Plan; | 90684 |
| 7.19.1.7 | take all reasonable steps to obtain a 'letter of non-objection' from the third party stakeholder when an EMC technical assessment has been accepted by that relevant third party stakeholder; | 90685 |

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| 7.19.1.8 | provide evidence that maintenance, testing and training equipment and systems are compliant with appropriate EMC standards and statutory legislation; | 90686 |
| 7.19.1.9 | develop a cable management system for: | 90687 |
| | (a) the signalling system; | 90688 |
| | (b) the communication system; | 90689 |
| | (c) the signalling control system; | 90690 |
| | (d) the Passenger Screen Door system; | 90691 |
| | (e) the mechanical systems; and | 90692 |
| | (f) the electrical systems; | 90693 |
| 7.19.1.10 | assess compliance of the existing signalling system (wider area where signalling works take place), with the following EMC standards and regulations: | 90694 |
| | (a) IEC 62236-4 (within the 3 m zone); | 90695 |
| | (b) IEC 61000-6-2 (outside of the 3 m zone); | 90696 |
| | (c) IEC 61000-6-4; | 90697 |
| | (d) IEC 61000-3-2 and IEC 61000-3-3 (for equipment in the scope of the Works); and | 90698 |
| | (e) Note: Zoning principles according to IEC 62236-4; and | 90699 |
| 7.19.1.11 | conduct regular audits of all electrical or electronic systems or pieces of equipment used as part of the Works during the construction, testing and commissioning phases of the D&C Phase against the requirements of the specific EMC Management Plan for that equipment or system. | 90700 |
| 7.20 Electrolysis | | 118336 |
| 7.20.1 | Project Co must ensure that the Works comply with: | 118337 |
| | 7.20.1.1 the Electrical Safety Act 1998; | 118338 |
| | 7.20.1.2 the Electrical Safety (Cathodic Protections) Regulations 2009 | 118339 |
| | 7.20.1.3 the Victorian Code of practice for electrolysis mitigation and cathodic protection 2015; and | 118340 |
| | 7.20.1.4 AS 2832 Cathodic Protection of Metals. | 118341 |
| 7.20.2 | Project Co must liaise with the Train Franchisee and the Victorian Electrolysis Committee (VEC) to establish the electrolysis requirements framework and agree on the proposed mitigation systems during the design development process and throughout the D&C Phase. | 118342 |
| 7.21 Passenger Modelling | | 118343 |
| 7.21.1 | Project Co must use the parameters and assumptions set out in Appendix C7 to undertake passenger modelling. | 118344 |

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| 8 | Property and Land Requirements | 90701 |
| 8.1 | Private Property | 90702 |
| 8.1.1 | Maintaining access to private property | 90703 |
| 8.1.1.1 | All things necessary must be done to ensure that: | 90704 |
| | (a) subject to sections (b) to (f), access, amenity and function is maintained to all properties at all times; | 90705 |
| | (b) safe access and egress is maintained to all properties, including as set out in Appendix C2, at all times during construction. This must include but not be limited to all mode movements essential to the operation of the stakeholder operations inclusive of emergency and building services; | 90706 |
| | (c) reduction to the level of access to and egress from commercial properties during their normal trading hours is avoided to the greatest extent possible; | 90707 |
| | (d) any reduction in the level of access to and egress from any property is limited to the absolute minimum duration necessary to carry out the relevant construction related D&C Activities and is carried out in accordance with the approved Worksite Traffic Management Plan (WTMP); | 90708 |
| | (e) all permanent access to any property affected by the D&C Activities must be restored, including associated landscaping and restoration works, and temporary access arrangements removed, within 7 days of completing the activity requiring the temporary access measures or within such other time as agreed with the relevant property owner. The restored permanent access must be to a condition at least equivalent to that existing prior to the commencement of the relevant D&C Activities; and | 90709 |
| | (f) without limiting Project Co's obligations under the Agreement, including any obligations under the Environmental Performance Requirements, notice must be given to the owner and occupier of a property in respect of which access may be affected by construction-related D&C Activities at least 10 Business Days prior to the commencement of such activities. Such notice must include: | 90710 |
| | (1) a full description of the relevant activities; | 90711 |
| | (2) the impact such activities are likely to have on the property including access to the property; and | 90712 |
| | (3) the Metro Tunnel Telephone Information Line contact phone number, through which the owner or occupier of the property may obtain further information or register complaints regarding the carrying out of the activities or the effect of the activities on or near the property. | 90713 |
| 8.1.1.2 | Project Co must respond to and resolve, at its own cost, any claims from commercial proprietors in relation to reduced access as a result of the construction methodology adopted by Project Co to perform the Works. | 90714 |
| 8.1.2 | Occupation of private property | 90715 |
| 8.1.2.1 | Without limiting the Agreement, where Project Co wishes to enter private property to carry out the Works, Project Co must: | 90716 |
| | (a) not enter into any private property or enter negotiations with the owners and occupiers of any private property unless and until it has received written confirmation from the State that it is authorised to enter into that land (which confirmation must not be unreasonably withheld or delayed), unless Project Co has the expressed agreement or consent of the relevant owners and occupiers of that private property; | 90717 |
| | (b) provide the State with any agreement with the relevant owners or occupiers of the private property and, if requested by the State, a copy of all correspondence with the relevant owners or occupiers of the private property; | 90718 |
| | (c) prior to Project Co entering the private property to carry out the Works, Project Co must prepare and give to the State a report setting out the condition of the land at the date of occupation; | 90719 |

- (d) cause as little harm and inconvenience and do as little damage as possible to the private property and anything on or growing on the private property; 90720
- (e) remain upon the private property only for such period as is reasonably necessary for undertaking the Works; 90721
- (f) remove from the private property on the completion of the occupation of that land all Temporary Works and Materials and Equipment brought onto, or erected on, that land other than any of those things that the owner or occupier agrees may be left on that land; 90722
- (g) leave the private property, as nearly as possible, in the condition in which it was immediately before it was occupied; 90723
- (h) use its best endeavours to co-operate with the owners and occupiers of the private property; 90724
- (i) be responsible for preventing the spread of weeds or the escape of stock and liable for any costs arising from the spread of weeds or the escape of stock; 90725
- (j) be responsible for all costs and liabilities associated with accessing and carrying out the Works on the private property; and 90726
- (k) separate the relevant part of the private property with sufficient fencing, with such gates as are necessary, from the remainder of any land adjoining it and ensure that all gates are kept securely locked when not in use. 90727

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8.2 Temporary Occupation Land

8.2.1 General 90729

Project Co must: 90730

8.2.1.1 use its best endeavours to negotiate an agreement with landowners or occupants of any land required to be temporarily occupied for the purposes of performing the Works before submitting a notice under clause 6.3 of the Agreement with respect to Temporary Occupation Land; 90731

8.2.1.2 minimise the impact of the Works on Temporary Occupation Land and the length of time that Temporary Occupation Land is required for the performance of the Works; 90732

8.2.1.3 ensure, prior to any Works commencing on any Temporary Occupation Land, that the land is fenced with appropriate security fencing and that a pre-condition survey of the land and any structures on the land is carried out in accordance with section 10.7; and 90733

8.2.1.4 reinstate the Temporary Occupation Land upon completion of the Works and must obtain written confirmation from the landowner that any reinstatement and rectification works (e.g. fencing or pavement works) have been carried out to the landowners satisfaction and that no outstanding claims (past, present or future) remain unresolved or will be made by the landowner against the State or Project Co. 90734

8.2.2 Access to Temporary Occupation Land 90735

8.2.2.1 Project Co may only procure access to Temporary Occupation Land for the purposes of performing the Works, in accordance with this section. 90736

8.2.2.2 Without limiting the Agreement, where Project Co wishes to enter Temporary Occupation Land to carry out the Works, Project Co must: 90737

(a) not enter into any Temporary Occupation Land unless and until it has complied with this section and has obtained written authorisation from the State to enter the Temporary Occupation Land (which authorisation must not be unreasonably withheld or delayed); 90738

(b) prior to Project Co entering the Temporary Occupation Land to carry out the Works, Project Co must prepare and provide to the State and the landowner/ occupier a report setting out the condition of the Temporary Occupation Land at the date of occupation; 90739

(c) do all things reasonably required by the State to assist the State to reach agreement with the owners and the occupiers of the Temporary Occupation Land regarding the contents of any condition report prepared by Project Co pursuant to section 8.2.2.2(b); 90740

(d) cause as little harm and inconvenience and do as little damage as possible to 90741

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| | the Temporary Occupation Land and anything on or growing on the Temporary Occupation Land; | |
| | (e) remain upon the Temporary Occupation Land only for such period as is reasonably necessary for undertaking the Works; | 90742 |
| | (f) not undertake any Works on the Temporary Occupation Land unless approved in writing by the State and the relevant owner or occupier of the Temporary Occupation Land; | 90743 |
| | (g) remove from the Temporary Occupation Land on the completion of the occupation of the Temporary Occupation Land all Temporary Works and Materials and Equipment brought onto, or erected on, the Temporary Occupation Land other than any Works approved in writing by the State and the relevant owner or occupier of the Temporary Occupation Land; | 90744 |
| | (h) leave the Temporary Occupation Land, as nearly as possible, in the condition in which it was immediately before the Temporary Occupation Land was occupied; | 90745 |
| | (i) use its best endeavours to co-operate with the owners and occupiers of the Temporary Occupation Land; | 90746 |
| | (j) be responsible for preventing the spread of weeds or the escape of stock and liable for any costs arising from the spread of weeds or the escape of stock; and | 90747 |
| | (k) separate the relevant part of the Temporary Occupation Land by sufficient fencing, with such gates as are necessary, from the remainder of any land adjoining it and ensure that all gates are kept securely locked when not in use. | 90748 |
| 8.2.2.3 | The State will be responsible for any rent that the State pays the owner or occupier of the Temporary Occupation Land under the Major Transport Projects Facilitation Act 2009 (Vic), in relation to Project Co's occupation of Temporary Occupation Land pursuant to this section. | 90749 |
| 8.3 | Fencing | 90750 |
| 8.3.1 | Subject to section 8.3.2: | 90751 |
| 8.3.1.1 | fences must be designed and constructed to prohibit the public from accessing the Works; | 90752 |
| 8.3.1.2 | appropriate boundary fencing must be provided between the Site and abutting land; and | 90753 |
| 8.3.1.3 | a security fence must be constructed between any shared use path and the rail corridor. | 90754 |
| 8.3.2 | A boundary fence or a security fence is not required where there is a noise wall which meets the requirements, other than fence type, for the boundary fence or the security fence, as the case may be, at that location. | 90755 |
| 8.3.3 | A new boundary fence may be required when: | 90756 |
| 8.3.3.1 | there is no existing boundary fence; or | 90757 |
| 8.3.3.2 | the existing boundary fence does not perform the functions as described in section 8.3.5. | 90758 |
| 8.3.4 | Each section of new boundary fencing must: | 90759 |
| 8.3.4.1 | be accurately located by cadastral survey on the Site boundary defined on the relevant survey plans; | 90760 |
| 8.3.4.2 | prevent access by vehicles, persons or animals to the Site at locations other than authorised access points; | 90761 |
| 8.3.4.3 | be constructed from materials and to standards that represent good workmanship; | 90762 |
| 8.3.4.4 | be in a sound structural condition; | 90763 |
| 8.3.4.5 | be of uniform appearance and be maintained free from graffiti when viewed from easily accessible public land; | 90764 |
| 8.3.4.6 | provide an acceptable level of privacy to the property where the abutting land use is residential; and | 90765 |
| 8.3.4.7 | for private property fencing, be of no lesser standard than any removed fencing or the remainder of the property fencing. | 90766 |

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| 8.3.5 | Each section of existing boundary fence proposed to be used as the permanent boundary fence must: | 90767 |
| 8.3.5.1 | be of a condition to prevent access by vehicles, persons or animals to the Licensed Construction Area at locations other than authorised access points; | 90768 |
| 8.3.5.2 | be in a sound structural condition; | 90769 |
| 8.3.5.3 | provide an acceptable level of privacy to the property where the abutting land use is residential; and | 90770 |
| 8.3.5.4 | not vary from the Licensed Construction Area boundary by more than 100mm, unless otherwise agreed by the State. | 90771 |
| 8.3.6 | Where a concrete safety barrier is required between a shared use path and rail corridor, the security fence must be a welded mesh fence erected on top of the concrete safety barrier. | 90772 |
| | | 90773 |
| 8.4 | Demolition and Salvaged Materials | |
| 8.4.1 | All residential buildings required to be demolished as part of the Works must be demolished within 20 Business Days after Project Co is provided access to those buildings in accordance with the Agreement, unless otherwise agreed to or directed by the State. | 90774 |
| 8.4.2 | Project Co is to undertake condition surveys of land at the following stages: | 90775 |
| 8.4.2.1 | immediately prior to the commencement of Demolition Works; and | 90776 |
| 8.4.2.2 | immediately after demolition and prior to commencement of any further D&C Activities. | 90777 |
| 8.4.3 | The following salvaged materials which have been removed from their in-situ state within the Project Area remain the property of the relevant Returned Asset Owner unless otherwise agreed by the Returned Asset Owner: | 90778 |
| 8.4.3.1 | bluestone paving and kerbing; | 90779 |
| 8.4.3.2 | train rails, sleepers and electrical infrastructure; and | 90780 |
| 8.4.3.3 | all other salvaged materials, the retention of which constitutes a usual requirement of the Returned Asset Owner. | 90781 |
| 8.4.4 | Unless otherwise agreed with the Returned Asset Owner, Project Co must make the salvaged material available for collection in a manner and location to facilitate easy loading and transport by the Returned Asset Owner. | 90782 |
| | | 90783 |
| 8.5 | Condition of Land | |
| 8.5.1 | Any property affected by the D&C Activities, to the extent that such property does not comprise part of the Relevant Infrastructure or the Returned Works, must be reinstated following the carrying out and completion of the relevant D&C Activities to at least the standard that it was in prior to access by Project Co. | 90784 |
| 8.5.2 | Nothing in this section 8.5 restricts or affects Project Co's right or obligation to remove infrastructure on, or make improvements to, such land to the extent authorised or required by the Project Agreement. | 90785 |
| 8.5.3 | Where repatriation of cultural heritage values is required to occur on VicTrack land, Project Co must consult with and undertake repatriation to the satisfaction of VicTrack. | 90786 |
| | | 90787 |
| 8.6 | Land Availability | |
| 8.6.1 | Roads | 90788 |
| 8.6.1.1 | Before Project Co accesses any Roads identified in the Property Schedule, Project Co must use its best endeavours to agree a maintenance plan with the Responsible Road Authority for that land which identifies: | 90789 |
| | (a) the discrete area in respect of which access is required; | 90790 |
| | (b) Project Co's maintenance obligations with respect to that discrete area and the assets located on that discrete area; | 90791 |
| | (c) the condition of the assets within and, where appropriate, adjacent to, the discrete area; | 90792 |
| | (d) the routine inspections to be undertaken; | 90793 |

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| | (e) the date from which Project Co will assume maintenance responsibility of the discrete area; and | 90794 |
| | (f) the names and contact information of a representative from Project Co and the Responsible Road Authority. | 90795 |
| 8.6.1.2 | Where Project Co is unable, despite using its best endeavours, to agree a maintenance plan with the Responsible Road Authority within 10 Business Days of first contacting that Responsible Road Authority, Project Co must submit a report to the State: | 90796 |
| | (a) demonstrating how it used its best endeavours to agree a maintenance plan; | 90797 |
| | (b) detailing Project Co's proposed maintenance plan; and | 90798 |
| | (c) detailing the reasons why agreement was not able to be reached. | 90799 |
| 8.6.1.3 | Within 10 Business Days of receiving the report under section 8.6.1.2 the State will, unless Project Co and the Responsible Road Authority subsequently agree a maintenance plan, either: | 90800 |
| | (a) procure the agreement of the Responsible Road Authority to Project Co's proposed maintenance plan; or | 90801 |
| | (b) direct Project Co to comply with a maintenance plan (which may include such amendments to address issues raised by Project Co or the Responsible Road Authority as the State considers appropriate). | 90802 |
| 8.6.1.4 | Prior to accessing that land, a maintenance plan must be in place (either agreed between Project Co and the Responsible Road Authority or as directed by the State). | 90803 |
| 8.6.1.5 | Project Co must comply with any maintenance plan agreed or directed under this section 8.6.1. | 90804 |
| 8.6.1.6 | Project Co must keep records of all maintenance activities undertaken on the Land and regularly submit them to the Responsible Road Authority and the State, including upon completion of the Works on that land. | 90805 |
| 8.6.2 | Property Schedule | 90806 |
| 8.6.2.1 | Access to land will be made available to Project Co subject to the conditions and not before the date set out in the Property Schedule. | 90807 |
| 8.6.3 | Temporary Works Areas | 90808 |
| 8.6.3.1 | No part of the Maintained Assets or the Returned Assets may be located on those areas identified as "Temporary Works Areas" on the Property Schedule. | 90809 |
| | | 90810 |
| 8.7 | Survey Plan | |
| 8.7.1 | Without limiting clause 6 of the Agreement, the Survey Plan must; | 90811 |
| 8.7.1.1 | be provided in Type 2, Type 4 and Type 5 formats as defined in Table 8-1; and | 94242 |
| 8.7.1.2 | be provided in an OP format acceptable to both the State and the Surveyor-General; and | 94243 |
| 8.7.1.3 | identify segments and points for the whole of the boundary of the Commercial Opportunities Lease Areas, the Licensed Maintenance Areas and the Licensed Construction Areas which must be either: | 94244 |
| | (a) a boundary line within a Survey Plan; or | 94245 |
| | (b) a defined point within a Survey Plan. | 94246 |
| 8.7.2 | Prior to Final Acceptance or Handback of a Returned Asset, Project Co must provide to the State and any relevant Returned Asset Owner a plan: | 90812 |
| 8.7.2.1 | on a photogrammetric base which identifies the completed Works; | 90813 |
| 8.7.2.2 | in Type 2, Type 4 and Type 5 formats as defined in Table 8-1; and | 90814 |
| 8.7.2.3 | which identifies segments and points for the whole of the boundary of the Maintenance Area or the Returned Asset (as relevant) which must be either: | 90815 |
| | (a) a boundary line within a Survey Plan; | 90816 |
| | (b) a defined point within a Survey Plan; or | 90817 |

(c) an easily determined and permanent on site location. 90818

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8.8 Road and Authorised Access Points Gazettal Plans

8.8.1 The road and authorised access points gazettal plans must: 90820

8.8.1.1 be provided to enable the Roads to be declared. 90821

8.8.1.2 be provided to the State as a condition precedent to Provisional Acceptance, at least two months prior to Provisional Acceptance unless otherwise agreed by the State; 90822

8.8.1.3 be in a form agreed by VicRoads; 90823

8.8.1.4 be produced in consultation with the Responsible Road Authority for each Road; 90824

8.8.1.5 be produced in Type 2, Type 4 and Type 5 formats as defined in Table 8-1; 90825

8.8.1.6 be agreed by the State; and 90826

8.8.1.7 identify segments and points for the whole of the boundary of each road declaration which must be either: 90827

(a) a boundary line within a survey plan; or 90828

(b) a defined point within a survey plan. 90829

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8.9 Format and Development of Plans

8.9.1 The plans to be provided under this section 8 must be: 90831

8.9.1.1 produced in the format required in the relevant section and defined in Table 8-1; and 90832

8.9.1.2 prepared and progressively developed. 90833

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Table 8-1: Plan Formats

| Format Type | Definition |
|-------------|---|
| 1 | Electronic .pdf format fully text searchable and selectable |
| 2 | Electronic .pdf format with image selectable |
| 3 | Electronic CAD as described in section 1.3.11 |
| 4 | Electronic GIS as described in section 1.3.12 |
| 5 | Printed |

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| 9 | Transport Management Requirements | 90835 |
| 9.1 | General | 90836 |
| 9.1.1 | Project Co must: | 90837 |
| 9.1.1.1 | prepare and update the Transport Management Plan; | 90838 |
| 9.1.1.2 | prepare and update Traffic Management Plans (TMPs) and Worksite Traffic Management Plans (WTMPs) for all construction stages in each of the Precincts; | 90839 |
| 9.1.1.3 | address any Environmental Requirements; | 90840 |
| 9.1.1.4 | comply with the Road Management Act and the Transport Integration Act; | 90841 |
| 9.1.1.5 | support the State's Travel Demand Management (TDM) Strategy, including provision of the following: | 90842 |
| | (a) continuous surface transport data for vehicles, pedestrians, cyclists, trucks, buses and trams for each precinct; | 90843 |
| | (b) any transport related feedback from stakeholders and members of the public gathered by Project Co; and | 90844 |
| | (c) communications and stakeholder engagement support to deliver the State's TDM strategy to stakeholders in each precinct; and | 90845 |
| 9.1.1.6 | ensure that the Communications and Stakeholder Engagement Management Plan and the Transport Management Plan are consistent with the State's delivery of the TDM strategy and do not hinder or obstruct the State's delivery of the TDM strategy. | 90846 |
| 9.2 | Transport Design and Modelling Reports | 90847 |
| 9.2.1 | Project Co must engage a suitably qualified and experienced transport professional to prepare a Transport Design Report and Transport Modelling Report for each Design Stage. The transport professional must be a VicRoads prequalified consultant. | 90848 |
| 9.2.2 | Prior to commencing transport modelling activities, Project Co must demonstrate to the satisfaction of the State: | 90849 |
| 9.2.2.1 | the transport models used to support the precinct and road functional layouts; | 94247 |
| 9.2.2.2 | the geographic scope for the transport modelling; | 94248 |
| 9.2.2.3 | the appropriate model validation techniques; | 94249 |
| 9.2.2.4 | the modelling performance and approach to delivering an outcome that achieves the modal priorities set out in Part B, Appendix B4; and | 94250 |
| 9.2.2.5 | the appropriate modelling and design guidelines/ standards and approvals from the relevant transport or road authority. | 94251 |
| 9.2.3 | The Transport Design Report must: | 90850 |
| 9.2.3.1 | provide a summary of the project transport requirements for each precinct and road functional layout; | 90851 |
| 9.2.3.2 | detail how each precinct and road functional layout meets those requirements; | 90852 |
| 9.2.3.3 | demonstrate how each precinct and road functional layout integrates with other interfacing work packages; | 90853 |
| 9.2.3.4 | detail the stakeholder consultation undertaken and how the outcome of that consultation informs each precinct and road functional layout; | 90854 |
| 9.2.3.5 | detail how each precinct and road functional layout are supported by the transport modelling; | 90855 |
| 9.2.3.6 | demonstrate that any approvals from the relevant transport or road authority for each precinct and road functional layout have been obtained; | 90856 |
| 9.2.3.7 | include or cross reference to the drawings produced for each precinct and road functional layout; and | 90857 |
| 9.2.3.8 | be submitted as part of the Design Documentation. | 90858 |
| 9.2.4 | The Transport Modelling Report must: | 90859 |

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| 9.2.4.1 | provide a summary of the project transport modelling requirements for each precinct and road functional layout; | 90860 |
| 9.2.4.2 | demonstrate that the relevant transport stakeholders have been consulted and how the outcome of that consultation informs the transport modelling; | 90861 |
| 9.2.4.3 | demonstrate that the transport models have been validated; | 90862 |
| 9.2.4.4 | demonstrate how the modelling results have been generated and analysed; | 90863 |
| 9.2.4.5 | detail how the transport modelling outputs for each precinct and road functional layout meet the modelling performance requirements; | 90864 |
| 9.2.4.6 | detail how the transport modelling informed each precinct and road functional layout; | 90865 |
| 9.2.4.7 | demonstrate that any approvals from the relevant transport or road authority for the transport modelling have been obtained; | 90866 |
| 9.2.4.8 | demonstrate how the transport modelling integrates with other interfacing work packages; and | 90867 |
| 9.2.4.9 | be submitted as part of the Design Documentation. | 90868 |
| | | 90869 |
| 9.3 | Road Functional Layouts | |
| 9.3.1 | Project Co must: | 90870 |
| 9.3.1.1 | develop road functional layouts for each precinct that optimise transport movements based upon the transport modal priorities provided in Part B, Appendix B4; | 94252 |
| 9.3.1.2 | demonstrate consideration of all modes of transport including pedestrians, cyclists, cars, buses, trams and trucks; | 94253 |
| 9.3.1.3 | document the benefits and impacts of all road functional layouts to all modes including cars, pedestrians, cyclists, buses, trams and freight of any proposed changes compared to the situation before the project; | 94254 |
| 9.3.1.4 | undertake stakeholder consultation to inform each precinct and road functional layout and gain agreement with the State and relevant authorities where the State is the final arbiter on the final precinct and road functional layout; | 94255 |
| 9.3.1.5 | consult with the Train Franchisee in relation to any proposed changes to rail relocation bus stops; | 94256 |
| 9.3.1.6 | cooperate with the State and relevant Authorities to accommodate other transport and urban improvements in the area; and | 94257 |
| 9.3.1.7 | effectively manage and support the forecast pedestrian demands in each precinct on the footpaths, intersections, crossings, tram platforms and bus stops for Day 1 operation. | 94258 |
| 9.3.2 | Road functional layouts must: | 90871 |
| 9.3.2.1 | be supported by transport modelling including all vehicles, cyclists, pedestrians, public transport users and freight vehicles; | 90872 |
| 9.3.2.2 | support the Urban Design Strategy; and | 90873 |
| 9.3.2.3 | provide a safe environment for all vehicles, cyclists, pedestrians, public transport users, freight vehicles and construction personnel, with clear and accurate information provided to all users. | 90874 |
| | | 90875 |
| 9.4 | Transport Approvals | |
| 9.4.1 | Project Co is responsible for obtaining any required approvals from the Responsible Road Authority in relation to the Transport Management Plan and for each TMP and WTMP prior to the commencement of any works or Traffic Guidance Scheme (TGS). | 90876 |
| 9.4.2 | Project Co must obtain approval from the Responsible Road Authority of the Transport Management Plan before developing TMPs, and approval from the Responsible Road Authority for the TMPs before developing the WTMPs. | 90877 |
| 9.4.3 | Project Co must not undertake any D&C Activities that impact on the transport network or TGS until such time as all required approvals have been obtained from the Responsible Road Authority with respect to: | 90878 |
| 9.4.3.1 | the Transport Management Plan for the Project; | 90879 |

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| 9.4.3.2 | the TMP for that Precinct; and | 90880 |
| 9.4.3.3 | the WTMP for the relevant part of the Works. | 90881 |
| 9.4.4 | Project Co must coordinate and liaise with the Responsible Road Authority, the Tram Franchisee, any party carrying out relevant Related State Project Works, any party carrying out any works, services or activities adjacent to the Works and any relevant stakeholders. | 90882 |
| 9.5 | Traffic Management | 90883 |
| 9.5.1 | Project Co must: | 90884 |
| 9.5.1.1 | use appropriate traffic and transport management methods and procedures to effectively and safely manage all road users throughout the D&C Phase including consideration of the wider transport network impacts; | 90885 |
| 9.5.1.2 | consider the needs of all road users (including pedestrians, cyclists and vehicles) which may be affected as a result of the Works; | 90886 |
| 9.5.1.3 | obtain the approval of the Responsible Road Authority to the decrease in the network performance and/or any ameliorative works including the communication plan proposed; | 90887 |
| 9.5.1.4 | obtain the approval of VicRoads or the Responsible Road Authority to entries to and exists from the Site; | 90888 |
| 9.5.1.5 | undertake all traffic signal works in consultation with, and with the approval of VicRoads. No changes or alterations must be made without VicRoads approval and agreement. | 90889 |
| 9.5.1.6 | provide a safe environment for all vehicles, cyclists, pedestrians, public transport users and construction personnel, with clear and accurate wayfinding information for all users; | 90890 |
| 9.5.1.7 | carry out the road works in such a way as to minimise delay and disruption to all road users (including pedestrians, cyclists, public transport passengers and operators); | 90891 |
| 9.5.1.8 | implement measures to mitigate impacts to key institutional stakeholders as determined in accordance with 5.2.1.7; | 90892 |
| 9.5.1.9 | undertake transport modelling to support the TMP and WTMPs including modelling of all vehicles, cyclists, pedestrians, public transport users and freight vehicles; | 90893 |
| 9.5.1.10 | where the planning or execution of the Works directly or indirectly impacts any road, footpath, bus, cycle lane or tram lane: | 90894 |
| | (a) cooperate and discuss with the State and relevant Authorities any changes to the transport network required prior to submission of the TMP or WTMP; | 90895 |
| | (b) maintain the access and connectivity of all transport modes; | 90896 |
| | (c) minimise the number of changes to road, footpath, bus, cycle, lane and tram lanes; | 90897 |
| | (d) minimise the duration and extent of any necessary closure of a lane, carriageway or road due to an emergency situation; | 90898 |
| | (e) undertake CPTED assessment where footpaths are closed, narrowed or diverted with consideration of personal security issues; | 90899 |
| | (f) ensure that appropriate measures are implemented to ensure that construction activities do not adversely impact any persons with restricted mobility; and | 90900 |
| | (g) note that construction activities requiring the temporary possession of roads may need to be undertaken outside the assumed hours during periods of low demand to minimise safety impacts and inconvenience to commuters; | 90901 |
| 9.5.1.11 | ensure that ambulance access and egress is maintained to all hospitals at all times; | 90902 |
| 9.5.1.12 | cooperate with the State and relevant Authorities to accommodate any changed traffic flows associated with a Special Event in any areas directly or indirectly affected by the Works or the Temporary Works, noting that restrictions on construction traffic may be implemented during Special Events; and | 90903 |
| 9.5.1.13 | undertake the Works so as to satisfy the Specific Stakeholder Requirements set out in Appendix C2. | 90904 |

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| 9.6 | Worksite Traffic Management | 90905 |
| 9.6.1 | Project Co must develop a travel plan for each worksite to manage construction traffic to and from each worksite. | 90906 |
| 9.6.2 | The worksite travel plans must be consistent with the Transport Management Plan, and be developed as part of the TMPs and WTMPs. | 90907 |
| 9.6.3 | As a minimum, the worksite travel plans must: | 90908 |
| 9.6.3.1 | identify access arrangements and make provision for staff travel; | 90909 |
| 9.6.3.2 | minimise access by private vehicle by staff and site visitors; | 90910 |
| 9.6.3.3 | include a range of tools to actively promote and provide public transport and active transport options to construction sites for staff and site visitors; | 90911 |
| 9.6.3.4 | identify any parking provision required for staff and site visitors and not assume that staff and site visitor parking can be accommodated in local streets; | 90912 |
| 9.6.3.5 | make provision for all site shift patterns, including any changes to shift patterns, 'out of hours' working, including staff safety and accessibility, fluctuations in workers employed onsite, changing transport/traffic conditions and any transport management tools not operating as planned; | 90913 |
| 9.6.3.6 | develop a freight management plan to minimise the movement of materials and spoil and truck movements to and from worksites; and | 90914 |
| 9.6.3.7 | be in place throughout the whole project lifecycle and be updated for different project stages. | 90915 |
| 9.6.4 | Project Co must: | 90916 |
| 9.6.4.1 | not park or wait heavy vehicles on the road unless at truck holding areas established in consultation with and to the satisfaction of the Responsible Road Authority; | 90917 |
| 9.6.4.2 | not implement the WTMP as the deemed TGS unless the Responsible Road Authority has provided agreement to the WTMP; | 90918 |
| 9.6.4.3 | minimise construction vehicle movements between the hours of 6.00pm to 7.00am in the vicinity of noise sensitive receivers; | 90919 |
| 9.6.4.4 | advise the State and Responsible Road Authority of the completion of each traffic event including the removal of any traffic management measures; and | 90920 |
| 9.6.4.5 | provide vulnerable road user awareness training for all heavy vehicle drivers and fit all heavy vehicles with safety devices as set out in section 6.3. | 90921 |
| 9.6.5 | Traffic Guidance Scheme | 90922 |
| 9.6.5.1 | Project Co must ensure that a TGS is included in an associated WTMP. | 90923 |
| 9.6.5.2 | To implement a TGS, Project Co must ensure that the WTMP agreed with the Responsible Road Authority, containing the TGS, is available 10 Business Days in advance of the proposed implementation of the TGS. | 90924 |
| 9.6.5.3 | If an agreed WTMP is not available 10 Business Days prior to the proposed implementation of the TGS, Project Co must reschedule the implementation of the TGS and the associated Works at Project Co's expense to provide a minimum of 10 Business Days between the Responsible Road Authority's agreement to the final WTMP and the implementation of the TGS. | 90925 |
| 9.6.5.4 | Variable message signs (VMSs) must be installed in accordance with the Worksite Safety – Traffic Management Code of Practice and the WTMP. | 90926 |
| 9.6.5.5 | After the TGS has been implemented in accordance with the relevant WTMP and prior to the commencement of the relevant construction Works in relation to the relevant Traffic Event, Project Co is responsible for reviewing the operation of the TGS and undertaking any amendments or changes necessary to ensure the TGS complies, operates and functions in accordance with the requirements of the Transport Management Plan, the relevant TMP and the relevant WTMP. | 90927 |
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| 9.7 | Works affecting tram and bus services | |
| 9.7.1 | General | 90929 |

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| 9.7.1.1 | Where the planning or execution of the Works directly or indirectly impacts any other public transport routes: | 90930 |
| | (a) access, connectivity, frequency and on-road priority of public transport services must be maintained; and | 90931 |
| | (b) the extent and duration of disruption must be minimised. | 90932 |
| 9.7.1.2 | Project Co must ensure that functionality and level of resilience of existing public transport infrastructure affected by the D&C Activities is maintained or replicated unless agreed to by PTV. | 90933 |
| 9.7.1.3 | Planning and execution of the Works must minimise customer disruption. | 90934 |
| 9.7.1.4 | Project Co must coordinate with PTV and the Train Franchisee in relation to the arrangement of replacement services in the event that the D&C Activities require planned cancellations or line closures. | 90935 |
| 9.7.1.5 | Frequency of bus and tram services must be maintained except by formal agreement with PTV. | 90936 |
| 9.7.2 | Safety | 90937 |
| 9.7.2.1 | A safety and risk assessment must be undertaken prior to any occupations (rail, road and tram). | 90938 |
| 9.7.2.2 | A safety and risk assessment must be undertaken prior to the re-commencement of any train or tram services. | 90939 |
| 9.7.3 | Bus services | 90940 |
| 9.7.3.1 | Project Co must ensure that bus services continue to operate during construction, with respect to frequency and routing, unless agreed to by PTV. | 90941 |
| 9.7.3.2 | Full closure of roads or detours during construction affecting scheduled PTV bus services must be avoided. | 90942 |
| 9.7.3.3 | Where it is not practicable to avoid road closures or detours altogether, they must be minimised and localised to preserve route integrity and excessive variance to travel times. | 90943 |
| 9.7.3.4 | Any proposed road changes, route alterations and temporary bus stops must be agreed with PTV and any Responsible Road Authorities at least 42 days prior to the commencement of the road works. | 90944 |
| 9.7.3.5 | Project Co must ensure that: | 90945 |
| | (a) bus stops impacted by the Works provide capacity accessibility and functionality to support patronage levels and pedestrian movements forecast for the D&C Phase; | 90946 |
| | (b) any temporary bus infrastructure remain operable and maintainable over its lifecycle; | 90947 |
| | (c) bus services operating on Lonsdale Street continue to operate during construction and at Day 1; and | 90948 |
| | (d) access connectivity, frequency and on road priority for routes 401, 402, 403, 505 and 546 bus services are maintained throughout the construction period. | 90949 |
| 9.7.4 | Tram services | 90950 |
| 9.7.4.1 | Project Co must: | 90951 |
| | (a) ensure tram services continue to operate during construction, with respect to frequency and routing, unless agreed to by PTV; | 90952 |
| | (b) ensure tram stops impacted by the Works provide capacity to support patronage levels and pedestrian movements forecast for the construction phase. This should be supported by modelling the impacts on patronage movements; | 90953 |
| | (c) model the impact of patronage movements for any tram stops impacted by the project for the following: | 90954 |
| | (1) accessibility; | 90955 |
| | (2) capacity; and | 90956 |
| | (3) functionality. | 90957 |
| | (d) document and minimise the impact on tram services delivery performance and | 90958 |

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| | on-time performance during the construction staging for the Works; | |
| (e) | ensure any temporary tram infrastructure remains operable and maintainable over its lifecycle; | 90959 |
| (f) | allow tram services to be delivered in line with the Tram Concept of Operation (CoO) from pre-construction up to Day-1; | 90960 |
| (g) | ensure tram services continue to operate during construction and at Day-1: | 90961 |
| | (1) at Domain, with the exception of localised occupations for transitions between construction stages; | 90962 |
| | (2) on La Trobe Street; and | 90963 |
| | (3) on Royal Parade and Elizabeth Street; and | 90964 |
| (h) | consult with and obtain agreement from both PTV and the Tram Franchisee if any Domain Interchange platforms require relocation/removal, specifically around the spacing and location of relocated platforms. | 90965 |
| 9.7.4.2 | Tram diversions must minimise the impact to customers' journey times and accessibility to tram services. | 90966 |
| 9.7.4.3 | Traffic diversions must minimise the impact to tram services. | 90967 |
| 9.7.4.4 | The operational functionality and passenger connectivity provided by the Domain tram stop must be maintained during construction. | 90968 |
| 9.7.4.5 | Construction work must not preclude the continued operation of both East-West and North-South tram services at the Swanston Street and Flinders Street intersection unless agreed to by PTV. | 90969 |
| | | 90970 |
| 9.8 | Resourcing | |
| 9.8.1 | Project Co must appoint a suitably experienced and qualified person as the 'Traffic Manager' who is responsible for: | 90971 |
| 9.8.1.1 | the development and implementation of the Transport Management Plan, TMPs and WTMPs; | 90972 |
| 9.8.1.2 | coordination of the Works; | 90973 |
| 9.8.1.3 | all issues relating to traffic management throughout the performance of the Works; and | 90974 |
| 9.8.1.4 | compliance with the requirements of the Worksite Safety – Traffic Management Code of Practice. | 90975 |
| | | 90976 |
| 9.9 | Road Safety Audits | |
| 9.9.1 | Project Co must ensure that Road Safety Audits are carried out in accordance with the Austroads Guide to Road Safety – Part 6: Road Safety Audit. | 90977 |
| 9.9.2 | The audit team must be from a company pre-qualified under the VicRoads Pre-qualification Scheme at the RSAUDIT Level and led by a VicRoads accredited senior Road Safety Auditor. Other team members must have undertaken appropriate training in Road Safety Audits. Road Safety Auditors must be independent of any other commitment or obligation to Project Co and its subcontractors carrying out the design for the Works. | 90978 |
| 9.9.3 | Project Co must ensure that a Road Safety Audit is undertaken at the following times: | 90979 |
| 9.9.3.1 | prior to implementing each proposed TMP and WTMP not specifically covered by arrangements shown in AS 1742.3 and its various user guides; | 90980 |
| 9.9.3.2 | immediately upon implementing each TGS from a WTMP; | 90981 |
| 9.9.3.3 | during the first day and night a.m. and p.m. peak hours following the implementation of each TGS; and | 90982 |
| 9.9.3.4 | where applicable, at any other time nominated in the Worksite Safety – Traffic Management Code of Practice. | 90983 |
| 9.9.4 | Road Safety Audits must be completed and all issues raised in the audit responded to prior to commencement of the next stage of the Works. | 90984 |
| 9.9.5 | Project Co must: | 90985 |
| 9.9.5.1 | implement any necessary corrective actions arising from the initial Road Safety Audit | 90986 |

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| | Report as soon as possible after identification; | |
| 9.9.5.2 | promptly address all issues raised in Road Safety Audits, and prepare a written response to the audit that: | 90987 |
| | (a) details action taken/to be taken to address each issue raised; | 90988 |
| | (b) provides justification for proposals not to undertake action on particular issues raised; | 90989 |
| | (c) highlights issues raised not considered to be the responsibility of Project Co; and | 90990 |
| | (d) within 2 Business Days of the Road Safety Audit being undertaken in relation to the WTMP, forward a Road Safety Audit initial report and Project Co's response to the report to the State and Independent Reviewer; | 90991 |
| 9.9.5.3 | prepare and maintain a register of all Road Safety Audits. The register must include: | 90992 |
| | (a) audit stage and date; | 90993 |
| | (b) summary of each issue; | 90994 |
| | (c) any changes required to the TMP, WTMP or TGS; | 90995 |
| | (d) status of action to address each issue; and | 90996 |
| | (e) verification of completed actions. | 90997 |
| 9.9.5.4 | implement any major changes required to the TMP, WTMP or TGS, as identified by the detailed Road Safety Audit Report; and | 90998 |
| 9.9.5.5 | respond to any minor changes required to the TMP, WTMP or TGS, as identified by the detailed Road Safety Audit Report. | 90999 |
| 9.9.6 | The State or Independent Reviewer may request, at any time, comment by the senior Road Safety Auditor on road safety issues associated with the Works. | 91000 |
| | | 91001 |
| 9.10 | Transport monitoring and reporting | |
| 9.10.1 | Project Co must prepare the Transport Review Report for inclusion in the Monthly D&C Phase Report, which as a minimum must detail: | 91002 |
| 9.10.1.1 | compliance with the Transport Management Plan, TMPs, WTMPs and TGS; | 94259 |
| 9.10.1.2 | the daily operation of the TMPs, WTMPs and TGS; | 94260 |
| 9.10.1.3 | any changes made to the TMPs, WTMPs and TGS as a result of the monitoring and review strategy; and | 94261 |
| 9.10.1.4 | how the performance requirements and any key performance indicators are being met. | 94262 |
| 9.10.2 | Project Co must provide recurring updates or transport bulletins at intervals required by the Responsible Road Authority in relation to the following: | 91003 |
| 9.10.2.1 | all current Works affecting the transport network, including roads, footpaths, cycle paths, buses, rail, trams and public transport users; | 91004 |
| 9.10.2.2 | all proposed Works to be carried out within the next 8 weeks that will affect the transport network, including roads, footpaths, cycle paths, buses, rail, trams and public transport users; and | 91005 |
| 9.10.2.3 | daily monitoring and reporting of travel time delays associated with the Works. | 91006 |
| 9.10.3 | Following implementation of the Transport Management Plan, any TMP, any WTMP or any TGS, Project Co must implement a monitoring and review strategy to ensure the TMPs, WTMPs and TGS comply, operate and function as intended. | 91007 |
| 9.10.4 | Any minor changes required to the TMP, WTMP or TGS, as identified by Project Co as a result of the review, must be implemented and recorded on the TMP, WTMP or TGS by the Traffic Manager. | 91008 |
| 9.10.5 | Any major changes required to the TMP, WTMP or TGS, as identified by Project Co as a result of a review, must be approved by the Traffic Manager and the Responsible Road Authority, and the TMP, WTMP and TGS must be updated accordingly. | 91009 |

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| 9.11 | Unplanned transport disruptions | 91010 |
| 9.11.1 | Project Co must: | 91011 |
| 9.11.1.1 | avoid any unplanned disruptions to a traffic lane, footpath, cycleway, tramway, bus lane, or road; | 91012 |
| 9.11.1.2 | immediately report any unplanned disruptions to a traffic lane, footpath, cycleway, tramway, bus lane, or road caused by the Works to the Responsible Road Authority, Emergency Service Organisations, the State and the Independent Reviewer; | 91013 |
| 9.11.1.3 | develop a stakeholder communication process to immediately inform any stakeholders of unplanned disruptions and the proposed amelioration measures; and | 91014 |
| 9.11.1.4 | following any unplanned disruption event, review the Transport Management Plan and the relevant TMP, WTMP and TGS and report the outcome of the review to the State and the Independent Reviewer. | 91015 |
| 9.11.2 | Any changes required to the TMP, WTMP or TGS identified as a result of a review must be undertaken in consultation with and to the satisfaction of the Responsible Road Authority, and the TMP, WTMP and TGS must be updated accordingly. | 91016 |

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| 10 | Construction Requirements | 91017 |
| 10.1 | General | 91018 |
| 10.1.1 | Project Co must: | 91019 |
| 10.1.1.1 | prepare and update the Construction Management Plan; | 91020 |
| 10.1.1.2 | ensure that the D&C Activities are undertaken in accordance with: | 91021 |
| | (a) the approved Environmental Performance Requirements; | 91022 |
| | (b) BS 6164-2011: Health and Safety in Tunnelling; | 91023 |
| | (c) Safe Work Australia: Guide for Tunnelling Work (2013); | 91024 |
| | (d) AS 2601-2001: The demolition of structures; | 91025 |
| | (e) AS4349.1-2007: Inspection of Buildings; | 91026 |
| | (f) AS1742.3-2009: Traffic control devices for works on roads; | 91027 |
| | (g) Part 2 of the VicRoads Road Design Guidelines; | 91028 |
| | (h) in respect of the construction of all road, bus, cycle facilities and footpath construction, the applicable standards established by the relevant Authority; and | 91029 |
| | (i) all other Management Plans; | 91030 |
| | to the extent that items (a) to (i) relate to the D&C Activities; | 91031 |
| 10.1.1.3 | ensure that the D&C Activities are undertaken in consideration of the stakeholder requirements set out in Appendix C2; | 91032 |
| 10.1.1.4 | attend construction review meetings in accordance with section 10.5. | 91033 |
| 10.1.2 | Project Co must only utilise new tunnel boring machines (TBMs) to undertake the Works. | 91034 |
| | | 91035 |
| 10.2 | Working Hours | |
| 10.2.1 | The construction of the Works must be carried out to minimise impact on local businesses, institutions and the community and in accordance with the Environmental Requirements. | 91036 |
| 10.2.2 | Project Co must implement appropriate mitigation measures in order to ensure that the noise and vibration targets for particular time periods as set out in the EPRs are not exceeded. This may include the restriction of working hours during particular construction activities. | 91037 |
| | | 91038 |
| 10.3 | Notification of Incidents | |
| 10.3.1 | Notification | 91039 |
| | Project Co must notify the State of any incidents associated with or affecting the D&C Activities in accordance with the Project Agreement. | 91040 |
| 10.3.2 | Incident Details | 91041 |
| | All relevant details of any incident must be recorded (supported by photographs of the incident site including the location of all safety devices) as soon as possible after the incident. | 91042 |
| | | 91043 |
| 10.4 | Construction Documentation | |
| 10.4.1 | Construction Documentation for each Construction Package must include: | 91044 |
| 10.4.1.1 | the relevant IFC Design Documentation (both Permanent and Temporary Works); | 91045 |
| 10.4.1.2 | a schedule of Assets, Asset Components and Asset Sub-Components contained within that Construction Package; | 91046 |
| 10.4.1.3 | the planned sequence of work for the Construction Package; | 91047 |
| 10.4.1.4 | the program for the Construction Package; | 91048 |
| 10.4.1.5 | ITPs and Construction Procedures; | 91049 |
| 10.4.1.6 | relevant WTMPs; | 91050 |
| 10.4.1.7 | the SEIP, including a specific risk assessment for the Construction Package; | 91051 |
| 10.4.1.8 | a risk assessment for all high risk activities for the Construction Package; | 91052 |
| 10.4.1.9 | safety plans, including safety procedures required for any construction operations such | 91053 |

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| | as lifting or trenching; and | |
| 10.4.1.10 | forecast construction impacts including noise, vibration, ground movement, ground water impact and other community impacts and proposed mitigation measures. | 91054 |
| 10.4.2 | A standard set of the ITPs and Construction Procedures required by the Reference Documents must be established and used for relevant construction activities. | 91055 |
| 10.4.3 | ITPs and Construction Procedures must include all Hold Points required by the relevant Reference Document, and must describe the process pursuant to which the Nominated Authority releases each Hold Point. | 91056 |
| 10.4.4 | Each Construction Procedure must describe: | 91057 |
| 10.4.4.1 | the scope of activities covered; | 91058 |
| 10.4.4.2 | the materials, plant and equipment to be used; | 91059 |
| 10.4.4.3 | the personnel required and their roles, responsibilities and required competencies; | 91060 |
| 10.4.4.4 | all induction requirements; | 91061 |
| 10.4.4.5 | all permit requirements; | 91062 |
| 10.4.4.6 | the ITPs to be used and quality assurance documentation to be completed; and | 91063 |
| 10.4.4.7 | the detailed construction procedures to be followed. | 91064 |
| 10.4.5 | Project Co must submit Construction Documentation which complies with section 10.4.1 to 10.4.4 for each Construction Package to the State and the Independent Reviewer in accordance with the Review Procedures. | 91065 |
| 10.4.6 | If required by the Independent Reviewer, Project Co must make available appropriate personnel to: | 91066 |
| 10.4.6.1 | explain the Construction Documentation; and | 91067 |
| 10.4.6.2 | provide such information regarding the Construction Documentation as the Independent Reviewer reasonably requests. | 91068 |
| 10.4.7 | Project Co must not proceed with the construction of any Construction Package until it has satisfied its obligations under the Review Procedures in relation to the relevant Construction Documentation. | 91069 |
| | | 91070 |
| 10.5 | Construction Review Meetings | |
| 10.5.1 | Construction review meetings must be held at least monthly, or as otherwise agreed by the Independent Reviewer and the State, throughout the D&C Phase to review: | 91071 |
| 10.5.1.1 | progress in submitting ITPs and Construction Procedures; | 91072 |
| 10.5.1.2 | progress in submitting Construction Documentation for each Construction Package; | 91073 |
| 10.5.1.3 | progress in closure of As-Built Records; | 91074 |
| 10.5.1.4 | progress in dealing with non-conformances and in rectification of Defects; | 91075 |
| 10.5.1.5 | any issues relating to safety; | 91076 |
| 10.5.1.6 | progress in completion and Handback of Returned Works; and | 91077 |
| 10.5.1.7 | a register of issues affecting construction progress and actions to resolve such issues. | 91078 |
| 10.5.2 | Construction review meetings must involve at least one representative from each of the State, Project Co, the D&C Subcontractor and the Independent Reviewer. | 91079 |
| | | 91080 |
| 10.6 | Sustainability Management | |
| 10.6.1 | Project Co must: | 91081 |
| 10.6.1.1 | source a minimum of 20% of energy from renewable sources for the construction phase through either: | 91082 |
| | (a) generation of onsite renewable energy; and/or | 91083 |
| | (b) use of alternative fuels; and/or | 91084 |
| | (c) purchase of renewable energy from an Australian Government accredited renewable energy supplier. | 91085 |
| 10.6.1.2 | demonstrate by the end of the construction phase a 15% reduction in materials lifecycle | 91086 |

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| | impacts (measured through Enviropoints) below the base case of 1,235,000 Enviropoints in accordance with: | |
| | (a) ISCA Materials Lifecycle Impact Base Case; | 91087 |
| | (b) MMRA Materials Base Case and Reductions Model; and | 91088 |
| | (c) IS Materials Calculator Base Case; | 91089 |
| 10.6.1.3 | divert greater than 95% by volume of reusable topsoil and spoil (general fill), greater than 90% by volume of inert and non-hazardous waste and greater than 60% by volume of office waste from landfill; | 91090 |
| 10.6.1.4 | conserve 100% of all useable topsoil to be recycled as topsoil on the site or on a site within a reasonable distance; | 91091 |
| 10.6.1.5 | ensure that all soil reuse is approved by VicTrack (or the landowner), as per the VicTrack "Soil Reuse Guidelines PG-GL 004 V1"; | 91092 |
| 10.6.1.6 | minimise the use of potable water during construction; | 91093 |
| 10.6.1.7 | implement sustainability measures in relation to temporary site facilities as set out in section 10.8.5.1; | 91094 |
| 10.6.1.8 | provide a cost payback analysis of installing photovoltaic panels on large acoustic sheds and other construction site facilities; and | 91095 |
| 10.6.1.9 | consult with the University of Melbourne regarding reuse of trees removed as part of the works on University land, and provide handling, transport and storage of the timber to facilitate reuse by the University. | 150493 |
| | | 91096 |
| 10.7 | Site Investigation, Condition Surveys and Monitoring | |
| 10.7.1 | General | 91097 |
| | Without limiting any obligations imposed on Project Co by the Environmental Performance Requirements and Environmental Requirements, Project Co must: | 91098 |
| 10.7.1.1 | undertake all pre and post construction site investigations, property, land and condition surveys and ground and infrastructure condition surveys as required for the performance of the D&C Activities; and | 91099 |
| 10.7.1.2 | ensure that the Works, including Temporary Works, have and will have no material adverse impacts on any existing ground conditions or on the performance of any infrastructure, property or utility (including roads, parks and other publicly accessible areas, footpaths and cycleways, Utility Infrastructure, railways, buildings, bridges and other structures including MURL and CityLink). | 91100 |
| 10.7.2 | Condition Surveys | 91101 |
| 10.7.2.1 | Project Co must undertake condition surveys of existing ground, infrastructure, properties and utilities within the determined Potential Zone of Influence (unless it can be demonstrated to the satisfaction of the State that a condition survey is not required) in accordance with AS4349.1-2007. | 91102 |
| 10.7.2.2 | Condition surveys must be undertaken: | 91103 |
| | (a) prior to the commencement of and following the completion of the relevant part of the Works; | 91104 |
| | (b) for all assets that are reasonably accessible and within the Potential Zone of Influence of the D&C Activities, or other assets that may be affected by the D&C Activities unless otherwise agreed by the State; | 91105 |
| | (c) to accurately record the condition of EES Heritage Listed Places; and | 91106 |
| | (d) with the prior approval of the relevant property owner and/or occupier. | 91107 |
| 10.7.2.3 | Condition surveys must be forwarded to the owner of the asset, the State and the Independent Reviewer within 4 weeks of the condition survey being undertaken and prior to commencement of the relevant Works. | 91108 |
| 10.7.2.4 | Project Co must also make provision for resurvey immediately following a recorded exceedance. | 91109 |
| 10.7.2.5 | Where required by the CityLink Interface Deed, Project Co must undertake condition surveys in respect of CityLink. | 91110 |

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| 10.7.2.6 | Project Co must ensure that the condition surveys described in this section 10.7.2 are carried out by an independent and appropriately qualified and experienced assessor for the specific asset being surveyed. | 91111 |
| 10.7.2.7 | Project Co must consider any brief prepared by MATC in determining the survey methods to be used in preparing a condition report for St. Paul's Cathedral, and at least 20 Business Days prior to undertaking a condition report in respect of St. Paul's Cathedral, provide MATC with written details of the survey methods that are proposed to be used. At least 20 Business Days prior to finalising a condition report in respect of St. Paul's Cathedral, Project Co must provide the draft condition report to MATC for comment. | 137214 |
| 10.7.3 | Survey Control | 91112 |
| 10.7.3.1 | Prior to the commencement of any relevant Works, Project Co must undertake a baseline control survey to be established for the purposes of monitoring for: | 91113 |
| | (a) all areas susceptible to settlement, movement or deformation; and | 91114 |
| | (b) all works within the rail or tram reserves. | 91115 |
| 10.7.3.2 | Project Co must, as a minimum, establish and maintain permanent survey marks (PSMs) which tie into the Survey Control Network at the following locations: | 91116 |
| | (a) at all Station excavations; | 91117 |
| | (b) at all intervention shafts; | 91118 |
| | (c) at a maximum spacing of 200m along the Tunnels; and | 91119 |
| | (d) at all major construction zones. | 91129 |
| 10.7.3.3 | All survey and design levels must refer to the Survey Control Network, based upon MGA94 Zone 55 (GDA94) coordinate system and Australian Height Datum (AHD). | 91121 |
| 10.7.3.4 | Surveys undertaken by Project Co must: | 91122 |
| | (a) comply with the Requirements of the Surveying Act where appropriate, and the Surveying (Cadastral Surveys) Regulations; and | 91123 |
| | (b) adopt where appropriate guidelines from Intergovernmental Committee on Surveying and Mapping (ICSM) and the Office of Surveyor General Victoria (OSGV). | 91124 |
| 10.7.3.5 | Project Co must: | 91125 |
| | (a) liaise and coordinate with OSGV when establishing new PSMs; | 91126 |
| | (b) verify and validate all existing datasets including the established Survey Control Network prior to commencement of survey activities; | 91127 |
| | (c) avoid, where possible, disturbance of established Survey Control Network marks or registered OSGV survey marks and must re-establish any such marks disturbed or affected by the works, in accordance with the requirements of relevant Acts, Regulations and Authorities; and | 91128 |
| | (d) provide a copy of quality assurance processes and verification documentation to the State and Independent Reviewer upon request. | 91129 |
| 10.7.4 | Monitoring | 91130 |
| 10.7.4.1 | Project Co must prepare and update the Monitoring Management Plan. | 91131 |
| 10.7.4.2 | Project Co must undertake a detailed and rigorous engineering analysis (including numerical modelling) to determine the Predicted Effects of the Works and the Temporary Works over time on existing ground conditions, infrastructure, properties and utilities (including roads, parks and other publicly accessible areas, footpaths and cycleways, Utility Infrastructure, railways, buildings and other structures including MURL and CityLink). | 91132 |
| 10.7.4.3 | In determining the Predicted Effects, the detailed rigorous engineering analyses must, as a minimum, consider the effects of vertical and horizontal displacements, rotations, strain, shear, structural loads, vibration, noise, geological conditions and variations, seepage, and groundwater movement as well as potential variations or changes to the existing ground and infrastructure conditions. The Predicted Effects must include the limits of accuracy of the prediction and the expected statistical spread of measured results. | 91133 |
| 10.7.4.4 | Project Co must also determine the Acceptable Effects, which must be consistent with | 91134 |

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| | satisfying the Environmental Requirements. | |
| 10.7.4.5 | Throughout the D&C Activities until the later of: | 91135 |
| | (a) Provisional Acceptance; or | 91136 |
| | (b) a time which is not less than 6 months after settlement has stabilised, | 91137 |
| | Project Co must monitor continuously over time the actual effects of the Works and the Temporary Works on the ground and groundwater conditions, infrastructure, properties and utilities and compare the actual effects to both the Predicted Effects and the Acceptable Effects. Continuous monitoring must be undertaken in critical areas. | 91138 |
| 10.7.4.6 | Monitoring of the actual effects of the Works and the Temporary Works on existing ground, infrastructure, properties and utilities must be undertaken by qualified and experienced geologists, geotechnical engineers, structural engineers, heritage specialists, noise and vibration specialists and environmental specialists (as applicable). | 91139 |
| 10.7.4.7 | In the event that the actual effects of the Works and the Temporary Works on the existing ground, infrastructure, properties and utilities exceed the Predicted Effects or significantly vary over time, Project Co must: | 91140 |
| | (a) review and, if necessary, re-evaluate the Predicted Effects and make any adjustment subsequently necessary to any aspects of the manner in which the D&C Activities are undertaken to ensure that the Acceptable Effects are not exceeded; and | 91141 |
| | (b) undertake any remedial action necessary to ensure that the Acceptable Effects are not exceeded, | 91142 |
| | in order to ensure full compliance with the Environmental Requirements of the State Project Documents. | 94273 |
| 10.7.4.8 | Notwithstanding the Predicted Effects or the Acceptable Effects on infrastructure contemplated in this section, Project Co must repair and reinstate infrastructure and property at the earliest opportunity so that Project Co satisfies the Environmental Requirements and the State Project Documents. | 91143 |
| 10.7.4.9 | Project Co must promptly and progressively provide the State and the Independent Reviewer with: | 91144 |
| | (a) analysis and determinations, including the original Predicted Effects and any Acceptable Effects and any revisions, and re-evaluations of the Predicted Effects and the Acceptable Effects; | 91145 |
| | (b) results of monitoring the actual effects of the Works and the Temporary Works on the existing ground conditions, infrastructure and properties over time, in a form which is directly comparable to the Acceptable Effects and Predicted Effects; | 91146 |
| | (c) details of any adjustments to the manner in which Project Co's Works are carried out which are necessary as a consequence of any re-evaluation of Predicted Effects; and | 91147 |
| | (d) details of designs and materials for the repair and reinstatement of infrastructure and properties required by section 10.7.4.8. | 91148 |
| 10.7.4.10 | Project Co must submit, prior to the Date of Provisional Acceptance, a final updated report detailing the Predicted Effects, Acceptable Effects and actual effects of the Works on the existing ground and groundwater conditions, infrastructure, properties and utilities, and detailing the works undertaken in accordance with section 10.7.4.8. | 91149 |
| 10.7.4.11 | Project Co must undertake monitoring of the condition of St. Paul's Cathedral at a consistent or higher standard than previous monitoring performed as part of the Metro Tunnel works, and as adjusted or modified as appropriate to take into account the final Project design and its associated impacts on St. Paul's Cathedral. Where the results of ongoing monitoring suggest that there is a real risk of imminent or significant damage to any part of St. Paul's Cathedral, Project Co must notify MATC as soon as is reasonably practicable. | 137215 |

10.8 Site Management

10.8.1 Construction Site

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| 10.8.1.1 | The Construction Site must be kept in a safe and tidy condition at all times. | 91152 |
| 10.8.1.2 | Project Co must ensure that existing security measures such as locks, barriers and access detection are maintained or equivalent measures introduced to protect existing assets during construction. | 91153 |
| 10.8.1.3 | Waste collection facilities must be confined to the construction site and be accessible via access points which have been established in accordance with the requirements outlined in section 9. | 91154 |
| 10.8.2 | Roads | 91155 |
| | Subject to any maintenance plan agreed or directed under section 8.6.1, all Roads within the Construction Site must be: | 91156 |
| 10.8.2.1 | maintained and repaired until Handback to the relevant Returned Asset Owner; and | 91157 |
| 10.8.2.2 | maintained in accordance with the relevant Returned Asset Owner's road management plans (if any) and usual requirements. | 91158 |
| 10.8.3 | Maintenance Records | 91159 |
| 10.8.3.1 | Maintenance records must be maintained on site and must be available for review by the Independent Reviewer, any relevant Returned Asset Owner or the State. | 91160 |
| 10.8.3.2 | All maintenance and inspection records for the inspection and maintenance activities undertaken during the D&C Phase must be provided to the relevant Returned Asset Owner upon Handback of the Returned Works. | 91161 |
| 10.8.4 | Site Reinstatement | 91162 |
| 10.8.4.1 | Construction Sites, and any other land accessed for the purposes of carrying out any part of the Works, must be progressively reinstated in compliance with the EPRs (subject to the carrying out of the Works) as each part of the Works is completed, as a condition precedent to Handback, Provisional Acceptance or Final Acceptance (as applicable to that part of the Works). | 91163 |
| 10.8.4.2 | All temporary areas and other land accessed or used for the purpose of the D&C Activities, including storage and site facilities, must be reinstated to a condition at least equivalent to that existing prior to their occupation or use after Project Co has departed the land. | 91164 |
| 10.8.5 | Temporary Site Facilities | 91165 |
| 10.8.5.1 | Project Co must ensure that, where reasonable and feasible, any temporary site facilities provided by Project Co include: | 91166 |
| | (a) energy efficient lighting schemes and light fittings; | 91167 |
| | (b) plug-in electrical equipment which complies with the requirements of the Equipment Energy Efficiency Program (E3) "Minimum Energy Performance Standards" and has at least a five-star Energy Rating Label; | 91168 |
| | (c) high performance thermal insulation in all walls, ceilings and floors that optimise thermal performance; | 91169 |
| | (d) natural daylighting; | 91170 |
| | (e) natural ventilation; | 91171 |
| | (f) photovoltaic panels on construction site facilities, acoustic sheds or within the project footprint; | 91172 |
| | (g) rainwater harvesting; | 91173 |
| | (h) water efficient fixtures, fittings and controls; | 91174 |
| | (i) air conditioning refrigerants with low or zero global warming potential; and | 91175 |
| | (j) bicycle storage facilities, showers and changing room facilities. | 91176 |
| 10.8.5.2 | Project Co must consider CPTED principles in the design and construction of any temporary site facilities, hoardings and fencing. | 91177 |
| 10.8.6 | Construction Hoarding, Fencing and Acoustic Sheds | 91178 |
| 10.8.6.1 | General | 91179 |
| | (a) Project Co must ensure that hoarding, fencing or acoustic sheds installed as part of the Works are: | 91180 |
| | (1) designed with consideration of amenity impacts on adjacent properties | 91181 |

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| | including overshadowing; | |
| | (2) capable of being fitted with banners, signage and digital panels; | 91182 |
| | (3) developed as 'living or green structures' including, where feasible, interim vegetation in areas with community interfaces; and | 91183 |
| | (4) maintained and cleaned of graffiti, such that all graffiti is removed within two hours of being identified. | 91184 |
| | (b) Project Co must not place any signage, advertising or branding (other than as required by sections 10.8.6.3 and 10.8.6.4) on the external face of any hoarding, fence or acoustic shed without the prior written approval of the State. | 91185 |
| | (c) If the banners or signage are irreparably damaged, Project Co must install replacement banners or signage within 24 hours of the damage occurring. | 91186 |
| 10.8.6.2 | Hoarding and Fencing | 91187 |
| | (a) Project Co must ensure that hoarding, fencing or any other Site delineation device is compliant with the Urban Design Strategy and is: | 91188 |
| | (1) at least 2.4 metres high; | 91189 |
| | (2) able to screen the Site from view, with the capacity to incorporate viewing access if requested by the State; | 91190 |
| | (3) structurally sound and designed for wind loading; | 91191 |
| | (4) set to allow minimum runoff zone from any vertical transportation in the vicinity; | 91192 |
| | (5) able to protect the public when using the adjacent footpath; and | 91193 |
| | (6) constructed of recycled materials where feasible. | 91194 |
| | (b) Project Co must incorporate public viewing access into the Swanston St face of the City Square hoardings until such time as the City Square acoustic shed is constructed. Viewing access into the site must be provided via Perspex windows of adequate size and spacing to provide a clear view into the construction site, and unless otherwise agreed with the State, the external face of the hoardings must feature hoarding treatment in accordance with the preliminary design proposal prepared by the State. | 150495 |
| 10.8.6.3 | Signage | 91195 |
| | Project Co must provide, install and maintain: | 91196 |
| | (a) wayfinding signage to direct pedestrians, commuters and vehicles around the Construction Site; | 91197 |
| | (b) signage that provides the community with details of the Metro Tunnel Telephone Information Line and out of hours contact details for Project Co; | 91198 |
| | (c) safety signage; and | 91199 |
| | (d) other signage required to comply with the Law. | 91200 |
| 10.8.6.4 | Banners and Digital Panels | 91201 |
| | (a) Project Co must provide, install and maintain banners for the external faces of hoardings, fences and acoustic sheds (visible to the public) that are: | 91202 |
| | (1) produced in accordance with a design provided by the State; | 91203 |
| | (2) made from vinyl (where banners are installed at the locations of future Metro Tunnel stations) and shade cloth (where banners are installed at other locations); and | 91204 |
| | (3) printed in full colour. | 91205 |
| | (b) Project Co must supply and install large format digital panels on hoarding in or around the City Square, Franklin Street and Federation Square sites that is capable of displaying digital content to be provided by the State. | 91206 |
| | (c) Project Co must, every 12 months or as requested by the State, replace the existing banners for the external faces of fences, hoardings and acoustic sheds with new banners. | 91207 |
| 10.8.7 | Interim open space | 91208 |
| | 10.8.7.1 Project Co must provide temporary open space for public access adjacent to, or within | 91209 |

close proximity of, construction sites in the CBD North and CBD South Station Precincts. These sites:

- (a) should be opportunistically identified with public or private land managers; 91210
- (b) must be of a minimum size suitable for two standard bench seats; 91211
- (c) must include temporary vegetation such as large potted or relocatable trees; 91212
- (d) should be north facing where possible; and 91213
- (e) be clearly signed as available for public use. 91214
91215

10.9 Temporary Works

- 10.9.1 Project Co must undertake all necessary Temporary Works including: 91216
 - 10.9.1.1 temporary measures necessary to meet the needs of all road, public area and pathway users during the D&C Activities, including the requirements for any temporary footpaths, shared paths and public transport facilities if applicable; 91217
 - 10.9.1.2 temporary arrangements to divert and control traffic and to provide public amenity, security and safety during the D&C Activities; 91218
 - 10.9.1.3 temporary arrangements for people and vehicles to access all property affected by the D&C Activities; 91219
 - 10.9.1.4 demolition, clearing and associated decontamination; 91220
 - 10.9.1.5 all environmental safeguards and measures necessary to mitigate environmental effects during construction of the Works; 91221
 - 10.9.1.6 sustainability initiatives to minimise resource use during construction of the Temporary Works; 91222
 - 10.9.1.7 cleaning, maintenance, repair, replacement and reinstatement, as required, of all areas occupied by Project Co during construction of the Works; 91223
 - 10.9.1.8 temporary site facilities required for construction of the Works; and 91224
 - 10.9.1.9 temporary infrastructure installed or erected to undertake construction of the Works. 91225
- 10.9.2 Project Co must consider the impacts of imposed loads from plant and materials on existing infrastructure, including but not limited to the Federation Square deck and University Square carpark and agree on a methodology with the asset owner where this is unavoidable. 91226
- 10.9.3 Groundwater control measures must be developed and implemented as part of the temporary works to mitigate against adverse impacts on groundwater. The design of these elements, mitigation measures, management and the monitoring system must be based on a detailed hydrogeological impact assessment. 91227
- 10.9.4 Vertical clearance for Temporary Works 91228
 - Project Co must: 91229
 - 10.9.4.1 provide a minimum vertical clearance for all structures over roadways in accordance with Part 2 of the VicRoads Road Design Guidelines. Notwithstanding this, a temporary minimum clearance of 4.5 metres may be provided over roads during construction subject to the prior written approval of the State; 91230
 - 10.9.4.2 where the vertical clearance during construction is less than the specified design clearance in the VicRoads Road Design Guidelines, design, supply, erect and maintain temporary low clearance warning gauges in advance of the bridgeworks. The location, type and details of all low clearance warning gauges must comply with the requirements of AS 1742.3, taking into account the safety of bridge workers and other traffic, traffic volume, and types of vehicles using the road, and suitable detours for high vehicles. In addition, Project Co must provide bridge clearance signs in accordance with AS 1742.3; 91231
 - 10.9.4.3 submit details of the low clearance warning gauge proposal to the State in the relevant WTMP(s); and 91232
 - 10.9.4.4 remove low clearance warning gauges and bridge clearance signs at the earliest possible time after the completion of the relevant Works. Project Co must arrange and provide traffic management during erection and removal of the low clearance warning gauges. 91233

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| 10.10 Works affecting existing rail infrastructure | 91234 |
| 10.10.1 Project Co must: | 91235 |
| 10.10.1.1 ensure that access to critical railway infrastructure is maintained at all times during construction; | 91236 |
| 10.10.1.2 ensure that safe access and egress to existing stations and all services and infrastructure within existing stations, including platforms and vertical transport, is maintained for the duration of the Works unless otherwise agreed with the Train Franchisee. | 91237 |
| 10.10.1.3 provide safe alternative access to any existing assets impacted by the Works; | 91238 |
| 10.10.1.4 consult with the Train Franchisee regarding any temporary construction or laydown areas that will impact on the operational circulation of an existing station and model the potential impact of such activities; | 91239 |
| 10.10.1.5 in conjunction with the Train Franchisee, conduct risk assessments in relation to the impact of dust and noise on passengers and any impacts to fire and life safety assets or systems in existing stations as a result of the D&C Activities; | 91240 |
| 10.10.1.6 not alter any existing station fire and life safety assets without the express consent of the Train Franchisee; | 91241 |
| 10.10.1.7 ensure that existing fire egress routes are not altered or augmented without the express consent of the Train Franchisee; | 91242 |
| 10.10.1.8 be responsible for any electrical faults on circuits in existing metropolitan stations affected by the Works; | 91243 |
| 10.10.1.9 ensure that existing ICT/OCS functionality is maintained for the duration of the Works; | 91244 |
| 10.10.1.10 stage the Works in such a way that there is no loss of firefighting or detection functionality in existing stations while those stations are operational; | 91245 |
| 10.10.1.11 give consideration to utilising occupations planned by other works where track occupations are required; | 91246 |
| 10.10.1.12 consider impacts of imposed loads from plant and materials on existing rail infrastructure and agree on a methodology with the Rail Franchisee where this is unavoidable; | 91247 |
| 10.10.1.13 repair any damage to any rail infrastructure, road, footpath, bridge or other structure within the Train Franchisee leasehold as a result of the Works; | 91248 |
| 10.10.1.14 liaise with the Train Franchisee prior to the removal of any salvageable existing rail infrastructure and make any necessary arrangements for its relocation to the satisfaction of the Train Franchisee; | 91249 |
| 10.10.1.15 immediately report any hazard, incident or safety practice that may affect the Accreditation of the Train Franchisee to the State and the Train Franchisee, and provide any information reasonably required by the Train Franchisee in relation to the hazard, incident or safety practice; and | 91250 |
| 10.10.1.16 notify the Train Franchisee of any hazardous materials that may be disturbed that have the potential to impact on existing stations or Train Operations. | 91251 |
| 10.10.2 Any relocation or modification of existing Train Franchisee staff and station facilities must be undertaken in consultation with and to the satisfaction of the Train Franchisee. | 91252 |
| 10.10.3 Any access to the Train Franchisee's infrastructure lease must comply with the MTM Site Access Procedures L1-CCO-PRO-001. | 91253 |
| 10.11 Works affecting CityLink | 91254 |
| 10.11.1 Project Co must undertake the Project Activities in accordance with the Citylink Direct Interface Agreement. | 91255 |
| 10.12 Utility Infrastructure Works | 91256 |
| 10.12.1 General | 91257 |
| 10.12.1.1 Project Co must: | 91258 |

- (a) identify all the Utility Infrastructure (including overland flow paths) potentially affected by D&C Activities to determine requirements for adjustment, protection, support or relocation. This must be undertaken in consultation with the relevant Utility Infrastructure owner or Authority; 91259
 - (b) identify all Utility Infrastructure required for D&C Activities and must do all things necessary to provide and maintain connections to such Utility Infrastructure to the Works and the Temporary Works; 91260
 - (c) whether or not the existence or extent of the existing Utility Infrastructure was known prior to the date of the Agreement: 91261
 - (1) investigate, adjust, protect, support, relocate or provide for all Utility Infrastructure services that are affected by D&C Activities or required for D&C Activities and obtain acceptance from Utility Providers for such Works; and 91262
 - (2) ensure that all Utilities remain unimpeded in their function for the duration of the Works; 91263
 - (d) ensure that the supply of critical services, including the 450 diameter gas transmission main (Dandenong to West Melbourne), is not interrupted at any time during the Works; 91264
 - (e) ensure that Utility services to existing customers are maintained for the duration of the Works; 91265
 - (f) avoid unplanned disruptions to Utility Infrastructure services resulting from D&C Activities and ensure that planned disruptions are minimised. Project Co must advise all affected parties including local residents, businesses, and the State prior to any disruption of any Utility Infrastructure; 91266
 - (g) arrange, and where necessary design, and coordinate the relocation of all Utility Infrastructure affected by the Works and must ensure that the requirements of each Utility Infrastructure owner and Authority are met. Project Co must obtain the written approval and acceptance of all works to and around any Utility Infrastructure from the relevant Utility Infrastructure owner or Authority in accordance with the Agreement; 91267
 - (h) undertake the relocation of Utility Infrastructure in a manner so as to minimise the impact of pedestrian, tram and traffic diversions; 91268
 - (i) not undertake blasting within 20 metres of Utility Infrastructure, unless otherwise agreed with Utility Provider in advance of the commencement of the relevant Utility Infrastructure Works; and 91269
 - (j) inform the State of the status of the Utility Infrastructure owner or Authority arrangements and must provide sufficient notice to allow the State Representative to attend Utility Infrastructure owner or Authority meetings as may be required from time to time. 91270
- 10.12.1.2 Temporary relocations must be avoided, where possible. 91271
- 10.12.1.3 Permanent location markers must be provided as required by the relevant owner or Authority. As constructed details of the locations of Utility Infrastructure must be provided to the State and the Utility Provider on completion of each section of the Works. 91272
- 10.12.1.4 All Utility Infrastructure exposed to view as a consequence of D&C Activities must be protected in accordance with the requirements of the relevant Utility Infrastructure owner or Authority. 91273
- 10.12.1.5 Loading on third party assets, including as a result of new construction, vehicle movements and construction storage, must not exceed agreed limits. 91274
- 10.12.1.6 Project Co must limit vibration to a maximum of 20mm/s peak particle velocity as measured at all utility service assets, unless a specific requirement is otherwise agreed with the relevant Utility Provider in writing in advance of commencement of the relevant part of the Works. 91275
- 10.12.1.7 With the approval of the relevant Authorities, Project Co may abandon Utility Infrastructure, in which case any works to decommission and make safe the Utility Infrastructure must be to the satisfaction of the Authorities. 91276
- 10.12.1.8 Protection must be provided during the Works to not adversely impact existing assets in 91277

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| the vicinity. Protection supported by structural assessments must be provided against, but not be limited to, the following: | |
| (a) ground vibration; | 91278 |
| (b) vehicle and plant movements; | 91279 |
| (c) excavation; | 91280 |
| (d) access (operational and maintenance); and | 91281 |
| (e) temporary works. | 91282 |
| 10.12.1.9 Project Co must ensure that no damage is caused to the existing power assets in Laurens Street as part of the station construction or tunnelling (including grouting to start the TBM). | 91283 |
| 10.12.1.10 The performance of the Works must not prevent the safe operation and maintenance of existing assets. | 91284 |
| 10.12.1.11 All utility diversion works must consider the impact to the road surface where the road will not be resurfaced as part of the overall Works. | 91285 |
| 10.12.2 Drainage | 91286 |
| 10.12.2.1 Physical protection must be provided to all drainage assets delivered as part of the Works. | 91287 |
| 10.12.2.2 Existing drainage connections and irrigation services impacted by the Works through the Shrine of Remembrance must be reinstated to the satisfaction of the City of Melbourne. | 91288 |
| 10.12.3 Water Utility Infrastructure Works | 91289 |
| 10.12.3.1 All Utility Infrastructure within the Potential Zone of Influence must be reviewed for risk rating prior to the relevant part of the Works being undertaken and any requirement for renewal or protection identified. | 91290 |
| 10.12.3.2 Water assets must be adequately protected and monitored so that no deterioration from their current condition occurs as a result of the Works. This must be based on a risk assessment including for any works proposed over, under or within vicinity of water or sewer mains. | 91291 |
| 10.12.3.3 Continuity of all water supplies, including fire-fighting water supplies, must be provided to Royal Melbourne Hospital (RMH), Royal Women's Hospital (RWH), Victorian Comprehensive Cancer Centre (VCCC) and University of Melbourne (UoM) with all connections/hydrants to be identified. | 91292 |
| 10.12.3.4 Project Co must ensure that the critical '2 Star rating' (involving assurance of dual supplies and redundancy) to the RMH, RWH and VCCC is maintained at all times during the Works for any temporary or permanent relocation of City West Water assets. | 91293 |
| 10.12.3.5 Uninterrupted service must be provided to existing customers and for firefighting services despite any temporary water diversions. | 91294 |
| 10.12.3.6 Project Co must undertake all water main relocation works in periods of low demand (winter) unless otherwise agreed with City West Water. | 91295 |
| 10.12.3.7 Water supply quality and quantity to all water customers (domestic and emergency services) must be maintained during the Works. | 91296 |
| 10.12.3.8 Temporary and permanent relocation of water assets must maintain at a minimum the existing agreed water supply quality, quantity and pressure to all research and medical facilities including the RMH, RWH VCCC and RMIT such that no water is supplied to such facilities from "dead ends" and that they are not the last user on a water main. | 91297 |
| 10.12.3.9 Project Co must ensure all existing water connection points from the relocated City West Water assets to its customers are re-instated at current building connection points unless agreed by City West Water and the customer. | 91298 |
| 10.12.3.10 A risk assessment must be undertaken of City West Water's DN750Ø and DN450Ø distribution mains on Royal Parade when the Station design, construction methodology, topography, timing etc. is known to determine the extent of renewal of these mains, considering the consequences of failure during and post construction (especially of the DN450Ø which is an older cast iron main). This risk assessment will also inform the location of the online pressure / flow monitors (e.g. on-line acoustic monitoring for early | 91299 |

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| | leak detection) and isolation valves required. | |
| 10.12.3.11 | Project Co must ensure that the structural and operational integrity of both the DN 750 Ø and 450Ø water mains running along Royal Parade and Elizabeth St are maintained at all times so that continuous supply is available always both to CBD and all local customers. | 91300 |
| 10.12.3.12 | Project Co must review and agree with City West Water the pipe sizing and network reconfiguration to ensure supply/fire service demand requirements and pressures are maintained to commercial customers (including to the Kensington station). The MFB must be notified and consulted to review the proposed fire management system. | 91301 |
| 10.12.3.13 | Project Co must liaise with City West Water to conduct a full planned shutdown to establish the number of properties connected at Childers St and south of the railway line and their demands/capacity and pressure requirements. | 91302 |
| 10.12.4 | Sewer Utility Infrastructure Works | 91303 |
| 10.12.4.1 | Asset condition surveys, using CCTV or other inspection methods, must be undertaken of the sections of the existing North Yarra Sewer Main and South Yarra Main Sewer and associated manholes impacted by the Works prior to, during and after construction of Works. | 91304 |
| 10.12.4.2 | Vibrations at the existing brick South Yarra Sewer Main must be limited to a maximum of 2mm/sec during construction. Where vibrations have the potential to exceed this threshold Project Co must submit the construction methodology to Melbourne Water for approval. | 91305 |
| 10.12.4.3 | Project Co must develop a decommissioning and dilapidation plan for the section of the South Yarra Main to be abandoned, including any manholes or ventilator shafts to be de-commissioned as part of the South Yarra Main Sewer diversion works (e.g. SYM15) as agreed with Melbourne Water. | 91306 |
| 10.12.4.4 | Pre and post construction asset condition assessments (CCTV or equivalent) of the potentially impacted section of the MEL in Flinders St must be undertaken to the satisfaction of City West Water. | 91307 |
| 10.12.4.5 | Project Co must coordinate any surveys required along the MEL potentially affected by both the Flinders Street Station interchange and Federation Square entry adit connection with City West Water to inform proposed protection or relocation options required as a result of the project. | 91308 |
| 10.12.4.6 | Project Co must confirm with City West Water impacts on MEL sewer resulting from the design of the Flinders Street Station interchange and Federation Square entry and agree on appropriate protection or relocation of MEL as part of its works. | 91309 |
| 10.12.4.7 | Protection must be provided to the existing MEL and the new replaced/relocated section of the MEL during all phases of the Utility Infrastructure relocation works as agreed with City West Water. | 91310 |
| 10.12.4.8 | Project Co must confirm with City West Water the flow monitoring requirements along the MEL sewer line. | 91311 |
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| 10.13 Particular location requirements | | |
| 10.13.1 | General | 91313 |
| 10.13.1.1 | The Works must be undertaken to accommodate the specific stakeholder considerations as set out in Appendix C2 so far as is reasonably practicable. | 91314 |
| 10.13.2 | Arden | 91315 |
| 10.13.2.1 | Any aspect of construction which will result in a permanent impact on the land licenced from VicTrack must be agreed to by VicTrack (e.g. easements for the power conduits). | 94310 |
| 10.13.2.2 | Project Co must coordinate with Brookfield and VicTrack for any issues relating to neighbouring tenants. | 91316 |
| 10.13.3 | Parkville | 91317 |
| 10.13.3.1 | The Works must not adversely affect air quality by disrupting soil and releasing aspergillus spores, which may enter hospitals via air intakes and cause infection in patients. | 91318 |

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| 10.13.3.2 | Project Co must ensure that air ambulance access to the helipad on RMH roof is maintained at all times. | 91319 |
| 10.13.3.3 | Project Co must coordinate its construction activities with the Graduate Union of the University of Melbourne and the Works must not adversely impact the redevelopment of Graduate House. | 91320 |
| 10.13.3.4 | The Sculpture in front of Tri-radiate Building on Grattan Street must be removed and stored at the University of Melbourne during construction. | 91321 |
| 10.13.4 | CBD North | 91322 |
| 10.13.4.1 | The Works must not disturb the forecourt or gardens outside the State Library. | 91323 |
| 10.13.4.2 | Project Co must, in consultation with RMIT, develop a detailed delivery and servicing strategy for RMIT owned buildings and tenants including the Oxford Scholar, Swanston Academic Building retail spaces, New Academic Street retail spaces, all buildings fronting Swanston Street (Buildings 22, 16, 8, 10, 12, 14, 39, 80, 18, 37) and Franklin Street (Buildings 9, 14, 39, 49). | 91324 |
| 10.13.4.3 | Project Co must identify and maintain a register of noise and vibration sensitive equipment within the RMIT city campus. This register must include monitoring measures to ensure equipment operation is not impacted without prior agreement with RMIT. | 91325 |
| 10.13.5 | CBD South | 91326 |
| 10.13.5.1 | Project Co must identify in consultation with City of Melbourne and Victoria Police alternative parking for police vehicles at CBD South Station in vicinity of Melbourne East police station. | 91327 |
| 10.13.6 | Domain | 91328 |
| 10.13.6.1 | Works within the Shrine of Remembrance land must be performed in a manner that is sensitive to the need to retain all existing trees. Any proposed Works in this area must be located outside of the Tree Protection Zone; | 91329 |
| 10.13.6.2 | Throughout the D&C Activities Project Co must continue to ensure that impact on the Shrine and its associated infrastructure located within the reserve within proximity to the construction site (including memorials, trees, plaques, furniture and paths/roadways) is eliminated or minimised. | 91330 |
| 10.13.6.3 | There must be respectful awareness of various commemoration days throughout the year and construction activities must be organised so as to minimise disruption on any ceremonial proceedings. All works are to be suspended on ANZAC day and Remembrance Day. The site must be tidied/prepared accordingly for such events. | 91331 |
| 10.13.6.4 | Project Co must minimise the use of public parking surrounding the Shrine precinct including Domain Road, Dallas Brooks Drive, Birdwood Ave. Sufficient coach access is to be provided along Birdwood Ave during business hours. This is particularly important during ceremonial events. | 91332 |
| 10.13.6.5 | Construction activities must respect the sensitivities associated with the Cobbers Memorial Statue and the people that regularly visit it. Construction work must not take place during the Battle of Fromelles ceremony. | 91333 |
| 10.13.6.6 | Pedestrian access along both sides of St Kilda Rd and Domain Rd are to be maintained where possible. Pedestrian access to the Cobbers Statue and MacPherson Robertson fountain must be maintained. | 91334 |
| 10.13.6.7 | Project Co must comply with the Victoria Barracks security procedures in the Victoria Barracks precinct. | 91335 |

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| 11 | Transition and Acceptance Requirements | 91336 |
| 11.1 | Testing and Commissioning | 91337 |
| 11.1.1 | Project Co must: | 91338 |
| 11.1.1.1 | prepare and update the Testing and Commissioning Management Plan; | 91339 |
| 11.1.1.2 | undertake testing and commissioning activities as set out in the Testing and Commissioning Management Plan and the Final Acceptance Schedule; | 91340 |
| 11.1.1.3 | in respect of Returned Train Works: | 91341 |
| | (a) actively participate in the JCC Systems Integration Team (SIT) established as a subcommittee to the Joint Coordination Committee (JCC); and | 91342 |
| | (b) undertake testing and commissioning activities, or support other parties to the JCC in undertaking such activities, as set out in section 11.1.4 or as otherwise required in order to support operational readiness, acceptance and Handback of Returned Train Works; | 91343 |
| 11.1.1.4 | prepare testing and commissioning records in accordance with section 11.1.5; and | 91344 |
| 11.1.1.5 | carry out its testing and commissioning activities in a structured manner to ensure a logical and efficient progression through the testing and commissioning activities. | 91345 |
| 11.1.2 | Testing and commissioning must: | 91346 |
| 11.1.2.1 | be carried out and comply with the requirements of this section, the Construction Management Plan and the Testing and Commissioning Management Plan; and | 91347 |
| 11.1.2.2 | be documented with the performance results clearly recorded by the appropriate personnel against the design requirements and documentation. | 91348 |
| 11.1.3 | When specific tests do not form part of the Works, these must be identified and reasons for exclusion clearly recorded in the testing and commissioning documentation. | 91349 |
| 11.1.4 | System integration and testing hierarchy | 91350 |
| 11.1.4.1 | Project Co must: | 91351 |
| | (a) in respect of the Works, perform and pass: | 91352 |
| | (1) all Level 0 Systems Integration; | 91353 |
| | (2) all Level 1 Systems Integration; and | 91354 |
| | (3) all Level 2 Systems Integration; | 91355 |
| | (b) for all Relevant Infrastructure other than the Rail Systems Assets, perform and pass: | 91356 |
| | (1) all Level 3 Systems Integration; and | 91357 |
| | (2) all Level 4 Systems Integration; | 91358 |
| | (c) in respect of the Rail Systems Assets, provide support to enable the RSA to perform and pass: | 91359 |
| | (1) all Level 3 Systems Integration; and | 91360 |
| | (2) all Level 4 Systems Integration; and | 91361 |
| | (d) undertake any other work or testings as directed by the SIT and as required to enable transition of the system to operational readiness. | 91362 |
| 11.1.5 | Testing and commissioning records | 91363 |
| 11.1.5.1 | Project Co must maintain up to date and marked up testing records for the duration of the testing and commissioning activities. | 91364 |
| 11.1.5.2 | Testing and commissioning records must be made available to the State and the Independent Reviewer in accordance with section 1.3 and must include: | 91365 |
| | (a) Work Lot registers which must: | 91366 |
| | (1) provide access to all checklists, test reports, test certificates, as-built survey certificates or other quality assurance documentation required by the Quality Management Plan and ITPs; and | 91367 |
| | (2) identify for each Work Lot: | 91368 |

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| | (i) location and Asset (including Asset Components and Asset-Sub Components); | 91369 |
| | (ii) quantities and sources of materials; | 91370 |
| | (iii) details to enable tracing of test samples; and | 91371 |
| | (iv) sampling frequency compared to specified testing frequency; | 91372 |
| | (b) registers of sampling and testing which enable identification of all test requisitions for each Work Lot and the date and reference number of corresponding test reports; | 91373 |
| | (c) Road Safety Audit reports; | 91374 |
| | (d) commissioning reports verifying compliance with: | 91375 |
| | (1) ride quality requirements; | 91376 |
| | (2) rolling stock noise amelioration requirements; and | 91377 |
| | (3) any mechanical and electrical systems requirements; and | 91378 |
| | (e) as-built survey certificates, which must be certified by a qualified surveyor and which must compare the as-built survey with the design geometry and identify any non-conformances. | 91379 |
| 11.1.6 | Testing of off-site equipment | 91380 |
| 11.1.6.1 | Off-site manufactured equipment must be tested at the point of manufacture prior to delivery (wherever this is practical) and further on site tests carried out during commissioning. | 91381 |
| 11.1.6.2 | Testing of off-site equipment or subsystems must comply with the Testing and Commissioning requirements as well as the Testing and Commissioning Management Plan. | 91382 |
| 11.1.6.3 | Testing of off-site equipment must be completed in a timely manner such that its acceptance does not directly or indirectly affect other deliverables. | 91383 |
| 11.1.7 | Non-conformance and Defects | 91384 |
| 11.1.7.1 | The State and the Independent Reviewer must be promptly notified of any non-conformance or Defect identified by testing and commissioning. | 91385 |
| 11.1.7.2 | Non-conformances or Defects identified by testing and commissioning must be recorded in the Defects List as set out in section 1.3.9. | 91386 |
| | | 91387 |
| 11.2 | Handback | |
| 11.2.1 | Handback Documentation | 91388 |
| 11.2.1.1 | Project Co must provide Handback Documentation for each Returned Asset or group of Returned Assets that contains the key information required by the State or the Returned Asset Owner to operate, maintain or repair the relevant Returned Asset. | 91389 |
| 11.2.1.2 | As a minimum, the Handback Documentation for each Returned Asset must include: | 91390 |
| | (a) records, documentation and other information required under the Agreement (including in the form and/or manner in which they are required to be prepared, updated and stored under the Agreement), including the As-Built Records, Construction Documentation and Construction Records; | 91391 |
| | (b) records relevant to compliance with the requirements of all Laws and Authorities; | 91392 |
| | (c) copies of all correspondence with all relevant Authorities and Key Subcontractors in relation to Approvals; | 91393 |
| | (d) a register of all compliance inspections, audits, details of any non-compliance and rectification actions taken or outstanding; | 91394 |
| | (e) evidence of satisfaction of all requirements (including clearances, declarations and certificates) required by Stakeholders (whether under the Agreement or otherwise) in relation to the Works; | 91395 |
| | (f) ITPs to the satisfaction of the State and Independent Reviewer (including those inspections and tests required at Provisional Acceptance), demonstrating compliance to the State Project Documents including evidence that the inspections, test results and audits are in accordance with the Agreement; | 91396 |

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| (g) | evidence that all tests (including the tests set out in the Completion Schedule, the Final Acceptance Schedule and the Testing and Commissioning Management Plan) have been passed in accordance with the Agreement; | 91397 |
| (h) | evidence that all incident reports have been closed out; | 91398 |
| (i) | documents and details proving that all waste materials have been removed from Site and disposed of in an accordance with the State Project Documents; | 91399 |
| (j) | copies of all structural design calculation documentation for each item of Returned Works; | 91400 |
| (k) | all manufacturers' and trade warranties required by the Agreement; | 91401 |
| (l) | copies of all Regulatory Requirements required by the Agreement including evidence of compliance with the State's Regulatory Requirements; | 91402 |
| (m) | details of all non-conformances that have been resolved; | 91403 |
| (n) | the program to correct the Defects on the Punch List along with contact details for the person who will responsible for the correction of the Defects; | 91404 |
| (o) | regular works inspection scope, staff resources and schedule to be carried out during the Defects Liability Period; | 91405 |
| (p) | the details of any claims that are not finally resolved; | 91406 |
| (q) | the Health and Safety Completion Report as set out in section 11.2.2; | 91407 |
| (r) | certification from each of Project Co's design consultants stating that Project Co's Documents submitted by Project Co to the State and Independent Reviewer comply with the requirements of the Agreement; | 91408 |
| (s) | certification from Project Co (in a form acceptable to the State and Independent Reviewer) that the Works have been executed in accordance with the IFC Design Documentation; | 91409 |
| (t) | certification from a licensed surveyor to the effect that the Returned Asset is within the boundaries required by the Agreement and that the structural elements of the Returned Asset are within the spatial tolerances specified in the Agreement in locations where the Returned Asset is within 2m of the boundary; | 91410 |
| (u) | a Site Condition Report that demonstrates that the Site is at least in as good condition as identified in the condition survey, prepared under section 10.7.2, with the exception of the Returned Asset; and | 91411 |
| (v) | all other information which, in the opinion of the State and Independent Reviewer, is reasonably necessary for the operation, use and maintenance of the Returned Asset. | 91412 |
| 11.2.1.3 | In addition to the Handback Documentation required to be provided for Returned Assets under section 11.2.1.2, the Handback Documentation for Returned Train Works, Returned VicTrack Works and Returned Tram Works must also include: | 91413 |
| (a) | Rail O&M Manuals and any other relevant O&M Manuals in accordance with the requirements of the State Project Documents; | 91414 |
| (b) | maintenance requirements for each trackform supported by documentation showing the basis for these requirements; | 91415 |
| (c) | delivery of all the receipts and documents confirming the provision of Spare Parts ordered in accordance with the Agreement; | 91416 |
| (d) | evidence of compliance with all Project Co's obligations in respect of the Rail Safety National Law (RSNL); | 91417 |
| (e) | asset data associated with changes to rail asset configuration in accordance with the current version of the PTV Infrastructure Drafting Standards and the PTV PASS Assets Data Requirements; | 91418 |
| (f) | a register of all system, sub-system and enabling and supporting system faults, the outcome of the fault investigation, fault root-cause and measures taken to rectify the fault; | 91419 |
| (g) | all documentation which is required to support an amendment to a Safety Management System in accordance with the RSNL; | 91420 |
| (h) | a certificate from Project Co which states that any regulatory reviews required of the Safety Management System have been satisfactorily completed; and | 91421 |
| (i) | any other documentation necessary to demonstrate compliance with the RTO's | 91422 |

Safety Management System and the State Project Documents.

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| 11.2.2 | Health and Safety Completion Report | 91423 |
| | Project Co must prepare and provide to the State and the Independent Reviewer for review a Health and Safety Completion Report that includes, as a minimum, the following: | 91424 |
| 11.2.2.1 | a final copy of Project Co's risk register (safety) and any other documentation that details any residual risks to Health and Safety in connection with the Works; | 91425 |
| 11.2.2.2 | a summary of the safety information in the monthly Health and Safety Performance Report in accordance with section 6.1.5.2 across the life of the Works; and | 91426 |
| 11.2.2.3 | details of any health and safety innovations or initiatives implemented in connection with the Works. | 91427 |
| 11.2.3 | Training Schedule | 91428 |
| 11.2.3.1 | Project Co must develop and implement a Training Schedule relevant for station staff, station controllers, train operators, train control operators, maintainers and other appropriate end users whose role is determined to be impacted by the Works. | 91429 |
| 11.2.3.2 | The Training Schedule must include each of the training modules and proposed programs for the following 12 month period to meet the obligations of the Agreement. | 91430 |
| 11.2.3.3 | Project Co must review and update the Training Schedule on an ongoing basis throughout the Term to ensure that training needs comply with its obligations under the Agreement. | 91431 |
| 11.2.3.4 | Project Co must submit the Training Schedule for review in accordance with the Review Procedures. | 91432 |
| 11.2.3.5 | In relation to fire and life safety assets, Project Co must: | 91433 |
| | (a) liaise with the Train Franchisee to develop operating procedures to be implemented in the event of a fire and/or other emergency; | 91434 |
| | (b) provide comprehensive training to operations and maintenance staff in the operation, maintenance and testing of all installed fire and life safety systems in advance of Handback. The training must be supported by complete operational, maintenance and testing documentation and schedules; and | 91435 |
| | (c) develop training requirements to ensure that Train Franchisee and MFB personnel are appropriately trained in relation to: | 91436 |
| | (1) the operational requirements for the fire and life safety systems; | 91437 |
| | (2) the implementation of emergency response procedures in line with the Emergency Risk Management Plan; and | 91438 |
| | (3) the communication protocol and requirements in the event of a fire in the Tunnel or Stations. | 91439 |
| 11.2.4 | Spares, special tools and equipment | 91440 |
| | Project Co must provide all spares, special tools and equipment for Returned Assets (at Handback) as required by the respective standards and specifications under which these assets are designed and constructed in accordance with Annexure 3, sections 3.7.4(e) and (f). | 91441 |
| 11.2.5 | Tunnel cleaning methodology | 91442 |
| | Project Co must provide a detailed methodology for the periodic cleaning of the linings of Tunnels, shafts and cross passages identifying the applicable processes, frequencies, equipment and chemicals that may be applied without adversely impacting the Tunnels, shafts and cross passages or any equipment contained therein. The methodology must include case studies where the proposed processes have been successfully applied in similar environments. | 91443 |

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| 12 | Rail Safety Accreditation | 91444 |
| 12.1 | General | 91445 |
| 12.1.1 | Project Co must develop, implement and maintain a Rail Safety Accreditation Plan which identifies how Project Co will comply with the rail safety requirements of the Agreement. | 91446 |
| 12.2 | Accreditation | 91447 |
| 12.2.1 | Throughout the D&C Phase Project Co must, prior to carrying out any work arising under or in connection with Works for which Accreditation is required by the Rail Safety National Law (RSNL), hold and maintain Accreditation or carry out Works under the effective management and control of a Key Subcontractor that is an accredited Rail Transport Operator (RTO). | 91448 |
| 12.2.2 | Project Co must provide the State with copies of communications between Project Co and ONRSR in relation to Accreditation and the RSNL. | 91449 |
| 12.3 | Returned Train Works | 91450 |
| 12.3.1 | Project Co must: | 91451 |
| 12.3.1.1 | identify and provide justification for any design variances to engineering and technical standards applicable to the Works (including those which form part of a RTO's Safety Management System), to enable the RTOs to assess such variances in accordance with their Management of Change Process. Project Co will be responsible for obtaining agreement from relevant RTOs for any proposed design variances to standards or technical standards as part of the Works prior to incorporating into the Works; | 91452 |
| 12.3.1.2 | develop, implement and seek review from affected RTOs in respect of processes, procedures and records, to demonstrate the effective management of Project Co's rail safety obligations; | 91453 |
| 12.3.1.3 | if requested by the State, provide information in a format acceptable to affected RTOs, that clearly identifies the changes arising out of the Works, including (without limitation) design, construction, testing, commissioning, operations and maintenance; | 91454 |
| 12.3.1.4 | participate in any required risk assessments associated with the RTO's Management of Change Process in relation to the Works; | 91455 |
| 12.3.1.5 | provide all necessary information to assist all affected RTOs in the carrying out of their Management of Change Process to manage the changes arising out of the Works; | 91456 |
| 12.3.1.6 | provide all necessary information to assist all affected RTOs in the development of any necessary applications for variation of Accreditation or any notifications; | 91457 |
| 12.3.1.7 | prepare all relevant Type Approval information to a level of detail and format acceptable by the affected RTOs (including as required by the relevant RTO) for any types of infrastructure not currently Type- Approved by the relevant RTO. Project Co will be responsible for obtaining Type Approval for any part of the Works prior to incorporation into the Works; | 91458 |
| 12.3.1.8 | provide all necessary information to assist all affected RTOs in the preparation of any new, or the alteration of any existing, Safety Interface Agreements (as described in the RSNL); and | 91459 |
| 12.3.1.9 | provide all affected RTOs with any information requested for the purposes of updating their asset registers. | 91460 |

13 [Not disclosed]

Annexure 1 Management Plans

91503

Table Ann- 1: Submission and updating requirements for Management Plans

91504

| Name of Management Plan | Time for Submission | Period during which Project Co must provide updates | Update Interval |
|---|---|---|-----------------|
| Project Management Plans | | | |
| Strategic Management Plan | On or before Financial Close. | From initial submission until the end of the D&C Phase. | 6 monthly |
| Project Management Plan | On or before Financial Close. | From initial submission until the end of the D&C Phase. | 6 monthly |
| Quality Management Plan | On or before Financial Close. | From initial submission until the end of the D&C Phase. | 6 monthly |
| Risk Management Plan | On or before Financial Close. | From initial submission until the end of the D&C Phase. | 6 monthly |
| PPP Interface Management Plan | On or before Financial Close. | From initial submission until the Date of Final Acceptance. | 6 monthly |
| Workforce Development and Training Management Plan | Within 30 Business Days after Financial Close. | From initial submission until the Date of Final Acceptance. | 6 monthly |
| Social Procurement Management Plan | Within 30 Business Days after Financial Close. | From initial submission until the Date of Final Acceptance. | 6 monthly |
| Industrial Relations Management Plan | On or before Financial Close. | From initial submission until the Date of Final Acceptance. | 6 monthly |
| Information Management Plan | On or before Financial Close. | From initial submission until the Date of Final Acceptance. | 6 monthly |
| Digital Engineering Management Plan | On or before Financial Close. | From initial submission until the Date of Final Acceptance. | 6 monthly |
| Knowledge Management Plan | Within 120 Business Days after Financial Close. | From initial submission until the Date of Final Acceptance. | 6 monthly |
| Competency Management Plan | Within 30 Business Days after Financial Close. | From initial submission until the Date of Final Acceptance. | 6 monthly |
| Systems Engineering and Assurance Management Plans | | | |
| Systems Engineering Management Plan | On or before Financial Close. | From initial submission until the Date of Final Acceptance. | 6 monthly |
| Configuration Management Plan | On or before Financial Close. | From initial submission until the Date of Final Acceptance. | 6 monthly |
| Requirements Management Plan | On or before Financial Close. | From initial submission until the Date of Final Acceptance. | 6 monthly |
| Verification & Validation Management Plan | Within 20 Business Days after Financial Close. | From initial submission until the Date of Final Acceptance. | 6 monthly |
| Systems Assurance Management Plan | On or before Financial Close. | From initial submission until the Date of Final Acceptance. | 6 monthly |
| System Safety Management Plan | Within 20 Business Days after Financial Close. | From initial submission until the Date of Final Acceptance. | 6 monthly |
| RAM Management Plan | Within 20 Business Days after Financial Close. | From initial submission until the Date of Final Acceptance. | 6 monthly |

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| Name of Management Plan | Time for Submission | Period during which Project Co must provide updates | Update Interval |
|--|--|---|-----------------|
| System Integration Management Plan | Within 20 Business Days after Financial Close. | From initial submission until the Date of Final Acceptance. | 6 monthly |
| Human Factors Management Plan | Within 20 Business Days after Financial Close. | From initial submission until the Date of Final Acceptance. | 6 monthly |
| Environmental Management Plans | | | |
| Construction Environmental Management Plan | On or before Financial Close. | From initial submission until the end of the D&C Phase. | 6 monthly |
| Site Environment Implementation Plan | At least 30 Business Days prior to the commencement of Works at the relevant Site. | From initial submission until the date that all of the relevant Returned Assets have achieved Handback. | 6 monthly |
| Urban Design Management Plan | Within 40 Business Days after Financial Close. | From initial submission until the Date of Provisional Acceptance. | 6 monthly |
| Noise and Vibration Management Plan | On or before Financial Close. | From initial submission until the Date of Final Acceptance. | 6 monthly |
| Sustainability Management Plan | | | |
| Sustainability Management Plan | Within 20 Business Days after Financial Close | From initial submission until the Date of Provisional Acceptance. | 6 monthly |
| Communications & Stakeholder Engagement Management Plan Management Plan | | | |
| Communications and Stakeholder Engagement Management Plan | On or before Financial Close. | From initial submission until the Date of Final Acceptance. | 6 monthly |
| Health and Safety Management Plan | | | |
| Health and Safety Management Plan | On or before Financial Close. | From initial submission until the end of the D&C Phase. | 6 monthly |
| Emergency Response and Incident Management Plan | On or before Financial Close. | From initial submission until the end of the D&C Phase. | 6 monthly |
| Design Management Plan | | | |
| Design Management Plan | On or before Financial Close. | From initial submission until the Date of Final Acceptance. | 6 monthly |
| Electromagnetic Compatibility Management Plan | Within 60 Business Days after Financial Close. | From initial submission until the Date of Final Acceptance. | 6 monthly |
| Transport Management Plans | | | |
| Transport Management Plan | On or before Financial Close. | From initial submission until the Date of Final Acceptance. | 6 monthly |
| Traffic Management Plans | On or before Financial Close. | From initial submission until the Date of Final Acceptance. | 6 monthly |
| Worksite Traffic Management Plans | At least 30 Business Days prior to the commencement of Works at the relevant Site. | From initial submission until the date that all of the relevant Returned Assets have achieved Handback. | 6 monthly |

| Name of Management Plan | Time for Submission | Period during which Project Co must provide updates | Update Interval |
|---|--|---|-----------------|
| Construction Management Plans | | | |
| Construction Management Plan | On or before Financial Close. | From initial submission until the end of the D&C Phase. | 6 monthly |
| Mobilisation Management Plan | On or before Financial Close. | From initial submission until the Date of Final Acceptance. | 6 monthly |
| Spoil Management Plan | On or before Financial Close. | From initial submission until the Date of Provisional Acceptance. | 6 monthly |
| Monitoring Management Plan | On or before Financial Close. | From initial submission until the Date of Final Acceptance. | 6 monthly |
| Demolition Management Plan | Within 20 Business Days after Financial Close. | From initial submission until the Date of Provisional Acceptance. | 6 monthly |
| Rail Access Management Plan | Within 20 Business Days after Financial Close. | From initial submission until the Date of Final Acceptance. | 6 monthly |
| Completion and Commissioning Management Plan | | | |
| Testing and Commissioning Management Plan | At least 12 months prior to the commencement of Level 1 System Integration activities. | From initial submission until the Date of Final Acceptance. | 6 monthly |
| Handback Management Plan | At least 24 months prior to the first Handback. | From initial submission until the Date of Final Acceptance. | 6 monthly |
| Rail Safety Accreditation Plan | | | |
| Rail Safety Accreditation Plan | On or before Financial Close. | From initial submission until the Date of Final Acceptance. | 6 monthly |
| [Not Disclosed] | | | |

Annexure 2 Project Management Plans 91508

2.1 Strategic Management Plan 91509

- 2.1.1 Project Co must develop, implement and maintain a Strategic Management Plan which identifies how Project Co intends to manage the Works and details Project Co's key relationships over both the D&C Phase and Maintenance Phase. 91510
- 2.1.2 The key purpose of the Strategic Management Plan is to: 91511
- (a) describe Project Co's overall vision and management approach; and 91512
 - (b) demonstrate how the project objectives will be achieved. 91513
- 2.1.3 The Strategic Management Plan must, as a minimum, address the following items: 91514
- (a) executive summary; 91515
 - (b) vision for the Project; 91516
 - (c) partnering and working relationships; 91517
 - (d) management approach and key initiatives; 91518
 - (e) management team and structure; 91519
 - (f) key entities; 91520
 - (g) management (project) plans and systems including the Management Plans and any plans required by the Environmental Management Plans or Approvals; and 91521
 - (h) key activities. 91522
- 2.1.4 The executive summary must provide a concise summary of the Strategic Management Plan's key features that covers: 91523
- (a) the D&C Phase; 91524
 - (b) the integration and commissioning phase; 91525
 - (c) the transition to Maintenance Phase; and 91526
 - (d) the Maintenance Phase. 91527
- 2.1.5 The vision statement must outline Project Co's overall vision for the Project and commitments that demonstrate how: 91528
- (a) the vision is to be delivered; and 91529
 - (b) the project objectives will be achieved. 91530
- 2.1.6 The partnering and working relationships component of the Strategic Management Plan must include: 91531
- (a) a statement of partnering that incorporates the following four elements: role clarity, commitment, trust and culture. The statement must include details on both the D&C Phase and Maintenance Phase with particular emphasis on: 91532
 - (1) how Project Co will work in a partnering relationship with the State particularly in the areas of service delivery, customer satisfaction and transport planning; 91533
 - (2) how Project Co will work cooperatively with other public transport providers, regulators, the community and other stakeholders; and 91534
 - (3) the proposed approach to create and deliver sustained value; 91535
 - (b) a statement of how Project Co will manage working relationships with and between the Key Subcontractors and Material Subcontractors during both the D&C Phase and Maintenance Phase; 91536
 - (c) a description of initiatives that are to be implemented to promote partnering and good working relationships during: 91537
 - (1) both the D&C Phase and Maintenance Phase generally; and 91538
 - (2) the period up to one year after the next update of the Strategic Management Plan is due; and 91539

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| | (d) where applicable, cross references to the PPP Interface Management Plan. | 91540 |
| 2.1.7 | The management approach and key initiatives component of the Strategic Management Plan must: | 91541 |
| | (a) detail the overall management strategies and integrated approach to: | 91542 |
| | (1) key systems and processes, including third party accreditations; | 91543 |
| | (2) responding to the requirements of the RSNL and any associated regulations; and | 91544 |
| | (3) any integrated management systems; | 91545 |
| | (b) outline the approach to ensure the delivery of whole-of-life outcomes; | 91546 |
| | (c) outline the initiatives that will be implemented to ensure high quality outcomes during the: | 91547 |
| | (1) D&C Phase; | 91548 |
| | (2) initial 12 months of operation post Final Acceptance; | 91549 |
| | (3) first five years of operation post Final Acceptance; and | 91550 |
| | (4) remainder of the Term; | 91551 |
| | (d) outline how future proofing is being addressed; and | 91552 |
| | (e) outline the approach to asset management. | 91553 |
| 2.1.8 | The management team and structure component of the Strategic Management Plan must: | 91554 |
| | (a) provide the overall senior (executive) management personnel and organisation structures for the D&C Phase, transition from the D&C Phase to the Maintenance Phase, and the Maintenance Phase, including: | 91555 |
| | (1) key personnel; | 91556 |
| | (2) overall senior management personnel and reporting structure within Project Co and the Key Subcontractors and Material Subcontractors; and | 91557 |
| | (3) interfaces with the management teams associated with implementing the Project Activities, including those covered by other Management Plans; | 91558 |
| | (b) identify any changes planned to the structures or senior management personnel in the period up until the next scheduled Strategic Management Plan update; | 91559 |
| | (c) provide a strategy and nominated resource pool, including from within the Key Subcontractors and Material Subcontractors, for supplementing or replacing the key personnel in the event that particular individuals are no longer available; and | 91560 |
| | (d) incorporate CVs of the personnel nominated for each role identified as an attachment to the Strategic Management Plan; and | 91561 |
| | (e) incorporate role descriptions for each position in the management team structure as an attachment to the Strategic Management Plan and identifying the: | 91562 |
| | (1) responsibilities; | 91563 |
| | (2) levels of authority; and | 91564 |
| | (3) necessary qualifications, skills and experience. | 91565 |
| 2.1.9 | The key entities component of the Strategic Management Plan must: | 91566 |
| | (a) identify key entities (including Key Subcontractors and Material Subcontractors) responsible for each major activity during the D&C Phase and the Maintenance Phase; and | 91567 |
| | (b) outline for each entity the: | 91568 |
| | (1) scope of work; | 91569 |
| | (2) contracting relationship through to Project Co; and | 91570 |
| | (3) period of the contract. | 91571 |
| 2.1.10 | The management systems, processes and plans component of the Strategic Management Plan must provide: | 91572 |
| | (a) a description of the overall strategy for management systems, processes and plans, including their purpose; | 91573 |

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| | (b) a description of the processes for establishing, integrating and maintaining all management systems, processes and plans; | 91574 |
| | (c) the structure showing all the Management Plans and demonstrating how each interfaces with, or relates to, the other Management Plans, including the Strategic Management Plan; | 91575 |
| | (d) a cross referencing plan that identifies the relationship between the proposed Management Plans. This must identify where the requirements of the Management Plans will be fulfilled; | 91576 |
| | (e) for each proposed Management Plan that differs from the Management Plans, a summary that outlines: | 91577 |
| | (1) the plan's purpose; | 91578 |
| | (2) the plan's content, including any content additional to that required by the PS&TR; | 91579 |
| | (3) the key resources to be applied in developing and implementing the plan; and | 91580 |
| | (4) other information that Project Co considers relevant; | 91581 |
| | (f) a structure and description of all management systems and processes that clearly demonstrates how they interface with, or relate to, the other systems and processes and the Management Plans; | 91582 |
| | (g) details on business systems and processes to be implemented and utilised including: | 91583 |
| | (1) purpose and description; | 91584 |
| | (2) provider; | 91585 |
| | (3) resources, including personnel and system requirements; | 91586 |
| | (4) status, including timing for implementing or updating; | 91587 |
| | (5) accessibility for the State; | 91588 |
| | (6) relevance to achieving the Project objectives; and | 91589 |
| | (h) details on the information technology strategy and forward planning, including those related to recurring activities, incremental upgrades, updates and maintenance and operation of information technology assets. | 91590 |
| 2.1.11 | The Strategic Management Plan must include a summary of key activities to be undertaken in the period up until the next scheduled Strategic Management Plan update and include: | 91591 |
| | (a) key mobilisation and demobilisation activities; and | 91592 |
| | (b) planned achievement of key milestones. | 91593 |
| | | 91594 |
| 2.2 | Project Management Plan | |
| 2.2.1 | Project Co must prepare and update the Project Management Plan (PMP). | 91595 |
| 2.2.2 | The PMP must identify the procedures, processes and management systems that will apply in relation to the D&C Activities. | 91596 |
| 2.2.3 | As a minimum, the PMP must: | 91597 |
| | (a) define an organisational structure for the D&C Subcontractor that sets out the governance structure for the project and identifies the key positions, roles, and the minimum skills and experience required for each position; | 91598 |
| | (b) provide a framework for how the Works will be divided and delivered in separate construction zones; | 91599 |
| | (c) outline the classification system of Asset types and Asset Component types to be used in the Asset Inventory required by section 1.3.7, and numbering protocol to be used to uniquely identify each Asset, Asset Component and Asset Sub-Component; | 91600 |
| | (d) define a standard set of work types and a consistent method for describing location that will be used to identify each construction zone; | 91601 |
| | (e) describe policies and processes that will ensure: | 91602 |
| | (1) effective input of the Maintenance Subcontractor into design and construction so as to optimise implementation of whole of life considerations; | 91603 |

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| (2) | effective consultation with Returned Asset Owners to facilitate efficient commencement of construction, progressive completion of Returned Works and Handback of Returned Assets; and | 91604 |
| (3) | compliance with the requirements of section 7; | 91605 |
| (f) | describe strategies and procedures for: | 91606 |
| (1) | managing risk; | 91607 |
| (2) | maximising local industry participation; | 91609 |
| (3) | obtaining all necessary Approvals; and | 91610 |
| (4) | schedule management and cost control. | 91611 |
| | | 91612 |
| 2.3 | Quality Management Plan | |
| 2.3.1 | Project Co must prepare and update the Quality Management Plan. | 91613 |
| 2.3.2 | The Quality Management Plan must: | 91614 |
| (a) | comply with AS/NZS ISO 9001:2015 Quality Management Systems – Requirements; | 91615 |
| (b) | define Project Co's quality related objectives for the Works, including processes for the delivery of all quality and compliance related documents at Handback of each Returned Asset as required under section 11.2.1; | 91616 |
| (c) | nominate and define the responsibility and authority of the Quality Manager; | 91617 |
| (d) | define the responsibility, authority and reporting function of personnel primarily responsible for quality assurance, including the name, qualification and scope of each Nominated Authority for the release of Hold Points required by the Design Documentation and other relevant Reference Documents. The Nominated Authority must have appropriate knowledge of the Design Documentation relevant to the Hold Point being released; | 91618 |
| (e) | describe processes: | 91619 |
| (1) | to coordinate and implement quality assurance functions across all Management Plans, including: | 91620 |
| (A) | audit and surveillance; | 91621 |
| (B) | verification that ITPs and Construction Procedures include all Hold Points required by the Design Documentation and other relevant Reference Documents; | 91622 |
| (C) | notification of Hold Points required by the Design Documentation and other relevant Reference Documents and witness points and release of those Hold Points; | 91623 |
| (D) | identification, notification and control of non-conformances; and | 91624 |
| (E) | corrective action and process improvement; and | 91625 |
| (2) | that provide for the role of the Independent Reviewer and the associated interactions with Project Co, including: | 91626 |
| (A) | processes that provide the Independent Reviewer with reasonable notice of: | 91627 |
| i. | Hold Points prior to their release; and | 91628 |
| ii. | witness points; | 91629 |
| (B) | a mechanism for the Independent Reviewer to nominate additional Hold Points and witness points for inclusion in the ITPs and Construction Procedures at any time during the D&C Activities; and | 91630 |
| (C) | provision and access for the Independent Reviewer to attend the release of any Hold Point or witness point. | 91631 |
| | | 91632 |
| 2.4 | Risk Management Plan | |
| 2.4.1 | Project Co must prepare and update the Risk Management Plan. | 91633 |

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| 2.4.2 | The Risk Management Plan must address the management of all types of risk across the Project Activities. Where applicable, the Risk Management Plan may include references to other Management Plans to avoid duplication. The types of risk to be identified, analysed, treated and monitored for the duration of the Project Activities include: | 91634 |
| | (a) Safety in Design risks; | 91635 |
| | (b) security risks; | 91636 |
| | (c) rail safety risks – during construction and operations; | 91637 |
| | (d) workplace safety, environment and quality risks; and | 91638 |
| | (e) business risks such as stakeholder, approvals, commercial and schedule risks. | 91639 |
| 2.4.3 | The Risk Management Plan must: | 91640 |
| | (a) address how Project Co will comply with the risk management requirements of the Agreement for the duration of the Project Activities; | 91641 |
| | (b) define how appropriate risk management strategies are defined and implemented in accordance with AS/NZS ISO 31000: 2009; | 91642 |
| | (c) cover all aspects of the Project Activities and as a minimum address all requirements set out in section 2.3; | 91643 |
| | (d) systematically address risks throughout the life cycle of the Asset from conception through to retirement; | 91644 |
| | (e) describe the process, purpose and objectives of the risk management plan, the risk management standards, risk acronyms, terms and definitions; | 91645 |
| | (f) describe how the standard risk management processes will be implemented for the Project, including: | 91646 |
| | (1) establishing the context; | 91647 |
| | (2) assessment of risks and opportunities (including identifying the risks and opportunities, analysing the risks and opportunities, qualitative process, quantitative process, deterministic analysis, probabilistic analysis and evaluation), as well as providing the matrices used for the assessment process; | 91648 |
| | (3) treating the risks; | 91649 |
| | (4) monitoring, reviewing and internal reporting of the risks; | 91650 |
| | (5) roles and responsibilities for risk management; | 91651 |
| | (6) methods to be used to monitor effectiveness of control; | 91652 |
| | (7) communication and consultation; | 91653 |
| | (8) tools to be used; | 91654 |
| | (9) identifying and addressing the requirements for internal risk framework audits and/or maturity reviews; and | 91655 |
| | (10) defining the process for closure of risks and verification of risk treatment implementation. | 91656 |
| | (g) outline the detail to be provided and process to be used for reporting, as required in section 1.4.2.3(d); | 91657 |
| | (h) detail the process to be used to transfer any risks that are residual to the D&C Phase to the appropriate stakeholder or to the Maintenance Subcontractor; | 91658 |
| | (i) detail how the risk management process will change during transfer from the D&C Phase to the Maintenance Phase; and | 91659 |
| | (j) detail the process to be used to transfer any risks that are residual to the Maintenance Phase to the appropriate stakeholder. | 91660 |
| | | 91661 |
| 2.5 | PPP Interface Management Plan | |
| 2.5.1 | Project Co must prepare and update the PPP Interface Management Plan. | 91662 |
| 2.5.2 | The PPP Interface Management Plan must: | 91663 |
| | (a) provide a full description of the scope of the Works being undertaken and all | 91664 |

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| | Stakeholders involved; | |
| (b) | include a matrix setting out all potential interfacing parties and their impact on or connection with the Works; | 91665 |
| (c) | provide for the interface issues in the Interface Issues Register; | 91666 |
| (d) | provide clear delineation of the responsibilities of each party (Project Co, the State and relevant Stakeholder(s)) in relation to the interface issues and identify the data to be communicated by each party; | 91667 |
| (e) | provide identification of the nominated first point of contact for each Stakeholder with respect to the Information Management Plan for: | 91668 |
| | (1) the provision of data; and | 91669 |
| | (2) the assessment of engineering compatibility; | 91670 |
| (f) | include identification of procedures for: | 91671 |
| | (1) the exchange, communication and agreement of interface data and information including: | 91672 |
| | (A) interface control documents; | 91673 |
| | (B) distribution lists; | 91674 |
| | (C) confidentiality issues; and | 91675 |
| | (D) dispute resolution procedures; | 91676 |
| | (2) the sharing of good practice, issues of concern and relevant safety information; | 91677 |
| | (3) the reporting and investigation of incidents and notifiable occurrences, including reporting protocol and responsible persons in accordance with AS 4292.1; and | 91678 |
| | (4) document control; | 91679 |
| (g) | include identification of related documentation, for example supporting standards, specifications and requirements; | 91680 |
| (h) | identify the roles and responsibilities in managing interfaces; | 91681 |
| (i) | detail a formal meeting schedule between Project Co and each interface party; | 91682 |
| (j) | include the communication, interfaces and integration management strategies, processes and procedures for cooperation and coordination with other parties including between Project Co and: | 91683 |
| | (1) the Key Subcontractors and Material Subcontractors; | 91684 |
| | (2) the State, PTV, the Franchisee, Authorities and other third parties involved in or affected by Project Co, as required; | 91685 |
| (k) | interface information schedules; | 91686 |
| (l) | collaborative interface problem resolution processes; | 91687 |
| (m) | details on any dedicated interface management resources and their roles and responsibilities; and | 91688 |
| (n) | detail how existing interface control documents are incorporated. | 91689 |
| | | 91690 |
| 2.6 | Workforce Development and Training Management Plan | |
| 2.6.1 | Project Co must prepare and update the Workforce Development and Training Management Plan. | 91691 |
| 2.6.2 | The Workforce Development and Training Management Plan must, as a minimum: | 91692 |
| | (a) detail the workforce initiatives that provide for the utilisation of new workplace skills and contribute to relevant sectoral, state and national targets, including consideration of existing government incentives and schemes to promote traineeships and apprentices; | 91693 |
| | (b) detail the workforce initiatives to meet all statutory obligations in relation to training, including in respect of health and safety and environmental matters; | 91604 |
| | (c) detail the initiatives to achieve the utilisation of Victorian registered apprentices, Victorian registered trainees or engineering cadets for at least 10% of the Works' total estimated labour hours in accordance with the Major Projects Skills Guarantee | 91695 |

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| | Compliance Plan; | |
| (d) | detail the initiatives to achieve the Aboriginal Employment Target of 2.5% of total labour hours and demonstrate how performance against this target will be measured; | 91696 |
| (e) | detail initiatives to achieve the Priority Jobseekers' Requirements; | 91697 |
| (f) | detail initiatives to improve participation of Priority Jobseekers and underrepresented groups in the industry; | 91698 |
| (g) | detail initiatives which will result in: | 91699 |
| | (1) Priority Jobseekers and underrepresented groups in the industry advancing in the workforce to more senior roles; and | 91700 |
| | (2) talented young trade and professional workers being identified and developed; | 91701 |
| (h) | detail the initiatives to develop and implement nationally recognised accredited training and skill development programs and ensure that 20% of the workforce participate in nationally recognised accredited training; and | 91702 |
| (i) | assess current and future workforce skill needs and develop a skills and labour gap plan and workforce profiles, including skill categories, required for the design and construction of major elements of the Works. | 91703 |
| | | 91704 |
| 2.7 | Social Procurement Management Plan | |
| 2.7.1 | Project Co must prepare and update the Social Procurement Management Plan. | 91705 |
| 2.7.2 | The Social Procurement Management Plan must, as a minimum: | 91706 |
| | (a) identify procurement initiatives that provide environmental and social improvement; | 91707 |
| | (b) identify procurement initiatives to engage Aboriginal businesses; | 91708 |
| | (c) identify procurement initiatives to develop social procurement opportunities in Victoria; | 91709 |
| | (d) describe the process for identifying and procuring suitable products with low life cycle environmental and social impacts; | 91710 |
| | (e) detail the environmental and social criteria in the selection process for Subcontractors including but not limited to, a demonstration of: | 91711 |
| | (1) systems, processes and practices that enable a supplier's reduction in environmental impacts; | 91712 |
| | (2) fair employment practices for workforce employees and subcontractors; | 91713 |
| | (3) formal corporate social responsibility commitments or corporate social responsibility initiatives in which the organisation is involved; and | 91714 |
| | (4) steps taken to reduce greenhouse gas emissions; and | 91715 |
| | (f) detail how the Social Procurement Management Plan relates to the LIDP. | 91716 |
| | | 91717 |
| 2.8 | Industrial Relations Management Plan | |
| 2.8.1 | Project Co must prepare and update the Industrial Relations Management Plan. | 91718 |
| 2.8.2 | The Industrial Relations Management Plan must: | 91719 |
| | (a) include a strategy for managing industrial relations; | 91720 |
| | (b) demonstrate compliance with all workplace laws; | 91721 |
| | (c) identify key employment and workplace relations risks; | 91722 |
| | (d) include the approach to: | 91723 |
| | (1) developing competitive workforce agreements; | 91724 |
| | (2) developing and maintaining a productive workforce; | 91725 |
| | (3) sourcing, selection and training of employees; | 91726 |
| | (4) relationship management with employees, employee representatives or other stakeholders (including unions); | 91727 |
| | (e) describe how rights of entry will be managed; and | 91728 |
| | (f) describe how Project Co will address any industrial relations matters that may arise with | 91729 |

respect to interfaces with other Metro Tunnel Package Contractors.

2.9 Information Management Plan

- 91730
- 2.9.1 Project Co must prepare and update the Information Management Plan. 91731
- 2.9.2 Project Co must ensure that the Information Management Plan is a single document and, as a minimum, includes: 91732
- (a) details of how Project Co will implement an electronic information management system that has the capability to manage all documentation, information, records and other types of project data; 91733
 - (b) details as to how information is collected, retained, secured, processed, disseminated and disposed of; 91734
 - (c) details of the information management system induction and training program for all users; 91735
 - (d) details of the expected competency levels for staff dedicated to the implementation and maintenance of the information management system; 91736
 - (e) identification of the IT requirements for information management, including the information and communications technology infrastructure network requirements (including software application, hardware and electronic communications); and 91737
 - (f) details of the disaster recovery process to be adopted in relation to information management. 91738

2.10 Digital Engineering Management Plan

- 91739
- 2.10.1 Project Co must prepare and update the Digital Engineering Management Plan. 91740
- 2.10.2 The Digital Engineering Management Plan must: 91741
- (a) describe the digital engineering strategy and its implementation throughout the project life cycle; 91742
 - (b) describe the process for the implementation of a live digital engineering environment to enable collaboration and coordination of information, data sharing and enhanced communication on the project; 91743
 - (c) demonstrate consideration of the need to coordinate with other Metro Tunnel Package Contractors with respect to the establishment of the digital engineering environment; 91744
 - (d) describe the process for the implementation of federated asset information models with sufficient embedded or linked data and information to satisfy operational and maintenance information requirements and support an asset management system appropriate for the scale of the Metro Tunnel; 91745
 - (e) describe the information security controls and procedures within the live digital environment to ensure compliance with security requirements of the State and or third parties; 91746
 - (f) describe the access control procedures for permitted users, access rights restrictions, and data entry permissions; 91747
 - (g) describe the common data environment including the electronic data management system; 91748
 - (h) describe the network and web-based user interfaces to the common data environment; 91749
 - (i) define the suite of software platforms (including versions) and data exchange formats to be adopted and address: 91750
 - (1) data exchange protocols (including to and from the asset information models); 91751
 - (2) forward and backward compatibility; 91752
 - (3) open standards compliance and non-proprietary interfaces (including to the asset management systems); 91753
 - (4) interoperability of the software platforms to support federated models; 91754
 - (5) handover compliance with PTV DMS and PASS Assets; and 91755

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| (6) | software viewers for federated models and their accessibility to the State, the Independent Reviewer and interfacing parties; | 91756 |
| (j) | define the common spatial coordinate system to be adopted across all software platforms, or (if not possible with the software platforms being adopted) the process to translate project elements or models into the common spatial coordinate system for coordination purposes; | 91757 |
| (k) | define the core documents and information management standards to be adopted and to what degree they are to be implemented; | 91758 |
| (l) | define digital engineering specific roles and responsibility associated with the management of models, data integration, model approvals, the electronic data management system and the common data environment; | 91759 |
| (m) | define the IT infrastructure requirements of Project Co, the State, the Independent Reviewer and interfacing parties; | 91760 |
| (n) | describe the information model production and deliverable strategy and define: | 91761 |
| (1) | the scope of the models to be generated including anticipated model sizes; | 91762 |
| (2) | the expected output detail on a discipline basis and a schedule of model deliverables for each work package during the design delivery phase; | 91763 |
| (3) | the coordination and clash detection process addressing technical query workflows, tolerance strategy, interface reports, model review workshops and a clash resolution process; | 91764 |
| (4) | the process for the management of the information and modelling from commencement through to published data; | 91765 |
| (5) | the migration of the model between different stages of the life cycle through to completion of an as-built model and asset information models; | 91766 |
| (6) | the process for updating and coordinating changes during construction into the as-built model; | 91767 |
| (7) | methods for showing simulations of construction staging; | 91768 |
| (8) | methods for showing visualisations, presentation models, 3D imagery, animated models, augmented reality models and fly-through models; | 91769 |
| (9) | methods for showing simulations in the operating environment; | 91770 |
| (10) | methods for showing major equipment space clearance reservations for operations, repair, maintenance and replacement; | 91771 |
| (11) | methods for undertaking digital as-built verification surveys; | 91772 |
| (12) | methods for ensuring the contents of the asset information models and embedded or linked data and information align with the physical assets; | 91773 |
| (13) | methods for demonstrating the implementation of a sustainability performance model(s) with sufficient information to satisfy life cycle environmental performance, design optimisations inclusive of daylighting, thermal, acoustics, energy, water, material and waste analysis. Project Co must provide output from the model(s) to the State and the Independent Reviewer demonstrating compliance with the performance requirements of the Sustainability Management Plan and Sustainability Targets; | 91774 |
| (o) | describe the process for the management of the information and data within the asset information models and the frequency of data transfer from the D&C Phase models; and | 91775 |
| (p) | describe the process for updating and coordinating changes to the asset information models as the assets change. | 91776 |
| 2.10.3 | Project Co must submit a CAD Management Plan as a sub-plan to the Digital Engineering Management Plan. | 91777 |
| 2.10.4 | The CAD Management Plan must as a minimum: | 91778 |
| (a) | describe the process for managing and exchanging drawings relating to rail infrastructure; | 91779 |
| (b) | define non rail infrastructure asset owner drawing standards to be adopted; and | 91780 |

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| | (c) define naming conventions, cross-referencing, drawing scales, line-styles, sheet sizes, title blocks, dimensioning, typefaces, abbreviations and symbols | 91781 |
| 2.10.5 | Project Co must submit a GIS Management Plan as a sub-plan to the Digital Engineering Management Plan. | 91782 |
| 2.10.6 | The GIS Management Plan must define the GIS data schema and the GIS layers. | 91783 |
| 2.10.7 | Metadata associated with the GIS layers should as a minimum include major themes, purpose, description, data limitations, data custodian and data updates. | 91784 |
| 2.10.8 | The GIS layers should as a minimum include infrastructure geometric layouts, construction footprints, land and property, ground movement, underground services, environmental, survey, topographic data, geotechnical data, published photograph logs and aerial photography. | 91785 |
| 2.11 | Knowledge Management Plan | 91786 |
| 2.11.1 | Project Co must prepare and update a Knowledge Management Plan. | 91787 |
| 2.11.2 | The Knowledge Management Plan must: | 91788 |
| | (a) describe how knowledge accumulated through the project life cycle will be captured, managed and made available to project participants and by agreement the wider industry. Knowledge captured must as a minimum include background and details of: | 91789 |
| | (1) key learnings; | 91790 |
| | (2) international best practices adopted; | 91791 |
| | (3) international standards adopted; | 91792 |
| | (4) innovative construction techniques adopted; and | 91793 |
| | (5) new technologies developed or adopted; | 91794 |
| | (b) describe systems and processes used to create, manage and disseminate knowledge throughout the project lifecycle; | 91795 |
| | (c) define key learning themes on the project that will be documented and must include as a minimum: | 91796 |
| | (1) project and program management; | 91797 |
| | (2) architecture and urban design; | 91798 |
| | (3) health and safety; | 91799 |
| | (4) workforce – mobilisation, retention and training; | 91800 |
| | (5) environment; | 91801 |
| | (6) sustainability; | 91802 |
| | (7) engineering; | 91803 |
| | (8) standards; | 91804 |
| | (9) operations and maintenance; | 91805 |
| | (10) innovation; and | 91806 |
| | (11) information management and technology (including digital engineering); | 91807 |
| | (d) define the document types to be generated for each of the key learning themes including as appropriate: | 91808 |
| | (1) guidance or good practice documents; | 91809 |
| | (2) insight reports; | 91810 |
| | (3) case studies; and | 91811 |
| | (4) technical papers; and | 91812 |
| | (e) define knowledge management specific roles and responsibilities associated with the management of knowledge on the project. | 91813 |

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| 2.12 | Competency Management Plan | 137256 |
| 2.12.1 | Project Co must develop, implement and maintain a Competency Management Plan. | 137257 |
| 2.12.2 | The Competency Management Plan must: | 137258 |
| | (a) describe the processes used to identify engineering competency requirements, assess competencies and maintain records to support delivery of the Works; and | 137259 |
| | (b) address rail safety worked Accreditation, including: | 137260 |
| | (1) Rail Safety National Law competency requirements; and | 137261 |
| | (2) Rail Transport Operator competency requirements. | 137262 |

Annexure 3 Systems Engineering and Assurance Management Plans 91814

3.1 Systems Engineering Management Plan 91815

3.1.1 Project Co must prepare and update the Systems Engineering Management Plan (**SEMP**). 91816

3.1.2 The SEMP must: 91817

(a) describe the strategy, plans, methodologies and processes for the management of a fully integrated engineering program in accordance with the Agreement; 91818

(b) comply with the Systems Engineering Standard; 91819

(c) be consistent with the PMP; 91820

(d) define the relationship to other planning documentation, including subordinate engineering plans and key non-technical plans such as the PMP; 91821

(e) align with the MTP SIT Systems Engineering Management Plan; 91822

(f) describe the development of the Systems Breakdown Structure (**SBS**) in Part A, Appendix A2; 91823

(g) describe Project Co's Lifecycle Cost (**LCC**) program for Returned Train Works consistent with a 30 year design timeframe; 91824

(h) define the tailored application of Project Co's systems engineering process to the activities of the Agreement, including: 91825

(1) engineering management system methodology; 91826

(2) systems engineering process planning (major engineering activities and outputs); 91827

(3) systems engineering control (contractor/subcontractor management and contractor project plans); 91828

(4) design management; 91829

(5) type approval; 91830

(6) the major products and / or increments to be delivered; 91831

(7) the major outcomes to be achieved; 91832

(8) the major systems engineering tools that will be used and identification of requirements for configuration management and control of the tool data; 91833

(9) the program and integration of effort including design, requirements management, verification and validation, systems assurance, system safety, RAM, human factors integration (**HFI**) and Stage Gate Reviews; 91834

(10) the management and progressive reporting of technical performance measures; 91835

(11) stakeholder requirements analysis and definition; 91836

(12) system architecture (functional analysis, functional allocation, functional verification, logistic engineering analysis, system architecture deliverables); 91837

(13) build; 91838

(14) T&C deployment; 91839

(15) system acceptance and handover; 91840

(16) interface management and functional analysis and allocation (inputs and outputs); and 91841

(17) the approach planned to establish and maintain control of external and internal interfaces; 91842

(i) describe the engineering organisation for the Agreement, including key engineering positions; 91843

(j) identify the training requirements, including internal training, user training and 91844

- maintenance training;
- (k) nominate the required procedures and related templates, reference documents, standards, RTO engineering authorisation, organisational roles, responsibilities and authorities; 91845
 - (l) describe how technical effort will be coordinated to meet cost, schedule and performance objectives; 91846
 - (m) summarise planned personnel needs by discipline and level of expertise; 91847
 - (n) define how all work conducted by subcontractors will be scoped, managed and monitored to ensure the objectives set out in the systems engineering program are met; 91848
 - (o) describe the selection and control of Subcontractors; 91849
 - (p) identify key interfacing projects and the engagement strategy to ensure technical risks are communicated and managed; 91850
 - (q) identify the key events in the system development lifecycle, including the relationships between them and those significant key events of interfacing projects; 91851
 - (r) describe the methods for documentation and control of engineering and technical information, including expected specifications and configuration baselines; 91852
 - (s) describe the process for developing, implementing and maintaining operational concept documents (**OCDs**) as agreed with the accredited RTO for the system and all relevant subsystems, which must also align with RSA's OCDs; 91853
 - (t) describe the Verification and Validation (**V&V**) strategy and the various Management activities used to achieve this; 91854
 - (u) describe the methods and tools for analysis, verification and validation of system requirements; 91855
 - (v) describe the use of DOORS as the requirement management tool, including its use to facilitate the generation of reporting metrics, the Requirements Traceability Matrix (**RTM**) and the Verification and Validation Cross Reference Matrix (**VCRM**); 91856
 - (w) describe how relevant stakeholders are consulted on the tailoring of criteria and criteria weighting for significant decisions; 91857
 - (x) describe the strategies governing the use of commercial-off-the-shelf (**COTS**), open systems architecture and re-use technologies; 91858
 - (y) describe how interface specifications and conditions of use are considered for the integration of COTS elements; 91859
 - (z) describe the approach of integration and assembly of the system; 91860
 - (aa) describe the approach to establish and maintain requirements traceability between systems products and design data; 91861
 - (bb) describe the expected use of any system performance models, in particular those that may be used as part of V&V; 91862
 - (cc) describe the approach planned to establish and maintain configuration control of identified system products and processes; 91863
 - (dd) describe the technical risk management approach and identify any special considerations of risks as part of the engineering program, e.g. integration and testing; 91864
 - (ee) identify the requirements for the system engineering reports including the system problem reports; 91865
 - (ff) define, in a traceability matrix from each requirement to section(s) within the SEMP, how each requirement of the Systems Engineering Standard is addressed, including justification of any tailoring of the Systems Engineering Standard; 91866
 - (gg) describe the approach for implementing and integrating a FRACAS with the Quality Management System used for classifying, tracking, reporting and managing: 91867
 - (1) failed tests from V&V activities; 91868
 - (2) non-conformances identified by functional configuration audit and PCA; 91869
 - (3) installation defects; 91870
 - (4) quality defects; and 91871

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| | (5) in-service failure of assets delivered, prior to commissioning; and | 91872 |
| | (hh) describe the approach planned to establish and conduct the Stage Gate Reviews necessary for effective implementation of the systems engineering program. | 91873 |
| 3.1.3 | Stage Gate Reviews must be conducted as part of Project Co's systems engineering program and use the Stage Gate Review Guide to inform the review process. | 91874 |
| 3.2 | Configuration Management Plan | 91875 |
| 3.2.1 | Project Co must prepare and update the Configuration Management Plan. | 91876 |
| 3.2.2 | The Configuration Management Plan must: | 91877 |
| | (a) define Project Co's policy, procedures and responsibilities for Configuration Management (CM) to meet the requirements of the PS&TR; | 91878 |
| | (b) define how Project Co intends to manage configuration of assets and documentation throughout the lifecycle; | 91879 |
| | (c) include supporting systems, processes and tools to facilitate and support whole-of-life management of assets provided as part of the Works, including both hardware and software assets; | 91880 |
| | (d) define the change management process to manage risks associated with configuration baseline changes throughout the project lifecycle; | 91881 |
| | (e) define the roles of any change control board (CCB); | 91882 |
| | (f) describe how Project Co will manage the process of ensuring accurate configuration records and that the configuration records are updated to the latest configuration status in a timely manner throughout the lifecycle; | 91883 |
| | (g) describe the system for defining and recording the configuration; | 91884 |
| | (h) describe the CM organisation including: | 91885 |
| | (1) lines of authority and linkages within Project Co's internal structure; | 91886 |
| | (2) formal links between Project Co's configuration management organisation and any subcontractors; | 91887 |
| | (3) the responsibilities and authority of participating groups, organisations and individuals involved in CM, including their role in CCBs; and | 91888 |
| | (4) mandatory inclusion of a Systems Assurance representative; | 91889 |
| | (i) identify and detail the integration of CM with other activities such as systems engineering, design, systems assurance, Stage Gate Reviews, HFI, RAM management and V&V; | 91890 |
| | (j) define the process and procedures used for managing formal deliverables and internal documentation; | 91891 |
| | (k) detail the implementation of CM in line with key milestones and events, including: | 91892 |
| | (1) the release and submission of controlled documentation in relation to Stage Gate Reviews; | 91893 |
| | (2) the establishment of configuration baselines; | 91894 |
| | (3) the implementation of the change management process and establishment of CCBs; and | 91895 |
| | (4) the conduct of configuration audits; | 91896 |
| | (l) define the process, procedures and tools used to manage configuration items; | 91897 |
| | (m) define the procedures for the selection of hardware, computer software and Interface configuration items and the list of configuration items and their respective specifications and associated documentation; | 91898 |
| | (n) define the requirements for establishing configuration baselines and include procedures for establishment of the functional, allocated and product baselines and the documentation used to define each baseline; | 91899 |
| | (o) define the procedures for issuing configuration documentation, and amendments to this documentation; | 91900 |

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| | (p) detail the process for configuration control and the level of authority for change approval; | 91901 |
| | (q) establish and maintain a configuration baseline of hardware and software elements of the system, including interfaces and procedural documentation; | 91902 |
| | (r) define the intended modification status of each of the elements identified in the configuration baseline; | 91903 |
| | (s) define the actual modification status for each of the elements identified in the configuration baseline, within the configuration register; and | 91904 |
| | (t) define the methods used to ensure that any subcontractors comply with the CM requirements of the PS&TR. | 91905 |
| | | 91906 |
| 3.3 | Requirements Management Plan | |
| 3.3.1 | Project Co must prepare and update the Requirements Management Plan. | 91907 |
| 3.3.2 | The Requirements Management Plan must: | 91908 |
| | (a) comply with the Systems Engineering Standard; | 91909 |
| | (b) detail the strategy of requirements analysis, including specification and definition of requirements to capture stakeholder needs and include: | 91910 |
| | (1) what the system has to do; | 91911 |
| | (2) when it has to do it; and | 91912 |
| | (3) how well it has to do it; | 91913 |
| | (c) detail Project Co's formal requirements management strategy, processes and activities to ensure that requirements defined in the Agreement are managed throughout the project lifecycle; | 91914 |
| | (d) describe the process for the requirements issues resolution process; | 91915 |
| | (e) detail the use of DOORS as the requirement management tool, including its use to facilitate the generation of reporting metrics, the RTM and the VCRM; | 91916 |
| | (f) detail the requirements for management activities, timelines and the integration with the systems engineering program, configuration management, V&V, systems assurance, system safety, HFI, RAM activities and other design activities; | 91917 |
| | (g) describe the process for defining and agreeing the acceptance criteria for all requirements with relevant stakeholders; | 91918 |
| | (h) detail the management and recording of requirements baseline and change; | 91919 |
| | (i) define the process of systematic audit of documentary evidence, appropriate to each state of the system lifecycle; and | 91920 |
| | (j) define how the stakeholder requirements are to be validated. | 91921 |
| 3.3.3 | The Requirements Management Plan must include processes for progressively developing, maintaining and submitting a RTM that must: | 91922 |
| | (a) show the traceability for the PS&TR; | 91923 |
| | (b) identify for each requirement: | 91924 |
| | (1) a unique and unmodifiable identifier for the requirement; | 91925 |
| | (2) the architectural element (configuration item or interface) to which the requirement belongs; | 91926 |
| | (3) the document and paragraph number of the requirement; | 91927 |
| | (4) the derivation, or reference to the design record that records the derivation, for the requirement from its parent where the requirement has a parent within the database; and | 91928 |
| | (5) other attributes as identified by the design process. | 91929 |
| | (c) identify parent-child and child-parent links that provide the rationale and unambiguous traceability for all requirements; | 91930 |
| | (d) show the parent-child and child-parent traceability through multiple levels of the design hierarchy to assess the impact of potential specification changes; | 91931 |

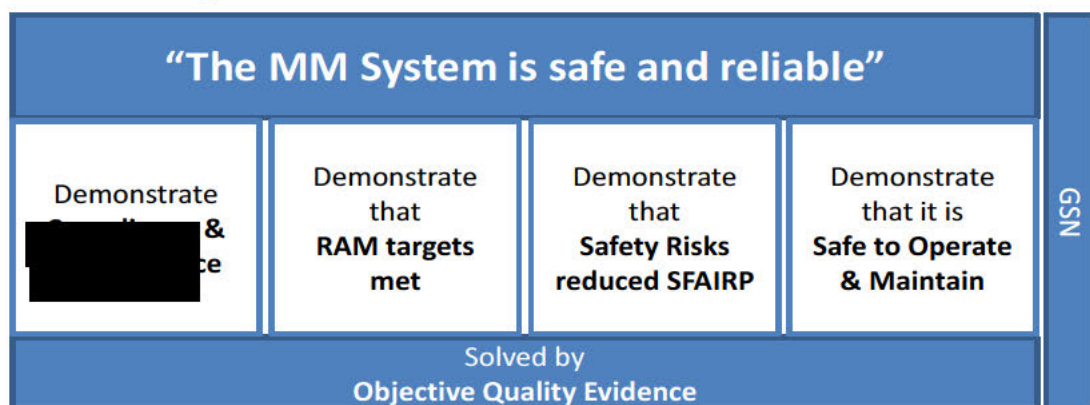
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| | (e) be accompanied with user documentation showing the operation, the data relationships and interpretation of all data fields; and | 91932 |
| | (f) be produced from the common data source within DOORS as the VCRM. | 91933 |
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| 3.4 | Verification and Validation Management Plan | |
| 3.4.1 | Project Co must prepare and update the Verification and Validation Management Plan. | 91935 |
| 3.4.2 | The Verification and Validation Management Plan (V&VMP) must: | 91936 |
| | (a) describe the V&V strategy, methodology, processes and sequence of activities to meet the requirements set out in the PS&TR; | 91937 |
| | (b) establish and maintains the strategy of progressive V&V throughout the development, integration and delivery process; | 91938 |
| | (c) include Project Co's organisation for its V&V program and the inter-relationships with other parties, such as systems engineering, design, systems assurance, system safety, RAM and HFI; | 91939 |
| | (d) detail all resources (e.g. personnel, witnesses, test platforms, Lead Verifier etc.) anticipated as being required at various stages of the V&V program; | 91940 |
| | (e) include relevant stakeholder input in the development and execution of the V&VMP; | 91941 |
| | (f) identify documentation requirements for each phase of the V&V program, describing generation and approval processes, document change and revision control, and the interdependence between the engineering and V&V documentation; | 91942 |
| | (g) describe the procedures for coordinating the V&V program with other Metro Tunnel Package Contractors, interfacing projects and key stakeholders; | 91943 |
| | (h) detail the V&V program work breakdown structure and schedule to include: | 91944 |
| | (1) all significant V&V milestones and efforts in development; | 91945 |
| | (2) any special tests or examinations necessary as part of the V&V program; | 91946 |
| | (3) any independent V&V activities required for suppliers; | 91947 |
| | (4) in-revenue testing, including monitoring operations and system operation, service performance, performance of operational problem resolution and customer support; | 91948 |
| | (5) hardware and software integration schedules; | 91949 |
| | (6) requirements for V&V concurrency; | 91950 |
| | (7) the person responsible for each V&V event; and | 91951 |
| | (8) the Lead Verifier for each V&V event; | 91952 |
| | (i) include the procedures for monitoring, evaluating and controlling the status of V&V tasks and achievement of the V&V schedules; | 91953 |
| | (j) identify and addresses the requirements for certificates of conformance; | 91954 |
| | (k) provide details of the expected configurations of the system or system components during the V&V program showing how the system configuration will be managed through the V&V phases to ensure that V&V will be conducted on equipment that is of the same hardware and software configuration as will be offered for Acceptance; | 91955 |
| | (l) describe the FRACAS used for the collection of non-conformance data (including that of Subcontractors and interfacing parties) and must identify when it will be established; | 91956 |
| | (m) identify the process used to track the corrective action taken as a result of a failure, and the interaction with Subcontractors and the State; | 91957 |
| | (n) identify how regression testing will be managed following test failure or design change throughout the V&V program; and | 91958 |
| | (o) refer to the VCRM such that for each requirement it identifies the method and stage of the V&V program at which compliance is verified and / or validated. | 91959 |
| 3.4.3 | The V&VMP must include processes for progressively developing, maintaining and submitting a VCRM that must: | 91960 |
| | (a) be used to plan and record the results of Project Co's V&V activities; | 91961 |

- (b) be progressively developed and validated to reflect the system lifecycle phases; 91962
- (c) contain at least: 91963
 - (1) a unique and unmodifiable identifier for the requirement; 91964
 - (2) the requirement words or a summary of the requirement for context; 91965
 - (3) the proposed Verification or Validation method(s), i.e. one or more of: 91966
 - (A) test; 91967
 - (B) demonstration; 91968
 - (C) inspection; 91969
 - (D) analysis; 91970
 - (E) simulation; 91971
 - (F) modelling; 91972
 - (G) experiment; 91973
 - (H) audit; 91974
 - (I) trial; 91975
 - (J) walk-through; 91976
 - (K) system review; 91977
 - (L) comparison; 91978
 - (M) historical data; 91979
 - (N) compliance certificate; or 91980
 - (O) other means; 91981
 - (4) the phase during which the requirements will be Verified or Validated; 91982
 - (5) a brief description of the proposed Verification or Validation method; 91983
 - (6) a reference to the specific test procedure(s) and relevant documentation, including unique version identifiers; 91984
 - (7) a reference to the report which contains the results; 91985
 - (8) the progressive status of each phase of the V&V program with respect to the requirement; 91986
 - (9) a result summary (i.e. PASS/FAIL or incomplete if all of the Verification or Validation activities associated with the requirement have not been completed); and 91987
 - (10) a record that the V&V results were independently checked by a Lead Verifier; and 91988
- (d) be produced from the common data source within DOORS as the RTM. 91989

3.5 Systems Assurance Management Plan 91990

- 3.5.1 Project Co must prepare and update the Systems Assurance Management Plan. 91991
- 3.5.2 The Systems Assurance Management Plan (**SAMP**) must: 91992
 - (a) define Project Co's framework for the development, integration and progressive delivery of the Assurance Case; 91993
 - (b) align with the MTP SIT Systems Assurance Management Plan; 91994
 - (c) detail the assurance activities, performed throughout the system lifecycle, to produce and integrate objective quality evidence in support of the Assurance Case; 91995
 - (d) comply with the requirements of EN50126:1999 "Railway Applications – The Specification and Demonstration of Reliability, Availability, Maintainability and Safety (RAMS)"; 91996
 - (e) detail the process for cascading these SAMP requirements to the relevant subcontractors, suppliers and lower level work packages, where applicable; 91997
 - (f) describe the assurance organisation, including the responsibility and authority of each person and entity involved in implementing the SAMP and production of the evidence to 91998

- support the Assurance Case;
 - (g) describe key systems assurance working groups, including those for RAM, system safety and HFI, and detail the lines of communication; 91999
 - (h) identify key interfacing projects and the engagement strategy to ensure interface risks are communicated and managed; 92000
 - (i) identify key stakeholders and the engagement strategy to achieving systems assurance objectives; 92001
 - (j) describe how Project Co will interface and coordinate with the Train Franchisee's Independent Safety Assessor (ISA); 92002
 - (k) detail the responsibilities for carrying out all RAM, system safety and HFI tasks within each phase of the lifecycle, including the interfaces between associated tasks; 92003
 - (l) identify and describe all interfacing processes such as accreditation, risk management, quality management, systems engineering, design, requirements management, implementation, V&V, independent safety assessment and other key processes that provide evidence to support the Assurance Case; 92004
 - (m) detail the schedule and scope of each progressive delivery of the Assurance Case throughout the lifecycle, via the Assurance Case Reports; 92005
 - (n) detail the development, implementation and integration of key assurance processes including the RAM, system safety and HFI programs; and 92006
 - (o) describe the management of risks and issues with respect to RAM, hazards and human factors issues logs (HFILs) and how these logs are used to facilitate risk communication, transfer and management. 92007
- 3.5.3 The SAMP must set out processes for the development of the Assurance Case, which must: 92008
- (a) contain objective quality evidence to support a structured and comprehensive assurance argument using Goal Structuring Notation as defined in the "GSN Community Standard Version 1 – November 2011"; 92009
 - (b) be developed and integrated using the "Adelard ASCE (Assurance and Safety Case Environment)"; 92010
 - (c) use the preliminary Goal Structuring Notation as the baseline for the GSN development; and 92011
 - (d) detail further strategies, supported by sub-goals and solutions, to make the overall assurance argument that: 92012



- 3.5.4 The SAMP must set out processes for the development and progressive delivery of the Assurance Case Reports, which must: 92013
- (a) provide an executive summary that succinctly states that the Assurance Case is appropriate for the particular phase of the lifecycle; 92014
 - (b) progressively detail the argument, at the time of the report, to support the Stage Gate Reviews; 92015
 - (c) present the RAM Log and describe the key RAM risks and the corresponding resolution actions; 92016

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| (d) | present the Hazard Log and describe the key safety risks and the corresponding resolution actions; | 92017 |
| (e) | present the HFIL and describe the key human factors risks and the corresponding resolution actions; | 92018 |
| (f) | detail the key risks associated with engineering change and corresponding resolution actions; | 92019 |
| (g) | detail the key system interface risks and corresponding resolution actions; | 92020 |
| (h) | report on the status of each goal, sub-goals and solutions in the GSN as to the level of completeness; | 92021 |
| (i) | reference all supporting evidence to support the GSN and provide these in corresponding appendices; | 92022 |
| (j) | detail the progress of the safety verification and validation efforts and the status of the corresponding VCRM; | 92023 |
| (k) | detail the status of the remaining assurance efforts required to produce the final Assurance Case; | 92024 |
| (l) | detail emerging risks and issues that could impact the Assurance Case; | 92025 |
| (m) | detail the findings and actions as a result of ISA report or activity that are pertinent to the particular phase of the lifecycle; | 92026 |
| (n) | describe the handover of residual risk to the asset operator and maintainer; and | 92027 |
| (o) | provide a conclusion and recommend actions to address any emerging risks and future activities. | 92028 |
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| 3.6 | System Safety Management Plan | |
| 3.6.1 | Project Co must prepare and update the System Safety Management Plan. | 92030 |
| 3.6.2 | The System Safety Management Plan (SSMP) must define a program to satisfy the systems assurance requirements by describing: | 92031 |
| | (a) the scope of the system safety program in terms of the system lifecycle; | 92032 |
| | (b) the integration of system safety activities with the systems engineering, design, quality management, HFI, RAM, Safety in Design, health and safety, accreditation and other functional areas; and | 92033 |
| | (c) the resource requirements needed to execute the SSMP. | 92034 |
| 3.6.3 | The SSMP must: | 92035 |
| | (a) comply with the requirements of EN50126: 1999 “Railway Applications – The Specification and Demonstration of Reliability, Availability, Maintainability and Safety (RAMS)”; | 92036 |
| | (b) describe the system safety organisation, including the organisational and functional relationships and lines of communication; | 92037 |
| | (c) identify the responsibility and authority of each person and entity involved in implementing the SSMP, including key persons, subcontractors and system safety working groups; | 92038 |
| | (d) describe how Project Co will interface and coordinate with the Train Franchisee’s Independent Safety Assessor (ISA); | 92039 |
| | (e) describe the procedures that will be used to integrate system safety efforts for external system interfaces; | 92040 |
| | (f) define a schedule of system safety program milestones and relate the schedule to systems engineering activities, specific engineering analyses such as type approval, options analysis and incident analysis, HFI activities, Stage Gate Reviews and key milestones such as commissioning and progressive acceptance into service; | 92041 |
| | (g) describe the process for hazard identification, risk assessment, risk mitigation, SFAIRP justification, communication of risks and risk acceptance; | 92042 |
| | (h) describe the approach for applying system safety processes to existing system interfaces; | 92043 |

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| | (i) describe the process for determining whether a qualitative or quantitative risk assessment is appropriate for a given hazard; | 92044 |
| | (j) detail Project Co's approach to the derivation, allocation and implementation of safety requirements and safety integrity and the use of Safety Integrity Level (SIL); | 92045 |
| | (k) describe, for system interfaces, how analysis of the integrated system design, operations and maintenance (O&M) and the interfaces will be executed; | 92046 |
| | (l) detail how data preparation tools for safety critical systems are applied (e.g. CBI and CBTC data preparation tools); | 92047 |
| | (m) describe the efforts to identify and control occupational health and safety (OHS) hazards directly related to the design for both construction and O&M; | 92048 |
| | (n) describe the detail of all system safety analyses to be conducted throughout the system lifecycle; | 92049 |
| | (o) describe the approach for development, management and review of the Hazard Log and its use in supporting the accreditation process; | 92050 |
| | (p) describe the process for verification of mitigation measures including requirements for certification, independent review and special testing of safety features; | 92051 |
| | (q) describe the procedures for ensuring the safe conduct of all V&V activities; | 92052 |
| | (r) describe the audit program to ensure that the objectives and related requirements of the SSMP are being accomplished; | 92053 |
| | (s) describe the safety training for all personnel involved in the system safety activities; and | 92054 |
| | (t) describe the near-miss, incident reporting and investigation processes. | 92055 |
| 3.6.4 | The SSMP must set out processes for the following system safety analyses to be progressively conducted, documented and delivered to the State: | 92056 |
| | (a) Preliminary Hazard Analysis (PHA) | 92057 |
| | The hazard analysis results within the PHA Report, as a minimum must: | 92058 |
| | (1) include a description of the use of appropriate risk techniques and resources to conduct the PHA such as brainstorming, SWIFT or HAZOP; | 92059 |
| | (2) review and evaluate past data of similar systems, their hazards including accidents and near misses; | 92060 |
| | (3) include the identification and description of each hazard; | 92061 |
| | (4) include the analysis and evaluation of the associated risks; | 92062 |
| | (5) include a description of the potential risk mitigation measures; | 92063 |
| | (6) include a list of the hazards that will be subject to further Quantitative Risk Assessment (QRA); | 92064 |
| | (7) include the corresponding hazard log entries; and | 92065 |
| | (8) include the associated SFAIRP justifications. | 92066 |
| | (b) System Hazard Analysis (SHA) | 92067 |
| | The hazard analysis results within the SHA Report in respect of subsystems and interrelationships, as a minimum must include: | 92068 |
| | (1) a review of the subsystems interrelationships for compliance with specified safety requirements, which will include: | 92069 |
| | (A) compliance with requirements associated with the integration of COTS subsystems; and | 92070 |
| | (B) compliance with the system requirements associated with integrating elements that have already achieved a specified SIL; | 92071 |
| | (2) a description of the use of appropriate risk techniques and resources to conduct the SHA such as SWIFT, HAZOP, FMECA, FTA or ETA; | 92072 |
| | (3) the possible independent, dependent, and simultaneous hazardous events including system failures, failure of safety devices, common cause failures and events, and system interactions that could create a hazard or result in increased system risk; | 92073 |

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| (4) | design changes that affect subsystem hazards and / or associated risks; | 92074 |
| (5) | the implications for human systems integration, including the impact on human-system interface and the risk of human errors; | 92075 |
| (6) | recommended actions to eliminate the system hazards and / or associated risks; | 92076 |
| (7) | the list of safety critical functions; | 92077 |
| (8) | the corresponding hazard log entries; and | 92078 |
| (9) | the associated SFAIRP justifications. | 92079 |
| (c) | Interface Hazard Analysis (IHA) | 92080 |
| | The hazard analysis results within the IHA Report, as a minimum must include: | 92081 |
| (1) | a review of compliance with safety requirements contained in interface specifications and / or documents, which will include: | 92082 |
| (A) | compliance with requirements associated with the integration of COTS elements; and | 92083 |
| (B) | compliance with the interface requirements associated with integrating elements that have already achieved a specified SIL ; | 92084 |
| (2) | a description of the use of appropriate risk techniques and resources to conduct the SHA such as SWIFT, HAZOP or FMECA; | 92085 |
| (3) | previously unidentified hazards associated with the system-system interfaces; | 92086 |
| (4) | an assessment of the risk associated with the total system design, including software, and specifically of the external system interfaces; | 92087 |
| (5) | recommended actions to eliminate the interface hazards and / or associated risks; | 92088 |
| (6) | the corresponding hazard log entries; and | 92089 |
| (7) | the associated SFAIRP justifications. | 92090 |
| (d) | Quantitative Risk Assessment (QRA) | 92091 |
| | QRA must be conducted for selected hazards or hazardous events, as identified in the PHA and / or other system safety analyses. Each QRA must be developed as early in the system lifecycle as possible and progressively be updated and refined throughout the lifecycle to support SFAIRP demonstration. As a minimum the QRA Report must include: | 92092 |
| (1) | a description of the system, its safety critical functions and hazardous event under consideration; | 92093 |
| (2) | the root causes and probability of occurrence of the specified hazardous event, typically using fault tree analysis including the data sources used in the fault tree model; | 92094 |
| (3) | the scenarios and consequences as a direct result of the hazardous event, typically using event tree analysis including the data sources used in the event tree model; | 92095 |
| (4) | sensitivity analyses (where appropriate); | 92096 |
| (5) | a description of the relative importance (sensitivity) of a basic event or cut-set within the fault tree or events within the event tree; | 92097 |
| (6) | the corresponding hazard log entries; | 92098 |
| (7) | quantification of risks to support SFAIRP justification and / or achievement of associated SIL; and | 92099 |
| (8) | recommendations to reduce the associated risk and the associated SFAIRP justifications. | 92100 |
| (e) | Operating and Maintenance Hazard Analysis (OMHA) | 92101 |
| | The hazard analysis results within the OMHA Report, as a minimum must include: | 92102 |
| (1) | hazards associated with the operating and maintenance activities and the actions required to minimise risk during these activities; | 92103 |
| (2) | a description of the use of appropriate risk techniques and resources to conduct | 92104 |

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| | the OMHA such as human factors techniques, SHERPA, or Human HAZOP; | |
| (3) | any changes needed in functional or design requirements for system, facilities, tooling, or support / test equipment to eliminate or control hazards or reduce associated risks; | 92105 |
| (4) | requirements for safety devices and equipment, including personnel safety and life support equipment; | 92106 |
| (5) | warnings, cautions and special emergency procedures; | 92107 |
| (6) | requirements for the packaging, handling, storage, transportation, and disposal of hazardous materials; | 92108 |
| (7) | requirement for safety training and personnel certification; | 92109 |
| (8) | potentially hazardous system states under operator control; | 92110 |
| (9) | the corresponding hazard log entries; and | 92111 |
| (10) | the associated SFAIRP justifications. | 92112 |
| (f) | Health Hazard Analysis (HH A) | 92113 |
| | The hazard analysis results within the HHA Report must include: | 92114 |
| (1) | identification of health hazards associated with the system; | 92115 |
| (2) | the assessment of the associated risks; | 92116 |
| (3) | recommended actions to eliminate the health hazards and / or associated risks; | 92117 |
| (4) | the corresponding hazard log entries; and | 92118 |
| (5) | the associated SFAIRP justifications. | 92119 |
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| 3.7 | RAM Management Plan | |
| 3.7.1 | Project Co must prepare and update the Reliability, Availability and Maintainability Management Plan (RAMMP). | 92121 |
| 3.7.2 | The RAMMP must define a program to satisfy the RAM requirements by describing: | 92122 |
| (a) | the scope of the RAM program in terms of the system lifecycle; | 92123 |
| (b) | the integration of RAM activities with the systems engineering, design, asset management, quality management, HFI, health and safety, accreditation, security and other functional areas; and | 92124 |
| (c) | the resource requirements needed to execute the RAMMP. | 92125 |
| 3.7.3 | The RAMMP must: | 92126 |
| (a) | comply with the requirements of EN50126:1999 "Railway Applications – The Specification and Demonstration of Reliability, Availability, Maintainability and Safety (RAMS)"; | 92127 |
| (b) | describe the RAM organisation, including the organisational and functional relationships and lines of communication; | 92128 |
| (c) | identify the responsibility and authority of each person and entity involved in implementing the RAMMP, including key persons, subcontractors and RAM working groups; | 92129 |
| (d) | describe the procedures that will be used to integrate RAM efforts for external system interfaces; | 92130 |
| (e) | describe the RAM design principles for designers to consult; | 92131 |
| (f) | define a schedule of RAM program milestones and relate the schedule to systems engineering activities, system safety activities, Stage Gate Reviews and key milestones; | 92132 |
| (g) | describe the process for RAM risk and issue identification, assessment, mitigation, communication and acceptance; | 92133 |
| (h) | describe the process for managing RAMS risks and issues that are shared with the Hazard Log; | 92134 |
| (i) | describe the approach for applying RAM processes to existing system interfaces; | 92135 |
| (j) | describe, for system interfaces, how analysis of the integrated system design, operations | 92136 |

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| | and the interfaces will be executed; | |
| | (k) describe the efforts to identify and control RAM risks and issues directly related to the design; | 92137 |
| | (l) describe the process for managing derived RAM requirements including RAM targets that were decomposed by the work package entity; | 92138 |
| | (m) describe the approach for development, management and review of the RAM Log, including: | 92139 |
| | (1) use of the partial schema articulated in the MMRA RAM Log Process; | 92140 |
| | (2) expansion of the partial schema, as appropriate, to account for applicable lifecycle activities such as V&V; | 92141 |
| | (3) incorporation of RAM Log entries characterised in a previous project phase; | 92142 |
| | (4) decision making framework to agree on mitigations required for issues and risks with the relevant stakeholders; | 92143 |
| | (5) periodic review of the RAM Log with the relevant stakeholders; and | 92144 |
| | (6) consideration of life cycle cost of mitigations; | 92145 |
| | (n) describe the risk matrices to be used in RAM activities, that are consistent with the Safety Management System of the relevant RTO; | 92146 |
| | (o) describe the strategy for progressively monitoring the achievement of RAM targets through the defined V&V framework, including use of test configurations over finite periods to supplement supplied data, where justified by risk; | 92147 |
| | (p) describe the audit program to ensure that the objectives and related requirements of the RAMMP are being accomplished; | 92148 |
| | (q) describe the training for all personnel involved in the RAM activities; | 92149 |
| | (r) describe the approach for managing asset performance prior to Day 1, including: | 92150 |
| | (1) incorporation of a FRACAS or equivalent to influence requirements and design activities; | 92151 |
| | (2) the process for classifying failures to drive the required corrective actions (e.g. installation defect has a different corrective action compared with random component failure); and | 92152 |
| | (3) interface with the owner of the live maintenance data; | 92153 |
| | (s) describe how RTOs are engaged in the RAM process, and how the following critical parameters are agreed during system design: | 92154 |
| | (1) estimated Mean Down Time (MDT) for all assets that have Service Affecting Failures; and | 92155 |
| | (2) estimated operational impact of all Failure Modes; | 92156 |
| | (t) describe the approach for achieving process alignment with the Rail Systems Alliance. In particular, this may relate to the use of common modelling tools and analysis outputs to allow for cross-package management of RAM; and | 92157 |
| | (u) include an Obsolescence Management Plan prepared in accordance with AS 62402 that sets out strategies, processes and tools to ensure ongoing currency of systems, subsystems, supporting infrastructure and components. | 92158 |
| 3.7.4 | The RAMMP must set out processes for the following RAM activities to be progressively conducted, documented and delivered to the State: | 92159 |
| | (a) Quantitative modelling | 92160 |
| | The quantitative modelling activity must be conducted in accordance with the following terms: | 92161 |
| | (1) produce a quantitative modelling report based on development maturity; | 92162 |
| | (2) use of a single recognised reliability analysis standard such as AS 61078:2008; | 92163 |
| | (3) document and execute an approach to progressively model the availability performance of the design against the RAM performance targets; | 92164 |
| | (4) ensure data from equipment suppliers are vetted for exaggeration and normalised | 92165 |

- to the expected operating conditions;
- (5) describe how modelling data, modelling assumptions, correction factors, data uncertainty and related engineering judgments are to be recorded, classified, prioritised and managed; 92166
 - (6) assess the design for RAM non-compliances, issues and risks using the model; 92167
 - (7) ensure that the MDT components of administrative delay, logistic delay, investigation time, repair/exchange time and test time are consistently incorporated within the model, as per CLC/TR CENELEC 50126-2:2007-02 Annex F; 92168
 - (8) allocate RAM performance targets downwards within the project's System Breakdown Structure, to an appropriate level for delivery and procurement purposes. For example, Line Replaceable Unit (**LRU**) level may be suitable where Project Co is directly responsible for the subsystem in question. A subsystem level target may be suitable where the subsystem has been partitioned off to a subcontractor by the Project Co; 92169
 - (9) provide recommendations to mitigate identified RAM non-compliances, issues and risks, in the form of requirements or, where applicable, corrective actions for the design; and 92170
 - (10) create the corresponding RAM Log entries. 92171
- (b) Maintainability Strategy 92172
- (1) Project Co must produce a Maintainability Strategy that describes how systems will be designed and installed to ensure ease of maintenance and support. 92173
 - (2) The Maintainability Strategy must inform Project Co's design decisions such that maintainability is built into the assets. 92174
 - (3) The Maintainability Strategy must as a minimum: 92175
 - (A) describe maintainability objectives including desirable design features such as standardisation, interchangeability, modularisation, testability and accessibility; 92176
 - (B) describe the key opportunities and constraints presented by the operating environment to minimise the effort necessary to undertake maintenance; 92177
 - (C) describe how preventive and corrective maintenance would be optimised through design such that the systems perform to their specified performance; 92178
 - (D) describe provisions of condition monitoring, fault detection, diagnostic, logistic, accessibility, fault isolation, ease of repair, and support systems to support achieving the specified performance; 92179
 - (E) describe how maintenance support systems for Returned Assets (training, spares allocation and storage, facilities, special tools, manuals, etc.) would be optimised; 92180
 - (F) describe how maintainability considerations would inform whole of life consideration through design; 92181
 - (G) be developed in conjunction with the asset maintainers and consider impact of human factors; 92182
 - (H) define first line, second line and third line maintenance; and 92183
 - (I) be consistent with the Obsolescence Management Plan. 92184
- (c) Failure Modes Effects and Criticality Analysis (**FMECA**) 92185
- The FMECA must be conducted in accordance with the following terms: 92186
- (1) produce a FMECA – reliability centred maintenance (**RCM**) report based on development maturity; 92187
 - (2) produce a Reliability Critical Items List (**RCIL**) based on a criticality measure; 92188
 - (3) use of a single recognised FMECA standard such as AS 60812-2008 or MIL-STD-1629A; 92189

- (4) use a quantitative criticality measure that incorporates detectability of failures; 92190
 - (5) document and execute an approach to conducting a FMECA on the design; 92191
 - (6) ensure that the FMECA covers all subsystems including civil, track, structure and architectural elements as they will need to be cascaded through to the RCMA and maintenance task definition activity to derive the maintenance outputs; 92192
 - (7) ensure that environment (e.g. temperature, water ingress, etc.) and vermin are considered as potential failure causes; 92193
 - (8) ensure that all single point failures that have significant geographic impact are assessed comprehensively within the FMECA; 92194
 - (9) ensure that the FMECA is cascaded into lower-level FMECAs, as appropriate, to manage depth and breadth of the analysis; 92195
 - (10) ensure the FMECA depth is appropriate for delivery and procurement purposes. For example, analysis down to the LRU level may be suitable where Project Co is directly responsible for the subsystem in question. A higher level analysis may be suitable where the subsystem has been partitioned off to a subcontractor by Project Co, noting that interfaces to the subsystem must be considered in the FMECA; 92196
 - (11) provide recommendations to mitigate identified RAM non-compliances, issues and risks, in the form of requirements or, where applicable, corrective actions for the design; 92197
 - (12) create the corresponding RAM Log entries; and 92198
 - (13) ensure that the FMECA output flows efficiently onto the RCM analysis (i.e. no need for intermediate RAM Log entries to interface between the FMECA and the RCMA). 92199
- (d) Reliability Centred Maintenance Analysis (**RCMA**) 92200
- The RCMA must be conducted in accordance with the following terms: 92201
- (1) analysis is integrated into the FMECA-RCM report; 92202
 - (2) use and tailoring of a single recognised RCM standard such as AS 60300.3.11; 92203
 - (3) document and execute an approach to applying RCM principles, to appropriately mitigate Failure Modes identified and ranked in the FMECA; 92204
 - (4) identify the hierarchy of controls to be used in the RCMA, including the use of maintenance tasks as a control of last resort; 92205
 - (5) ensure that supporting infrastructure is considered in selecting controls (e.g. electricity for tools, water for cleaning, storage space); 92206
 - (6) ensure Life Cycle Costing is considered in the selection of controls; 92207
 - (7) ensure sufficiently detailed analysis is carried out to support the decision making on selection of controls; 92208
 - (8) document the decisions made, their rationale and supporting analyses in the report; 92209
 - (9) provide recommendations to mitigate identified RAM non-compliances, issues and risks, in the form of requirements or, where applicable, corrective actions for the design; 92210
 - (10) create the corresponding RAM Log entries; and 92211
 - (11) ensure that the RCMA output flows efficiently onto the maintenance task definition activity (i.e. no need for intermediate RAM Log entries). 92212
- (e) Maintenance task definition 92213
- The maintenance task definition activity must be conducted in accordance with the following terms: 92214
- (1) aligned with the Maintainability Strategy; 92215
 - (2) engage the asset maintainers' representative in the maintenance task definition process; 92216

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| (3) | produce a technical maintenance plan, in a format and structure suitable for hand over to the asset maintainer; | 92217 |
| (4) | produce all required O&M collateral subordinate to the technical maintenance plan, suitable for hand over to the asset maintainer; | 92218 |
| (5) | develop and document an approach for managing configuration of assets delivered by Project Co, in consultation with the asset maintainer, and integrate into relevant subsidiary documents; | 92219 |
| (6) | provision of all maintenance collateral provided by the equipment suppliers; | 92220 |
| (7) | document and execute an approach to define maintenance tasks and supporting maintenance arrangements where maintenance tasks have been identified as a control in the RCMA; | 92221 |
| (8) | define the maintenance echelon(s) to be used; | 92222 |
| (9) | ensure that the maintenance tasks are characterised through a minimum of: | 92223 |
| | (A) asset specific procedures; | 92224 |
| | (B) maintenance task triggers (e.g. precursor metric, fault indication, time-based); | 92225 |
| | (C) coverage of all maintenance types (e.g. corrective, preventative, end of life replacement); | 92226 |
| | (D) temporary repairs where appropriate; | 92227 |
| | (E) spares and tools required; and | 92228 |
| | (F) safeworking provisions; | 92229 |
| (10) | ensure that supporting maintenance arrangements are characterised through a minimum of: | 92230 |
| | (A) staffing and competency requirements; | 92231 |
| | (B) 3rd party arrangements if applicable; | 92232 |
| | (C) non first line maintenance arrangements; | 92233 |
| | (D) plan for disruption management, for activities requiring cancellation of revenue services; and | 92234 |
| | (E) other logistics support needs; | 92235 |
| (11) | ensure interface to training activities are actively managed; | 92236 |
| (12) | ensure that non-critical maintenance tasks identified in the FMECA but not flowed onto the RCMA are covered (e.g. cleaning of public areas); and | 92237 |
| (13) | ensure the outputs of this activity are consistent with the obsolescence management approaches called out within the Obsolescence Management Plan. | 92238 |
| (f) | Spares allocation | 92239 |
| | The spares allocation activity must: | 92240 |
| (1) | produce spares allocation report based on development maturity and timeliness for procurement; | 92241 |
| (2) | document and execute an approach to determining the spares allocation for every asset within design scope, which must be centred around a quantitative queuing model; | 92242 |
| (3) | ensure that qualitative considerations such as multiple depot locations, current spares level held by maintainer, storage requirements and reverse logistics (e.g. are failed units returned to vendor for replacement in bulk) are factored into the allocation process; | 92243 |
| (4) | ensure that cross work package interfaces are considered (e.g. one work package entity determines spares allocation, and a different work package entity procures the equipment and spares); and | 92244 |
| (5) | ensure that the spares allocation report is provided in time to inform procurement for interim delivery stages. | 92245 |

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| (g) RAM workshops | 92246 |
| RAM workshops must be conducted in accordance with the following terms: | 92247 |
| (1) produce RAM workshop reports on a per workshop basis; | 92248 |
| (2) document and execute an approach to identify RAM non-compliances, issues and risks with subject matter experts in a workshop environment; | 92249 |
| (3) ensure the design scope is fully covered by the RAM workshops; | 92250 |
| (4) one workshop must cover intentional and un-intentional damage by the general public in the Front of House areas; | 92251 |
| (5) provide recommendations to mitigate identified RAM non-compliances, issues and risks, in the form of requirements or, where applicable, corrective actions for the design; and | 92252 |
| (6) create the corresponding RAM Log entries. | 92253 |
| (h) Common Cause Failure Analysis (CCFA) | 92254 |
| The CCFA must be conducted in accordance with the following terms: | 92255 |
| (1) produce a CCFA report based on development maturity; | 92256 |
| (2) document and execute an approach to identify and assess common cause failures; | 92257 |
| (3) ensure analysis covers both random and systematic failure sources; | 92258 |
| (4) ensure that the following scenarios are assessed comprehensively: | 92259 |
| (A) changeover and standby systems; | 92260 |
| (B) shared data and their configurations; | 92261 |
| (C) software/firmware deployed in multiple assets; | 92262 |
| (D) common factors affecting co-located equipment such as fire, climatic conditions, EMI/EMC, lightning, vandalism; and | 92263 |
| (E) supply chain issues; | 92264 |
| (5) provide recommendations to mitigate identified RAM non-compliances, issues and risks, in the form of requirements or, where applicable, corrective actions for the design; and | 92265 |
| (6) create the corresponding RAM Log entries. | 92266 |
| (i) Other analyses | 92267 |
| Any additional RAM analyses as required to support design activities and/or to adequately manage RAM, such as RAM input into options analyses and technology selection activities. | 92268 |

3.8 System Integration Management Plan 92269

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| 3.8.1 | Project Co must prepare and update the Systems Integration Management Plan. | 92270 |
| 3.8.2 | The System Integration Management Plan must: | 92271 |
| (a) | comply with the Systems Engineering Standard; | 92272 |
| (b) | align with the Metro Tunnel System Integration Management Plan and identify how the integration process will be managed throughout the lifecycle for intra and inter work package scope, as well as provision of support to overall system integration; | 92273 |
| (c) | describe the progressive systems integration strategy, program, processes and tools used throughout the system lifecycle; | 92274 |
| (d) | define Project Co's role in the integration of the Metro Tunnel including: | 92275 |
| (1) | the integration organisation, roles and responsibilities of integration resources; | 92276 |
| (2) | management of the system architecture and configuration items; | 92277 |
| (3) | integration of Rail Systems Alliance and Rail Infrastructure Alliance works and corresponding Assurance Cases; | 92278 |
| (4) | integration of other Related State Project Works; | 92279 |

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| (5) | participation in testing, commissioning and system acceptance activities; | 92280 |
| (6) | process to resolve integration issues; | 92281 |
| (7) | interfacing with the Train Franchisee for network integration; | 92282 |
| (8) | communication lines to key stakeholders; | 92283 |
| (9) | level of resourcing required to sustain the system integrator function for the Works; and | 92284 |
| (10) | relevant transport and Station Precinct operators, authorities and stakeholders; | 92285 |
| (e) | describe the identification and management of all interfaces and system constraints; | 92286 |
| (f) | identify the key interface and integration issues, including interfaces with existing equipment, rolling stock and signalling interfaces, track interfaces and station interfaces; | 92287 |
| (g) | identify relevant modes of transport arriving at and interchange with Metro Tunnel at each Station and the way each will be managed; | 92288 |
| (h) | detail all integration requirements, standards, processes and procedures for the implementation of the system, sub-systems, assemblies and components; | 92289 |
| (i) | detail the integration testing and commissioning process; | 92290 |
| (j) | detail the progressive audit of the system integration program; | 92291 |
| (k) | detail the operational readiness process including operation readiness, maintenance readiness, rail safety accreditation, staff readiness and documentation; | 92292 |
| (l) | address coordination of first and last required train services with other service providers; | 92293 |
| (m) | demonstrate and gain acceptance of how information regarding planned and unplanned changes to Rail Services is exchanged with the media and other service providers; | 92294 |
| (n) | describe how Project Co will coordinate with Station Precinct stakeholders, including government and private transport operators and Authorities, local councils, land owners, tenants, community, user groups, Emergency Service Organisations and event organisers, for: | 92295 |
| (1) | management of relationships with Station Precinct stakeholders, including details of relevant Project Co personnel responsible; | 92296 |
| (2) | methods to identify and engage with new Station Precinct stakeholders; | 92297 |
| (3) | methods to identify and engage with the operators of new transport services; | 92298 |
| (4) | sharing of information; | 92299 |
| (5) | participation in place branding; | 92300 |
| (6) | participation in community engagement; | 92301 |
| (7) | participation with Special Events management/organisers; and | 92302 |
| (8) | methods for coordination of Special Events, service disruption, maintenance and accident events; | 92303 |
| (o) | identify physical elements provided by Project Co to achieve physical integration with other transport networks and facilities, with elements outside the extent of the Metro Tunnel, including: | 92304 |
| (1) | pedestrian facilities including Customer connections, footpaths and pedestrian infrastructure; | 92305 |
| (2) | bicycle parking, bicycle end of trip facilities and cycleways; | 92306 |
| (3) | shared paths; | 92307 |
| (4) | bus bays, bus lanes, bus priority measures and facilities and layover space; | 92308 |
| (5) | taxi ranks; | 92309 |
| (6) | kiss-and-ride drop-off and pick-up locations; | 92310 |
| (7) | off-street and on-street car parking facilities; | 92311 |
| (8) | dynamic car parking information systems; and | 92312 |
| (9) | local road works; | 92313 |
| (p) | identify elements provided by Project Co to achieve transport integration outcomes for | 92314 |

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| customers, including elements outside the extent of the Works, for: | |
| (1) dynamic customer information: | 92315 |
| (A) within Stations and interchanges; and | 92316 |
| (B) within the Station Precincts; | 92317 |
| (2) printed customer information: | 92318 |
| (A) within Stations and interchanges; and | 92319 |
| (B) within the Station Precincts; | 92320 |
| (3) remotely accessible Customer information; | 92321 |
| (4) signage and wayfinding within the Stations, interchanges and Station Precincts; and | 92322 |
| (5) CCTV and security information systems at transport interchanges; | 92323 |
| (q) set out arrangements for the management and maintenance of the transport integration elements, including ownership, operation, maintenance and coordination between Project Co, transport operators and Authorities and Station Precinct stakeholders; and | 92324 |
| (r) set out strategies for the continuous improvement of physical, operational and Customer integration, including but not limited to: | 92325 |
| (1) monitoring of use and performance of elements of transport integration provided by Project Co; | 92326 |
| (2) Station and Station Precinct maintenance and service vehicle access; | 92327 |
| (3) mechanisms to identify, and respond to changes in: | 92328 |
| (A) passenger demand; | 92329 |
| (B) Station Precinct land use; | 92330 |
| (C) other public transport operations and services; and | 92231 |
| (D) new public transport networks, operators and services; and | 92232 |
| (4) mechanisms to respond to issues arising from the section above, including but not limited to: | 92233 |
| (A) elements owned or operated by Project Co; and | 92234 |
| (B) elements owned or operated by relevant transport and Station Precinct operators, Authorities and stakeholders. | 92235 |
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3.9 Human Factors Management Plan

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| 3.9.1 | Project Co must prepare and update the Human Factors Management Plan. | 92237 |
| 3.9.2 | The Human Factors Management Plan (HFMP) must define a program to satisfy the systems assurance requirements by describing: | 92238 |
| (a) | the scope of the HFI activities applied throughout the system lifecycle to provide effective human-system interfaces in support of achieving safety and performance requirements; | 92239 |
| (b) | the HFI principles, criteria and requirements applied to system and subsystem designs; | 92240 |
| (c) | the integration of HFI activities with the systems engineering, quality management, system safety, design, RAM, health and safety, accreditation, V&V and other functional areas; | 92241 |
| (d) | the activities to be undertaken within the HFI, including: | 92242 |
| (1) | early human factors analysis; | 92243 |
| (2) | human factors integration plans; | 92244 |
| (3) | human factors awareness raising; | 92245 |
| (4) | attendance at workshops; | 92246 |
| (5) | specific human factors analyses; | 92247 |
| (6) | human factors issues log; and | 92248 |
| (7) | human factors issues reporting; | 92249 |

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| | (e) how the system is to be made robust to the risks of human error, procedural violation and undesirable human behaviour that could impact system safety; and | 92250 |
| | (f) the personnel, related documents and references and legislative requirements needed to execute the HFMP. | 92251 |
| 3.9.3 | The HFMP must: | 92252 |
| | (a) identify and describe the primary organisational element responsible for the HFI activities; | 92253 |
| | (b) identify the responsibility and authority of each person and entity involved in implementing the HFMP, including key persons, subcontractors and working groups; | 92254 |
| | (c) describe the relationships of the HFI responsible with other organisational and functional areas, including key external parties; | 92255 |
| | (d) describe the procedures that will be used to integrate HFI activities for external interfaces; | 92256 |
| | (e) define a schedule of HFI program milestones and relate the schedule to systems engineering activities, system safety activities, Stage Gate Reviews, V&V and other key milestones; | 92257 |
| | (f) be aligned with the processes and timelines specified in other relevant plans and including the System Safety Management Plan and the Design Management Plan; | 92258 |
| | (g) describe the human factors participation in studies, tests, mock-up evaluations, dynamic simulation, specification preparation and system reviews; | 92259 |
| | (h) describe the process for human error identification, hazard and risk assessment, risk mitigation, SFAIRP justification, communication of human factors risks and acceptance of these risks using the Rail Franchisee's safety risk criteria; | 92260 |
| | (i) describe the approach for applying human factors analyses to existing system interfaces; | 92261 |
| | (j) describe how human factors analyses of the integrated system design, operations and the interfaces will be executed; | 92262 |
| | (k) describe the active participation of human factors expertise in the key areas of system development such as analysis, design and development and test and evaluation; | 92263 |
| | (l) describe all the human factors analyses to be conducted throughout the system lifecycle; | 92264 |
| | (m) describe the approach for development, management and review of the HFIL and its use in risk management and in supporting the accreditation process. The HFIL must align with the Train Franchisee's SMS requirements; | 92265 |
| | (n) describe the approach for development, management and review of end-user requirements and how these are captured in DOORS; | 92266 |
| | (o) describe the process for verification and validation of mitigation measures applied during analysis, design, development, test, evaluation and commissioning; | 92267 |
| | (p) describe the training for all personnel involved in the HFI activities; | 92268 |
| | (q) describe the audit program to ensure that the objectives and related requirements of the HFMP are being accomplished; | 92269 |
| | (r) consider the relevant aspects of the following standards: | 92270 |
| | (1) ISO 18529:2000: Ergonomics of human-system interaction – Human-centred lifecycle process descriptions; | 92271 |
| | (2) ISO 9241-210:2010: Ergonomics of human-system interaction - Part 210: Human-centred design for interactive systems; | 92272 |
| | (3) ISO 9241: Ergonomics of human-system interaction or the relevant parts may include but not be limited to: Part 2: Guidance on Task Requirements, Parts 5 Workstation layout and postural Requirements, Part 6: Guidance on the Work Environment, Part 110: Dialogue principles]; | 92273 |
| | (4) ISO 11064: Parts 1 - 7: Ergonomic design of control centres; | 92274 |
| | (5) AS IEC 62508-2011: Guidance on human aspects of dependability; | 92275 |
| | (6) ISO 9355: Parts 2 - 3: Ergonomic requirements for the design of displays and control actuators; | 92276 |

- (7) ISO 10075-3:2004: Ergonomic principles related to mental workload – Part 3: Principles and requirements concerning methods for measuring and assessing mental workload; 92277
 - (8) ISO 6385:2004: Ergonomic principles in the design of work systems; 92278
 - (9) ISO/TS 18152:2010(E): Ergonomics of human-system interaction - Specification for the process assessment of human-system issues; and 92279
 - (10) ISO 2631: Mechanical vibration and shock; and 92280
 - (s) Demonstrate that all human factors issues have been appropriately considered, addressed and documented in accordance with the MTM Human Factors Integration Procedure (L0-SQE-PRO-046). 150498
- 3.9.4 In the event that the works to be carried out by Project Co are grouped into a series of separate work packages, each work package must develop its own Human Factors Integration Plan (**HFIP**), aligned with the overall Project Co HFMP, to describe: 92281
- (a) responsibilities and activities 92282
 - (b) working arrangement and liaison with the State; 92283
 - (c) working arrangements with other stakeholders; 92284
 - (d) potential collaboration and working arrangements with other work packages; 92285
 - (e) how the preliminary HFIL will be managed and existing human factors issues addressed; and 92286
 - (f) coordination and conduct of the human factors analysis tasks detailed in the following table, ensuring that key user groups are involved and the referenced HFIL entries are addressed. 92287

Table 13-1: Human factors analysis tasks

| # | Key User Group | HF Analysis Tasks | | | | | | | | | | | HF Issues Log Reference | |
|----|----------------------------|-------------------|----------------|-------------------|---------------------|-------------------------|-------------------------------|------------|-------------------------|------------------------------------|--------------------|---------------------|-------------------------|--|
| | | Task Analysis | Error Analysis | Workload Analysis | Wayfinding Analysis | Communications Analysis | Functional Interface Analysis | HCI Design | Training Needs Analysis | Risk-Based Training Needs Analysis | Ergonomic Analysis | Crowd Flow Analysis | | Scenario Testing and Simulation |
| 1 | Customers | X | X | | X | | | | | | X | X | X | HFIR-020, HFIR-026, HFIR-032, HFIR-033, HFIR-041 |
| 2 | Drivers | X | X | X | | | X | X | | X | | | X | HFIR-021, HFIR-023, HFIR-027, HFIR-028, HFIR-034, HFIR-035, HFIR-040 |
| 3 | ELECTROL | X | X | X | | X | X | X | X | | X | | X | HFIR-021, HFIR-022, HFIR-023, HFIR-025, HFIR-041, HFIR-042 |
| 4 | Emergency Services | X | X | | X | X | X | X | X | | X | | X | HFIR-013, HFIR-023, HFIR-024, HFIR-041 |
| 5 | Fleet Controllers | X | X | X | | | | X | X | | | | | HFIR-037 |
| 6 | Maintenance Staff | X | | X | X | X | X | | X | | X | | X | HFIR-019, HFIR-030, HFIR-031, HFIR-041, HFIR-042 |
| 7 | METROL | X | X | X | X | X | X | X | X | | X | | X | HFIR-021, HFIR-022, HFIR-023, HFIR-025, HFIR-041, HFIR-042, HFIR-043 |
| 8 | Network Control Operations | X | X | X | X | X | X | X | X | | X | | X | HFIR-014, HFIR-015, HFIR-021, HFIR-022, HFIR-025, HFIR-036, HFIR-037, HFIR-038, HFIR-039, HFIR-041, HFIR-042, HFIR-043 |
| 9 | Other MTM Staff | X | | | X | | | | X | | | | X | HFIR-041 |
| 10 | Public | X | | | | | X | X | | | | | X | HFIR-024 |
| 11 | Safe Working | X | | | | | X | | X | | | | X | HFIR-042 |
| 12 | Signal Controllers | X | X | X | | X | X | X | | | | | | HFIR-036, HFIR-038, HFIR-039 |
| 13 | Station Control Operators | X | X | X | X | X | X | X | X | | | | X | HFIR-014, HFIR-015, HFIR-016, HFIR-017, HFIR-018, HFIR-022, HFIR-029 |
| 14 | Station Staff | X | X | | X | X | X | X | X | | X | | X | HFIR-013, HFIR-041, HFIR-042 |

Annexure 4 Environmental Management Plans

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4.1 Construction Environmental Management Plan

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- 4.1.1 Project Co must prepare and update the Construction Environmental Management Plan (**CEMP**) in accordance with EPR EMF2. 92391
- 4.1.2 The CEMP may apply to the whole of the Works or separate CEMPs may be developed for each precinct or component of the Works. 92392
- 4.1.3 As a minimum, the CEMP must: 92393
- (a) be developed using a risk-based approach and allow the project to be delivered in accordance with, as a minimum, the Environmental Management Framework (**EMF**), Environmental Performance Requirements (**EPR**) and Approvals; 92394
 - (b) detail appropriate design and construction responses that comply with, and implement, the EMF, and Environmental Management System (**EMS**), as well as addressing the EPRs; 92395
 - (c) include an archaeological management plan to manage disturbance of archaeological sites and values affected by the project in accordance with EPR CH7; 92396
 - (d) detail a process for identifying relevant or required consultation with local councils, Heritage Victoria, VicRoads, Melbourne Water, PTV, EPA, the Office of the Victorian Government Architect or other government agencies or stakeholders in preparing plans or documents to comply with the EPRs or Approvals; 92397
 - (e) detail the approach to obtaining all necessary planning, environmental and heritage approvals; 92398
 - (f) detail the approach to complying with any conditions on any approvals obtained by Project Co or by the State; 92399
 - (g) ensure that all relevant Laws, Reference Documents or specific requirements of the State, relevant government agencies and stakeholders are referred to and complied with; 92400
 - (h) include details of the organisational structure of Project Co and its Key Subcontractors, including, but not limited to, identification of those roles with specific environmental management responsibilities, and description of the rationale for environmental management resourcing; 92401
 - (i) detail how environmental integration will be achieved during construction through other key disciplines using cross references to other Management Plans; 92402
 - (j) detail how Project Co, any Subcontractors or any other relevant parties will comply with, monitor and adopt the CEMP at all sites; 92403
 - (k) detail how complaints and other community or stakeholder enquiries will be dealt with relating to environmental management and compliance with approvals, including compliance with EPRs SC3 and SC4; 92404
 - (l) detail the approach to implementing mitigation measures determined in consultation with key institutional stakeholders in accordance with 5.2.1.7; 92405
 - (m) detail the processes and methodologies for identifying, tracking and implementing environmental opportunities into the Works and provide performance milestones for all environmental opportunities; 92406
 - (n) include details of the arrangements for Site inductions and training to ensure that all relevant parties are aware of the requirements of the CEMP; and 92407
 - (o) include details of the processes and responsibilities for: 92408
 - (1) reviewing and updating the CEMP; 92409
 - (2) external and independent review of the CEMP; 92410
 - (3) monitoring, measurement and internal auditing arrangements to ensure that all relevant parties comply with the requirements of the CEMP; 92411

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| (4) | arrangements for facilitating independent audits of the CEMP and for the prompt and effective rectification of any non-conformances identified during such auditing; | 92412 |
| (5) | implementation of contingency measures in accordance with the EMF; | 92413 |
| (6) | arrangement for periodic reporting of environmental performance to the State and the Independent Reviewer; and | 92414 |
| (7) | implementing an adaptive approach for the assurance, monitoring, auditing and corrective action for the continuous improvement of environmental performance. | 92415 |
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| 4.2 | Site Environment Implementation Plans | |
| 4.2.1 | Project Co must prepare and update separate Site Environment Implementation Plans (SEIPs) for each work site in accordance with EPR in accordance with EPR EMF2. | 92417 |
| 4.2.2 | The SEIP must detail site-specific environmental control measures to be implemented by Project Co. As a minimum, they must: | 92418 |
| (a) | identify specific measures included in the relevant construction methodology to prevent adverse environmental impacts and enable environmental opportunities; and | 92419 |
| (b) | include relevant drawings at an appropriate scale (developed using GIS mapping) showing: | 92420 |
| (1) | location and scope of works to be managed; | 92421 |
| (2) | location and nature of key site features such as significant structures, sensitive receivers and protected trees in the vicinity of the work site; | 92422 |
| (3) | location and nature of physical controls or the nature of management controls required by the plan; | 92423 |
| (4) | nature and frequency of monitoring to be undertaken for each of the identified potential environmental impacts to ensure compliance with the EMF, the EPRs and Project Co's EMS; | 92424 |
| (5) | nature and frequency of monitoring to be undertaken of environmental indicators developed in consultation with key institutional stakeholders; | 92425 |
| (6) | procedures for notification of any incident or potential hazard, including emergency contacts; and | 92426 |
| (c) | be displayed, kept current and visible where the relevant works are occurring. | 92427 |
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| 4.3 | Urban Design Management Plan | |
| 4.3.1 | Project Co must prepare and update the Urban Design Management Plan. | 92429 |
| 4.3.2 | The Urban Design Management Plan must: | 92430 |
| (a) | be developed in accordance with the Metro Tunnel Urban Design Strategy; | 92431 |
| (b) | articulate how the urban design approach will deliver the design outcomes sought for the Project; | 92432 |
| (c) | identify the design team (architecture, landscape architecture industrial design, heritage, land use planning) and their role in the design process, including their skills, qualifications and experience; | 92433 |
| (d) | identify change management processes for public realm designs; | 92434 |
| (e) | demonstrate how public realm and station design processes will be integrated; | 92435 |
| (f) | demonstrate how relevant EPRs, including EPR LV3, will be addressed during the D&C Phase; | 92436 |
| (g) | identify how and when relevant stakeholder and land manager feedback will be incorporated into the public realm designs (as required by the EPRs); | 92437 |
| (h) | include an Interim Open Space Plan that must: | 92438 |
| (1) | identify the location of all interim open space; | 92439 |

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| (2) | include details of the proposed landscaping strategy inclusive of temporary vegetation and potted or relocatable trees; | 92440 |
| (3) | include details of any proposed street furniture, lighting and wayfinding; | 92441 |
| (4) | be designed to promote safety and inclusiveness; and | 92442 |
| (5) | incorporate cultural and community identity themes and elements, where appropriate and in accordance with the Cultural and Community Identity Enhancement Sub-Plan; and | 92443 |
| (i) | include a Cultural and Community Identity Enhancement Sub-Plan developed in accordance with the MMRA Creative Strategy which must identify: | 92445 |
| (1) | the role that features that enhance the cultural and community identity will play in the Metro Tunnel project; | 92446 |
| (2) | the character, location and scope for features that enhance the cultural and community identity in Stations, Station Precincts, and civil structures during both the D&C Phase and Maintenance Phase; | 92447 |
| (3) | how cultural and community identity enhancements or features will be embedded into the design as well as operational policies and procedures; | 92448 |
| (4) | the interface with other technical areas such as lighting, urban design, engineering and architectural specialists; customer and marketing consultants; signage & branding specialists; advertising and digital signage specialists; | 92449 |
| (5) | the capacity of the cultural and community identity features to address specific themes and purpose; | 92450 |
| (6) | the program of cultural and community identity features with suitable timing for development and approval to achieve key Works milestones; | 92451 |
| (7) | opportunities for temporary installations or experiences during the D&C Phase; | 92452 |
| (8) | the involvement of community and stakeholders; | 92453 |
| (9) | the process for finalising and procuring cultural and community identity features; and | 92454 |
| (10) | the curator responsible for advising on implementation of the cultural and community identity features, including skills, qualifications and relevant experience. | 92455 |
| 4.4 | Noise and Vibration Management Plan | 92917 |
| 4.4.1 | Project Co must prepare and update the Noise and Vibration Management Plan in accordance with Part C and EPR NV21. | 92918 |
| 4.4.2 | The Noise and Vibration Management Plan must identify how the acoustic and vibration effects of the design, construction, installation, operation and maintenance of the Works will be managed in accordance with the Agreement. | 92919 |
| 4.4.3 | The Noise and Vibration Management Plan must: | 92920 |
| (a) | have regard to the Environmental Management Plan, the Sustainability Management Plan, any Approvals and conditions on those Approvals; | 92921 |
| (b) | address Environmental Requirements; | 92922 |
| (c) | describe how Project Co will ensure compliance with all Laws and applicable policies and Guidelines in respect of noise and vibration; | 92923 |
| (d) | detail processes and methodologies to comply with construction noise and vibration constraints set out in the Environmental Requirements; | 92924 |
| (e) | detail the approach to implementing mitigation measures determined in consultation with key institutional stakeholders in accordance with 5.2.1.7; | 92925 |
| (f) | detail roles and responsibilities of key contractor personnel with respect to noise and vibration management and engagement of noise and vibration specialists; | 92926 |
| (g) | for each worksite, provide for the development of noise and vibration impact assessment procedures, including the preparation of individual site specific noise | 92927 |

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| | impact statements, for regenerated noise from bored piling, diaphragm wall installation, excavation, underground mining, tunneling operations, station construction, service facilities construction and surface construction support operations and out of hours deliveries; | |
| | (h) consider the approach to 24 hour tunneling and underground construction works; | 92928 |
| | (i) consider the approach to diaphragm wall construction cycles, including wall panel excavation, panel desanding, reinforcement cage placement and panel concreting; | 92929 |
| | (j) detail the blast management strategy (if blasting is proposed); | 92930 |
| | (k) include, for Works (including heavy vehicle movements) to be undertaken outside of the standard daytime construction periods, a description of the proposed activities, the duration of the Works, how often out of hours works are required, the noise and vibration impacts in relation to the management levels and the mitigation measures that will be required to reduce the impacts (including relocation of any sensitive receivers); and | 92931 |
| | (l) detail how Project Co will comply with its obligations under section 5.5, including a description of relocation strategies to be implemented and measures to ensure that the Works are not unduly delayed; | 118659 |
| | (m) identify all noise and vibration sources and conduct a risk assessment of the potential to cause disturbance to local residents, impact on amenity values and impact on native fauna. | 92932 |
| 4.4.4 | The Noise and Vibration Management Plan must address the following: | 92933 |
| | (a) site preparation noise including blasting etc.; | 92934 |
| | (b) construction noise; | 92935 |
| | (c) installation noise; | 92936 |
| | (d) train maintenance facility operational noise; | 92937 |
| | (e) power sub-station operational noise; and | 92938 |
| | (f) noise and vibration control measures and procedures that will be implemented and as a minimum must include: | 92939 |
| | (1) measures to ensure that all noise and vibration environmental obligations and criteria are met; | 92940 |
| | (2) the use of noise and vibration best management practice to reduce noise and vibration; | 92941 |
| | (3) selection of plant and equipment and noise-reducing components to control and reduce noise impacts; | 92942 |
| | (4) the use of broadband reversing alarms on all plant, site vehicles and delivery vehicles at all times; | 137263 |
| | (5) placement of work compounds, parking areas, equipment and material stockpile sites away from noise-sensitive locations; | 92943 |
| | (6) provision of acoustic enclosures; | 92944 |
| | (7) use of temporary noise barriers and/or mounds; | 92945 |
| | (8) consultation with affected residents and key institutional stakeholders; | 92946 |
| | (9) timing and direction of construction activities and opportunities to combine noisy activities to reduce their impact; | 92947 |
| | (10) use, installation, management and maintenance of environmental control measures, including prompt installation; | 92948 |
| | (11) construction vibration management for various plant items working adjacent to buildings; and | 92949 |
| | (12) monitoring of noise and vibration levels undertaken to provide information on the effectiveness of controls and measures. | 92950 |

Annexure 5 Sustainability Management Plan

5.1 Sustainability Management Plan

92457

- 5.1.1 Project Co must prepare and update the Sustainability Management Plan in accordance with EPR GHG1. 92458
- 5.1.2 The Sustainability Management Plan must be a single volume for the whole of the D&C Activities. As a minimum, it must: 92459
- (a) set out the processes, methodologies and initiatives to be implemented in order to achieve the sustainability requirements contained in the PS&TR during the performance of the D&C Activities; 92460
 - (b) be developed and delivered in accordance with the MMRA Sustainability Management Plan to the extent that it relates to the Works; 92461
 - (c) develop appropriate design and construction responses that comply with the MMRA Sustainability Policy, MMRA Sustainability Strategy and MMRA Sustainability Management Plan to the extent that they relate to the Works; 92462
 - (d) ensure that all relevant Laws, Reference Documents or specific requirements of relevant government agencies, stakeholders and the State are referred to and complied with; 92463
 - (e) include details of the organisational structure of Project Co and its Key Subcontractors, including, but not limited to, identification of those roles with specific sustainability management responsibilities, and a description of the rationale for sustainability management resourcing; 92464
 - (f) demonstrate how sustainability integration will be achieved through other key disciplines by nominating roles with specific sustainability management responsibilities and using cross references to other Management Plans; 92465
 - (g) detail how Project Co, any Subcontractors or any other relevant parties will comply with, monitor and adopt the Sustainability Management Plan; 92466
 - (h) include details of the arrangements for Site inductions and training to ensure that all relevant parties are aware of the requirements of the Sustainability Management Plan; and 92467
 - (i) include details of the processes and responsibilities for: 92468
 - (1) reviewing and updating the Sustainability Management Plan; 92469
 - (2) external and independent review of the Sustainability Management Plan; 92470
 - (3) monitoring and internal auditing arrangements to ensure that all relevant parties comply with the requirements of the Sustainability Management Plan; 92471
 - (4) arrangements for facilitating independent audits of the Sustainability Management Plan and for the prompt and effective rectification of any non-conformances identified during such auditing; and 92472
 - (5) implementing an adaptive approach for the assurance, monitoring, auditing and corrective action for the continuous improvement of reporting on sustainability performance. 92473
- 5.1.3 Project Co must: 92474
- (a) address and detail the processes and methodologies for identifying, tracking and implementing sustainability initiatives into the Works; 92475
 - (b) provide performance milestones for key sustainability initiatives; 92476
 - (c) provide an overarching implementation approach including processes to progressively check the achievement of the minimum IS Rating Tool score of 71 for design and as-built milestones; 92477
 - (d) provide an overarching implementation approach including processes to progressively check the achievement of the minimum GS Rating Tool minimum score of 5 stars for each station; 92478

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| | (e) provide an overview of the systems to be adopted to support sustainability management; | 92479 |
| | (f) provide data and inputs to inform the State and the Rail Franchisee public reporting on sustainability performance throughout the design, construction and operation phases of the project; and | 92480 |
| | (g) prepare and implement the following sub-plans as appendices to the Sustainability Management Plan: | 92481 |
| | (1) Urban Ecology and Vegetation Sub-Plan; | 92482 |
| | (2) Climate Resilience Sub-Plan; | 92483 |
| | (3) Carbon and Energy Sub-Plan; | 92484 |
| | (4) Materials and Waste Sub-Plan; and | 92485 |
| | (5) Water Sub-Plan. | 92486 |
| 5.1.4 | The Urban Ecology and Vegetation Sub-Plan must, as a minimum: | 92487 |
| | (a) detail the processes, methodologies and initiatives to be implemented to achieve the urban ecology and vegetation requirements set out in this PS&TR; | 92488 |
| | (b) detail the processes, methodologies and initiatives to be implemented to achieve the requirements outlined in the Biophillic Design Guidelines and the Living Infrastructure Plan; and | 92489 |
| | (c) set out the process for coordinating with specialist contractors engaged by the State or the local council to plant trees and provide soil in tree plots. | 92490 |
| 5.1.5 | The Climate Resilience Sub-Plan must, as a minimum, include; | 92491 |
| | (a) a climate risk assessment, adopting climate change projections and scenarios within the MMRA Adoption of Climate Change Scenarios and Projections Report and, if applicable, providing justification of any deviations from MMRA Climate Risk Assessment; | 92492 |
| | (b) a climate change adaptation plan that identifies existing measures based on the MMRA Climate Change Adaptation Plan and relevant new measures to address climate risks over the forecast lifecycle of the key infrastructure and components; | 92493 |
| | (c) details of the processes, methodologies and initiatives to achieve the climate resilience sustainability requirements in this PS&TR including a workshop with the State and key stakeholders to review, validate and update risk assessments; and | 92494 |
| | (d) the approach to developing and implementing flooding adaptation measures to prevent flooding in the Tunnel in accordance with section 5.2.7 of Part B. | 92495 |
| 5.1.6 | The Carbon and Energy Sub-Plan must, as a minimum: | 92496 |
| | (a) provide a description of the overall approach to the identification of opportunities to reduce greenhouse gas emissions, energy use and embodied lifecycle impacts of the Works, including options for alternative onsite electricity generation; | 92497 |
| | (b) detail low carbon strategies and initiatives that will be implemented to minimise, to the maximum extent possible, the greenhouse emissions associated with the Works to achieve the percentage reduction in section 15.5.3 of Part B; | 92498 |
| | (c) detail energy efficiency strategies and initiatives that will be implemented to minimise energy use and achieve the energy requirements in this PS&TR; | 92499 |
| | (d) demonstrate the understanding of the base case set and verified by the State in the 'ISCA Carbon and Energy Base Case'; | 92500 |
| | (e) include processes to develop a detail design greenhouse gas footprint to demonstrate the achievement of the energy requirements in section 15.5 of Part B; | 92501 |
| | (f) detail how the carbon model provided in the Energy and Carbon Base Case and Reductions Model will be used by Project Co to demonstrate achievement of the energy targets and ISCA energy credit levels; | 92502 |
| | (g) demonstrate how construction equipment will be selected to maximise energy efficiency in line with the construction methodology; | 92503 |
| | (h) detail processes and systems to collect greenhouse gas emissions data during the construction phase; and | 92504 |
| | (i) include processes to develop an as-built greenhouse gas footprint to demonstrate the | 92505 |

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| | achievement of the energy requirements in this PS&TR. | |
| 5.1.7 | The Materials and Waste Sub-Plan must, as a minimum: | 92506 |
| | (a) detail the processes and methodologies to achieve the materials and waste requirements in this PS&TR; | 92507 |
| | (b) detail strategies to reduce materials and waste use through design refinement to meet the requirements of section 15.6 of Part B; | 92508 |
| | (c) details strategies to reduce materials and waste by construction planning and construction methods, waste minimisation, recycling and resource recovery; | 92509 |
| | (d) include a detailed design Materials Calculator to demonstrate the achievement of the materials requirements in section 10.6.1.2 of this Part C and section 15.6 of Part B to be implemented in the construction phase; and | 92510 |
| | (e) include an as-built version of the Materials Calculator to demonstrate the achievement of the materials requirements in this PS&TR and monitor, measure and report materials consumption in the Sustainability Report on a monthly basis. | 92511 |
| 5.1.8 | The Water Sub-Plan must, as a minimum: | 92512 |
| | (a) detail the processes and methodologies to achieve the water requirements in this PS&TR for the Works; | 92513 |
| | (b) detail initiatives to be implemented during the performance of the D&C Activities to meet the sustainability requirements in this PS&TR; | 92514 |
| | (c) include evidence to demonstrate that initiatives have been investigated during design and implemented in the construction phase with respect to the following: | 92515 |
| | (1) reduction in potable water usage; | 92516 |
| | (2) replacements of potable water with local non-potable water sources; | 92517 |
| | (3) reduction of overall materials used; | 92518 |
| | (4) implementation of water sensitive urban design initiatives; and | 92519 |
| | (5) use of rainwater or stormwater harvesting; | 92520 |
| | (d) detail how Project Co will work with the State on legacy water offsetting projects in accordance with MMRA Sustainability Strategy; | 92521 |
| | (e) include a detailed design water model to demonstrate the achievement of the water requirements in section 15.7 of Part B to be reviewed by the State at each Design Stage; | 92522 |
| | (f) include an as-built version of the water model to demonstrate the achievement of the water requirements in this PS&TR and monitor, measure and report potable and non-potable water consumption in the Sustainability Report on a monthly basis; and | 92523 |
| | (g) include processes to ensure that all construction equipment requiring water must be selected taking into account the water efficiency of the equipment and associated construction methodology. | 92524 |

Annexure 6 Communications and Stakeholder Engagement Management Plan

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| 6.1 | Communications and Stakeholder Engagement Management Plan | 92526 |
| 6.1.1 | Project Co must prepare and update the Communications and Stakeholder Engagement Management Plan (CSEMP). | 92527 |
| 6.1.2 | The CSEMP must: | 92528 |
| | (a) be consistent with all requirements in section 5; | 92529 |
| | (b) be consistent with the Community and Stakeholder Engagement Management Framework developed by the State, as approved by the Minister for Planning, in accordance with EPR SC3; | 118350 |
| | (c) demonstrate how stakeholders including businesses, community members, transport network users and government bodies will be engaged during the planning, detailed design and delivery of the Works; | 92530 |
| | (d) demonstrate how stakeholder issues and concerns, including those set out in Appendix C2, will be identified, documented and addressed; | 92531 |
| | (e) demonstrate how Project Co will establish and engage with the Stakeholder Groups in the Design Review Process; | 92532 |
| | (f) address any relevant Environmental Performance Requirements including: | 92533 |
| | (1) the preparation of the relocation management framework described in EPR SC2, which must be consistent with the Residential Impact Mitigation Guidelines; | 92534 |
| | (2) the preparation of a Business Disruption Plan in accordance with EPR B2, which must be consistent with the Business Support Guidelines for Construction; | 92535 |
| | (3) the preparation of a Community and Business Involvement Plan in accordance with EPRs SC3 and SC4; and | 92536 |
| | (4) the preparation of a communications plan to liaise with potentially affected community stakeholders and land owners regarding potential noise and vibration impacts in accordance with EPR NV5. | 92537 |
| | (g) provide for the appointment of communications, community relations and stakeholder engagement representatives and outline each representative's responsibilities; | 92538 |
| | (h) include: | 92539 |
| | (1) a commitment statement that demonstrates a high level of commitment to stakeholders and that the engagement processes are valued; | 92540 |
| | (2) objectives that determine the level of engagement appropriate to the needs of the Project; | 92541 |
| | (3) an analysis of stakeholders including a table that identifies all relevant stakeholders and indicates their likely level of interest in the project and their likely issues; | 92542 |
| | (4) a community engagement program including a description of project specific stakeholder engagement techniques that respond to the objectives, level of engagement and stakeholder analysis; | 92543 |
| | (5) a timetable, to be updated on a regular basis, including key community engagement milestones and demonstrating early engagement activities and milestones for reviewing and responding to feedback; and | 92544 |
| | (6) a review and evaluation process linked to the stakeholder engagement objectives for the Project, including undertaking research to gauge effectiveness of engagement efforts and community surveys undertaken at least annually during construction and at least one survey during the first two years of operation. The evaluation process must also include the identification and implementation of any | 92545 |

- required corrective actions;
- (i) include procedures to: 92546
 - (1) in accordance with EPR EMF4, manage public enquiries, feedback and complaints concerning the Works and the Project consistent with Australian Standard AS/NSZ 10002:2014 *Guidelines for Complaint Management in Organisations*; 92547
 - (2) record and report on the preparation and distribution of community notices and public materials; 92548
 - (3) build and maintain effective relationships with local communities and stakeholders; 92549
 - (4) respond in a timely and sensitive manner to matters which are of interest or concern to the community, including but not limited to: 92550
 - (A) project design; 92551
 - (B) significant milestones; 92552
 - (C) construction activities including working hours and potential impacts; 92553
 - (D) changed traffic and transport conditions; and 92554
 - (E) changed access arrangements; 92555
 - (5) use both written and online communications: 92556
 - (A) to develop protocols for media management and liaise with the State on key milestones and opportunities for project promotion related to construction activities; 92557
 - (B) to address instances where the construction activities result in material impacts on the transport network; 92558
 - (C) to address incidents occurring in the construction areas which impact on transport network operations; 92559
 - (D) to deal with complaint resolution including escalation beyond Project Co; 92560
 - (E) for the organisation of Site visits, community open days and opening events; and 92561
 - (F) to promote the Project and its benefits; 92562
 - (j) include, at a minimum: 92563
 - (1) initiatives to build community capacity and resilience and to generate positive social outcomes during the delivery of the Works and as a legacy; and 92564
 - (2) the approach to working with local government, not for profit organisations, community groups and other relevant State and Commonwealth agencies to achieve mutually beneficial outcomes; 92565
 - (k) include as appendices to the CSEMP: 92566
 - (1) a Special Events Sub-Plan that addresses proactive identification of, coordination, communication and engagement with Special Event organisers across the Works, including but not limited to those listed in Appendix C4, noting that some major events are planned years in advance; and 92567
 - (2) a crisis communications plan that outlines how communications and media activities, stakeholder and community relations, and interfaces with the State, other contractors, relevant government agencies and emergency services would be managed in a crisis. This plan must be consistent with the Integrated Crisis Framework. 92568

Annexure 7 Health and Safety Management Plan

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7.1 Health and Safety Management Plan

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- 7.1.1 Project Co must prepare and update the Health and Safety Management Plan in accordance with EPR C4. 92571
- 7.1.2 The Health and Safety Management Plan must: 92572
- (a) describe how workplace health and safety will be managed at each distinct area of the Site, and in relation to the Relevant Infrastructure and the D&C Activities for the duration of the D&C Phase; 92573
 - (b) ensure that the D&C Activities are undertaken in accordance with the principles set out in section 6.1.1; 92574
 - (c) be a single volume for the whole of the D&C Activities (including any D&C Activities performed by Subcontractors); and 92575
 - (d) as a minimum, comply with the following requirements: 92576
 - (1) all applicable OHS Legislation, without limitation, this includes general duty provisions applying to Project Co, Principal Contractor provisions and specific regulations regarding construction work; and 92577
 - (2) BS6164: 2011 and AS4801:2001 or a comparative international standard. 92578
- 7.1.3 The Health and Safety Management Plan must include, as a minimum: 92579
- (a) Project Co's health and safety policy and objectives; 92580
 - (b) demonstration of how the outcomes of the Safety Strategy and Culture Workshop have been incorporated; 92581
 - (c) the Health and Safety Risk Assessment; 92582
 - (d) the details required to be included in a health and safety coordination plan under the OHS Regulations; 92583
 - (e) details of the organisational structure of the Subcontractors including, but not limited to, identification of those roles with specific health and safety responsibilities, such as the roles and responsibilities of the health and safety professionals (including the Occupational Health and Safety Manager) and description of the rationale for safety resourcing; 92584
 - (f) details of how Project Co will manage safety on the Project, including in relation to: 92585
 - (1) underground safety and supervision; 92586
 - (2) any demolition activities; 92587
 - (3) heavy lifting and safe crane operations; 92588
 - (4) HV installation and management; 92589
 - (5) working in confined spaces; 92590
 - (6) traffic and vehicle interaction; 92591
 - (7) management of heavy vehicle movements (giving consideration to the use of GPS tracking to manage heavy vehicle movements) and loading/ unloading; 92592
 - (8) pedestrian and cyclist protection; 92593
 - (9) mental health; 92594
 - (10) occupational illnesses and disease; 92595
 - (11) flood management; 92596
 - (12) spoil management; 92597
 - (13) compliance with the Heavy Vehicle National Law; 92598
 - (14) hazardous materials; 92599
 - (15) fatigue; 92600

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| (16) | identification of high risk activities and field verification of the effectiveness of critical controls in place to manage those activities; and | 92601 |
| (17) | prevention of impacts to underground services; | 92602 |
| (g) | procedures and responsibilities for: | 92603 |
| (1) | preparation, implementation, review and updating of the Health and Safety Management Plan; | 92604 |
| (2) | identifying hazards and risks associated with the Project Activities, including preparation, review and updating of the Health and Safety Risk Assessment and establishing appropriate controls which must be in accordance with the hierarchy of controls during the Works; | 92605 |
| (3) | providing such information, instruction and training as is necessary to ensure risks are appropriately eliminated or controlled; | 92606 |
| (4) | the management of Subcontractors; | 92607 |
| (5) | ensuring the preparation and implementation of Safe Work Method Statements for all High Risk Work; | 92608 |
| (6) | reviewing the effectiveness of the Health and Safety Management Plan, particular controls implemented under the Health and Safety Management Plan, and where necessary revising the Health and Safety Management Plan and the controls implemented thereunder; | 92609 |
| (7) | monitoring and verification of the effectiveness of critical controls for high risk activities; | 92610 |
| (8) | complying with the Heavy Vehicle National Law; | 92611 |
| (9) | managing hazards and risks associated with fatigue; | 92612 |
| (10) | managing hazards and risks associated with hazardous materials; | 92613 |
| (11) | reporting and investigation of Health and Safety Incidents; | 92614 |
| (12) | reporting and investigation of Health and Safety Incidents that that have the potential to impact a Rail Franchisee's Accreditation. These must be reported immediately or as soon as possible. Any investigation is to be performed to the satisfaction of the Rail Franchisee, with required improvements identified and actions closed out; | 92615 |
| (13) | arrangements for ensuring appropriate Site-specific and task-specific induction and training is undertaken by all relevant Subcontractors and other persons who attend the Site to ensure they are aware of the requirements of the Health and Safety Management Plan and safety controls identified therein; | 92616 |
| (14) | arrangements for ensuring induction and training; | 92617 |
| (15) | arrangements for ensuring training addresses the risk profile and emergency procedures for that part of the Site; | 92618 |
| (16) | performance monitoring and auditing arrangements including an audit schedule; | 92619 |
| (17) | arrangements for facilitating the Health and Safety Management Plan Audit and the Health and Safety Compliance Audits, and for the prompt rectification of any non-conformances identified; | 92620 |
| (18) | arrangements for consulting with Key Subcontractors; | 92621 |
| (19) | arrangements for consulting with and providing safety information to relevant stakeholders; | 92622 |
| (20) | managing public safety during all Project Activities, including control measures and ongoing verification of the effectiveness of these control measures; and | 92623 |
| (21) | consideration of overlapping safety obligations and requirements under the RSNL. | 92624 |
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7.2 Emergency Response and Incident Management Plan

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| 7.2.1 | Project Co must prepare and update the Emergency Response and Incident Management Plan (ERIMP). | 92626 |
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| 7.2.2 | The ERIMP must comply with OHS Legislation and must ensure reporting and investigation of Health and Safety Incidents by Project Co and all Subcontractors. | 92627 |
| 7.2.3 | The ERIMP must, at a minimum, provide details of the following: | 92628 |
| | (a) roles and responsibilities in the event of an Emergency or crisis; | 92629 |
| | (b) procedures for managing and controlling Emergencies, Incidents or crises; | 92630 |
| | (c) details of safe egress or evacuation of the Site following an Incident or Emergency; | 92631 |
| | (d) emergency and crisis contacts list (including contacts for out of hours); | 92632 |
| | (e) details of first aid and emergency equipment kept on Site; | 92633 |
| | (f) procedures for locating and/or identifying all workers who may have been involved in or affected by the Emergency or Incident; | 92634 |
| | (g) procedures for training workers in relation to Emergencies and Incidents; | 92635 |
| | (h) details of possible emergency or crisis scenarios that may occur during the Works and how those emergencies are proposed to be managed; | 92636 |
| | (i) details for contacting, notifying and interfacing with relevant government agencies, Emergency Service Organisations and other relevant stakeholders, such as Utility Providers and municipal councils; | 92637 |
| | (j) specific Emergency Service Organisations' information relating to their respective capabilities and functions. This information must be sourced directly from the relevant Emergency Service Organisations or from the State; | 92638 |
| | (k) procedures for the immediate notification to the State of incidents which may give rise to a public interest or be communicated to Victorians through the media; | 92639 |
| | (l) means for compliance with and coordination of any other emergency notification requirements under the Agreement; and | 92640 |
| | (m) procedures for testing and reviewing the ERIMP throughout the Term. | 92641 |
| 7.2.4 | The ERIMP must address and be consistent with the Integrated Crisis Framework | 92642 |

Annexure 8 Design Management Plan

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8.1 Design Management Plan

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8.1.1 Project Co must prepare and update the Design Management Plan.

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8.1.2 The Design Management Plan must:

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(a) identify how Project Co will manage the design development process in order to comply with the design requirements of the Agreement;

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(b) cover all aspects of the Works;

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(c) detail the proposed approach to identification and application of standards during the design development process including consideration of variances between or gaps in standards and how these will be addressed;

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(d) include a schedule of Design Packages;

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(e) identify which Design Packages will be reviewed by the Lead Architect prior to submission of Design Documentation to the Independent Reviewer;

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(f) for each Design Package, list technical specifications and standards applicable to the Design Package;

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(g) identify how Project Co will manage the design development process for the Accelerated Design Packages;

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(h) include a design process flow chart that describes the design development process for all Design Packages including any Accelerated Design Packages;

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(i) include a design program to ensure that Design Documentation is submitted in package sizes and timings that are reasonable and manageable to enable the State, Independent Reviewer and/or Returned Asset Owner to carry out their obligations and respond within required timeframes;

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(j) detail Project Co's approach to conducting Stage Gate Reviews during the design development process;

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(k) detail Project Co's approach to achieving and demonstrating Level 0 Systems Integration;

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(l) provide within the organisational structure of the D&C Subcontractor the key position roles and the minimum skills and experience required for each position in the D&C Subcontractor's design team, including its subcontractors, its design verifiers and the position of Proof Engineer;

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(m) describes the processes to be used to assure the quality of the design, including:

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(1) a mechanism for incorporating the comments of the Independent reviewer, the State or any Stakeholder Groups involved in the design development process as set out in the Design Review Schedule;

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(2) details of the processes in relation to risk management and Safety In Design (including the development of risk registers and the reporting of residual risk in accordance with AS/NZS ISO 31000:2009 – Risk management – Principles and guidelines);

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(3) details of the processes in relation to quality assurance certification;

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(4) details of the processes in relation to compliance with the Agreement;

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(5) the design reviews in accordance with the Design Review Schedule;

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(6) details of the processes in relation to design change management;

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(7) details of the management and coordination of design interfaces, including interfaces with other design disciplines and with interfacing works;

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(8) details of the design verification (including in relation to proof engineering and the Temporary Works), interdisciplinary checks, validation and certification processes, including providing a verification, validation and certification schedule;

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| | and | |
| | (9) in relation to management review and approval; | 92667 |
| (n) | include details of the design co-ordination requirements for design reviews, risk assessments, risk management workshops, comments and co-ordination meetings among each of the design disciplines and with the State and other stakeholders including, where appropriate, any parties carrying out Related State Project Works; | 92668 |
| (o) | include details of the processes to be used for the preparation and submission of As-Built Records and utility asset information; | 92669 |
| (p) | describe the process for providing design updates in the Monthly D&C Phase Progress Report prepared in accordance with section 1.4.2.3(b) that summarises the status and progress of the design and records discussion and decisions affecting the design and construction; | 92670 |
| (q) | contain the following as appendices: | 92671 |
| | (1) a SiD Management Sub-Plan that addresses how Safety In Design must be implemented; | 92672 |
| | (2) [Not disclosed] | 92673 |
| | (3) an Electromagnetic Compatibility Management Plan as set out below; | 92674 |
| | (4) a Durability Management Sub-Plan that addresses how durability requirements and standards will be complied with during the design development; | 92675 |
| | (5) a Modelling Management Sub-Plan that describes the modelling procedures, including review and verification, and addresses how modelling requirements will be met in relation to the Works; and | 92676 |
| | (6) a Wheel/ Rail Interface Management Sub-Plan, including: | 118023 |
| | (A) consideration of HCMT wheel profile and type, rail deflection, bending stresses, longitudinal stresses and wheel rail contact stresses and defects (including potential for corrugations, rolling contact fatigue and other rail head defects to develop); | 118024 |
| | (B) determination of the grade/type of rail required (e.g. standard carbon, head hardened etc.); and | 118025 |
| | (C) assessment of the need and/or suitability for track based rail lubrication or friction modifiers; and | 118026 |
| | (D) a Blast Assessment Sub-Plan. | 150503 |
| (r) | include processes and allocation of responsibilities that will ensure that: | 92677 |
| | (1) the Interim Design Documentation complies with section 7.5.2; | 92678 |
| | (2) the Certified Design Documentation complies with section 7.5.3; and | 92679 |
| | (3) the documentation, certification and notification of proposed changes to IFC Design Documentation comply with section 7.5.4. | 92680 |
| | | 92681 |
| 8.2 | Electromagnetic Compatibility Management Plan | |
| 8.2.1 | Project Co must prepare and update the Electromagnetic Compatibility (EMC) Management Plan. | 92682 |
| 8.2.2 | The EMC Management Plan must: | 92683 |
| | (a) consider the electromagnetic emissions generated by the Works as a whole throughout the different phases of the Project as follows: | 92684 |
| | (1) trials; | 92685 |
| | (2) construction; | 92686 |
| | (3) commissioning; | 92687 |
| | (4) testing; | 92688 |
| | (5) operation (for all modes of operation); | 92689 |
| | (6) maintenance; | 92690 |

- (7) decommissioning; and 92691
- (8) on the safe and correct operation of any other adjacent railway infrastructure or relevant 3rd party stakeholders; 92692
- (b) include an EMC hazard identification; 92693
- (c) include provisions for obtaining assurance and certification for each system that makes up the Works; 92694
- (d) include provisions for the maintenance of an “EMC Project File” that contains, as a minimum, the following: 92695
 - (1) EMC Management Plan; 92696
 - (2) EMC risk analysis; 92697
 - (3) EMC design review; 92698
 - (4) EMC pre site survey (measured background electromagnetic interference); 92699
 - (5) EMC equipment test report; and 92700
 - (6) EMC compliance matrix and associated technical files; 92701
- (e) provide for performing EMC studies to determine the impact of earthing and bonding connections between the Rail Infrastructure assets and the neighbouring railway infrastructure (wider area), businesses, residences and utilities.; 92702
- (f) include an EMC test strategy to address EMC across the Works; 92703
- (g) provide for an EMC study regarding the interaction between the train detection system and rolling stock according to IEC 62427 for the tunnel and stations where signalling infrastructure is modified or added as part of the Works; and 92704
- (h) provide for a register of non-conformant items (regarding EMC), for equipment that fails to achieve the appropriate standards or specific requirements. 92705

Annexure 9 Transport Management Plans

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9.1 Transport Management Plan

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9.1.1 Project Co must prepare and update the Transport Management Plan in accordance with EPR T2. 92708

9.1.2 The Transport Management Plan must: 92709

- (a) be a single overarching document for the whole of the Works; 92710
- (b) comply with the relevant Environmental Performance Requirements; 92711
- (c) consider all modes of transport including pedestrians, cyclists, cars, buses, trams and trucks; and 92712
- (d) optimise movements based upon the modal priorities provided in Part B, Appendix B4. 92713

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9.2 Traffic Management Plan

9.2.1 Project Co must prepare and update the Traffic Management Plans. 92715

9.2.2 The Traffic Management Plans (**TMPs**) must: 92716

- (a) address any Environmental Requirements; 92717
- (b) be consistent with the Transport Management Plan; 92718
- (c) demonstrate how the transport network will be safely and effectively managed in each Precinct throughout the D&C Phase for all vehicles, cyclists, pedestrians, public transport users and construction personnel, with clear and accurate information for all users; 92719
- (d) comply with the *Road Management Act 2004*, the *Worksite Safety – Traffic Management Code of Practice under the Road Management Act 2004* and the Agreement; 92720
- (e) be prepared by VicRoads prequalified consultants; 92721
- (f) address and ensure compliance with the requirements of all Authorities; 92722
- (g) include area strategies for proposed traffic management arrangements for each location where vehicles, cyclists, pedestrians and public transport may be affected; 92723
- (h) detail the approach to implementing mitigation measures determined in consultation with key institutional stakeholders in accordance with 5.2.1.7; 92724
- (i) be supported by traffic data and analysis to demonstrate that traffic impacts will be minimised and showing the proposed staging provisions for: 92725
 - (1) temporary transport and pedestrian routes; 92726
 - (2) managing restricted lane widths; 92727
 - (3) construction clear zones; and 92728
 - (4) property access arrangements; and 92729
- (j) include procedures and responsibilities for managing and reporting traffic accidents and incidents. 92730

9.2.3 Project Co must prepare a TMP for each Precinct that aligns with the Transport Management Plan and includes as a minimum: 92731

- (a) the purpose and objectives of the TMP; 92732
- (b) a schedule of events expected to impact on the transport network including an outline of proposals for any closure or other activity (including routes beyond the Site) and proposed timeframes; 92733
- (c) procedures and responsibilities for preparing, reviewing and updating the WTMPs; 92734
- (d) transport analysis to verify the adequacy of the TMP and any WTMP; 92735
- (e) independent Road Safety Audits, in accordance with section 9.9, of WTMPs and associated TGS; 92736

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| | (f) a process to meet all relevant program and approval requirements for TMPs and WTMPs; | 92737 |
| | (g) development and implementation of communications requirements in accordance with section 5; and | 92738 |
| | (h) processes for implementing, auditing and adjusting the WTMPs. | 92739 |
| 9.2.4 | TMPs must: | 92740 |
| | (a) show any changes to the proposed arrangements for staging the Works, including Temporary Works, and for managing vehicles, pedestrians, cyclists, public transport and construction traffic; | 92741 |
| | (b) include the requirements of all Responsible Road Authorities including the in-principle agreements of the Responsible Road Authorities; | 92742 |
| | (c) include submission of VicRoads Planned Road/Lane Closure Advice form for inclusion in roadworks bulletins; | 92743 |
| | (d) include arrangements for Site induction to ensure that the relevant personnel are aware of the requirements of the TMP and the requirements of specific TMPs and WTMPs; | 92744 |
| | (e) include processes for reviewing the appropriateness of the design standards adopted for TMPs and WTMPs; | 92745 |
| | (f) include a schedule of relevant standards, specifications, Laws, Regulatory Requirements and other requirements in accordance with which the WTMPs are prepared; | 92746 |
| | (g) include detail of the impacts on local roads, due to transport diversions or altered travel patterns, including details of the following: | 92747 |
| | (1) provision of advance notice; | 92748 |
| | (2) signage indicating changes due to the truncation, realignment and other alterations of roads shown in Project Co's design; and | 92749 |
| | (3) signage indicating alternative routes/detours that have been agreed to by the Responsible Road Authority(s); | 92750 |
| | (h) include the use of Variable Message Sign (VMS) as follows: | 92751 |
| | (1) where advanced notification is required for any Traffic Event that requires traffic to utilise an alternate route (other than a side track / localised diversion road) and/or which results in traffic being delayed by more than 5 minutes, a minimum of one VMS must be provided on each road approach, placed continuously from 7 days prior to the proposed Traffic Event; | 92752 |
| | (2) a VMS must be in place for at least the first 7 days of any Traffic Event (or, if the duration of the Traffic Event is less than 7 days, the full duration of the Traffic Event) that requires traffic to utilise an alternate route and/or which results in traffic being delayed by more than 5 minutes. Static signs may be used for any duration beyond 7 days; | 92753 |
| | (3) Project Co should where possible seek to utilise existing fixed VMSs operated by VicRoads; | 92754 |
| | (4) the message and panel format proposed for static signs and/or VMSs must be in accordance with the Worksite Safety – Traffic Management Code of Practice; and | 92755 |
| | (5) the placing of VMSs must not obstruct the movement of pedestrians or cyclists, or obscure driver sightlines, traffic signals or existing road signs; | 92756 |
| | (i) include protocols for communication of traffic impacts to motorists, and notices to property owners/occupiers whose access is affected in accordance with Annexure 9, section 9.2.4(c); | 92757 |
| | (j) include provision of formal advice to all relevant stakeholders, including but not limited to residents, businesses, schools, community groups, municipal councils, road user groups, public transport, affected individuals and emergency services affected in accordance with Annexure 9, section 9.2.4(c) prior to a proposed Traffic Event; | 92758 |
| | (k) include emergency contacts including emergency services and other relevant Authorities and procedures to ensure after hours attendance at the Site in the event of an | 92759 |

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| | emergency; | |
| (l) | include drawings that demonstrate the proposed traffic staging methodology for each section of the Works and clearly identify the stages of the Works or particular activities for which individual WTMPs are produced. Drawings must include details of barriers and associated widths of 'no go zones' and lane widths and shoulder widths; | 92760 |
| (m) | include the timetable which outlines the proposed timeframe for commencement of stages of the Works or particular activities identified above, and the timetable for the submission and implementation of any WTMP and associated TGS; | 92761 |
| (n) | processes for liaison and co-ordination with Responsible Road Authorities and any parties undertaking adjacent works or activities; | 92762 |
| (o) | the proposed arrangements for the management of traffic within the Site, including routes within the Site from Site access points to Work areas and delivery points; | 92763 |
| (p) | the proposed arrangements for managing vehicle movements in and outside of the worksite including management of interactions with both pedestrian and bicycle movements. | 92764 |
| (q) | the proposed diversion routes for emergency services accessing all major hospitals affected by the Works; | 92765 |
| (r) | allow a minimum period of 10 Business Days' notice for providing advice to Emergency Service Organisations of Works requiring diversion routes. | 92766 |
| | | 92767 |
| 9.3 | Worksite Traffic Management Plan (WTMP) | |
| 9.3.1 | Project Co must prepare and update the WTMPs. | 92768 |
| 9.3.2 | The WTMPs must: | 92769 |
| (a) | provide for the management of the performance of discrete stages or components of the Works and Temporary Works that have an impact on (or on users of) roads, shared use paths, footpaths or public transport infrastructure. | 92770 |
| (b) | be prepared in accordance with the following: | 92771 |
| (1) | the Transport Management Plan and relevant TMPs; | 92772 |
| (2) | the Road Management Act 2004 Worksite Safety – Traffic Management Code of Practice; | 92773 |
| (3) | Austrroads Guides; and | 92774 |
| (4) | AS 1742.3: Traffic control for Works on Roads; and | 92775 |
| (c) | be live documents that are updated in response to changed traffic conditions. | 92776 |
| 9.3.3 | Project Co must obtain all necessary approval of the WTMP from the Responsible Road Authority, and coordinate/implement any arrangements associated with the WTMPs. | 92777 |
| 9.3.4 | Each WTMP must be a complete document incorporating the following: | 92778 |
| (a) | an introduction describing the WTMP, its purpose and justification including alternatives considered; | 92779 |
| (b) | measures to adequately control vehicle, bicycle, pedestrian and public transport movements including consideration of passengers; | 92780 |
| (c) | worksite hazard assessments in accordance with the Worksite Safety – Traffic Management Code of Practice; | 92781 |
| (d) | results of transport analysis demonstrating the impacts of proposed arrangement(s); | 92782 |
| (e) | the location and extent of any proposed road, footpath, tramway, bus lane, cycle path or lane closures or other event that impacts on transport users; | 92783 |
| (f) | proposed operating conditions including speed limits; | 92784 |
| (g) | the timing of any proposed road or lane closures or other event that impacts on traffic; | 92785 |
| (h) | transport movements at intersections that are proposed to be prohibited (if any) and the transport movements normally prohibited that are proposed to be allowed (if any); | 92786 |
| (i) | any proposed signage and pavement markings, including any changes to the existing signage and/or pavement markings; | 92787 |

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| (j) modifications proposed to existing traffic control devices and onroad services including but not limited to traffic signals and traffic signal phasing, help phones, incident detection loops, control boxes and closed circuit television; | 92788 |
| (k) the location of any proposed temporary traffic signals; | 92789 |
| (l) notification, including the submission of any Memorandum of Authorisation (provided to Project Co from the Responsible Road Authority) of any Major Traffic Control Devices proposed or affected, which require installation, removal and/or alteration. If a Major Traffic Control Device is proposed or affected as above, then the Memorandum of Authorisation is required from VicRoads, irrespective of whether the Responsible Road Authority is VicRoads or a municipal council; | 92790 |
| (m) CAD drawings that clearly show the proposed transport staging; | 92791 |
| (n) the detours proposed, including details of the proposed signing scheme for such detours (if different from the TMP); | 92792 |
| (o) replacement public transport services; | 92793 |
| (p) the following details for proposed side tracks: | 92794 |
| (1) the geometry of the side track; and | 92795 |
| (2) the details of surfacing treatment and, where applicable, the associated maintenance regime; | 92796 |
| (q) measures proposed to mitigate the disruption to transport, including transport that is disrupted outside the Site; | 92797 |
| (r) evidence of the agreement of the Responsible Road Authority; | 92798 |
| (s) an implementation program for the Traffic Event; | 92799 |
| (t) a complete list of relevant contacts including Project Co, the State, Emergency Service Organisations, Authorities and service providers; | 92800 |
| (u) the findings and actions from a Road Safety Audit; | 92801 |
| (v) arrangements for Road Safety Audits after implementation of the WTMP; | 92802 |
| (w) arrangements for the provision of temporary low clearance warning gauges in accordance with section 10.9.4 (if applicable); and | 92803 |
| (x) a TGS as set out in section 9.6.5. | 92804 |

Annexure 10 Construction Management Plans

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10.1 Construction Management Plan

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- 10.1.1 Project Co must prepare and update the Construction Management Plan. 92807
- 10.1.2 The Construction Management Plan may be one volume for the whole of the Works or may be submitted as an overarching Construction Management Plan and multiple Site Construction Management Plans. 92808
- 10.1.3 In either case, the Construction Management Plan/s must: 92809
- (a) address any relevant Environmental Performance Requirements including; 92810
 - (1) the preparation of a Ground Movement Plan in accordance with EPR GM3; 92811
 - (2) the preparation of a Groundwater Management Plan in accordance with EPR GW3; 92812
 - (3) the preparation of a Dust Management Plan describing dust management and monitoring activities in accordance with EPR AQ1, including in respect of St Paul's Cathedral; and 92813
 - (4) the relocation management framework described in EPR SC2, which must be consistent with Residential Impact Mitigation Guidelines (and may be cross referenced to the CSEMP); 92814
 - (5) the preparation of a Business Disruption Plan in accordance with EPR B2, which must be consistent with the Business Support Guidelines for Construction (and may be cross referenced to the CSEMP); 92815
 - (b) detail processes and methodologies for ensuring that the Works will be appropriate for the long term operation of Melbourne Metro; 92816
 - (c) include a schedule of Construction Packages; 92817
 - (d) for each Construction Package: 92818
 - (1) list technical specifications and construction standards applicable to each Construction Package 92819
 - (2) include procedures for the monthly updating, monitoring and review of the D&C Program and the monthly progress summary required by sections 2.2.1 and 2.2.2; and 92820
 - (3) include procedures for the development and approval of Construction Documentation complying with section 10.4; 92821
 - (e) include: 92822
 - (1) records management indexing protocols that will enable referencing of all design and construction records back to Construction Packages, and Construction Packages to Asset, work type and location; and 92823
 - (2) procedures to ensure progressive development, closure and storage of As-Built Records in accordance with section 1.3.5; 92824
 - (f) provide a framework for delivery of components of the Works within each construction zone including an outline of the Construction Packages required within the zone; 92825
 - (g) for each construction site, provide a detailed site establishment and management plan that specifies the nature, extent, location and operation of construction compounds and ancillary facilities and environmental considerations and management; 92826
 - (h) provide detailed construction methodologies for each major construction stage and or key activity, including piling, diaphragm wall installation, ground support, tunneling, underground mining, excavation, station construction, services facilities construction including construction staging, sequencing and techniques; 92827
 - (i) provide details of bored piling, diaphragm wall installation, tunneling, underground mining and excavation equipment, including water sealing and probing arrangements for 92828

- road-headers and tunnel boring machines;
- (j) include details of the physical resources in terms of plant, equipment, materials that will be used for the construction of the Works including the Temporary Works; 92829
 - (k) provide the construction management team structure, including key personnel, authority and roles of key personnel, lines of responsibility and communication, minimum skill level of each role and interfaces with the overall project organisation structure; 92830
 - (l) provide proposed procurement and contracting strategies for key subcontractors and suppliers, along with strategies and processes for their engagement and management; 92831
 - (m) provide processes for construction risk assessment and construction risk mitigation, including a register of key construction risks including noise, vibration and other community impacts and proposed mitigation measures; 92832
 - (n) include relevant details from or cross references to the EMC Management Plan; 92833
 - (o) detail measures to be implemented to mitigate impacts to key institutional stakeholders as determined in accordance with 5.2.1.7, which may include: 92834
 - (1) the restriction of working hours during particular construction activities; 92835
 - (2) additional communication measures (for example information packages for hospital patients and visitors, provision of travel information to hospital visitors, support updating websites and other published information); 92836
 - (3) building and public realm modifications for access purposes; 92837
 - (4) works to sensitive receivers to reduce impacts (for example double glazing, ground support, vibration isolation, EMI isolation); and 92838
 - (5) relocation of facilities, services or equipment and their staff (for example relocation of medical diagnostic equipment, research instruments, bio-resources); 92839
 - (p) provide management strategies for utility service works and local area works, including coordination and interfacing with Authorities; 92840
 - (q) set out processes for collection, presentation and management of subsurface and surface utilities data, which must be consistent with the MMRA Underground Utilities Survey Guideline; 92841
 - (r) set out processes for the protection of underground utilities which must be consistent with the requirements of Appendix C5; 92842
 - (s) set out processes for ensuring the adequacy and safety of Temporary Works; 92843
 - (t) include a protocol for notification of all Incidents; 92844
 - (u) outline safe processes for each element of work and how outcomes of the safety in design processes identified in the Design Management Plan are to be incorporated into the construction activities to ensure these outcomes are achieved; 92845
 - (v) address access to the Construction Site and to affected properties; 92846
 - (w) detail, in a schedule, the necessary property works and utility service works; 92847
 - (x) detail maintenance methods to be used during construction; 92848
 - (y) address security of the Works, Temporary Works and the Construction Site; 92849
 - (z) include procedures in relation to survey and condition monitoring; 92850
 - (aa) provide processes for the development and management of Construction Procedures; 92851
 - (bb) detail how design performance and durability requirements are to be addressed and satisfied during the D&C Activities; 92852
 - (cc) provide, in a schedule, the required construction Approvals and the process and program for obtaining construction Approvals; 92853
 - (dd) provide processes for the provision of up-to-date information to the State and Independent Reviewer; and include a detailed tunneling, underground mining and excavation management plan that deals with key issues associated with tunneling, underground mining and excavation, including: 92854
 - (1) excavation stability; 92855
 - (2) groundwater control; 92856
 - (3) construction techniques and resources; 92857

- (4) construction techniques for work carried out in areas of contaminated material and acid sulphate soil and rock; 92858
- (5) monitoring of encountered geotechnical conditions and validation of design assumptions; and 92859
- (6) recording of encountered geotechnical conditions; 92860
- (ee) include a detailed plan which specifically describes the works associated with the concrete batching plant and precast concrete manufacturing facility (including tunnel precast segments) and associated support facilities including environmental considerations and management, site establishment, site layout, facility assembly and operation, resources and site decommissioning; and 92861
- (ff) detail interactions with any other Management Plans. 92862

10.2 Mobilisation Management Plan 92863

- 10.2.1 Project Co must prepare and update the Mobilisation Management Plan, including a D&C Mobilisation Program. 92864
- 10.2.2 The Mobilisation Management Plan must describe the mobilisation process, including Project Co's mobilisation requirements at each part of the Site that the Works will be performed and relevant conditions and timeframes. 92865
- 10.2.3 The Mobilisation Management Plan must provide assurance that critical design and construction activities will be able to commence at each site as planned. As a minimum the Mobilisation Management Plan must address: 92866
 - (a) mobilisation of facilities such as project office, design office, and specific site establishments including any necessary property acquisitions; 92867
 - (b) identification of any Utility relocations or protection required to facilitate site establishments; 92868
 - (c) mobilisation of key personnel, whether consultant, principal contractor or subcontractor required to achieve pre-construction activities such as from consortium parent organisations, major consultancies, and subcontractors, and any key recruitment activities; 92869
 - (d) mobilisation of key delivery personnel of the D&C Subcontractor including but not limited to: 92870
 - (1) project director; 92871
 - (2) construction director(s); 92872
 - (3) occupational health and safety manager; 92873
 - (4) environment manager; 92874
 - (5) sustainability manager; 92875
 - (6) quality manager; 92876
 - (7) TBM tunnel project manager; 92877
 - (8) mined tunnels and caverns manager; 92878
 - (9) design director/manager; 92879
 - (10) lead fire engineer; 92880
 - (11) system integration and commissioning manager; 92881
 - (12) general superintendent; 92882
 - (13) station(s) project manager(s); 92883
 - (14) segment manager; 92884
 - (15) mechanical and electrical manager; 92885
 - (16) mechanical and electrical superintendent (temporary facilities and operations); 92886
 - (17) Temporary Works coordinator; 92887
 - (18) Chief E&M coordinator; 92888

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| (19) architectural project manager; | 92889 |
| (20) building surveyor; | 92890 |
| (21) communications and stakeholder engagement manager; | 92891 |
| (22) inter-agencies coordination manager; | 92892 |
| (23) program manager; | 92893 |
| (24) traffic coordinator(s); | 92894 |
| (25) utilities coordinator(s); and | 92895 |
| (26) compliance manager; | 92896 |
| (e) obtaining relevant stakeholder approvals required prior to mobilising to worksites and commencing construction including statutory approvals, permits, and secondary consents; | 92897 |
| (f) finalisation and approval of Management Plans that detail management of project aspects including scope, integration, time, cost, procurement, methodology, environmental, quality, risk, OHS, human resources, communications, and stakeholders; | 92898 |
| (g) detailed design development through to issue of IFC designs for initial Design Packages, including identification of relevant technical approving authorities; | 92898 |
| (h) establishment of key information management systems and processes such as document repositories and transmittals; | 92900 |
| (i) procurement and suppliers of major plant, materials, equipment and subcontractors, including key management systems and processes and identification of commercial levels of authority; | 92901 |
| (j) procurement of major plant including: | 92902 |
| (1) new tunnel boring machines; | 92903 |
| (2) road headers; | 92904 |
| (3) specialist foundation equipment; | 92905 |
| (4) spoil conveyance systems and equipment (i.e. rolling stock, conveyors); | 92906 |
| (5) slurry treatment plants; | 92907 |
| (6) noise attenuation systems; | 92908 |
| (7) segment moulds; | 92909 |
| (8) concrete supply; | 92910 |
| (9) reinforcement supply; | 92911 |
| (10) permanent MEP provisions; | 92912 |
| (11) specialist earth retention systems; and | 92913 |
| (12) specialist grouting equipment; | 92914 |
| (k) pre-construction condition surveys of structures at relevant sites; and | 92915 |
| (l) geotechnical and hydrogeological Site investigations and laboratory tests to support and inform development of initial Design Packages. | 92916 |
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10.3 Spoil Management Plan

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| 10.3.1 | Prior to construction of main works or shafts, Project Co must prepare, implement and update the Spoil Management Plan in accordance with the EPR C1. | 92952 |
| 10.3.2 | The Spoil Management Plan must: | 92953 |
| | (a) be prepared in accordance with the State's Spoil Management Strategy (as exhibited in the EES) and relevant regulations, standards and best practice guidance; | 92954 |
| | (b) be developed in consultation with and to the satisfaction of the EPA; | 92955 |
| | (c) include, but not be limited to: | 92956 |
| | (1) identifying applicable regulatory requirements; | 92957 |
| | (2) identifying the nature and extent of spoil (clean fill, contaminated spoil, and acid | 92958 |

- sulphate soil and rock) across all precincts;
- (3) roles and responsibilities; 92959
- (4) identifying management measures for handling and transport of spoil for the protection of health and the environment, including methodologies for on-site spoil handling, on site storage and stock piling arrangements, testing (including for contamination and acid sulphate soil and rock), methods of loading, transportation, haulage rates and environmental mitigation measures; 92960
- (5) identifying, designing and developing specific environmental management plans for temporary stockpile areas; 92961
- (6) identifying suitable sites for re-use, management or disposal of any spoil; 92962
- (7) monitoring and reporting, including extraction volumes and reuse and disposal locations; and 92963
- (8) sub-plans as required by the Environmental Performance Requirements, including: 92964
 - (A) an Acid Sulfate Soil and Rock (**ASS/ASR**) Management Sub-Plan in accordance with EPR C2; and 92965
 - (B) a Prescribed Industrial Waste (**PIW**) Management Sub-Plan. 92966

10.4 Monitoring Management Plan

- 10.4.1 Project Co must prepare and update the Monitoring Management Plan. 92968
- 10.4.2 The Monitoring Management Plan must: 92969
 - (a) address the relevant Environmental Performance Requirements; 92970
 - (b) include any usual requirements of relevant Authorities and stakeholders; 92971
 - (c) provide the monitoring and protection management team structure, including key personnel, authority and roles of key personnel, lines of responsibility and communication, minimum skill levels of each role and interfaces with the overall project organization structure; 92972
 - (d) detail the approach to implementing mitigation measures determined in consultation with key institutional stakeholders in accordance with 5.2.1.7; 92973
 - (e) detail the equipment, devices, locations and processes to be used for monitoring settlement and movement, noise, vibration, groundwater levels and discharge water quality; 92974
 - (f) include the establishment of the baseline conditions; 92975
 - (g) address the requirements for groundwater modelling; 92976
 - (h) include the establishment of predicted impacts and mitigation measures; 92977
 - (i) detail processes and methodologies for monitoring the actual effects of the Works on existing ground conditions and infrastructure; 92978
 - (j) include processes and methodologies for monitoring encountered geotechnical conditions, verifying geotechnical and design assumptions and actions required if monitoring results do not confirm any geotechnical or design assumption; 92979
 - (k) include processes and methodologies for the ongoing review of the effectiveness of the monitoring systems and development and modification of the monitoring systems; 92980
 - (l) include processes and methodology to identify and protect existing infrastructure during construction of the Works and Temporary Works including actions that may be required if monitoring indicates that impacts are different from predicted impacts in material respects; 92981
 - (m) detail the Predicted Effects of the Works, temporary works and the D&C Activities on existing ground conditions, infrastructure, properties and utilities; 92982
 - (n) describe the approach to undertaking pre-construction and post-construction condition surveys for ground conditions and existing infrastructure, properties and utilities; 92983
 - (o) include processes for the management of monitoring data and information; 92984
 - (p) outline how existing infrastructure will be protected from the impact of the Works, 92985

temporary works and the D&C Activities including actions that may be required if monitoring indicates that impacts are different from predicted impacts in material respects; and

- (q) detail interactions with the other Management Plans.

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Table 13-2: Minimum Monitoring Requirements

| Area | Item | Minimum Monitoring Requirement |
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| Condition Assessments and Monitoring of Existing Assets | Building Asset Condition Surveys | Survey Control Pre & Post Condition Surveys |
| | Building Monitoring | Survey Control including but not limited to: Automated deformation monitoring; Automated robotic stations; Tiltmeters and reflector survey prisms; and Tilt beams / electro level sensors |
| | Building Condition Monitoring | Pre & Post Condition Surveys |
| | Internal Basements | Survey Control Pre & Post Condition Surveys |
| Ground Movement (Project Wide) | Ground Monitoring | Survey Control |
| Ground Movement (Local to the Structure) | Ground Monitoring | Extensometers and Inclinometers |
| Ground Water Monitoring | Ground Water Monitoring | Piezometers and Standpipes |
| Temporary Works Monitoring | Temporary Works Monitoring | Extensometer |
| Ground Movement (Rail Reserve) | Remote Ground Monitoring | Survey Control (frequency and notification periods/ protocols subject to agreement with the Train Franchisee) |

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10.5 Demolition Management Plan

10.5.1 Project Co must prepare and update the Demolition Management Plan.

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10.5.2 The Demolition Management Plan must comply with OHS Legislation including, without limitation, the requirements of AS 2601- 2001 The demolition of structures and Compliance Code 'Removing Asbestos in workplaces', September 2008, and contain, at a minimum, details of the following:

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- (a) approach to OHS and include copy of relevant OHS documentation, including OHS policy and procedures;
- (b) procedure of ensuring compliance with OHS Legislation and contractual obligations;
- (c) demolition subcontractor team structure, including key personnel, authority and roles of key personnel, lines of responsibility and communication, minimum skill levels of each role and interfaces with the overall project organization structure;
- (d) the general principles to be adopted throughout the works, to minimize the impact of the hazardous material removed and demolition works on the surrounding areas;
- (e) site access, site mobilisation, demolition, disposal and haulage methodology and the

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| | management measures to avoid, reduce, reuse and recycle waste, including details of proposed beneficial reuse of demolished material; | |
| (f) | hours of operation, public and property protection, noise, dust management, odour control, storage of dangerous goods, water quality / storm water runoff, waste management and recycling, hazardous materials management, traffic and pedestrian management and services disconnections; | 92996 |
| (g) | demolition methodology for existing buildings and structures, and protection plan for adjacent/ neighboring properties, including: | 92997 |
| | (1) construction methods, plant and equipment to be used for the Demolition Works; | 92998 |
| | (2) staging of the Demolition Works; and | 92999 |
| | (3) disposal of the demolition materials; | 93000 |
| (h) | process of identifying and managing risks and establishing OHS systems and procedures; | 93001 |
| (i) | process of establishing adequate Site safety facilities; | 93002 |
| (j) | procedures of safe access and egress from the Site; | 93003 |
| (k) | emergency response and incident management procedures; | 93004 |
| (l) | systems of reporting incidents, near misses and hazards; | 93005 |
| (m) | system of risk assessment, inspection and maintenance of plant, including process of ensuring any applicable licensing and registration requirements will be complied with; | 93006 |
| (n) | system of providing necessary information, instruction, training and supervision, including induction and task-specific training; | 93007 |
| (o) | compliance with the requirements of WorkSafe Code of Practice No. 14 Demolition; | 93008 |
| (p) | procedure of ensuring timely approval of all safety approvals required for the Demolition Works; | 93009 |
| (q) | traffic management; and | 93010 |
| (r) | monitoring and auditing procedures. | 93011 |
| | | 93012 |
| 10.6 | Rail Access Management Plan | |
| 10.6.1 | Project Co must prepare and update the Rail Access Management Plan. | 93013 |
| 10.6.2 | The Rail Access Management Plan must address how Project Co will manage access to the Rail Infrastructure for the purposes of the Works. | 93014 |
| 10.6.3 | The Rail Access Management Plan must: | 93015 |
| (a) | address how Project Co will comply with the occupations requirements under the Agreement; | 93016 |
| (b) | nominate the relevant personnel including for occupation, RTO resourcing and safe-working resourcing; | 93017 |
| (c) | include the occupation program which must set out the major occupations, weekend occupations, APL-BPFT occupations and details of the occupation interface with other packages (identifying potential opportunities for shared occupation and/or value for money) and the alternate passenger arrangements (including for disruptions to rail passengers and disruptions to rail freight services); | 93018 |
| (d) | describe in detail the way in which occupations will be managed, including the planning and control process (including for the occupation gateway timeline, communications about disruptions to services and passengers and for communicating with the public), the occupation delivery (including the rail safety pre-work brief, the securing of points and the multiple work groups), the process for completion, handback and documentation and the post occupation and defects identification process; | 93019 |
| (e) | describe in detail how rail safety will be managed during the occupations including, during access to the rail corridor, the type of rail access, fence delineation and management of rail safety incidents; | 93020 |
| (f) | describe in detail the bussing operations including, the occupation bussing operation principles and the bus operational management of the Rail Franchisee (including bus | 93021 |

- controllers, types of buses, communications and bus driver awareness); and
- (g) identify the requirements for staff operations including, patron notification and signage, operational duration, customer service personnel (including revenue protection, daily bus forecast and transfer of customers with special needs) and the staff amenities for the Rail Franchisee.

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Annexure 11 Transition and Acceptance Management Plans 93023

11.1 Testing and Commissioning Management Plan 93024

11.1.1 Project Co must prepare and update the Testing and Commissioning Management Plan. 93025

11.1.2 The Testing and Commissioning (T&C) Management Plan must define: 93026

(a) processes and systems that will be used to monitor all completion and commissioning activities, including closure of Defects; 93027

(b) a detailed scope of tests which must be carried out prior to Provisional Acceptance and, where applicable, the sequence of such tests; 93028

(c) the approach to activities to be undertaken during the integration and commissioning phase; 93029

(d) any Approvals or acceptances required from relevant Authorities, including Emergency Service Organisations; and 93030

(e) the requirements for safety audits. 93031

11.1.3 The Testing and Commissioning Management Plan must, as a minimum: 93032

(a) cover all systems and subsystems to be constructed, introduced or modified as part of the Works; 93033

(b) describe how Project Co will comply with the testing and commissioning requirements of the Agreement to validate all aspects of the requirements including those developed by Project Co in accordance with the Design Management Plan and the Systems Engineering Management Plan; 93034

(c) describe the approach to Level 1, Level 2, Level 3 and Level 4 System Integration; 93035

(d) identify and address matters in relation to testing and commissioning, completion tests, performance tests, milestones, the acceptance certificate, defects liability period, timeline of testing and commissioning activities, interfacing works among civil works and systems, factory and acceptance tests, installation tests and subsystem tests; 93036

(e) show the test program for each Asset, with each test program including all tests, the duration of each test, requirements for the sequence of tests, the interrelationship between tests on different Assets, integration with other Assets (including those delivered by other parties), any contingency and responsibilities for delivering the tests; 93037

(f) detail how each test will be certified, where test records are kept and for how long they will be retained; 93038

(g) detail the requirements for submissions including commissioning plan, factory testing plan, on-site testing and commissioning plan, contingency plan, test procedures, request for inspection of works form and register and test records and reports (test content, T&C submissions monitoring system and As-Built Records); 93039

(h) describe and address the implementation requirements, including civil works and systems interfaces, notification, execution, coordination, surveillance, nonconformity report, request for change form and register, fault log, test instruments and equipment, and Handback; 93040

(i) identify and address training requirements, including training during testing and commissioning, objectives, on the job training, system control training, training courses and training materials; 93041

(j) describe and address the safety requirements, including system safety, hazard log, purchase and factory acceptance, on-site installation, testing and commissioning, pre-revenue operations, reliability growth period and defect liability period, proof of safety, site safety, contractor's obligation, defined area, control of defined area, restricted area, access into restricted area and environmental safety; 93042

(k) cover the testing of all of the requirements of the Environmental Management Plan on 93043

| | | |
|-------------|--|-------|
| | an ongoing basis; | |
| | (l) describe the strategy for dealing with conflicts between Tests requiring access to the same test facilities at the same time; and | 93044 |
| | (m) be incorporated into an overall quality assurance regime. | 93045 |
| | | 93046 |
| 11.2 | Handback Management Plan | |
| 11.2.1 | Project Co must prepare and update the Handback Management Plan. | 93047 |
| 11.2.2 | The Handback Management Plan must provide the overall strategy and include planned dates for the progressive completion and Handback of Returned Works. | 93048 |
| 11.2.3 | Where applicable, the Handback Management Plan must include details of how the following matters are to be dealt with: | 93049 |
| | (a) operator training; | 93050 |
| | (b) demonstration and documentation of the Residual Life of the Returned Assets; | 93051 |
| | (c) the transfer of all required intellectual property, warranties, guarantees, records and documentation; and | 93052 |
| | (d) the disclosure of any liabilities or potential liabilities remaining at Handback. | 93053 |
| 11.2.4 | The Handback Management Plan must, as a minimum: | 93054 |
| | (a) identify all documents relevant to the operation and maintenance of the Returned Asset; | 93055 |
| | (b) identify all legal arrangements pertinent to the Project which will require transfer from Project Co to the State or the Returned Asset Owner; | 93056 |
| | (c) identify all configuration change, safety, environment, and quality actions to be closed out by Project Co before Handback; | 93057 |
| | (d) identify all activities required for the physical handover of Assets, special tools, maintenance equipment, spares and consumables from Project Co to the State or Returned Asset Owner; | 93058 |
| | (e) identify all superfluous construction materials, debris and general rubbish to be disposed of by Project Co prior to Handback; | 93059 |
| | (f) identify the scope of all training required that will be required for the State, the Returned Asset Owner and/or any authorised nominee; | 93060 |
| | (g) establish the process and resources required to facilitate the above, and achieve complete Handback by the planned date for Handback; | 93061 |
| | (h) identify each party's respective responsibilities with respect to each of the actions identified within the above; and | 93062 |
| | (i) establish the procedure, and identify resources for, Project Co to respond to any requests for information received from the State or its authorised nominees pertinent to Handback. | 93063 |

Annexure 12 Rail Safety Accreditation Plan

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12.1 Rail Safety Accreditation Plan

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12.1.1 Project Co must prepare and update the Rail Safety Accreditation Plan.

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12.1.2 The Rail Safety Accreditation Plan must:

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(a) demonstrate how Accreditation is to be obtained and maintained throughout the Term;

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(b) identify the entity or entities that will hold Accreditation through both the D&C Phase and the Maintenance Phase;

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(c) detail:

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(1) the proposed staging and timing for obtaining Rail Safety Accreditation in accordance with the deed and to meet the requirements of the RSNL;

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(2) the extent and potential source of any documentation, information, records and any other assistance Project Co will require in connection with its Accreditation, in respect of the Works;

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(3) the strategy and timing for liaison with the Office of the National Rail Safety Regulator (**ONRSR**) and other necessary interfacing parties covering rail safety, including fire brigades, police and other transport operator; and

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(d) include consultation arrangements with each stakeholder organisation.

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Annexure 13 [Not disclosed]

Appendix C1: Stage Gate Reviews

C1.1 System Definition Review

Within 90 Business Days of Financial Close unless otherwise agreed by the State, Project Co must conduct the System Definition Review (SDR), with the following entry and exit criteria:

System Definition Review (SDR): Ensure that the system concept design is complete and that a complete set of configuration documents that define that concept design are in place and available and that issues, risks and opportunities have been appropriately addressed. SDR provides assurance that the system concept adequately addresses the requirements.

| Entry Criteria | Exit Criteria |
|---|---|
| <p>1. SDR review criteria agreed</p> <p>Key Plans to support</p> <p>2. Design Management Plan</p> <p>3. Systems Engineering Management Plan</p> <p>4. System Integration Management Plan</p> <p>5. Configuration Management Plan</p> <p>6. Requirements Management Plan</p> <p>7. Verification & Validation Management Plan</p> <p>8. Systems Assurance Management Plan</p> <p>9. System Safety Management Plan</p> <p>10. Human Factors Management Plan</p> <p>11. RAM Management Plan</p> <p>Key Documentation to support</p> <p>12. systems architecture</p> <p>13. Systems Breakdown Structure (SBS)</p> <p>14. Interface Control Documents (ICDs)</p> <p>15. Requirements Traceability Matrix (RTM)</p> <p>16. preliminary FEB</p> <p>17. Risk Register</p> <p>18. Hazard Log</p> <p>19. HFIL</p> <p>20. RAM Log</p> <p>21. GSN (requirements)</p> <p>22. Design Package Register</p> <p>Analysis to support</p> <p>23. updated PHA</p> <p>24. updated user impact analyses</p> <p>25. hierarchical task analyses (HTAs)</p> <p>26. updated RAM quantitative modelling</p> | <p>Key Plans</p> <p>1. Plans agreed</p> <p>Key Documentation</p> <p>2. functional baseline established and under configuration management</p> <p>3. GSN (requirements) reviewed</p> <p>4. actions from Risk Register agreed</p> <p>5. actions for Hazard Log management agreed</p> <p>6. actions for HFIL management agreed</p> <p>7. actions for RAM Log management agreed</p> <p>8. Key Documentation reviewed</p> <p>Analysis</p> <p>9. PHA actions closed or agreed moving forward</p> <p>10. HF analysis actions closed or agreed moving forward</p> <p>11. RAM quantitative modelling actions closed or agreed moving forward</p> |

C1.2 Preliminary Design Review

Following the submission and review of the Interim Design Documentation, Project Co must conduct the Preliminary Design Review (PDR), with the following entry and exit criteria:

Preliminary Design Review (PDR): Ensure that the system preliminary design is complete and that the set of configuration documents that define the preliminary design are complete and appropriately address any issues, risks and opportunities. PDR provides assurance that the preliminary design is acceptable; this includes assurance that system requirements are acceptable, that the preliminary design documentation is acceptable and has been verified against system requirements, and that the supporting development and delivery plans are acceptable.

| Entry Criteria | Exit Criteria |
|--|---|
| <p>1. PDR review criteria agreed</p> <p>2. outcomes of Stage Gate Reviews affecting PDR have been successfully addressed or action plans</p> | <p>Key Plans</p> <p>1. Plans agreed</p> |

| | |
|---|--|
| <p>agreed</p> <p>Key Plans to support</p> <ol style="list-style-type: none"> 3. audit plans for PDR 4. updated management plans as required <p>Key Documentation to support</p> <ol style="list-style-type: none"> 5. systems architecture 6. SBS 7. RTM 8. ICDs 9. VCRM 10. audit Reports for PDR 11. draft GSN (design) 12. draft Assurance Case Report (design) 13. preliminary FER 14. updated Risk Register 15. updated Hazard Log 16. HFIL updated 17. RAM Log updated <p>Analysis to support</p> <ol style="list-style-type: none"> 18. safety analyses: SHA, IHA 19. draft QRA report (including FTA, ETA) 20. draft OMHA Report 21. human error identification and reliability assessment 22. workload analysis 23. RAM quantitative modelling updated 24. FMECA (System Level) 25. CCFA (System Level) 26. RAM workshops conducted (System Level) 27. draft LCC model 28. preliminary Durability Assessment | <ol style="list-style-type: none"> 2. draft Plans reviewed 3. Audit actions / recommendations closed or agreed moving forward <p>Key Documentation</p> <ol style="list-style-type: none"> 4. allocated baseline established and under configuration management 5. GSN reviewed 6. draft Assurance Case Report (Design) reviewed 7. draft VCRM reviewed 8. actions from Risk Register agreed 9. actions for Hazard Log management agreed 10. actions for HFIL management agreed 11. actions for RAM Log management agreed 12. ISA report/s 13. Interim Design Documentation reviewed 14. ICDs reviewed <p>Analysis</p> <ol style="list-style-type: none"> 15. SHA, IHA actions closed or agreed moving forward 16. draft QRA and OMHA reviewed 17. HF analysis actions closed or agreed moving forward 18. RAM quantitative modelling actions closed or agreed moving forward 19. FMECA / CCFA reviewed 20. draft LCC model reviewed 21. preliminary Durability Assessment reviewed |
|---|--|

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C1.3 Critical Design Review

Following submission and review of the Certified Design Documentation, Project Co must conduct the Critical Design Review (CDR), with the following entry and exit criteria:

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Critical Design Review (CDR): Ensure that the system design, comprising all the sub-systems and interfaces, can fulfil the system functional and performance requirements, and that issues, risks and opportunities have been appropriately addressed. CDR provides assurance that the integrated system design is acceptable.

| Entry Criteria | Exit Criteria |
|--|---|
| <ol style="list-style-type: none"> 1. CDR Review Criteria agreed 2. audit actions/recommendations for PDR closed 3. outcomes from Stage Gate Reviews affecting CDR have been successfully addressed or action plans agreed <p>Key Plans to support</p> <ol style="list-style-type: none"> 4. updated management plans as required 5. audit plans for CDR 6. Testing and Commissioning Management Plan 7. Transition and Acceptance Management Plan 8. Testing and Commissioning Management Plan 9. Transition and Acceptance Management Plan 10. training management plan 11. technical maintenance plan 12. FRACAS implementation plan <p>Key Documentation to support</p> <ol style="list-style-type: none"> 13. GSN (design) | <p>Key Plans</p> <ol style="list-style-type: none"> 1. Plans agreed 2. Draft Plans reviewed 3. Audit actions / recommendations closed or agreed moving forward <p>Key Documentation</p> <ol style="list-style-type: none"> 4. Product baseline established and under configuration management 5. Systems Architecture agreed 6. GSN (design) reviewed 7. Assurance Case Report (Design) reviewed 8. actions from Risk Register agreed 9. actions for Hazard Log management agreed 10. actions for HFIL management agreed 11. actions for RAM Log management agreed 12. RTM agreed |

Critical Design Review (CDR): Ensure that the system design, comprising all the sub-systems and interfaces, can fulfil the system functional and performance requirements, and that issues, risks and opportunities have been appropriately addressed. CDR provides assurance that the integrated system design is acceptable.

| Entry Criteria | Exit Criteria |
|--|---|
| 14. Assurance Case Report (Design) 15. updated Systems Engineering deliverables / artefacts as required 16. VCRM 17. updated Risk Register, Hazard Log, HFIL and RAM Log 18. audit reports for CDR Analysis to support 19. safety analyses: OMHA, HHA, QRA (including FTA, ETA) 20. HF analysis reports 21. RAM quantitative modelling updated 22. RCMA Report, maintenance task definition, spares allocation 23. updated FMECA (detailed level) 24. updated issue CCFA (detailed level) 25. RAM workshops conducted (detailed level) 26. LCC model 27. final Durability Assessment | 13. VCRM agreed 14. FRACAS ready to implement 15. Certified Design Documentation reviewed Analysis 16. OMHA, HHA and QRA actions closed or agreed moving forward 17. HF analysis actions closed or agreed moving forward 18. RAM quantitative modelling / analyses actions closed or agreed moving forward 19. RCMA, maintenance task definition, spares allocation reviewed 20. LCC model agreed |

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C1.4 Issued for Construction Design Review

Following submission and review of the IFC Design Documentation, Project Co must conduct the Issued for Construction Review (IFCR), with the following criteria:

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Issued for Construction Review (IFCR): Ensure all construction related risks and issues are reviewed and closed out prior to proceeding to construction. IFC provides assurance the system and associated documentation are acceptable to proceed to construction.

| Criteria |
|---|
| 1. all construction related risks are closed or agreed moving forward Key Plans to support 2. training management plan implemented for construction Key Documentation to support 3. Construction Documentation 4. GSN (construction) 5. Assurance Case Report (Construction) 6. all HF issues are closed and addressed 7. all construction RAM issues are closed and addressed 8. all occupation issues related to construction are closed and addressed 9. Proof Engineering 10. IFC Design Documentation Analysis to support 11. all construction OHS and system safety risks identified, eliminated or reduced SFAIRP |

C1.5 Test Readiness Review

Prior to commencement of Testing and Commissioning, Project Co must conduct the Test Readiness Review (TRR), with the following entry and exit criteria:

Test Readiness Review (TRR): Ensure that each sub-system assembly or component is of sufficient quality and has been tested / qualified to allow installation or site construction to begin, and that issues, risks and opportunities have been appropriately addressed. TRR provides assurance that the system is acceptable for installation.

| Entry Criteria | Exit Criteria |
|---|---|
| <ol style="list-style-type: none"> 1. TRR Review Criteria agreed 2. audit actions / recommendations closed or agreed moving forward <p>Key Plans to support</p> <ol style="list-style-type: none"> 3. audit plans for TRR 4. training management plan implemented for integration & test stage 5. updated training management plan <p>Key Documentation to support</p> <ol style="list-style-type: none"> 6. progressive PCA 7. audit reports for TRR 8. draft GSN (integration & test) 9. draft Assurance Case Report (integration & test) 10. updated Risk Register, Hazard Log, HFIL and RAM Log 11. documented redlines / change requests for all corresponding modifications made during construction and installation 12. formal engineering changes are reflected in the revised test documentation 13. suite of test documentation established for <ul style="list-style-type: none"> • subsystem and interfaces • safety controls/functions • HF controls • RAM demonstration 14. VCRM <p>Analysis to support</p> <ol style="list-style-type: none"> 15. updated hazard analyses relating to integration & test stage 16. FRACAS Report | <p>Key Plans</p> <ol style="list-style-type: none"> 1. Plans agreed <p>Key Documentation</p> <ol style="list-style-type: none"> 2. draft GSN (integration & test) reviewed 3. draft Assurance Case Report (integration & test) reviewed 4. audit actions / recommendations closed or agreed moving forward 5. actions from risk register agreed 6. actions for Hazard Log management agreed 7. actions for HFIL management agreed 8. actions for RAM Log management agreed 9. scope of subsystem installation agreed 10. scope of component testing/ qualification agreed <ul style="list-style-type: none"> • subsystem and interfaces • safety controls/functions • HF controls • RAM demonstration 11. stakeholders and resources available for the scope of testing 12. ongoing testing status is acceptable and agreed moving forward 13. VCRM agreed 14. test safety actions closed or agreed moving forward <p>Analysis</p> <ol style="list-style-type: none"> 15. FRACAS Report actions closed or agreed moving forward |

C1.6 Integration Readiness Review

Prior to Provisional Acceptance, Project Co must conduct the Integration Readiness Review (IRR), with the following entry and exit criteria:

Integration Readiness Review (IRR): Ensure that the system is ready to proceed into the process of progressive levels of systems integration and testing, and that issues, risks and opportunities have been appropriately addressed. IRR provides assurance that the test and integration program is acceptable.

| Entry Criteria | Exit Criteria |
|--|--|
| <ol style="list-style-type: none"> 1. IRR review criteria agreed 2. audit actions / recommendations closed or agreed moving forward 3. audit actions / recommendations for TRR closed | <p>Key Plans</p> <ol style="list-style-type: none"> 1. Plans agreed |

Integration Readiness Review (IRR): Ensure that the system is ready to proceed into the process of progressive levels of systems integration and testing, and that issues, risks and opportunities have been appropriately addressed. IRR provides assurance that the test and integration program is acceptable.

| Entry Criteria | Exit Criteria |
|---|--|
| <p>Key Plans to support</p> <ol style="list-style-type: none"> 4. Handback Management Plan 5. audit plans for IRR 6. training management plan implemented for integration & test stage 7. Updated Training Management Plan <p>Key Documentation to support</p> <ol style="list-style-type: none"> 8. Audit Reports for IRR 9. GSN (integration & test) 10. Assurance Case Report (integration & test) 11. updated Risk Register, Hazard Log, HFIL and RAM Log 12. documented redlines / change requests for all corresponding modifications made during testing 13. formal engineering changes are reflected in the revised test documentation 14. suite of test reports 15. suite of integration test procedures 16. suite of test documentation established for <ul style="list-style-type: none"> • systems and interfaces • safety controls/functions • HF controls • RAM demonstration 17. VCRM <p>Analysis to support</p> <ol style="list-style-type: none"> 18. updated hazard analyses relating to integration and test stage 19. FRACAS Report | <p>Key Documentation</p> <ol style="list-style-type: none"> 2. GSN (integration & test) reviewed 3. Assurance Case Report (integration & test) reviewed 4. audit actions / recommendations closed or agreed moving forward 5. actions from risk register agreed 6. actions for Hazard Log management agreed 7. actions for HFIL management agreed 8. actions for RAM Log management agreed 9. scope of progressive systems integration agreed 10. scope of progressive testing agreed <ul style="list-style-type: none"> • subsystem and interfaces • safety controls/functions • HF controls • RAM demonstration 11. stakeholders and resources available for the scope of testing 12. ongoing integration status is acceptable and agreed moving forward 13. VCRM agreed 14. test safety actions closed or agreed moving forward <p>Analysis</p> <ol style="list-style-type: none"> 15. FRACAS Report actions closed or agreed moving forward |

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C1.7 System Acceptance Review

Prior to Final Acceptance, Project Co must conduct the System Acceptance Review (SAR), with the following entry and exit criteria:

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System Acceptance Review (SAR): Ensure that verification and validation evidence for the system against the performance and functional requirements specification is provided and that all system definition, operation, maintenance and disposal documentation is provided to enable acceptance of the system. SAR provides assurance that the delivered system is fit to accept.

| Entry Criteria | Exit Criteria |
|---|--|
| <ol style="list-style-type: none"> 1. SAR review criteria agreed 2. audit actions / recommendations for IRR closed <p>Key Plans to support</p> <ol style="list-style-type: none"> 3. Handback Management Plan 4. audit plans for SAR 5. updated Management Plans as required <p>Key documentation to support</p> <ol style="list-style-type: none"> 6. audit reports for SAR 7. GSN (commissioning & acceptance) | <p>Key Plans</p> <ol style="list-style-type: none"> 1. Plans agreed <p>Key documentation</p> <ol style="list-style-type: none"> 2. final Assurance Case handover <ul style="list-style-type: none"> • HFI program deliverables • System safety program deliverables • RAM program deliverables 3. Final GSN handover 4. final Assurance Case Report handover contained within the Assurance Case |

System Acceptance Review (SAR): Ensure that verification and validation evidence for the system against the performance and functional requirements specification is provided and that all system definition, operation, maintenance and disposal documentation is provided to enable acceptance of the system. SAR provides assurance that the delivered system is fit to accept.

| Entry Criteria | Exit Criteria |
|--|---|
| <ul style="list-style-type: none"> 8. Assurance Case Report (commissioning & acceptance) 9. updated Risk Register, Hazard Log, HFIL and RAM Log 10. suite of test reports 11. suite of integration test & commissioning procedures <ul style="list-style-type: none"> • safety controls/functions • HF controls • RAM demonstration 12. VCRM <p>Analysis to support</p> <ul style="list-style-type: none"> 13. updated hazard analyses relating to commissioning & acceptance 14. FRACAS Report | <ul style="list-style-type: none"> 5. Risk Register handover 6. Hazard Log handover 7. HFIL handover 8. RAM Log handover 9. Handover of FRACAS data to the operator & maintainer 10. all testing and commissioning activities completed 11. VCRM and associated data handover 12. RTM and associated data handover 13. training management plan and O&M training artefacts handover 14. completion of O&M training 15. handover package accepted |

Appendix C2: Specific Stakeholder Requirements

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C2.1 General

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An indicative, non-exhaustive list of specific stakeholder requirements, information and concerns is provided in this Appendix C2. Project Co must undertake the D&C Activities in order to accommodate and address these considerations.

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C2.2 Access and egress (including emergency egress) arrangements

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| Precinct | Stakeholder | Requirement/ information |
|-----------|---|--|
| Arden | Multiple | Vehicular access off Laurens Street and Arden Street must not be impeded. |
| Arden | City of Melbourne (CoM) | CoM has a brick lined storm water pipe which runs along the Queensberry St alignment under the Arden precinct. Access for repairs and servicing is required. |
| Arden | Nick Theodossi Prestige Cars | Rear access to the building off Laurens St must be maintained. |
| Arden | Taxi Tech/13 Cabs | Access to the car park and to the workshop off Barwise St must be maintained. |
| Arden | Turi Foods Farming Division | Access to the weigh bridge and between the mill and the weighbridge must be maintained. |
| Parkville | Ambulance Victoria | Ambulance access should be maintained for Royal Melbourne Hospital, Royal Women's Hospital, Peter Macallum Cancer Centre and Melbourne Private. |
| Parkville | Florey Institute | Maintain 24/7 access and egress to the Kenneth Myer Building from Royal Parade. |
| Parkville | IQ Apartments | Maintain 24/7 access from Berkeley Street for pedestrians. |
| Parkville | Melbourne Business School | Maintain 24/7 access from Leicester Street. |
| Parkville | Melbourne Health (Royal Melbourne Hospital) | <p>The following access arrangements need to be maintained for Royal Melbourne Hospital:</p> <ul style="list-style-type: none"> ▪ 24/7 road ambulance access from Royal Parade to the emergency department and egress from Grattan Street & Royal Parade; ▪ 24/7 road ambulance access and egress from Royal Parade to the mortuary driveway (100m north of Grattan St intersection); ▪ on street ambulance parking on Grattan Street between Flemington Road and Royal Parade; ▪ MFB (2) emergency vehicle parking on north side of Grattan Street by the fire control room; ▪ Diesel tanker access from the northern kerb on Grattan Street by the main pedestrian entrance; ▪ Vehicular access to main hospital car park from Royal Parade for staff, patients and visitors; ▪ Ambulant and non-ambulant pedestrian access to RMH main entrance Parade and the Emergency Department on Grattan Street and secondary entrance on Royal; |
| | | <ul style="list-style-type: none"> ▪ 24/7 access/ egress to the patient transit lounge and decontamination showers off Grattan Street. |
| Parkville | Melbourne Health | Maintain 24/7 air ambulance access to the helipad on RMH |

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|-----------|----------------------------|---|---|
| | (Royal Melbourne Hospital) | roof. Helicopters create downward air pressure and can be obstructed by construction equipment. Helipad must be kept open as it 45-60min to transfer patients from the alternative helipad at RCH which compromises patient safety. | |
| Parkville | Parkville Music School | Maintain pedestrian access from Royal Parade, student drop off facilities on Storey Street and vehicular access to RMH's car park. | 93152 |
| Parkville | Peter Doherty Institute | The following access arrangements need to be maintained for PDI: <ul style="list-style-type: none"> ▪ 24/7 pedestrian access/ egress via Elizabeth Street and Grattan Street entrances; ▪ 24/7 access to the secure drop boxes drop boxes in the building wall fronting Grattan Street; ▪ vehicular (including emergency vehicles) access to the loading bay off Elizabeth Street 8am-7pm; ▪ UoM student access to the entrance on Berkeley Street 9am-5pm; there could be up to 200 students using this entrance at the same time to go to a lecture; ▪ bicycle access/ egress via the Grattan Street entrance; ▪ 2 on street delivery bays adjacent to their building, preferably the existing loading zones on Elizabeth St and Berkeley St. | 93153 93154 93155 93156 93157 93158 93159 |
| Parkville | Royal Women's Hospital | Compliant ambulant and non-ambulant pedestrian, and cyclist, access must be maintained to Royal Women's Hospital. | 93160 |
| Parkville | Royal Women's Hospital | Emergency access to Royal Women's Hospital from Flemington Road must be maintained during construction and operation. | 93161 |
| Parkville | Royal Women's Hospital | The following access arrangements need to be maintained for RWH: <ul style="list-style-type: none"> ▪ 24/7 access & egress for emergency, delivery and patient vehicles via their entrance off Flemington Road; ▪ 24/7 access & egress to oxygen and nitrogen stores; ▪ pedestrian access & egress via the main entrance on Grattan Street; ▪ MFB vehicle parking along Grattan Street north kerb; ▪ taxi rank on Grattan Street outside the hospital main entrance. | 93162 93163 93164 93165 93166 93167 |
| Parkville | University High School | Access to the Royal Melbourne Hospital car park must be maintained. | 93168 |
| Parkville | University of Melbourne | Leicester St must be kept open for vehicular traffic, taxi, bus and emergency vehicle access. Pedestrian access to Leicester St must also be maintained at all times as this is the access route to the Graduate House main entrance. Carpark and delivery access via Church St must be maintained. | 93169 |
| Parkville | University of Melbourne | Cycle access along Grattan St and adjoining streets to, from and past the UoM must be maintained during construction. | 93170 |
| Parkville | University of Melbourne | Cycle access to Alan Gilbert Building must be maintained. | 93171 |
| Parkville | University of Melbourne | Access for deliveries to Alan Gilbert Building must be maintained. | 93172 |
| Parkville | University of Melbourne | Vehicle movements must be restricted for any areas or roads subject to high volumes of pedestrians and cyclists. | 93173 |
| Parkville | University of Melbourne | Emergency access via Grattan Street and Gate 10 is vital to maintain emergency coverage. | 93174 |
| Parkville | University of | 24-hour access to the university grounds must be maintained | 93175 |

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| | Melbourne | during construction. | |
| Parkville | University of Melbourne | Pedestrian access to Alan Gilbert Building, the Tri-radiate building, and UoM owned buildings on Barry St and Leicester St must be maintained. | 93176 |
| Parkville | University of Melbourne | A variety of delivery vehicles rely on access via Gate 10 because access via Gate 4 is impeded by road geometry or is otherwise impractical. If Gate 10 is closed to deliveries or restricted then alternate access will need to be accommodated for vehicles including: <ul style="list-style-type: none"> ▪ Trucks up to 10 tonnes; ▪ Semi-trailers (approximately twice per year); ▪ [Not disclosed]; and ▪ Tankers. | 93177 93178 93179 93180 93181 |
| Parkville | University of Melbourne | Access to the loading dock and equipment entrance to the Howard Florey Laboratories (bld 183) to be maintained throughout the project. | 93182 |
| Parkville | University of Melbourne | Truck access off Kernot Road to the loading dock for the Tri-radiate (Bld 181) to be maintained throughout the project. | 93183 |
| Parkville | University of Melbourne | Appropriate egress to be maintained to all fire stairs to the Tri-radiate (bld 181) or appropriate alternate arrangements developed, signed off by the University's Building Surveyor and appropriately displayed – including any exit sign relocations. | 93184 |
| Parkville | Victorian Comprehensive Cancer Centre (VCCC) | The following access must be maintained, or alternates provided. Access to car park, ambulance and loading bays off Flemington Road. Retailer's deliveries and patient drop offs on Grattan Street. Nitrogen and diesel deliveries on Elizabeth St. MFB control room access on Elizabeth St. | 93185 |
| Parkville | Victorian School of Languages | Maintain pedestrian access from Royal Parade, student drop off facilities on Storey Street and vehicular access to RMH's car park. | 93186 |
| CBD North | Melbourne City Baths | Emergency exit door on Franklin Street must remain accessible at all times. | 93187 |
| CBD North | Melbourne City Baths | Staff/contractor door on Franklin Street which is also utilised by MFB and is accessed 24/7 must remain accessible at all times during construction. | 93188 |
| CBD North | RMIT University | RMIT emergency response location is adjacent to the Building 14 tunnels and must remain accessible at all times during construction. | 93189 |
| CBD North | RMIT University | Building 14 "tunnels" to Franklin Street to be closed only during weekend or night time operations as agreed with RMIT (the tunnels contain access to the fire room and other RMIT emergency services rooms). | 93190 |
| CBD North | RMIT University | Emergency egress routes from RMIT buildings including Buildings 37 onto A'Beckett Street and 39 and 49 onto Franklin Street are to be maintained at all times. | 93191 |
| CBD North | RMIT University | RMIT emergency response location is adjacent to the Building 14 tunnels and must remain accessible at all times during construction. | 93192 |
| CBD North | RMIT University | A pedestrian walkway between Swanston Street and Victoria Street on Franklin Street must be maintained at all times, with the footpath adjacent to Building 14 to be accessible during the major works stages. | 93193 |
| CBD North | RMIT University | Operationally critical vehicle access to properties on Franklin Street must be maintained during construction. | 93194 |
| CBD North | RMIT University | Operationally critical vehicle access to RMIT Building 37 must be maintained during construction. | 93195 |
| CBD North | State Library of Victoria | State Library secondary entrance on Russell Street to remain accessible at all times during construction as this entrance | 93196 |

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| | | would operate as the sole major entry to the State Library during the redevelopment project. | |
| CBD North | Various | Access for deliveries to car dealerships on Franklin Street must be maintained. | 93197 |
| CBD South | [Not disclosed] | [Not disclosed] | 93198 |
| CBD South | ACMI | Exhibition deliveries are usually from Flinders Street (no allocated loading zones in this location). | 93199 |
| CBD South | Dangerfield (222-226 Flinders St), Young & Jacksons | Cocker Alley (South) is currently used by Dangerfield and Young & Jacksons for waste management. Any use of this lane as part of final design will require consultation with these parties. | 93200 |
| CBD South | Federation Square Management | Federation Square event bump in/out is managed from Swanston Street (Princes Bridge). | 93201 |
| CBD South | Melbourne Town Hall | Bump in crews for events at Melbourne Town Hall utilise the loading zone on the northern side of Collins Street. Often with trucks parking facing west due to the grade of the road. | 93202 |
| CBD South | [Not disclosed] | [Not disclosed] | 93203 |
| CBD South | [Not disclosed] | [Not disclosed] | 93204 |
| CBD South | [Not disclosed] | [Not disclosed] | 93209 |
| CBD South | [Not disclosed] | [Not disclosed] | 93210 |
| CBD South | [Not disclosed] | [Not disclosed] | 93211 |
| CBD South | [Not disclosed] | [Not disclosed] | 93212 |
| CBD South | [Not disclosed] | [Not disclosed] | 93213 |
| CBD South | [Not disclosed] | [Not disclosed] | 93214 |
| CBD South | [Not disclosed] | [Not disclosed] | 93215 |
| Domain | Albert Road Clinic | Rear access from Bowen Lane needs to be maintained as staff and trucks (including rubbish removal, linen delivery and food delivery services) access the Clinic via Bowen Lane from both St Kilda Rd and Kings Way. | 93216 |
| Domain | Albert Road Clinic | Drop off and pick up zones for inpatients, outpatients and ambulances need to be catered for. This is currently serviced by access from Bowen Lane. Noted that a lot of staff currently drive to work and park onsite (Bowen Lane) rather than taking public transport. | 93217 |
| Domain | [Not disclosed] | [Not disclosed] | 93218 |
| Domain | Botanica Apartments | Botanica has two entrances. One on Bowen Crescent (24no.) and the other on St Kilda Road (44no.). The carpark entrance on St Kilda Rd will require special consideration to ensure access during construction (given that main works are likely to be in very close proximity) . The St Kilda Road carpark entrance is the preferred for those residents or visitors that have mobility impairments and cannot be accessed any other way. This entrance is also required for building deliveries & maintenance. | 93219 |
| Domain | Botanica Apartments | Domain Station emergency egress location should not obstruct entrance to Botanica Apartments. | 93220 |
| Domain | Botanica Apartments | Current access for emergency services is via front of building on St Kilda Road. | 93221 |
| Domain | [Not disclosed] | [Not disclosed] | 93222 |

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| Domain | Fawkner Park Child Care Centre | Fawkner Park Child Care Centre is very sensitive to loss of carparks either adjacent to the centre or in Toorak Road. | 93223 |
| Domain | Fawkner Park Child Care Centre | Drop-off & pick up zones must be retained Sensitive to any change to access or operations of the centre. | 93224 |
| Domain | Melbourne Girls Grammar School | Students and staff require access to nearby sporting facilities such as Fawkner Park Tennis courts. | 93225 |
| Domain | Melbourne Grammar School | At least one east-west crossing of St Kilda Road must be provided in vicinity of the school gates. | 93226 |
| Domain | Melbourne Grammar School | Pedestrians must be able to walk on the southern side of Domain Road and follow the path around into the eastern side of St Kilda Rd. This must be made safe or closed at night. | 93227 |
| Domain | Melbourne Grammar School | A convenient north-south connection across Domain Rd must be provided at all times in vicinity of school gates. | 93228 |
| Domain | Melbourne Grammar School | Access to Melbourne Grammar's underground carpark must be maintained during construction. | 93229 |
| Domain | Melbourne Grammar School | Existing school bus pick up and drop off zone in Domain Road. | 93230 |
| Domain | Melbourne Grammar School | School bus services need to be able to continue services to the school. | 93231 |
| Domain | Melbourne Grammar School | Waste collection point is on St Kilda Road. | 93232 |
| Domain | Melbourne Grammar School | School currently uses Edmund Herring Oval. | 93233 |
| Domain | Royce Hotel | Features critical to Hotel functionality: <ul style="list-style-type: none"> ▪ guest drop-off zones on St Kilda Road & Bromby Street; ▪ public parking; ▪ hotel private parking (including valet parking) on St Kilda Road; and ▪ loading/delivery dock and waste collection facility on St Kilda Road. | 93234 93235 93236 93237 93238 |
| Domain | [Not disclosed] | [Not disclosed] | 93239 |
| Domain | [Not disclosed] | [Not disclosed] | 93241 |
| Domain | [Not disclosed] | [Not disclosed] | 93243 |
| Domain | [Not disclosed] | [Not disclosed] | 93244 |
| Domain | [Not disclosed] | [Not disclosed] | 93245 |
| Domain | [Not disclosed] | [Not disclosed] | 93246 |

C2.3 Interfacing and future projects

| Precinct | Stakeholder | Requirement/ information | |
|-----------|---|--|----------------|
| Arden | Victorian Planning Authority/ City of Melbourne | The Victorian Planning Authority is in the process of developing the plan for the Arden Urban Renewal Precinct. | 93248 93249 |
| Parkville | City of Melbourne | The City of Melbourne has prepared a University Square Draft Master Plan and is targeting endorsement of the plan in late 2016. | 93250 |
| Parkville | Graduate House | The Graduate Union has embarked on a 10-year master plan which is at an advanced stage and involves staged redevelopment of the Graduate House properties from the Leicester Street frontages eastwards over the timeframe proposed for installation of the Parkville station and underground rail loop. The staged construction redevelopment of Graduate House is not to be hindered during construction | 93251 |

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| | | delivery of the Melbourne Metro Rail Project. | |
| Parkville | Melbourne Health (Royal Melbourne Hospital) | Construction, operation and design of Parkville station must not preclude RMH's future redevelopment plans on their site. | 93252 |
| CBD South | ACMI | ACMI currently have plans to undertake a full internal refurbishment of the building (subject to funding). | 93253 |
| | | <ul style="list-style-type: none"> ▪ 2017/18: Funding received ▪ Late 2018: Commence refurbishment ▪ Early/ mid 2019: Complete refurbishment | 93254 93255 93256 |
| | | ACMI and City of Melbourne are proposing to upgrade the streetscape along Flinders Street southern footpath between Swanston Street and Russell Street. Works are funded for detailed design in 16/17 financial year and CoM have provided conditional funding for construction in the 17/18 financial year. | 93257 |
| CBD South | City of Melbourne | The City of Melbourne is developing the Elizabeth Street South Streetscape Improvement Plan and is targeting release of this document in mid-2017. | 93258 |
| CBD South | PTV | Flinders Street Station upgrade project | 93259 |
| Domain | [Not disclosed] | [Not disclosed] | 93260 |
| Domain | Royce Hotel | Hotel has approved plans to expand - construction of an 8 storey building, 67 rooms. Construction timeframe is 2017/2018. | 93261 |

C2.4 Emergency management arrangements

| Precinct | Stakeholder | Requirement/ information | |
|-----------|--|---|----------------|
| Parkville | Bio21 Molecular Science & Biotechnology Institute | The emergency assembly point location isn't known but could be affected by changes to other assembly points or increase in traffic in the precinct. It should be considered within a wider precinct emergency assembly location plan. | 93263 93264 |
| Parkville | Graduate Union of the University of Melbourne (Graduate House) | The emergency assembly point location is in University Square across Leicester Street and may be affected during construction. | 93265 |
| Parkville | IQ Apartments | The emergency assembly point location isn't known but could be on Berkeley Street and therefore be affected during construction. | 93266 |
| Parkville | Melbourne Business School | The emergency assembly point location is on the southern lawn of University Square across Leicester Street and access may be affected during construction. | 93267 |
| Parkville | Melbourne Health (Royal Melbourne Hospital) | RMH has several emergency assembly points - one adjacent to Uni High, one adjacent to Flemington Road and one on the corner of Royal Parade & Grattan Street where people often spill onto the road due to lack of space on the footpath. This will be an issue during construction of the VCCC entrance. | 93268 |
| Parkville | Melbourne Health (Royal Melbourne Hospital) | RMH is the statewide infectious disease & disaster hospital for Victoria. In the event of a major disaster Grattan Street may be closed by Victoria Police to facilitate RMH's response plans. | 93269 |
| | | VCCC station entrance could be closed if DISPLAN is activated to prevent egress into RMH's triage area on Grattan St. | 93270 |
| Parkville | Peter Doherty Institute | Peter Doherty Institute's emergency access point is on Haymarket Walk. | 93271 |
| Parkville | Peter Doherty Institute | Peter Doherty Institute has high security laboratories that are operated under external security protocols (Federal or State level). These protocols must be considered during the | 93272 |

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| | | design, construction & operation of the Metro Tunnel. | |
| Parkville | Victorian Comprehensive Cancer Centre (VCCC) | VCCC evacuates to Grattan St. The construction of VCCC entrance impacts VCCC's evacuation plans. | 93273 |
| Parkville | Walter and Eliza Hall Institute (WEHI) | WEHI evacuates to University High oval. | 93274 |

C2.5 EMI/ EMC

| Precinct | Stakeholder | Requirement/ information | |
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| Parkville | Bio21 Molecular Science & Biotechnology Institute | Equipment extremely sensitive to EMI that may require additional mitigation measures. | 93276 |
| Parkville | Florey Institute of Neuroscience and Mental Health | Florey Institute has EMI sensitive equipment on the lower floors of the Kenneth Myer Building that is in 24/7. | 93278 |
| Parkville | Melbourne Health (Royal Melbourne Hospital) | RMH has EMI sensitive equipment on 2 floors fronting Royal Parade. Their equipment must be a minimum of 40m from the tram tracks to prevent their equipment affecting the trams. The EMI relationship between RMH's equipment and Metro Tunnel equipment & trains must be clearly understood. | 93279 |
| Parkville | Peter Doherty Institute for Infection and Immunity | PDI is EMI sensitive equipment in the basement. There is protection in place however PPP must confirm that this provides sufficient protection from Metro Tunnel's EMI. | 93280 |
| Parkville | Victorian Comprehensive Cancer Centre (VCCC) | VCCC has EMI sensitive equipment in the basements and upper floors. The interaction between that equipment and Metro Tunnel's traction power system must be investigated. EMI mitigation measures were installed during VCCC construction so the PPP must confirm that these mitigations are sufficient or if any additional mitigations are required. | 93281 |

C2.6 Existing assets and conditions

| Precinct | Stakeholder | Requirement/ information | |
|-----------|--|--|----------------------------------|
| Arden | City of Melbourne | CoM have a brick lined storm water pipe which runs along the Queensberry St alignment under the Arden precinct. It must not be damaged during construction as a result of construction loading | 93283 |
| Parkville | Graduate Union of the University of Melbourne (Graduate House) | The eight terrace houses from 222 to 234 Leicester Street, known collectively as the 'Gladstone Terraces', are regarded as heritage construction from the 1870s. There are susceptible to damage by vibration and ground movement. | 93284 |
| Parkville | [Not disclosed] | [Not disclosed] | 93285 |
| Parkville | Melbourne Health (Royal Melbourne Hospital) | RMH infrastructure: <ul style="list-style-type: none"> ▪ 2 airbridges over Grattan Street connecting VCCC & RMH; ▪ service tunnel beneath Grattan St providing service (oxygen & fibre optic cables) connections between RMH & VCCC; ▪ basements fronting Grattan St will be adjacent to TBM route. | 93286 93287 93288 93289 |
| Parkville | Peter Doherty Institute for Infection and Immunity | There is a canopy on PDI's building at level 1 on the corner of Elizabeth Street/ Grattan Street that may be impacted by construction. | 93290 |
| Parkville | Peter Doherty Institute for Infection | There is a CitiPower substation within PDI's building that can power the Parkville precinct if required. | 93291 93292 |

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| | and Immunity | | |
| Parkville | Peter Doherty Institute for Infection and Immunity | Peter Doherty Institute have surface flooding issues in the delivery bay at the corner of Grattan St and Royal Parade. Changing surface water flows could exacerbate this issue. | 93293 |
| Domain | Royce Hotel | The Hotel has had ongoing issues with drainage at the end of Bromby Street, with water backing up and flooding the footpath. | 93294 |
| Domain | [Not disclosed] | [Not disclosed] | 93295 |
| Domain | Tabcorp | Tabcorp Head Office Building heavily relies upon telecomms cables servicing this building. Consequences of unexpected cut of these services are severe to Tabcorp. | 93296 |

C2.7 Particular noise, vibration and air quality concerns

| Precinct | Stakeholder | Requirement/ information | |
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| Parkville | Bio21 Molecular Science & Biotechnology Institute | Bio 21 Molecular Science and Biotechnology Institute contains equipment sensitive to ground-borne noise. | 93298 |
| Parkville | [Not disclosed] | [Not disclosed] | 93299 |
| Parkville | Graduate Union of the University of Melbourne (Graduate House) | Graduate House has meeting rooms and accommodation facing Leicester Street. | 93300 |
| Parkville | IQ Apartments | IQ Apartments is a residential block so noise levels shouldn't exceed the EPA limits for bedrooms and living rooms. Mitigation measures required if noise levels do exceed EPA limits, particularly at night. | 93301 |
| Parkville | Melbourne Business School | Melbourne Business School has accommodation areas so noise and vibration levels shouldn't exceed the EPA limits. Mitigation measures required if noise levels do exceed EPA limits, particularly at night. | 93302 |
| Parkville | [Not disclosed] | [Not disclosed] | 93303 |
| Parkville | Melbourne Health (Royal Melbourne Hospital) | RMH air intakes are located on Grattan Street and air filters are quickly clogged up with construction dust. Dust management is essential. | 93304 |
| Parkville | Melbourne Private Hospital | Noise impacts on major surgery. Mitigation measures should ensure that surgery isn't disrupted by excessive noise. | 93305 |
| Parkville | Melbourne Private Hospital | Share Royal Melbourne Hospital's sensitive equipment so vibration impacts should be managed via RMH's requirements. | 93306 |
| Parkville | Melbourne Private Hospital | Excessive noise impacts on major surgery may result in construction delays. Mitigation measures should ensure that surgery isn't disrupted by excessive noise. | 93307 |
| Parkville | [Not disclosed] | [Not disclosed] | 93308 |
| Parkville | Royal Women's Hospital | Construction noise will disrupt patients sleeping in wards at night. RWH prefer day works to 24/7 working hours. | 93309 |
| Parkville | Royal Women's Hospital | There are fresh air intakes at on each of the 9 floors that can be affected by construction dust. This has to be managed to prevent adverse impacts on staff and patients. | 93310 |
| Parkville | [Not disclosed] | [Not disclosed] | 93311 |
| Parkville | [Not disclosed] | [Not disclosed] | 93312 |
| Parkville | [Not disclosed] | [Not disclosed] | 93313 |
| Parkville | [Not disclosed] | [Not disclosed] | 93314 |
| Parkville | [Not disclosed] | [Not disclosed] | 93317 |
| CBD South | [Not disclosed] | [Not disclosed] | 93318 |
| CBD South | [Not disclosed] | [Not disclosed] | 93319 |
| Domain | Albert Road Clinic | The Albert Road Clinic is a private psychiatric facility which specialises in care for mental health. Construction noise may | 93320 |

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| | | be a concern for patients and staff, particularly in their consulting rooms where a quiet environment is needed. Inpatient rooms are on both sides of the building. Noted no double glazing on windows currently. | |
| Domain | [Not disclosed] | [Not disclosed] | 93321 |
| Domain | Shrine of Remembrance Trustees | Due to the proximity of the work site to the Cobbers statue, the Shrine expects that the contractor will delineate the site in an appropriate way that allows for construction to take place, but provides an appropriate treatment for those visiting the memorial. | 93322 |

C2.8 Stakeholder interactions

| Precinct | Stakeholder | Requirement/ information | |
|-----------|------------------------------|---|---|
| Parkville | Parkville Reference Group | <p>The Metro Tunnel Precinct Reference Group – Parkville (PRG) has been established to assist in the mitigation and management of construction impacts associated with construction of the tunnels and station in Parkville. Membership includes a representative from each of:</p> <ul style="list-style-type: none"> ▪ Ambulance Victoria ▪ Bio21 Molecular Science & Biotechnology Institute ▪ City of Melbourne ▪ Department of Health and Human Services ▪ The Florey Institute of Neuroscience and Mental Health ▪ Gene Technology Access Centre ▪ Graduate Union of the University of Melbourne (Graduate House) ▪ Melbourne Business School ▪ Melbourne Health (Royal Melbourne Hospital) ▪ Melbourne Private Hospital ▪ Peter Doherty Institute for Infection and Immunity ▪ Peter MacCallum Cancer Centre ▪ Public Transport Victoria ▪ Royal Children’s Hospital ▪ Royal Women’s Hospital ▪ University High School ▪ University of Melbourne ▪ VicRoads ▪ Victorian Comprehensive Cancer Centre (VCCC) ▪ Walter and Eliza Hall Institute of Medical Research | 93323 93324 93325 93326 93327 93328 93329 93330 93331 93332 93333 93334 93335 93336 93337 93338 93339 93340 93341 93342 93343 93344 93345 |
| CBD South | Federation Square Management | Federation Square Management are to be engaged during the planning of non-standard and/or "unavoidable" construction activities that may impact on their ability to operate including holding various events. | 93346 |
| Domain | G12 | <p>Large apartment blocks in the G12 group include:</p> <ul style="list-style-type: none"> ▪ St James Apartments, 350 St Kilda Road Melbourne ▪ Royal Domain Plaza, 360 St Kilda Rd Melbourne ▪ Royal Domain Tower, 368 St Kilda Rd Melbourne ▪ The Hallmark, 2-14 Albert Road South Melbourne ▪ Albert Tower, 38 Albert Rd South Melbourne ▪ Fifty Albert, 50 Albert Rd South Melbourne ▪ The Domain, 1 Albert Road South Melbourne ▪ Lucient, 430 St Kilda Rd Melbourne | 93347 93348 93349 93350 93351 93352 93353 93354 93355 |

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|--------|---------------------------------------|--|---|
| | | <ul style="list-style-type: none"> ▪ Balencea - 454 St Kilda Road, Melbourne ▪ Capri - 38 Bank Street, South Melbourne ▪ Parkside - 28 Bank Street, South Melbourne ▪ Royal Albert - 15 Queens Road, Melbourne ▪ The Boulevard – 632 St Kilda Road, Melbourne | 93356 93357 93358 93359 93360 |
| Domain | Various | Others in the Precinct but not in the G12 group include: <ul style="list-style-type: none"> ▪ The Emerald, 35 Albert Road Melbourne ▪ Botanica, 400 St Kilda Road Melbourne ▪ The Princeton, 418 St Kilda Road Melbourne | 93361 93362 93363 93364 |
| | | <ul style="list-style-type: none"> ▪ Promenade, 416A St Kilda Road Melbourne ▪ City Condos, 416 St Kilda Road Melbourne | 93365 93366 |
| Domain | Schools – various (MGS, MGGS, MacRob) | Opportunity to consult all nearby schools as a collective with regard to TDM. | 93367 |
| Domain | [Not disclosed] | [Not disclosed] | 93368 |

C2.9 Transport arrangements

| Precinct | Stakeholder | Requirement/ information | |
|-----------|---|---|----------------------------------|
| Parkville | Melbourne Health (Royal Melbourne Hospital) | Ambulances must be able to drive in both directions across the northbound traffic lanes in Royal Parade, through the median on the west side of Royal Parade and onto the tram tracks or across the Grattan Street intersection as they currently do. | 93370 93371 |
| CBD North | RMIT University | Pedestrian access across Swanston Street opposite the Oxford Scholar to be available at all times. | 93372 |
| CBD North | RMIT University | Pedestrian access along Swanston Street including across Franklin Street to be available at all times. | 93373 |
| CBD North | RMIT University | Safe pedestrian access at the intersection of Swanston and La Trobe Street is to be provided for all users including at the RMIT information hub (Building 22) at the north-east corner. | 93374 |
| CBD North | RMIT University | The connection of Bowen Street to Franklin Street must be accessible throughout construction. | 93375 |
| Domain | MacRobertson Girls' High School | School has requested: <ul style="list-style-type: none"> ▪ 40 km/h speed limits outside school on Kings Way and Albert Rd; ▪ A drop-off zone constructed at the school; ▪ A pedestrian supervisor. | 93376 93377 93378 93379 |
| Domain | Royce Hotel | Hotel owners were in favour of re-connecting Bromby St with St Kilda Road. | 93380 |

C2.10 Special Events – Stakeholder specific

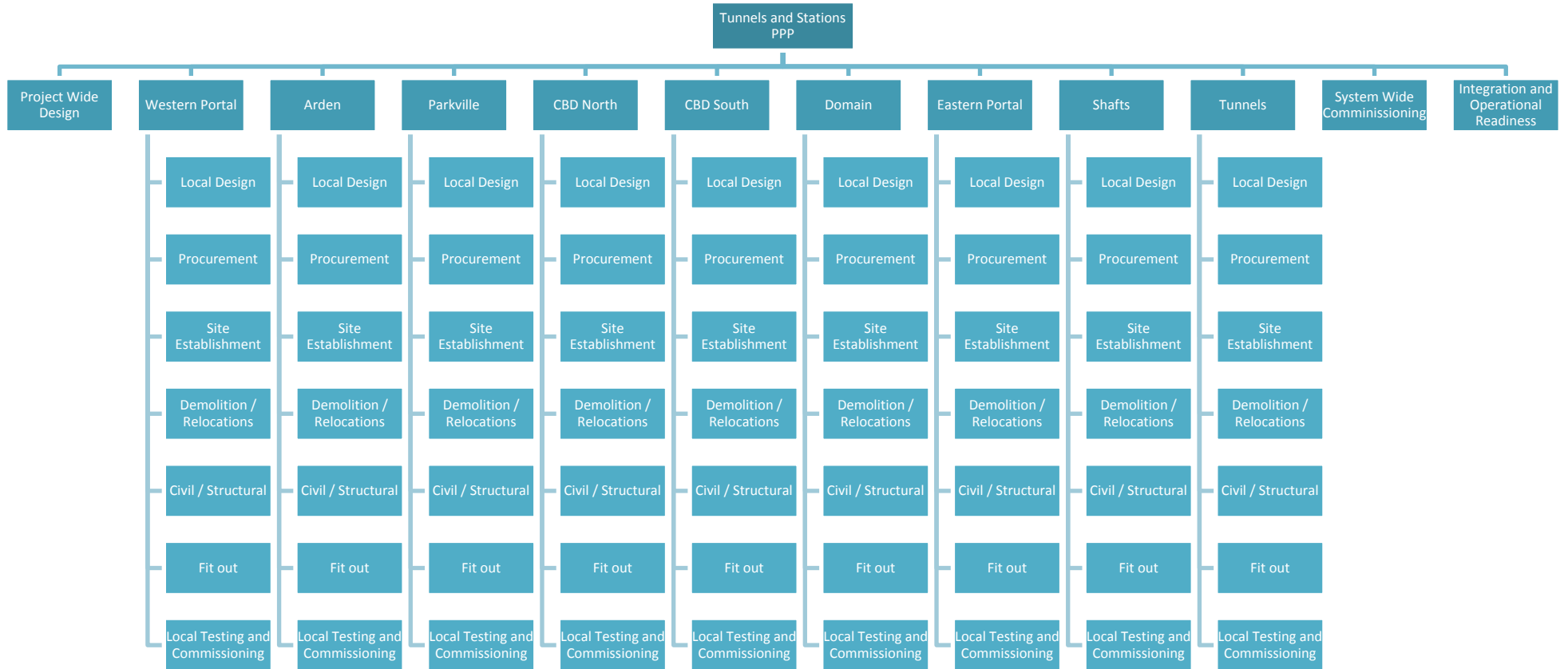
| Precinct | Stakeholder | Requirement/ information | |
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| Parkville Domain | & University High, Melbourne Grammar School, Melbourne Girls Grammar School, MacRobertson Girls' High School | VCE exams will create additional sensitivities to noise, air quality and utility outages. Additional or alternative mitigation measures may be required during the exam period. | 93382 93383 |
| Parkville | Peter Doherty Institute for Infection and Immunity | PDI hold public events that may generate additional pedestrian traffic and require additional access arrangements. | 93384 |
| Parkville | University of | The University and Business School run examinations, | 93385 |

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| | Melbourne and Melbourne Business School | open days, orientation week and other events which could potentially be impacted by works. | |
| Domain | Melbourne Hebrew Congregation | Construction during Hebrew High Holidays requires consideration and consultation. | 93386 |
| Domain | Melbourne Hebrew Congregation | The Jewish Sabbath is on sundown Friday evening to an hour after sundown on Saturday evening. Works in close proximity on Sabbaths may not be appreciated by some particularly when there might be a wedding or bar mitzvah. | 93387 |
| Domain | Shrine of Remembrance Trustees | The Shrine has 166 commemorative services a year and over 1 million visitors. There must be respectful awareness of various commemoration days throughout the year and organise construction activities accordingly, so as to minimise disruption on any ceremonial proceedings. All works are to be suspended on ANZAC day and Remembrance Day. The site should be tidied/prepared accordingly for such events. | 93388 |

Appendix C3: Program Work Breakdown Structure

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Appendix C4: Special Events

This Appendix C4 includes a non-exhaustive list of Special Events that must be considered in the planning and execution of the Works.

| Month | Title | Description | Potential impact details |
|----------|-----------------------------|--|--|
| January | Ride the Night | Annual night time cycle event | Swanston Street, St Kilda Road, Docklands |
| January | Australia Day | State celebrations, flag raising at Town Hall and Parade with community groups and activation at Kings Domain. | Swanston Street, Lonsdale Street and Kings Domain |
| January | Midsumma | Large-scale music and lifestyle event on all lawns in Alexandra Gardens | Arts precinct, Alexandra Gardens and surrounds |
| January | Australian Open | Annual two-week festival, day and night | Birrarung Marr, Federation Square |
| February | Orientation Weeks | Orientation weeks for new students at RMIT, Melbourne University | Various - RMIT uses Bowen Street and Melbourne University uses University Square |
| February | Lonsdale Street Festival | Annual Greek cultural street festival | Lonsdale Street and Russell Street |
| February | White Night | CBD-wide annual event with multiple lighting / projection installations and large pedestrian presence | CBD-wide pedestrian management plan impacts. Footprint changes each year. |
| February | Chinese New Year | Annual festival across the city celebrating the lunar new year | TBC: Chinatown, Fed Square, Southbank, Docklands, Queen Victoria Markets |
| February | Moomba (CoM owned) | Annual large-scale CoM produced event | Alexandra Gardens, Riverbank (both sides), Arts Precinct, Queen Vic Gardens, Domain precinct |
| February | Sustainable Living Festival | Annual Sustainable Festival - 2 day event | Birrarung Marr, River Terrace and City Square (The New Joneses) |

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| March | Comedy Festival | Annual Comedy Festival incorp. Family stage at City Square and ticket booth at Town hall | Swanston Street to Bourke Street and City Square |
| March | Melbourne Food and Wine Festival | Annual 10-day festival across the city | Queensbridge Square, Southbank, Batman Park, Yarra bridges, Fed Square |
| March | Virgin Australia Melbourne Fashion Festival | Week long Fashion Festival | Royal Exhibition Building |
| March | Australian Formula 1 Grand Prix | City Square and Federation square for activations leading up to main race | City Square |
| April | Herald Sun / CityLink Run for the Kids | Mass participation fun run via Herald and Weekly times sponsorship linked to Good Friday Appeal | St Kilda Road and Kings Domain |
| April | ANZAC Day | Annual, RSL organised street parade | St Kilda Road, Swanston Street |
| May | Mother's Day Classic | Breast cancer fundraiser walk / run | Alexandra Gardens and St Kilda Road |
| July | Run Melbourne | Annual running event | Alexandra Gardens, Birrarung Marr, Southbank, Docklands and CBD Streets |
| July | Open House Melbourne | Two day weekend with open buildings | Access via train station for attendees to access certain buildings. City Square was used in 2015. |
| August | Melbourne Spring Fashion Week hub (CoM owned) | Annual Spring Fashion Week hub | Retail precinct activation in City Square |
| August | RMIT Open Day | Annual RMIT open day | Roads closed through CBD North - Franklin Street, LaTrobe Street, Victoria Street, A'beckett Street |
| September/ October | AFL Grand Final Day Parade | Annual AFL Grand Final Parade | New proposed route along Spring Street may eliminate impacts |
| September | Melbourne Fringe Hub | City Square activation for Melbourne Fringe Festival | City Square - relocation required as of 2017 |
| September | Around the Bay | Large cycling event with three day expo (weekend) | Course and activation consideration starting Alexandra Gardens, Alexandra Ave, St Kilda Road, |

| | | | |
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| | | | Southbank |
| October | Melbourne Marathon | Running Festival throughout CoM and City of Port Phillip | St Kilda Road, Birrarung Marr, Domain precinct, Federation Square |
| October | Melbourne Festival | Temp festival hub at Alex Gardens. Citywide international arts festival. | Potential for parade down Swanston Street |
| October | Festival of Tabernacles | City Square annual event | City Square - relocation required as of 2017 |
| November | Melbourne Cup Parade | Melbourne Cup celebration including parade of jockeys sponsors & community groups. | Swanston Street to Lonsdale Street - St Kilda Road Service Lanes |
| November | Christmas (CoM owned) | Xmas festival | City Square N/A relocation necessary |
| November | Night Noodle Market | 2 week food festival | Birrarung Marr - access for bump in potentially |
| November | City 2 Sea | Mass participation fun run organised by Fairfax Media to promote healthy living and fitness. | St Kilda Road, Yarra Park |
| December | RMIT Parade | Graduates walk down Swanston St, from Latrobe Street to Federation Square | Swanston Street |
| December | NYE (CoM owned) | New Year's Eve annual CBD-wide activation | CBD-wide pedestrian management plan impacts |
| Year round | Other events including those described in Appendix C2.10. | | |

Appendix C5: Protection of Underground Services – Minimum Conditions*

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1. A Ground Penetration Permit (**GPP**) system will be in place for the management of all ground penetrations. A permit is required for any works where the ground is broken / penetrated. 93396
2. The GPP shall ensure that there is coordination and consultation with asset owners to ensure all requirements and approvals are achieved. 93397
3. Within the nominated work zone stipulated on the GPP, all known services will be identified¹, and dependent on the proximity of the ground penetration works to these services; positively located² (as per asset owner or contractor organisational requirements) and marked³ prior to the commencement of any ground penetration works. 93398
4. Service investigation works shall consider not only all known services but include investigations to locate domestic and commercial feeds/taps coming from the main. 93399
5. The GPP system will detail roles and responsibilities of all personnel involved in the permit process. Roles and responsibilities must be clearly defined including the minimum competencies, training, authority, consultation expectations and experience required for each role. 93400
6. All personnel involved in the GPP process (including but not limited to the project manager, GPP coordinator, the operators and spotters on the ground) shall receive detailed information, instruction and training into the GPP system. 93401
7. A senior suitably qualified and experienced person with appropriate authority shall be assigned to the position of GPP Coordinator (this role will be nominated under the contract). The GPP Coordinator will be a dedicated resource and shall have the responsibility to manage and coordinate the GPP system, and be the singular point of issue for all GPP's. This role is considered critical in the process and therefore should not be assigned additional unrelated tasks / functions, the role is to be separate from other operational disciplines. 93402
8. A specific hold point shall be included within the GPP, outlining the requirement of a walk through / site inspection to be conducted prior to the commencement of ground penetrating works. This is to be carried out by the GPP Coordinator, site supervisor(s) and all associated operational employees. 93403
9. Duration of the permit shall be determined using, whichever is assessed as the least duration from the following: a risk based approach; or by adhering to the timeframes outlined by dial before you dig (DBYD) (valid for 28 days). The permit shall have a re-validation section to be completed by the GPP Controller to ensure its currency and validity in the field. This re-validation section shall be completed at least weekly. 93404
10. Any unknown and/or redundant services identified during the ground penetration process 93405

* This document has been created by the Melbourne Metro Rail Authority in consultation with construction industry stakeholders and outlines a contemporary and practical summary of expected minimum conditions relating to work on or around underground services.

¹ Means of identification shall include the use of technologies such as acoustic devices, electromagnetic technologies or ground penetrating radar.

² Positively located is defined as verifying the precise horizontal and vertical location of underground assets through non-destructive means i.e. water jetting, vacuum excavation and/or soft digging methods

³ As per AS 1345:1995 Identification of the contents of pipes, conduits and ducts

shall be recorded, the relevant asset owner / stakeholder notified and the information captured as required by 'Minimum Condition 13'.

11. The scope of work including the task and limits of work boundaries must be clearly defined in the GPP and communicated to all affected workers and stakeholders. The issue of a permit covering multiple tasks such as a "blanket permit" and / or "piggy backing" of multiple tasks onto a single permit is to be avoided. 93406
12. All service strikes (and potential to strike) shall be reported through normal incident reporting processes and thoroughly investigated to identify casual factors and implementation of corrective actions to prevent recurrence. As part of the reporting process, escalation to the most senior project representative is required to demonstrate an appropriate governance structure is in place. 93407
13. An underground service data management system will be implemented to capture, update and classify⁴ all underground assets (including the dissemination of updated information) within suitable timeframes to protect underground assets from damage by other user groups. All relevant project participants will be expected to co-operate with the collation of this information. 98927
14. Where requested by MMRA, the GPP system will be independently audited to ensure the inclusion of these 'Minimum Conditions', to verify the adequacy and implementation of the GPP system / process. 93408

⁴As per AS 5488:2013 Classification of Subsurface Utility Information

Appendix C6: [Not disclosed]

Appendix C7: Passenger Modelling Parameters

C7.1 General

118357

Parameters to be used for passenger modelling of stations are provided in this Appendix C7.

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Project Co must present the details of its static and dynamic analysis including key assumptions and justification for the chosen modelling approach, especially if the proposed parameters depart from those listed here or otherwise advised by the State.

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In addition to the modelling scope and approach defined in these documents, the State may request additional pedestrian modelling to be undertaken by Project Co to test sensitivities of or changes to model inputs, such as network planning, timetable, or these parameters.

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C7.2 Static capacity calculations

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(a) Calculation of the required number of ticket gates must be based on the following assumptions:

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- i) the time profiles specified in Appendix B1 of *Volume 2, Part B: Technical Requirements* to convert 1-hour flows to 15-minute peak entry and exit flows;
- ii) a factor of 0.4 to convert the 15-minute peak flows to 5-minute peak entry and exit flows;
- iii) the number of gates required in each direction is to be determined based on the 5-minute peak entry and exit flows and the gate capacity set out in *Volume 2, Part B: Technical Requirements Section 7.4.1 (j)*; and
- iv) wide barrier gates and redundancy are to be added in accordance with *Volume 2, Part B: Technical Requirements Section 7.7.7*.

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(b) For the purposes of calculating platform width, an edge effect of 0.5m should be assumed for the rear of each platform. No edge effect is required to be assumed for the front edge (PSD side) of the platform. The static calculation of the required platform width should assume a passenger occupancy load of 35% of the total patronage demand constrained to 25% of the available platform length.

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Note that pedestrian simulation modelling may ultimately indicate that additional gates, vertical transport and platform circulation space may be required to support the Level of Service targets established in *Volume 2, Part B: Technical Requirements Section 7.4.1 (g)*.

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C7.3 Operational scenarios

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C7.3.1 Normal operations scenario

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Volume 2, Part B: Technical Requirements Section 7.4 (f) i. defines normal operations for the purposes of calculating station levels of service as where trains arrive at scheduled headways of 150 seconds.

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For the purposes of modelling a normal operations scenario for the Design Case, it should be assumed that trains will arrive simultaneously in the eastbound and westbound directions in both the AM and PM peak periods.

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C7.3.2 Degraded operations scenario

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Volume 2, Part B: Technical Requirements Section 7.4 (f) i. defines degraded operations for the purposes of calculating station levels of service as the case where two consecutive scheduled train arrivals are missed on both platforms. Services resume at the time of the next scheduled train after the two missed headways. Upon resumption of services, the following trains arrive at 120-second headways until the timetable can be recovered (that is, until trains are able to run to their original schedule).

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For the purposes of modelling a degraded operations scenario for the Design Case, it should be assumed that trains will arrive simultaneously in the eastbound and westbound directions in both

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the AM and PM peak periods.

C7.3.3 Escalator unavailable scenario 118376

Volume 2, Part B: Technical Requirements Section 7.4 (f) i. defines an escalator unavailable scenario as where at least one escalator is not operating on each level of the station (including one escalator not operating at each of the station exits). During escalator unavailability, trains arrive at normal scheduled headways of 150 seconds. 118377

For the escalator unavailable scenario, escalator capacity may optionally be increased to 121 pax/min (see *Volume 2, Part B: Technical Requirements Section 7.5.5 (b)*) 118378

C7.4 Pedestrian simulation modelling 118379

Pedestrian simulation modelling must be based on the following assumptions: 118380

- (a) The Fruin distribution of walk speeds is to be used, specifically: 118381
 - i) Normal distribution with a mean of 1.35 m/s and standard deviation of 0.255 118382
 - ii) Minimum speed of 0.65m/s 118383
 - iii) Maximum speed of 2.05m/s. 118384
- (b) For the purposes of pedestrian simulation modelling, Project Co must demonstrate an adequate percentage of passengers have been assumed to use lifts, which must be greater than 2%. This is to enable simulation of the interactions between the walk routes for lift users and for escalator users. 118385
- (c) For normal operations and degraded operations scenarios, the capacities for ticket gates and escalators are to be capped as advised in the *Volume 2, Part B: Technical Requirements*. These capacities are 28 passengers per minute and 100 passengers per minute, respectively. Refer to *Volume 2, Part B: Technical Requirements* Clauses 7.4.1(j), 7.4.1 (f) i., 7.4.1 (f) ii., and 7.5.5 (a). 118386
- (d) For the escalator unavailable scenario (*Volume 2, Part B: Technical Requirements* Clauses 7.4.1 (f) iii. and 7.5.5 (b)), escalator capacity can optionally be assumed to increase to 121 passengers per minute. 118387
- (e) For the purposes of determining passenger waiting areas on platform, the platform area should be divided into four parts of equal length. As per the static calculations, an edge effect of 0.5m should be assumed at the rear of the platform. Passengers waiting on platforms should be distributed so that for each walk route to the platform: 118388
 - i) 35% of passengers will wait for a train in the quarter of the platform they first reach, 118389
 - ii) 30% of passengers will walk to wait in the closest adjacent quarter of the platform. If there are two equidistant adjacent quarters of the platform, passengers will travel to the quarter of the platform that minimises their turn radius (e.g. travel in the direction of the escalator, stair, or lift runoff), 118390
 - iii) 22.5% of passengers will walk to wait in the next adjacent quarter of the platform, 118391
 - iv) 12.5% of passengers will walk to wait in the furthest quarter of the platform. 118392
- (f) Outputs generated from the passenger simulation modelling must at a minimum be as follows: 118393
 - i) The average level of service for each area must be calculated to exclude intervals with zero pedestrian flow. Maximum level of service plots must also be provided for normal operations. 118394
 - ii) Journey times must be provided for average, minimum, and maximum journey times from platform to street for each walk route (i.e. exit), for each modelled scenario and time period. 118395
 - iii) For AM and PM peak hours for normal operations, the following is to be provided: 150504
 - (1) A stacked minute-by-minute histogram showing both the total boarding occupancy on platform as well as a breakdown of this total into each of the 150505

- Queuing Level of Service Designations as set out in Appendix B2
- (2) A minute-by-minute graph for alighting passengers on platform 150506
 - (3) A minute-by-minute graph for a zone of 6m around the gatelines showing the number of passengers queuing 150507

METRO TUNNEL

TUNNEL AND STATIONS

PUBLIC PRIVATE PARTNERSHIP

Project Scope and Technical Requirements (PS&TR)

Part D: Glossary of Terms



1 Glossary of Terms

Unless otherwise expressly defined in Table D1, expressions used in the PS&TR have the meaning given to them in the Agreement.

A table of acronyms is provided in Table D2.

Table D 1 – Glossary of Terms

| TERM | ACRONYM | DEFINITION | DNG |
|--|---------|--|-------|
| 2031 Project Case | | means the 2031 Project Case passenger forecasts defined in Part B, Appendix B1. | 93440 |
| Aboriginal Employment Target | | means the Aboriginal workforce target set by the Victorian Government of 2.5% estimated total labour hours. | 93441 |
| Accelerated Design Packages | ADP | has the meaning given in the Design Review Schedule. | 93442 |
| Acceptable Effects | | means the extent to which the existing ground conditions, infrastructure and properties may be acceptably affected consistent with the Environmental Requirements of the State Project Documents. | 93443 |
| Accessible | | means features to enable use by people with a disability as defined in AS 1428 and appropriate for providing universal access compliant with the Disability Discrimination Act. | 93444 |
| Accredited Professional | | means a person accredited as a Green Star Accredited Professional or an IS Accredited Professional by the GBCA or ISCA respectively. | 93445 |
| Acid Sulfate Soil and Rock (ASS/ASR) Management Sub-Plan | | means the sub-plans to the Spoil Management Plan to be prepared in accordance with EPR C2. | 93446 |
| Acquired Land | | means the land obtained by the State and made available to Project Co for delivery of the Works. | 93447 |
| After Last Before First | ALBF | means an occupation facilitated through the Train Franchisee, that takes place after the last train for the day and prior to the first train of the following day. | 93448 |
| Agreement Processes | | has the meaning given in the Systems Engineering Standard. | 93449 |
| AIRAH Technical Handbook | | means the Australian Institute of Refrigeration, Air Conditioning and Heating 'Technical Handbook' 5 th edn. 2013. | 93450 |
| Approval Conditions | | any condition or requirement to be satisfied as a result of a planning, environmental or heritage approval process, such as an Environmental Performance Requirement, condition of the relevant Incorporated Document, gazetted planning overlay or heritage approval. | 93451 |
| Arden-Macaulay Precinct | | means the 144 hectare area identified as an urban renewal precinct by the City of Melbourne, including Macaulay Precinct and Arden Precinct. | 93452 |

| TERM | ACRONYM | DEFINITION | DNG |
|--|---------|--|-------|
| Arden Precinct | | see 'Precinct'. | 93453 |
| Arden Station | | means the new underground station to be constructed at Arden as set out in the PS&TR. | 93454 |
| Arden Urban Renewal Precinct | | means the 56 hectare parcel within the Arden and Macaulay urban renewal area. | 93455 |
| Arden Vision and Framework | | means the document developed by the Victorian Planning Authority in collaboration with officers of the City of Melbourne and other Victorian Government departments and agencies and released in draft form in September 2016. | 93456 |
| As-Built Records | | means the as-built information required to be provided in relation to the Works in accordance with section 1.3.5 of Part C. | 93457 |
| Asset | | means a discrete physical component of the Works. | 93458 |
| Asset Component | | means a component of an Asset which has a specified Design Life or maintenance requirement which varies from that specified for the Asset of which the Asset Component forms a part. | 93459 |
| Asset Inventory | | has the meaning given in section 1.3.7 of Part C. | 93460 |
| Asset Management System | | means a system for Asset management that complies with section 1.3.7 of Part C. | 93461 |
| Asset Owner | | means any relevant Returned Asset Owner or Utility Infrastructure owner. | 93462 |
| Asset Sub-Component | | means one of the elements which forms an Asset Component. | 93463 |
| Assurance Case | | means a structured argument supported by a body of evidence that provides a compelling, comprehensible and valid justification that a system or asset is acceptably safe for its given application in a given operating environment. | 93464 |
| Assurance Case Report | | means the report described in Annexure 3, section 3.5.4 of Part C. | 93465 |
| Australian Bureau of Statistics Census of Population and Housing | | means statistical data captured from all Australians via the Census, providing information on key characteristics of people including languages spoken and origin of birth. | 93466 |
| Australasian Certification Authority for Reinforcing Steels | ACRS | means the industry based third party certification scheme certifying manufacturers and suppliers of reinforcing, prestressing and structural steels to Australian and New Zealand Standards. | 93467 |
| Australian Government Protective Security Policy Framework | | means the framework developed to assist Australian Government entities to protect people, information and assets, at home and overseas. | 93468 |
| Australian Greenhouse and Energy Minimum | | means the GEMS Regulator as described in the Greenhouse and Energy Minimum Standards Regulation (2012). | 93469 |

| TERM | ACRONYM | DEFINITION | DNG |
|--|---------|---|--------|
| Standards Regulator | | | |
| Australian Height Datum | AHD | means the geodetic datum for altitude measurement in Australia. | 93470 |
| Australian Standard | AS | means standards published by Standards Australia. | 93471 |
| Austrroads | | means the peak organisation of Australasian road transport and traffic agencies. | 93472 |
| Austrroads Design Vehicle and Turning Path Templates Guide | | means the Austrroads Guide of that name. | 93473 |
| Austrroads Guides | | means the range of guides published by Austrroads covering the design, construction, maintenance and operation of the road network in Australia, including the Guide to Traffic Management and the Guide to Road Design. | 93474 |
| Austrroads Guide to Road Design | AGRDR | means the Austrroads Guide of that name. | 93475 |
| Automatic Rescue Device | ARD | means the device that will bring a lift car to the nearest floor for evacuation of passengers in the event of motor failure and/or any power supply interruption, and hold the elevator car on that floor until normal lift service can be resumed. | 93476 |
| Average Recurrence Interval | ARI | means the average or expected period between exceedances of a given rainfall total accumulated over a given duration. | 93477 |
| Back of House | BOH | means the operational areas of the stations that are not accessible to the public. | 93478 |
| Base Case | | means a 'business as usual' early design of the project, accepted by key stakeholders and used to measure performance against quantifiable parameters such as resource consumption and greenhouse gas emissions. | 93479 |
| Baseline Security Clearance | | has the meaning given in the Protective Security Policy Framework, specifically the Australian Government personnel security management protocol. | 150557 |
| Bicycle Priority Route | BPR | means a discrete section of the VicRoads' Principle Bicycle Network that has been elevated to a higher order of priority, mainly on the basis of potential for separation from motorised traffic. | 93480 |
| Biophilic Design Guidelines | | means the document entitled 'Stations: Biophilic Design Guidelines' prepared and provided by the State, initially MMR-AJM-UGAA-RP-NS-002236. | 93481 |
| Blast Assessment | | means the assessment described in section 7.17 of Part C. | 93482 |
| Blast Assessment Report | | means the report described in section 7.17.5 of Part C. | 93483 |
| Building 14 | | means the RMIT building on the eastern corner of Swanston and Franklin Streets. | 93484 |

| TERM | ACRONYM | DEFINITION | DNG |
|--|----------|---|-------|
| Building Code of Australia | BCA | means the uniform set of technical provisions for the design and construction of buildings and other structures which form Volumes One and Two of the National Construction Code. | 93485 |
| Building Management System | BMS | means a computer-based system that controls and monitors the mechanical and electrical plant and systems as described in section 9.10 of Part B. | 93486 |
| Business Disruption Plan | | means the plan described in Environmental Performance Requirement B2 to be prepared as part of the Communications and Stakeholder Engagement Management Plan. | 93487 |
| Business Support Guidelines for Construction | | means the guidelines prepared by the State to address the potential adverse impacts of a temporary nature that construction may have on businesses in areas close to construction activities. | 93488 |
| CAD Management Plan | | means the sub-plan described in Annexure 2, section 2.10.4 of Part C. | 93489 |
| Carbon and Energy Sub-Plan | | means the sub-plan described in Annexure 5, section 5.1.6 of Part C. | 93490 |
| Carlton and United Breweries Site | CUB Site | means the site formerly occupied by Carlton and United Breweries, located at the north end of Swanston Street in the centre of the block bordered by Victoria, Swanston, Queensberry and Bouverie Streets. | 93491 |
| CBD North Precinct | | see 'Precinct'. | 93492 |
| CBD North Public Realm Concept Plan | | means the document provided in Appendix A4. | 93493 |
| CBD North Station | | means the new underground station to be constructed at CBD North as set out in the PS&TR. | 93494 |
| CBD Revitalisation Project | | means the award winning project delivered by the City of Melbourne in 1996. | 93495 |
| CBD South Precinct | | see 'Precinct'. | 93496 |
| CBD South Station | | means the new underground station to be constructed at CBD South as set out in the PS&TR. | 93497 |
| Certified Design | | has the meaning given in the Design Review Schedule. | 93498 |
| Certified Design Documentation | | means the Design Documentation described in section 7.5.3 of Part C. | 93499 |
| City Baths | | means the building located on the block bounded by Swanston, Victoria and Franklin Streets. | 93500 |
| City of Melbourne Design Standards | | means the standards developed by the City of Melbourne to guide design and construction in public spaces, include typical features of streets and other public spaces such as paving, kerbs, tree pits, lighting and furniture. | 93502 |
| City of Melbourne Open Space | | means the document entitled 'Open Space Strategy: Planning for Future Growth' published by the City of | 93503 |

| TERM | ACRONYM | DEFINITION | DNG |
|---|---------|---|--------|
| Strategy | | Melbourne and describing the City of Melbourne's overarching framework and strategic direction for open space planning for the next 15 years. | |
| City of Melbourne University Square Master Plan | | means the master plan developed by the City of Melbourne to outline a new vision for University Square and describe how this will be delivered, released in draft form for public exhibition in 2016. | 93504 |
| City of Port Phillip | | means the local government authority for former cities of Port Melbourne, South Melbourne and St Kilda, Victoria, Australia. | 93505 |
| City Square Background Paper | | means the document prepared by the City of Melbourne and provided in Appendix A4. | 93506 |
| City West Water | | means one of three government owned retail water businesses responsible for provision of drinking water, sewerage, trade waste and recycled water services to customers in Melbourne's central business district, inner and western suburbs. | 93507 |
| Clause | | refers to a clause in the Project Agreement. | 93508 |
| Clifton Hill Metro Tunnel | | means the potential future metro rail project as described in the PTV Network Development Plan. | 93509 |
| Climate Resilience Sub-Plan | | means the sub-plan described in Annexure 5, section 5.1.5 of Part C. | 93510 |
| Closed Circuit Television | CCTV | means a TV system in which signals are not publicly distributed but are monitored, primarily for surveillance and security purposes. | 93511 |
| Coordinated Universal Time | UTC | means the primary time standard as defined by International Telecommunications Union Recommendation (ITU-R TF.460-6), Standard-frequency and time-signal emissions. | 150558 |
| Combined Services Route | CSR | means the common cable containment system that houses communications, signalling and power cabling. | 93512 |
| Common Cause Failure Analysis | CCFA | means the analysis to be undertaken by Project Co in accordance with Annexure 3 section 3.7.4 (h) of Part C. | 93513 |
| Communication Equipment Room | CER | means an equipment room designed to house communications infrastructure. | 93514 |
| Communications and Stakeholder Engagement Management Plan | CSEMP | means the Management Plan described in Annexure 6, section 6.1 of Part C. | 93515 |
| Communications and Stakeholder Engagement Manager | | means the person described in section 5.8.1 of Part C. | 93516 |
| Communications Based Train Control | CBTC | means a high capacity signalling system utilising high-resolution train location determination, independent of track circuits; continuous, high capacity, bidirectional train-to-wayside data communications; and train-borne and wayside processors capable of implementing vital functions. | 93517 |

| TERM | ACRONYM | DEFINITION | DNG |
|--|---------|---|--------|
| Community and Business Involvement Plan | | means the plan described in Environmental Performance Requirement SC4 to be prepared as part of the Communications and Stakeholder Engagement Management Plan. | 93518 |
| Communications and Stakeholder Engagement Report | | means the report described in section 5.9.1 of Part C. | 93519 |
| Competency Management Plan | | means the Management Plan described in Annexure 2, section 2.12 of Part C. | 150562 |
| Concept of Operation | COO | means the operating plan for the rail system. | 93520 |
| Condition Survey | | means the conditions surveys of existing ground, infrastructure property and utilities to be undertaken in accordance with section 10.7.2 of Part C. | 93521 |
| Configuration Management | CM | means the systems engineering process for establishing and maintaining consistency of an asset's performance, functional, and physical attributes with its requirements, design, and operational information throughout its life. | 93522 |
| Configuration Management Plan | | means the Management Plan described in Annexure 3, section 3.2 of Part C. | 93523 |
| Construction Documentation | | means the documentation described in section 10.4 of Part C. | 93524 |
| Construction Environmental Management Plan | CEMP | means the Management Plan described in Annexure 4, section 4.1 of Part C. | 93525 |
| Construction Management Plan | | means the Management Plan described in Annexure 10, section 10.1 of Part C. | 93526 |
| Construction Package | | means each construction package as contemplated by the Construction Management Plan. | 93527 |
| Construction Procedure | | means a procedure described in section 10.4.4 of Part C or as otherwise required to be prepared and submitted by a Reference Document. | 93528 |
| Construction Records | | means those documents described in section 1.3.4 of Part C. | 93529 |
| Consumables | | means those Asset Sub-Components which are not durable and are capable of being consumed, destroyed, dissipated, wasted or spent, including grease, lubricants, oils, indicator lamps, disposable filters, battery electrolytes, gaskets, cooling water, chemicals, belts, static fuses and landscaping composts. | 93530 |
| Contaminated Land Assessment – Interpretive Report | | means the report described in section 7.11 of Part C. | 150563 |

| TERM | ACRONYM | DEFINITION | DNG |
|--|---------|---|-------|
| Crime Prevention Through Environmental Design | CPTED | means an approach to crime prevention that takes into account the relationship between the physical environment and the users of that environment. | 93531 |
| Critical Areas | | means a room/s and or system that must provide uninterrupted operation, together with all associated plant and equipment. | 93532 |
| Critical Design Review | CDR | means the Stage Gate Review to be undertaken by Project Co in accordance with section 1.1.6 of Part C. | 93533 |
| Cultural and Community Identity Enhancement Sub-Plan | | means the sub-plan to the Urban Design Management Plan described in Annexure 4, section 4.3.2 (i). | 93534 |
| Culturally and Linguistically Diverse (CALD) Engagement Strategy | | means the engagement strategy to be prepared by Project Co as described in section 5.6.1.3 of Part C. | 93535 |
| Customer Help Point | CHP | means an OCS device installed at platforms and concourses which provides at-call train service information and emergency assistance intercom facilities. | 93536 |
| Customer Service Centre | CSC | means the Customer Service Centre as described in section 7.7.4 of Part B. | 93537 |
| D&C Mobilisation Program | | means a filtered view of the full D&C Program that shows the initial design, mobilisation, approvals, procurement, surveys and other pre-construction activities required to commence construction at each site as planned. | 93538 |
| Data Date | DD | means the date of the latest update to the D&C Program that defines the demarcation between actual work performed and remaining work. | 93539 |
| Day-1 | | means the proposed service plan on project opening in 2026. Also referred to as the “initial service plan”, which delivers the “initial capacity uplift”. | 93540 |
| Defects List | | means the list of all Defects to be maintained and updated by Project Co in accordance with section 1.3.9 of Part C. | 93541 |
| Degraded Operating State | | means a state of continuing system operation under significant operational or equipment failure. | 93542 |
| Demolition Management Plan | | means the Management Plan described in Annexure 10, section 10.5 of Part C. | 93543 |
| Demolition Works | | means the works described in section 8.4 of Part C. | 93544 |
| Department of Social Services' Settlement Reporting Database | | means the Federal Government database containing statistical data collected on permanent settlers to Australia who have arrived since January 1991. | 93545 |
| Design Case | | means the Design Case (2046 plus 25 percent) passenger forecasts defined in Part B, Appendix B1. | 93546 |

| TERM | ACRONYM | DEFINITION | DNG |
|--|---------|---|-------|
| Design Change Notice | DCN | means the notice to be submitted to the State and the Independent Reviewer describing a design change including the reason for the design change. | 93547 |
| Design Fire Scenario | DFS | has the meaning given in AS 4825. | 93548 |
| Design Management Plan | | means the Management Plan described in Annexure 7 section 7.1 of Part C. | 93549 |
| Design Package | | means a design package as set out in the Design Management Plan. | 93550 |
| Design Package Register | | means the register described in section 7.2 of Part C. | 93551 |
| Design Stage | | means the stages of the design development process as set out in the Design Review Schedule, being Interim Design, Certified Design and IFC Design. | 93552 |
| Design Report | | means the report to be submitted as part of the Interim Design Documentation and Certified Design Documentation as the context requires. | 93553 |
| Design Risk Register | | means the register described in section 7.4 of Part C. | 93554 |
| Design Year | | means 30 years after Day-1. | 93555 |
| Digital Engineering Management Plan | | means the Management Plan described in Annexure 2, section 2.10 of Part C. | 93556 |
| Disability Discrimination Act | DDA | means the <i>Disability Discrimination Act 1992</i> (Cth). | 93557 |
| Disability Standards for Accessible Public Transport | DSAPT | means the <i>Disability Standards for Accessible Public Transport 2002</i> (Cth) under section 31(1) of the <i>Disability Discrimination Act 1992</i> (Cth). | 93558 |
| Distribution Board | DB | means power supply distribution boards as described in section 10 of Part B. | 93559 |
| Distribution Substations | | means all power substations other than the traction power substation and the main intake substation. | 93560 |
| Domain Interchange | | means the tram interchange on St Kilda Road between Domain Road and Park Street. | 93561 |
| Domain Precinct | | see 'Precinct'. | 93562 |
| Domain Public Realm Concept Plan | | means the document provided in Appendix A4. | 93563 |
| Domain Station | | means the new underground station to be constructed at Domain as set out in the PS&TR. | 93565 |
| Down Time | | means the time interval for which the item is in a down state. Note: Where redundancy exists, while a particular system is a down state, the parent system may not be in a down state, dependent on system details and conditions. | 93566 |

| TERM | ACRONYM | DEFINITION | DNG |
|---|---------|---|-------|
| Durability Assessment | | means the assessment to be undertaken by Project Co in accordance with section 7.10 of Part C. | 93567 |
| Durability Management Sub-Plan | | means the sub-plan of the Design Management Plan described in Annexure 8, section 8.1.2 (p) of Part C. | 93568 |
| Dust Management Plan | | means the plan described in Environmental Performance Requirement AQ1 to be prepared as part of the Construction Management Plan. | 93569 |
| Dynamic Modelling | | means, in respect of station pedestrian capacity, the use of pedestrian simulation software to assess pedestrian flows, capacity and Levels of Service in a station. | 93570 |
| Dynamic Object-Oriented Requirements System | DOORS | means IBM's Rational DOORS Next Generation requirements management tool. | 93571 |
| Eastern Portal | | means the interface area between the existing Dandenong line to the Tunnel at South Yarra, including the decline structure and the cut and cover tunnel. | 93572 |
| Eastern Portal ventilation building | EPVB | means a remote building to support emergency services intervention and accommodate tunnel ventilation system including associated power and controls infrastructure. | 93573 |
| EES Heritage Listed Places | | means the Heritage places listed on the Victorian Heritage Register, Victorian Heritage Inventory or Heritage Overlay in the applicable planning schemes and described in the Project EES. | 93574 |
| Electrical Resistance Test | | means the test described in TCRP Report 71, Volume 6: Direct Fixation Track Design Specifications, Research, and Related Material, Section 3, Part A, Section 4.03. Test G (Page 35). | 93575 |
| Electrol | | means the electrical control centre for the Metropolitan Railway Network, located at Burnley. | 93576 |
| Electromagnetic Compatibility | EMC | means the ability for electronic and electrical systems or components thereof to continue to function as intended when exposed to electromagnetic field below a nominated value. | 93577 |
| Electromagnetic Compatibility (EMC) Management Plan | | means the Management Plan described in Annexure 8, section 8.2 of Part C. | 93578 |
| Electromagnetic Interference | EMI | means the disturbance of operation of electrical and electronic devices in the vicinity of electromagnetic field or in the radio frequency spectrum that is caused by another electrical and/or electronic source (existing and/ or new sources). | 93579 |
| Elizabeth Street South Streetscape Improvement Plan | | means the plan developed by the City of Melbourne describing proposed upgrades to Elizabeth Street between Flinders Lane and Flinders Street to expand the pedestrian space and improve the amenity of the area, released for public consultation in August 2016 and expected to be | 93580 |

| TERM | ACRONYM | DEFINITION | DNG |
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| | | finalised in mid-2017. | |
| Emergency/ Emergencies | | means a potential or actual incident that: (a) poses significant harm to people, property, the environment or the local community; or (b) requires assistance from external emergency services agencies. | 93581 |
| Emergency Management Act | | means the <i>Emergency Management Act 2013</i> (Vic). | 93582 |
| Emergency Operating State | | means a state of system operations in response to a major safety or security event. | 93583 |
| Emergency Management (Critical Infrastructure Resilience) Regulations | | means the <i>Emergency Management (Critical Infrastructure Resilience) Regulations 2015</i> (Vic). | 93584 |
| Emergency Management Victoria | | means the statutory body tasked with ensuring Victoria is prepared for future emergencies and able to recover quickly from their impacts. | 93585 |
| Emergency Train Operations | | means the scenario requiring movement of trains through the system in line with the following parameters: (a) capacity to move up to 12 trains at any one time in both tunnels; (b) 10-car trains in operation; and (c) train movements restricted to a maximum speed of 30km/h. | 118935 |
| Emergency Power Supply | | means the source of emergency power described in section 10.2.3 of Part B and sized to continuously support 100% of all Operationally Critical and Operationally Essential Systems, as well as provide adequate traction power to facilitate Emergency Train Operations. | 118935 |
| Emergency Response and Incident Management Plan | ERIMP | means the sub-plan described in Annexure 7, section 7.2 of Part C. | 93586 |
| Emergency Response and Incident Management Workshop | | means the workshop described in section 6.5.2 of Part C. | 93587 |
| Emergency Risk Management Plan | ERMP | means the Management Plans described in Annexure 13, section 13.1 of Part C. | 93588 |
| Emergency Service Organisations | ESO | means any one or more of Victoria Police, MFB, Ambulance Victoria or the State Emergency Service as the context requires. | 93589 |
| Energy and Water Management | E&WMS | means the system described in section 9.11 of Part B. | 93590 |

| TERM | ACRONYM | DEFINITION | DNG |
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| System | | | |
| Energy Rating Label | | means the rating system describing the energy efficiency of an appliance and its average use annual energy consumption. | 93591 |
| Energy Safe Victoria | | means the statutory body established under the <i>Energy Safe Victoria Act 2005</i> responsible for electricity, gas and pipeline safety in the State of Victoria. | 93592 |
| Engineering Product Approval | | has the meaning given in the MTM standard L1-CHE-PRO-004 - Type Approval Procedure. | 93593 |
| Environment Coordinator | | means the person or people described in section 3.4.2 of Part C. | 93594 |
| Environment Manager | | means the person described in section 3.4.1 of Part C. | 93595 |
| Environmental Control System | ECS | means the system to be provided throughout all public areas of the stations to provide appropriate environmental comfort to station occupants, as described in section 9.2 of Part B. | 93596 |
| Environment Effects Statement | EES | means the assessment of the potential environmental impacts of effects of the Project required under the <i>Environment Effects Act 1978 (Vic)</i> . | 93597 |
| Environmental Management Framework | EMF | means the Environmental Management Framework approved by the Minister for Planning in line with the Incorporated Document. | 93598 |
| Environmental Management Plans | | means the Management Plans described in Annexure 3 of Part C. | 93599 |
| Environmental Management System | EMS | means a system as described in AS/NZS/ISO 14001. | 93600 |
| Environmental Performance Requirements | EPR | means the performance requirements approved by the Minister for Planning as part of the Environmental Management Framework. | 93601 |
| Environmental Report | | means the report described in section 3.3 of Part C. | 93602 |
| Environmental Sustainability Charter | | means the Environmental Sustainability Charter of the Australian Steel Institute. | 93603 |
| Enviropoints | | means a composite measure of the environmental impact of any material, product or service and are used in the ISCA materials calculator. | 93604 |
| Equipment Energy Efficiency Program | E3 | means the program implemented through the Council of Australian Governments Energy Council to deliver an integrated program on energy efficiency standards and energy labelling for equipment and appliances. | 93605 |
| Extended HCMT | | means a 10 car formed of a single 10-car unit providing a train-set of approximately 234 metres in length with an operational driving cab at each end. See also 'High Capacity | 93606 |

| TERM | ACRONYM | DEFINITION | DNG |
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| | | Metro Train'. | |
| Extreme Event | EFS | has the meaning given in AS 4825. | 93607 |
| Failure Mode | | means the manner in which failure occurs. | 93608 |
| Failure Modes Effects and Criticality Analysis | FMECA | means the analysis to be undertaken by Project Co in accordance with Annexure 3, section 3.7.4 (c) of Part C. | 93609 |
| Failure Reporting, Analysis and Corrective Action System | FRACAS | means a system used to report, analyse and record failures, and plan corrective actions and record results. | 93610 |
| Federation Square Management | | means Fed Square Pty Ltd. | 93611 |
| Finish to Start | | means a scheduling logic relationship that dictates that a successor activity cannot start until the predecessor activity finishes. | 93612 |
| Fire and Life Safety Strategy | | means the strategy set out in the Fire Engineering Report. | 93613 |
| Fire Brigade Intervention Model | FBIM | has the meaning given in the MFB Guidelines GL-17: Fire Brigade Intervention Model - General Provisions. | 93614 |
| Fire Control Room | FCR | has the meaning given in the Building Code of Australia (BCA). | 93615 |
| Fire Engineering Brief | FEB | has the meaning given in the International Fire Engineering Guidelines 2005. | 93616 |
| Fire Engineering Report | FER | has the meaning given in the International Fire Engineering Guidelines 2005. | 93617 |
| Fire Protection Committee | | means the committee comprising Utility Providers, the MFB and local government authorities. | 93618 |
| Fire Resistance Level | FRL | has the meaning given in the Building Code of Australia (BCA). | 93619 |
| Fire Safety Code | | means all relevant statutory and regulatory requirements governing the installation, testing, availability and maintainability of any system forming part of the fire and life safety provisions. | 93620 |
| Fitted | | means rolling stock and rail infrastructure that includes on-board or wayside equipment forming part of the high capacity signalling system. | 93621 |
| Forest Stewardship Council | | means the organisation administering the certification system for forest and forest products. | 93622 |
| Fractional Equivalent Dose | FED | means the fraction of the dose that would be expected to result in a specific effect (e.g. incapacitation) in 50% of the population exposed to that dose taking into account airborne contaminants absorbed and/or a measure of the combined | 93623 |

| TERM | ACRONYM | DEFINITION | DNG |
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| | | effects of convected and radiant heat by an occupant. | |
| Franchisee | | means either the Train Franchisee or the Tram Franchisee as the context requires. | 93624 |
| Front of House | | means the Paid and Unpaid areas of stations that are publicly accessible. | 93625 |
| Full Time Equivalent | FTE | means the hours worked by one person on a full-time basis. | 93626 |
| Gas Safety Act 1997 | | means the Gas Safety Act 1997 (Vic). | 93627 |
| Gate 10 | | means an entrance to the University of Melbourne located on the northern Grattan frontage opposite University Square. | 93628 |
| GBCA GS Rating Tool | | see 'GS Rating Tool'. | 93629 |
| GBCA Reference Building | | has the meaning given in section 2.12 of the document 'Green Star – Design & As Built: MMRP'. | 150559 |
| Geotechnical Interpretive Report | GIR | means the report described in section 7.11 of Part C. | 93630 |
| GIS Management Plan | | means the sub-plan described in Annexure 2, section 2.10.6 of Part C. | 93631 |
| Glossary of Terms | | means this Part D. | 93632 |
| Goal Structuring Notation | GSN | has the meaning given in the "GSN Community Standard Version 1 – November 2011". | 93633 |
| Good Electricity Industry Practice | GEIP | means the exercise of that degree of skill, diligence, prudence and foresight that reasonably would be expected from a significant proportion of operators of facilities forming part of a power system for the generation, transmission, distribution or supply of electricity under conditions comparable to those applicable to the relevant facility consistent with applicable laws, regulations, the Distribution Technical Code, licences, codes, reliability, safety and environmental protection. | 93634 |
| Graduate Union | | means the Graduate Union of the University of Melbourne Incorporated, a residential college of the University of Melbourne located at 220 Leicester Street Carlton. | 93635 |
| Green Star Accredited Professional | | means an individual who has successfully completed a Green Star Accredited Professional (GSAP) qualification delivered by the Green Building Council of Australia (GBCA) to work with the Green Star Rating Tools. | 93636 |
| Ground Movement Plan | | means the plan described in Environmental Performance Requirement GM3 to be prepared as part of the Construction Management Plan. | 93637 |
| Groundwater Management Plan | | means the plan described in Environmental Performance Requirement GW3 to be prepared as part of the Construction Management Plan. | 93638 |
| GS Rating Tool | | means the GBCA Green Star Design and As-Built Melbourne | 93639 |

| TERM | ACRONYM | DEFINITION | DNG |
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| | | Metro Rail Tool. | |
| GS Rating Tool Scorecard | | means the self-assessment scorecard provided with the Green Star (GS) Rating Tool. | 93640 |
| Handback Documentation | | means the documentation described in section 11.2 of Part C. | 93641 |
| Handback Management Plan | | means the Management Plan described in Annexure 11, section 11.2 of Part C. | 93642 |
| Haymarket Walk | | means the footway between Berkeley Street and Elizabeth Street. | 93643 |
| Hazard Log | | means a record keeping tool applied to tracking all hazard analysis, risk assessment and risk reduction activities for the whole-of-life of a safety-related system. | 93644 |
| HCMT Project | | has the meaning given to the High Capacity Metro Trains Project in the Project Agreement. | 93645 |
| Health and Safety Completion Report | | means the report described in section 11.2.2 of Part C. | 93646 |
| Health and Safety Compliance Audit | | means the audits described in section 6.2.3 of Part C. | 93647 |
| Health and Safety Management Plan | | means the Management Plan described in Annexure 7, section 7.1 of Part C. | 93648 |
| Health and Safety Management Plan Audit | | means the audits described in section 6.2.2 of Part C. | 93649 |
| Health and Safety Performance Report | | means the report described in section 6.1.5 of Part C. | 93650 |
| Health and Safety Performance Report Template | | means the template provided by the State entitled 'Monthly Safety Report Form' upon which Project Co must base its Health and Safety Performance Report, initially DOC/15/1201. | 93651 |
| Health and Safety Professional | | means a person described in clause 15.2 (g). | 93652 |
| Health and Safety Risk Assessment | | means the risk assessment described in section 6.1.4 of Part C. | 93653 |
| Health Hazard Analysis | HHA | means the analysis to be undertaken by Project Co in accordance with Annexure 3, section 3.6.4 (f) of Part C. | 93654 |
| Heavy Vehicle National Law | | means the <i>Heavy Vehicle National Law Application Act 2013</i> (Vic) and related: <ul style="list-style-type: none"> (1) Regulations; (2) Codes of practise; (3) other compliance codes; (4) directions on safety or other notices issued by any relevant authority; and (5) standards relevant and applicable to any part of the | 93655 |

| TERM | ACRONYM | DEFINITION | DNG |
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| | | Project Activities. | |
| Heritage Victoria | | means the statutory authority of that name. | 93656 |
| High Capacity Metro Train | HCMT | means the non-dividable 7 car train of approximately 164 metres in length with a driving cab at each end to be designed, manufactured, supplied and maintained under the High Capacity Metro Trains Project. See also 'Extended HCMT'. | 93657 |
| High Capacity Signalling | HCS | means the CBTC based signalling system that delivers increased train capacity controlled from an Automatic Train Supervision system for the Sunshine-Dandenong Line, covering areas of: (a) conventional signalling; (b) CBTC-Only; and (c) mixed operation. | 93658 |
| High Challenge Design Fire Scenario | HFS | has the meaning given in AS 4825. | 93659 |
| High Risk Work | | has the meaning given in the OHS Regulations. | 93660 |
| Hold Points | | means those points beyond which the stated construction activity must not proceed without the Nominated Authority's approval to proceed. | 93661 |
| Human Factors Integration Plan | HFIP | means the plan described in Annexure 3, section 3.9.4 of Part C. | 93662 |
| Human Factors Management Plan | HFMP | means the Management Plan described in Annexure 3, section 3.9 of Part C. | 93663 |
| Hydrogeological Interpretive Report | | means the report described in section 7.11 of Part C. | 150564 |
| IK Rating | IK | means Impact Protection rating, being the degree of protection provided by enclosures for electrical and mechanical equipment against the harmful effects of mechanical impacts. | 93664 |
| Incident Control Room | ICR | means a meeting room for incident management containing equipment to provide situational awareness of the incident being managed, to be located at each Station and at the NCC and its DRS. | 93665 |
| Incident Management System | | means the State's incident management system. | 93666 |
| Independent Environmental Auditor | | means the suitably qualified and independent person described in section 3.5 of Part C. | 93667 |
| Independent Safety Assessor | ISA | means the independent safety assessor engaged by the Train Franchisee. | 93668 |
| Independent Safety Auditor | | means the suitably qualified and independent person described in section 6.2.1 of Part C. | 93669 |
| Industrial Relations | | means the Management Plan described in Annexure 2, | 93670 |

| TERM | ACRONYM | DEFINITION | DNG |
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| Management Plan | | section 2.8 of Part C. | |
| Information Exchange System | IES | means the State's information exchange system. | 93671 |
| Information Management Plan | | means the Management Plan described in Annexure 2, section 2.9 of Part C. | 93672 |
| Information Security System Management Plan | | means the Management Plan described in Annexure 13, section 13.2 of Part C. | 93674 |
| Infrastructure Sustainability Council of Australia | | means the industry body administering the IS Rating Scheme. | 93675 |
| Ingress Protection | IP | means ingress protection rating, indicating the degree of protection against dust, solid objects and moisture into an enclosure. | 93676 |
| Inherent Availability | | means a system's availability provided by the design under expected conditions of operation and ideal conditions of maintenance. Inherent Availability is bounded by the following conditions, in addition to mission success criteria that is context specific: (d) accounts for all Failure sources (intrinsic and externally caused); (e) accounts for the Repair Time (including on-site fault localisation); (f) does not account for other corrective Down Time components such as logistic, and; (g) administrative delays, and remote fault localisation. | 93677 |
| Inspection and Test Plan | ITP | means the plans related to inspections and tests that must be conducted at key points in the construction process. | 93678 |
| Intake Substation | ISS | means the facility described in section 10.2.2 of Part B. | 93679 |
| Integrated Crisis Framework | | means the document entitled 'Integrated Crisis Framework - A Common Appendix for all MM Project Partners' provided by the State, initially DOC/15/340615. | 93680 |
| Integration Readiness Review | IRR | means the Stage Gate Review to be undertaken by Project Co in accordance with section 1.1.6 of Part C. | 93681 |
| Interface Control Documents | ICD | means a document used to define and record interface requirements between two interfacing parties, projects, work packages, systems, or components. | 93682 |
| Interface Definition Sheet | IDS | means a document which sets out the activities, programmatic interfaces, deliverables and milestones associated with interfacing works. | 93683 |
| Interface Hazard Analysis | IHA | means the analysis to be undertaken by Project Co in accordance with Annexure 3, section 3.6.4 (c) of Part C. | 93684 |
| Interface Issues Register | | means the register described in section 2.4.5 of Part C. | 93685 |
| Interface Manager | | means the person(s) described in section 2.4.1 of Part C. | 93686 |

| TERM | ACRONYM | DEFINITION | DNG |
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| Interface Programs | | means a Program used to manage Interface Milestones and maintain logic relationships between them. | 93687 |
| Intergovernmental Committee on Surveying and Mapping | ICSM | means the committee established to coordinate cooperative mapping programs related to Government activities, on a national basis. | 93688 |
| Interim Design | | has the meaning given in the Design Review Schedule. | 93689 |
| Interim Design Documentation | | means the Design Documentation described in section 7.5.2 of Part C. | 93690 |
| Interim Open Space Plan | | means the plan to be submitted as part of the Urban Design Management Plan. | 93691 |
| International Fire Engineering Guidelines | IFEG | means the International Fire Engineering Guidelines 2005 published by the Australian Building Codes Board. | 93692 |
| Internet Protocol | IP | means the communication protocol by which data is sent from one computer to another. | 93693 |
| Inter-station | | means wheel start to wheel stop between stations and from point of entry at each tunnel portal to wheel stop at the next station. | 150565 |
| IS Materials Calculator Base Case | | means the IS Materials Calculator V1.2 Base Case - Tunnel and Stations PPP provided by the State, initially MMR-AJM-PWAA-CA-NS-002326. | 93694 |
| IS Rating Scheme | | means version 1.2 of the rating system for evaluating sustainability across design, construction and operation of infrastructure as developed by the ISCA. | 93695 |
| IS Rating Tool | | means the ISCA Infrastructure Sustainability Rating Tool. | 93696 |
| IS Rating Tool Scorecard | | means the self-assessment scorecard provided with the IS Rating Tool. | 93697 |
| ISCA Accredited Professional | | means an individual who has successfully completed the ISCA Infrastructure Sustainability Training for Professionals qualification delivered by Infrastructure Sustainability Council of Australia (ISCA) for the purpose of using the ISCA (IS) Rating Tools. | 93698 |
| ISCA Carbon and Energy Credit | | means the Ene-1 and Ene-2 credits of the IS Rating Tool, focusing on monitoring energy and carbon emissions and the use of renewable energy on a project. | 93699 |
| ISCA Carbon and Energy Base Case | | means the ISCA Carbon and Energy (Ene-1) Credit V1.2 – Tunnel and Stations PPP Base Case’ provided by the State, initially DOC/16/372433. | 93700 |
| ISCA Carbon and Energy ‘Reference Design’ Footprint | | means the ISCA Carbon and Energy (Ene-1) Credit V1.2 – Tunnel and Stations PPP ‘Reference Design’ Footprint provided by the State, initially MMR-AJM-PWAA-RP-NS-002106. | 93701 |
| ISCA Community Health, Wellbeing and Safety Credits | | means the Hea-1, 2 and 3 credits of the IS Rating Tool. | 93703 |

| TERM | ACRONYM | DEFINITION | DNG |
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| ISCA Innovation Credit | | means the Inn-1 credit of the IS Rating Tool. | 93704 |
| ISCA IS Rating Tool | | see 'IS Rating Tool'. | 93705 |
| ISCA Materials Lifecycle Impact Credit | | means the Mat-1 credit of the IS Rating Tool. | 93706 |
| ISCA Materials Lifecycle Impact Base Case | | means the 'ISCA Materials Lifecycle Impact (Mat-1) Credit V1.2 – Tunnel and Stations PPP Base Case' provided by the State, initially DOC/16/372434. | 93707 |
| ISCA Materials Lifecycle Impact 'Reference Design' Footprint | | means the 'ISCA Materials Lifecycle Impact (Mat-1) Credit 'Reference Design' Footprint V1.2 – Tunnel and Stations PPP' provided by the State, initially MMR-AJM-PWAA-RP-NS-002242. | 93708 |
| ISCA Stakeholder Participation Credits | | means the Sta-1, 2, 3 and 4 credits of the IS Rating Tool. | 93709 |
| ISCA Water Credits | | means the Wat-1, 2 and 3 credits of the IS Rating Tool. | 93710 |
| Issued for Construction Review | IFCR | means the Stage Gate Review to be undertaken by Project Co in accordance with section 1.1.6 of Part C. | 93711 |
| Knowledge Management Plan | | means the Management Plan described in Annexure 2, section 2.11 of Part C. | 93712 |
| Kiss & Ride | | means short term parking to allow motor vehicle drivers to drop off and pick up Passengers at train stations. | 93713 |
| Lead Verifier | | means the suitably qualified and experienced persons independent of those having direct responsibility for the design identified as 'Lead Verifiers' in the Design Management Plan. | 93714 |
| Level of Protection | | has the meaning given in the Unified Facilities Criteria, Department of Defence Minimum Antiterrorism Standards for Buildings, UFC 4-010-01. | 93715 |
| Level of Service | LoS | means an indicator of pedestrian convenience measured on a scale of A (best) to F (worst). The level of service indicates a pedestrian's freedom to choose their walking speed, the ability to pass slow-moving pedestrians and the relative ease of cross-flow movements. Level of service thresholds are defined in Appendix B2. | 93716 |
| Level 0 Systems Integration | | has the meaning given in the Final Acceptance Schedule. | 93717 |
| Level 1 Systems Integration | | has the meaning given in the Final Acceptance Schedule. | 93718 |
| Level 2 Systems Integration | | has the meaning given in the Final Acceptance Schedule. | 93719 |
| Level 3 Systems Integration | | has the meaning given in the Final Acceptance Schedule. | 93720 |

| TERM | ACRONYM | DEFINITION | DNG |
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| Level 4 Systems Integration | | has the meaning given in the Final Acceptance Schedule. | 93721 |
| Lifecycle | | has the meaning given in the Systems Engineering Standard. | 93722 |
| Lifecycle Cost | LCC | means the total cost throughout the life of an asset, including planning, design, acquisition, support costs, disposal and any other costs directly attributable to owning or using the asset. | 93723 |
| Lifecycle Stages | | has the meaning given in the Systems Engineering Standard. | 93724 |
| Line Replaceable Unit | LRU | means a modular element or components of a system that can be replaced quickly within the MRT at an operating location (in the field, equipment room, control room, etc.) | 93725 |
| Living Infrastructure Plan | | means the plan by that name prepared and provided by the State. | 93726 |
| Low Voltage | LV | means the electrical voltage system exceeding extra low voltage (50 V AC or 120 V ripple-free DC) but not- exceeding 1000 V AC or 1500 V DC, as described in section 10.1 of Part B. | 93727 |
| Main Suburban line | | means the tracks referenced as “Main Suburban Line” in the South Kensington Signalling Diagram 66/14 or the latest successor drawing, and the continuation of those tracks in the up and down directions. | 93728 |
| Maintainability Strategy | | means the strategy to be prepared as part of the RAM Management Plan and described in Annexure 3, section 3.7.4 of Part C. | 93729 |
| Maintained Rail Survey Plan | | means the plan described in section 8.7 of Part C. | 93730 |
| Major Traffic Control Devices | | means a traffic control device specified in Schedule 1 of the <i>Road Safety (Traffic Management) Regulations 2009</i> . | 93731 |
| Management of Change Process | | means the activities, processes and procedures accredited persons are obligated to comply with as part of their Safety Management System, under the <i>Rail Safety Act 2006 (Vic)</i> or the Rail Safety National Law as given force in Victoria by the Rail Safety National Law Application Act 2013 (Vic), when a change to their Rail Infrastructure and/or its management is proposed. | 93732 |
| Master Agency Media Services | MAMS | means the State Purchase Contract under which all advertising services (media strategy, planning, buying and reporting for campaign and non-campaign services) must be purchased. | 93733 |
| Materials and Waste Sub-Plan | | means the sub-plan described in Annexure 5, section 5.1.7 of Part C. | 93734 |
| Materials Calculator | | refers to the ISCA (IS) Rating Tool evaluative spreadsheet to analyse the environmental impacts of materials used on infrastructure projects and assets. | 93735 |
| Mean Down Time | MDT | means the expectation of the Down Time. | 93736 |
| Mean Repair Time | MRT | means the expectation of the Repair Time | 93737 |

| TERM | ACRONYM | DEFINITION | DNG |
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| Mechanical Ventilation and Air Conditioning | MVAC | means the system/s provided throughout all non-public areas to maintain a comfortable and safe environment for staff and support the reliable operation of equipment, as described in section 9.2 of Part B. | 93738 |
| Medical Faculty Building 181 | | means the University of Melbourne building on the south west corner of the main campus, at the corner of Grattan Street and Royal Parade. | 93739 |
| Melbourne Metro Height Datum | MMHD | has the meaning given in section 1.1.2 of Part B. | 93740 |
| Melbourne Metro Reduced Level | MMRL | has the meaning given in section 1.1.2 of Part B. | 93741 |
| Melbourne Underground Rail Loop | MURL | means the existing underground rail tunnels in Melbourne's CBD. | 93742 |
| Melbourne Water | | means one of three government owned retail water businesses responsible for management of waterways and provision of drinking water, sewerage, trade waste and recycled water services to customers in the Port Phillip and Westernport region. | 93743 |
| Melbourne Water Guidelines for Development in Flood Prone Areas | | means the guidelines prepared by Melbourne Water to ensure that urban development is mindful of, and responds to, flood risk. | 93744 |
| Memorandum of Authorisation | | has the meaning given in the <i>Road Safety (Traffic Management) Regulations 2009</i> . | 93745 |
| Metro Tunnel Precinct Reference Group – Parkville | PRG | means the group described in Appendix C2.8 to Part C. | 93746 |
| Metro Tunnel Telephone Information Line | | means the project information phone line to be established by the State and operated by Project Co. | 93750 |
| Metrol | | means the train control facility for the Metropolitan Rail Network, currently located on Level 5, 595 Collins Street, Melbourne VIC 3000 and operated by the Rail Franchisee. | 93751 |
| Metropolitan Rail Network | | means the Melbourne metropolitan train and tram network. | 93752 |
| Minimum Energy Performance Standards | MEPS | means the minimum level of energy performance that electrical products or appliances must meet or exceed before they can be used or sold for commercial purposes. | 93753 |
| Ministerial Guidelines for Critical Infrastructure Resilience | | means the guidelines as describes in section 74W of the Emergency Management Act 2013 (Vic). | 93754 |
| MMRA Adoption of Climate Change Scenarios and | | means the MMRA Adoption of Climate Change Scenarios and Projections Report prepared and delivered by the state, | 93755 |

| TERM | ACRONYM | DEFINITION | DNG |
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| Projections Report | | initially MMR-AJM-PWAA-RP-NS-000946 | |
| MMRA CALD Engagement Strategy | | means the strategy prepared and provided by the State. | 93756 |
| MMRA Climate Change Adaptation Plan | | means the MMRA Climate Change Adaptation Plan, initially MMR-AJM-PWAA-RP-NS-001435. | 93757 |
| MMRA Climate Risk Assessment | | means the Climate Risk Assessment prepared and provided by the State, initially MMR-AJM-PWAA-RP-NS-001114. | 93758 |
| MMRA Creative Strategy | | means the strategy prepared and provided by the State. | 93759 |
| MMRA Energy and Carbon Base Case and Reductions Model | | means the 'MMRA Energy and Carbon (Ene-1) Base Case and Reductions Model – Tunnel and Stations PPP' provided by the State. | 93760 |
| MMRA Environmental Policy | | means the State's Environmental Policy prepared for the MMRP, initially DOC/15/467966. | 93761 |
| MMRA Materials Base Case and Reductions Model | | means the 'Materials (Mat-1) Base Case and Reductions Model - Tunnel and Stations PPP' provided by the State. | 93762 |
| MMRA PPP Sustainability Reporting Template | | means the template prepared by the State as a basis for the Sustainability Report. | 93763 |
| MMRA RAM Log Process | | means the MMRA RAM Log Process document prepared and provided by the State, initially DOC/16/222436. | 93764 |
| MMRA Sustainability Management Plan | | means the plan by that name prepared and provided by the State, initially DOC/16/366652. | 93765 |
| MMRA Sustainability Policy | | means the State's policy in relation to sustainability for the MMRP, initially DOC/15/369912. | 93766 |
| MMRA Sustainability Strategy | | means the Sustainability Strategy prepared and provided by the state, initially DOC/16/135424. | 93767 |
| Mobilisation Management Plan | | means the Management Plan described in Annexure 10, section 10.2 of Part C. | 93768 |
| Modal Priorities | | means the transport modal priorities for specific areas provided in Appendix B4 to Part B. | 93769 |
| Modelling Management Sub-Plan | | means the sub-plan of the Design Management Plan described in Annexure 8, section 8.1.2 (p) of Part C. | 93770 |
| Monitoring Management Plan | | means the Management Plan described in Annexure 10, section 10.4 of Part C. | 93771 |
| Monthly D&C Phase Progress | | means the monthly report described in section 1.4 of Part C. | 93772 |

| TERM | ACRONYM | DEFINITION | DNG |
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| Report | | | |
| MTP SIT Systems Assurance Management Plan | | means the plan by that name prepared and provided by the State. | 93747 |
| MTP SIT Systems Engineering Management Plan | | means the plan by that name prepared and provided by the State. | 93748 |
| MTP SIT System Integration Management Plan | | means the plan by that name prepared and provided by the State. | 93749 |
| National Construction Code | | means the <i>National Construction Code 2016</i> (Cth). | 93773 |
| National Emergency Risk Assessment Guidelines | | means the guidelines of that name published by the Australian Government Attorney-General's Department. | 93774 |
| National Occupational Health and Safety Commission | NOHSC | means the independent statutory agency by that name responsible for improving occupational health and safety and workers' compensation arrangements across Australia. | 93775 |
| National Terrorism Threat Advisory System | | means the system developed by the Australian Government to inform the public of the likelihood of an act of terrorism occurring in Australia. | 93776 |
| Network Control Centre | NCC | means the facilities from which railway network command and control is provided. Located at METROL main control site and its disaster recovery site for train service management and at ELECTROL main control site and its disaster recovery site for traction power management. | 93777 |
| Network Time Protocol | NTP | means a communications protocol used to synchronise computer clocks. | 93778 |
| New Academic Street | NAS | means the project being undertaken by RMIT to upgrade the lower levels of buildings 8, 10, 12 and 14 along Swanston and Franklin Streets. | 93779 |
| Noise and Vibration Management Plan | | means the Management Plan described in Annexure 4, section 4.4 of Part C. | 93780 |
| Noise Reduction Coefficient | NRC | means the arithmetic average (rounded to the nearest 0.05) of the absorption coefficients of a material at the 250 Hz, 500 Hz, 1 kHz and 2 kHz octave band frequencies. | 93781 |
| Nominated Authority | | means the nominated person with the authorisation to release each Hold Point. | 93782 |
| Non-conformance | | includes any non-conformances with the processes or systems set out in Part C. | 93783 |
| Non-essential Systems | | means all systems except those defined as Operationally Critical Systems or Operationally Essential Systems. | 93784 |
| Normal Operating | | means a state of continuing system operation, including minor disturbances and delays to the service during traffic | 93785 |

| TERM | ACRONYM | DEFINITION | DNG |
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| State | | hours. | |
| O&M Manuals | | means the operating and maintenance processes and procedures required for the system, subsystem or equipment to be operated and maintained efficiently and safely. | 93786 |
| Obsolescence Management Plan | | means the plan prepared in accordance with AS62402 and included In the RAM Management Plan. | 93787 |
| Office of the National Rail Safety Regulator | ONRSR | means the independent regulator established under the Rail Safety National Law. | 93788 |
| Office of Surveyor General Victoria | OSGV | means the primary government authority responsible for surveying and cadastre. | 93789 |
| Official Information | | means any information (including personal information) obtained, generated, received or held by or for a Victorian public sector organisation for an official purpose or supporting official activities. This includes both hard and soft copy information, regardless of media or format. | 150560 |
| ONRSR Major Project Guidelines | | means the guideline 'Major Project Guideline' from the Office of the National Rail Safety Regulator. | 93790 |
| ONRSR SFAIRP Guidance | | means the guideline 'Meaning of Duty to Ensure So Far As Is Reasonably Practicable Guideline' from the Office of the National Rail Safety Regulator. | 93791 |
| Operating & Maintenance Hazard Analysis | OMHA | means the analysis to be undertaken by Project Co in accordance with Annexure 3, section 3.6.4 (e) of Part C. | 93792 |
| Operating States | | means the states of the operating railway being Normal, Degraded or Emergency Operating State. | 93794 |
| Operational Availability | | means the system availability provided by the design under expected conditions of operation and maintenance. Operational Availability is bounded by the following conditions, in addition to mission success criteria that is context specific: (a) accounts for all Failure sources (intrinsic and externally caused); and (b) accounts for all corrective Down Time contributions (including logistic and administrative delays, localisation delay and Repair Time). | 93795 |
| Operational Control System | OCS | means the sub-systems used to control service delivery operations, which typically consist of, but are not limited to: (a) CCTV; (b) PA; (c) PIDS; (d) AFILs; (e) CHP; (f) access control; (g) intruder detection, and; (h) existing Rail Transport Operator OCS systems. | 93796 |
| Operationally | | means the critical systems defined in Part B, section 10.1.2 | 93797 |

| TERM | ACRONYM | DEFINITION | DNG |
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| Critical Systems | | (b). | |
| Operationally Essential Systems | | means the essential systems defined in Part B, Section 10.1.2 (c). | 93798 |
| Option B5 | | <p>an alignment configuration at the Western Portal as broadly set out in the Environmental Effects Statement (EES) as Option B and refined so as to;</p> <ul style="list-style-type: none"> – remove the need for a new rail-over bridge at Kensington Road; and – contain an ultimate configuration that removes the surface track connection of the Sunbury Lines towards Melbourne. <p>Further details regarding the alignment arrangement can be found in AJM document 'Western Portal Alignment B5 Supplementary Report To Reference Design' MMR-AJM-WOWP-RP-CC-003001 P2.</p> | 150561 |
| Organisational Enabling Processes | | has the meaning given in the Systems Engineering Standard. | 93799 |
| Over Head Line Equipment | OHLE | means overhead line equipment system comprising the electrical and mechanical components required to transmit electrical power from the traction substation(s) to the trains, and includes the overhead contact line and sectioning switchgear, as described in section 10.2.5 (i) of Part B. | 93800 |
| Paid | | means any publicly accessible area beyond the ticketing gateline in which passengers must have a valid ticket. | 93801 |
| Parkville Precinct | | see 'Precinct'. | 93802 |
| Parkville Station | | means the new underground station to be constructed at Parkville as set out in the PS&TR. | 93803 |
| Parkville Public Realm Design Brief | | means the document provided in Appendix A4. | 93804 |
| Part A | | means Part A (<i>Project Scope</i>) of the PS&TR. | 93805 |
| Part B | | means Part B (<i>Technical Requirements</i>) of the PS&TR. | 93806 |
| Part C | | means Part C (<i>Project Management Requirements</i>) of the PS&TR. | 93807 |
| Part D | | means Part D (<i>Glossary</i>) of the PS&TR. | 93808 |
| PASS Assets | | means the State owned Geographic Information System called "Privatised Arrangement Support Systems" utilised as a database of records of public transport infrastructure in the State of Victoria. | 93809 |
| Passenger Information Displays | PIDs | means visual display units and infrastructure used to display train service and other information. | 93810 |
| Peak Service | | means a service running during the peak period in the prevailing direction. | 93811 |
| Permanent Survey | PSMs | mean the major survey control marks established for MMRP | 93812 |

| TERM | ACRONYM | DEFINITION | DNG |
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| Marks | | or managed by the Office of Surveyor General Victoria to assist surveyors in establishing survey control. | |
| Permanent Works | | means the Works excluding the Temporary Works. | 93813 |
| Pipelines Act | | means the Pipelines Act 2005 (Vic). | 93814 |
| Planned Road/Lane Closure Advice | | VicRoads Planned Road/Lane Closure Advice form | 93815 |
| Platform Screen Doors | PSD | means the pair of sliding doors that automatically open in synchronisation with the train doors to allow passengers to embark and disembark from the train. | 93816 |
| Platform Screen Door System | PSDS | means all equipment located on the platform forming the Platform Screen and the equipment at the platform, in the Tunnel and within the equipment rooms required to operate the Platform Screen Doors and the associated maintenance equipment. | 93817 |
| Portal | | means the Eastern Portal and/or the Western Portal (as required by the context) being the interface area between the existing line and the Tunnel, including the decline structure and the cut and cover tunnel. | 93818 |
| Potential Zone of Influence | | means the area encompassing the predicted extent of: (a) any excavation induced ground movement of 5mm or greater; and (b) any primary consolidation settlement of 10mm or greater, as determined by Project Co. | 93819 |
| PPP Interface Management Plan | | means the Management Plan described in Annexure 2, section 2.5 of Part C. | 93820 |
| Precinct | | means the area adjacent to each of the each of the Western Portal, Eastern Portal, Arden station, Parkville station, CBD North station, CBD South station and Domain station. | 93821 |
| Predicted Effects | | means the predicted effects of the Works including the Temporary Works over time on existing ground conditions, infrastructure and properties as calculated under section 10.7.4 of Part C. | 93822 |
| Preliminary Design Review | PDR | means the Stage Gate Review to be undertaken by Project Co in accordance with section 1.1.6 of Part C. | 93823 |
| Preliminary Hazard Analysis | PHA | means the analysis to be undertaken by Project Co in accordance with Annexure 3, section 3.6.4 of Part C. | 93824 |
| Preparatory Works | | means any site preparation activities which are scheduled to commence before Certified Design Documentation is available as set out in section 7.9 of Part C. | 93825 |
| Preparatory Works design report | | means the report described in section 7.9.1.1 of Part C. | 93826 |
| Prescribed Industrial Waste | PIW | has the meaning given in the Environmental Protection (Industrial Waste Resource) Regulations 2009. | 93827 |

| TERM | ACRONYM | DEFINITION | DNG |
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| Prescribed Industrial Waste Management Sub-Plan | | means the Management Plan described in Annexure 10, section 10.3.2 of Part C. | 93828 |
| Principal Bicycle Network | PBN | means the network of existing and proposed cycle routes identified to help people ride to major destinations around metropolitan Melbourne with a focus on getting people into activity centres and to make more use of local roads and off-road paths. | 93829 |
| Programmable Logic Controllers | PLC | means industrial control systems deployed for automation of specific functions. | 93830 |
| Program Summary Report | | means the report described in section 2.2.2 of Part C. | 93831 |
| Project Information Hub | | means a staffed, public information centre displaying project information and providing a place for stakeholders ask questions and provide feedback | 93832 |
| Project Lifecycle Stages | | see 'Lifecycle Stages'. | 93833 |
| Project Management Plan | | means the Management Plan described in Annexure 2, section 2.2 of Part C. | 93834 |
| Project Management Requirements | | means Part C (<i>Project Management Requirements</i>) of the PS&TR. | 93835 |
| Project Processes | | has the meaning given in the Systems Engineering Standard. | 93836 |
| Project Scope | | means Part A (<i>Project Scope</i>) of the PS&TR. | 93837 |
| Proof Engineer | | has the meaning given in the D&C Subcontract. | 93838 |
| Proof Engineering Certificate of Compliance | | means the certificate provided in the Schedule of Certificates and Notices. | 93839 |
| Protective Marking | | means an administrative label assigned to official information that is directly linked to the business impact level for a potential compromise of its confidentiality. It also informs the minimum protection requirements during use, storage, transmission, transfer and disposal. Protective markings include security classifications, dissemination limiting markers and caveats. | 150566 |
| Protective Security Documentation | | means information that contains procedural, physical, personnel, ICT, and information security measures, designed to protect official assets (information, functions, resources, people) from security threats. | 150567 |
| PTV Drawings Management System | PTV DMS | means the drawings management system operated and maintained by PTV containing drawings of certain Victorian rail infrastructure. | 93840 |
| PTV Infrastructure Drafting Standard | | means PTV Infrastructure Drafting Standards v1.0 and PTV Infrastructure Drafting Standards V1.0 Appendix. | 93841 |

| TERM | ACRONYM | DEFINITION | DNG |
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| PTV Network Development Plan | | means the detailed plan prepared by PTV a of how Melbourne's train system needs to evolve to meet the needs of the city and of train passengers in the short, medium and long term. | 93842 |
| PTV Network Status Boards | | means network status boards which provide a snapshot of how train, tram and bus services are performing across the network, displaying up-to-date service information on the public transport system. | 93843 |
| PTV PASS Assets Data Requirements | | means PTV PASS Assets Data Requirements v1.0 and PTV PASS Assets Data Requirements V1.0 Appendix A. | 93844 |
| PTV Strategic Asset Management Policy and Guidance | | means PTV Strategic Asset Management Policy and Guidance. | 93845 |
| PTV Systems Engineering Policy | | means the PTV Systems Engineering Policy. | 93846 |
| Public Sector Data | | has the meaning given in the Privacy and Data Protection Act 2014. | 93847 |
| Punch List | | means the list all non-conformances that must be rectified prior to completion. | 93848 |
| Quality Management Plan | | means the Management Plan described in Annexure 2, section 2.3 of Part C. | 93849 |
| Quality Management System | | means a system as described in AS/NZS ISO 9001: 2015. | 93850 |
| Quality Manager | | means the person described in section 2.1.1.4 of Part C. | 93851 |
| Quantitative Risk Assessment | QRA | means the assessment to be undertaken by Project Co in accordance with Annexure 3, section 3.6.4 (d) of Part C. | 93852 |
| Queen Victoria Master Plan | | means the plan developed by the City of Melbourne to guide the redevelopment (over 10 years) of the Queen Victoria Market precinct. | 93853 |
| Rail Access Management Plan | | means the Management Plan described in Annexure 10, section 10.6 of Part C. | 93854 |
| Rail Network Emergency Response Vehicles | RNERVs | means the vehicles described in section 8.5.4 (c) of Part B. | |
| Rail O&M Manuals | | means an O&M Manual prepared in relation to any Rail Infrastructure. | 93855 |
| Rail Projects Agreements | | means the Train Franchisee Projects Agreement or the Tram Franchisee Projects Agreement (as relevant). | 93856 |
| Rail Safety Accreditation | | means accreditation under Part 3 of Division 4 of the Rail Safety National Law. | 93857 |
| Rail Safety Accreditation Plan | | means the Management Plan described in Annexure 12 of Part C. | 93858 |

| TERM | ACRONYM | DEFINITION | DNG |
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| Rail Systems Assets | | means the assets to be designed, supplied or installed (as the context requires) by Project Co as set out in section 5 of Part A, including: <ul style="list-style-type: none"> (a) ICT/ OCS equipment; (b) security equipment; (c) communications equipment; (d) signalling equipment; and (e) Platform Screen Doors. | 93859 |
| RAM Log | RAML | means the log to be created and managed by Project Co in accordance with Annexure 3, section 3.7.3 of Part C. | 93860 |
| RAM Management Plan | RAMMP | means the Management Plan described in Annexure 3, section 3.7 of Part C. | 93861 |
| Reference Documents | | means those documents described in section 2 of Part A. | 93863 |
| Repair Time | | means part of active corrective maintenance time taken to complete repair action. Note: Repair time is comprised of fault localization time (192-07-18), fault correction time (192-07-14) and function checkout time (192-07-16), but excludes technical, administrative and logistic delays. | 93864 |
| Regulatory Requirements | | means any requirement or obligation imposed by any applicable Act, Statute or Regulation. | 93865 |
| Reliability, Availability, Maintainability Management Plan | RAMMP | see 'RAM Management Plan'. | 93866 |
| Reliability Centred Maintenance Analysis | RCMA | means the analysis to be undertaken by Project Co in accordance with Annexure 3, section 3.7.4 (d) of Part C. | 93867 |
| Reliability Critical Items List | RCIL | means the prioritised list to be generated by Project Co in accordance with Annexure 3, section 3.7.4 (c) of Part C. | 93869 |
| Requirements Management Plan | | means the Management Plan described in Annexure 3, section 3.3 of Part C. | 93870 |
| Requirements Traceability Matrix | RTM | means the matrix described in Annexure 3, section 3.3.3. | 93871 |
| Residential Impact Mitigation Guidelines | RIMG | means the guidelines prepared by the State to outline measures for offering respite and temporary alternative accommodation to residents affected by a range of different amenity impacts, including airborne noise, ground-borne noise and vibration, and loss of access. | 93872 |
| Responsible Road Authority | | has the meaning given to that term in section 3 of the <i>Road Management Act 2004</i> (Vic). | 93873 |
| Risk Management Plan | | means the Management Plan described in Annexure 2, section 2.4 of Part C. | 93874 |

| TERM | ACRONYM | DEFINITION | DNG |
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| Risk Register | | means the register including all hazards and risks associated with the Project Activities as described in section 2.3.2 of Part C. | 93875 |
| Road | | means any road or road reserve which crosses, is adjacent to, or is affected by, the Project Activities. | 93876 |
| Road Functional Layout | | means a two-dimensional concept design capturing the intended functions and operations of the area including kerb lines, road markings and general features and characteristics. | 93877 |
| Road Safety Audit | | means an audit as described in section 9.9 of Part C. | 93878 |
| Road Safety Audit Report | | means a report as described in section 9.9 of Part C. | 93879 |
| Road Safety Auditor | | means the person described in section 9.9 of Part C. | 93880 |
| Royal Parade entrance | | means the entrance to Parkville Station to be located on the northeast corner of the Royal Parade and Grattan Street intersection. | 93881 |
| Safe Work Australia | | means the Australian Government statutory agency established in 2009 under the <i>Safe Work Australia Act 2008</i> . Their primary responsibility is to improve work health and safety and workers' compensation arrangements across Australia. | 93882 |
| Safe Work Method Statements | SWMS | means a document that sets out the high risk construction work activities to be carried out at a workplace, the hazards arising from these activities and the measures to be put in place to control the risks | 93883 |
| Safety in Design | SiD | process defined as the integration of hazard identification and risk assessment methods early in the design process to eliminate or minimise the risks of injury throughout the life of a structure being designed | 93884 |
| Safety in Design Management Sub-Plan | | means the sub-plan of the Design Management Plan described in Annexure 8, section 8.1.2 (p) of Part C. | 93885 |
| Safety in Design Risk Register | SiD Risk Register | means the risk register described in section 7.14.4.6 of Part C. | 93886 |
| Safety in Design Workshop Facilitator | SiD Workshop Facilitator | means the person engaged by Project Co to facilitate the SiD Workshop as described in section 7.14.4.2 of Part C. | 93887 |
| Safety in Design Workshops | SiD Workshop | means the workshop described in section 7.14 of Part C. | 93888 |
| Safety Integrity Level | SIL | as defined in EN 50128 and EN 50129. | 93889 |
| Safety Interface Agreements | | has the meaning given in the Rail Safety National Law. | 93890 |
| Safety Management | SMS | has the meaning given in the Rail Safety National Law. | 93891 |

| TERM | ACRONYM | DEFINITION | DNG |
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| System | | | |
| Safety Strategy and Culture Workshop | | means the workshop described in section 6.1.2 of Part C. | 93892 |
| Supervisory Control and Data Acquisition | SCADA | means a power monitoring and control system. In the context of the Metro Tunnel, this is the power control system located at ELECTROL which monitors and controls HV, Traction, industrial and signalling power. | 93893 |
| Scope Allocation Matrix | SAM | means the matrix described in Appendix A2 to Part A. | 93894 |
| Security Classified | - | means official information that has been security assessed as having a business impact level of 2, (high) or above for potential compromise of its confidentiality. This results in a security classification as a protective marking. Security classifications include PROTECTED, CONFIDENTIAL, SECRET and TOP SECRET. | 150568 |
| [Not disclosed] | - | [Not disclosed] | 150569 |
| [Not disclosed] | - | [Not disclosed] | 93895 |
| [Not disclosed] | - | [Not disclosed] | 93896 |
| [Not disclosed] | - | [Not disclosed] | 93897 |
| [Not disclosed] | - | [Not disclosed] | 93898 |
| [Not disclosed] | - | [Not disclosed] | 93899 |
| [Not disclosed] | | [Not disclosed] | 93900 |
| [Not disclosed] | - | [Not disclosed] | 93901 |
| [Not disclosed] | - | [Not disclosed] | 93902 |
| [Not disclosed] | | [Not disclosed] | 93903 |
| Security Zones | | has the meaning given in the Australian Government Protective Security Policy Framework. | 93904 |
| Service Affecting Failure | | means a failure which affects revenue train services. | 93905 |
| So Far As Is Reasonably Practicable | SFAIRP | has the meaning given in the guidance (Meaning of Duty to Ensure So Far As Is Reasonably Practicable Guideline) from the Office of the National Rail Safety Regulator. | 93906 |
| Shrine of Remembrance Reserve | | means the 13-hectare memorial park built in Melbourne in 1934. | 93907 |
| Shrine Trustees | | means the trustees are appointed by the Governor in Council to look after the Shrine of Remembrance on behalf of the State of Victoria. | 93908 |
| SiD Management Sub-Plan | | see 'Safety in Design Management Sub-Plan'. | 93909 |
| Signalling | SER | means an equipment room located in each underground | 93910 |

| TERM | ACRONYM | DEFINITION | DNG |
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| Equipment Room | | station housing rail signalling and associated equipment. | |
| Signal Post Telephones | | means the user interface for the telephony system that allows for voice communication from a signal post (signal mast) to a centralised location. | 93911 |
| Site Condition Report | | means the report described in section 11.2.1.2 of Part C. | 93912 |
| Site Construction Management Plan | | means the multiple Site Construction Management Plans that could make up an overarching Construction Management Plan as described in Annexure 10, Section 10.1. | 93913 |
| Site Environment Implementation Plans | SEIPs | means the Management Plan/s described in Annexure 4, section 4.2 of Part C. | 93914 |
| Social Procurement Management Plan | | means the Management Plan/s described in Annexure 2, section 2.7 of Part C. | 93915 |
| Social Procurement Report | | means the report described in section 2.6.2 of Part C. | 93916 |
| Special Event | | means a local or regional event which generates increased vehicle and/or pedestrian traffic or reduces traffic speed or lowers the capacity of the road network around the Construction Site. | 93917 |
| Special Events Sub-Plan | | means the appendix of the Communications and Stakeholder Engagement Management Plan described in Annexure 6, section 6.1.2 (j)(1) of Part C. | 93918 |
| Specific Stakeholder Requirements | | means Appendix C2 to Part C. | 93919 |
| Spoil Management Plan | | means the Management Plan described in Annexure 10, section 10.3 of Part C. | 93920 |
| Spoil Management Strategy | | means the strategy prepared by the State that provides performance based standards for spoil disposal and management as part of the EES. | 93921 |
| St Kilda Road Safety Improvement Project | | means the project to be undertaken by VicRoads to investigate and implement cyclist safety measures on St Kilda Road between Linlithgow Avenue in Southbank and Carlisle Avenue in East St Kilda. | 93922 |
| Stage Gate Review Guide | | means the guide developed by the State to inform the undertaking of Stage Gate Reviews, initially DOC/16/378185. | 93923 |
| Stage Gate Reviews | | means the set of system reviews to be undertaken by Project Co in accordance with section 1.1.6 of Part C as follows: <ul style="list-style-type: none"> (a) System Definition Review (SDR); (b) Preliminary Design Review (PDR); (c) Critical Design Review (CDR); (d) Issued for Construction Review (IFCR); (e) Test Readiness Review (TRR); (f) Integration Readiness Review (IRR); and (g) System Acceptance Review (SAR). | 93924 |

| TERM | ACRONYM | DEFINITION | DNG |
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| Stakeholder Groups | | has the meaning given in the Design Review Schedule. | 93925 |
| Stakeholder Management Database | | means the State's stakeholder management database, 'Darzin Software'. | 93926 |
| State Environmental Protection Policy (Air Quality Management) | SEPP (Air Quality Management) | means the policy that establishes the framework for managing emissions into the air environment in Victoria from all sources of air pollutants gazetted as the State Environment Protection Policy (Air Quality Management) No. S240, Gazette 21/12/2001. | 93927 |
| State Environmental Protection Policy (Ambient Air Quality) | SEPP (Ambient Air Quality) | means the policy setting air quality objectives and goals for the whole State of Victoria gazetted as the State Environment Protection Policy (Ambient Air Quality) No. S19, Gazette 9/2/1999. | 93928 |
| State Library | | means the State Library of Victoria. | 93929 |
| Static Analysis | | means, in respect of station pedestrian capacity, calculations based on average pedestrian flow rates during peak periods to determine preliminary requirements for circulation areas, queuing areas, ticket gates and vertical transport in stations. | 93930 |
| Stations | | means each of the new stations to be constructed Arden, Parkville, CBD North, CBD South and Domain. | 93931 |
| Station Control Room | SCR | means a room for monitoring and managing the operation of the station containing equipment to provide situational awareness of the station and tunnel for people and train movements. | 93932 |
| Station Equipment Room | StER | a room for station equipment, including the BMS, vertical transport, energy and water management. | 93933 |
| Station Planning and Passenger Modelling Report | | means the report described in section 7.5.2.1(m)(24) of Part C. | 118939 |
| Station Precinct | | see 'Precinct'. | 93934 |
| Station Room Schedule | | means Appendix B3 to Part B. | 93935 |
| Station Smoke Management Systems | SSMS | means the system described in section 9.3 of Part B. | 93936 |
| Station Substation | | means each or all (as the context requires) power substations serving the Tunnel, Stations and supporting plant and remote operational facilities such as the EPVB. | 93937 |
| Strategic Management Plan | | means the Management Plan described in Annexure 2, section 2.1 of Part C. | 93938 |
| Sub Fire Indication Panel | SFIP | means a Fire Indicator Panel (FIP) defined in National Construction Code (BCA) serving specific local areas and interlinking signals back to a main/ master FIP. | 93939 |

| TERM | ACRONYM | DEFINITION | DNG |
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| Survey Control Network | | means the survey control network established by the State. | 93940 |
| Surveying Act | | means the <i>Surveying Act 2004 (Vic)</i> . | 93941 |
| Surveying (Cadastral Surveys) Regulations | | means the <i>Surveying (Cadastral Surveys) Regulations 2015 (Vic)</i> . | 93942 |
| Surveyor-General | | means the person appointed under the <i>Surveying Act 2004 (Vic)</i> . | 93943 |
| Sustainability Coordinator | | means the person or people described in section 4.6.2 of Part C. | 93944 |
| Sustainable Design Report | | means the report described in section 7.18.1.4 of Part C. | 93945 |
| Sustainability Management Plan | | means the Management Plan described in Annexure 5, section 5.1 of Part C. | 93946 |
| Sustainability Manager | | means the person described in section 4.6.1 of Part C. | 93947 |
| Sustainability Report | | means the report described in section 4.5.2 of Part C. | 93948 |
| Sustainability Targets | | means the list of agreed sustainability performance outcomes, initially DOC/16/347956. | 93949 |
| System | | means a set of interrelated elements considered in a defined context as a whole and separated from their environment. | 93950 |
| System Acceptance Review | SAR | means the Stage Gate Review to be undertaken by Project Co in accordance with section 1.1.6 of Part C. | 93951 |
| System Breakdown Structure | SBS | means the document contained in Appendix A2 that defines the notional hierarchy of System Elements that make up the System. | 93952 |
| System Definition Review | SDR | means the Stage Gate Review to be undertaken by Project Co in accordance with section 1.1.6 of Part C. | 93953 |
| System Elements | | means individual items presented within the System Breakdown Structure. | 93954 |
| System Engineering Policy | | means Public Transport Victoria's 'System Engineering Policy', version A dated 14 August 2014, as updated from time to time. | 93955 |
| System Hazard Analysis | SHA | means the analysis to be undertaken by Project Co in accordance with Annexure 3, section 3.6.4 (b) of Part C. | 93956 |
| System Integration | | means the process of bringing together the component elements and subsystems into one system and ensuring that all elements and subsystems function together as a complete system regardless of physical and scope boundaries. | 93957 |
| System Integration Management Plan | | means the Management Plan described in Annexure 3, section 3.8 of Part C. | 93958 |
| System Lifecycle | | means Agreement Processes, Organisational Enabling | 93959 |

| TERM | ACRONYM | DEFINITION | DNG |
|--|---------|--|-------|
| Processes | | Processes, Project Processes and Technical Processes as described in the Systems Engineering Standard. | |
| System Safety Management Plan | | means the Management Plan described in Annexure 3, section 3.6 of Part C. | 93960 |
| Systems Architecture | | has the meaning given in the Systems Engineering Standard. Note: for context, this typically refers to the actual collection of architecture views as per the Systems Engineering Standard. | 93961 |
| Systems Assurance | | means the justified confidence that the System functions as intended and is free of exploitable vulnerabilities, either intentionally or unintentionally designed or inserted as part of the system at any time during the life cycle. This confidence is achieved by system assurance activities, which include a planned, systematic set of multi-disciplinary activities to achieve the acceptable measures of system assurance and manage the risk of exploitable vulnerabilities. | 93962 |
| Systems Assurance Management Plan | | means the Management Plan described in Annexure 3, section 3.5 of Part C. | 93963 |
| Systems Breakdown Structure | SBS | means the document defining the notional hierarchy of elements that make up the MMRP. | 93964 |
| Systems Engineering and Assurance Management Plans | | means the Management Plans described in Annexure 3 of Part C. | 93965 |
| Systems Engineering Management Plan | | means the Management Plan described in Annexure 3, section 3.1 of Part C. | 93966 |
| Systems Engineering Manager | | means the person described in section 1.1.1.3 of Part C. | 93967 |
| Systems Engineering Standard | | means AS/NZS ISO/IEC 15288: 2015. | 93968 |
| Technical Document Numbering System | | means the document naming convention provided in Appendix C4 to Part C. | 93969 |
| Technical Processes | | has the meaning given in the Systems Engineering Standard. | 93970 |
| Technical Requirements | | means Part B (<i>Technical Requirements</i>) of the PS&TR. | 93971 |
| Temporary Occupation Land | | means land required to be temporarily occupied for the purposes of performing the Works. | 93972 |
| Temporary Works Areas | | means those areas identified as such on the Land Availability Plans. | 93973 |
| Terrorism Act | | means the <i>Terrorism (Community Protection) Act 2003 (Vic)</i> | 93974 |

| TERM | ACRONYM | DEFINITION | DNG |
|---|---------|---|-------|
| Test Readiness Review | TRR | means the Stage Gate Review to be undertaken by Project Co in accordance with section 1.1.6 of Part C. | 93975 |
| Testing and Commissioning | | means the activities to be undertaken under clause 22. | 93976 |
| Testing and Commissioning Management Plan | | means the Management Plan described in Annexure 11, section 11.1 of Part C. | 93977 |
| Traffic | | means, unless the context requires otherwise, all vehicles, pedestrians, cyclists, public transport and construction traffic. | 93978 |
| Traffic Event | | any works conducted on, under or over a road that results in an encroachment onto the road reserve or an impact to traffic (including vehicles, pedestrians, bicycles & public transport vehicles). | 93979 |
| Traffic Guidance Scheme | TGS | means an arrangement of temporary signs and devices to warn traffic and guide it through or past a work area or temporary hazard. | 93980 |
| Traffic Management Plan | TMP | means the Management Plan described in Annexure 9, section 9.2 of Part C. | 93981 |
| Traffic Manager | | means the person described in section 9.8.1 of Part C. | 93982 |
| Train Protection Risk Report | | means the report described in section 7.5.2 of Part C. | 93983 |
| Training Schedule | | means the schedule described in section 11.2.3 of Part C. | 93984 |
| Transition and Acceptance Management Plan | | means the Management Plans described in Annexure 11 of Part C. | 93985 |
| Transport Design Report | | means the report described in section 9.2.3 of Part C. | 93986 |
| Transport Integration Act | | means the <i>Transport Integration Act 2010</i> . | 93987 |
| Transport Management Plan | | means the Management Plan described in Annexure 9, section 9.1 of Part C. | 93988 |
| Transport Modelling Report | | means the report described in section 9.2.4 of Part C. | 93989 |
| Transport Review Report | | means the report described in section 9.10.1 of Part C. | 93990 |
| Travel Demand Management Strategy | TDM | to be prepared by the State and implemented by Project Co in accordance with EPR T6. | 93991 |
| Trial Design | | has the meaning given in the International Fire Engineering Guidelines 2005. | 93992 |
| Tree Protection Policy | | means the City of Melbourne's policy for the protection, retention and removal of public trees. | 93993 |

| TERM | ACRONYM | DEFINITION | DNG |
|--|---------|---|-------|
| Tree Protection Zone | | means the protection zone around a tree, measured as a radial distance in metres from the centre of the trunk and calculated using the method specified in Australian Standard AS4970-2009. | 93994 |
| Tunnel | | means the twin nine-kilometre tunnels from Kensington to South Yarra as part of the new Sunbury to Cranbourne / Pakenham line. | 93995 |
| Tunnel Reference Documents | | means the documents listed in section 6 of Appendix A1. | 93996 |
| Tunnel Ventilation Control System | TVCS | means Tunnel Ventilation Control System described in section 9.5 of Part B. | 93997 |
| Tunnel Ventilation System | TVS | means the system described in section 9.4 of Part B. | 93998 |
| Type Approved | | means that an element of the Rail Infrastructure has been approved by the RTO for use in accordance with its requirements under the Rail Safety National Law as given force in Victoria by the <i>Rail Safety National Law Application Act 2013 (Vic)</i> . | 93999 |
| Underground Utilities Survey Guideline | | means the MMRA Underground Utilities Survey Guideline document prepared and provided by the State, initially DOC-16-256092.1.3.IFI. | 94000 |
| Undrained | | means that the underground structure permanent works is designed as completely watertight, such that there is no discernible ingress of groundwater into the permanent works or any effect on the groundwater table in the long term. | 94001 |
| Universal Transverse Mercator | UTM | means a grid coordinate system based on the Transverse Mercator projection. | 94002 |
| University Square | | means the public square located on the southern side of Grattan Street, in the block bordered by Grattan, Leicester, Pelham and Barry Streets. | 94003 |
| University Square Master Plan | | means the blueprint developed by the City of Melbourne describing the vision and outcomes for the redevelopment of University Square. | 94004 |
| Unpaid | | means a publicly accessible area that does not require a valid ticket to enter. | 94005 |
| Urban Design Management Plan | | means the Management Plan described in Annexure 4, section 4.3 of Part C. | 94006 |
| Urban Design Strategy | | means the document entitled 'MMRP - Technical Appendix M - Urban Design Strategy' prepared and provided by the State, initially DOC/16/199886. | 94007 |
| Urban Ecology and Vegetation Sub-Plan | | means the sub-plan described in Annexure 5, section 5.1.4 of Part C. | 94008 |
| User-Centred | | has the meaning given in ISO 9241-210:2010. | 94009 |

| TERM | ACRONYM | DEFINITION | DNG |
|---|---------|---|-------|
| Variable Message Sign | VMS | means a traffic control device which displays one or more messages providing advance warning to road users with necessary information about construction operations, maintenance, road incidents, traffic congestion and/or road conditions where work activities may cause delays or require road users to behave in specific ways. | 94010 |
| Victorian Comprehensive Cancer Centre | VCCC | means the Victorian Comprehensive Cancer Centre. | 94011 |
| Verification and Validation | V&V | means, in respect of: (a) Verification: the activity of providing objective evidence that requirements truly are fulfilled. (b) Validation (of requirements): the activity of providing objective evidence that the requirements are correct, complete and consistent. (c) Validation (of product/system): the activity of providing objective evidence that the product is suitable for its intended use. Product validation is achieved by showing that all the requirements have been validated and verified. | 94012 |
| Verification and Validation Cross Reference Matrix | VCRM | means the document described in Annexure 3 section 3.4.3 of Part C. | 94013 |
| Verification and Validation Management Plan | V&VMP | means the Management Plan described in Annexure 3, section 3.4 of Part C. | 94014 |
| Vice Chancellor's Residence | | means the building adjacent to Gate 10 at the University of Melbourne. | 94015 |
| VicRoads Consultant Pre-qualification Scheme | | means prequalification scheme administered by VicRoads. | 94016 |
| Victorian Government Passenger Rail Infrastructure Noise Policy | | means the 2013 Victorian Government Passenger Rail Infrastructure Noise Policy, which provides a process that balances the benefits of new passenger rail infrastructure projects with the possible impacts on those living nearby. | 94017 |
| Victorian Government Master Agency Media Services | | means the State Purchase Contract under which all advertising services (media strategy, planning, buying and reporting for campaign and non-campaign services) must be purchased. | 94018 |
| Victorian Industry Participation Policy | VIPP | means the Victorian Industry Participation Policy made pursuant to section 4 of the <i>Victorian Industry Participation Policy Act 2003 (Vic)</i> . | 94019 |
| Victorian Protective Data Security Standards | | means the protective data security standards as defined in the <i>Privacy and Data Protection Act 2014 (Vic)</i> . | 94020 |
| Victorian Service Installation Rules | | means the service and installation rules for the connection of electrical installations developed by the Victorian Electricity Distributors Service and Installation Rules Management | 94021 |

| TERM | ACRONYM | DEFINITION | DNG |
|---|---------|---|--------|
| | | Committee. | |
| Vital Critical Infrastructure | | has the meaning as defined in the <i>Emergency Management Act 2013 (Vic)</i> | 94022 |
| Water Sensitive Urban Design | WSUD | means the land planning and engineering design approach which integrates the urban water cycle, including stormwater, groundwater and wastewater management and water supply, into urban design. | 94023 |
| Water Sub-Plan | | means the sub-plan described in Annexure 5, section 5.1.8 of Part C. | 94024 |
| Western Portal | | means the interface area between the existing Sunshine line to the Tunnel at Kensington, including the decline structure and the cut and cover tunnel. | 94025 |
| Western Shard | | means the building at the most north westerly corner of Federation Square that currently houses the visitor centre. | 94026 |
| West Melbourne Terminal Station | WMTS | means the electrical terminal station to be located in the vicinity of the proposed Arden station. | 94027 |
| Wheel/ Rail Interface Management Sub-Plan | | means the sub-plan of the Design Management Plan described in Annexure 8, section 8.1.2 (p) of Part C. | 150570 |
| Work Breakdown Structure | WBS | means the subdivision of a project into discrete work elements that can be used for project planning and delivery. | 94028 |
| Work Lot | | means any part of the work constructed or manufactured under essentially uniform conditions in a continuous operation and which is essentially homogeneous with respect to material properties, general appearance and construction or manufacturing process. | 94029 |
| Workforce Development and Training Management Plan | | means the Management Plan described in Annexure 2, section 2.6 of Part C. | 94030 |
| Workforce and Training Manager | | means the person described in section 2.5.3 of Part C. | 94031 |
| Workforce Development and Training Report | | means the report described in section 2.5.2.2 of Part C. | 94032 |
| WorkSafe | | means the statutory body established under the <i>Occupational Health and Safety Act 2004 (Vic)</i> . | 94033 |
| Worksite Safety - Traffic Management Code of Practice | | means the code of practice produced by VicRoads providing practical guidance for any person conducting, or proposing to conduct any works on roads in Victoria. | 94034 |
| Worksite Traffic Management Plan | WTMP | means the Management Plan described in Annexure 9, section 9.3 of Part C. | 94035 |
| WSUD Opportunities | | means the 'WSUD Opportunities Assessment for input into | 94036 |

| TERM | ACRONYM | DEFINITION | DNG |
|------------|---------|---------------------------|-----|
| Assessment | | the MMRA Water Strategy'. | |

Table D2 - Acronyms

| ACRONYM | Definition | DNG |
|----------|--|-------|
| ACMI | means the Australian Centre for the Moving Image. | 94037 |
| AFC | means automatic fare collection | 94038 |
| AFFL | means above finished floor level. | 94039 |
| AFIL | means audio-frequency induction loop. | 94040 |
| AHU | means air handling unit. | 94041 |
| AIS | means air insulated switchgear. | 94042 |
| APL-BPFT | means after passage of last, before passage of first train. | 94043 |
| ASHRAE | means the American Society of Heating, Refrigerating and Air-Conditioning Engineers. | 94044 |
| ATM | means automated teller machine. | 94045 |
| BIM | means building information modelling | 94046 |
| BMS | means Building Management System. | 94047 |
| CAD | means computer aided design. | 94048 |
| CALD | means culturally and linguistically diverse. | 94049 |
| CBD | means the Melbourne central business district. | 94050 |
| CBTC | means communications based train control. | 94051 |
| CCB | means change control board. | 94052 |
| CCTV | means closed circuit television. | 94053 |
| CEMP | means Construction Environmental Management Plan. | 94054 |
| CER | means communications equipment room. | 94055 |
| CFD | means computational fluid dynamics | 94056 |
| CIP | means central island platform. | 94057 |
| COTS | means commercial-off-the-shelf. | 94058 |
| CPTED | means Crime Prevention Through Environmental Design. | 94059 |
| CM | means Configuration Management. | 94060 |
| CUB | means Carlton and United Breweries. | 93491 |
| DB | means dry bulb. | 94061 |
| DDA | means the <i>Disability Discrimination Act 1992</i> (Cth). | 94062 |
| DISPLAN | means the State Emergency Medical Plan, including the necessary procedures for alerting and mobilising medical and health personnel and establishing on site medical control to ensure an integrated and effective response in times of emergency. | 94063 |

| ACRONYM | Definition | DNG |
|---------|--|--------|
| DTRS | means digital train radio systems. | 94064 |
| DOORS | means Dynamic Object-Oriented Requirements System. | 94065 |
| DSAPT | means the <i>Disability Standards for Accessible Public Transport 2002</i> (Cth) under section 31(1) of the <i>Disability Discrimination Act 1992</i> (Cth). | 94066 |
| DTS | means Deemed-to-Satisfy in relation to the National Construction Code. | 94067 |
| E&WMS | means Energy and Water Management System. | 94068 |
| ECS | means Environmental Control System. | 94069 |
| ECW | means enhanced compression wavelet (file format). | 94070 |
| EMC | means electromagnetic compatibility. | 94071 |
| EMI | means electromagnetic interference. | 94072 |
| EMF | means Environmental Management Framework. | 94073 |
| EMP | means Environmental Management Plans. | 94074 |
| EMS | means Environmental Management System. | 94075 |
| EPR | means Environmental Performance Requirement. | 94076 |
| EPVB | means the Eastern Portal ventilation building. | 94077 |
| ETA | means event tree analysis. | 94078 |
| EWIS | means emergency warning and intercommunication system. | 94079 |
| FCA | means functional configuration audit. | 94080 |
| FEB | means Fire Engineering Brief. | 94081 |
| FER | means Fire Engineering Report. | 94082 |
| FMECA | means failure mode, effects and criticality analysis. | 94083 |
| FRACAS | means Failure Reporting, Analysis and Corrective Action System. | 94084 |
| FCR | means Fire Control Room. | 150587 |
| FSS | means Flinders Street Station. | 94085 |
| FTA | means fault tree analysis. | 94086 |
| GAC | means gate attendant control. | 94087 |
| GBCA | means the Green Building Council of Australia. | 94088 |
| GHG | means greenhouse gas. | 94089 |
| GIR | means Geotechnical Interpretive Report. | 94090 |
| GIS | means Geographic Information System. | 94091 |
| GPOs | means general purpose outlet. | 94092 |
| GPS | means global positioning system. | 94093 |

| ACRONYM | Definition | DNG |
|---------|--|-------|
| GRP | means glass reinforced plastic. | 94094 |
| GSN | means Goal Structured Notation. | 94095 |
| HAZOP | means hazard and operability. | 94096 |
| HCMT | means High Capacity Metro Train. | 94097 |
| HF | means human factors. | 94098 |
| HFI | means human factors integration. | 94099 |
| HFIL | means human factors issues log. | 94100 |
| HHA | means Health Hazard Analysis. | 94101 |
| HRR | means heat release rate. | 94102 |
| HV | means high voltage. | 94103 |
| HVAC | means the heating, ventilation and air conditioning system. | 94104 |
| IAC | means internal arc classification. | 94105 |
| ICN | means the Industry Capability Network. | 94106 |
| ICNIRP | means the International Commission on Non-Ionizing Radiation Protection. | 94107 |
| ICT | means information and communications technology. | 94108 |
| IES | means Information Exchange System. | 94109 |
| IFC | means 'Issued for Construction'. | 94110 |
| IFEG | means the International Fire Engineering Guidelines 2005 | 94111 |
| IHA | means Interface Hazard Analysis. | 94112 |
| ISA | means Independent Safety Assessor. | 94113 |
| ISCA | means the Infrastructure Sustainability Council of Australia. | 94114 |
| ISS | means intake substation. | 94115 |
| JCC | means Joint Coordination Committee. | 94116 |
| ITP | means Inspection and Test Plan. | 94117 |
| LAN | means local area network. | 94118 |
| LCC | means lifecycle cost. | 94119 |
| LSC | means loss of service continuity. | 94120 |
| LED | means light emitting diode. | 94121 |
| LEOS | means Local Emergency Operating System. | 94122 |
| LIDP | means Local Industry Development Plan. | 94123 |

| ACRONYM | Definition | DNG |
|---------|---|--------|
| LSZH | means low smoke zero halogen. | 94124 |
| MASD | means multipoint aspirating smoke detection. | 150588 |
| MATC | means the Melbourne Anglican Trust Corporation. | 150589 |
| MCC | means motor control centre. | 94125 |
| MCS | means Melbourne Central Station. | 94126 |
| MDB | means main distribution board. | 94127 |
| MDE | means the line prefix to be adopted for the eastern track between South Kensington and South Yarra. | 94128 |
| MDW | means the line prefix to be adopted for the western track between South Kensington and South Yarra. | 94129 |
| MEL | means the MEL Sewer which is City West Water's | 94130 |
| MEP | means mechanical, electrical and plumbing | 94131 |
| MFB | means the Metropolitan Fire Brigade. | 94132 |
| MFIP | means master fire indication panel. | 94133 |
| MMRP | means the Melbourne Metro Rail Project. | 94134 |
| MRL | means machine roomless lifts | 94135 |
| MSB | means main switchboard. | 94136 |
| MURL | means Melbourne Underground Rail Loop. | 94137 |
| NFPA | means the National Fire Protection Association. | 94138 |
| NRC | means noise reduction coefficient. | 94139 |
| O&M | means operations and maintenance. | 94140 |
| OCS | means the Operational Control System comprising PIDS, PA, AFIL, CHP, SEPAC and CCTV. | 94141 |
| OHLE | means overhead line equipment. | 94142 |
| OHS | means occupational health and safety. | 94143 |
| OHW | means overhead wire. | 94144 |
| OMHA | means Operating and Maintenance Hazard Analysis. | 94145 |
| ONRSR | means Office of the National Rail Safety Regulator. | 94146 |
| OSD | means oversight development. | 94147 |
| OSSR | OHLE sectioning switch rooms. | 94148 |
| OTE | means over track exhaust. | 94149 |
| OTSSR | OHLE traction sectioning switch rooms | 94150 |
| PA | means public address. | 94151 |

| ACRONYM | Definition | DNG |
|----------|--|--------|
| PCA | means physical configuration audit. | 94152 |
| PHA | means Preliminary Hazard Analysis. | 94153 |
| PIDS | means passenger information display systems. | 94154 |
| PMP | means Project Management Plan. | 94155 |
| PMR | means Part C (Project Management Requirements) of the PS&TR. | 94156 |
| PoE | means power over Ethernet. | 94157 |
| PRM | means persons of restricted mobility. | 94158 |
| PSO | means a Protective Services Officer. | 94159 |
| PTV/MTM | means Public Transport Victoria/Metro Trains Melbourne. | 94160 |
| PTV TTY | means the Public Transport Victoria teletypewriter facility. | 94161 |
| QRA | means Quantitative Risk Assessment. | 94162 |
| RABT-ZTV | means tunnel fire curves as described by RABT - Guidelines for equipment and operation of road tunnels and ZTV - Additional Technical Conditions for the Construction of Road Tunnels. | 94163 |
| RAM | means Reliability, Accessibility and Maintainability. | 94164 |
| RAMMP | means Reliability, Accessibility and Maintainability (RAM) Management Plan. | 94165 |
| RAMS | means Reliability, Availability, Maintainability and Safety as described in EN50126:1999. | 94166 |
| RCM | means reliability centred maintenance. | 94167 |
| RCMA | means Reliability Centred Maintenance Analysis. | 94168 |
| RF | means radio frequency. | 94169 |
| RH | means Relative Humidity. | 94170 |
| RIA | means Rail Infrastructure Alliance | 94171 |
| RMH | means the Royal Melbourne Hospital. | 94172 |
| RMIT | means RMIT University. | 94173 |
| RNERV | means Rail Network Emergency Response Vehicle. | 150591 |
| RSNL | means Rail Safety National Law. | 94174 |
| RTM | means Requirements Traceability Matrix. | 94175 |
| RTO | means Rail Transport Operator. | 94176 |
| RWH | means the Royal Women's Hospital. | 94177 |
| SAMP | means Systems Assurance Management Plan. | 94178 |
| SBS | means System Breakdown Structure. | 94179 |
| SCADA | means supervisory control and data acquisition. | 94180 |

| ACRONYM | Definition | DNG |
|---------|--|--------|
| SCR | means station control room. | 94181 |
| SEIP | means Site Environmental Implementation Plan. | 94182 |
| SEMP | means Systems Engineering Management Plan. | 94183 |
| SEM | means structural electrical and mechanical or stand-alone enquiry machine. | 94184 |
| SEPAC | means an operational system used to broadcast voice messages from METROL to selected stations. | 94185 |
| SFAIRP | means So Far As Is Reasonably Practicable. | 94186 |
| SFIP | means sub fire indication panel. | 94187 |
| SHA | means System Hazard Analysis. | 94188 |
| SHERPA | means System Human Error Reduction and Prediction Approach. | 94189 |
| SiD | means Safety in Design. | 94190 |
| SIL | means safety integrity level. | 94191 |
| SIT | means the JCC Systems Integration Team. | 94192 |
| SLPM | means systems lifecycle process model. | 94193 |
| SRMC | means Security Risk Management Committee. | 94194 |
| SSMP | means System Safety Management Plan. | 94195 |
| STI | means speech transmission index. | 94196 |
| SWIFT | means structured what-if technique. | 94197 |
| T&C | means testing and commissioning. | 94198 |
| TBM | means Tunnel Boring Machine. | 94199 |
| TDM | means Travel Demand Management. | 94200 |
| TGS | means Traffic Guidance Scheme. | 94201 |
| TMP | means Traffic Management Plan. | 94202 |
| TORFM | means top of rail friction modifiers. | 150590 |
| TOT | means a ticket office terminal. | 94203 |
| TPSS | means traction power substation switch room. | 94204 |
| TSS | means traction substation system. | 94205 |

| ACRONYM | Definition | DNG |
|---------|---|-------|
| TVF | means tunnel ventilation fan. | 94206 |
| UoM | means the University of Melbourne. | 94207 |
| UPS | means an uninterruptable power supply. | 94208 |
| V&V | means verification and validation. | 94209 |
| V&VMP | means the Verification and Validation Management Plan. | 94210 |
| VCCC | means the Victorian Comprehensive Cancer Centre. | 94211 |
| VCRM | means the Verification and Validation Cross Reference Matrix. | 94212 |
| VEDN | means the Victorian Electrical Distribution Network. | 94213 |
| VIPP | means the Victorian Industry Participation Policy. | 94214 |
| VMS | means variable message sign. | 94215 |
| WAN | means wide area network | 94216 |
| WB | means wet bulb. | 94217 |
| WBS | means work breakdown structure. | 94218 |
| WTMP | means Worksite Traffic Management Plan. | 94219 |



HERBERT
SMITH
FREEHILLS

Exhibit 2

Project Strategies

[not disclosed]



HERBERT
SMITH
FREEHILLS

Exhibit 3

Technical Solution

[not disclosed]

METRO TUNNEL

TUNNEL AND STATIONS PRIVATE PUBLIC PARTNERSHIP

Exhibit 4: Services Specification



Defined terms

Terms defined in this Exhibit 4 have the meanings given to them in the Project Documents (including the PS&TR) unless otherwise defined in *Section 1.2 (Definitions) of this Exhibit 4: Services Specifications*.

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Appendices

Appendix A Minimum Failure Event Levels

Appendix B System Failure Events

Appendix C Fire Engineering Report related System Failure Events

Appendix D Periodic Reporting Requirements

Appendix E Summary of Maintenance Management Plans

Appendix F Maintenance Phase Documentation

Appendix G O&M Manuals

Appendix H Handover Package

Appendix I Asset Standards

Appendix J Planned Periodic Cleaning

Appendix K Cleaning Areas and Cleaning Access Times – Estimated Only

Appendix L Cleaning Service Standards

1 Introduction

1.1 Project Agreement Definitions

Defined terms in Clause 1.2 (Definitions) of the Project Agreement apply in this Services Specification unless the context requires otherwise or the relevant term is defined in this this Services Specification.

1.2 Definitions

In this Services Specification, the following words and phrases have the following meanings unless the context requires otherwise:

| Term | Meaning |
|--------------------------------|---|
| Abatement Free Period | means the "Abatement Free Period" described in Table 4 in section 2.2.3 (Response Times and Abatement Free Periods). |
| Above Ground Tunnel Structures | means those elements of the Licenced Maintenance Areas that are visible above ground level. |
| ACB | means "air circuit breaker". |
| Accessible Areas | means areas within Licensed Maintenance Areas that can be accessed for the removal of Graffiti without the need for specialist equipment or access. |
| Air Quality Management Plan | means the plan prepared, submitted and updated by Project Co in accordance with AM26. |
| Annual Works Plan | means the plan prepared, submitted and updated by Project Co as part of the Asset Management Plan, in accordance with AM01 and Appendix F.1.10. |
| Asset | means a discrete physical component of the Maintained Assets. |
| Asset Management Manual | means the manual prepared, submitted and updated by Project Co as an element of the Maintenance Management Plans in accordance with CM04 and Appendix F1.2. |
| Asset Management Plan | means the Plan required to be prepared in accordance with AM01 and Appendix F1.10. |
| Asset Management Services | means the services to be provided as described in section 4 of this Services Specification. |
| Asset Register | means the register prepared, submitted and updated by Project Co in accordance with AM18. |
| Asset Standards | means the standards contained in Appendix I. |
| Associate | means the meaning given to that term in the Project |

| Term | Meaning |
|----------------------------------|--|
| | Agreement. |
| Authority | has the meaning given to that term in the Project Agreement. |
| Best Maintenance Practices | has the meaning given to that term in the Project Agreement. |
| Bid Method Statements | means the method statements submitted by Project Co as part of their proposal. |
| BMS | means “Building Management System”. |
| Back of House (BOH) | means the operational areas of the stations that are not accessible to the public. |
| BOH (High) Areas | <p>means areas within the Stations that are critical to Train Operations (except plant rooms) including:</p> <ul style="list-style-type: none"> i) the station control room; ii) the incident control room; iii) customer service centre; iv) fire control centre; v) and the like. <p>For avoidance of doubt BOH (High) Areas exclude staff amenities, store rooms, and plant rooms.</p> |
| BOH / Plant Room (Low) Areas | <p>means areas within the Stations that are not:</p> <ul style="list-style-type: none"> i) Passenger Areas; ii) BOH (High) Areas; or iii) Plant Room (Critical) Areas. |
| Building Code of Australia (BCA) | means the uniform set of technical provisions for the design and construction of buildings and other structures which form Volumes One and Two of the National Construction Code. |
| Business Day | has the meaning given to that term in the Project Agreement. |
| CAD | means “computer aided design”. |
| CAD Management Plan | means the plan prepared, submitted and updated by Project Co as part of the Maintenance Management Plan, in accordance with CM04 and Appendix F1.7. |
| Cleaning Access Times | means those times set out in Appendix K. |
| Cleaning Services | means the services to be provided as described in section 6 of this Services Specification. |

| Term | Meaning |
|---|--|
| Cleaning Areas | means those areas set out in Appendix K. |
| Cleaning Services Standards | means those standards set out in Appendix L. |
| CMMS | means “computerised maintenance management system”. |
| Combined Services Route | means the common cable containment system that houses communications, signalling and power cabling. |
| Completion Requirements | means the requirements set out in the “Completion Schedule” as that term is defined in the Project Agreement. |
| Confidential Waste | means waste which is ‘Confidential Information’ as defined in the FCA. |
| Contract Management and Administration Services | means the services to be provided as described in section 2 of this Services Specification. |
| Contract Year | has the meaning given to that term in the Project Agreement. |
| Defects | has the meaning given to that term in the Project Agreement. |
| Degraded Operations | <p>means the disruption of Train Operations or material disruption of passengers as a direct result of a Fault, including by:</p> <ul style="list-style-type: none"> i) the Franchisee having been reasonably required (in accordance with the FCA) to make operational changes, including: <ul style="list-style-type: none"> a. slowing down or delaying trains, or otherwise amending the train timetable; b. preventing one or more trains embarking or disembarking passengers as intended by the FFP Warranty; c. restricting the number of passengers able to enter into the Station; or ii) passenger flow through the station having been materially disrupted. |
| Designated Special Event | means a special event designated by PTV under clause 6.5 of the Franchise Agreement as a Designated Special Event. |
| Digital Engineering Management Plan | means the plan prepared, submitted and updated by Project Co as part of the Maintenance Management Plan, in accordance with CM04 and Appendix F.1.7. |
| Dispute | has the meaning given to that term in the Project Agreement. |
| Domestic Waste | means waste that is generated from normal domestic household, office or administrative based duties, which |

| Term | Meaning |
|---|--|
| | includes but is not limited to, kitchen waste, newspapers, office waste, cardboard and other packaging, paper towels, toner cartridges and other office consumables, glass, plastic containers, aerosols, cigarette butts, plastic bags and other wrappings, and garden waste. |
| Electronic Operational Document Library | means the library described in CM24. |
| Emergency | means a potential or actual incident that: <ul style="list-style-type: none"> • poses significant harm to people, property, the environment or the local community; and • requires assistance from external emergency services agencies. |
| Emergency Response and Incident Management Sub-Plan | means the plan prepared, submitted and updated by Project Co as part of the Maintenance Management Plan, in accordance with CM04 and Appendix F.1.4. |
| Environmental Management Framework | means the Environmental Management Framework set out in the Environmental Effects Statement as endorsed by the Minister for Planning. |
| Environmental Performance Requirements | has the meaning given to that term in the Project Agreement. |
| Environmental Management System (EMS) | means the system to be maintained in accordance with CM28. |
| Equipment | has the meaning given to that term in the Project Agreement. |
| Event | means a Failure Event or other incident reported to the Help Desk, Project Co or any of Project Co's Associates. |
| Extended Rectification | means an extension to the Abatement Free Period and any associated Temporary Fix agreed in accordance with section 2.2.4 (Extended Rectifications). |
| Extended Abatement Free Period | has the meaning given to that term in section 2.2.4 (Extended Rectifications). |
| Failure Event (FE) | means any failure by Project Co to provide a Service accordance with this Services Specification which is designated 'FE' in the Minimum Services Specifications. |
| Failure Event Level | means, in relation to a Failure Event, the level applicable to that Failure Event as defined according to Table 3 at 2.1.7 (Failure Events: Failure Event Levels). |
| Fault | means any element of the Maintained Assets failing to meet the standards required by AM03a) as identified by a suitably |

| Term | Meaning |
|--|--|
| | trained maintenance technician(s) following investigation of a reported fault. |
| FCA | means Train Franchisee Cooperation Agreement including the Interface Management Plans. |
| FFP Warranty | has the meaning given to that term in the Project Agreement. |
| Final Acceptance | has the meaning given to that term in the Project Agreement. |
| Financial Close | has the meaning given to that term in the Project Agreement. |
| Fire Engineering Report | has the meaning given in the International Fire Engineering Guidelines 2005. |
| Fit For Purpose | has the meaning given to that term in the Project Agreement. |
| Forecast Maintenance and Refurbishment Program | means the plan prepared, submitted and updated by Project Co as part of the Asset Management Plan, in accordance with Appendix F1.10. |
| Franchisee | has the meaning given to the term “Train Franchisee Interface Party” in the Project Agreement. |
| Functional Unit Category | means the category applied to each room or area within the Stations and Tunnels, comprising: <ul style="list-style-type: none"> i) Passenger Areas; ii) BOH (High) Areas; iii) Plant Room (Critical) Areas; iv) BOH/Plant Room (Low) Areas; or v) Tunnel Areas. |
| GIS | means “geographic information system”. |
| GIS Management Plan | means the plan prepared, submitted and updated by Project Co as part of the Maintenance Management Plan, in accordance with CM04 and Appendix F.1.7. |
| Graffiti | any visible marking, scratching, writing or drawing that has been made deliberately as an act of vandalism. This includes surface paint and any shadowing, ghosting or impression affecting the any surface. |
| Graffiti and Vandalism Management Plan | means the plan prepared, submitted and updated by Project Co as part of the Maintenance Management Plan, in accordance with CM04 and Appendix F.1.10. |
| Handover Package | has the meaning given to that term in the Project Agreement, as further described in CM25. |

| Term | Meaning |
|---|--|
| Hazardous Materials Management Sub-Plan | means the plan prepared, submitted and updated by Project Co as part of the Maintenance Management Plan, in accordance with CM04 and Appendix F.1.4.1. |
| Health and Safety Management Plan | means the plan prepared, submitted and updated by Project Co as part of the Maintenance Management Plan, in accordance with CM04 and Appendix F.1.4 |
| Help Desk | means the facility established and maintained by Project Co in accordance with section 3 of this Services Specification to deliver the Help Desk Services. |
| Help Desk Services | means the services to be provided as described in section 3 of this Services Specification. |
| HV | means “high voltage”. |
| HVAC | means “heating, ventilation and air conditioning”. |
| ICT | means “information communication technology”. |
| Inaccessible Areas | areas that cannot be accessed without a Track Occupation or specialised equipment. |
| Information Management Plan | means the plan prepared, submitted and updated by Project Co as part of the Maintenance Management Plan, in accordance with CM04 and Appendix F.1.6. |
| Interface Management Plans | has the meaning given to that term in the FCA. |
| Intervening Event | has the meaning given to that term in the Project Agreement. |
| Laws | has the meaning given to that term in the Project Agreement. |
| Licensed Maintenance Areas | has the meaning given to that term in the Project Agreement. |
| Maintained Assets | has the meaning given to that term in the Project Agreement. |
| Maintained Asset Software and Firmware | means software and firmware embedded within Maintained Assets, or otherwise required to operate Maintained Assets. |
| Maintenance Management Plan | means each of the plans listed in Appendix E and prepared, submitted and updated by Project Co in accordance with CM04. |
| Maintenance Phase | has the meaning given to that term in the Project Agreement. |
| Maintenance Phase Documentation | has the meaning given to that term in the Project Agreement and Appendix F. |
| Maintenance Phase | means the plan prepared, submitted and updated by Project Co as part of the Maintenance Management Plan, in |

| Term | Meaning |
|--|---|
| Sustainability Plan | accordance with CM04 and Appendix F.1.9. |
| Maintenance Subcontractor | has the meaning given to that term in the Project Agreement. |
| Method Statements | means the documents of that name maintained in accordance with CM05. |
| Minimum Failure Event Level | means in relation to an event, the greater of: i) the Failure Event Level specified for that event in Appendix A (Minimum Failure Event Levels); and ii) the Failure Event Level specified for that event as set out in the 'Level / Points' column of the relevant Minimum Services Specification. |
| Minimum Services Specification | means in relation to a Service, the State's minimum specific requirements in relation to the relevant Service as set out in the 'Minimum Services Specification' section of section 2 (Contract Management and Administration Services) and each Specific Services Specification. |
| Monitoring Methods | means the methods referred to and set out in section 2.2.6. |
| Monthly Health and Safety Performance Report | means the report of that name prepared in accordance with CM33. |
| Monthly Maintenance Schedule | means the schedule required to be prepared in accordance with AM05. |
| Monthly O&M Meetings | has the meaning given to that term in the FCA and CM07. |
| Monthly Performance Report | means the report of that name provided in accordance with CM19 and Appendix D (Periodic Reporting Requirements). |
| MSDS | means "material safety data sheet". |
| Non-Operational Period | means times outside of Peak Periods and Off-Peak Periods. |
| Non Peak Period | means the periods that are not Peak Periods. |
| O&M Manual | means the manuals prepared, submitted and updated by Project Co in accordance with AM17. |
| Occupant | means any person who is entitled to enter into any part of the Licensed Maintenance Area, including but not limited to: iii) Users; iv) the Franchisee's Associates; v) the Project Co's Associates; and vi) the State's Associates. |

| Term | Meaning |
|--|--|
| Offensive Graffiti | means explicit language, pictures, drawings or content that discriminates by race, gender, religion or sexual orientation. |
| Off-Peak Period | means the periods between first train and last train that are not Peak Periods. |
| OHS | means “occupational health and safety”. |
| Operating Hours | means all Peak Periods or Off-Peak Periods. |
| Operating Month | means any calendar month during the Maintenance Phase. |
| Operations and Maintenance Protocol | has the meaning given to that term in the FCA. |
| Operations Environmental Management Plan | means the plan prepared, submitted and updated by Project Co as part of the Maintenance Management Plan, in accordance with CM04 and Appendix F.1.8. |
| Overnight Clean | means cleaning to be carried out during Non-Operational Periods and includes the daily removal of gum to all surfaces. |
| Passenger Areas | means all areas that are normally accessible to Users. |
| Payment Schedule | means schedule 3 of the Project Agreement. |
| Peak Period | means: i) Monday to Friday (excluding gazetted public holidays); a. First train until 0930 hours; and b. 1600 hours and 1900 hours, and ii) the period of a Designated Special Event, or as otherwise amended by the State from time to time. |
| Performance Assessment Period | means in relation to each Service, the period set out in the 'Performance Assessment Period' column of the relevant Minimum Services Specification (each as defined according to the key in Table 1 at 2.1.1). |
| Performance Data | means the Monthly Performance Report, the Quarterly Performance Report and the source information, documentation and data required for, created, produced or prepared in accordance with the Performance Monitoring Plan. |
| Performance Monitoring Audits | means audits undertaken in accordance with CM42. |
| Performance Monitoring Plan (PMP) | means the plan prepared, submitted and updated by Project Co as an element of the Maintenance Management Plans in accordance with CM04 and Appendix F1.1. |

| Term | Meaning |
|----------------------------------|--|
| Periodic Reports | means those reports to be delivered in accordance with CM19. |
| Personal Cleaning Consumables | means toilet paper, paper hand towel (if used), soap (blocks and liquid), plastic bin liners and antiseptic hand wash. |
| Pest Control Plan | means the plan prepared, submitted and updated by Project Co in accordance with PC01, CM04 and Appendix F1.11. |
| Pest Control Services | means the services to be provided as described in section 5 of this Services Specification. |
| Pests | <p>include:</p> <ul style="list-style-type: none"> i) spiders; ii) insects (including cockroaches, flying insects and ants); iii) rodents (including rats and mice); iv) reptiles (including snakes and lizards); v) birds; and vi) other animals. |
| Planned Periodic Cleaning | means those planned cleaning activities undertaken by Project Co in accordance with CL04 and Appendix J. |
| Planned Preventative Maintenance | means the planned preventive maintenance or programmed maintenance required to be carried out by Project Co in accordance with this Services Specification. |
| Plant Room (Critical) Areas | <p>means plant rooms within the Stations and Tunnels that contain equipment that is critical to Train Operations including:</p> <ul style="list-style-type: none"> i) signalling and PSD equipment rooms; ii) communications equipment rooms; iii) telephone equipment room; iv) uninterruptible power supply/central battery rooms; v) station, ticketing equipment rooms and server rooms; and vi) rooms containing power infrastructure and Tunnel ventilation equipment. |
| Platform SFE | means a Service Failure of that name described in Appendix B. |
| PPM | means “planned preventative maintenance”. |

| Term | Meaning |
|---|--|
| PPM Program | means the program prepared, submitted and updated by Project Co as part of the Asset Management Plan, in accordance with AM01. |
| PPM Service | means the planned preventative maintenance service to be provided by Project Co in accordance with the Services Specification. |
| Project Assets | has the meaning given to that term in the Project Agreement. |
| Project Co | has the meaning given to that term in the Project Agreement. |
| PS&TR | has the meaning given to that term in the Project Agreement. |
| PSDs | means platform screen doors. |
| PTV DMS | means the drawing management system operated by Public Transport Victoria. |
| Public Holidays | means a public holiday as gazetted in the State of Victoria. |
| Quality Failure (QF) | means any failure by Project Co to provide a Service in accordance with this Services Specification which is designated 'QF' in the Minimum Services Specifications. |
| Quality Failure Point | means those points incurred by Project Co as a result of a Quality Failure in accordance with this Services Specification |
| Quality Failure Remedy Period | means in relation to each Service, the period set out in the 'Quality Failure Remedy Period' column of the relevant Minimum Services Specification (each as defined according to the key in Table 1 at 2.1.1). |
| Quality Management Plan | means the plan maintained as part of the Maintenance Management Plans in accordance with CM04 and Appendix F.1.3. |
| Quarterly Performance Report | means the report of that name provided in accordance with CM19 and Appendix D (Periodic Reporting Requirements). |
| Quarterly Service Payment | has the meaning given to that term in the Project Agreement. |
| Rail Safety National Law | has the meaning given to that term in the Project Agreement. |
| Rectification (and "Rectify" and "Rectifying" (as applicable) | means Project Co undertaking the tasks to rectify a reported Service Failure set out in, and in accordance with, section 2.2.1 (Response). |
| Refurbishment Works | has the meaning given to that term in the Project Agreement. |
| Repeat Failure Events | has the meaning given to that term in CM45. |

| Term | Meaning |
|---|--|
| Response (and “Responding” (as applicable)) | means Project Co undertaking the tasks in response to a reported Service Failure set out in, and in accordance with, section 2.2.1 (Response). |
| Response Time | has the meaning given to it in section 2.2.3 (Response Times and Abatement Free Periods). |
| Returned Assets | has the meaning given to that term in the Project Agreement. |
| Returned Spaces | means the signalling equipment room, the communications equipment room and the telephone equipment room, only to the extent that each room does not contain any plant or equipment to be maintained by Project Co as Maintained Assets. |
| Review Procedures | has the meaning given to that term in the Project Agreement. |
| Reviewable Services | means: i) Cleaning Services; and ii) Pest Control Services. |
| Reviewable Services Manual | means the manual of that name required to be prepared in accordance with CM26. |
| Risk Management Plan | means the plan prepared, submitted and updated by Project Co as an element of the Maintenance Management Plans in accordance with CM04 and E1.6. |
| Routine Daytime Activities | means i) a visual inspection of all Passenger Areas at: a. 30 minute intervals during Peak Periods; and b. intervals appropriate to the amount of passenger traffic at other times, to identify the need for unscheduled cleaning in accordance with CL05; ii) emptying of all bins and removal of all litter from each Station; iii) removal of spills and contamination from the Station Precinct; iv) spot cleaning of surfaces in the Station so that any grime or spillage which could contaminate clothing is removed; v) maintaining and watering any plants located within the Station; vi) cleaning of all toilet surfaces, replenishment of Personal Cleaning Consumables and the updating of the visible record situated within the bathroom to include the date |

| Term | Meaning |
|-------------------------------------|---|
| | <p>and time of the last inspection and clean at least twice daily, and more frequently if required to meet the Cleaning Services Standards; and</p> <p>vii) replenishing of consumables located within each toilet.</p> |
| Scheduled | <p>means recurring work undertaken:</p> <p>i) against a schedule contained in a document reviewed in accordance with the Review Procedures under the terms of the Project Agreement, including this Services Specification; or</p> <p>ii) as otherwise agreed with the Franchisee (in accordance with the FCA) and/or approved by the State in accordance with this Services Specification.</p> |
| Service Failure | has the meaning given to that term in the Project Agreement. |
| Service Failure Assessment Criteria | means the criteria to be applied by the Help Desk in categorising Failure Events as set out in Table 3 in section 2.1.7 (Failure Events: Failure Event Levels). |
| Services | has the meaning given to that term in the Project Agreement. |
| Services Specification | means this Services Specification. |
| Services Training Program | means the training and induction program described in CM18. |
| Site | has the meaning given to that term in the Project Agreement. |
| Soft Services Areas | <p>means the Licensed Maintenance Areas excluding:</p> <p>i) Tunnels; and</p> <p>ii) areas trackside of the PSD.</p> |
| Spares | means replacement components used by Project Co rectify a Fault. |
| Specialist Cleaning Items | <p>means:</p> <p>i) passenger information displays;</p> <p>ii) ticketing machines;</p> <p>iii) automatic barriers;</p> <p>iv) public address speakers;</p> <p>v) advertising signs;</p> <p>vi) vending machines;</p> <p>vii) signage; and</p> <p>viii) ATM machines.</p> |
| Specification | means in relation to each Service, the specification set out in |

| Term | Meaning |
|----------------------------------|---|
| | the 'Specification' column of the relevant Minimum Services Specification. |
| Specific Services Specifications | means each of: i) section 3 (Help Desk Services); ii) section 4 (Asset Management Services); iii) section 5 (Pest Control Services); and iv) section 6 (Cleaning Services). |
| Standards | has the meaning given to that term in the Project Agreement. |
| State | has the meaning given to that term in the Project Agreement. |
| State's Associate | has the meaning given to that term in the Project Agreement. |
| Station | has the meaning given to that term in the Project Agreement. |
| Station Deep Clean | means a clean of a Station which includes the requirements of a Station daily clean and also includes: i) high pressure cleaning of all surfaces in the Station to remove the build-up of dust and grime; ii) replacement of bin lids where dust and grime cannot be removed; iii) replacement of plants within the Station if they have perished; and iv) removal of weeds and maintenance of vegetation within the Station. |
| Station SFE | means a Service Failure of that name described in Appendix B. |
| Station Precinct | means the area surrounding each of the Stations. |
| System Failure Event | means a Service Failure described in Appendix B. |
| Temporary Fix | has the meaning given to that term in section 2.2.4 (Extended Rectifications). |
| Temporary Fix Time | has the meaning given to that term in section 2.2.4 (Extended Rectifications). |
| Time Category | means Peak Period, Off-Peak Period or Non-Operational Period. |
| Total SFE | means a Service Failure of that name described in Appendix B. |
| Track Occupation | has the meaning given to that term in the FCA. |

| Term | Meaning |
|-------------------------------------|---|
| Train Accreditation | has the meaning given to that term in the Project Agreement. |
| Train Operations | has the meaning given to that term in the Project Agreement. |
| Tunnel | means tunnels and portals as described in the PS&TR. |
| Tunnel Areas | means: i) Tunnels; ii) walkways; iii) cross passages; iv) shafts; v) and the like. |
| Tunnel SFE | means a failure of that name described in Appendix B. |
| Unscheduled Pest Control | means the Services to be delivered by Project Co in accordance with PC03. |
| Unscheduled Repairs and Maintenance | means the Services to be delivered by Project Co in accordance with AM07. |
| UPS | means uninterrupted power supply. |
| User | has the meaning given to that term in the Project Agreement. |
| Utility | has the meaning given to that term in the Project Agreement. |
| Vandalism | means action involving deliberate destruction of or damage to property. |
| Vertical Transportation | means lifts or escalators. |
| VicTrack | has the meaning given to that term in the Project Agreement. |
| Waste | means all rubbish, litter, debris or waste including Confidential Waste, Domestic Waste, body fluids waste, recyclable waste, syringes, needles or other sharp instruments, kitchen waste, hazardous waste, building waste and engineering waste. |
| Waste Water Management Plan | means the plan prepared, submitted and updated by Project Co in accordance with AM25. |

1.3 Interpretation

All references to sections and appendices refer to sections and appendices of this Services Specification unless expressly stated to the contrary.

1.4 Contract Management and Administration Services and Specific Services Specifications

1.4.1 General

1.4.1.1 Structure

- a) The Services consist of the Contract Management and Administration Services (section 2) and Specific Services Specifications (sections 3 to 6).
- b) The Contract Management and Administration Services detail the State's general service requirements and contain general provisions applicable to all Services.
- c) The Specific Services Specifications detail the State's additional specific requirements for each of the Services.
- d) The Services shall be provided to the whole Licensed Maintenance Area, unless otherwise stated.

1.4.1.2 Overriding obligation

- a) Project Co must comply with all of the requirements of this Services Specification, including the Contract Management and Administration Services and Specific Services Specifications.
- b) In delivering the Services in accordance with the Specific Services Specifications set out in sections 3 to 6, Project Co must also satisfy all relevant requirements of section 2 (Contract Management and Administration Service).
- c) Unless instructed otherwise, Project Co must assume that Train Operations are provided on a continuous 24-hour basis between the first timetabled service on Friday and the last timetabled service on Sunday.

1.4.1.3 Specific requirements

- a) Each Specific Services Specification sets out the:
 - (i) key objectives;
 - (ii) scope; and
 - (iii) Minimum Services Specifications,in respect of each of the relevant Services.
- b) The "Key Objectives" and "Scope" sections of each Specific Services Specification outline the key objectives which should be considered by Project Co when delivering each of the Services, and the service scope or boundaries of each of the Services respectively.
- c) The "Minimum Services Specifications" section of each of section 2 (Contract Management and Administration Services) and each Specific Services Specification sets out the State's minimum specific requirements in relation to the relevant Service, against which Project Co's actual performance is to be assessed.
- d) The requirement for Project Co to produce a plan, program or schedule to the satisfaction of, or approval of, the State under this Services Specification does not limit or derogate from Project Co's obligations to meet the Minimum Services Specifications, maintain the Maintained Assets to meet the FFP Warranty and meet all other requirements of the Project Agreement including with respect to availability of the Maintained Assets.

- e) A Minimum Services Specification may be allotted a reference number which appears in the column named "Ref". Where a reference number applies to a number of Services requirements, failure to achieve any one of those Services requirements will be a Service Failure.

1.4.1.4 Effect of the Method Statements

- a) Without limiting Section 1.4.1.3(d) the carrying out of a Service in accordance with the relevant Method Statement for that Service, including the provision of the number of personnel or full-time equivalents set out in a Method Statement:
 - (i) is not evidence that Project Co has discharged its obligations under this Services Specification; and
 - (ii) does not limit, affect or otherwise derogate from Project Co's obligations to meet:
 - (A). the Minimum Services Specification;
 - (B). the FFP Warranty under Clause 5.2 of this Project Agreement; or
 - (C). any other requirements of this Project Agreement.

1.4.2 **Contract Management and Administration Services**

- a) The Contract Management and Administration Services are divided into the following sections:
 - (i) Response;
 - (ii) Management;
 - (iii) Cooperation with Third Parties;
 - (iv) Quality Management;
 - (v) Risk Management;
 - (vi) Human Resources Management;
 - (vii) Information Management;
 - (viii) Environmental Management;
 - (ix) Occupational Health and Safety Management;
 - (x) Train Accreditation;
 - (xi) Emergency Risk Management;
 - (xii) Materials, Equipment and Consumables;
 - (xiii) Performance Monitoring and Reporting; and
 - (xiv) Repeat Failure Events.
- b) Section 2.1 (Performance monitoring methodology) describes the methodology that will be applied in measuring Project Co's performance against the Specific Services Specifications.
- c) Section 2.3 describes the Minimum Service Specifications applicable to Contract Management and Administration.

1.4.3 **Specific Services Specifications**

- a) The Specific Services Specifications are divided into the following areas:

- (i) Help Desk Services;
- (ii) Asset Management Services;
- (iii) Pest Control Services; and
- (iv) Cleaning Services.

1.4.4 Directions and requirements

- a) The State Representative may delegate any of its rights and obligations under this Services Specification in accordance with clause 11.3(e) of the Project Agreement.
- b) Without limiting any provision within the Project Agreement, Project Co must comply with all instructions, directions, requirements and requests of the Franchisee as contemplated by this Services Specification and given in accordance with the FCA or the O&M Protocol (as applicable).

2 Contract Management and Administration Services

2.1 Performance monitoring methodology

2.1.1 Performance assessment against Minimum Services Specifications

- a) Project Co's performance of the Services will be assessed on a pass or fail basis.
- b) Each Minimum Services Specification sets out for each Service:
 - (i) the Specification;
 - (ii) the type of Service Failure (described in Table 2 below);
 - (iii) in the case of:
 - (A). a Quality Failure, the number of Quality Failure Points; and
 - (B). a Failure Event, the Failure Event Level;
 - (iv) the Performance Assessment Period; and
 - (v) the Quality Failure Remedy Period.

Table 1: Abbreviations

| Abbreviation | Meaning |
|--------------|---|
| QF | Quality Failure |
| FE | Failure Event |
| PR | Per Request/Per Event |
| T | Two Hourly |
| D | Daily |
| W | Weekly (Sunday-Saturday) |
| M | Monthly (per Operating Month) |
| Q | Quarterly (per relevant period of three Operating Months commencing 1 January, 1 April, 1 July and 1 October) |
| H | Half-yearly (per relevant period) of six Operating Months commencing 1 January and 1 July) |
| A | Annually (per financial year) |
| C | Continuous (24x7 hours x 365 days) |

| Abbreviation | Meaning |
|--------------|----------------|
| N/A | Not Applicable |

2.1.2 Commencement of Service Failures

- a) A Service Failure will be deemed to have occurred upon:
- (i) notification by the State or any person so delegated by the State to the Help Desk;
 - (ii) notification by the Franchisee to the Help Desk;
 - (iii) being identified as a result of performance measurement undertaken by Project Co in accordance with the Performance Monitoring Plan;
 - (iv) first coming to the attention of the Help Desk;
 - (v) detection by the BMS or any other automatic monitoring or alarm system;
 - (vi) where it should have come to the attention of the Help Desk or should have been detected by the BMS or any other automatic monitoring or alarm system, if Project Co was complying with its obligations under this Project Agreement; or
 - (vii) Project Co otherwise becoming aware, that the Specification for the relevant Service has not been satisfied.
- b) Project Co acknowledges and agrees that the deemed occurrence of a Service Failure under section 2.1.2 will be conclusive between Project Co and State as to the time of commencement of a Service Failure.

2.1.3 Service Failure type

- a) The type of Service Failure designates the consequence of the Service Failure under this Services Specification and the Payment Schedule.

Table 2: Service Failure Types

| Service Failure type | Consequence |
|-----------------------------|---|
| Failure Events (FE) | Abatement |
| System Failure Events (SFE) | Abatement |
| Quality Failures (QF) | Quality Failure Points leading to Abatement |

2.1.4 Specification

- a) The Specification describes the minimum standard that Project Co must satisfy in providing the Service in order to avoid a Service Failure.
- b) Where a Specification comprises more than one deliverable, a failure to satisfy any one deliverable will result in a Service Failure.

2.1.5 Performance Assessment Period

- a) The Performance Assessment Period describes the interval at which the continued satisfaction of the Specification must be assessed.

- b) For Services designated as Failure Events, Project Co's satisfaction of the Specification will be assessed continuously.

2.1.6 Quality Failures: Quality Failure Points / Quality Failure Remedy Periods

- a) Upon the occurrence of a Quality Failure, Project Co will incur the number of Quality Failure Points designated to that Service at the time which is the later of:
 - (i) the expiry of the Quality Failure Remedy Period; or
 - (ii) the occurrence the Quality Failure (if the Quality Failure Remedy Period is designated as "N/A");
- b) Quality Failure Points will result in Abatement under the Payment Schedule.
- c) Following the occurrence of a Quality Failure until rectification of the Quality Failure, Project Co will incur additional Quality Failure Points for that Quality Failure no more frequently than the Quality Failure Remedy Period.
- d) Where the Quality Failure Remedy Period is designated as "N/A", no Quality Failure Remedy Period will apply.

2.1.7 Failure Events: Failure Event Levels

- a) For Services designated as Failure Events, the Failure Event Level will determine:
 - (i) the Response Time;
 - (ii) the Abatement Free Period; and
 - (iii) the Abatement to be applied under the Payment Schedule.
- b) For certain events, Appendix A (Minimum Failure Event Levels) identifies the minimum Failure Event Levels to be applied irrespective of Table 3.
- c) For each Failure Event, the Failure Event Level will be the greater of:
 - (i) the Failure Event Level determined according to Table 3; and
 - (ii) the Minimum Failure Event Level set out in Appendix A (Minimum Failure Event Levels).
- d) Where two or more Failure Event Levels could be assigned to a specific Failure Event, the Failure Event Level will be the higher Failure Event Level.
- e) If a Failure Event is not an event described in Appendix A (Minimum Failure Event Levels):
 - (i) the Failure Event Level will be the Failure Event Level determined according to Table 3 using Appendix A (Minimum Failure Event Levels) as a guide to the appropriate Minimum Failure Event Level; and
 - (ii) Project Co and the State will use reasonable endeavours to agree a minimum Failure Event Level for future events of that type based on the Minimum Failure Event Levels set out in Appendix A (Minimum Failure Event Levels).

Table 3: Service Failure Assessment Criteria

| Failure Event Level | Service Failure Assessment Criteria |
|---------------------|---|
| Level A | Any Failure Event that does not constitute a System Failure Event and which: <ul style="list-style-type: none"> a) is life threatening or if not remedied immediately, will potentially be life threatening; |

| Failure Event Level | Service Failure Assessment Criteria |
|---------------------|--|
| | b) poses an immediate risk to harm, or if not remedied immediately, has the potential to pose risk to harm; c) causes, or is serious enough to cause, significant damage to any part of the Project Assets; d) will result in, or has the potential to result in, significant damage or impairment of the environment external to the Project Assets, including damage to air, water and soil quality; or e) will result in, or has the potential to result in, Degraded Operations. |
| Level B | Any Failure Event affecting lifts or escalators that is not a Level A Failure Event. |
| Level C | Any Failure Event that is not categorised as a Level A or B Failure Event and: a) may develop into a Level A Failure Event if not remedied within the applicable Abatement Free Period; b) in the case of systems designed with a level of backup or redundancy, will result in, or has the potential to result in, Degraded Operations should there be a further Failure Event; c) will result in, or has the potential to result in, significant loss of amenity to passengers or Franchisee staff. |
| Level D | Any Failure Event which is not categorised as a Level A, B, or C Failure Event and: a) may a lead to a Level A or C Failure Event if not remedied within 24 hours; and b) causes no more than very minor disruption, inconvenience or loss of amenity to the Franchisee or Users. |
| Level E | Any Failure Event which is not categorised as a Level A, B, C or D Failure Event. |

2.1.8 Failure Events: Assignment of Failure Event Levels

- a) The Help Desk must determine the Failure Event Level at the time that the Help Desk receives notification of the occurrence of a Failure Event, and advise the Franchisee accordingly.
- b) The Franchisee (in accordance with the FCA) may give notice to Project Co and the State that it does not agree with the Failure Event Level determined by the Help Desk, and alter the Failure Event Level by instructing the Help Desk accordingly.
- c) If Project Co or the State does not agree with an assigned Failure Event Level:
 - (i) Project Co and the State may agree a different Failure Event Level; or
 - (ii) Project Co or the State may refer the Dispute to resolution in accordance with clauses 46 and 47 of the Project Agreement,
- d) after which, the State will notify the Help Desk of the determined Failure Event Level.

- e) Until the disagreement referred to in 2.1.8c) is resolved, the parties must act on the basis of the greater of the Failure Event Levels determined by the Help Desk and the Franchisee.
- f) If a Failure Event has occurred and the Help Desk does not respond as specified in this Services Specification, then the Failure Event Level will be:
 - (i) determined by the Franchisee (in accordance with the FCA); or
 - (ii) in the absence of a determination by the Franchisee, determined by the State.
- g) The occurrence of a Failure Event does not prevent the State or the Franchisee from electing, in its absolute discretion, to use that Maintained Asset or area notwithstanding the occurrence of the Failure Event. The continued use of the area does not in any way limit rights of the State to exercise its rights in respect of the Failure Event in accordance with the Project Agreement and this Services Specification.
- h) If it is not clear whether an event is the result of a Failure Event or is the result of a failure outside of Project Co's responsibility (for example, a Returned Asset), Project Co must Respond to the event and actively assist in the investigation of the event until such time that it is evident that the event is not a Failure Event.
- i) Any disagreement between the parties in respect of 2.1.8h) must be resolved in accordance with clauses 46 and 47 of the Project Agreement.
- j) Until a disagreement referred to in 2.1.8h) is resolved, the parties must act on the basis that the event is a Failure Event, and on the basis of the greater of the Failure Event Levels determined by the Help Desk, the Franchisee and the State.

2.2 Response and rectification

2.2.1 Response

- a) On the occurrence of a Failure Event, Project Co must as soon as practicable and in any event within the applicable Response Time set out in Table 4:
 - (i) establish the nature and location of the Failure Event;
 - (ii) inform the Franchisee of the Failure Event (if the Franchisee is unaware) and agree with the Franchisee all subsequent actions to mitigate the Failure Event;
 - (iii) commence to take all necessary actions to make the affected areas(s) safe and secure, fulfil all health and safety requirements in accordance with OHS Legislation and agreed Management Plans, and mitigate any further or consequential damage or impact on Train Operations or disruption to passengers;
 - (iv) confirm the appropriate Failure Event Level for the Failure Event having regard to section 2.1.7 and any more detailed directions set out in the Management Plans pursuant to CM04;
 - (v) where required and / or specified in the Management Plans:
 - (A). appoint a suitably qualified, experienced and accountable person to assess the situation who, within reasonable limits, is empowered to take or to authorise any required action on behalf of Project Co; and
 - (B). provide the State and the Franchisee with an assessment of the Failure Event, the action (if any) taken, details of any work required and estimated time to complete it and limitations that this may impose on the affected areas, Train Operations or Services; and
 - (vi) in the case of Failure Events with a Failure Event Level of A, B or C, the person referred to in 2.2.1a)(v)(A) must have arrived at the location of the Failure Event ready to commence investigation and repair.

2.2.2 Rectification

- a) After Responding to a Failure Event, Project Co must:
- (i) where Rectification may impact Train Operations and safety or amenity of Occupants, inform the Franchisee of the proposed Rectification and agree with the Franchisee (in accordance with the FCA) all subsequent actions to Rectify the Failure Event;
 - (ii) make good any Failure Event as soon as reasonably practicable in all circumstances, and in any event within the Abatement Free Period allowed for that Failure Event, so as to comply with this Project Agreement, including this Services Specification;
 - (iii) carry out any testing that may be reasonably requested by the Franchisee (in accordance with the FCA) to demonstrate that Rectification has been completed;
 - (iv) ensure that the State and the Franchisee is informed of progress and any likely delays;
 - (v) minimise the disruption to the Services and the provision of Train Operations or to passengers; and
 - (vi) notify the State and the Franchisee when Rectification is complete.

2.2.3 Response Times and Abatement Free Periods

- a) Project Co is deemed to have complied with a Specific Services Specification if it has:
- (i) Responded to the Failure Event in accordance with section 2.2.1 **within** the Response Time set out in 2.2.3d); and
 - (ii) Rectified the Failure Event in accordance with section 2.2.2 **within** the Abatement Free Period set out in in 2.2.3d) (as extended under section 2.2.4 (Extended Rectifications)).
- b) The Abatement Free Period (if applicable) and the Response Time will:
- (i) run concurrently; and
 - (ii) commence from the time that the Service Failure is deemed to have occurred in accordance with 2.1.2.
- c) The time taken for Project Co to Respond to, or Rectify a Failure Event will be the later of Project Co:
- (i) having completed the tasks required to Respond to, or Rectify the relevant Failure Event (as applicable); and
 - (ii) notifying the Help Desk of the Response or Rectification (as the case may be).
- d) Unless otherwise specified within this Services Specification, the Response Times and Abatement Free Periods for each Failure Event Level (as they relate to the period in which the Response Time and Abatement Free Period commence) are as shown in Table 4:

Table 4: Response Times and Abatement Free Periods

| Failure Event Level | Response Time | | Abatement Free Period | |
|---------------------|---------------|-----------------|---|---|
| | Peak Period | Non Peak Period | Peak Period | Non Peak Period |
| Level A | 15 minutes | 30 minutes | 1 Hour (except as discussed in 2.2.3 e)) | The greater of 1 Hour or the period until the commencement of the next Peak Period (except as discussed in 2.2.3 e)) |
| Level B | 15 minutes | 30 minutes | 3 days | 3 days |
| Level C | 30 minutes | 1 hour | 4 hours | 8 Hours |
| Level D | 30 minutes | 1 hour | 1 day | 1 day |
| Level E | 1 day | 1 day | 7 days | 7 days |

- e) If a Failure Event categorised as Level A occurs that results in Degraded Operations within a Functional Unit Category of "Tunnel", no Abatement Free Period will apply and Abatement will be incurred in respect of the Failure Event immediately upon its occurrence.

2.2.4 Extended Rectifications

- a) If Project Co considers that it is not able to Rectify a Failure Event within the Abatement Free Period, it may propose an Extended Rectification to:
- (i) the Franchisee for its agreement in accordance with the FCA, in respect of Faults reported by the Franchisee; and
 - (ii) the State in respect of all other Faults,
- together with an alternative time by which Rectification will occur ("Extended Abatement Free Period"). Such proposals must be received prior to the end of the Abatement Free Period.
- b) Except for the provisions of 2.2.4c), the State or the Franchisee (acting in accordance with the FCA) (as applicable) will not refuse to grant an Extended Rectification provided that:
- (i) if so requested by the State or the Franchisee (in accordance with the FCA) (as applicable), the Extended Rectification includes a course of action that will temporarily ameliorate the consequences of the Failure Event whilst the Failure Event is being Rectified ("**Temporary Fix**");
 - (ii) Project Co has Responded to the Event in accordance with section 2.2.1 (Response and Rectification);
 - (iii) in the opinion of the State or the Franchisee (as applicable), Project Co has been diligently pursuing a remedy or cure in respect of that Failure Event,

including completing all actions required to meet its obligations under section 2.2.2;

- (iv) in the opinion of the State or the Franchisee (as applicable), Project Co has been diligently pursuing any previously agreed Temporary Fix in accordance with the agreed timeframes (“**Temporary Fix Time**”); and
- (v) the granting of such Extended Rectification will not, in opinion of the State or the Franchisee (as applicable):
 - (A). contravene any Standards or Laws or relating to health and safety, or otherwise pose a danger to health and safety of Occupants;
 - (B). cause an unacceptable level of disruption, inconvenience or loss of amenity to the Franchisee or Users; or
 - (C). give rise to additional Franchisee operating costs in providing Train Operations.
- c) In addition to 2.2.4b), the State may refuse to grant an Extended Rectification (or may rescind approval by the Franchisee in accordance with 2.2.4b)) in the event that:
 - (i) a similar Failure Event has occurred within the Maintained Assets on more than three occasions in the preceding quarter;
 - (ii) the Failure Event was caused by an act or omission of Project Co or a Project Co’s Associate, including the provision of inadequate resources;
 - (iii) the need for the extension is due to a failure on the part of Project Co to:
 - (A). adhere to Best Maintenance Practices, including the identification, purchasing and storage of spare parts for Plant and Equipment whose failure may have a significant impact upon Train Operations or passengers, including (but not limited to) compliance with the Asset Management Plan; or
 - (B). mitigate its loss by maintaining an appropriate level of spare equipment in accordance with Best Industry Practice.
- d) For avoidance of doubt, the State or the Franchisee may rescind any previously granted Extended Rectification in the instance that Project Co fails to diligently pursue the Temporary Fix.
- e) Project Co and the Franchisee may pre-agree Extended Rectifications for specific foreseeable Failure Events in accordance with the FCA, in which case the Management Plans must be updated to record those pre-agreed Extended Rectifications. Subject to 2.2.4j), the Franchisee is under no obligation to pre-agree Extended Rectifications and may amend or cancel any pre-agreed Extended Rectification at any time in accordance with the FCA.
- f) Project Co may not proceed to perform a Temporary Fix without the State or the Franchisee’s prior approval (in accordance with the FCA) (as applicable).
- g) If the State or the Franchisee (in accordance with the FCA) (as applicable) agrees to a Temporary Fix, Project Co must diligently pursue the Temporary Fix within the time periods agreed as part of the Extended Rectification, and must ensure that the Failure Event is Rectified by the Extended Abatement Free Period.
- h) No agreement to, or failure or refusal to agree to, an Extended Rectification or Temporary Fix by the State or the Franchisee will:
 - (i) relieve Project Co of any of its obligations or liabilities under this Project Agreement other than to the extent of this section 2.1.6; or
 - (ii) entitle Project Co to make any Claim against the State.

- i) Any decision by the State or the Franchisee to agree to an Extended Rectification does not create a precedent nor prejudice the State's right to exercise its entire discretion in making future decisions.
- j) Without limiting the State's rights to reject a request by Project Co for an Extended Rectification in 2.2.4c), the State or the Franchisee (as applicable) agrees that, without limiting Project Co's obligation to carry out the activities set out in clauses **Error! Reference source not found.** to **Error! Reference source not found.** within the original Response Time, Project Co will be granted a pre-agreed Extended Rectification where:
 - (i) a Failure Event has occurred in an area that is not accessible to Project Co either in accordance with the FCA, or where otherwise prevented by the Franchisee; and
 - (ii) there is redundancy provided to the assets such that there is no impact on Train Operations or the passenger experience created by the Failure Event. Determination of the level of impact will be in accordance with the Access Category B defined in the Operations and Maintenance Protocol, namely:
 - (A). no impact upon Train Operations;
 - (B). no adverse impact upon safety;
 - (C). no material adverse impact upon customer service;
 - (D). no material adverse impact on station operations or nominal levels of service;
 - (E). fire and life safety not being compromised – system availability must be as per the Fire Engineering Report;
 - (F). the activity not compromising the ability of the operator to deliver a safe Train Operations; and
 - (G). no material impact on Passenger Flow.
- k) Pre-agreed Extended Rectifications subject to clause 2.2.4j):
 - (i) will be documented within the Operations and Maintenance Protocols;
 - (ii) are not intended to be used as a means of diluting Project Co's obligations in other circumstances (e.g. the maintenance of essential spares); and
 - (iii) will not apply to Vertical Transportation.
- l) Where a pre-agreed Extended Rectification is applied under clause 2.2.4j), the Response Time and the Abatement Free Period will be extended by the amount of time access is unavailable.

2.2.5 System Failure Events

- a) Appendix B defines Failure Events that may be classified as System Failure Events.
- b) In accordance with Appendix B, a System Failure Event may be a:
 - (i) Platform SFE;
 - (ii) Station SFE;
 - (iii) Tunnel SFE; or
 - (iv) Total SFE.
- c) For the avoidance of doubt, Abatement Free Periods will not apply in regards to System Failure Events.

2.2.6 Performance Monitoring Methods

- a) The State may monitor the delivery of the Services using any method considered reasonable by the State as applicable, including the following ("**Monitoring Methods**"):
- (i) Project Co self-monitoring (in accordance with the Performance Monitoring Plan);
 - (ii) the State / Franchisee / Project Co reports to Help Desk, and Help Desk records;
 - (iii) comparison with agreed policies, procedures, manuals and work plans;
 - (iv) comparison against agreed benchmark (applies to format of reports and the like);
 - (v) analysis of information contained in Project Co systems and other operational records;
 - (vi) State and Franchisee audits (including analysis of complaints, random visits, validation checks of Project Co data and deliberate testing);
 - (vii) written reports from the Franchisee;
 - (viii) CCTV Footage; and
 - (ix) results of customer surveys undertaken by the State or Franchisee.

2.3 Minimum Services Specifications

2.3.1 Response

| Ref. | Specification | Service Failure | Level / points | Performance Assessment Period | Quality Failure Remedy Period |
|-------------------------------------|--|-----------------|----------------|-------------------------------|-------------------------------|
| Response (Maintained Assets) | | | | | |
| CM01 | a) Project Co must Respond to all Failure Events in accordance with section 2.2.1 within the Response Time set out in section 2.2.3d). | QF | 2 points | PR | N/A |

2.3.2 Management

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|--|---|-----------------|----------------|-------------------------------|-------------------------------|
| Management Structure | | | | | |
| CM02 | a) Project Co must keep the State advised of the management structure, responsibilities and lines of communication put in place by Project Co in respect of providing all the Services, in a manner consistent with the requirements of this Project Agreement. | QF | 2 points | M | N/A |
| Representatives of the State and Project Co | | | | | |
| CM03 | a) Project Co must act in accordance with the directions of the delegates of the State (nominated in accordance with section 1.4.4 a)) given in accordance with this Services Specification. | QF | 1 point | PR | D |

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|-------------------------------------|---|-----------------|-------------------|-------------------------------|-------------------------------|
| Maintenance Management Plans | | | | | |
| CM04 | <p>a) Project Co must maintain, update and submit the Maintenance Management Plans in accordance with the Project Requirements, and must ensure all Maintenance Management Plans are made available to all the relevant State’s Associates, Project Co’s Associates and the Franchisee in accordance with this CM04 and otherwise in accordance with this Services Specification, including Appendix F (Maintenance Management Plans).</p> <p>b) The Maintenance Management Plans must, each time they are submitted to the State, be submitted in electronic form with one hard copy (unless otherwise agreed).</p> <p>c) Project Co must update the Maintenance Management Plans:</p> <ul style="list-style-type: none"> A) annually from the commencement of the Maintenance Phase at least three months prior to the end of each Contract Year; or B) more frequently as reasonably requested by the State, or if the plans are otherwise updated or amended. <p>d) Prior to submission to the State in accordance with this CM04, Project Co must have consulted with the Franchisee and incorporated the Franchisee’s reasonable requests.</p> <p>e) <u>(Note: If Project Co forms the view (acting reasonably) that any Maintenance Management Plan is not required to be updated in a particular Contract Year on the basis that the then current version is already up to date, Project Co may submit written notice to this effect to the State at least three months prior to the end of the particular Contract Year. Any notice submitted by Project Co to the State pursuant to this CM04 d) must confirm in writing that the then current version of the Maintenance Management Plan is up to date and otherwise complies with the requirements of this Specific Services Specification.</u></p> <p>Upon receipt of a notice pursuant to this CM04 d), the State may in its sole and absolute discretion confirm in writing to Project Co that it is relieved from its obligation to update the Maintenance Management Plan for that particular Contract Year or otherwise request</p> | QF | 5 points per plan | Q | W |

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|--|---|-----------------|----------------|-------------------------------|-------------------------------|
| | Project Co to update the Maintenance Management Plan in accordance with CM04.) | | | | |
| Minimising Impact on Train Operations and Occupants | | | | | |
| CM05 | <p>a) Project Co must:</p> <ul style="list-style-type: none"> i) minimise disruption to the provision of Train Operations or to Users in the delivery of the Services in accordance with the Project Agreement, this Services Specification and the FCA; ii) maintain comprehensive operational Method Statements for planned and unscheduled activities incorporating risk assessments which consider the impact on Train Operations and Occupants. When a new Method Statement is created, it must be added to the applicable Maintenance Management Plan in accordance with CM04; iii) conduct a six-monthly review of their operational Method Statements in consultation with the State and the Franchisee; and iv) ensure that it does not in any way compromise the security requirements of the Stations or Tunnels as required by the FCA. | QF | 5 points | M | N/A |

2.3.3 Cooperation with Third Parties

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|---------------------------------------|---|-----------------|----------------|-------------------------------|-------------------------------|
| Liaison with the Other Parties | | | | | |
| CM06 | a) In connection with the provision of Services, Project Co must regularly consult, cooperate | QF | 5 points | M | N/A |

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|---------------------------------|--|-----------------|----------------|-------------------------------|-------------------------------|
| | <p>and coordinate with:</p> <ul style="list-style-type: none"> i) the Franchisee (in accordance with the FCA): <ul style="list-style-type: none"> A) in undertaking or preparing to undertake Services which may impact upon the provision of Train Operations or upon the convenience, comfort or well-being of Occupants; B) prior to commencing any unscheduled tasks which may impact upon the provision of Train Operations or upon the convenience, comfort or well-being of Occupants; or C) as otherwise required by the FCA and the Project Agreement; ii) the State's Associates; and iii) external advisers and Authorities as required, in respect of the Services. <p>b) Project Co must notify the State and the Franchisee immediately if any unplanned events or interruptions occur during the delivery of the Services which may disrupt the provision of Train Operations, or inconvenience or endanger Occupants.</p> | | | | |
| Monthly O&M Meetings | | | | | |
| CM07 | <ul style="list-style-type: none"> a) Project Co must ensure appropriate qualified and authorised representatives attend: <ul style="list-style-type: none"> i) monthly performance meetings with the State; ii) monthly (or more frequently if required in accordance with the FCA) operational meetings with the Franchisee and if applicable, the State; and iii) any other meeting as reasonably requested by the State or the Franchisee (in accordance with the FCA). b) Where requested by the State or by the Franchisee in accordance with the FCA (as applicable), Project Co must issue accurate and comprehensive records of such meetings to the State and Franchisee (as applicable) within 7 days of each meeting. | QF | 5 points | M | N/A |

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|-----------------------------|---|-----------------|----------------|-------------------------------|-------------------------------|
| Third Party Training | | | | | |
| CM08 | <p>a) Project Co must cooperate with the State and the Franchisee (in accordance with the FCA) to:</p> <ul style="list-style-type: none"> i) develop and maintain, training material and operational instructions for any of the Maintained Assets that may be operated by personnel other than Project Co's Associates; and ii) provide training as reasonably requested by the State or the Franchisee (in accordance with the FCA) from time to time to ensure that those persons identified in paragraph i) are appropriately knowledgeable and competent to operate such Maintained Assets. | QF | 2 points | M | W |
| CM09 | <p>a) Project Co must obtain approval from the Franchisee (in accordance with the FCA) for all new working practices, or working practices that have changed from those already agreed with the Franchisee and incorporated within the Maintenance Management Plans, before any such new or revised working practices are implemented.</p> <p>b) <u>(Note: Such approval or disapproval shall be confirmed in writing by the Franchisee (in accordance with the FCA) within 10 Business Days of receipt. The Franchisee's approval will not be unreasonably withheld however, it will be reasonable for the Franchisee to require the work practices to be reasonably amended to accommodate the provision of Train Operations (including the Franchisee's Train Accreditation), prior to granting its approval).</u></p> | QF | 5 points | M | W |
| CM10 | <p>a) Project Co must obtain approval for the proposed timing of delivery of all planned or scheduled Services, and the requirement for Franchisee involvement and local working practices from the Franchisee (in accordance with the FCA) to the extent that undertaking or preparing to undertake Services may impact upon the provision of Train Operations or upon the convenience, comfort and or well-being of the Franchisee employees or Occupants;</p> <p>b) <u>(Note: Such approvals must be confirmed in writing by the State or Franchisee (as</u></p> | QF | 5 points | M | W |

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|------|---|-----------------|----------------|-------------------------------|-------------------------------|
| | <i>applicable) before the commencement of the relevant Services.)</i> | | | | |

2.3.4 Quality Management

| Ref. | Service Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|--------------------------|--|-----------------|----------------|-------------------------------|-------------------------------|
| Quality Assurance | | | | | |
| CM11 | a) Project Co must comply with its Quality Management Plan maintained in accordance with CM04. | QF | 5 points | M | N/A |
| ISO 55001 | | | | | |
| CM12 | a) Project Co must maintain, or ensure the Maintenance Subcontractor maintains, an Asset Management System that: <ul style="list-style-type: none"> i) complies with all applicable Standards; and ii) is accredited to ISO 55001 (or equivalent if replaced) pertaining to the delivery of the Services. b) For avoidance of doubt, the accreditation to be provided under this CM12 must be specific to the delivery of the Services under the Agreement (rather than an overall corporate accreditation). | QF | 5 points | M | W |

2.3.5 Risk Management

| Ref. | Service Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|------------------------|---|-----------------|----------------|-------------------------------|-------------------------------|
| Risk Management | | | | | |
| CM13 | <p>a) Project Co must comply with its Risk Management Plan maintained in accordance with CM04.</p> <p>b) Project Co must, in cooperation and coordination with the Franchisee under the FCA:</p> <ul style="list-style-type: none"> i) ensure risk management is addressed throughout the performance of the Services; ii) ensure that the Project Activities are performed in accordance with: <ul style="list-style-type: none"> A) AS/NZS ISO 31000: 2009 - Risk Management and ISO/IEC 31010: 2009; B) AS4292 – Rail Safety Management; C) National Rail Safety Legislation; and D) the Risk Management Plan; and iii) implement risk management techniques to determine risks which could affect the provision of Train Operations and develop and implement risk management strategies to manage these risks, which must be documented in the Risk Management Plan. | QF | 5 points | M | N/A |
| CM14 | <p>a) Project Co must, in cooperation and coordination with the Franchisee under the FCA, produce a risk register that includes all hazards and risks associated with the Services. The risk register must be reflected in the Risk Management Plan and must include:</p> <ul style="list-style-type: none"> i) a description of all hazards and risks and their likely impact; ii) the risk rating assessed for each hazard and risk; iii) specific control measures to be implemented to eliminate or reduce the risk rating; iv) the residual risk rating following mitigations; | QF | 5 points | Q | W |

| Ref. | Service Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|------|---|-----------------|----------------|-------------------------------|-------------------------------|
| | <ul style="list-style-type: none"> v) the personnel responsible for monitoring implementation of the control measures; vi) consultative processes employed by Project Co in relation to the risk and the personnel involved in the consultative process; and vii) demonstration that risks to safety have been eliminated, so far as is reasonably practicable, and where elimination of risks to safety is not reasonably practical, those risks to safety have been minimised so far as is reasonably practicable. | | | | |

2.3.6 Human Resources Management

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|-------------------------------|---|-----------------|----------------|-------------------------------|-------------------------------|
| Recruitment | | | | | |
| CM15 | <ul style="list-style-type: none"> a) Project Co must ensure that sufficient and suitably trained, inducted and qualified persons are available at all times (24 hours a day 365(6) days a year) and in all respects to comply with the requirements of this Services Specification. b) Project Co must provide evidence of such qualifications and training to the State and the Franchisee as reasonably requested. | QF | 2 points | M | N/A |
| National Police Checks | | | | | |
| CM16 | <ul style="list-style-type: none"> a) Project Co must obtain a National Police Certificate for all persons employed or engaged on the Project Activities, and any further security clearance requested by the State, in accordance with Clause 62.5 of the Project Agreement. | QF | 2 points | PR | N/A |

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|-------------------------------|---|-----------------|----------------|-------------------------------|-------------------------------|
| Human Resources Issues | | | | | |
| CM17 | <p>a) Project Co must:</p> <ul style="list-style-type: none"> i) ensure that all of Project Co's Associates are of good character, are confident and competent to perform their duties; ii) ensure that all of Project Co's Associates are competent to read, write and verbally communicate in English; iii) ensure that Project Co's Associates observe appropriate standards of personal demeanour, presentation and customer service, in line with the Franchisee's customer service standards; iv) ensure that Project Co's Associates display identification of their name and employer's name at all times while on duty; v) comply with and ensure compliance by Project Co's Associates with all applicable Laws, Standards and the FCA; vi) ensure that no Project Co's Associate attends the Licensed Maintenance Areas if under the influence of any substance; vii) ensure that Project Co's Associates comply with the procedures identified and described in the Maintenance Management Plans; viii) release Project Co's Associates (as may be required from time to time in accordance with the FCA) to attend obligatory Franchisee training. Project Co must, at its own expense, provide suitably trained replacement staff so as not to compromise the level or quality of Services delivery during any absences of staff for the purpose of attendance at the Franchisee training; and ix) maintain documentary evidence of all licences, training records and other relevant Approvals in order to be able to demonstrate the competencies of all persons used to deliver the Services. | QF | 2 points | W | N/A |

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|--|---|-----------------|----------------|-------------------------------|-------------------------------|
| Services Training Program for Project Co's Associates | | | | | |
| CM18 | a) Project Co must: <ul style="list-style-type: none"> i) meet all statutory obligations in relation to training, including in respect of health and safety and environmental matters; ii) develop, maintain and deliver for all Project Co's Associates, an appropriate Services Training Program. The content and style of delivery must be updated by Project Co and reviews by the State in accordance with the Review Procedures on an annual basis (and at any time when circumstances change); and iii) The Services Training Program must incorporate the Franchisee material as reasonably requested by the Franchisee. | QF | 2 points | M | W |

2.3.7 Information Management

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|---------------------------|---|-----------------|----------------|-------------------------------|-------------------------------|
| Periodic Reporting | | | | | |
| CM19 | a) Project Co must prepare Periodic Reports that meet the requirements of Appendix D (Periodic Reporting Requirements) an electronic copy of which must be delivered to: <ul style="list-style-type: none"> i) the State; and ii) the Franchisee in regards of the commercially redacted version described in Appendix D b), within 10 Business Days after the end of each Operating Month. | QF | 25 points | M | W |

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|--------------------------|--|-----------------|----------------|-------------------------------|-------------------------------|
| General Reporting | | | | | |
| | a) Project Co must prepare and supply all information reasonably requested by the State, the Franchisee (in accordance with the FCA) or any person, firm, Authority or other body to whom the State is obliged to present information at any time in relation to the performance of any of the Services, including: | | | | |
| CM20 | i) information relating to safety, security and Failure Events that have impacted Train Operations and Users; and | QF | 10 points | PR | D |
| CM21 | ii) all other information. | QF | 1 point | PR | D |
| CM22 | a) Project Co must maintain records detailing any complaints made in relation to any of the Services and the action taken to redress the complaint, and must provide visibility of such records to the Franchisee at all times. Project Co must obtain the Franchisee's approval prior to issuing any communication to a User in regards to a complaint. b) Project Co must assist the State and/or Franchisee in responding to any complaint received from a third party in relation to the Services, as required by the State or Franchisee (in accordance with the FCA). | QF | 1 point | W | W |
| CM23 | a) Project Co must ensure that, on no more than two occasions in any rolling three-month period, any information, plan or report reasonably required by the State or any other information, plan or report required under this Services Specification to be submitted by Project Co to the State or the Franchisee, is submitted in a form that is: i) incomplete; ii) inaccurate; or iii) not in the format agreed at the commencement of the operating period or as required or amended from time to time in conjunction with the State or the Franchisee (applicable), | QF | 2 points | M | N/A |

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|--|---|-----------------|----------------|-------------------------------|-------------------------------|
| | and must resolve such shortfalls two Business Days or within such other period if agreed with the State or the Franchisee (as applicable). | | | | |
| Electronic Operational Document Library | | | | | |
| CM24 | <p>a) Project Co must maintain an Electronic Operational Document Library for use by Project Co, the State and the Franchisee to store operational documents relating to the Services, including:</p> <ul style="list-style-type: none"> i) records of inspections, audits, tests and maintenance required to ensure compliance with all Laws; ii) documentation required to support the Franchisee’s Train Accreditation; iii) the Maintenance Management Plans; iv) the Handover Package; v) copies of all Monthly Performance Reports; and vi) all other documentation to which Project Co and the State and the Franchisee would reasonably require joint access to in relation to the Services. <p>b) The Electronic Operational Document Library must be of a design and functionality approved by the State and as reasonably requested by the Franchisee, and must include as a minimum:</p> <ul style="list-style-type: none"> i) the ability to restrict access to certain areas of the library to specific users; and ii) the ability to restrict access to certain areas of the library to the State’s Associates only. <p>c) The State and the Franchisee must have continuous full (read, download and print) access to the Electronic Operational Document Library.</p> <p>d) Project Co must maintain weekly backups of the complete Electronic Operational Document Library.</p> | QF | 2 points | PR | T |

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|-------------------------|---|-----------------|----------------|-------------------------------|-------------------------------|
| | e) Project Co must ensure all Project Co produced documents described in paragraph a) above are uploaded into the Electronic Operational Document Library within two days of them being produced or otherwise available. | | | | |
| Handover Package | | | | | |
| CM25 | <p>a) Project Co must maintain and update the Handover Package regularly and at least annually from the commencement of the Maintenance Phase at a time that is three months prior to the end of each Contract Year and otherwise in accordance with the State's reasonable requirements, and in the same manner as a competent provider of services similar to the Services would do. Project Co must promptly submit an electronic copy of the updated Handover Package to the State for review in accordance with the Review Procedures.</p> <p>b) The purpose of the Handover Package is to assist the State to ensure that operations continue in the event that Project Co ceases to provide some or all of the Services.</p> <p>c) The Handover Package prepared and submitted under this Project Agreement, and all updated versions of the Handover Package prepared in accordance with this Services Specification, must be contained in an electronic database available to the State at all times and, as a minimum, contain the information identified in Appendix H (Handover Package).</p> <p>d) For each version of the Handover Package provided to the State, Project Co must provide written confirmation to the State that the Handover Package contains the information required by this Services Specification and is up to date.</p> <p>e) Project Co must retain copies of the most recent version of the Handover Package and provide these to any new services provider nominated by the State.</p> <p>f) <u>(Note: If Project Co forms the view (acting reasonably) that the Handover Package is not required to be updated in a particular Contract Year on the basis that that the then current version is already up to date, Project Co may submit written notice to this effect to the State at least three months prior to the end of the particular Contract Year. Any notice submitted by Project Co to the State pursuant to this CM25 f) must confirm in</u></p> | QF | 15 points | H | M |

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|-----------------------------------|--|-----------------|----------------|-------------------------------|-------------------------------|
| | <p><u>writing that the then current version of the Maintenance Management Plans is up to date and otherwise complies with the requirements of this Services Specification.</u></p> <p>g) <u>Upon receipt of a notice pursuant to this CM25 f), the State may in its sole and absolute discretion confirm in writing to Project Co that it is relieved from its obligation to update the Maintenance Management Plans for that particular Contract Year or otherwise request Project Co to update the Maintenance Management Plans in accordance with CM25.)</u></p> | | | | |
| Reviewable Services Manual | | | | | |
| CM26 | <p>a) For each of the individual Reviewable Services, Project Co must maintain a comprehensive manual, as part of the Maintenance Management Plans, which must identify the scope, delivery methodologies, processes, policies and all other information that would be necessary for an incoming subcontractor to be able to mobilise and deliver the Reviewable Service with no disruption to the Franchisee, Train Operations or Users.</p> <p>b) Except to the extent reasonably restricted by confidentiality, Project Co must include the applicable Reviewable Services Manual within the tender documentation whenever a Reviewable Service is being tendered in accordance with the Project Agreement.</p> | QF | 5 points | H | M |

2.3.8 Environmental Management

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|---------------------------------|---|-----------------|----------------|-------------------------------|-------------------------------|
| Environmental Management | | | | | |
| CM27 | a) Project Co must comply with the Operations Environmental Management Plan | QF | 5 points | M | W |

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|------|--|-----------------|----------------|-------------------------------|-------------------------------|
| | maintained in accordance with CM04. | | | | |
| CM28 | <p>a) Project Co must maintain and operate an Environmental Management System for the duration of the Maintenance Phase in accordance with the requirements of this Project Agreement and which is certified to ISO14001 and is in accordance with all applicable Laws relating to the Environment. This system must:</p> <ul style="list-style-type: none"> i) be developed and delivered: <ul style="list-style-type: none"> A) in accordance with, as a minimum, the State's Environmental Management Framework; and B) in consultation with the Franchisee's environmental management system; ii) be consistent with the Operations Environmental Management Plan; iii) be developed, implemented and maintained to align with the State's Environmental Management System and be certified to ISO 14001:2015 Environmental management systems – Requirements with guidance for use; iv) provide a structured approach for leadership endorsement, planning, risk management, support, performance evaluation and improvement of the Environmental Management System during project delivery; v) ensure that objectives and targets are consistent with the objectives of the State's Environmental Management Framework and identified significant risks, and provide plans to achieve the targets; vi) include processes for considering environmental hazards, risks and opportunities in accordance with the risk management standard AS/NZS/ISO31000:2009 and must include assessment of residual risks and opportunities; vii) include details of all monitoring, incident management and reporting requirements; and viii) ensure processes are in place to continuously improve the suitability, adequacy and effectiveness of the Environmental Management System. | QF | 5 points | Q | M |

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|------|--|-----------------|----------------|-------------------------------|-------------------------------|
| CM29 | <p>a) Project Co, in designing its Services delivery models, must demonstrate a proactive and integrated approach to sustainable development, including in relation to the following areas:</p> <ul style="list-style-type: none"> i) energy conservation and minimising carbon footprint; ii) pollution; iii) procurement; iv) waste management (including recycling); and v) monitoring and auditing. | QF | 2 points | M | M |

2.3.9 Occupational Health and Safety Management

| Ref. | Service Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|--|---|-----------------|----------------|-------------------------------|-------------------------------|
| General Health and Safety Obligations | | | | | |
| CM30 | a) Project Co must comply with the Health and Safety Management Plan maintained in accordance with CM04. | QF | 5 points | M | N/A |
| CM31 | <p>a) Project Co must comply with the Franchisee's safety management procedures (as advised in accordance with the FCA), including where applicable, the requirement to obtain:</p> <ul style="list-style-type: none"> i) authority for Track Occupations; ii) Franchisee authorisation prior to commencing an applicable Maintenance activity and; | QF | 20 points | PR | N/A |

| Ref. | Service Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|-------------|---|-----------------|----------------|-------------------------------|-------------------------------|
| | iii) Franchisee approval upon completion of an applicable Maintenance activity. | | | | |
| CM32 | a) Project Co must: <ul style="list-style-type: none"> i) advise the State of any breaches of the OHS Legislation; ii) maintain a register of MSDS for all hazardous chemicals used by Project Co in the delivery of Services (including solvents and cleaning products) and maintain a copy of all MSDS immediately near all stored chemicals; iii) provide all Project Co's Associates with suitable and appropriate personal protective equipment, uniforms and work wear; iv) maintain and keep up-to-date health and safety records and documentation and make these available for inspection by the State and the Franchisee; v) proactively participate in any associated safety forum, including attending all the Franchisee's OH&S meetings when required; vi) administer hazard and safety notices, recording, distributing and evaluating such notices and ensuring that all required notification and rectification procedures relating to any Maintained Assets are complied with and/or actioned; and vii) ensure that all required notification procedures to the State, the Franchisee, or any other Authority of any Equipment or Plant failure are complied with. | QF | 2 points | M | N/A |
| CM33 | a) Project Co must: <ul style="list-style-type: none"> i) comply with the Project Agreement in regards to Incidents; ii) use the State's incident management system to capture and report on Health and Safety Incidents; iii) report on and monitor any non-conformances identified in any health and safety audits; iv) manage and record the close out of incident investigations in cooperation with the | QF | 10 points | PR | N/A |

| Ref. | Service Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|------|--|-----------------|----------------|-------------------------------|-------------------------------|
| | <p>Franchisee; and</p> <p>v) report on safety performance; in accordance with processes instructed by the State from time to time.</p> <p>b) Project Co must:</p> <p>i) immediately advise the State and the Franchisee in writing of any act, fact or circumstance associated with the activities of Project Co, or any Project Co's Associate, relevant to the ability of Project Co to perform the Services in a manner that is safe and without risks to health; and</p> <p>ii) prepare and submit to the State and the Franchisee within the Monthly Performance Report a 'Monthly Health and Safety Performance Report' for the previous calendar month that contains all of the information as reasonably required by the State and the Franchisee.</p> | | | | |

2.3.10 Train Accreditation

| Ref. | Service Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|----------------------------|---|-----------------|----------------|-------------------------------|-------------------------------|
| Train Accreditation | | | | | |
| CM34 | a) Project Co must support the Franchisee in its maintenance and variation of the Franchisee's Train Accreditation, as reasonably requested by the Franchisee. | QF | 10 points | PR | N/A |
| CM35 | a) Project Co must immediately advise the State and the Franchisee in the event that it becomes aware of any material breach by Project Co (or Project Co Associate) of the Franchisee's Train Accreditation. | QF | 10 points | PR | N/A |

2.3.11 Emergency Risk Management

| Ref. | Service Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|---------------------------|--|-----------------|----------------|-------------------------------|-------------------------------|
| Emergency Planning | | | | | |
| CM36 | <p>a) Project Co must, in accordance with the FCA:</p> <ul style="list-style-type: none"> i) assist the Franchisee, to the extent reasonably requested, in the development, implementation and periodic review of the Franchisee's emergency management plan with which they will be required to comply; and ii) update the required inputs for the Franchisee's emergency management plan as required. | QF | 10 points | M | W |
| CM37 | <p>a) Project Co must:</p> <ul style="list-style-type: none"> i) cooperate with the Franchisee (in accordance with the FCA) in the carrying out tests and audits of fire and life safety systems to ensure they interface and operate with Maintained Assets in compliance with the FFP Warranty; and ii) provide accurate and detailed records of all testing of the Maintained Assets as requested by the Franchisee in accordance with the FCA, in support of Franchisee's obligations in respect of fire and life safety and Train Accreditation held by the Franchisee. | QF | 5 points | M | W |
| CM38 | <p>a) Project Co must ensure that all Project Co's Associates:</p> <ul style="list-style-type: none"> i) participate in emergency drills, including security and counter-terrorism exercises, carried out in accordance with all applicable Laws and lawful directions of the Franchisee (in accordance with the FCA); and ii) respond to any emergency incident within the Licensed Maintenance Areas in accordance with the Franchisee's emergency management plan. | QF | 5 points | PR | N/A |

2.3.12 Materials, Equipment and Consumables

| Ref. | Service Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|---|---|-----------------|----------------|-------------------------------|-------------------------------|
| Materials, Equipment and Consumables | | | | | |
| CM39 | <p>a) Project Co must:</p> <ul style="list-style-type: none"> i) provide such equipment and consumables as are necessary for the provision of the Services at Project Co's cost and must ensure that such equipment is maintained in such a manner and replaced from time to time, so as to ensure that the health and/or safety of Occupants is protected at all times; ii) ensure sufficient stocks of materials, equipment and consumables are maintained for the provision of the Services and that such materials are stored in a clean and tidy manner in areas approved by the Franchisee in accordance with the FCA, and in a manner that ensures access to such materials and consumables is controlled in accordance with protocols approved by the Franchisee (in accordance with the FCA); and iii) make all arrangements for the delivery and distribution of stocks of consumables, materials and other equipment required for the provision of the Services as approved by the Franchisee in accordance with the FCA. | QF | 5 points | M | N/A |
| CM40 | <ul style="list-style-type: none"> a) Project Co must obtain the written approval of the Franchisee (in accordance with the FCA) prior to the use of all chemical products (including cleaning products, herbicides, insecticides, biocides and pesticides) in or around the Licensed Maintenance Areas to confirm that no product will interfere with or affect the provision of Train Operations or adversely affect the health and safety of Occupants. b) Project Co must ensure access to and the use of chemicals are strictly controlled and monitored and fully comply with all relevant manufacturers' instructions, Standards, applicable Laws and the FCA. Records of the use of such chemicals must be available for inspection by the Franchisee and other authorised organisations or personnel. | QF | 2 points | M | N/A |

2.3.13 Performance Monitoring and Reporting

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|--------------------------------------|---|-----------------|----------------|-------------------------------|-------------------------------|
| Performance Data | | | | | |
| CM41 | <p>a) Project Co must provide all Performance Data required under this Project Agreement, and otherwise as reasonably required by the State, to enable the measurement of Project Co's performance under this Services Specification.</p> <p>b) Project Co must ensure the availability and continuous integrity of all Performance Data, and ensure that all Performance Data is accurate, complete and correct within 24 hours of that Performance Data being collected, created or otherwise recorded.</p> <p>c) Project Co must ensure that Performance Data is not amended, deleted or destroyed unless prior written authorisation is provided by the State.</p> <p>d) If any Performance Data is amended, deleted or destroyed with the authorisation of the State, Project Co must prepare, record and retain:</p> <ul style="list-style-type: none"> i) details of the item of Performance Data amended, deleted or destroyed; ii) the reason given for the amendment, deletion or destruction; iii) the date and time of the amendment, deletion or destruction; iv) details of the person who amended, deleted or destroyed the relevant item of Performance Data; and v) details of the person who authorised the amendment, deletion or destruction of the relevant item of Performance Data. | QF | 25 points | M | N/A |
| Performance Monitoring Audits | | | | | |
| CM42 | a) Project Co must give such assistance in accordance with Clause 14.4 (Audits) of the Project Agreement and as otherwise reasonably required by the State in respect of any monitoring, review or audit under paragraph b), including by providing additional copies of documents used, prepared or produced in connection with Project Co's performance | QF | 15 points | M | W |

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|------------------------------------|--|-----------------|----------------|-------------------------------|-------------------------------|
| | <p>monitoring activities or the provision of the Services and forwarding those document to the State or such other place or person notified by the State as noted below.</p> <p>b) <u>(Note: The State and any person authorised by it may monitor and review, upon giving reasonable notice to Project Co (except in the case of an Emergency when no notice is required) at any time during the Maintenance Phase, or require an audit of Project Co's performance or its performance monitoring system (including the Performance Monitoring Plan) any time up to six months after the end of the Term.)</u></p> | | | | |
| Performance Monitoring Plan | | | | | |
| CM43 | a) Project Co must provide the State with continuous read and print access to all information, reports and data used by Project Co in measuring its performance under the Performance Monitoring Plan, by means of a web-portal or similar. | QF | 2 points | PR | T |
| CM44 | <p>a) Project Co must:</p> <p>i) monitor its own performance in accordance with the Performance Monitoring Plan; and</p> <p>ii) provide the State with 24 hours' notice prior to undertaking all inspections and audits, and allow the State, or any person delegated by the State, to attend such inspections and audits.</p> <p>b) Project Co must submit as part of the Monthly Performance Report a summary of the performance monitoring conducted during the previous month. The summary must be in accordance with the Performance Monitoring Plan and detail where the performance standards have not been achieved, including how Project Co intends to address the shortfall in performance.</p> | QF | 15 points | M | W |

2.3.14 Repeat Failure Events

| Ref. | Service Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|------|---|-----------------|----------------|-------------------------------|-------------------------------|
| CM45 | <p>a) Project Co must ensure that a Failure Event of the same or substantially similar type does not occur to the same asset on more than three separate occasions in any rolling two-month period irrespective of whether or not the Failure Event is rectified within the Abatement Free Period or otherwise.</p> <p>b) Note: This CM45 will not apply in respect of lifts or escalators.</p> | QF | 5 points | PR | N/A |

2.3.15 Outstanding Final Acceptance Works

| Ref. | Service Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|------|--|-----------------|----------------|-------------------------------|-------------------------------|
| CM46 | a) Project Co must complete all Final Acceptance Works outstanding at the Date of Final Acceptance as that term is defined in the Project Agreement. | QF | 10 points | PR | W |

3 Help Desk Services

3.1 Key objectives

- a) Project Co must provide comprehensive Help Desk Services to support the delivery of Services. The Help Desk Services must be fully integrated with all Services and act as a communication hub for all matters relating to the Services. The Help Desk must:
 - (i) be effective, flexible, transparent and efficient in coping with varying demands;
 - (ii) facilitate responses to service requests and reported Service Failures in accordance with Response and Rectification requirements (as applicable);
 - (iii) ensure that effective Help Desk Services are implemented and do not conflict with the provision of Train Operations or the FCA; and
 - (iv) marshal resources to the maximum benefit of the State.

3.2 Scope

- a) In addition to the requirements of this Services Specification, Project Co must comply with all the requirements set out in section 2 (Contract Management and Administration Services) relevant to the delivery of the Help Desk Services.
- b) Project Co must provide the Help Desk Services 24 hours a day, 365(6) days per calendar year in accordance with the requirements of this Services Specification.
- c) The Help Desk must form the day-to-day notification interface between the State and Franchisee (as applicable) (on the one hand) and Project Co (on the other) in relation to the following matters:
 - (i) the reporting of all queries and requests relating to the Services;
 - (ii) the notification of faults and complaints from any of the State's Associates or Franchisee's Associates relating to the Services;
 - (iii) the notification of Services Failures by the State's Associates, Franchisee's Associates or Project Co and classification of Failure Events;
 - (iv) requests for temporary changes to the delivery and scope of Services by the State or the Franchisee;
 - (v) monitoring of alarms from the BMS and other systems as required in order to comply with the FFP Warranty (as appropriate);
 - (vi) the issue of instructions and notices by the State or the Franchisee (in accordance with the FCA) in relation to the Services;
 - (vii) requests for information relating to the operation of the Help Desk or the provision of the Services; and
 - (viii) update of progress regarding any fault notified to the Help Desk.
- d) The Help Desk must comprise a staffed facility receiving, logging and responding appropriately to direct verbal, telephone, letter, e-mail and other forms of communications, automatically notifying the applicable users when a job is logged and liaising with users on the progress of work.
- e) The Help Desk must also effectively respond to all received (non-Service) related issues/calls, ensuring that they are communicated expediently to the most appropriate representative of the State or Franchisee.
- f) It is recognised that the Help Desk may co-ordinate its response through secondary personnel specific to a Service. However, at all times the central Help Desk must be fully responsible for managing and coordinating the responses and must be the single point of contact for the State and Franchisee.

3.3 Minimum Services Specifications

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|------------------------------------|--|-----------------|----------------|-------------------------------|-------------------------------|
| Installation and setting up | | | | | |
| HD01 | a) Project Co must ensure that clear operational and user instructions on the function of the Help Desk are maintained and provided to the State and the Franchisee in a form agreed by the State and updates must be provided prior to any changes being implemented. | QF | 5 points | M | W |
| HD02 | a) Project Co must prepare and maintain guidance material to assist the Help Desk in applying the Service Failure Assessment Criteria, for review in accordance with the Review Procedures. The material must include appropriate escalation processes in the event that Project Co's initial action is unlikely to be effective in meeting Project Co's Response and Rectification obligations. This material must form part of the Management Plans and must be reviewed and updated at least once a year or more frequently if considered necessary by the State. | QF | 5 points | M | W |
| HD03 | a) Help Desk staff must be sufficiently knowledgeable to assess the likely classification of Services requirements, as specified in the Management Plans, resulting from a request made through, or Service Failure reported to, the Help Desk in accordance with the agreed Service Failure Assessment Criteria and they must co-ordinate a response accordingly. b) Project Co must train Help Desk staff to respond in an informed manner to enquiries in accordance with the Maintenance Management Plans. | QF | 5 points | M | W |
| Operating the Help Desk | | | | | |
| HD04 | a) Project Co must log all requests made and Service Failures reported to the Help Desk. Project Co must record all relevant details, including the following information: i) name and location of the person logging the query or Service Failure; | QF | 2 points | PR | N/A |

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|------|---|-----------------|----------------|-------------------------------|-------------------------------|
| | <ul style="list-style-type: none"> ii) date and time the request was made or Service Failure was reported; iii) location of the areas and associated Functional Unit Categories affected by the Service Failure; iv) nature of the request or Service Failure; v) any systems affected by the Service Failure; vi) the service required; vii) Failure Event Level, including any subsequent changes in Failure Event Level; viii) unique request reference; ix) details relating to any extensions of the Response or Abatement Free Periods (including authorisation of any Temporary Fix); x) date and time request passed to the relevant person responsible for rectifying the Service Failure or responding to the request; xi) Response and Rectification action taken; xii) details of any further action or monitoring required to ameliorate the risk of future or consequential Service Failures; xiii) the actual Response time; xiv) the actual Rectification time; and xv) the name(s) of the person(s) acting on behalf of Project Co who undertook both the Response, Temporary Fix (if any) and Rectification. <p>b) Project Co's obligation to capture Service Failures described in paragraph a) extends to all Service Failures to which Project Co becomes aware, including those observed by Project Co's Associates either visually, or by an alarm (BMS or similar).</p> | | | | |
| HD05 | a) The Help Desk must provide the ability for the Help Desk user to raise requests / report Events | QF | 10 points | M | W |

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|------|--|-----------------|----------------|-------------------------------|-------------------------------|
| | via (as a minimum): i) telephone; ii) email; iii) intranet based work request portal (of a format agreed with the State); and iv) written communication. | | | | |
| HD06 | a) Project Co must ensure that all Help Desk staff implement an immediate call forward response in accordance with the State's instructions to all issues/calls received which do not relate to Project Co's responsibilities under this Service Specification. | QF | 5 points | M | N/A |
| HD07 | a) Where a request / Event relates to the Services: i) Project Co must inform the Help Desk user as to the proposed course of action and Response Time and anticipated time for completion; ii) the Help Desk system must send an automated confirmation immediately after each request / Event is successfully logged, for every logged job by a Help Desk user. Where required by the State, selected confirmations (identified by location, Failure Event Level or any other criteria) must also be copied to the State and /or the Franchisee. The confirmation must contain the following information, as a minimum: A) name and location of the person logging the request, query or Service Failure; B) date and time the request or query was made or Service Failure was reported; C) location of the areas and associated Functional Unit Categories affected by the Service Failure; D) nature of the request or Service Failure; E) the service required; F) the assigned Failure Event Level; and | QF | 2 points | PR | N/A |

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|------|--|-----------------|----------------|-------------------------------|-------------------------------|
| | <p>G) unique request reference;</p> <p>iii) Project Co must co-ordinate the appropriate response to the request/Event reported and on completion inform the Help Desk of the achieved Response and Rectification and the action undertaken. This information is to be logged onto the Help Desk system; and</p> <p>iv) Project Co must keep the Help Desk user informed should problems occur while responding to a request or Responding to or Rectifying (as applicable) any Failure Event.</p> | | | | |
| HD08 | <p>a) Once information has been logged with the Help Desk, Project Co must ensure that entries cannot be amended unless there is a system in place to record the:</p> <p>i) exact nature and impact of the amendment;</p> <p>ii) reason for the amendment;</p> <p>iii) name of the person who made the amendment; and</p> <p>iv) name of the person who authorised the amendment.</p> | QF | 5 points | M | N/A |
| HD09 | <p>a) Project Co must ensure that the Help Desk provides an appropriate and timely acknowledgment of each communication, having regard to the nature and importance of the request for assistance. Project Co must ensure that the Help Desk:</p> <p>i) provides a personal, non-automated answer to each telephone call within 30 seconds for 75% of the calls in any month, and within a maximum of 45 seconds for all calls;</p> <p>ii) confirms receipt of electronic mail within five minutes; and</p> <p>iii) answers other written communications within two Business Days of receipt of the relevant correspondence.</p> | QF | 2 points | M | N/A |
| HD10 | <p>a) Project Co must ensure that the State and the Franchisee are given full live electronic (read and print only) access to all Help Desk records at all times and be able to track the progress of all requests/ Service Failures.</p> <p>b) Project Co must ensure the Help Desk is capable of providing read and print only access and</p> | QF | 5 points | M | N/A |

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|------|--|-----------------|----------------|-------------------------------|-------------------------------|
| | <p>the ability to track the progress of all requests/Service Failures, on a consolidated basis for each Station.</p> <p>c) <u>(Note: Access to all live help desk data for all Stations on a consolidated basis will need to be available to 10 concurrent users.)</u></p> | | | | |
| HD11 | a) Project Co must ensure that an appropriate back-up system is in place to ensure that Help Desk data and records cannot be lost or destroyed as a result of software or systems failure or any other occurrence. The back-up system need not be maintained on a real-time basis but must be backed up daily. | QF | 25 points | M | N/A |
| HD12 | a) At the end of each Month of the Maintenance Phase, Project Co must provide the State with a soft copy of the Help Desk data and records for that month. | QF | 5 points | M | W |

4 Asset Management Services

4.1 Key objectives

- a) Project Co must provide comprehensive Asset Management Services to the Licensed Maintenance Areas to ensure the integrity and functionality of structure, fabric and systems comprising the Maintained Assets, maintain public safety and facilitate the provision of Train Operations. Project Co must:
 - (i) provide efficient, responsive, comprehensive and effective Asset Management Services which are based on ensuring the Maintained Assets:
 - (A). meet the FFP Warranty;
 - (B). meet the relevant Handover Condition; and
 - (C). are capable of being operated as anticipated by the Project Requirements and in accordance with Best Operating Practices,for the duration of the Maintenance Phase;
 - (ii) ensure that all systems, buildings and Utilities function as required by the Project Agreement and these Services Specifications and do not cause or create any unacceptable hazard to the environment and/or any person within the Licensed Maintenance Areas;
 - (iii) maintain a safe and secure environment in accordance with the Franchisee's safety management system and the Franchisee's Train Accreditation;
 - (iv) maintain and manage systems to reduce greenhouse gas emissions, peak energy demand, energy consumption costs and water consumption; and
 - (v) ensure that Asset Management Services are delivered in a manner that minimises the impact on Train Operations and passengers.

4.2 Scope

- a) In addition to satisfying requirements of this section 4 (Asset Management Services), Project Co must comply with all the requirements set out in section 2 (Contract Management and Administration Services) relevant to the delivery of the Asset Management Services.
- b) Project Co must provide the Asset Management Services 24 hours per day, 365(6) days per calendar year in accordance with the requirements of this Services Specification.
- c) Project Co must provide the following elements under this Services Specification:
 - (i) a comprehensive Asset Management Plan in accordance with ISO 55001 that applies a reliability and predictive based approach to maintenance and replacement of all Maintained Assets, that is aligned with the Asset Management approaches adopted by the State and Franchisee;
 - (ii) a comprehensive maintenance service including Planned Preventative Maintenance and Unscheduled Repairs and Maintenance in relation to the Maintained Assets;
 - (iii) periodic refurbishment of the Maintained Assets as necessary to maintain the functionality, reliability, look and amenity of the Maintained Assets consistent with the other requirements of this Services Specification, and to meet the Asset Standards out in Appendix I (Asset Standards); and
 - (iv) additions or modifications to the Maintained Assets as necessary to ensure that the Maintained Assets are at all times in accordance with the FFP Warranty and to maintain the functionality, reliability, look and amenity of the Maintained Assets consistent with the other requirements of this Services Specification.

- d) Project Co will be responsible for the maintenance, refurbishment and replacement as necessary of all elements of the Maintained Assets in accordance with this section.
- e) Project Co must bear all costs associated with:
 - (i) inspecting and testing Maintained Assets to ensure they are compliant with all applicable Laws, Best Maintenance Practices and Standards;
 - (ii) 24 hours per day, 365(6) days per year monitoring and response to equipment failures, environmental alarms and other alarms or alert events;
 - (iii) producing such reports as required by applicable Laws and Standards, informing the State and the Franchisee which statutory tests have been carried out across the Maintained Assets and making available to the State and the Franchisee copies of such reports; and
 - (iv) providing all information relating to the provision of the Services as reasonably requested by the Franchisee in accordance with the FCA to enable the Franchisee to obtain and maintain its Train Accreditation.
- f) For the purposes of maintenance access, the period between last train and first train will generally be 12.30am to 4.30am, with practical occupation within the tunnel available between 1:30am – 3:30am, except for the following:
 - (i) access requiring electrical isolation;
 - (ii) periods of Designated Special Events;
 - (iii) Saturday and Sunday mornings;
 - (iv) the Franchisee's operational requirement to relocate trains and other Franchisee requirements for network balancing; and
 - (v) other occasional unforeseen operational requirements.

4.3 Minimum Services Specifications

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|---|---|-----------------|----------------|-------------------------------|-------------------------------|
| Asset Management | | | | | |
| AM01 | <p>a) Project Co must prepare an Asset Management Plan in accordance with CM04 and Appendix F (Maintenance Management Plans), and must maintain and regularly update the Asset Management Plan in accordance with Best Maintenance Practice, and promptly provide an electronic and hard copy of the updated Asset Management Plan to:</p> <ul style="list-style-type: none"> i) the State for review in accordance with the Review Procedures; and ii) the Franchisee in accordance with the FCA. <p>b) Project Co must update, and submit to the State for review in accordance with the Review Procedures, an updated Asset Management Plan:</p> <ul style="list-style-type: none"> i) no later than two months prior to the start of each Contract Year; and ii) at any time any change is proposed to the Asset Management Plan. <p>c) If any element of the Asset Management Plan changes during a Contract Year, Project Co must resubmit that changed element and any affected elements as part of the subsequent Monthly Performance Report.</p> | QF | 20 points | Q | M |
| AM02 | a) Project Co must comply with the Annual Works Plan as part of the Asset Management Plan. | QF | 5 points | Q | M |
| Planned Preventative Maintenance and Refurbishment | | | | | |
| AM03 | a) Project Co must provide a comprehensive PPM Service at such times and in a manner that is consistent with the PPM Program, its Method Statements, Best Maintenance Practice and each Specific Services Specification to ensure that the Maintained Assets are at all times Fit For Purpose, including by meeting: | QF | 5 points | M | N/A |

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|-------------------------------------|--|-----------------|----------------|-------------------------------|-------------------------------|
| | <ul style="list-style-type: none"> i) the specifications in Appendix I (Asset Standards); ii) the requirements of all applicable Laws; iii) the FFP Warranty; iv) Asset Management Manual requirements for all systems; and v) the requirements of all applicable Standards. <p>b) The PPM Program must include provision for a daily inspection of all areas of each Station to identify and record any Faults or damage to Maintained Assets.</p> <p>c) Failure to comply with the FFP Warranty at any time must be treated as an indication that an item does not operate as intended, unless the State in its absolute discretion agrees otherwise.</p> <p>d) The PPM Services must seek to actively reduce the risk of unscheduled repairs and maintenance work, which may or may not affect the provision of Train Operations or User convenience, and to optimise the reliability, performance and efficiency of the Maintained Assets, including all Plant and Equipment.</p> | | | | |
| AM04 | a) Project Co must comply with the PPM Program as part of the Asset Management Plan and otherwise carry out and complete all PPM in a manner that minimises disruption to the Franchisee or Users, and the provision of Train Operations. | QF | 5 points | M | N/A |
| Monthly Maintenance Schedule | | | | | |
| AM05 | <p>a) No later than 10 Business Days before the commencement of each Operating Month from the Date of Final Acceptance, Project Co must:</p> <ul style="list-style-type: none"> i) meet with the State and the Franchisee (in accordance with the FCA) to consult regarding the maintenance requirements for the Maintained Assets for the ensuing two months (or such longer period as required by the State or the Franchisee (in accordance with the FCA) in respect of works that may result in a disruption to Train Operations; and ii) submit to the State (for review in accordance with the Review Procedures) and the | QF | 5 points | M | D |

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|------|---|-----------------|----------------|-------------------------------|-------------------------------|
| | <p>Franchisee a detailed monthly schedule of maintenance work on a rolling two-month basis, based on the Asset Management Plan and consistent with the Annual Works Plan (unless otherwise agreed with the State) and otherwise in accordance with the requirements of and containing the information required by this Services Specification.</p> <p>b) Each new Monthly Maintenance Schedule must, where required, update the maintenance requirements set out in the previous Monthly Maintenance Schedule for that month which is covered by both the new and previous Monthly Maintenance Schedule.</p> <p>c) The Monthly Maintenance Schedule must be consistent with the works described in the Annual Works Plan, unless otherwise agreed with the State, and must include details of the following:</p> <ul style="list-style-type: none"> i) any activities for the following two months which may cause risk of disruption to Users or the provision of Train Operations, the nature of any such disruption and the time and date of the disruption; ii) how Project Co intends to minimise or avoid disruption to passengers or the Train Operations; iii) details of all necessary interfaces with, or cooperation required from, the Franchisee (in accordance with the FCA); iv) any State's Associate with whom Project Co's Associates will directly interface regarding the delivery of the Asset Management Services; v) details of each Project Co's Associate who will be carrying out the work; and vi) a program of all proposed testing to be undertaken in the following two months. <p>d) Where requested by the Franchisee in accordance with the FCA, the Monthly Maintenance Schedule must include a detailed risk assessment against any task that has the potential to impact Train Operations and passengers.</p> | | | | |
| AM06 | a) Project Co must comply with the Monthly Maintenance Schedule. | QF | 5 points | M | M |

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|---|--|-----------------|-----------------|-------------------------------|-------------------------------|
| <p>AM06 A</p> | <p>a) Project Co:</p> <ul style="list-style-type: none"> i) must not, subject to this Project Agreement (including this Services Specification), provide any scheduled Asset Management Services other than in accordance with the Monthly Maintenance Schedules (as varied in accordance with this Services Specification, or the Project Agreement); and ii) must give at least 7 days' notice to the Franchisee of any request for approval to vary a Monthly Maintenance Schedule and must not vary any Monthly Maintenance Schedule unless such approval is received from the Franchisee in accordance with the FCA (such approval not to be unreasonably withheld if the variation does not interfere with passengers or the provision of Train Operations). <p>b) <u>(Note: A refusal by the Franchisee, given in accordance with paragraph b)ii) to vary a Monthly Maintenance Schedule will not:</u></p> <ul style="list-style-type: none"> i) <u>relieve Project Co from, or alter or affect, Project Co's obligations and liabilities;</u> ii) <u>prejudice the State's rights against Project Co; or</u> iii) <u>entitle Project Co to make any Claim against the State.</u> <p>in respect of the provision of the Services in accordance with this Services Specification whether under this Project Agreement or at Law.)</p> | <p>QF</p> | <p>2 points</p> | <p>PR</p> | <p>N/A</p> |
| <p>Unscheduled Repairs and Maintenance</p> | | | | | |
| <p>AM07</p> | <p>a) Project Co must provide a comprehensive unscheduled repairs, maintenance and refurbishment service in accordance with the specified Response and Abatement Free Periods and requirements to ensure that at all times, the Maintained Assets are Fit For Purpose, including by meeting, at all times, the specifications set out in Appendix I (Asset Standards).</p> <p>b) In providing a comprehensive Unscheduled Repairs and Maintenance service, Project Co must:</p> <ul style="list-style-type: none"> i) at all times perform its obligations in a manner that is consistent with Best Maintenance | <p>FE</p> | <p>A-E</p> | <p>C</p> | <p>N/A</p> |

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|---------------------------------|--|-----------------|----------------|-------------------------------|-------------------------------|
| | <p>Practices and compliant with the requirements of the FFP Warranty and all applicable Standards;</p> <p>ii) comply with all instructions received from the State or the Franchisee (in accordance with the FCA) in regards to maintaining the safety of Occupants, and minimising disruption to passengers and the provision of Train Operations;</p> <p>iii) provide technical and managerial support and advice as reasonably requested by the State or the Franchisee (in accordance with the FCA); and</p> <p>iv) keep the State and the Franchisee fully informed regarding Project Co's plans and status in regards to Level A and Level C Failure Events.</p> <p>c) Failure to meet any of the requirements of AM03a) at any time must be treated as an indication that an item does not operate as intended, unless the State in its absolute discretion agrees otherwise.</p> | | | | |
| Maintenance Access Times | | | | | |
| AM08 | <p>a) Notwithstanding any notification in the Monthly Maintenance Schedule, Project Co must obtain approval (not to be unreasonably withheld or delayed, in accordance with the FCA) from the Franchisee 7 days (or such other time required in accordance with the FCA) prior to undertaking any activity that may disrupt the Franchisee in the provision of Train Operations. Project Co must comply (at its own cost) with any reasonable requests from the Franchisee (in accordance with the FCA) regarding measures required to mitigate disruption to the Franchisee.</p> | QF | 2 points | D | N/A |
| AM09 | <p>a) Project Co must comply with any instruction from the Franchisee (issued in accordance with the FCA) that an activity described in the Monthly Maintenance Schedule be delayed or rescheduled if it is likely to disrupt the Franchisee in the provision of Train Operations, unless Project Co reasonably believes that such delay or rescheduling would result in a breach of the Law or would increase the likelihood of a Service Failure, in which case Project Co must notify the Franchisee in writing of such opinion.</p> | QF | 1 point | PR | N/A |

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
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| | <p>b) <u>(Note: Upon receipt of such a notice from Project Co referred to in a), Project Co may refer the matter to the Franchisee which may:</u></p> <p>i) <u>withdraw its request for the activity to be delayed; or</u></p> <p>ii) <u>require that the activity be delayed notwithstanding Project Co's notice, in which case Project Co must comply with such direction.)</u></p> | | | | |
| AM10 | <p>a) If unplanned events or interruptions occur during PPM or Refurbishment Works which may disrupt the provision of Train Operations, endanger the Occupants or breach any Law, Project Co must notify the State and the Franchisee immediately, and comply with all instructions from the State or the Franchisee (in accordance with the FCA) in regards to minimising disruption to Train Operations, or the safety of Occupants.</p> | QF | 10 points | PR | N/A |
| AM11 | <p>a) Without limitation to AM08 and notwithstanding any notification in the Monthly Maintenance Schedule, Project Co must obtain written approval (not to be unreasonably withheld or delayed in accordance with the FCA) from the Franchisee two days prior to commencing PPM or Refurbishment Works which will or may affect:</p> <p>i) fire or life safety systems;</p> <p>ii) Vertical Transportation;</p> <p>iii) ventilation systems;</p> <p>iv) electricity supplies;</p> <p>v) natural gas supplies;</p> <p>vi) water supplies;</p> <p>vii) disruption through vibration or acoustic affects;</p> <p>viii) waste water systems;</p> <p>ix) data or voice communications;</p> | QF | 10 points | PR | N/A |

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|---|---|-----------------|----------------|-------------------------------|-------------------------------|
| | <ul style="list-style-type: none"> x) heating, cooling and ventilation; xi) security management systems; xii) BMS; or xiii) otherwise impact the performance by the Franchisee of Train Operations. | | | | |
| AM12 | a) Should any unscheduled Maintenance or repairs be required which cause or have the potential to cause disruption to provision of Train Operations or to Occupants, Project Co must obtain the Franchisee's agreement (in accordance with the FCA) prior to commencing such activities. | QF | 5 points | PR | N/A |
| Cooperation with Franchisee | | | | | |
| AM13 | a) Project Co must comply with the FCA. | QF | 1 point | PR | N/A |
| Vertical Transportation | | | | | |
| AM15 | <p>a) Project Co must provide a service to attend to lift failures and to release occupants in lifts 24 hours a day, seven days a week. Occupants are to be released as soon as practicable from the time of notification to the Help Desk, and in any case a suitable Project Co Associate must be on site and commence release:</p> <ul style="list-style-type: none"> i) within 20 minutes: <ul style="list-style-type: none"> A) between 0600 and 1900 hours (Monday to Friday excluding Public Holidays); and B) during Designated Special Event; and ii) within 35 minutes during all other times. | QF | 10 points | PR | N/A |
| Building Management System (BMS) | | | | | |
| AM16 | a) Project Co must ensure the BMS maintains the capability of performing the following functions: | QF | 10 points | D | T |

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|------------------------|--|-----------------|----------------|-------------------------------|-------------------------------|
| | <ul style="list-style-type: none"> i) generating automated reports in respect of delivery of Asset Management Services which must be available to the State at any time and provided, to the extent required, as part of the Monthly Performance Report; ii) continuous monitoring of utilities and system meters with trending capabilities; and iii) timely initiation of paging services (or similar) linked to nominated alarms (including notification to any Franchisee’s Associates nominated by the Franchisee in accordance with the FCA). The nominated alarms must activate on occurrence of the following: <ul style="list-style-type: none"> A) tunnel ventilation alarms; B) station ventilation alarm; C) vertical transportation alarms; D) drainage pump alarms E) miscellaneous equipment alarms; F) server and equipment room failure alarm events; or G) power supply systems faults and failure alarm events, or any other alarms required in order to comply with the FFP Warranty and Management Plans and as notified in writing to Project Co by the State from time to time. b) Project Co must ensure that: <ul style="list-style-type: none"> i) the BMS data is electronically backed up at least weekly; and ii) in the event of a central hard disk failure ensure that it is possible to retrieve 14 days of energy logging from field controllers. | | | | |
| O&M Manuals | | | | | |
| AM17 | a) Project Co must prepare and maintain manuals for the operation and Maintenance of the Maintained Assets, in accordance with Appendix G (O&M Manuals) and as otherwise required | QF | 5 points | Q | M |

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|------|--|-----------------|----------------|-------------------------------|-------------------------------|
| | <p>by the Project Agreement.</p> <ul style="list-style-type: none"> b) All manuals must be maintained in an electronic format that can be readily reproduced in hard copy. c) All manuals are to be stored electronically on a web-based document management system to which the State and the Franchisee have read and print access. d) At least one hard covered and bound complete copy of each manual is to be kept at each Station and readily available in the event that electronic copies cannot be accessed. e) Project Co must update and redistribute all manuals or updated sections of the amended manual within one month (or immediately, in the event of a serious health or safety concern) of: <ul style="list-style-type: none"> i) any change to the maintenance or operating procedures described in the manual; ii) receipt of recommendations or safety or warning advice from equipment manufacturers or suppliers; and iii) any errors or discrepancies being found in the manual, and as otherwise required by any change in Laws, Standards or other event which may impact on operating and maintenance procedures which must be reflected in the manuals. All revisions and updates to the manuals must be at least the same level of detail as those accepted by the State at Final Acceptance, and further described in this AM17. f) All information that relates to the configuration and programming of equipment provided within the O&M Manuals must be in a manner that can enable non-technical personnel to obtain an understanding of it. All information that may be required for the Maintenance and operation of the system must be provided in plain English descriptions. g) Project Co must also comply with any additional requirements set out in the Completion Requirements with respect to the O&M Manuals. | | | | |

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|--------------------------------------|--|-----------------|----------------|-------------------------------|-------------------------------|
| Asset and Property Management | | | | | |
| AM18 | <p>a) Project Co must prepare an Asset Register in respect of all plant and equipment in accordance with the terms of this Project Agreement and must maintain and update the Asset Register in accordance with this Services Specification. Project Co must subsequently maintain and update such information during the Maintenance Phase.</p> <p>b) The Asset Register must be submitted to the State (for review in accordance with the Review Procedures):</p> <ul style="list-style-type: none"> i) at least 15 Business Days prior to the end of each Contract Year; and ii) otherwise within three Business Days of a reasonable request by the State, and once reviewed by the State a copy provided to the Franchisee. <p>c) The Asset Register and software must be compatible with, and in the same format as (including nomenclature and asset coding hierarchy), the State's Asset Register system or must otherwise be in a format approved by the State so as to enable full integration and data upload in the systems that will be maintained by the State pursuant to:</p> <ul style="list-style-type: none"> i) the State's asset management practices and policies; and ii) the Financial Management Act (Vic) 1994 or, if this legislation no longer applies, as reasonably directed by the State. <p>d) Project Co must:</p> <ul style="list-style-type: none"> i) clearly tag all Plant and Equipment, including any new or replacement Plant and Equipment, with a unique asset identification number and electronically scannable barcode or QR code on, as a minimum, all line replaceable units; ii) ensure the type of tag and asset identification format are approved by the State; iii) ensure that all tags installed on all equipment are durable, remain firmly affixed to the relevant asset and are affixed in such a way as to be clearly visible at all times; | QF | 15 points | Q | M |

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|------|--|-----------------|----------------|-------------------------------|-------------------------------|
| | <ul style="list-style-type: none"> iv) maintain such tags for the entire Maintenance Phase or until disposal of the relevant item of Equipment; v) ensure that all tags used on Maintained Assets are readily distinguished from tags used by others on non-Maintained Assets; vi) at all times during the Maintenance Phase hold and maintain sufficient electronic barcode detectors capable of scanning the asset tags and otherwise in good working condition; and vii) hand over (5) electronic barcode detectors in the condition described in subparagraph (v). to the State upon the end of the Maintenance Phase. <p>e) The Asset Register must, as a minimum, include the following information:</p> <ul style="list-style-type: none"> i) any information required for financial accounting of assets in accordance with Australian accounting standards and all applicable Laws; ii) up to 50 information fields per asset registered, the content and format of which are to be agreed with the State, but which may include such information as: <ul style="list-style-type: none"> A) description of the asset; B) the unique asset barcode and identification number for each asset registered; C) the area and Functional Unit Category in which the asset is located; D) details of the exact location of the asset within that area; E) the asset class and sub-class (if applicable) as classified by the State; F) name and details of the manufacturer of the asset; G) serial numbers / part numbers (as applicable); H) owner details; I) date of acquisition or purchase of the asset; J) acquisition or purchase value; | | | | |

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|------|---|-----------------|----------------|-------------------------------|-------------------------------|
| | <ul style="list-style-type: none"> K) cost and other information as required by VicTrack; L) date of installation of the asset; M) date of commissioning of the asset; N) dates and details of all Maintenance previously undertaken against the asset, and details of results of any inspections of the asset; O) details of required intervals at which the asset must be serviced or maintained in accordance with the manufacturer's recommendations; P) details of the service/spares contact for the asset; Q) if applicable, details of software and firmware suppliers and versions; R) details of any applicable warranties in respect of the asset; S) a photograph of the asset (either linked or embedded); and T) any additional relevant comments; and <p>iii) any information provided to Project Co by the State in respect of the State's equipment.</p> <p>f) Project Co must ensure that the Asset Register and related software complies with the reasonable requirements of the State so that it is:</p> <ul style="list-style-type: none"> i) compliant with an industry standard protocol; ii) compatible with the asset management system of the State; iii) available in excel format; and iv) able to produce individual reports by equipment owner. <p>g) Project Co must update the Asset Register within five Business Days of:</p> <ul style="list-style-type: none"> i) any disposal, acquisition, upgrade or change of any Plant or Equipment; and ii) receipt of a notice by the State in respect of any item of Equipment purchased or replaced by others, which notice will include the information necessary for Project Co to complete | | | | |

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|--|--|-----------------|----------------|-------------------------------|-------------------------------|
| | such update. | | | | |
| AM19 | <p>a) Project Co must collect, manage and update all property records and information on behalf of the State, where such records or information are in respect of matters for which Project Co is responsible under this Project Agreement. All such information must be included in the Handover Package and also available for inspection at the request of the State. This must include information regarding:</p> <ul style="list-style-type: none"> i) legal or equitable interests in, or rights over, the Maintained Assets and, in addition, Project Co must retain and keep safe all original documentation relating to any such rights or interests; ii) specific licence requirements where Project Co is responsible for obtaining such licences. Where the State is responsible, Project Co is obliged to maintain records that have been provided to it by the State; and iii) test certificates and other documentation and records (in particular those relating to any aspects of safety or statutory compliance). | QF | 1 point | M | W |
| AM20 | <p>a) Project Co must:</p> <ul style="list-style-type: none"> i) ensure that all required notification procedures to the State, the Franchisee, or any other Authority of any Equipment or Plant failure are complied with; and ii) to the extent that Project Co is required to maintain Equipment, supply, administer and distribute Equipment evaluation records in accordance with required distribution procedures. | QF | 1 point | M | M |
| Asset Management IT hardware and software | | | | | |
| AM21 | <p>a) In support of the Asset Management Services, Project Co must provide and maintain the following:</p> <ul style="list-style-type: none"> i) a computer-based asset and maintenance management system which must be used to | QF | 2 points | M | M |

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|---|--|-----------------|----------------|-------------------------------|-------------------------------|
| | record all asset and maintenance information including: <ul style="list-style-type: none"> A) the Asset Register; and B) maintenance (PPM and unscheduled maintenance) history stored against individual assets; and C) future planned maintenance; and ii) hardware and software to the Maintained Assets to run relevant linked systems. <ul style="list-style-type: none"> b) Such equipment and software must apply an industry standard protocol and nomenclature and asset coding hierarchy as agreed by the State. | | | | |
| Maintained Asset Software and Firmware | | | | | |
| AM22 | a) Project Co must maintain Maintained Asset Software and Firmware including: <ul style="list-style-type: none"> i) maintaining interfaces between systems, including systems that are not Maintained Assets; ii) upgrading to reflect market standards and otherwise so that the Maintained Assets is at all times Fit For Purpose; and iii) ensuring compliance with all applicable copyright and licence obligations. b) With any upgrade, Project Co must ensure that its systems remain compatible with systems that are not Maintained Assets and, if not, allow for the upgrade or amendment of those systems to maintain functionality. <ul style="list-style-type: none"> c) Project Co must ensure that all Project Co’s Associates, State’s Associates and Franchisee’s Associates who are users of specific software/systems are trained to competently use such systems including operation, integration and interfacing with Project Co systems as required to effectively provide Train Operations. d) <u>Note: For avoidance of doubt, any update or amendment of software or firmware within Maintained Assets which results in Degraded Operations will be classified a Failure Event or System Failure Event (as applicable) in accordance with this Services Specification.</u> | QF | 2 points | M | N/A |

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|-------------------------------|---|-----------------|----------------|-------------------------------|-------------------------------|
| Statutory testing | | | | | |
| AM22 | <p>a) Project Co must:</p> <ul style="list-style-type: none"> i) advise the State and Franchisee in writing one month prior to all statutory and regulatory tests and inspections which may be required to be carried out in relation to the Maintained Assets or Services; ii) attend upon, and undertake where appropriate, any tests which may be required by Law, the FCA or insurers in liaison with the applicable Authority or person; iii) maintain records of any tests as required by Law, Standards or insurers in liaison with the applicable Authority or person; and iv) prepare and reinstate any plant and equipment as required for such tests or inspections. | QF | 2 points | M | N/A |
| AM23 | a) Project Co must ensure Franchisee involvement in the commissioning all new or replaced Maintained Assets in accordance with the FCA. This includes the production or upgrade of maintenance manuals and as-built drawings in accordance with this Services Specification. | QF | 2 points | PR | M |
| Waste water management | | | | | |
| AM25 | <p>a) Project Co must provide an effective waste water quality management service to ensure waste water (trade wastes) discharges are discharged or recycled in such a manner that complies with all Laws. Project Co must:</p> <ul style="list-style-type: none"> i) prepare a Waste Water Management Plan as part of the Maintenance Management Plans to fully document Project Co methods and processes for monitoring, management and control of waste water discharges, and which is compliant with the FFP Warranty; ii) include as part of the Waste Water Management Plan, systems and processes to maintain and manage Plant and Equipment producing, or used to process waste water to minimise environmental impact, including procedures for dealing with emergency discharges and other events that may lead to illegal discharge of improperly treated waste water; | QF | 5 points | Q | M |

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|-------------------------------|---|-----------------|----------------|-------------------------------|-------------------------------|
| | <ul style="list-style-type: none"> iii) implement and comply with the Waste Water Management Plan in all respects at all times; and iv) monitor, record and report waste water discharge volumes as part of the Monthly Performance Report. | | | | |
| Air quality management | | | | | |
| AM26 | <p>a) Project Co must provide an effective air quality management service to control the indoor air quality and to ensure discharges to outside air from the Maintained Assets comply with all Laws. Project Co must:</p> <ul style="list-style-type: none"> i) prepare an Air Quality Management Plan as part of the Management Plans to fully document Project Co methods and processes for monitoring and control of air discharges; ii) implement a regime of regular air quality tests to demonstrate that indoor air quality complies with the FFP Warranty; and iii) implement and comply with the Air Quality Management Plan in all respects. | QF | 5 points | Q | M |
| Utilities management | | | | | |
| AM27 | <p>a) Project Co must support the State and the Franchisee (in accordance with the FCA) in the development, implementation and maintenance of:</p> <ul style="list-style-type: none"> i) operational processes to ensure the continual supply of the Utilities; ii) contingency plans addressing the loss of each Utility; and <p>to the extent reasonably requested by the State.</p> | QF | 10 points | A | M |
| AM28 | <p>a) Project Co must monitor, operate (where applicable), maintain and control the performance of the Maintained Assets in accordance with Best Maintenance Practices with the objective (to the extent reasonably practicable) of minimising the consumption of energy and other Utilities, minimising the cost of energy and the production of greenhouse gases whilst achieving the</p> | QF | 5 points | M | W |

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|---|--|-----------------|----------------|-------------------------------|-------------------------------|
| | optimum environmental conditions required by the State, in accordance with the Environmental Performance Requirements. | | | | |
| Tunnel Linings | | | | | |
| AM29 | <p>a) Where the State or the Franchisee advises Project Co that it intends to undertake cleaning of the linings of Tunnels, shafts and/or cross passages, Project Co must:</p> <p>i) within 30 days, confirm that the applicable cleaning processes included within the Handback Documentation remain applicable, or if not, provide the State and the Franchisee with amended documentation to the standard (as a minimum) provided within the Handback Documentation; and</p> <p>ii) if requested by the State or the Franchisee, provide a quotation to undertake the cleaning of Tunnels, shafts and/or cross passages within 90 days of being requested to do so.</p> | QF | 10 | PR | W |
| AM30 | <p>a) Where cleaning of the linings of Tunnels, shafts and/or cross passages is undertaken by or on behalf of the State or the Franchisee, Project Co must agree with the State or Franchisee (as applicable), and implement, an inspection regime to monitor the cleaning of the linings of Tunnels, shafts and/or cross passages, and advise the State and the Franchisee immediately upon it becoming concerned that the delivery of such cleaning may:</p> <p>i) be impacting on the ability of any element of the Maintained Assets achieving its planned life, or</p> <p>ii) otherwise prejudice the State's ability to enforce its rights against the Project Co under the Project Agreement.</p> | QF | 10 | M | N/A |
| Structural Inspections and Repairs | | | | | |
| AM31 | <p>a) Project Co must undertake full structural inspections of the Stations and Tunnels:</p> <p>i) at 2 yearly intervals during the first 10 years of the Maintenance Phase; and</p> | QF | 10 points | Q | M |

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|------|--|-----------------|----------------|-------------------------------|-------------------------------|
| | <p>ii) at 5 yearly intervals thereafter.</p> <p>b) All structural inspections and supervision of repairs must be undertaken in accordance with Best Maintenance Practice by an independent structural engineering consultant approved by the State.</p> <p>c) Project Co must provide the State and the Franchisee with:</p> <ul style="list-style-type: none"> i) 28 days advance notice of all inspections; ii) the opportunity to attend all inspections; iii) copies of all inspection reports within 28 days of any inspection, together with proposals for: <ul style="list-style-type: none"> A) for all identified repair works; and B) monitoring of signs of defects in accordance paragraph d). <p>d) Project Co must undertake a program of monitoring of all signs of defects, including cracking, settlement, water penetration, corrosion and the like in accordance with Best Maintenance Practice, and as reasonably requested by the State. The frequency of such monitoring must be no less than annually.</p> <p>e) <u>Note: All defects will be deemed a fault in accordance with AM07.</u></p> | | | | |

5 Pest Control Services

5.1 Key objectives

- a) Project Co must provide comprehensive Pest Control Services in order to:
 - (i) ensure that effective pest control measures are implemented and do not conflict with the provision of Train Operations and all Standards and Laws; and
 - (ii) undertake all work in a safe manner which maximises availability of the Stations and reduces, to an absolute minimum, the risk in terms of safety or damage to the environment and Project Assets and disruption to Train Operations from pest infestation.

5.2 Scope

- a) In addition to satisfying the requirements of this section 5 (Pest Control Services), Project Co must comply with all the requirements set out in section 2 (Contract Management and Administration Services) relevant to the delivery of the Pest Control Services.
- b) Project Co must provide a scheduled/programmed and unscheduled Pest Control Service across all areas of the Soft Services Areas.
- c) Project Co must provide, manage and operate a comprehensive system of pest control management in accordance with this Services Specification, including for:
 - (i) spiders;
 - (ii) insects;
 - (iii) rodents;
 - (iv) reptiles;
 - (v) birds; and
 - (vi) other animals.

5.3 Minimum Services Specifications

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|---------------------------------|--|-----------------|----------------|-------------------------------|-------------------------------|
| Scheduled Pest Control | | | | | |
| PC01 | <p>a) Project Co must submit to the State for review in accordance with the Review Procedures, a schedule of inspection and treatments for the Soft Services Areas (including Stations and Above ground Tunnel Structures), for the forthcoming Contract Year (Pest Control Plan) 30 days prior to each anniversary of the Contract Year for inclusion in the Maintenance Management Plans.</p> <p>b) The Pest Control plan must also include high level methods statements detailing the proposed process for treating each pest and clearly identify each of the areas affected (and the extent of such impact) and timescales of each item of the proposed work.</p> <p>c) The Pest Control Plan must also demonstrate:</p> <ul style="list-style-type: none"> i) that the Soft Services Areas (including Stations and Above Ground Tunnel Structures) are planned to remain free of infestation in accordance with Best Maintenance Practices, Standards and applicable Laws at all times; and ii) a proactive approach to deal with high risk areas. | QF | 5 points | A | M |
| PC02 | a) Project Co must undertake inspections and treatments in accordance with the Pest Control Plan. | QF | 2 points | M | W |
| Unscheduled Pest Control | | | | | |
| PC03 | a) Project Co must Rectify unscheduled Pest Control requests within the Soft Services Areas (which will be deemed to be Failure Events from the time Project Co receives such requests) in accordance with the Response and Abatement Free Periods and requirements detailed in Section 2 (Contract Management and Administration Services). | | | | |

| Ref. | Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period | | | | | | |
|--|--|-----------------|---|--|-------------------------------|--------------------|-------|----|---|---|-----|
| | <p style="text-align: center;"><u>Table 5: Unscheduled Pest Control Abatement Free Periods</u></p> <table border="1" data-bbox="443 480 1272 788"> <thead> <tr> <th data-bbox="443 480 1008 592">Description</th> <th data-bbox="1008 480 1272 592">Abatement Free Period</th> </tr> </thead> <tbody> <tr> <td data-bbox="443 592 1008 719">Reactive pest request which poses, or has the potential to pose a risk to health and safety.</td> <td data-bbox="1008 592 1272 719">1 Hour</td> </tr> <tr> <td data-bbox="443 719 1008 788">All other requests</td> <td data-bbox="1008 719 1272 788">1 Day</td> </tr> </tbody> </table> <p>b) Unscheduled Pest Control requests may include:</p> <ul style="list-style-type: none"> i) treating Pest infestations and removing live or dead Pests from the Soft Services Areas; ii) investigating signs of Pest infestation; iii) replenishment of traps and baits; iv) removing evidence of Pests including excreta, cobwebs and the like; v) implementing reasonable measures to deter Pest infestations; vi) rectifying a failure to provide Pest Control Services in accordance with this Services Specification; and vii) other requests received (or deemed to be received) by the Help Desk. | Description | Abatement Free Period | Reactive pest request which poses, or has the potential to pose a risk to health and safety. | 1 Hour | All other requests | 1 Day | FE | A | C | N/A |
| Description | Abatement Free Period | | | | | | | | | | |
| Reactive pest request which poses, or has the potential to pose a risk to health and safety. | 1 Hour | | | | | | | | | | |
| All other requests | 1 Day | | | | | | | | | | |
| | | QF | 2 points per expiry of the associated Abatement Free Period | PR | N/A | | | | | | |

6 Cleaning Services

6.1 Key objectives

- a) Project Co must provide comprehensive Cleaning Services in order to:
 - (i) provide quality driven Cleaning Services which achieve an optimum standard of cleaning for all the required Cleaning Areas of each Station and relevant Above Ground Tunnel Structures;
 - (ii) provide a standard of service that enhances the positive image of the State and Franchisee and a level of cleanliness which provides a pleasant environment for all Users;
 - (iii) minimise disruption to Train Operations and be seen as a respected and important member of the Station service team;
 - (iv) providing efficient and timely waste management and disposal services; and
 - (v) maintain a safe environment and safe working practices.

6.2 Scope

- a) In addition to satisfying the requirements of this section 6 (Cleaning Services), Project Co must comply with all the requirements set out in section 2 (Contract Management and Administration Services) relevant to the delivery of the Cleaning Services.
- b) Project Co must provide the Cleaning Services 24 hours per day, 365(6) days per year on a scheduled and unscheduled basis as may be required to ensure that the Cleaning Areas (including all elements identified in Appendix L [Cleaning Service Standards] are in accordance with this Services Specification.
- c) The scheduled Cleaning Services include:
 - (i) a planned cleaning service during Peak Periods and Off-Peak Periods to support day-to-day Train Operations;
 - (ii) a planned clean during Non-Operational Periods and Non Peak Periods to bring the Cleaning Areas up to the required Cleaning Services Standards;
 - (iii) provision of hygiene services;
 - (iv) a planned program for periodic cleaning as set out in Appendix J (Planned Periodic Cleaning); and
 - (v) Graffiti removal.
- d) The unscheduled Cleaning Services will comprise ad-hoc reactive requests.
- e) Project Co must also provide waste management and disposal services for all Waste generated within the Stations. Project Co is responsible for:
 - (i) ensuring there is an adequate supply of well-maintained and clean Waste containers, bins, disposal units, receptacles and any equipment required to move Waste within the Stations; and
 - (ii) managing the compliant and timely disposal of Waste from the Stations to avoid impacting on Train Operations and surrounding stakeholders.
- f) Project Co is also responsible for the cleaning of Specialist Cleaning Items in accordance with the Cleaning Services Standards and in accordance with the warranty requirements of the item as advised to Project Co from time to time.
- g) Project Co must not undertake any activities or use any product that may disrupt the provision of Train Operations or damage Specialist Cleaning Items.
- h) Project Co is not responsible for:

- (i) cleaning within Returned Spaces;
- (ii) cleaning of:
 - (A). track side of PSDs;
 - (B). marks or staining on the station side of PSD's where specialist process/chemicals required; and
 - (C). security cameras.
- i) Cleaning staff must be suitably knowledgeable to be able to guide passengers seeking directions or requesting information about the use of the Station facilities to station staff, in accordance with the Franchisee's customer service strategy.

6.3 Minimum Service Specifications

| Ref. | Service Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|--|--|-----------------|------------------------------|-------------------------------|-------------------------------|
| Scheduled Cleaning – Planned Daily and Overnight Cleaning | | | | | |
| CL01 | <p>a) Project Co must submit a weekly (Monday to Sunday) schedule of planned daily cleaning for each area (covering Routine Daytime Activities and the Overnight Clean) of the Cleaning Areas to the State for review in accordance with the Review Procedures and the Franchisee, at least 60 days prior to each anniversary of the Contract year, and undertake a quarterly review of the schedule for inclusion in the applicable Monthly Performance Report in that Quarter to ensure the schedule continues to appropriately support the delivery of Train Operations.</p> <p>b) The schedule submitted in accordance with paragraph a) must be adequate to achieve the Cleaning Service Standards specified in Appendix L.</p> | QF | 5 points | Q | W |
| CL02 | <p>a) Project Co must ensure that scheduled Cleaning Services are undertaken in accordance with the current schedule, the agreed times and the Cleaning Services Standards, except where expressly agreed to the contrary by the State or Franchisee (in accordance with the FCA) in advance.</p> <p>b) Project Co must also implement a system where scheduled toilet cleaning is recorded (including date, time and cleaners name) and visibly displayed inside the main entrance of the toilet facility.</p> | QF | 2 points per station per day | D | N/A |
| Scheduled Cleaning – Planned Periodic Cleaning | | | | | |
| CL03 | <p>a) Project Co must review and submit a planned periodic cleaning schedule for the Cleaning Areas to:</p> <p>i) the Franchisee for agreement in accordance with the FCA, and once agreed; and</p> <p>ii) to the State for review in accordance with the Review Procedures,</p> | QF | 5 points | A | M |

| Ref. | Service Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period | | | | | | | | | | |
|--|--|-----------------|---|--|-------------------------------|------------------------------|------------|---|--------|--|--------|--|--|--|--|
| | at least 30 days prior to each anniversary of the Date of Final Acceptance to ensure the schedules continue to appropriately support the delivery of Train Operations. | | | | | | | | | | | | | | |
| CL04 | a) Planned periodic cleaning tasks are identified in Appendix J (Planned Periodic Cleaning). Project Co must ensure that planned periodic cleaning is completed in accordance with the current schedule, within the agreed times, the Cleaning Services Standards and as a minimum, at the frequencies detailed in Appendix J (Planned Periodic Cleaning). | QF | 5 points | M | W | | | | | | | | | | |
| Unscheduled Cleaning | | | | | | | | | | | | | | | |
| CL05 | <p>a) Project Co must Rectify unscheduled cleaning requests (which will be deemed to be Failure Events from the time Project Co receives such requests) in accordance with the Response and Rectification requirements detailed in Section 2 (Contract Management and Administration Services) and the specific Response and Abatement Free Periods set out below:</p> <p><u>Table 6: Unscheduled Cleaning Abatement Free Periods</u></p> <table border="1"> <thead> <tr> <th>Description</th> <th>Abatement Free Period</th> </tr> </thead> <tbody> <tr> <td>Reactive cleaning request which poses, or has the potential to pose a risk to health and safety.</td> <td>15 Minutes</td> </tr> <tr> <td>Replenish toilet consumables</td> <td>15 Minutes</td> </tr> <tr> <td>Rectification of a substandard daily and Overnight Cleaning</td> <td>1 Hour</td> </tr> <tr> <td>Rectification of a substandard Planned</td> <td>7 Days</td> </tr> </tbody> </table> | Description | Abatement Free Period | Reactive cleaning request which poses, or has the potential to pose a risk to health and safety. | 15 Minutes | Replenish toilet consumables | 15 Minutes | Rectification of a substandard daily and Overnight Cleaning | 1 Hour | Rectification of a substandard Planned | 7 Days | | | | |
| Description | Abatement Free Period | | | | | | | | | | | | | | |
| Reactive cleaning request which poses, or has the potential to pose a risk to health and safety. | 15 Minutes | | | | | | | | | | | | | | |
| Replenish toilet consumables | 15 Minutes | | | | | | | | | | | | | | |
| Rectification of a substandard daily and Overnight Cleaning | 1 Hour | | | | | | | | | | | | | | |
| Rectification of a substandard Planned | 7 Days | | | | | | | | | | | | | | |
| | | FE | A | C | N/A | | | | | | | | | | |
| | | QF | 2 points per expiry of the associated Abatement | PR | N/A | | | | | | | | | | |

| Ref. | Service Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|------------------------------------|---|-----------------|----------------|-------------------------------|-------------------------------|
| | <p style="text-align: center;">Periodic Cleaning</p> <p>b) <u>(Note: An Extended Rectification will be granted where all staff are on site as per agreed roster but are responding to other unscheduled cleaning requests.)</u></p> <p>c) <u>(Note: Unscheduled Cleaning services requests include:</u></p> <ul style="list-style-type: none"> i) <u>spot cleaning surfaces which could contaminate clothing;</u> ii) <u>cleaning up spills and emptying Waste receptacles; undertaking any bio hazard cleans (spillage/spilling of bodily fluids and other hazardous substances in any area of the Station or Above Ground Tunnel Structures in accordance with all Standards and Laws;</u> iii) <u>replenishment of Personal Cleaning Consumables e.g. toilet tissue, hand towels, hand cleanser and the like;</u> iv) <u>requests to bring an element within the Cleaning Areas up to the requirements of the Cleaning Services Standards;</u> v) <u>removal of Graffiti in accordance with the Cleaning Services Standards and the Graffiti management process in CL06;</u> vi) <u>cleans associated with maintenance works;</u> vii) <u>untoward incidents such as flooding or storm damage; and</u> viii) <u>other requests received (or deemed to be received i.e. issues discovered as part of an audit) by the Help Desk.)</u> | | Free Period | | |
| Graffiti Management Process | | | | | |
| CL06 | a) Project Co must, in consultation with the Franchisee (in accordance with the FCA) implement an active Graffiti management process within the Stations and Above Ground Tunnel Structures, in accordance with the Standards and the following minimum requirements: | | | | |

| Ref. | Service Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|----------------------------------|---|-----------------|---------------------|-------------------------------|-------------------------------|
| | i) all Station and Above Ground Tunnel Structures surfaces and elements (as identified in Appendix K below) must be inspected once every 24 hours for Graffiti; | QF | 1 point per Station | D | N/A |
| | ii) all instances of Graffiti must be recorded by date, time, Station/structure, asset location, size and content (during inspection and if discovered for the first time during cleaning activities); | QF | 1 point | PR | N/A |
| | iii) all instances and evidence of Offensive Graffiti within the Stations and Above Ground Tunnel Structures must be removed from Accessible Areas within 24 hours of report (noting that Offensive Graffiti can be downgraded and removed in accordance with paragraph iv) below); | QF | 5 points | PR | N/A |
| | iv) all instances and evidence of Graffiti must be removed from Accessible Areas of the Stations and Above Ground Tunnel Structures and all Offensive Graffiti is removed from Inaccessible Areas within 7 days of report; and v) Project Co must take reasonable steps to remove such Graffiti from view and return the defaced surface, material, furniture or fitting in accordance with the Cleaning Services Standards to its original presentation. vi) <u>(Note: where cleaning does not fully remove all signed of Graffiti, further action will be undertaken as a Level E Failure Event in accordance with AM07 as from the time the Graffiti was originally reported.)</u> | QF | 2 points | PR | N/A |
| | vii) Project Co must provide evidence that it is complying with the above obligations as part of the Monthly Performance Report or as agreed with the State. | QF | 5 points | M | W |
| Cleaning Standards Audits | | | | | |
| CL07 | a) Project Co must develop, and update annually, an internal auditing program covering all Cleaning Areas within the Stations and Above Ground Tunnel Structures. The program must ensure that each of the critical areas are audited at least twice a month and all other public | QF | 10 points | A | W |

| Ref. | Service Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|--------------------------------------|---|-----------------|----------------------|-------------------------------|-------------------------------|
| | areas are audited at least once a month and all back of house areas are audited at least twice a year as a minimum. Records of these audits, including results, must be made available to the State and Franchisee one Business Day after receipt of the report and included as part of the Monthly Performance Report. | | | | |
| CL08 | a) Project Co must undertake audits in accordance with the internal audit program prepared in accordance with CL07 and report the results of such audits within the following Monthly Performance Report. | QF | 5 points per Station | M | W |
| Personal Cleaning Consumables | | | | | |
| CL09 | a) Project Co must procure and store, all Personal Cleaning Consumables and replenish all receptacles (point of use) in all applicable areas of the Stations. Project Co must ensure that there is a sufficient stock of them always available at all points of use within the Stations. | QF | 5 points per Station | M | N/A |
| Hygiene Services | | | | | |
| CL10 | a) Project Co must provide a hygiene service for the Soft Services Areas including the provision and maintenance of: <ul style="list-style-type: none"> i) sanitary disposal units in all female and unisex toilets, which must be replaced in accordance with the changeover cycle of 28 days or earlier if greater than 75% full; ii) nappy disposal units in all baby change facilities, which must be replaced weekly or more frequently if required to avoid becoming odorous; and iii) air fresheners in all toilet facilities, which must be functional at all times. b) Project Co must ensure that all replacement units are clean and sanitised. | QF | 5 points per Station | M | N/A |
| Waste Management and Disposal | | | | | |
| CL11 | a) Project Co must: | QF | 1 point | D | NA |

| Ref. | Service Specification | Service Failure | Level / Points | Performance Assessment Period | Quality Failure Remedy Period |
|------|--|-----------------|----------------|-------------------------------|-------------------------------|
| | <ul style="list-style-type: none"> i) ensure there is an adequate supply at all times of clean (sanitised) Waste collection and disposal equipment (which are compliant with the Standards), and an appropriate and adequate mix of all Waste containers, bins, disposal units, sharps containers, receptacles are available at all times to meet the waste volume generated at each Station; ii) clearly display the Waste management strategy for the segregation and handling of Waste at all waste holding points throughout the Stations. This must include the display of usage instructions on each waste receptacle; and iii) manage the collection, movement, storage and disposal of Waste from the Stations to avoid disruption to Train Operations and surrounding stakeholders and in accordance with all applicable Standards and Laws. | | per Station | | |

Appendix A Minimum Failure Event Levels

- a) The Faults identified in the following table assume:
 - (i) the Fault does not constitute a System Failure Event in accordance with Appendix B;
 - (ii) the Fault reflects a failure in one or more Maintained Assets; and
 - (iii) the Fault is a single standalone event. The occurrence of multiple concurrent Faults may necessitate the escalation of the applicable Failure Event Level.
- b) The applicable Functional Unit Category(ies) for a Fault will be the Functional Unit Category(ies) in which any impacts of the Fault are experienced. For example:
 - (i) a Fault in a UPS where mains power is unaffected will be measured against the Functional Unit Category in which the UPS is located; and
 - (ii) a Fault in a UPS during a mains power outage which results in disruption of say, lighting, will be measured against each of the Functional Unit Categories in which lighting is disrupted.

| System | Fault Description | Impact | Affected Functional Unit Category | | | | |
|----------|--------------------------|--|-----------------------------------|------------|-----------------------|------------------------|---------|
| | | | Passenger Areas | BOH (High) | Plant Room (Critical) | BOH / Plant Room (Low) | Tunnels |
| Access | Broken non-security door | Assuming security not compromised | D | D | D | D | |
| | Broken security door | Security of any space compromised | C | C | C | C | |
| | Entrance door Fault | Degraded Operations | A | A | | | |
| BMS | BMS Fault | Loss of communication between network control centre and local equipment | A | A | A | A | A |
| Drainage | Pump Failure | Degraded Operations | | | | | A |
| | | No impact on Train Operations (including as a result of the operation of redundancy) | C | C | C | C | C |

| System | Fault Description | Impact | Affected Functional Unit Category | | | | |
|---------------------------------------|---|---|-----------------------------------|------------|-----------------------|------------------------|---------|
| | | | Passenger Areas | BOH (High) | Plant Room (Critical) | BOH / Plant Room (Low) | Tunnels |
| | Sewer blockage | 1 toilet out | D | | | D | |
| | | All toilets unusable in a Station | C | | | C | |
| Emergency Lighting | Any Fault | Assuming no impact on operations | D | D | D | D | |
| | | Degraded Operations | A | A | A | A | |
| Flooring | Trip hazard | Assuming ability to isolate area without affecting operations | D | E | E | E | |
| | | Degraded Operations | A | A | A | A | |
| Fire Hydrants & Sprinklers | Fault in any system | Any Fault | C | C | C | C | C |
| Graffiti | Graffiti | Non-Offensive | D | E | E | E | |
| | | Offensive | A | A | A | A | |
| HVAC | Fault in the operation of the HVAC installations | Temperature posing a potential risk to wellbeing of Occupants or Train Operations | A | A | A | A | |
| | | Temperature outside of the levels required to comply with the FFP Warranty | C | C | C | D | |
| | | Temperature within levels required to comply with the FFP Warranty | D | D | D | D | |
| | Failure to maintain airflow or air quality standards to any area (e.g. waste odour, exhaust fumes, gas smells) in compliance with the FFP Warranty. | Degraded Operations | A | A | A | A | |
| | | No impact on Train Operations (including as a result of the operation of redundancy) | C | C | C | C | |
| Lighting | Lighting control Fault (assuming controller shared with Stations) | Tunnel lighting impacted resulting in Degraded Operations | | | | | A |
| | Lighting Fault | Lighting levels posing a potential risk to wellbeing of Occupants or Train Operations | A | A | C | C | |

| System | Fault Description | Impact | Affected Functional Unit Category | | | | |
|------------------------------------|---|--|-----------------------------------|------------|-----------------------|------------------------|---------|
| | | | Passenger Areas | BOH (High) | Plant Room (Critical) | BOH / Plant Room (Low) | Tunnels |
| | | Lighting levels above operational minimum levels but outside of the levels required to comply with the FFP Warranty. | C | C | D | D | |
| | | Lighting levels in compliance with the FFP Warranty. | D | D | D | D | |
| Painting and other finishes | Painting below level required by Project Agreement | No operational impact | E | E | E | E | |
| Power | Fault in electricity supply (unless as a result of agreed load-shedding). | Degraded Operations | A | A | A | A | A |
| | | No impact on Train Operations (including as a result of the operation of redundancy) | C | D | D | D | C |
| Station Furniture | Damage / Fault in furniture and fittings | Posing a risk to the wellbeing to Occupants | A | A | A | A | |
| | | Failures not posing a risk | D | E | E | E | |
| Station Ventilation | Fault in the operation of the Station ventilation installations | Degraded Operations | A | A | A | A | |
| | | No impact on Train Operations (including as a result of the operation of redundancy) | C | C | C | C | |
| Structural | First stage concrete | Degraded Operations | | | | | A |
| | | No impact on Train Operations (including as a result of the operation of redundancy) | | | | | E |
| | Fault in structural lining | Degraded Operations | | | | | A |
| | | No impact on Train Operations (including as a result of the operation of redundancy) | | | | | C |
| Toilets | Any Fault disrupting the ability to use any shower, toilet or toilet cubicle (e.g. blockage, continuous | Assuming sufficient and suitable other facilities are available. | D | | | D | |
| | | Assuming insufficient suitable other facilities are available. | C | | | C | |

| System | Fault Description | Impact | Affected Functional Unit Category | | | | |
|-------------------------|---|---|-----------------------------------|------------|-----------------------|------------------------|---------|
| | | | Passenger Areas | BOH (High) | Plant Room (Critical) | BOH / Plant Room (Low) | Tunnels |
| | flushing, broken toilet seat, blocked drainage) | | | | | | |
| Tunnel Ventilation | Tunnel ventilation system Fault | Degraded Operations | | | | | A |
| | | No impact on Train Operations (including as a result of the operation of redundancy) | | | | | C |
| Vertical Transportation | Escalator Fault | Asset not operational or operating at less than 0.5m/s resulting in Degraded Operations | A | | | A | |
| | | Any Failure Event affecting escalators that is not a Level A Failure Event | B | | | B | |
| | Lift Fault | Asset not operational resulting in Degraded Operations | A | | | A | |
| | | Any Failure Event affecting lifts that is not a Level A Failure Event | B | | | B | |
| Wayfinding | Any Fault | Any Fault | C | C | C | C | |
| Water | Leaking / dripping ceiling | Possible risk to persons and property. (Note: This Failure Event level will persist until investigated by a suitable tradesperson, even after cleaners have provided first response.) | A | A | A | A | |
| | | Leaking / dripping tap | Any area | D | | | D |
| | Loss or interruption of water supplies | To ALL Toilets/sinks in a Station | C | | | C | |
| | | To sprinklers | A | A | A | A | A |

Appendix B System Failure Events

| Category | SFE Definition |
|-------------------------------|--|
| PLATFORM SFE | |
| Platform - Fire & Life Safety | <p>Any Fault in Maintained Assets including, but not limited to:</p> <ul style="list-style-type: none"> • vertical transportation; • smoke ventilation; • sprinklers; • emergency lighting; and • availability and integrity of safe spaces / escape routes, <p>resulting in the availability and performance of a platform being below that which is required to support the fire safety objectives set out in the Fire Engineering Report (See Appendix C).</p> |
| Platform - Power | <p>Any Fault in Maintained Assets causing the supply of electrical power to Operationally Critical Systems (as defined in the PS&TR) resulting in the platform being unsafe or unavailable for the provision of Train Operations.</p> <div style="border: 1px solid black; background-color: #D3D3D3; padding: 5px; margin-top: 10px;"> <p>[Drafting Note: It is anticipated that Operationally Critical Systems specific to the design solution will be determined with Project Co]</p> </div> |
| Platform - Lighting | <p>Any Fault in Maintained Assets causing the average lighting level within a platform to fall below (X) lux.</p> <div style="border: 1px solid black; background-color: #D3D3D3; padding: 5px; margin-top: 10px;"> <p>[Drafting Note: It is anticipated that an operationally minimum lux level will be determined with Project Co based upon the minimum level at which Train Operations can be safely maintained]</p> </div> |
| Platform - Other | <p>Any structural or other Fault resulting in the platform being unsafe or unavailable for the provision of Train Operations due to a failure of Project Co to perform, or comply with, its obligations under this Agreement.</p> |
| Platform - Degraded | <p>Any Level A Failure affecting a Platform that remains unresolved for 24 hours or more.</p> |
| STATION SFE | |
| Station – Platform SFEs | <p>A Platform SFE existing concurrently in both platforms within a Station.</p> |
| Station – Fire & Life Safety | <p>Any Fault in Maintained Assets including, but not limited to:</p> <ul style="list-style-type: none"> • vertical transportation; • smoke ventilation; • sprinklers; • emergency lighting; and • availability and integrity of safe spaces / escape routes, |

| Category | SFE Definition |
|-----------------------------|---|
| | resulting in the availability and performance of a Station being below that which is required to support the fire safety objectives set out in the Fire Engineering Report (See Appendix C). |
| Station - Power | Any Fault in Maintained Assets causing the supply of electrical power to Operationally Critical Systems (as defined in the PS&TR) resulting in the Station being unsafe or unavailable for the provision of Train Operations. <div style="border: 1px solid black; padding: 5px; background-color: #f0f0f0;"> [Drafting Note: It is anticipated that Operationally Critical Systems specific to the design solution will be determined with Project Co] </div> |
| Station - Lighting | Any Fault in Maintained Assets causing the average lighting level within any public area of the Station to fall below (X) lux. <div style="border: 1px solid black; padding: 5px; background-color: #f0f0f0;"> [Drafting Note: It is anticipated that an operationally minimum lux level will be determined with Project Co based upon the minimum level at which Train Operations can be safely maintained] </div> |
| Station - Other | Any structural or other Fault resulting in the Station being unsafe or unavailable for the provision of Train Operations due to a failure of Project Co to perform, or comply with, its obligations under this Agreement |
| Station - Degraded | Any Level A Failure affecting a Station that remains unresolved for 24 hours or more. |
| TUNNEL SFE | |
| Tunnel – Fire & Life Safety | Any Fault in Maintained Assets including, but not limited to: <ul style="list-style-type: none"> • tunnel ventilation; • smoke ventilation; and • availability and integrity of safe spaces / escape routes, resulting in the availability and performance of Tunnels, walkways, cross passages, shafts and the like being below that which is required to support the fire safety objectives set out in the Fire Engineering Report (See Appendix C). |
| Tunnel - Drainage | Any flooding greater than (x)mm in any part of the Tunnel as a result of a Fault on any Maintained Asset. <div style="border: 1px solid black; padding: 5px; background-color: #f0f0f0;"> [Drafting Note: It is anticipated that an operationally maximum flooding level will be determined with Project Co] </div> |
| Tunnel - Power | Any Fault in Maintained Assets causing the supply electrical power to Operationally Critical Systems (as defined in the PS&TR) resulting in the Tunnel being unsafe or unavailable for the provision of Train Services. <div style="border: 1px solid black; padding: 5px; background-color: #f0f0f0;"> [Drafting Note: It is anticipated that Operationally Critical Systems specific to the design solution will be determined with Project Co] </div> |

| Category | SFE Definition |
|-------------------|---|
| | <p>or Any Fault in Maintained Assets resulting in a failure of traction power within a Tunnel.</p> |
| Tunnel - Other | Any structural or other Fault within Tunnels, walkways cross passages, shafts and the like resulting in the within Tunnel (and the like) being unsafe or unavailable for the provision of Train Operations due to a failure of Project Co to perform, or comply with, its obligations under this Agreement |
| Tunnel - Degraded | Any Level A Failure affecting a Tunnel that remains unresolved for 24 hours or more. |
| TOTAL SFE | |
| Tunnels | <p>Tunnel SFE existing concurrently in both Tunnels</p> <p>or Any Tunnel SFE remaining unresolved for 4 hours or more.</p> |
| Stations | <p>Any Station SFE existing concurrently in both CBD North and CBD South Stations.</p> <p>or Any Station SFE related to CBD North or CBD South remaining unresolved for 12 hours or more.</p> <p>or Any Station SFE related to Arden, Domain or Parkville Stations remaining unresolved for 24 hours or more.</p> |

Appendix C Fire Engineering Report related System Failure Events

[Drafting Note

- a) It is intended that:
- (i) a System Failure Event will occur when a Fault in any one or more Maintained Assets results in the ability to protect persons and property to the standard outlined in, or otherwise contemplated by, the Fire Engineering Report (FER) being compromised;
 - (ii) this Appendix C will ultimately contain a list of the anticipated Faults or scenarios of multiple Faults that will result in a System Failure Event, developed from the final design and the assumptions used in the Fire Engineering Report;
 - (iii) whilst the parties will attempt to identify anticipated System Failure Events arising in accordance with (i) above, it is understood that the final list within this Appendix C may not be exhaustive and the existence or otherwise of a SFE will ultimately be made against the definitions within Appendix B.
- b) The table below provides a number of example SFEs. The development process for this Appendix C is intended to be:
- (i) CYP will update the template contained in Appendix C and submit to MMRA and the Franchisee by the end of February, May, August and November each year between Contractual Close and Final Acceptance.
 - (ii) MMRA, CYP and the Franchisee will meet within 2 weeks of CYP issuing an update to discuss and seek to agree the applicable extended Rectifications.
- c) The parties will attempt to achieve the following milestones:
- (i) Issue of final certified design – 70% complete
 - (ii) Provisional Acceptable – 100% complete]

| Location | System (Maintained asset) | Fire & Life Safety Assumption | Failure Description of Maintained Assets (at which point Fire Engineering Report will be breached) | Consequence | Reference to trace the requirement in the Fire Engineering Documentation |
|----------|---------------------------|-------------------------------|--|-------------------|--|
| Tunnels | Tunnel Ventilation System | Exhaust Air Capacity | Standby TVF fan not available when duty TVF fan from the same bank is out of service | <i>Tunnel SFE</i> | <i>FER section [TBA]</i> |
| Tunnels | Tunnel Ventilation System | Exhaust Air Capacity | Damper module fails to activate as required | <i>Tunnel SFE</i> | <i>FER section [TBA]</i> |

| Location | System (Maintained asset) | Fire & Life Safety Assumption | Failure Description of Maintained Assets (at which point Fire Engineering Report will be breached) | Consequence | Reference to trace the requirement in the Fire Engineering Documentation |
|---|---------------------------|---|---|-------------------|--|
| Tunnels | Cross Passage Doors | Cross passage fire and smoke separated from tunnels | Cross passages are fire and smoke separated from the tunnel to the minimum level defined in the PS&TR and FER | <i>Tunnel SFE</i> | <i>FER section [TBA]</i> |
| | | | | | |
| [Drafting Note: Scenarios in this table to be modified and added to as agreed] | | | | | |

Appendix D Periodic Reporting Requirements

- a) **(Monthly Performance Reporting requirements):** The Monthly Performance Report must provide sufficient information to enable the State to calculate the Quarterly Service Payment for each Operating Month of the relevant Quarter, including the following information (or as otherwise agreed with the State):
- (i) a management overview which summarises overall performance and discusses key issues experienced during the reporting period, in respect of the Services;
 - (ii) a summary of all Failure Events and Quality Failures and other Services requests and events reported to the Help Desk within the relevant Operating Month, including:
 - (A). the number of Quality Failures;
 - (B). the number of Failure Events;
 - (C). the number of Failure Events of each Failure Event Level;
 - (D). the number of communications received by the Help Desk, broken down by service or other agreed categorisation; and
 - (E). complaints received by the Help Desk relating to any of the Services;
 - (iii) with respect to each Failure Event:
 - (A). the unique Failure Event number;
 - (B). the nature of the Failure Event;
 - (C). the date and time of the Failure Event;
 - (D). the specific location of the Failure Event and the applicable Functional Unit Categories;
 - (E). the classification by reference to the Failure Event Level of the Failure Event;
 - (F). the required date and time of Response;
 - (G). the actual date and time of Response;
 - (H). the required date and time of Rectification;
 - (I). the actual date and time of Rectification;
 - (J). details of where an Extended Rectification or Temporary Fix was applied;
 - (K). a short description of the Failure Event;
 - (L). a short description of how the Failure Event was rectified;
 - (M). any additional works required;
 - (N). Project Co's estimate of the deduction to be made from the Quarterly Service Payments; and
 - (O). any mitigating circumstances Project Co wishes the State to consider;
 - (iv) with respect to each Quality Failure:
 - (A). the unique Quality Failure number;
 - (B). the nature of the Quality Failure;
 - (C). the date and time of the Quality Failure and, if applicable;
 - (1). the required date and time of Response; and
 - (2). the actual date and time of Response;
 - (D). the Quality Failure Points attributable to the Quality Failure; and

- (E). Project Co's estimate of the deduction to be made from the Quarterly Service Payment calculated by reference to the total number of Quality Failure Points accumulated for Quality Failures in the relevant Operating Month including details of the calculation;
 - (v) a summary of all Failure Events and the areas and associated Functional Unit Categories affected;
 - (vi) a summary of the monitoring which has been conducted during the previous month in accordance with section CM44;
 - (vii) sufficient details of any Service Failures of the same or substantially similar type to enable the State to calculate applicable Quality Failure Points in respect of Repeat Failure Events for the purposes of CM45;
 - (viii) performance relative to the Performance Requirements identified in the State Project Documents;
 - (ix) progress against the Asset Management Plan including an outline of any departures and reasons for these, including actions required to ensure delivery in accordance with this Services Specification;
 - (x) summary of any failures to comply with the Help Desk minimum acknowledgment time standard specified in HD09;
 - (xi) BMS exception report by node status and all other relevant data generated by the BMS in accordance with AM16 and as required to comply with the FFP Warranty;
 - (xii) a summary of Pest control activities undertaken during the reporting period;
 - (xiii) information required to be provided under sections 3 to 6 inclusive;
 - (xiv) an occupational health and safety report summarising safety performance and initiatives;
 - (xv) the minutes of any monthly meeting of the Monthly O&M Meetings;
 - (xvi) any other information required to be provided in accordance with this Project Agreement (including this Services Specification); and
 - (xvii) other reasonable requirements of the State;
- during, for or in respect of, the relevant Operating Month.
- c) A version of the Monthly Performance Report with any abatement calculations or similar commercially confidential material redacted for issue to the Franchisee.
 - d) **(Quarterly Performance Reporting requirements):** The Quarterly Performance Report must summarise:
 - (i) the information provided in the Monthly Performance Reports submitted in respect of the Operating Months comprising that Quarter, required to substantiate the quarterly invoice; and
 - (ii) any other information required to be provided with or as part of the Quarterly Performance Report under this Services Specification or the remainder of this Project Agreement.

Appendix E Summary of Maintenance Management Plans

| Name of Plan | Reference | Update or Revision Interval |
|--|-------------------------------|-----------------------------|
| Performance Monitoring Plan | CM04 and Appendix F1.1 | Annually |
| Asset Management Manual | CM04 and Appendix F1.2 | Annually |
| Quality Management Plan | CM04, CM11 and Appendix F1.3 | Annually |
| Health and Safety Management Plan | CM04, CM30 and Appendix F1.4 | Annually |
| Risk Management Plan | CM04, CM13 and Appendix F1.5 | Annually |
| Information Management Plan | CM04 and Appendix F1.6 | Annually |
| Digital Engineering Management Plan | CM04 and Appendix F1.7 | Annually |
| Operations Environmental Management Plan | CM04, CM27 and Appendix F1.8 | Annually |
| Maintenance Phase Sustainability Plan | CM04 and Appendix F1.9 | Annually |
| Asset Management Plan | AM01 and Appendix F1.10 | Annually |
| O&M Manuals | AM17 and Appendix G | Annually |
| Pest Control Plan | PC01, CM04 and Appendix F1.11 | Annually |

Appendix F Maintenance Phase Documentation

F.1. Maintenance Management Plan

- a) The Maintenance Management Plan must identify the procedures, processes work practices and management systems that Project Co will apply in relation to the delivery of the Services.
- b) The Maintenance Management Plan must include:
 - (i) the Performance Monitoring Plan;
 - (ii) the Asset Management Manual;
 - (iii) the Quality Management Plan;
 - (iv) the Health and Safety Management Plan;
 - (v) the Risk Management Plan;
 - (vi) the Information Management Plan;
 - (vii) the Digital Engineering Management Plan;
 - (viii) the Operations Environmental Management Plan
 - (ix) the Maintenance Phase Sustainability Plan;
 - (x) the Asset Management Plan; and
 - (xi) the Pest Control Plan.
- e) In addition, the Maintenance Management Plan must:
 - (i) be consistent with the Bid Method Statements and Maintenance Management Plans;
 - (ii) align, to the extent practicable, with the Maintenance Management Plan (or equivalent) maintained by the Franchisee or the State in respect of Returned Works;
 - (iii) identify the procedures, Method Statements, processes work practices and management systems that Project Co will apply in relation to the delivery of the Services;
 - (iv) define an organisational structure within the Maintenance Subcontractor that identifies the key positions, roles and the minimum skills and experience required for each position;
 - (v) identify all Subcontractors and suppliers;
 - (vi) include allocation of responsibilities and procedures for reviewing and updating each of the Maintenance Management Plans;
 - (vii) include a protocol agreed with the State for notification of all Incidents;
 - (viii) include information relating to the collection and storage of data referred to in:
 - (A). the Services Training Program;
 - (B). Help Desk procedures described in section 3.3 (Minimum Services Specifications) including the Service Failure Assessment Criteria and any procedures relating to Response and Rectification of Failure Events;
 - (ix) include all policies, procedures, work practices, programs and schedules relating to the Services;
 - (x) include procedures for minimising disruption to passengers and Train Operations when performing all Services;
 - (xi) include procedures for the use, storage and disposal of equipment, materials and consumables;
 - (xii) include policies and procedures in relation to the BMS;

- (xiii) include the planned daily cleaning schedules and planned periodic cleaning schedules as detailed in section 6 (Cleaning Services); and
- (xiv) include all other information required to be updated or presented as detailed in this Service Specification and any other information reasonably required by the State.

F.1.1. Performance Monitoring Plan

- a) The Performance Monitoring Plan (PMP) must demonstrate all the performance monitoring activities (including frequencies, systems, methods and audit tools) that Project Co must undertake to monitor the quality of Services that Project Co and all Project Co's Associates are delivering, and to ensure that the Services are being carried out to the level and quality required by this Project Agreement and this Services Specification.
- b) The format of the Performance Monitoring Plan must accord with Best Maintenance Practice and include for each Service the following minimum details or characteristics:
 - (i) the PMP must be compatible with this Services Specification and the Monthly Performance Report;
 - (ii) Project Co's interpretation of the key objectives of each Service;
 - (iii) the appropriate reference or extract from the Method Statements included as part of the Management Plans, which describes the service inputs required to deliver each Service obligation;
 - (iv) the monitoring frequencies, systems, methods and tools that will be used to monitor the delivery of each Service obligation;
 - (v) the methods and documentary evidence to be used to assess and support Project Co's performance in relation to each Service obligation;
 - (vi) the proposed remediation process should there be a failure to meet any of the minimum performance standards specified in this Services Specification;
 - (vii) a coherent process and procedures to assess, monitor and calculate Abatements arising from a Service Failure and record them in the Monthly Performance Report; and
 - (viii) the nominated staff member responsible for the management and delivery of each Service obligation.

F.1.2. Asset Management Manual

- a) The Asset Management Manual must include:
 - (i) procedures for condition monitoring of Assets;
 - (ii) a CMMS operating manual;
 - (iii) an index of As-Built Records;
 - (iv) procedures for accessing and updating As-Built Records;
 - (v) details of the Maintenance Subcontractor;
 - (vi) maintenance procedures, including maintenance recording procedures and safe operating procedures for plant and equipment;
 - (vii) operating details for all systems and equipment; and
 - (viii) procedures for environmental monitoring.

F.1.3. Quality Management Plan

- a) The Quality Management Plan must:

- (i) comply with AS/NZS ISO 9001:2016 Quality Management Systems – Requirements;
- (ii) define Project Co's quality related objectives for the Services;
- (iii) nominate and define the responsibility and authority of the quality manager;
- (iv) define the responsibility, authority and reporting function of personnel primarily responsible for quality assurance; and
- (v) describe processes to coordinate and implement quality assurance functions across all Management Plans, including:
 - (A). audit and surveillance;
 - (B). identification, notification and control of non-conformances; and
 - (C). corrective action and process improvement.

F.1.4. Health and Safety Management Plan

- a) The Health and Safety Management Plan must describe how workplace health and safety will be managed at each distinct area of the Licensed Maintenance Areas for the duration of the Maintenance Phase.
- c) The Health and Safety Management Plan must reflect the following principles:
 - (i) safety is not a priority that can be reordered, but is a value associated with every priority;
 - (ii) development of a work environment based on employee involvement, accountability, team work, education, training and leadership;
 - (iii) building self-esteem, empowerment, pride, enthusiasm, optimism and encouraging innovation;
 - (iv) reinforcement of the need for employees to actively care about their co-workers; and
 - (v) recognition of group and individual achievement.
- d) The Health and Safety Management Plan must be consistent with the Franchisee's safety management system to the extent required to comply with the Franchisee's Train Accreditation.
- e) The Health and Safety Management Plan must be a single volume for the whole of the Services (including any Services performed by Subcontractors) and, as a minimum, comply with the following requirements:
 - (i) all applicable OHS Legislation, in particular general duty provisions applying to Project Co; and
 - (ii) AS4801:2001 or a comparative international standard.
- f) Project Co must ensure that the Health and Safety Management Plan includes, as a minimum:
 - (i) Project Co's and the State's health and safety policy and objectives;
 - (ii) a risk assessment of applicable risks arising out of delivery of the Services;
 - (iii) the details required to be included in a health and safety coordination plan under Part 5.1 of the *Occupational Health and Safety Regulations 2007* (Vic);
 - (iv) details of the organisational structure of the Maintenance Subcontractor, as relevant, including, but not limited to, identification of those roles with specific health and safety responsibilities, such as the roles and responsibilities of the health and safety professionals (including the safety manager) and description of the rationale for safety resourcing;

- (v) details of Project Co's procedures, policies and arrangements regarding the management of safety associated with the provision of the Services;
- (vi) procedures and responsibilities for:
 - (A). preparation, implementation, review and updating of the Health and Safety Management Plan;
 - (B). identifying hazards and risks associated with the Services, including preparation, review and updating of the risk assessment and establishing appropriate controls which must be in accordance with the hierarchy of controls during the Services;
 - (C). providing such information, instruction and training as is necessary to ensure risks are appropriately eliminated or controlled;
 - (D). the management of Subcontractors;
 - (E). reviewing the effectiveness of the Health and Safety Management Plan, particular controls implemented under the Health and Safety Management Plan, and where necessary revising the Health and Safety Management Plan and the controls implemented thereunder;
 - (F). preparing and implementing the following sub-plans within the Health and Safety Management Plan and reviewing and revising those sub-plans:
 - (1). Hazardous Materials Management Sub-Plan; and
 - (2). Emergency Response and Incident Management Sub-Plan;
 - (G). reporting and investigation of Health and Safety Incidents;
 - (H). arrangements for ensuring appropriate Site-specific and task-specific induction and training is undertaken by all relevant Subcontractors and other persons who attend the Site to ensure they are aware of the requirements of the Health and Safety Management Plan and safety controls identified therein;
 - (I). arrangements for ensuring that the Site-specific and task-specific induction and training programs undertaken by relevant Subcontractors and other persons who attend the Site addresses the risk profile and emergency procedures for that Site;
 - (J). monitoring and auditing arrangements to ensure that all Subcontractors comply with the requirements of the Health and Safety Management Plan and safety controls identified therein;
 - (K). arrangements for facilitating independent audits of the Health and Safety Management Plan, and for the prompt and effective rectification of any non-conformances identified during such auditing;
 - (L). arrangements for consulting with Key Subcontractors including, but not limited to, in relation to arrangements for the election of health and safety representatives and establishment of health and safety committees for the Services;
 - (M). arrangements for consulting with and providing safety information to relevant stakeholders;
 - (N). consideration of public safety for all Services, including control measures;
 - (O). consideration of overlapping safety obligations and requirements under the *Rail Safety National Law Application Act 2013 (Vic)* and the *Rail Safety National Law Regulations 2012*; and
 - (P). arrangements for health and safety performance monitoring.
- g) Project Co must retain a copy of the current Health and Safety Management Plan at each distinct area of the Site and ensure that it is available for inspection at all times.

- h) Project Co must ensure that all Subcontractors comply with Project Co's Health and Safety Management Plan at all Sites.

F.1.4.1. Hazardous Materials Sub-plan

- a) Project Co must:
 - (i) ensure the Hazardous Materials Management Sub-Plan is in accordance with the requirements of AS2601 and incorporates an asbestos removal control plan as required by applicable Laws, Approvals and Reference Documents;
 - (ii) ensure compliance with any requirements under OHS Legislation to notify any relevant Authority of any asbestos removal works and provide the State with evidence of that notification;
 - (iii) ensure that the State is notified of any Services involving asbestos removal, no less than 2 days prior to the commencement of the relevant Services, and where directed by the State, Project Co must conduct additional air monitoring;
 - (iv) ensure that at the completion of any hazardous materials removal and prior to the commencement of further Services, the State is provided with a 'clearance certificate' from a suitably qualified independent party certifying the removal of the relevant hazardous materials;
 - (v) ensure that any air monitoring required by OHS Legislation is conducted for any asbestos removal works and provide the results of such monitoring to the State through the incident reporting management database; and
 - (vi) monitor the compliance of all contractors and other responsible parties with the Hazardous Materials Management Sub-Plan and safety controls identified therein.

F.1.4.2. Emergency Response and Incident Management Sub-Plan

- a) The Emergency Response and Incident Management Sub-Plan must comply with OHS Legislation and must ensure reporting and investigation of Health and Safety Incidents by Project Co and all Project Co's Associates.
- b) The Emergency Response and Incident Management Sub-Plan must be consistent with and supportive of the Franchisee's emergency response and incident management plans.
- c) The Emergency Response and Incident Management Sub-Plan must, at a minimum, provide details of the following:
 - (i) Project Co roles and responsibilities in the event of an Emergency or crisis;
 - (ii) procedures (including interface requirements with the Franchisee) for managing and controlling Emergencies, Incidents or crises;
 - (iii) emergency and crisis contacts list (including contacts for out of hours);
 - (iv) details of first aid and emergency equipment kept on Site;
 - (v) procedures for training workers in relation to Emergencies and incidents;
 - (vi) details of possible emergency or crisis scenarios that may occur during the Services and how those emergencies are proposed to be managed;
 - (vii) details for contacting, notifying and interfacing with the Franchisee, the State and other relevant Authority, emergency services organisations, media outlets and other relevant stakeholders, such as utility service providers, utility asset owners and municipal councils;
 - (viii) procedures for the immediate notification to the Franchisee and the State of incidents which may give rise to a public interest or be communicated to Victorians through the media; and

- (ix) means for compliance with and coordination of any other emergency notification requirements under the Agreement.

F.1.5. Risk Management Plan

- a) The Risk Management Plan must:
 - (i) address how Project Co will comply with the risk management requirements of the Agreement for the duration of the Maintenance Phase;
 - (ii) define how appropriate risk management strategies are defined and implemented in accordance with AS/NZS ISO 31000: 2009;
 - (iii) describe the processes to be implemented by Project Co to:
 - (A). identify, analyse, treat and monitor all risks continuously for the duration of the Maintenance Phase, including:
 - (1). Security risks;
 - (2). Rail safety risks – during operations;
 - (3). Workplace safety, environment and quality risks; and
 - (4). Business risks such as stakeholder, approvals, commercial and schedule risks; and
 - (B). systematically address risks throughout the life cycle of the Asset from conception through to retirement.
 - (iv) describe the process, purpose and objectives of the risk management plan, the risk management standards, risk acronyms, terms and definitions;
 - (v) describe how the standard risk management processes will be implemented for the Project, including:
 - (A). communication and consultation;
 - (B). tools to be used;
 - (C). establishing the context;
 - (D). assessment of risks and opportunities (including identifying the risks and opportunities, analysing the risks and opportunities, qualitative process, quantitative process, deterministic analysis, probabilistic analysis and evaluation), as well as providing the matrices used for the assessment process;
 - (E). treating the risk;
 - (F). monitoring, reviewing and internal reporting the risks;
 - (G). roles and responsibilities for risk management;
 - (H). methods to be used to monitor effectiveness of control;
 - (I). identify and address the requirements for risk framework audits maturity review; and
 - (vi) outline the detail to be provided and process to be used for reporting, including reporting on the status of any high rated risks relevant to the State.
- b) Where applicable, the Risk Management Plan may include references to other Management Plans to avoid duplication.

F.1.6. Information Management Plan

- a) The Information Management Plan must, as a minimum, include:

- (i) details of how Project Co will implement an Electronic Operational Document Library that has the capability to manage all documentation, information, records and other types of project data;
- (ii) details as to how information is collected, retained, secured, processed, disseminated and disposed of;
- (iii) details of how Project Co will ensure that all information collected, retained and reported is accurate and up to date;
- (iv) details of the Electronic Operational Document Library induction and training program for all users;
- (v) identification of the IT requirements for information management, including the information and communications technology infrastructure network requirements (including software application, hardware and electronic communications);
- (vi) details of the disaster recovery process to be adopted in relation to information management; and
- (vii) details of how the State may be granted access to the Electronic Operational Document Library for the purpose of performing compliance audits in relation to the Information Management Plan.

F.1.7. Digital Engineering Management Plan

- a) The Digital Engineering Management Plan must:
 - (i) describe the digital engineering strategy and its implementation throughout the Maintenance Phase;
 - (ii) describe the process for the implementation of a live digital engineering environment to enable collaboration and coordination of information, data sharing and enhance communication on the project;
 - (iii) describe the process for the implementation of federated asset information models with sufficient embedded or linked data and information to satisfy operational or maintenance information requirements and support an asset management system;
 - (iv) describe the information security controls and procedures within the live digital environment to ensure compliance with security requirements of the State and or third parties;
 - (v) describe the access control procedures for permitted users, access rights restrictions, and data entry permissions;
 - (vi) describe the common data environment including the electronic data management system;
 - (vii) describe the network and web-based user interfaces to the common data environment;
 - (viii) define the suite of software platforms (including versions) and data exchange formats to be adopted and address:
 - (A). data exchange protocols (including to and from the asset information models);
 - (B). forward and backward compatibility;
 - (C). open standards compliance and non-proprietary interfaces (including to the asset management systems);
 - (D). interoperability of the software platforms to support federated models;
 - (E). handover compliance with PTV DMS and PASS Assets; and
 - (F). software viewers for federated models and their accessibility to the State and the Franchisee;

- (ix) define the common spatial coordinate system to be adopted across all software platforms or if not possible with the software platforms being adopted, the process to translate project elements or models into the common spatial coordinate system for coordination purposes;
 - (x) define the core documents and information management standards to be adopted and to what degree they are to be implemented;
 - (xi) define digital engineering specific roles and responsibility associated with the management of models, data integration, model approvals, the electronic data management system and the common data environment;
 - (xii) define the IT infrastructure requirements of Project Co, the State and the Franchisee;
 - (xiii) describe the information model production and deliverable strategy and define:
 - (A). scope of the models to be generated including anticipated model sizes;
 - (B). the expected output detail on a discipline basis and a schedule of model deliverables for each work package during the design delivery phase;
 - (C). the coordination and clash detection process addressing technical query workflows, tolerance strategy, interface reports, model review workshops and a clash resolution process;
 - (D). the process for the management of the information and modelling from commencement through to published data;
 - (E). the migration of the model between different stages of the life cycle through to completion of an as-built model and asset information models;
 - (F). the process for updating and coordinating changes during Maintenance Phase;
 - (G). methods for undertaking digital as-built verification surveys; and
 - (H). methods for ensuring the contents of the asset information models and embedded or linked data and information align with the physical assets;
 - (xiv) describe the process for the management of the information and data within the asset information models and the frequency of data transfer; and
 - (xv) describe the process for updating and coordinating changes to the asset information models as the assets change.
- b) Project Co must submit a CAD Management Plan as a sub-plan to the Digital Engineering Management Plan.
- c) The CAD Management Plan must as a minimum:
- (i) define non rail infrastructure asset owner drawing standards to be adopted; and
 - (ii) define naming conventions, cross-referencing, drawing scales, line-styles, sheet sizes, title blocks, dimensioning, typefaces, abbreviations and symbols;
- d) Project Co must submit a GIS Management Plan as a sub-plan to the Digital Engineering Management Plan.
- e) The GIS Management Plan must define the GIS data schema and the GIS layers, including:
- (i) metadata associated with the GIS layers should as a minimum include major themes, purpose, description, data limitations, data custodian and data updates; and
 - (ii) the GIS layers should as a minimum include but not be limited to infrastructure geometric layouts, construction footprints, land and property, ground movement, underground services, environmental, survey, topographic data, geotechnical data, published photograph logs and aerial photography.

F.1.8. Operations Environmental Management Plan

- a) The Operations Environmental Management Plan must be a single volume applying to the whole of the Services. As a minimum, it must:
 - (i) include the:
 - (A). Waste Water Management Plan described in AM25; and
 - (B). Air Quality Management Plan described in AM26;
 - (ii) be developed using a risk-based approach and allow the project to be operated in accordance with, as a minimum, the State's Environmental Management Framework and Environmental Performance Requirements;
 - (iii) detail appropriate operational responses that comply with, and implement, the State's Environmental Management Framework and Environmental Performance Requirements and Project Co's Environmental Management System for the Services;
 - (iv) ensure that all relevant Laws, Reference Documents or specific requirements of the State, relevant Authorities are referred to and complied with;
 - (v) include details of the organisational structure of Project Co, including, but not limited to, identification of those roles with specific environmental management responsibilities, and description of the rationale for environmental management resourcing;
 - (vi) detail how environmental integration will be achieved during the Maintenance Phase through other key disciplines using cross references to other Management Plans;
 - (vii) detail how Project Co and any Subcontractors will comply with, monitor and adopt the Operations Environmental Management Plan at all sites;
 - (viii) detail how complaints and other community or stakeholder enquiries will be dealt with relating to environmental management and compliance with approvals;
 - (ix) detail the processes and methodologies for identifying, tracking and implementing environmental opportunities into the Services and provide performance milestones for all environmental opportunities; and
 - (x) implementing an adaptive approach for the assurance, monitoring, auditing and corrective action for the continuous improvement of environmental performance.

F.1.9. Maintenance Phase Sustainability Plan

- a) The Maintenance Phase Sustainability Plan must, as a minimum and with regards to the Services, detail:
 - (i) sustainability resourcing requirements;
 - (ii) an outline of systems that will be used to support sustainability management;
 - (iii) processes and methodologies for monitoring, auditing (as a minimum energy audits), corrective action, continuous improvement on sustainability performance;
 - (iv) processes and methodologies for embedding sustainability initiatives into Project Co's maintenance processes;
 - (v) the approach to sustainable procurement including:
 - (A). the processes and procedures that will be used to provide environmental and social improvement; and
 - (B). the processes and environmental and social criteria that will be used for the selection of Project Co's Contractors;

- (vi) the details of the Building Management System and how it will report on sustainability data;
- (vii) the processes and methodologies for providing monthly reporting on sustainability data, as a minimum, energy, water and waste consumption, or data as required by Franchisee;
- (viii) processes for ensuring that the efficiencies of the utilities infrastructure (for example, the energy efficiency of Maintained Assets), maintains the same level of efficiency over the Term; and
- (ix) the interfaces with other operational procedures and processes, including the Franchisee's sustainability procedures and processes.

F.1.10. Asset Management Plan

- a) The Asset Management Plan must describe how the assets comprising the Maintained Assets will be managed and must include strategies for reliability improvement, obsolescence, optimising maintenance, meeting future service requirements, stakeholder requirements and otherwise the requirements of the Project Agreement.
- b) The Asset Management Plan must be in accordance with Project Co's ISO 55001 accreditation.
- c) The Asset Management Plan must include:
 - (i) an inventory and description of assets by asset category including all As-Built Records;
 - (ii) an assessment of asset criticality;
 - (iii) an assessment of asset performance against target performance by asset category;
 - (iv) drivers and triggers of asset interventions by asset category;
 - (v) identification of interdependency between asset categories;
 - (vi) an assessment of asset condition by asset category including information on:
 - (A). residual life;
 - (B). emerging latent defects;
 - (C). specific assets which may degrade due to exposure to the environment and the elements;
 - (D). specific assets which are subject to accelerated wear or deterioration; and
 - (E). specific assets which may or will require renewal and replacement before the end of their predicted Design Life;
 - (vii) an asset replacement and refurbishment program for all asset categories for the following (15) years defining:
 - (A). assets to be renewed with supporting justification;
 - (B). timing of works;
 - (C). locations and scope of works; and
 - (D). duration of work and potential service disruption;
 - (viii) a Forecast Maintenance and Refurbishment Program, which must adopt a whole of life asset management approach and focus on elements of the Maintained Assets impacted in the short and medium term and must include:
 - (A). an indicative plan for the Maintenance Phase plus 10 years, including the nature, scope, cost and timing of planned maintenance, refurbishment,

- replacement and augmentation works, together with an indication of any consequential impact or risk to Train Operations;
- (B). details of potential advancements in technologies that may be considered for adoption as part of asset replacement or refurbishment; and
 - (C). a report of changes in planned asset life cycle from the Forecast Maintenance and Refurbishment Program agreed at Financial Close, detailing replacements and refurbishments extended or otherwise deferred, with the supporting rationale for the change and otherwise satisfying the requirements of this Project Agreement;
- (ix) an Annual Works Plan, which must:
- (A). include a comprehensive works plan covering scheduled servicing, inspections, testing, maintenance, refurbishment, replacement and augmentation of the Maintained Assets for the following 12 months of the Maintenance Phase;
 - (B). be consistent with the work described in the asset replacement and refurbishment program and include the following details with respect to the work:
 - (1). its nature, scope and scale;
 - (2). its location;
 - (3). its projected timing and duration;
 - (4). a risk assessment of the Maintained Assets (as appropriate) with a content and in a format agreed with the State; and
 - (5). details of any risks or impacts the proposed works may have on passengers and Train Operations, including:
 - (6). possible impacts on safety systems;
 - (7). required interfaces with the Franchisee or others;
 - (8). possible impacts on passengers or Train Operations; and
 - (9). the way in which Project Co intends to work with the State to manage and minimise disruption to passengers and Train Operations;
- (x) a PPM Program which must set out how and when the PPM Services will be carried out, including how the impact on passengers and Train Operations will be minimised;
- (xi) a program for structural inspections in accordance with AM31.
- (xii) a Spares and consumables strategy for each asset category which must include:
- (A). an analysis of Maintained Assets that are critical to Train Operations, identifying:
 - (1). critical maintainable or replaceable components;
 - (2). location (country/State) of component manufacturer;
 - (3). location (country/State) of stockist;
 - (4). minimum stock of spares to be retained by Project Co within the vicinity of the Licensed Maintenance Areas; and
 - (5). anticipated location of spares storage;
 - (B). plans for maintaining a sufficient inventory of Spares such that all necessary maintenance can be performed;
 - (C). plans for replenishing Spares stocks and repair strategies;
 - (D). plans for storage of Spares including off-site storage;
 - (E). variation processes to manage the Spares pool;

- (F). processes for the modification of Spares;
 - (G). plans for the management of warranties;
 - (H). plans to ensure continuity of supply;
 - (I). obsolescence management plans;
 - (J). plans to minimise Spares deterioration whilst in storage; and
 - (K). options to minimise service disruption; and
- (xiii) a change configuration management system which must describe the processes to be adopted in respect of maintenance, upgrade and replacement of software and firmware embedded within the Maintained Assets.
- d) The Asset Management Plan must include a Graffiti and Vandalism Management Plan, as a sub-Management Plan to the Asset Management Plan, which must:
- (i) be consistent, and address Project Co's compliance, with the Asset Standards contained in Appendix I; and
 - (ii) demonstrate the process and methodology used to select exterior and interior materials in consideration of current local and international Vandalism and Graffiti practices to meet the requirements of this Services Specification.
- e) The Asset Management Plan must, as a minimum, provide a works program defining the asset management activities required in the following 2 years.

F.1.11. Pest Control Plan

- a) The Pest Control Plan must include:
- (i) a schedule of inspection and treatments for the Soft Services Areas (including Stations and Above Ground Tunnel Structures), for the forthcoming Contract Year; and
 - (ii) high level methods statements detailing the proposed processes for treating each type of pest.
- b) The Pest Control Plan must also demonstrate:
- (i) that the all areas of the Soft Services Areas (including Stations and Above Ground Tunnel Structures) are planned to remain free of infestation in accordance with Best Maintenance Practices, Standards, and applicable Laws at all times; and
 - (ii) a proactive approach to deal with high risk areas.

Appendix G O&M Manuals

- a) The O&M Manuals must include instructions for operating and maintaining all aspects of the Maintained Assets, including (as a minimum):
- (i) scope of works;
 - (ii) descriptions of services installed and their operation;
 - (iii) procedures for starting, stopping and operating Plant;
 - (iv) all Plant operation and testing requirements, including;
 - (A). conditions of use; and
 - (B). controls in use;
 - (v) controlling set points;
 - (vi) design criteria;
 - (vii) an inspection, testing and Maintenance schedule;
 - (viii) details of the manufacturer's recommended Maintenance on each item;
 - (ix) manufacturer's literature;
 - (x) a full set of as-built drawings;
 - (xi) a full set of commissioning sheets and checklists;
 - (xii) a listing of contact details for designers, contractors, sub-contractors and suppliers;
 - (xiii) pro-forma checklists for use in all future essential services testing; and
 - (xiv) other requirements as required in order to comply with the FFP Warranty.

Appendix H Handover Package

- a) Project Co must prepare and, at all times during the Maintenance Phase, maintain a 'Handover Package' in respect of the Maintained Assets.
- b) The Handover Package is to contain key information to enable the State or another party to take over operations or maintenance of the Maintained Assets.
- c) As a minimum, the Handover Package is to contain the following information:
 - (i) (contracts): a list of all agreements, permits, licences or other documents which are material to the delivery of the Services, including (as appropriate) the contact number, name, address, email address and telephone numbers of counterparties, contract price, value and subject matter;
 - (ii) (warranties and guarantees): all Subcontractor warranties and guarantees in respect of the Maintained Assets and the performance of the Services;
 - (iii) (information systems): a list of systems (including communication systems) used (computer and otherwise) for the Services, together with a description of the systems and master passwords where applicable. Software licences for any software required for continued operation and management of the systems must be transferred to the State at the end of the Maintenance Phase as part of the final Handover Package or following the State exercising its step-in rights right to step-in in accordance with the Agreement;
 - (iv) (operations): a list of any other information key to the daily operation of the Services, including:
 - (A). O&M Manuals;
 - (B). Maintenance Management Plans;
 - (C). operations and maintenance records;
 - (D). asset, maintenance and operations plans and forecasts; and
 - (E). lists of plant, consumables, rotatable items, Spares, special tools and Equipment and other assets or equipment relevant to the Services or required in respect of the Services;
 - (v) (employees): to the extent not prohibited by Law, details of each employee of Project Co or its Subcontractors undertaking the Services, including:
 - (A). names, work email addresses, work telephone numbers, roles and responsibilities;
 - (B). the date on which employment began;
 - (C). terms and conditions of employment;
 - (D). qualifications held to the extent they are relevant to the services that the employee performs as part of the Services; and
 - (E). all payments, benefits or changes to terms and conditions of employment promised to any employee;
 - (vi) (records):
 - (A). records, documentation and other information required under the Agreement (including in the form and/or manner in which they are required to be prepared, updated and stored under the Agreement) or in respect of the Services, including the As-Built Records, Construction Documentation and Construction Records;
 - (B). records relevant to compliance with the requirements of all Laws and Authorities;

- (C). a register of all System, sub-system and enabling and supporting system faults, the outcome of the fault investigation, fault root-cause and measures taken to rectify the fault;
 - (D). all property records and information specified in AM19;
 - (E). a current risk and hazard register and detail of the hazards and risks;
 - (F). a forecast of planned Services covering the five (5) year period subsequent to handover;
 - (G). a register of all compliance inspections, audits, details of any non-compliance and rectification actions taken or outstanding;
 - (H). a current resource plan covering the roles, competencies and numbers of personnel required to operate and maintain the Maintained Assets;
 - (I). a register and details of all injuries and incidents arising in respect of the Services;
 - (J). a description of the scope and conditions of all Approvals and requirements of Authorities in respect of the Maintained Assets;
 - (K). inspection and test plans to the satisfaction of the State demonstrating compliance to the State Project Documents including evidence that the inspections, test results and audits are in accordance with the Agreement;
 - (L). evidence that all tests have been passed in accordance with the Agreement;
 - (M). evidence that all incident reports have been closed out;
 - (N). O&M Manuals and any other relevant operation and maintenance manuals in accordance with the requirements of the State Project Documents;
 - (O). all manufacturers' and trade warranties required by the Agreement;
 - (P). copies of all Standards required by the Agreement including evidence of compliance with the Standards;
 - (Q). details of all non-conformances that have been resolved;
 - (R). delivery of all the receipts and documents confirming the provision of spare parts ordered in accordance with the Agreement;
 - (S). the certificates of occupancy for stations;
 - (T). evidence of compliance with all Project Co's obligations in respect of the Rail Safety National Law;
 - (U). the details of any Claims that are not finally resolved; and
 - (V). all other information which, in the opinion of the State, is necessary for the operation, use and maintenance; and
- (vii) (approvals correspondence): copies of all:
- (A). correspondence with all relevant Authorities and Key Subcontractors in relation to Approvals;
 - (B). Approvals correspondence related to subsequent building works and alterations and additions to Services; and
 - (C). records relevant to any Approvals obtained in respect of the Services.
- d) Project Co must permit representatives of the State and/or, once engaged, the Handover Reviewer (or nominee) to inspect the Handover Package upon request.

Appendix I Asset Standards

- a) This Appendix I is not intended to be exhaustive. Where an element of the Maintained Assets is not specifically identified, applicable minimum asset standards shall be derived from reference to similar assets. Nothing in this Appendix I will derogate from Project Co’s obligations under the Project Agreement, including in relation to the FFP Warranty.

I.1. Building

| Element | Standard |
|--|--|
| <p>Civil and Structural Works including:</p> <ul style="list-style-type: none"> • walls and linings • slabs • walkways • Tunnels • Portals • bridges • pits • first stage concrete • all underground structures and foundation elements, including stations, tunnels, structural linings, portal structures, decline structures, retaining structures, shafts, cross passages and sumps • all above ground building structures • earthing and bonding system • silencers, acoustic treatment and accessories • vibration treatment and accessories | <ul style="list-style-type: none"> • All elements and components must be functional, operational and comply with the FFP Warranty. • Sound, secure, bird-proof and weatherproof where appropriate. • Sealed to minimise uncontrolled infiltration and exfiltration. • Free from structural cracks and/or deflection. • Free from damp penetration or spalling except for maximum acceptable water penetration as required to comply with the FFP Warranty. • Substantially free from areas capable of harbouring vermin and/or pests. • Substantially free from debris and moss growth. • Services support fittings, fixtures must be properly housed and fastened securely to their intended point of anchorage and labelled. |

| Element | Standard |
|---|--|
| <ul style="list-style-type: none"> • cathodic protection • Combined Services Route / cable support systems. | |
| <p>Building Superstructure and External Fabric including:</p> <ul style="list-style-type: none"> • external walls • roof • flues, louvres and vents • gutters and culverts • rainwater collection systems • lightning conductors • fire escapes • walkways • safety barriers • balconies • eaves • rendering • external access cradles and gantries | <ul style="list-style-type: none"> • All elements of building superstructure, fabric, finishes and services system components must be functional, operational and satisfy the performance requirements required to comply with the FFP Warranty. • Sound, secure, bird-proof and weatherproof where appropriate. • Sealed to minimise uncontrolled infiltration and exfiltration. • Free from structural cracks and/or deflection. • Free from damp penetration or spalling. • Claddings, copings and parapets are structurally sound and secure. • Substantially free from areas capable of harbouring vermin and/or pests. • Flues and vents are structurally sound and secure, free to expand and free from blockages. • Substantially free from debris and moss growth. |
| <p>Building Fabric Internal including:</p> <ul style="list-style-type: none"> • architectural cladding • internal walls | <ul style="list-style-type: none"> • All elements of building fabric and finishes or services system components must be functional, operational and satisfy the performance requirements as required to comply with the FFP Warranty. • Free from structural cracks and/or deflection. • Substantially free from damp and vermin. |

| Element | Standard |
|---|--|
| <ul style="list-style-type: none"> • partitions • ceilings | <ul style="list-style-type: none"> • Substantially free from undue damage and of reasonable appearance for location. |
| <p>Furniture Fixtures and Fittings including:</p> <ul style="list-style-type: none"> • internal and external doors (including fire and smoke stop doors) and door furniture (locks, automatic latching and release devices, acoustic seals, and air and weather seals) • operable walls • tables, desks, chairs, other furniture • passenger seating • windows and sills (incl. window suites) • hatches • vents • sky lights • joinery, shelving • cupboards • ironmongery • railings • racking • notice boards • mirrors • balustrades • grilles and shutters | <ul style="list-style-type: none"> • All elements must be complete, functional, operational and satisfy the performance requirements as required to comply with the FFP Warranty • Operate as intended, in a safe way, without making undue noise and without observable stains on hinges, locks, catches and handles, and without binding, rubbing or catching in any way. • Must function as intended, and must be free from all but minor surface blemishes and minor wear and tear. • Luminescent strips, signs, notices, warning signs are intact, legible and illuminated where appropriate. • Substantially free from corrosion. • Maintain impervious qualities of surfaces and materials intended to remain impervious. |

| Element | Standard |
|--|---|
| Floor and Floor Coverings | <ul style="list-style-type: none"> • The floor covering is complete, and complies with the FFP Warranty and manufacturers specifications. • The floor covering is fully fixed to the floor so as not to cause a health and safety hazard. • The floor/floor covering is free from tears, scoring, cracks or any other damage that is unsightly and/or could cause a health and safety hazard. • The floor covering is free from all but minor surface blemishes and minor wear and tear. • Floor coverings/surfaces must be maintained in such a way as to provide a suitable uniform surface, with minimal resistance, for, wheel chairs and any other wheeled vehicle or equipment in use in the Licenced Maintenance Areas. • Floor coverings/surfaces allow adequate drainage where necessary. • Floor coverings/surfaces are free from pests. |
| Decorative Finishes including: <ul style="list-style-type: none"> • paintwork • fabric and special finishes applied to walls • ceilings • woodwork • metalwork • pipework and other visible elements | <ul style="list-style-type: none"> • Complete and complies with the FFP Warranty and manufacturer's specifications. • Free from all but minor surface blemishes or undue wear and tear. • Substantially free from cracks, or any other surface degradation consistent with a building maintained in accordance with Best Maintenance Practices. |
| External Lighting | <ul style="list-style-type: none"> • Sound, secure, and safe and free from damage. • Free from dead pests, excreta etc. • Operating at their design performance where applicable. • Controlled as required to comply with the FFP Warranty. |

| Element | Standard |
|----------------|--|
| Signage | <ul style="list-style-type: none"> • Compliant with the applicable signage standards, style guides and protocols of the State as advised from time to time. • Secure and sound. • Do not hinder visibility at junctions. • Must be in appropriate locations. • Must be highly visible, both day and night. • Must offer clear and concise information. • Must be free from Graffiti and/or Vandalism. |

1.2. Systems

| Element | Requirement |
|--|---|
| Emergency Power Supplies | <ul style="list-style-type: none"> • Standby power sources and UPS must be operational, secure, have adequate fuel and be tested regularly in accordance with AS3009. • Emergency lighting units must comply with AS2293, be free from dust, operational and fully charged. • Static inverters must be in working order and not overheating during normal operational loading. |
| Electrical Generators including: <ul style="list-style-type: none"> • standby supplies | <ul style="list-style-type: none"> • Operational as intended achieving designed fuel efficiencies. • Changeover between standby and mains operation to be seamless. |
| LV Distribution System including: | <ul style="list-style-type: none"> • Correctly operating in accordance with AS3000 and in compliance with the FFP Warranty. • Wiring, fittings, fixtures, controls and safety devices must be properly housed and fastened |

| Element | Requirement |
|--|---|
| <ul style="list-style-type: none"> • distribution equipment and protective devices fuse switches • isolators • distribution boards • fuses • mini circuit breakers, air circuit breaker, earth leakage circuit breakers and residual current devices, exposed distribution cables • check meters | <p>securely to their intended point of anchorage and labelled.</p> |
| <p>HV Distribution Systems including:</p> <ul style="list-style-type: none"> • substations • distribution equipment • protective devices • isolators • distribution units • oil circuit breakers, air circuit breakers and earth leakage circuit breakers | <ul style="list-style-type: none"> • Correctly operating in accordance with Victorian Distribution Rules, Building Code of Australia, AS3000, relevant high voltage (HV) standards together with permits to work and relevant occupational health and safety systems. • Wiring, fittings, fixtures, controls and safety devices must be properly housed and fastened securely to their intended point of anchorage and labelled. |
| <p>Hot and Cold Water Systems including:</p> <ul style="list-style-type: none"> • cold water supplies • rainwater recycling • domestic cold water systems | <ul style="list-style-type: none"> • Deliver water at the temperatures and flow rates required to comply with the FFP Warranty without undue noise and vibration. • Taps, valves and other related fittings and fixtures function as intended. • Pipework and fittings must be fastened securely to their intended points of anchorage. • There must be no drips or leaks of water from pipework, taps, valves and/or fittings. • Compliance with public health measures for Legionella. |

| Element | Requirement |
|--|--|
| <ul style="list-style-type: none"> • domestic hot water systems • filtration and treatment systems | <ul style="list-style-type: none"> • Water supply pressure maintained. • Tanks and storage system level controls and alarms maintained. |
| <p>Heating, Air Conditioning and Mechanical Ventilation Systems</p> <p>including:</p> <ul style="list-style-type: none"> • heating hot water system including boilers and pumps, piping and valves • steam and vacuum plant including pumps, piping and valves • air conditioning systems including fans, cooling and heating coils filters, dampers, ductwork and grilles, variable air volume boxes and automatic controls • chilled water system including chillers, pumps, piping and valves, etc. • supply and exhaust ventilation systems including fans, ductwork, dampers and grilles, filters etc. • BMS • tunnel ventilation | <ul style="list-style-type: none"> • All air conditioning and ventilation systems and associated Plant components must function as intended without undue noise or vibration. • Air changes and ventilation levels as required to comply with the FFP Warranty at all times. • Temperatures to each part of the Maintained Assets are maintained to the levels required to comply with the FFP Warranty. • Ductwork, fittings and pipework must be securely fastened to their intended points of anchorage. • There must be no leaks of water (or other heating/cooling medium) or air from ventilation systems. • Secure to authorised access only. • Substantially free from corrosion, erosion and organic growth. • Compliance with public health measures for Legionella. • All vents and similar to be clean and clear of dust, dirt, cobwebs, debris and the like which may adversely affect airflow. • All relevant interfaces to BMS/security technology correctly operating. • Air pressurisation regimes maintained. • Smoke control devices correctly operating • Ductwork to be accessible for routine inspection and cleaning internally. |
| <p>Electrical Power and other Cabled Systems</p> <p>Including:</p> <ul style="list-style-type: none"> • information technology • lightning protection | <ul style="list-style-type: none"> • All installations to comply with and operate within the requirements of the FFP Warranty. • Audio systems must be audible and comprehensible. • Weatherproof where appropriate. • Function as intended without undue noise or vibration. • Wiring, fittings, fixtures, controls and safety devices must be properly housed and fastened |

| Element | Requirement |
|--|---|
| <ul style="list-style-type: none"> • communication systems • safety systems • alarm systems • lighting systems | <p>securely to their intended point of anchorage and labelled.</p> <ul style="list-style-type: none"> • Lightning down conductor should be complete, isolated and comply with AS1768. • Electro medical installations comply with AS3003. • All relevant interfaces to BMS/security technology correctly operating. • Lighting fittings must be operable. • Lighting control systems must operate as intended. |
| <p>Public Health and other Drainage Systems including:</p> <ul style="list-style-type: none"> • trade waste system and sewer system • all sanitary ware • specialist traps and interceptors • stormwater system (including swales) • sewer mining • wastewater treatment system(s) • rainwater harvesting system(s) • sump pumps • tunnel drainage | <ul style="list-style-type: none"> • Must function as intended, without undue noise and vibration. • Provide a safe and comfortable environment. • All pipework and fittings fastened securely to their intended points of anchorage. • There must be no leakage of waste and/or foul water and/or rain water. • Filtration and treatment plants maintained and output quality tested. • All traps and the like operating as intended (including emptying and cleaning) • Pumps must be accessible without impacting Train Operations. |
| <p>Fire Fighting Equipment Including:</p> <ul style="list-style-type: none"> • Sprinklers • Pressurisation systems • Fire pumps | <ul style="list-style-type: none"> • Fire sprinklers, and other firefighting equipment shall be maintained and tested in accordance with all applicable Standards, including the Building Code of Australia and AS1851 series. • All smoke management systems be maintained and tested in accordance with all applicable Standards including the BCA and the AS1851 series. • Sound, secure and fixed to their intended point of anchorage. • Fully operational within manufacturer's recommendations. |

| Element | Requirement |
|--|---|
| | <ul style="list-style-type: none"> • Hydrants, sprinklers and hoses must be at correct operating pressure and capacity. • Pipework must be free from corrosion, leaks and drips. • Be of suitable type and quantity for the hazards present within their vicinity. |
| <p>Fire Safety Systems</p> <p>Including:</p> <ul style="list-style-type: none"> • Detection systems • Smoke management systems • Emergency and standby power systems • Automatic elevator recall systems (if applicable) • Ventilation systems • Emergency Lighting | <ul style="list-style-type: none"> • All installations must comply with and operate within relevant Standards. • Function as intended. • Interface with the relevant systems including all relevant interfaces to the BMS and security management systems. • Devices operate effectively to prevent avoidable loss of life. • Comply with the relevant building regulations and Laws. |
| <p>Vertical Transportation</p> <p>Including:</p> <ul style="list-style-type: none"> • lifts • escalators • travelators | <ul style="list-style-type: none"> • Must function as intended in compliance with the FFP Warranty, without undue noise or vibration. • Must comply with AS1735. • Must have a fully functioning control panel and phone. • No broken comb plate teeth. • Note: 2 adjacent broken teeth or 4 broken teeth across whole width of escalator or travelator will result in the escalator or travelator being removed from service. |
| <p>Clocks</p> | <ul style="list-style-type: none"> • Must, at all times, be accurate to within 1 minute of local time. |
| <p>Audio Visual Equipment</p> | <ul style="list-style-type: none"> • Must function as intended without undue noise |

| Element | Requirement |
|---|--|
| <p>Including:</p> <ul style="list-style-type: none"> • passenger information display | <ul style="list-style-type: none"> • Visual systems must be visible and readable. • Audio systems must be audible and comprehensible. • Must be free of excessive dust and dirt (particularly ceiling hung projectors). • All installations to comply with and operate within the requirements of the FFP Warranty. • Weatherproof where appropriate. • Wiring, fittings, fixtures, controls and safety devices must be properly housed and fastened securely to their intended point of anchorage and labelled. |

Appendix J Planned Periodic Cleaning

The following table lists the minimum frequencies for planned periodic cleaning activities. It does not negate the need for Project Co to meet the Cleaning Services Standards at all times, especially in high profile, high traffic and public areas of the Cleaning Areas.

| Element/Service | Applicable Area | Minimum Frequency |
|---|--|---|
| Station Deep Clean: high pressure cleaning of all surfaces, replacement of bin lids where dust and grime cannot be removed, replacement of plants where perished, removal of weeds and maintenance of vegetation within the Station Precinct. | All public areas | 2 monthly |
| Soft floors (hot water extraction) | Cleaning Areas:- all areas | 12 monthly |
| Soft furnishings (hot water extraction) | Cleaning Areas:- all areas | 12 monthly |
| Light fittings | Cleaning Areas:- all areas | 6 monthly |
| High Windows: all surfaces of glass, including ledges, fly screens and fixed mesh screens (internal and external) above 2 metres | Internal: Maintained Assets/Stations ad Above Ground Tunnel Structures:- all areas | 6 Monthly |
| | External: all external windows of the Maintained Assets including Above Ground Tunnel Structures | 12 Monthly |
| Power scrubbing of hard floors (in areas where this is not undertaken daily) | All public areas | Weekly |
| Building façade | Cleaning Areas:- all areas | 12 monthly (or in accordance with any warranty) |
| Roof areas including gutters | Cleaning Areas:- all areas (including Above Ground Tunnel Structures) | 12 monthly |
| High Dusting: remove dust, cobwebs, insects and the like from all elements above 2 metres | Cleaning Areas:- all areas | Monthly |
| External Surfaces - Supply, return and exhaust ductwork, external vents, louvres and registers and any visible plant housing coils and fans | Cleaning Areas:- all areas | 12 monthly |
| Plant rooms and the like | Cleaning Areas:- all areas | 12 monthly |

Project Co must include any elements not covered above but which are part of their design solution which requires periodic cleaning or where the manufacturers specifications/warranty details the requirement for a specialist periodic clean.

Appendix K Cleaning Areas and Cleaning Access Times – Estimated Only

K.1. Maintained Assets/Stations/Above Ground Tunnel Structures

| Cleaning Area | Cleaning Access Times* |
|------------------------------|---|
| Passenger Areas | Mon – Sun outside of Operating Hours |
| BOH (High) Areas | Mon – Fri 07:00 to 18:00 (Some key operational areas may be required to be cleaned during Off-Peak periods as instructed by the Franchisee (in accordance with the FCA)) |
| BOH / Plant Room (Low) Areas | Mon – Fri 07:00 to 18:00 |

* Areas with a Cleaning Access Time Mon-Sun are required to be cleaned on Public Holidays. All other areas do not require Cleaning Services on Public Holidays.

* Cleaning Access Times are only applicable for Overnight Cleans (cleaning activities which require the station to be free of passengers), this does not limit the requirement to undertake normal schedules daily cleaning activities (e.g. empty waste receptacles, keeping the stations free of waste and undertaking unscheduled cleaning requests).

Appendix L Cleaning Service Standards

- (a) Each element described in this appendix should be cleaned to the standard required by this appendix, irrespective of where in the Cleaning Areas the particular element is located.
- (b) In this appendix, the word "free" is a reference to reasonably free and is not always an absolute standard but is to be interpreted by taking into account the use and location of the specific element it applies to.
- (c) Project Co is responsible for determining the frequency of cleaning required to meet the following performance standards unless noted otherwise. Noting that a higher frequency of cleaning is required in toilets and high profile public areas of the Stations.

L.1. Maintained Assets (including Stations and Above Ground Tunnel Structures)

| Element | Standard |
|---|--|
| External Features, Fire exits and stair wells, Above Ground Tunnel Structures (where applicable) | <ul style="list-style-type: none"> • Landings, ramps, stairwells, fire exits, steps, entrances, porches, patios, balconies, eaves, external light fittings are free of spillage, bodily fluids, dust, grit, dirt, leaves, cobwebs, rubbish, unauthorised stickers, graffiti, gum, cigarette butts and bird excreta. • Light covers and diffusers are free of dust, grit, insects, lint and cobwebs. • Handrails are clean and free of stains. • Garden furniture (where applicable) is clean and operational. |
| Walls, signage, skirtings and ceilings | <ul style="list-style-type: none"> • Internal and external walls, signage and ceilings are free of spillage, bodily fluids, dust, grit, dirt, cobwebs, rubbish, unauthorised stickers, graffiti, gum, cigarette butts and bird excreta. • Walls and ceilings are free of marks caused by furniture, equipment or Occupants. • Light switches are free of fingerprints, scuffs and any other marks. • Light covers and diffusers are free of dust, grit, insects, lint and cobwebs. • Skylights are free of dust, grit, insects, lint and cobwebs. • Polished surfaces are of a uniform lustre. |
| Windows and glass surfaces | <ul style="list-style-type: none"> • External and internal surfaces of glass are clear of all streaks, spots and marks, including fingerprints, gum, unauthorised stickers, and smudges. • Window frames, tracks, fly screens, fixed mesh screens and ledges are clear and free of dust and grit. • Windows are free of all marks and spots. |
| Doors | <ul style="list-style-type: none"> • Internal and external doors and doorframes are free of spillage, bodily fluids, dust, grit, dirt, cobwebs, |

| Element | Standard |
|---------------------------------|---|
| | <p>unauthorised stickers, graffiti, gum, cigarette butts and bird excreta.</p> <ul style="list-style-type: none"> • Doors and doorframes are free of marks caused by furniture, equipment or Occupants. • Air vents, relief grilles and other ventilation outlets are kept unblocked and free of dust, grit, soil, film, cobwebs, scuffs and any other marks. • Door tracks and door jambs are free of grit and other debris. • Polished surfaces are of a uniform lustre. |
| Hard Floors | <ul style="list-style-type: none"> • The floor is free of spillage, bodily fluids, dust, grit, dirt, leaves, cobwebs, rubbish, unauthorised stickers, graffiti, gum, cigarette butts and bird excreta. • The floor is free of polish or other build-up at the edges and corners or in areas of high traffic. • The floor is free of spots, scuffs or scratches on traffic lanes, around furniture and at pivot points. • Inaccessible areas (edges, corners and around furniture) are free of dust, grit, lint and spots. • Polished or buffed floors are of a uniform lustre (only using non slip materials if sealing is required). • Appropriate signage and precautions are taken regarding pedestrian safety of newly cleaned or wet floors. |
| Soft Floors | <ul style="list-style-type: none"> • The floor is free of dust, grit, litter, marks and spots, gum water or other liquids. • The floor is free of stains, spots, scuffs or scratches on traffic lanes, around furniture and at pivot points. • Inaccessible areas (edges, corners and around furniture) are free of dust, grit, lint and spots. • Where carpets are vacuumed/cleaned, this is done in accordance with section 5 of Australian Standard No. 3733. |
| Ducts, grilles and vents | <ul style="list-style-type: none"> • All external surfaces of ventilation outlets are kept unblocked and free of dust, grit, soil, film, cobwebs, scuffs and any other marks. • All external surfaces of ventilation outlets are kept clear and uncluttered following cleaning. (The surrounding ceiling area is to be cleaned along with the vents where the dust sticks and “feathers” out from the vent.) |

L.2. Fixtures

| Element | Standard |
|--|--|
| Electrical fixtures and appliances | <ul style="list-style-type: none"> • Electrical fixtures and appliances are free of grease, dirt, dust, encrustations, marks, stains and cobwebs. • Electrical fixtures and appliances are kept free from signs of use or non-use. • Motor vents fans, etc. are clean and free of dust and lint. • Drinking fountains are clean and free of stains, marks, graffiti and mineral build-up. |
| Furnishings and fixtures., passenger seating/furniture, lifts, escalators and customer touch points | <ul style="list-style-type: none"> • Hard surface furniture/seating is free of spots, soil, film, dust, fingerprints, litter, bodily fluids, graffiti, unauthorised stickers and spillages. • Soft surface furniture is free from stains, soil, film and dust. • Furniture legs, wheels and castors are free from mop strings, soil, film, dust and cobwebs. • Inaccessible areas (edges, corners, folds and crevices) are free of dust, grit, lint and spots. • All high surfaces are free from dust and cobwebs. • Curtains, blinds and drapes are free from stains, dust, cobwebs, lint and signs of use or non-use. • Furniture has no odour that is distasteful or unpleasant. • Shelves, bench tops, cupboards and wardrobes/lockers are clean inside and out and free of dust and litter or stains. • Waste receptacles /rubbish bins (including ATM bins) or containers are not overflowing, not heavily soiled, not foul smelling and mechanically intact. • Fire extinguishers and fire alarms are free of dust, grit, dirt and cobwebs, graffiti, unauthorised stickers etc. • Customer touch points (e.g. customer help points, hard rails,) are wiped daily with an appropriate disinfectant. (the disinfectant is needs to be approved by the State and the Franchisee and must not damage the touch point) |
| Kitchenettes / staff rooms | <ul style="list-style-type: none"> • Fixtures, surfaces (internally & externally) and appliances are free of grease, dirt, dust, encrustations, marks, stains and cobwebs. • Hygiene standards are satisfied where the fixture or appliance is used in food preparation. • Range hoods (interior and exterior) and exhaust filters are free of grease and dirt on inner and outer surfaces. • Electrical and cooking fixtures and appliances are kept free from signs of use or non-use (inside and out). |

| Element | Standard |
|--------------------------------------|--|
| | <ul style="list-style-type: none"> • Motor vents, air grilles, etc. are clean and free of dust and lint. |
| Toilets and bathroom fixtures | <ul style="list-style-type: none"> • Porcelain and plastic surfaces are free from smudges, smears, body fats & fluids, hair, soap build-up, graffiti, unauthorised stickers and mineral deposits. • Metal surfaces, shower screens and mirrors are free from streaks, soil, hair, smudges, soap build-up, graffiti, unauthorised stickers and oxide deposits. • Wall tiles and wall fixtures (including soap and cream dispensers, hand rails and towel holders) are free of dust, grit, smudges/streaks, hair, mould, graffiti, unauthorised stickers, soap build-up and mineral deposits. • Shower curtains and bath mats are free from stains, smudges, smears, odours, hair, mould and body fats. • Plumbing fixtures are free of smudges, dust, soap build-up and mineral deposits. • Bathroom fixtures are free from odours which are distasteful or unpleasant. • Polished surfaces are of a uniform lustre. • Sanitary disposal units, sharp containers and nappy bins are clean and functional. • Personal Cleaning Consumable items are in sufficient supply. • Walls under and around electric hand dryers and paper towel dispensers are to be free of splash marks and water stains. • Floors under soap dispensers (Including all surfaces of dispensers) are to be cleared of soap drips and associated build-ups in the corners. • Paper towel dispensers and electric hand dryers are clean and functional. |

L.3. Environment

| Element | Standard |
|----------------------------------|---|
| General tidiness | <ul style="list-style-type: none"> • The area appears tidy and uncluttered. • Floor space is clear, only occupied by furniture and fittings designed to sit on the floor. • Passenger Areas, fire access and exit doors are left clear and unhindered. |
| Odour Control (all areas) | <ul style="list-style-type: none"> • There is no odour that is distasteful or unpleasant. • Room deodorisers in toilets are clean and functional. |

L.4. Other Special Cleaning Requirements

| Requirement | Standard |
|---|--|
| Back of House Areas | <ul style="list-style-type: none"> • All elements in the affected area have been cleaned, disinfected/sanitised and deodorised. |
| Specialist Equipment PSD (station side subject to section 6.2 h)) passenger information displays ticketing machines; automatic barriers; public address speakers; advertising signs; vending machines; signage; ATM machines, and the like | <ul style="list-style-type: none"> • Equipment is free from soil, smudges, dust, fingerprints, grease and spillages. • Equipment is free of tapes/plastic, etc. that may compromise cleaning. • Equipment has no odour that is distasteful or unpleasant. |



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Exhibit 5

Services Solution

[not disclosed]



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Exhibit 6

Bid D&C Program

[not disclosed]



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Exhibit 7

Major Projects Skills Guarantee Compliance Plan

[not disclosed]



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Exhibit 8

Soil Contamination Plans

[not disclosed]



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Exhibit 9

Initial Contaminated Groundwater Methodology

[not disclosed]



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Agreement

Metro Tunnel
Tunnel and Stations PPP

Commercial Development Agreement CBD North

Minister for Public Transport on behalf of the Crown
in right of the State of Victoria

John Holland Nth OSD Developer Pty Ltd (ACN 623
274 564)

Scape Little Latrobe Operator Pty Ltd (ACN 607 697
183)

John Holland Property Developments Pty Ltd (ACN
617 899 297)



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Incorporated Document

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Commercial Development Agreement

Date ►

Between the parties

State **Minister for Public Transport on behalf of the Crown in right of the State of Victoria**

Developer **The unincorporated joint venture comprising**
John Holland Nth OSD Developer Pty Ltd ACN 623 274 564
of Level 5, 380 St Kilda Rd, Melbourne VIC 3004
and
Scape Little Latrobe Operator Pty Ltd ACN 607 697 183
of Tenancy 3A Swanston Square, 551 Swanston Street, Carlton VIC 3053

Guarantor **John Holland Property Developments Pty Ltd ACN 617 899 297**
of Level 5, 380 St Kilda Rd, Melbourne VIC 3004

Recitals

- 1 Associated with the 'Tunnel and Stations PPP' component of the Metro Tunnel and for the purpose of an approved project in accordance with the Major Transport Projects Facilitation Act 2009 (Vic), the State agrees for the Developer to undertake the Oversight Development.
- 2 The State and the Developer wish to enter into this Agreement and, as applicable, the other Oversight Development Agreements, to record the terms on which the Oversight Development will be developed and implemented by the Developer.
- 3 The Guarantor has agreed to guarantee the obligations of the Developer under this Agreement.

The parties agree as follows:



1 Definitions and interpretation

1.1 Definitions

The meanings of the terms used in this agreement are set out below.

| Term | Meaning |
|---|--|
| Aboriginal Cultural Heritage | has the meaning given in the <i>Aboriginal Heritage Act 2006</i> (Vic). |
| Absolute Occupation | occupation of the Freehold Land in a manner which requires suspending the movement of trains over the whole or part of any railway running line over the Station Land. |
| Access Protocols | has the meaning given to that term in the Interface Agreement. |
| Adjustment Note | has the meaning given by the GST Law. |
| Advertising Restrictions | the restrictions set out in Attachment 4. |
| Agreement | this agreement including any attachments. |
| Agreement Date | the date of this Agreement. |
| Annualised Employee Equivalent (AEE) | the number of hours that is calculated by dividing the total number of ordinary working hours that an employee worked and was paid for over the reporting period by the total number of full-time ordinary working hours paid per annum. |
| Applicable Cure Period | has the meaning given to it in clause 34.2(c)(2). |
| Approval | any licence, permit, authorisation, endorsement of plan, consent, assessment, approval, determination, certificate, accreditation, registration, clearance, permission or the like (as amended or substituted from time to time) which is issued by or obtained from or is required to be issued or obtained from any Authority or any other person or in accordance with any Law, which must be |



| Term | Meaning |
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| | obtained or satisfied in connection with the Oversight Development. |
| Approved Cure Plan | has the meaning given to it in clause 34.2(c). |
| Approved Design Documentation | Design Documentation approved in accordance with clause 15. |
| Artefacts | any fossils, bones, artefacts, coins, articles of antiquity, valuable materials, structures or other remains, or things or structures of a scientific, geological, historical, cultural, heritage, archaeological or Aboriginal nature or interest or things otherwise of value, including any items of cultural heritage significance under the <i>Aboriginal Heritage Act 2006</i> (Vic). |
| Associate | <p>in relation to a person, any officer, employee, agent, consultant or adviser of that party and:</p> <p>1 in the case of the State means:</p> <ul style="list-style-type: none">• the State Representative;• MMRA;• any Authority (other than the Commonwealth of Australia or its Associates); and• any officer, employee, agent, contractor, consultant or adviser of the State, the State Representative, MMRA or Authority, <p>each acting in connection with the Oversight Development, but does not include the Developer and its Associates, Project Co and its Associates, the Independent Reviewer, the Train Franchisee, or a contractor or alliance delivering a work package for the Project (including the State in its capacity of 'participant' in the 'Rail Systems Alliance' or the 'Rail Infrastructure Alliance' for the Project);</p> <p>2 in the case of the Developer includes:</p> <ul style="list-style-type: none">• any Subcontractors; and• any Related Body Corporate, officer, employee, agent, contractor, consultant or adviser of the Developer and Subcontractors, <p>each acting in connection with the Oversight Development, but excludes:</p> <ul style="list-style-type: none">• the State and its Associates;• the Independent Reviewer; and• Project Co and the Project Co Associates (other than to the extent that such Associates are engaged by the Developer for the purposes of the design, construction, operation or |



| Term | Meaning |
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| | maintenance of the Oversight Development Works). |
| Authorised Person | any person authorised by the State to access the Licenced Area or the Freehold Land (as applicable) including a contractor or alliance delivering a work package for the Project. |
| Authority | any government or any governmental, semi-governmental or local government authority, local council, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality and any person having jurisdiction over any part of the Oversight Development Works or the Oversight Development. |
| Bank Bill | a bill of exchange (as that term is defined in the <i>Bills of Exchange Act 1909</i> (Cth)) which has been accepted by any bank authorised under a law of the Commonwealth of any state to carry on banking business. |
| Bank Bill Rate | for a period: <ol style="list-style-type: none">1 the rate, expressed as a yield per cent per annum (rounded upwards to two decimal places) quoted as the average bid rate on the Reuters Monitor System page 'BBSY' (or any page which replaces that page) at about 10.10 am (Melbourne time) on the first day of that period, for Bank Bills having a tenor in months which is closest to that period; or2 if there is a manifest error in the calculation of that average rate or no average rate is published for Bank Bills of that tenor in accordance with paragraph 1 the rate specified by the complying party reasonably and in good faith having regard to the rates otherwise bid for Bank Bills having a tenor as described above at or around that time. |
| Best D&C Practices | design, manufacturing, construction, installation, commissioning and repair practices which are carried out: <ol style="list-style-type: none">1 with the skill, care and diligence which may reasonably be expected of a skilled professional carrying out design, manufacturing, construction, installation, commissioning and repair work similar to the Oversight Development Works;2 with due expedition and without delay;3 in a manner which is safe to all people and the Environment;4 with the intent of ensuring reliable long term and safe operation of the Oversight Development;5 by trained and experienced personnel utilising high quality and safe proper equipment, tools, procedures and industry standards; |



| Term | Meaning |
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| | <p>6 with an adequate number of personnel, materials, resources and supplies;</p> <p>7 using new and high quality fixtures, fittings, finishes and materials which are:</p> <ul style="list-style-type: none">• free from defects; and• appropriate for the environment in which they are intended to be used under normal conditions and reasonably anticipated abnormal conditions or which would be reasonably anticipated by a skilled professional carrying out design, manufacturing, construction, installation, commissioning and repair work similar to the D&C Activities. |
| Best Industry Practices | industry practices appropriate to the construction and development of mixed commercial, residential and retail developments, as would be reasonably expected of a skilled and experienced Australian operator engaged in similar developments to the Oversight Development under the same or similar circumstances and conditions |
| Builder | the builder appointed by the Developer to construct the Oversight Development. |
| Builder's Side Deed | the side deed between the State, the Developer and the Builder substantially in the form contained in Attachment 10. |
| Building Contract | the building contract between the Developer and the Builder in relation to the Oversight Development Works entered into as contemplated by this Agreement and approved by the State Representative. |
| Business Day | a day that is not a Saturday, Sunday or public holiday in Melbourne, Victoria pursuant to the <i>Public Holidays Act 1994</i> (Vic). |
| CBD North | the site located at: <ol style="list-style-type: none">1 377-391 Swanston Street2 200 La Trobe Street3 212-222 La Trobe4 17-27 Little La Trobe5 204-206 La Trobe6 208-210 La Trobe, Melbourne |



| Term | Meaning |
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| CBD North OSD Acceptance | <p>occurs on the earlier of:</p> <ol style="list-style-type: none">1 the date the Developer issues a notice under clause 9.1(d)(i) of the Interface Agreement accepting Completion (PPP); or2 if a party to the Interface Agreement refers whether Completion (PPP) has been achieved for resolution under clause 17 of the Interface Agreement, the later of:<ul style="list-style-type: none">– the date that it is determined that Completion (PPP) has been or was achieved; and– the date which is 3 months after the date that a party to the Interface Agreement referred whether Completion (PPP) has been achieved for resolution under clause 17 of the Interface Agreement. |
| Certificate of Final Completion | <p>a certificate issued by the Developer in accordance with clause 25.3 certifying to the State that Final Completion has been achieved.</p> |
| Cessation Date | <p>has the meaning set out in clause 36.2.</p> |
| Change in Law | <p>any one or more of the following:</p> <ol style="list-style-type: none">1 a change in, or repeal of, an existing Law;2 the enactment or judicial determination of a new Law; or3 a change in the way a Law is applied or interpreted as a result of a decision of a court of competent jurisdiction, <p>but does not include:</p> <ol style="list-style-type: none">4 a change in the way a Law is applied or interpreted due to:<ul style="list-style-type: none">– the failure of the Developer or any of its Associates to comply with a Law or Approval; or– an illegal act or omission of the Developer or any of its Associates;5 any new Approval or change in an Approval resulting from:<ul style="list-style-type: none">– an act or omission of the Developer or any of its Associates; or– a change to the design or delivery methodology in relation to the Oversight Development Works;6 any new Law or change in existing Law relating to Taxes including the <i>Income Tax Assessment Act 1936</i> (Cth), the <i>Income Tax Assessment Act 1997</i> (Cth) and the GST Law;7 any new Law or change in any existing Law which was not in force at the date of this Agreement but which:<ul style="list-style-type: none">– had been published in the Government Gazette by way of bill, draft bill or draft statutory instrument or otherwise |



| Term | Meaning |
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| | <p>specifically referred to prior to the date of this Agreement;</p> <ul style="list-style-type: none">– a party exercising Best Industry Practices would have reasonably foreseen or anticipated prior to the date of this Agreement ; or– is substantially the same as a Law in force prior to the date of this Agreement; or <p>8 any new Law or change in existing Law relating to Part IVA (Proportionate Liability) of the <i>Wrongs Act 1958</i> (Vic) or its application which limits or eliminates the impact of that Part.</p> |
| Claim | <p>includes any claim, action, demand or suit or proceeding (including by way of contribution or indemnity) made:</p> <ol style="list-style-type: none">1 in connection with the Oversight Development Agreements or the Oversight Development; or2 at Law or for specific performance, restitution, payment of money (including damages). |
| Commencement Date | <p>the date on which the last of the conditions precedent in clause 4.2 to be satisfied or waived is satisfied or waived.</p> |
| Commonwealth Building Code | <p>each of:</p> <ol style="list-style-type: none">1 the Building Code 2013 (Cth);2 the 'Supporting Guidelines' (April 2016);3 the Code for the Tendering and Performance of Building Work 2016 (Cth); and4 any other documents issued under section 34 of the Building and Construction <i>Industry (Improving Productivity) Act 2016</i> (Cth) by legislative instrument. |
| Concept Design Documentation | <p>all drawings, plans, specifications and other information required for the Oversight Development Works as contained in Attachment 8 and as subsequently amended in accordance with this Agreement.</p> |
| Confidential Information | <p>the:</p> <ol style="list-style-type: none">1 Oversight Development Agreements;2 Development Information;3 information provided by:<ul style="list-style-type: none">• the State or any of its Associates to the Developer or any of its Associates; or• the Developer or any of its Associates to the State or any of its Associates, |



| Term | Meaning |
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| | <p>4 in accordance with this Agreement whether prior to or after the date of this Agreement;</p> <p>5 the Developer Material; and</p> <p>6 other information in connection with the D&C Activities which the Developer is required to keep confidential in complying with any Privacy Principles or any applicable Law.</p> |
| Conditions Precedent Deadline Date | the date which is 30 days after the date of the Agreement Date. |
| Consideration | has the meaning given by the GST Law. |
| Construction Commencement | has the meaning given to that term in clause 10. |
| Construction Commencement Deadline | [not disclosed] after CBD North OSD Acceptance, as extended pursuant to clause 21.3(a). |
| Construction Licence | any licence granted in accordance with clause 11.1 in connection with the Oversight Development Works, in the form set out in Attachment 2. |
| Construction Site | the area to be used for construction within the Site. |
| Contamination | a condition of land, air, soil, water (including groundwater) resulting from past or present Pollution and which shares any of the characteristics of Pollution. |
| Contamination Notice | a notice, order or direction given, or purporting to have been given, under the <i>Environment Protection Act 1970</i> (Vic) or any other Law which requires a person to Remediate any Contamination in, on or emanating from the Construction Site or any other land within the vicinity of the Construction Site used or occupied by the Developer or its Associates for the Project. |
| Contract of Sale | the contract of sale for the Freehold Land between the State (or the Secretary of Department of Economic Development, Jobs, Transport and Resources) and the Purchaser to be entered as contemplated by this Agreement, a form of which is contained in Attachment 3. |



| Term | Meaning |
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| Contract Price | the purchase price payable under the Contract of Sale and, for the purpose of clause 35, includes the Development Fee. |
| Corporations Act | the <i>Corporations Act 2001</i> (Cth). |
| Cultural Heritage Management Plan | a cultural heritage management plan to be prepared and approved under the Aboriginal Heritage Act 2006 (Vic) for the D&C Activities. |
| D&C Activities | all things which the Developer is, or may be, required to carry out or do: <ol style="list-style-type: none">1 in connection with the Oversight Development Works; or2 to otherwise comply with its obligations under the Oversight Development Agreements prior to Final Completion. |
| Default | <ol style="list-style-type: none">1 a material breach by the Developer of, or other material failure by the Developer to comply with, an obligation of the Developer under this Agreement or any other Oversight Development Agreement;2 a representation, warranty or statement made or given by the Developer in this Agreement or any other Oversight Development Agreement being false or misleading in any material particular when made or given; or3 a default by the Developer in a persistent or repeated fashion in the due observance and performance of any of its obligations under this Agreement or any other Oversight Development Agreement. |
| Default Notice | has the meaning given in clause 34.1. |
| Default Rate | for a period, the Interest Rate for that period plus a margin of [not disclosed] per annum. |
| Defects | any omission or defect in the Oversight Development Works. |
| Defects Liability Period | the period commencing on the date the Oversight Development Works reach or are deemed to have reached Final Completion under this Agreement and ending 12 months after that date, and if during that period the Developer rectifies Defects of State Concern, the Defects Liability Period for the rectified Defects of State Concern will recommence on the date of completion of the work required to give effect to the rectification and end 12 months after that date provided that the maximum Defects Liability Period will not be longer than 24 months after the date Final Completion has |



| Term | Meaning |
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| | occurred under this Agreement. |
| Defects of State Concern | any Defect in a part of the Oversight Development Works which relates to the façade treatments, public spaces or street frontages or in any way affects the Interfaces. |
| Delay Notice | has the meaning set out in clause 21.2(a). |
| Design Documentation | all drawings, plans, specifications and other information required for the Oversight Development Works including all documents submitted as part of any application for the Planning Scheme Amendment, including the Concept Design Documentation and Final Design Documentation, as the context requires. |
| Destruction Termination Notice | has the meaning given in clause 40.2(c). |
| Developer D&C Workforce | the workforce employed or otherwise engaged by the Developer or any Subcontractor undertaking all or any part of the D&C Activities in Australia or New Zealand and includes persons performing a head office, corporate or governance role to the extent such role is in connection with the Oversight Development, provided that to the extent a person undertakes multiple roles in connection with the Oversight Development, that person may not be counted more than once. |
| Developer Material | each of: <ol style="list-style-type: none">1 the Design Documentation;2 method of working and materials used in, or intended to be used in the construction and completion of the Oversight Development Works;3 all other documentation, information (including data bases and drafts), models, systems and technology in which Intellectual Property Rights are capable of subsisting which the Developer or any of its Associates prepare or use in carrying out the D&C Activities, but does not include software tools which are:<ul style="list-style-type: none">• used internally the Developer or any of its Associates to create, but which are not incorporated into, the materials described in paragraphs 1 to 3 of this definition; or• generally commercially available; and4 any other deliverables required to be delivered by the Developer or any of its Associates to the State in accordance with the Oversight Development Agreements, |



| Term | Meaning |
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| Developer Unacceptable Condition | each of: <ol style="list-style-type: none">1 a condition of an Authority to the extent it is imposed in a Planning Permission in order to achieve the objectives and design outcomes set out in the Metro Tunnel Project Urban Context Report, CBD North Over Site Development (Jones and Whitehead)(October 2017); or2 the requirements imposed under or arising as a consequence of the difference between the Incorporated Document and the Incorporated Document as Submitted; or3 any diminution in entitlements under the Incorporated Document when compared with the Incorporated Document as Submitted. |
| Development Fee | the First Instalment Development Fee and the Second Instalment Development Fee. |
| Development Information | all documents and information provided by the State and its Associates to the Developer in connection with the Oversight Development: <ol style="list-style-type: none">1 prior to the date of this Agreement, which is not incorporated into this Agreement;2 after the date of this Agreement, which the State is not required by this Agreement to provide to the Developer; and3 without limiting paragraph 1, any report provided by the State or any of the State's Associates in relation to any site information. |
| Development Intellectual Property Rights | all Intellectual Property Rights in: <ol style="list-style-type: none">1 any Developer Material, including any such Intellectual Property Rights:<ul style="list-style-type: none">• existing at the date of this Agreement; or• which come into existence after the date of this Agreement, including those derived from Intellectual Property Rights existing at the date of this Agreement, and2 any information, ideas, documents, equipment or material of any kind and however embodied, which are supplied, brought to or used by or on behalf of the Developer in undertaking the Development (including each method of working used by or on behalf of the Developer in carrying out the D&C Activities) or which are made available to the State in accordance with this Agreement by or on behalf of the Developer, whether or not forming part of the Developer Material and whether or not owned by a third party. |
| Development Plan | a development plan required under the Incorporated Document as amended from time to time. |

| Term | Meaning |
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| Disclosed Information | <p>all information of whatever nature which is obtained by or on behalf of the Developer or any of its Associates from the State, any of the State's Associates or any Authority relating in any way to the Oversight Development including:</p> <ol style="list-style-type: none"> 1 the RFP and all documentation issued in connection with the Oversight Development, including, without limitation, any report prepared by a third party on the instructions of the State and the contents of the data room operated by, or on behalf of, the State during the tendering process; 2 all material disclosed in presentations by or on behalf of the State or any of the State's Associates in connection with the Oversight Development; 3 all discussions and negotiations between the State and the State's Associates on the one hand and the Developer and its Associates on the other hand relating to the Oversight Development or the Oversight Development Agreements to which the State is a party; and 4 any other information disclosed to, or obtained by or on behalf of, the Developer or any of its Associates from the State or any of the State's Associates or which is otherwise acquired by or on behalf of, or comes to the knowledge of, the Developer or any of its Associates, whether the information is in oral, visual, electronic or written form or is recorded in any other medium. |
| Dispute | <p>any dispute between the State and the Developer arising in connection with this Agreement or the D&C Activities (including questions concerning this Agreement's existence, meaning or validity).</p> |
| Draft Cure Plan | <p>has the meaning given in clause 34.2(a).</p> |
| Easement Plan | <p>an easement plan to be agreed under clause 15.4.</p> |
| Entity | <p>has the meaning given in section 64A of the Corporations Act, but is also deemed to include a joint venture within the meaning of Australian Accounting Standard 131 (AASB 131).</p> |
| Environment | <p>the physical factors of the surroundings of humans and other life forms, including the land, soil, plants, habitat, waters, atmosphere, climate, sounds, odours, tastes, biodiversity and the social and aesthetic values of landscape.</p> |
| Environmental Hazard | <p>a state of danger to human beings or the Environment whether imminent or otherwise resulting from the location, storage, handling or release of any substance having toxic, corrosive, flammable,</p> |



| Term | Meaning |
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| | explosive, infectious or otherwise dangerous characteristics. |
| Environmental Law | in relation to the Site any Law relating to the Environment including any law relating to land use, planning, pollution of air, water, soil or groundwater, chemicals, waste, the use of transport, the storage and handling of dangerous goods, the health or safety of any person, or any other matters relating to but not limited to the protection of the Environment, health or property. |
| Environmental Requirements | all Laws relating to the Environment and the conditions and requirements of any Approval relating to the Environment together with all environmental safeguards and measures necessary to avoid, reduce, minimise or mitigate the environmental impacts of the D&C Activities. |
| EPA | the Environment Protection Authority constituted under the <i>Environment Protection Act 1970 (Vic)</i> . |
| Extension Event | <ol style="list-style-type: none">1 an act or omission of the State in its capacity as counterparty to this Agreement or a breach by the State of the Oversight Development Agreements (but does not in any circumstances include any act or omission of the State which is otherwise authorised or permitted by this Agreement);2 a Force Majeure Event;3 a State Initiated Modification or a State Initiated OSD Variation directed by the State Representative under clause 16 except where the need for the State Initiated OSD Variation was a result of a breach of obligations by the Developer under this Agreement;4 any requirement (including under the Interface Agreement) or a direction by the State for the Developer to cease or delay the Oversight Development Works or modify the manner in which the Oversight Development Works are being carried out for the purpose of prioritising, expediting or minimising any delay to the Project Activities (including rectifying any defect in any works undertaken as part of the Project Activities); or5 a Modification under the terms of the Interface Agreement or any alteration to the Development Works required as a result of a change to the PPP Works for OSD (as defined in the Interface Agreement) required under clause 8.1(b) or 9.5 of the Interface Agreement; or6 a Change in Law which specifically discriminates against:<ul style="list-style-type: none">– the Oversight Development; or– the Station so that that discrimination has a consequential impact on the Oversight Development,or which applies to the Oversight Development but does not |



| Term | Meaning |
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| | apply generally to commercial or retail premises in the Melbourne CBD; |
| | 7 a delay to the Project Activities (under the Project Agreement) in respect of which Project Co is granted an extension of time or is granted relief under clause 31 of the Project Agreement; or |
| | 8 Total Financial Market Disruption. |
| External Finance | the finance to be secured by the Developer from the External Financier to enable the Developer to comply with its obligations under this Agreement. |
| External Financier | the financial institution from whom the Developer secures the External Finance. |
| Fair Market Value | – [not disclosed]. |
| Final Completion | the completion of the Oversight Development Works in accordance with clause 25.1. |
| Final Completion Date | the date specified as the date on which Final Completion was achieved as set out in the Certificate of Final Completion. |
| Final Design Documentation | the design documentation for the Oversight Development Works based on the Concept Design Documentation and developed in accordance with the requirements in clause 15, including but not limited to the development plans required under the Incorporated Document and any subsequent design documentation. |
| Financial Close | the date on which all the Conditions Precedent are satisfied or waived in accordance with clause 4.2. |
| Financial Close Date | the date on which Financial Close is achieved. |
| Financier Direct Deed | the deed of that name to be entered into between the State, the Developer and the Developer's and the Purchaser's financier on terms consistent with the Financier Principles or such other terms as are required by the Developer's financier where the State agrees to that alternative form (and the State may not unreasonably withhold or delay consent to that alternative form). |



| Term | Meaning |
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| Financier Principles | the principles outlined in Attachment 5. |
| FIRB Approval | <ol style="list-style-type: none">1 written advice from or on behalf of the Treasurer of the Commonwealth of Australia that the Commonwealth Government does not object to the Oversight Development;2 written approval from the Foreign Investment Review Board under the Foreign Acquisitions and Takeovers Act 1975 (Cth) or any business policy of the Commonwealth Government allowing the Developer to enter into this Agreement; or3 the failure by the Treasurer of the Commonwealth of Australia to make an order under Part 3 of the Foreign Acquisitions and Takeovers Act 1975 (Cth) (other than an interim order under section 68) in respect of entry or performance by the Developer of this Agreement within the time limits specified in section 77 of that Act. |
| First Instalment Development Fee | [not disclosed] |
| Force Majeure Event | each of the following events: <ol style="list-style-type: none">1 earthquake, tropical cyclone, natural disaster, landslide, seismic activity, tsunami or mudslide;2 a flood which might, at the Agreement Date, be expected to occur less frequently than once in every 100 years;3 war, act of a public enemy (whether war is declared or not), civil war, rebellion, revolution, military usurped power, military insurrection, military commotion or other like hostilities;4 chemical, nuclear or biological contamination;5 ionising radiation or contamination by radioactivity;6 explosion or fire caused by events referred to in paragraphs 1 or 3; or7 an act of terrorism,8 which occurs at or directly in the vicinity of the Construction Site and prevents, the Developer from carrying out all or a material part of the D&C Activities or prevents, the State from carrying out all or a material part of its obligations under this Agreement. |
| Force Majeure Report | has the meaning given in clause 36.1(b). |
| Force Majeure Termination Event | a Force Majeure Event which prevents the Developer from carrying out all or a material part of the Oversight Development Works or prevents the State from carrying out all or a material part of its obligations under Oversight Development Agreements for a |



| Term | Meaning |
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| | continuous period exceeding [not disclosed]. |
| Freehold Land | that part of OSD North containing the Oversight Development, as initially shown on the plans in Attachment 12. |
| Freehold Strata Plan | the strata plan of subdivision as determined under clause 26. |
| Government Party or Parties | all and any of the State and any Authority. |
| GST | has the meaning given by the GST Law and where appropriate includes Notional GST. |
| GST Act | the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth). |
| GST Amount | to the extent the Consideration is consideration for a Taxable Supply an amount equal to the Consideration provided for that Taxable Supply (excluding any Consideration payable pursuant to clause 32) multiplied by the prevailing rate of GST (10% as at the Commencement Date). |
| GST Group | has the meaning given by the GST Law. |
| GST Law | has the meaning given by the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth). |
| GST Registered | has the meaning given to the term 'registered' by the GST Law. |
| Hazardous Substance | any substance which would or might reasonably be expected to cause damage or injury to any person, any property or the Environment. |
| Health and Safety Incident | any incident that: <ol style="list-style-type: none">1 is required to be notified to an Authority under any OHS Legislation;2 results or could potentially result in injury, illness or disease requiring a person to miss more than one day of work (for the avoidance of doubt, this includes 'near misses');3 results in an injury that requires treatment by a medical |



| Term | Meaning |
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| | practitioner; 4 results in, or could potentially result, in injury, illness or disease to a member of the public (for the avoidance of doubt, this includes 'near misses'); or 5 results, or could potentially result, in damage to Oversight Development or other property, plant or equipment, and that poses a material risk of an incident referred to in paragraphs 1 to 4 above. |
| Health and Safety Management Plan | the plan of that name prepared and updated by the Developer in accordance with the Health and Safety Requirements. |
| Health and Safety Requirements | those matters set out in Attachment 9 and any direction, instruction, request or requirement relevant or necessary for compliance by the State with any applicable Workplace Health and Safety Laws, and including any such matter of which the Developer has been informed by the State either orally or in writing. |
| Health Privacy Principles | the Health Privacy Principles set out in the Health Records Act 2001 (Vic). |
| Heritage Claim | a claim made in connection with a requirement under any Law for the protection, preservation or removal of any Artefact. |
| Incorporated Document | the Incorporated Document under the Planning Scheme Amendment following the completion of the statutory process under the Planning and Environment Act 1987 (Vic) including without limitation under section 38 Planning and Environment Act 1987 (Vic), and the masterplan as endorsed by the Minister under that incorporated document. |
| Incorporated Document as Submitted | the Incorporated Document under the Planning Scheme Amendment and the masterplan as submitted by the Developer to the State a copy of which is at Attachment 13. |
| Indemnified Persons | has the meaning given to that term in clause 29.4(f) of this Agreement. |
| Independent Reviewer | the person appointed from time to time as the independent reviewer pursuant to the Project Agreement. |



| Term | Meaning |
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| Indirect or Consequential Loss | <p>any:</p> <ol style="list-style-type: none">1 loss of opportunity, profit, anticipated profit, business, business opportunities, revenue or any failure to realise anticipated savings;2 penalties payable by the State or any of its Associates under agreements other than this Agreement; or3 penalties payable by the Developer or any of its Associates under agreements other than this Agreement. |
| Industrial Action | <p>labour matters and Industrial Relations Matters affecting the Site or the Oversight Development Works, including:</p> <ol style="list-style-type: none">1 a strike, lockout, demarcation, ban, limitation on work, industrial dispute or any other action that meets the definition of industrial action in section 19 of the <i>Fair Work Act 2009</i> (Cth);2 any claim relating to labour or industrial arrangements applicable to any of the Developer D&C Workforce; and3 any besetting or obstruction of the Site. |
| Industrial Relations Laws | <p>all workplace, employment or industrial relations related:</p> <ol style="list-style-type: none">1 Law;2 principles of law or equity;3 standards, codes and guidelines, <p>relevant and applicable to any part of the Oversight Development Works, as amended from time to time.</p> |
| Industrial Relations Matter | <p>any industrial relations matter arising out of, or in connection with, the Site or the Oversight Development Works including:</p> <ol style="list-style-type: none">1 a claim for payment for or on behalf of any of the Developer D&C Workforce;2 a claim for payment in the nature of a site allowance;3 a claim arising out of, or in connection with, changes in State or Commonwealth work practices or requirements, including any changes resulting from current State or Commonwealth initiatives, negotiated contracts or agreements, conditions on payments, increases in labour costs, overtime costs, changed work practices or procedures, site allowances and any bonuses allowable or payable within the construction industry; and4 any reduction in the construction industry working hours per week. |
| IR Management Plan | <p>the industrial relations management plan to be developed by the</p> |



| Term | Meaning |
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| | Developer in accordance with Attachment 6. |
| Industrial Waste | has the same meaning as in the <i>Environment Protection Act 1970</i> (Vic) and regulations thereto. |
| Information Privacy Principles | the Information Privacy Principles set out in the <i>Information Privacy Act 2000</i> (Vic) or the <i>Privacy and Data Protection Act 2014</i> (Vic) (as in force from time to time). |
| Input Tax Credit | has the meaning given by the GST Law and a reference to an Input Tax Credit to which a party is entitled includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law. |
| Insurances | the insurances required to be effected and maintained in accordance with this Agreement. |
| Intellectual Property Rights | <p>includes any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future, including rights of any kind in:</p> <ol style="list-style-type: none">1 inventions, discoveries and novel designs, whether or not registered or registrable as patents, innovation patents or designs, including developments or improvements of equipment, technology, processes, methods or techniques;2 literary works, dramatic works, musical works, artistic works, cinematograph films, television broadcasts, sound broadcasts, published editions of works and any other subject matter in which copyright (including future copyright and rights in the nature of or analogous to copyright) may, or may upon creation of the subject matter, subsist anywhere in the world;3 registered and unregistered trade marks and service marks, including goodwill in the business concerned in the relevant goods and/or services;4 trade, business or company names;5 internet domain names; and6 proprietary rights under the <i>Circuit Layouts Act 1989</i> (Cth),7 whether created or in existence before or after the date of this Agreement. |
| Interest Rate | for a period, [not disclosed] for that period, plus a margin of [not disclosed] per annum. |



| Term | Meaning |
|----------------------------|---|
| Interface Agreement | the interface agreement to be entered into on or about the date of this Agreement between, amongst any others the State, the Developer, Project Co, the Project D&C Subcontractor and the Builder. |
| Interface Works | <ol style="list-style-type: none">1 OSD Works for PPP; and2 PPP Works for OSD,3 as each of those terms are defined in the Interface Agreement. |
| Interfaces | has the meaning given to that term in clause 15.1. |
| Key Design Elements | <ol style="list-style-type: none">1 the facade treatment;2 ground plane entrance design; and3 external architectural elements, including but not limited to screening to plant and equipment (including but not limited to air-conditioning equipment, ducts, flues, and communications equipment), devices required for wind amelioration or environmentally sustainable design (ESD) measures, and architectural features (including but not limited to blades, fins, awnings, canopies or a veranda roof). |
| Labour Conditions | any labour arrangements applicable to the Developer D&C Workforce for, or in connection with, the Oversight Development Works. |
| Land Victoria | the Victorian Government agency known as 'Land Victoria' responsible for land administration and land information in Victoria, including the registration of land titles. |
| Law | all laws, including common law equity and statute any regulation, order, rule, subordinate legislation or other document enforceable under any statute, regulation, order, rule or subordinate legislation. |
| Liability | any debt, obligation, cost, expense, loss, damage, compensation, charge or liability of any kind, including those that are prospective or contingent and those the amount of which is not ascertained or ascertainable. |
| Licensed Area | the area of the Precinct marked in green on the map contained in Attachment 1, excluding any part of that area which pursuant to the Project Agreement becomes a 'Maintenance Area' (as that term is |



| Term | Meaning |
|---------------------------------|--|
| | defined in the Project Agreement).. |
| Loss | any Liability (including legal and other professional expenses) of any kind whatsoever and includes but is not limited to direct and indirect, consequential or special damage, loss of profits, loss of use, loss of revenue, anticipated revenue, interest or other such claim arising from any cause whatsoever whether or not such loss, damage or claim is based on contract, statute, warranty, tort (including negligence), indemnity or otherwise. |
| Lot | a lot on a freehold strata plan of subdivision. |
| LUAA | a land use activity agreement entered into in accordance with the TOS Act. |
| Matters of State Concern | any Key Design Element and any matter affecting: <ol style="list-style-type: none">1 works or uses which do not comply with the Planning Scheme Amendment;2 the Interfaces; and3 safety or operational requirements of the Rail Operations including building envelopes or building elevations for the Oversite Development Works or external finishes of buildings which, in each case, impact or may potentially impact, safety or operational requirements of the Rail Operations. |
| Metro Tunnel | the twin nine-kilometre rail tunnels from Kensington to South Yarra and five underground Stations, as part of the new Sunbury to Cranbourne / Pakenham line including all enabling and complementary works or services associated with them. |
| Minister for Planning | the Minister for Planning for the State of Victoria. |
| MMRA | Melbourne Metro Rail Authority. |
| Modification | a Modification (as defined in the Project Agreement) under the Project Agreement. |
| Modification Order | a Modification Order (as defined in the Project Agreement) under the Project Agreement. |



| Term | Meaning |
|---------------------------------|---|
| Modification Request | a Modification Request (as defined in the Project Agreement) under the Project Agreement. |
| Monthly IR Report | a monthly industrial relations report to be prepared by the Developer in accordance with Attachment 6 and Attachment 7. |
| Moral Rights | non-assignable moral rights as defined in the <i>Copyright Act 1968</i> (Cth) and similar non-assignable personal rights of authors and producers, directors and screenwriters anywhere in the world. |
| Native Title Claim | any claim or application under any Law or future Law relating to native title, including any application under section 61 of the <i>Native Title Act 1993</i> (Cth). |
| Notional GST | where, in relation to the Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations and the <i>National Taxation Reform (Consequential Provisions) Act 2000</i> (Vic) (NTR Act) or a direction given under section 5 of the NTR Act, the supplier is obliged to make voluntary or notional GST payments, in which case Notional GST means those voluntary or notional payments. For the avoidance of doubt, Notional GST amounts will be calculated as if the GST Act applies to the relevant supplies. |
| OHS Accreditation Scheme | the Australian Government Building and Construction Work Health and Safety Accreditation Scheme established by the <i>Building and Construction Industry (Improving Productivity) Act 2016</i> (Cth) and the <i>Fair Work (Building Industry- Accreditation Scheme) Regulations 2016</i> (as preserved by the <i>Building and Construction Industry (Consequential and Transitional Provisions) Act 2016</i> (Cth)), as amended from time to time. |
| OHS Legislation | <p>all safety-related:</p> <ol style="list-style-type: none">1 Laws;2 codes of practice;3 other compliance codes;4 directions on safety or notices issued by any relevant Government Agency; and5 standards, <p>relevant and applicable to any part of the Oversight Development Works and includes, but is not limited to, the <i>Occupational Health and Safety Act 2004</i> (Vic), the <i>Heavy Vehicle National Law Application Act 2013</i> (Vic) and the <i>Rail Safety National Law Application Act 2013</i> (Vic) and associated regulations.</p> |



| Term | Meaning |
|--|--|
| OHS Regulations | the Occupational Health and Safety Regulations 2017 (Vic). |
| Operator | any operator or operators licensed or authorised by PTV or VicTrack to operate rail services on the Station Land and includes the Train Franchisee. |
| OPR Incentive Payments | has the meaning given in the Train Franchise Agreement. |
| OSD Modification | a State Initiated Modification or State Initiated OSD Variation referred to in clause 16.2 or a Developer Unacceptable Condition. |
| OSD Modification Order | a direction by the State under clause 16.5(b). |
| OSD Modification Quote | the quote prepared by the Developer in accordance with clause 16.4. |
| Oversite Development | the development (including the potential development) on the Freehold Land of a mixed use building for retail, commercial and residential purposes by the Developer generally (but subject to this Agreement) in accordance with the Planning Scheme Amendment and to the extent that there is no inconsistency with the Planning Scheme Amendment, in accordance with the Final Design Documentation (as varied or modified from time to time in accordance with this agreement). |
| Oversite Development Access and Interface Protocols | the plan of that name which sets out the procedures and protocols for accessing the Licenced Area prior to Final Completion, being the Access Protocols. |
| Oversite Development Agreements | <ol style="list-style-type: none">1 this Agreement;2 the Construction Licence;3 the Contract of Sale;4 the Interface Agreement;5 the Financier Direct Deed; and6 the Builder's Side Deed. |
| Oversite Development Project Control Group | has the meaning set out in clause 17(a). |



| Term | Meaning |
|---|--|
| Oversite Development Sunset Date | the date falling [not disclosed] after the Construction Commencement Deadline. |
| Oversite Development Works | all works to be carried out by the Developer to complete the Oversite Development in accordance with the Design Documentation including temporary construction works and remedial works. |
| Planning Permission | any Development Plan approved by the Minister for Planning under the Incorporated Document. |
| Planning Scheme | any planning scheme made under the <i>Planning and Environment Act 1987</i> (Vic) applicable to all or any part of the Site. |
| Planning Scheme Amendment | the amendment of the Planning Scheme (amendment number C315) by incorporation of the Incorporated Document pursuant to Section 6(2)(j) of the <i>Planning and Environment Act 1987</i> (Vic) or any subsequent planning scheme amendments applicable to the Freehold Land entered into with the consent of the Developer. |
| Plant and Equipment | all plant, machinery and equipment and other items used by, or brought onto the Freehold Land by, the Developer, the Builder, any Subcontractors, consultant, or any other party other than the State for the purpose of enabling or facilitating the Oversite Development Works which is not and will not become part of the Oversite Development or is not and will not be used for operating or maintaining the Oversite Development. |
| Pollution | <p>includes any solid, liquid, gas, odour, heat, sound, vibration, radiation or substance present in any segment of the Environment (other than those naturally present in a given segment of the Environment) which alone or in combination makes or may make the Environment:</p> <ol style="list-style-type: none">1 unsafe or unfit for habitation or occupation by persons or animals;2 degraded in its capacity to support plant life;3 contaminated; or4 otherwise environmentally degraded. |
| Power | any power, right, authority, discretion or remedy, whether express or implied. |



| Term | Meaning |
|--|--|
| Precinct | the area outlined on the map set out in Attachment 1. |
| Precinct Users | the Station Users (other than Project Co) and any person occupying or using any other part of the Precinct for any purpose whatsoever. |
| Pre-Existing Contamination | any Contamination existing in, on, under or emanated or emanating from the Site at the Agreement Date. |
| Principal Contractor | has the meaning given in the OHS Legislation. |
| Priority Jobseekers | persons designated, in accordance with the Jobs Victoria Employment Network Program Guidelines dated May 2016, as falling within any of the following priority target groups: <ol style="list-style-type: none">1 long term unemployed;2 living with a disability;3 living with a mental illness;4 retrenched workers including workers retrenched from the automotive manufacturing and supply chain industry;5 Aboriginal Persons;6 refugees or asylum seekers;7 young people in out-of-home care;8 young people who are disengaged from education, training and employment;9 youth justice clients; or10 ex-offenders. |
| Priority Jobseekers' Requirements | the requirement that at least 10% of the Developer D&C Workforce will be Priority Jobseekers undertaking D&C Activities in Victoria, calculated as an Annualised Employee Equivalent against the Developer D&C Workforce. |
| Privacy Principles | each of: <ol style="list-style-type: none">1 the Health Privacy Principles; and2 the Information Privacy Principles. |
| Probity Investigations | any probity or criminal investigations to report on the character, integrity or honesty of a person or Entity, including: <ol style="list-style-type: none">1 investigations into commercial structure, business and credit |



| Term | Meaning |
|--|---|
| | history, prior contract compliance or any criminal records or pending charges; and 2 interviews of any person or research into any relevant activity that is or might reasonably be expected to be the subject of criminal or other regulatory investigation. |
| Project | the financing and undertaking of the 'Tunnel and Stations PPP' component of the Metro Tunnel by Project Co. |
| Project Activities | has the meaning given to that term in the Project Agreement. |
| Project Agreement | the document of the same name between the State and Project Co dated on or about the date of this Agreement. |
| Project Agreement Modification | a Modification under the Project Agreement, or a change to the Oversight Development Works including addition, increase, decrease, omission, deletion, demolition or removal to or from the Oversight Development Works resulting from a Modification. |
| Project Co | Cross Yarra Partnership Pty Limited (ACN 617 097 711), and any person who in addition or substitution is engaged by the State to carry out all or substantially all of the 'D&C Activities' and 'Maintenance Activities' (as those terms are defined in the Project Agreement). |
| Project Co Associate | an 'Associate' (as defined in the Project Agreement) of Project Co. |
| Project D&C Subcontractor | as at the date of this Agreement, the unincorporated joint venture comprising Lendlease Engineering Pty Ltd (ACN 000 201 516), John Holland Pty Ltd (ABN 11 004 282 268) and Bouygues Construction Australia Pty Ltd (ABN 37 144 013 801) and any person who in addition or substitution is engaged by Project Co to carry out all or substantially all of the 'D&C Activities' (as that term is defined in the Project Agreement). |
| Project Maintenance Subcontractor | any person who is engaged by Project Co to carry out all, or substantially all of the 'Services' as that term is defined in the Project Agreement. |
| Project Termination Event | the State has terminated the Project Agreement under clause 45 (<i>Termination</i>) of the Project Agreement prior to the CBD North OSD Acceptance. |



| Term | Meaning |
|---|---|
| Proposal | the binding proposal to undertake the Oversight Development submitted as part of the response to the RFP. |
| PTV Agreement | a deed or agreement between the State and PTV under which the State assumes obligations and liabilities incurred by PTV under the Train Franchise Agreement and the Train Infrastructure Lease in connection with the Oversight Development. |
| Public Disclosure Obligations | has the meaning given in clause 46.1(a). |
| Purchaser | a party notified by the Developer under clause 26.4 of this Agreement. |
| Quarter | <ol style="list-style-type: none">1 a period of three months commencing on 1 January, 1 April, 1 July or 1 October in any year, provided that:2 the first Quarter commences on the Commencement Date and ends on the next 31 December, 31 March, 30 June or 30 September (whichever first occurs); and3 the last Quarter commences on the last 1 January, 1 April, 1 July or 1 October (whichever last occurs) and ends on the Final Completion Date. |
| Rail Corridor Access Arrangement | a deed, agreement or arrangement between PTV and the State relating to the State Project and the exercise of rights to access the rail corridor provided or reserved to PTV under the Train Franchise Agreement, the Train Infrastructure Lease or both and allowing the State access to Station Land for the purposes of the State Project, |
| Rail Operations | has the meaning given to that term in the Project Agreement. |
| Rates and Taxes | all municipal rates, water rates sewerage rates, drainage rates and other rates, Taxes, assessments, charges, costs and expenses (including for the construction of any private street, channel, kerbing, flagging or paving of any footway or pathway abutting the Site) which may at any time be payable to any Authority other than GST but does not include any portion of such charges which relate to the provision of Utility Services. |
| Recipient | has the meaning given in clause 32(b)(2). |
| Related Body | has the meaning given to that term in the Corporations Act. |



| Term | Meaning |
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| <hr/> Corporate <hr/> | |
| Relief Event | an event which entitles the Developer to: <ol style="list-style-type: none">1 an extension of time;2 compensation;3 any amount payable by the State;4 relief or suspension from carrying out any of the Developer's obligations under this Agreement; or5 bring any other Claim against the State, in accordance with clause 21.6. |
| Remediate or Remediation | to remove, disperse, abate, destroy, dispose of, neutralise, remediate, treat, cap, contain, excavate, manage or otherwise test, monitor or assess (as applicable). |
| RFP | the document of that name in relation to the Project issued by the State dated September 2016 as amended by addenda. |
| Scheduled Date for Final Completion | the date falling [not disclosed] after Construction Commencement. |
| Second Instalment Development Fee | [not disclosed] |
| Section 173 Agreement | an agreement registered on the title comprised in the Freehold Land under Section 173 of the <i>Planning and Environment Act 1987</i> . |
| Serviced Area | the site where the Station is to be built and the area on which the Station is located, including all buildings, plant, equipment and other facilities located thereon. |
| Services | has the meaning given in the Project Agreement. |
| Side Deed | a deed or agreement which the State requires the Developer, the Builder or both to enter into under which the Developer, the Builder or both, assume responsibility for all of the State's obligations under a Site Access Agreement and Rail Corridor Access Arrangement. |

| Term | Meaning |
|-------------------------------------|---|
| Site | for the period from the Agreement Date up to and including the Final Completion Date, the Licenced Area. |
| Site Access Agreement | a deed or agreement which the State is required by PTV or the Train Franchisee, under a Rail Corridor Access Arrangement, to enter into or comply with and to procure the Developer, the Builder or both to comply with before permitting access to the Station Land including any requirements of the Train Franchisee for access to the Station Land and providing for the allocation of costs and liabilities in relation to access. |
| Site Conditions | <p>the following conditions (whether latent or otherwise) relating to the Site:</p> <ol style="list-style-type: none"> 1 groundwater, groundwater hydrology and the effects of any dewatering; 2 physical conditions above, on or below the Site; 3 physical condition above the surface of the Site, including the condition of and circumstances affecting all improvements on the Site, equipment, goods, materials and other things on the Site; 4 demography of the Site surface and sub-surface conditions and geology including rock or other materials encountered at the Site; 5 climatic and weather conditions, rain surface water run-off and drainage, water seepage, wind, windblown, dust and sand in season; 6 all existing Utility Infrastructure and Utility Services above, on or below the surface of the Site and the location of the all facilities with which such Utility Services are connected; 7 any Pollution or Contamination; 8 all Easements over or in connection with the Site; and 9 all other physical conditions and characteristics of the Site above, on or below the surface of the Site which may affect the performance by the Developer of its obligations under this Agreement. |
| State Extension Event | <ol style="list-style-type: none"> 1 an event referred to in paragraph 1 or 6 of the definition of Extension Event; or 2 a delay to the Project Activities (under the Project Agreement) in respect of which Project Co is granted relief under the Project Agreement for an event which constitutes a Compensable Extension Event (within the meaning of the Project Agreement). |
| State Initiated Modification | any Modification Order issued by the State under the Project Agreement which results in a Project Agreement Modification or |



| Term | Meaning |
|--|---|
| | any variation to the terms of the Project Agreement which requires a modification of the Oversight Development or otherwise adversely impacts on the Oversight Development. |
| State Initiated OSD Variation | a variation to the Oversight Development Works in relation to Matters of State Concern (other than a State Initiated Modification). |
| State Project | a project nominated under clause 10.3 of the Train Franchise Agreement. |
| State Representative | the person appointed as the state representative in accordance with the Project Agreement. |
| Station | the buildings, equipment, plant and other infrastructure relation to the underground train station at CBD North to be procured, designed, constructed and completed by Project Co in accordance with the Project Agreement. |
| Station Final Acceptance | the Station Works are certified as having been completed under clause 24.5 (<i>Final Acceptance</i>) of the Project Agreement. |
| Station Land | all of CBD North other than the Freehold Land. |
| Station Land Management Agreement | a land management agreement between the Purchaser and the State containing the principles outlined Attachment 11, the purpose of which is to regulate the use, maintenance and costs associated with the Station Shared Services, and is otherwise in a form agreed by those parties. |
| Station Land Management Registrable Agreement | means an agreement under section 173 of the <i>Planning and Environment Act 1987</i> (Vic) in substantially similar form to the agreement in Attachment 11. |
| Station Opening Date | the date that the Station Works are complete and the Station opens for operation in accordance with the Project Agreement. |
| Station Shared Services | means specific services and structures which are shared across the Station Land and Freehold Land including structures, plant, services, infrastructure, egress and circulation. |



| Term | Meaning |
|---------------------------------|--|
| Station Users | all persons who fall within any of the categories described below: <ol style="list-style-type: none">1 patrons or event organisers attending the Station, or any part thereof;2 employees, contractors, sub-contractors and authorised officers of Project Co or Subcontractors employed or contracted in relation to the Station (or any part thereof) or delivery of the Services;3 members of the public attending the Station, or any part thereof;4 visitors to the Station (or any part thereof) for any purpose; and5 any person who has dealings with the Maintenance Subcontractor in relation to the Station, or any part thereof. |
| Station Works | the permanent and physical works required for the development and construction of the Station in accordance with the Project Agreement. |
| Subcontractor | <ol style="list-style-type: none">1 the Builder; or2 a person engaged by or on behalf of the Developer or the Builder in relation to the Oversight Development Works or a person whose contract is in connection with the Oversight Development Works and is in a chain of contracts where the ultimate contract is with the Developer or the Builder, including for the supply of material or goods for those works. |
| Supplier Code of Conduct | the document titled 'Procurement - Supplier Code of Conduct' issued by the State (as amended from time to time) and, as at the date of this Agreement, available at http://www.procurement.vic.gov.au/Suppliers/Supplier-Code-of-Conduct . |
| Tax | includes any tax, levy (including congestion levy), impost, deduction, charge, rate (other than utility and council rates), duty, compulsory loan or withholding which is levied or imposed by a Authority, including without limitation any such amount imposed on an equivalence basis and withholding, income, stamp, transaction or capital gains tax, payroll tax, fringe benefits tax, duty or charge together with any related additional tax, further additional tax, interest, penalty, fine, charge, fee or like amount. |
| Tax Invoice | has the meaning given by the GST Law. |
| Taxable Supply | has the meaning given by the GST Law excluding the reference to section 84-5 of the GST Act. |



| Term | Meaning |
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| Termination Date | mean the date specified in clause 35.2(a), clause 35.3(a) or clause 35.4(a) (as relevant). |
| Termination Event | <ol style="list-style-type: none">1 a failure by the Developer to comply with its obligations under clause 34.2(c), 34.3(c) or 34.4 (as relevant);2 Construction Commencement has not occurred by the Construction Commencement Deadline;3 Final Completion of the Oversight Development Works has not occurred by the Oversight Development Sunset Date;4 the Oversight Development Works are damaged or destroyed and the Developer elects not to reinstate the Oversight Development Works in accordance with clause 40.2; or5 a Project Termination Event. |
| Termination Payment | the amount payable by the State to the Developer on termination of this Agreement in accordance with clause 35.6. |
| TOS Act | the <i>Traditional Owner Settlement Act 2010 (Vic)</i> . |
| Total Financial Market Disruption | sustained events, or general ongoing illiquidity or lack of credit, in and affecting Australian and international financial markets generally and having a material adverse effect on the availability of credit on commercially reasonable terms to finance construction of projects in Australia of a similar scale and nature to the Oversight Development Works. In determining whether or not a Total Financial Market Disruption exists, regard will be given to the availability of credit to construction projects in Australia of a similar scale and nature to the Oversight Development Works and to other large scale real estate projects of this nature, However, unavailability of credit due to the particular circumstances, performance or prospects of the Oversight Development or a Default will be disregarded in determining whether Total Financial Market Disruption exists. |
| Train Franchisee | has the meaning given to that term under the Project Agreement. |
| Train Franchise Agreement | has the meaning given to that term in the Project Agreement. |
| Train Infrastructure Lease | has the meaning given to that term in the Project Agreement. |



| Term | Meaning |
|----------------------------------|--|
| Transport Services | all present or future services provided from time to time by any person at or in connection with the Station Land and includes, without limitation passenger rail and tram services, or both. |
| Union Official | any officer, official, delegate, employee or representative of an employee organisation registered under Industrial Relations Laws. |
| User | any person involved from time to time in the provision or use of Transport Services including, without limitation: <ol style="list-style-type: none">1 the State;2 VicTrack;3 any Operator4 PTV. |
| Utility Infrastructure | any item of plant or equipment for delivering Utility Services. |
| Utility Service | any utility service, including water, electricity, gas, telephone, drainage, waste, sewerage and electronic communications (including fibre optic feeds). |
| Utility Services | any utility service, including water, electricity, gas, telephone, drainage, waste, sewerage and electronic communications (including fibre optic feeds). |
| Value at Final Completion | the estimated Fair Market Value of the Oversight Development as at Final Completion as determined in accordance with clause 16.7 on the basis that (but subject to any express provision of this Agreement): <ol style="list-style-type: none">1 each party has exercised all its rights under this Agreement and has complied in full with its obligations under this Agreement; and2 the Oversight Development was to be constructed in accordance with this Agreement. |
| Verifiable Costs | the verifiable costs of the improvements constructed as part of the Oversight Development Works incurred by the Developer as at the date of termination, being the design, construction, and reasonable development costs for the relevant state of construction. The costs of improvements must exclude: <ol style="list-style-type: none">1 the costs of variations to the Oversight Development Works, where the Developer has been unable to demonstrate to the State's reasonable satisfaction that such variations were |



| Term | Meaning |
|-----------------|---|
| | <p>implemented properly and in accordance with the Oversight Development Agreements; and</p> <p>2 any costs for which the Developer owes under the Oversight Development Agreements by reason of its own default.</p> |
| VicRoads | the Roads Corporation within the meaning of section 3 of the <i>Transport Integration Act 2010 (Vic)</i> . |
| VicTrack | the Victorian Rail Track, a body corporate established under the Rail Corporations Act 1996 (Vic); |
| Works | has the meaning given to that term in the Project Agreement. |

1.2 Interpretation

In this Agreement:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (a) **(count and gender)**: a word importing the singular includes the plural and vice versa and a word indicating a gender includes every other gender
- (b) **(Agreement and Schedule references)**: a reference to:
- (1) a party, clause, Schedule or Attachment is a reference to a clause of, or a Schedule of or Attachment to, this Agreement; and
 - (2) a section is a reference to a section of a Schedule;
- (c) **(Agreement as amended)**: a reference to this Agreement or to any other deed, agreement, document or instrument includes a reference to this Agreement or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (d) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (e) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (f) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;



- (h) (**'includes'**): 'includes' will be read as if followed by the phrase '(without limitation)';
- (i) (**'or'**): the meaning of 'or' will be that of the inclusive, being one, some or all of a number of possibilities;
- (j) (**information**): a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (k) (**'\$'**): a reference to '\$', AUD or dollar is to Australian currency;
- (l) (**time**): a reference to time is a reference to time in Melbourne, Australia;
- (m) (**rights**): a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (n) (**obligations and liabilities**): a reference to an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (o) (**'may'**): the term 'may', when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;
- (p) (**Authorities**): where there is a reference to an Authority, institute or association or other body referred to in this Agreement which:
 - (1) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Agreement is deemed to refer to that other entity; or
 - (2) ceases to exist, this Agreement is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (q) (**remedy**): the use of the words 'remedy', 'cure' or any form of such words in this Agreement means that the event to be remedied or cured must be remedied or cured or its effects overcome; and
(contra proferentem rule not to apply): each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

1.3 Business Day

If the day on or by which anything is to be done in accordance with this Agreement is not a Business Day, that thing must be done no later than the next Business Day.

1.4 Approvals, directions and notices in writing

Unless otherwise expressly provided in this Agreement or agreed between the parties, all approvals, consents, directions, requirements, requests, Claims, notices, agreements and demands must be given in writing.

1.5 Prior approval or consent

Where the Developer is required by this Agreement to obtain the State's or the State Representative's consent or approval to an action, document or thing, unless otherwise



expressly stated, that consent or approval must be obtained prior to the actions, document or thing occurring or coming into effect.

1.6 Action without delay

Unless there is a provision in this Agreement which specifies a period of time in which something must be done by the parties, all things must be done without undue delay.

1.7 Provisions limiting or excluding Liability, rights or obligations

- (a) A right of the State or an obligation of the Developer under this Agreement will not limit or exclude any other right of the State or obligation of the Developer under this Agreement unless expressly stated.
- (b) Any provision of this Agreement which seeks, either expressly or by implication, to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.

1.8 Relationship of the parties

Unless otherwise expressly provided, nothing in this Agreement or any other Oversight Development Agreement:

- (a) **(no additional relationship)**: creates a partnership, joint venture, fiduciary, employment or agency relationship between the State and the Developer; or
- (b) **(no good faith)**: imposes any duty of good faith on the State.

1.9 State's executive rights and duties

- (a) **(State's own interests)**: Unless otherwise expressly provided in the Agreement, nothing in the Oversight Development Agreements to which the State is a party gives rise to any duty on the part of the State to consider interests other than its own interests when exercising any of its rights or carrying out any of its obligations in accordance with those Oversight Development Agreements.
- (b) **(State's rights)**: Notwithstanding anything expressly provided or implied in the Agreement to the contrary, the parties agree that:
 - (1) the State is not obliged to exercise any executive or statutory right or duty, or to influence, over-ride, interfere with or direct any other Government Party in the proper exercise and performance of any of its executive or statutory rights or duties; and
 - (2) nothing expressly provided or implied in the Agreement has the effect of constraining the State or placing any fetter on the State's discretion to exercise or not to exercise any of its executive or statutory rights or duties.
- (c) **(No Claim)**: Subject to clause 1.9(d), the Developer will not be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its executive or statutory rights or duties.
- (d) **(Liability for breach)**: Clauses 1.9(a) to 1.9(c) do not limit any Liability which the State would have had to the Developer under any Agreement as a result of a breach by the State of a term of any Agreement to which it is a party but for these clauses.



1.10 Reasonable endeavours of State

Any statement in an Agreement providing that the State will use or exercise 'reasonable endeavours' or 'act reasonably' in relation to an outcome, means that the State:

- (a) **(relevant steps)**: will take steps to bring about the relevant outcome so far as it is reasonably able to do so, having regard to its resources and other responsibilities;
- (b) **(no guarantee)**: cannot guarantee the relevant outcome; and
- (c) **(no obligation)**: is not required to:
 - (1) exercise a right of any Government Party, or to influence, over-ride, interfere with or direct any other Government Party in the proper exercise and performance of its legal, statutory or executive duties and functions;
 - (2) exercise a power or discretion in a manner that the State regards as not in the public interest;
 - (3) develop or implement new policy;
 - (4) procure legislation; or
 - (5) act in any way that the State regards as not in the public interest.

1.11 State representatives

- (a) **(State representatives)**: The State may exercise any of its rights or carry out any of its obligations in accordance with this Agreement through the State Representative.
- (b) **(Agent)**: The State Representative must be a natural person and will act as the agent of its respective party.
- (c) **(State Representative)**: The State Representative will exercise the rights and carry out the obligations of the State as set out in the Oversight Development Agreements to which it is a party, including its ability to give and receive directions and notices.
- (d) **(Delegation)**: The State may vary or terminate the duties of the State Representative as it sees fit, including delegating its representative's duties to a new representative.
- (e) **(Notice)**: Where the State varies, terminates or delegates the duties of its representatives in accordance with clause 1.11(d), the State will promptly notify the other of the variation, termination or delegation, including the identity of any new representative and the new representative's duties (if applicable) and of any further variation, termination or delegation.

2 Oversight Development risk and costs

Except to the extent that this Agreement or another Oversight Development Agreement expressly provides to the contrary but without limiting any Claim for breach of contract or negligence, the Developer:

- (a) accepts all risks relating to the Oversight Development and the Developer will not be entitled to make any Claim against the State or seek to be indemnified by the



- State for or against any Liability arising from any risk relating to the Oversight Development; and
- (b) is responsible for all costs it incurs in carrying out its obligations under this Agreement and that are associated in any way with the development or delivery of the Oversight Development (excluding risks accepted by Project Co under the Project Agreement).

3 Representations and Warranties

3.1 Representations by the State

The State represents and warrants for the benefit of the Developer that:

- (a) **(power to execute)**: the State has:
- (1) the power to execute the Oversight Development Agreements to which it is a party and does so through the Minister for Public Transport on behalf of the Crown in right of the State of Victoria; and
 - (2) the power to deliver and carry out its obligations under those Oversight Development Agreements,
- and all necessary action has been taken (or will at the relevant time be taken) to authorise their execution, delivery and performance;
- (b) **(validity)**: those Oversight Development Agreements constitute a valid and legally binding obligation on it in accordance with their terms; and
- (c) **(legality)**: the execution, delivery and performance of those Oversight Development Agreements does not violate any Law to which the State is subject.

3.2 Representations by Developer

The Developer represents and warrants for the benefit of the State that:

- (a) **(power to execute)**: it has the power to execute, deliver and perform any Oversight Development Agreement to which it is a party;
- (b) **(authorisations)**: it has taken all necessary corporate actions has been taken to authorise, execute, deliver and perform its obligations under each Oversight Development Agreement to which it is a party;
- (c) **(validity)**: those Oversight Development Agreements to which it is a party constitute a valid and legally binding obligations on it in accordance with their terms;
- (d) **(legality)**: the execution, delivery and performance of those Oversight Development Agreements to which it is a party does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;
- (e) **(disputes)**: no litigation, arbitration, tax claim, dispute or administrative proceeding (each a **Proceeding**) is current or pending or (to its knowledge) threatened, which will or is likely to have a material adverse effect upon it (or any applicable Associate) or its ability to perform its financial and other obligations under the Oversight Development Agreements; and



- (f) **(FIRB)**: any FIRB Approval required to enter into the Oversight Development Agreements has been obtained.
- (g) **(Design and construction)**:
it has or will procure the resources, expertise and experience necessary to design, construct and complete the Oversight Development Works and nothing in this clause 3.2(g) will in any way limit or reduce any other obligation or liability of the Developer under this Agreement.

3.3 Developer's Acknowledgement, Waiver and Indemnity

- (a) The Developer acknowledges and agrees that, except as expressly set out in this Agreement, neither the State nor any of its Associates has made any representation, given any advice or given any warranty or undertaking of any kind in respect of:
 - (1) any of the Oversight Development Agreements;
 - (2) any transaction or arrangement contemplated under any of the Oversight Development Agreements; or
 - (3) any other matter relevant to the Developer's decision to enter into the Oversight Development Agreements.
- (b) Without limiting clause 3.3(a), the Developer acknowledges and agrees that:
 - (1) the Disclosed Information, and all Intellectual Property Rights in the Disclosed Information, will remain the property of the State or any of its Associates (as the case may be);
 - (2) the Disclosed Information does not constitute an invitation, offer or recommendation by or on behalf of the State or any of its Associates;
 - (3) the purpose of the Disclosed Information is to provide the Developer and its Associates with information to assist in preparing and lodging a proposal for the Oversight Development;
 - (4) the Disclosed Information does not purport to contain all of the information that the Developer and its Associates required for the purposes of preparing and lodging a proposal (including the Proposal) or making the decision to enter into the Oversight Development Agreements and did not purport to have been prepared having regard to the Developer's or its Associate's business objectives, financial situation or particular needs;
 - (5) neither the State, its Associates, nor any other person acting on behalf of or associated with any of them, has verified or has any obligation to verify the accuracy, reliability or completeness of the Disclosed Information;
 - (6) neither the State, its Associates nor any other person acting on behalf of or associated with any of them has made any representation or warranty either express or implied as to the accuracy, reliability or completeness of the Disclosed Information;
 - (7) the Developer and its Associates have not relied in any way on the skill or judgment of the State, its Associates or any person acting on behalf of or associated with any of them and the Developer and its Associates have relied absolutely on their own opinion and professional advice based upon their own independent analysis,

- assessment, investigation and appraisal in deciding to lodge the Proposal and to enter into the Oversight Development Agreements;
- (8) the Developer and its Associates will not in any way rely upon:
- (A) the Disclosed Information; or
 - (B) a failure by the State or any of its Associates to provide any information to the Developer or its Associates;
- (9) the Developer and its Associates have carried out all relevant investigations and have examined and acquainted themselves concerning:
- (A) all aspects of the Oversight Development;
 - (B) the contents, correctness and sufficiency of the Disclosed Information;
 - (C) all information which is relevant to the risks, contingencies and other circumstances related to the Oversight Development which could affect their decision to enter into the Oversight Development Agreements;
 - (D) the Site and Site Conditions; and
 - (E) all amounts payable between the parties to the Oversight Development Agreements;
- (10) on the basis that the Disclosed Information has been given in good faith and that the State has no knowledge that any part of the Disclosed Information is misleading or deceptive (but acknowledging that neither the State, its Associates nor any person acting on behalf of or associated with any of them is under any obligation to make and that none of them has made enquiries to verify that state of knowledge) any statement, representation, term, warranty, condition, promise or undertaking made, given or agreed to by the State, its Associates or any person acting on behalf of or associated with any of them in any prior negotiation, arrangement, understanding or agreement has no effect except to the extent expressly set out or incorporated in any of the Oversight Development Agreements;
- (11) neither the State nor any of its Associates is under any obligation to:
- (A) notify the Developer or any of its Associates or provide any other information to the Developer or any of its Associates if it becomes aware of any inaccuracy, incompleteness or change in the whole or any part of the Disclosed Information; or
 - (B) update the whole or any part of the Disclosed Information, although, the State or any of its Associates may do so at their sole discretion; and
- (12) the acknowledgements under this clause 3.3(b) are in addition to and do not replace the terms and conditions already agreed to or accepted by the Developer or its Associates when receiving the Disclosed Information.
- (c) To the extent permitted by Law, the Developer expressly waives any right which it or any of its Associates may have (whether at the Agreement Date or otherwise) to bring any action or make any Claim against the State, any of its Associates or any person acting on behalf of or associated with any of them



arising out of any alleged misrepresentation or misleading or deceptive conduct on the part of the State, any of its Associates or any person acting on behalf of or associated with any of them in providing the Disclosed Information or in connection with the negotiation or preparation of any Oversight Development Agreement.

- (d) The Developer indemnifies the State and its Associates or any person acting on behalf of or associated with any of them, and will hold them harmless against all Claims and Liabilities that any of them may sustain or incur as a result of or in connection with any breach of this clause 3.3 by the Developer.

3.4 Repetition of representations and warranties

The representations and warranties and acknowledgments in clauses 3.2 and 3.3 are taken to be repeated by the Developer on the Final Completion Date and the representations and warranties in clause 3.3 are taken to be repeated:

- (a) prior to the Final Completion Date, on each anniversary of the date of this Agreement; and
- (b) after the Final Completion Date, on each anniversary of the Final Completion Date,

with reference to the facts and circumstances subsisting at that date.

3.5 Reliance on Representations

- (a) Each of the State and the Developer acknowledges and agrees that the other of them has entered into the Oversight Development Agreements (to the extent that each is a party to the relevant Oversight Development Agreement) in reliance on the representations and warranties contained in this clause 3.
- (b) The Developer acknowledges and agrees that all of its representations, warranties, acknowledgements and agreements under clauses 3.2 and 3.3 survive the execution and delivery of the Oversight Development Agreements and the completion of the transactions contemplated by any of them.

3.6 Exclusion of Warranties

To the maximum extent permitted by Law (and except as otherwise expressly provided in this Agreement) all terms, conditions, promises, undertakings, representations, warranties and statements (whether express, implied, written, oral, collateral, statutory or otherwise) which would be implied or incorporated into any of the Oversight Development Agreements are excluded and the State disclaims all Liability in relation to them.

3.7 Obligations to Notify of Proceedings

The Developer must inform the State if any Proceeding referred to in clause 3.2(e) becomes current, pending or threatened where that Proceeding will or is likely to have a material adverse effect upon its or any of its Associates ability to perform any of its obligations under any of the Oversight Development Agreements.



4 Conditions Precedent

4.1 Commencement of obligations

This Agreement (other than clauses 1, 3, 29, 38, 42, 45, 46, 47, 48 and this clause 4) does not commence until each of the conditions precedent set out in clause 4.2 has been satisfied or waived in accordance with this clause 4.

4.2 Conditions Precedent

- (a) This Agreement is conditional on:
- (1) the State receiving original copies of this Agreement and the Interface Agreement; and
 - (2) the issue and delivery of a notice under clause 3.2(c) (*Satisfaction of Conditions Precedent*) of the Project Agreement.
- (b) Unless all the condition precedent in clause 4.2(a) has been satisfied or waived by 2.00pm (local time) on the Conditions Precedent Deadline Date, except to the extent that the State otherwise specifies, the parties will no longer be bound by the terms of the Oversight Development Agreements, each of the Oversight Development Agreements will be taken to have been terminated on that date, the Oversight Development Agreements will be of no further force or effect and neither party will be entitled to any Claim against the other under or in respect of the Oversight Development Agreements or in respect of the reimbursement of costs or expenses or otherwise in connection with the Oversight Development, other than any Claim in relation to a breach of clause 3.

5 Ancillary Deeds

5.1 Builder's Side Deed

On or prior to the date that the Developer enters into the Building Contract with the Builder for the Oversight Development Works then the:

- (a) Developer will and must procure that the Builder and the Purchaser's External Financier (if applicable) to enter into the Builder's Side Deed on terms acceptable to the Developer, the Builder, the State and the Purchaser's External Financier (if applicable) generally in the form of the Builder's Side Deed contained in Attachment 10; and
- (b) State will enter into the Builder's Side Deed.

5.2 Financier Direct Deed

On or before Construction Commencement, in connection with any debt financing for the Oversight Developments:

- (a) the Developer will and must procure that its and the Purchaser's External Financier will enter into a Financier Direct Deed; and
- (b) the State will enter into a Financier Direct Deed.

6 No State liability Interface Works

6.1 No liability for any Claim

The State is not liable to the Developer in any way in relation to the Interface Works including in respect of any Claim in relation to the Interface Works provided that the State complies with any obligations of the State under the Interface Agreement.

6.2 No warranty, etc

Without limiting clause 6.1, the State gives no warranty, and the Developer must make its own enquiries, in relation to the Interface Works, including:

- (a) the design, construction and commissioning of the Interface Works;
- (b) whether the Interface Works, have been, or will be, carried out:
 - (1) in accordance with all applicable Laws and Approvals;
 - (2) so that they are:
 - (A) fit for and suitable for their intended purpose;
 - (B) free from defects in design; and
 - (C) free from Contamination.

6.3 Release

The Developer releases the State to the fullest extent permitted by law from any Claims by or liabilities to the Developer whatever, arising out of or in connection with the Interface Works.

7 Health and safety

7.1 State's objectives and overarching requirements

- (a) **(State requirements):** The State requires:
 - (1) the D&C Activities to be completed with safety as the paramount consideration;
 - (2) the management of safety during the planning and carrying out of the D&C Activities to be of the highest priority;
 - (3) all health and safety risks to be either eliminated or controlled so far as reasonably practicable; and
 - (4) that all participants in the Project, including those who are a party to this Agreement or otherwise involved in the delivery of the D&C Activities, work to prevent harm and inspire exceptional health and safety performance.
- (b) **(Developer acknowledgement):** the Developer acknowledges and agrees that:
 - (1) safety is a core value for the Development and the carrying out of the D&C Activities;



- (2) it must aspire to achieve that all people will have the highest level of protection during the carrying out of the D&C Activities to ensure, so far as is reasonably practicable, that no harm to individuals arises;
- (3) effective engagement and consultation with relevant stakeholders regarding health and safety matters is necessary at all stages of the carrying out of the D&C Activities; and
- (4) in carrying out the D&C Activities, it must promote a culture where employees and contractors are encouraged to identify, address and prevent risks and unsafe behaviour.

7.2 Developer's general OHS obligations

The Developer:

- (a) **(general OHS)** accepts that it is responsible for all aspects of health and safety relating to the Oversight Development Works from CBD North OSD Acceptance, except in relation to the obligations of any Principal Contractor under the OHS Legislation appointed in accordance with clause 7.3, until the expiration of this Agreement in accordance with clause 45.1 and it cannot delegate or assign this responsibility to a third party (other than the Developer's Builder) without the prior written approval of the State;
- (b) **(access and egress)**: must ensure or procure that the Builder ensures that at all times the Construction Site is secure and that access and egress to the Construction Site is controlled, including during non-work times, and does not pose a risk to the health and safety of any person (to avoid doubt, where responsibility for access and egress is shared, the Developer is required to consult with other parties to ensure that the requirements of this clause 7 are met);
- (c) **(cooperation)** must cooperate, and ensure the cooperation of its Associates, with the State in respect of the discharge of any occupational health and safety obligations of the State, in connection with the Oversight Development under the OHS Legislation and must:
 - (1) comply with all reasonable requests of the State to assist it to discharge its obligations;
 - (2) refrain from doing anything that may impede the State in discharging its obligations;
 - (3) notify the State immediately of any non-compliance or potential non-compliance in connection with the OHS Legislation or any other significant occupational health and safety incident that occurs in connection with the Oversight Development or the Construction Site or the Serviced Area; and
 - (4) require that all sub-contracts contain clauses equivalent to clauses 7.1(b)(1) to (3);
- (d) **(Safety culture)**: must demonstrate the implementation of a positive safety culture by implementing programs to support a positive safety culture for all Oversight Development Works;
- (e) **(Subcontractors)**: must ensure that its Associates and all Subcontractors carry out the Oversight Development Works in accordance with:
 - (1) a safety management system independently certified to AS4801-2001 by a JAS-ANZ accredited certification body maintained for the duration of the Project Activities; and



- (2) the Health and Safety Management Plan;
- (f) **(Health and Safety Management Plan)**: must ensure that a Health and Safety Management Plan is:
 - (1) prepared and submitted to the State for review;
 - (2) updated to address any comments raised by the State during that review;
 - (3) maintained and resubmitted as necessary to the State until Final Completion in accordance with Health and Safety Requirements; and
 - (4) is retained at the Site and available for inspection by the State at all times;
- (g) **(Health and safety professionals)**: must ensure that an adequate number of health and safety professionals are appointed (either by it or the Builder) to ensure that the Oversight Development Works are carried out safely and without risk to health. For the purpose of this clause 7.2(f), a health and safety professional must:
 - (1) be employed by the Developer or the Builder in a full time capacity as a safety professional;
 - (2) as a minimum, have had suitable experience as a safety professional in construction safety on a full time basis for at least 3 years and possess the required technical skills and knowledge to perform the role, which may include the attainment of a recognised certificate, degree or post graduate qualification in a safety or OHS risk management discipline; and
 - (3) be able to demonstrate competence, experience and training in safety;
- (h) **(Occupational Health and Safety Manager)**: must ensure that a suitably experienced and qualified person be appointed either by it or the Builder as 'Occupational Health and Safety Manager' for the Oversight Development to, without limiting any obligation of the Developer, be responsible for compliance with this clause 7.1 and the implementation of the Health and Safety Management Plan;
- (i) **(Independent Safety Auditor)**: must:
 - (1) engage, or procure that the Builder engages, an Independent Safety Auditor to undertake audits of the Oversight Development Works to verify compliance with this Agreement and the Health and Safety Management Plan;
 - (2) allow 4 full Business Days per year for the conduct of audits in accordance with this clause 7.2(i), although these 4 days need not be consecutive. and
 - (3) provide to the State, within 30 Business Days of the end of 1 January and 1 July each calendar year during the Oversight Development Works, an audit report, prepared by the Independent Safety Auditor in respect of,

the Developer's compliance with its obligations in respect of health and safety including in respect of the Health and Safety Management Plan;



- (j) **(Health and Safety Management Plan audit)**: must, prior to submitting the Health and Safety Management Plan for review in accordance with clause 7.2(f):
 - (1) engage, or procure that the Builder engages, an Independent Safety Auditor to undertake an audit of the Health and Safety Management Plan in accordance with the Health and Safety Requirements ; and
 - (2) provide to the State an audit report, prepared by the Independent Safety Auditor, in respect of the Health and Safety Management Plan;
- (k) **(Implement audit findings)**: must, if an audit report prepared by the Independent Safety Auditor reveals any non-conformances or areas for safety improvement, promptly (and in any event, in the timeframes specified in the audit report) take such steps as are necessary to resolve those non-conformances and provide evidence of those steps to the State;
- (l) **(Monitoring)**: throughout the life of the Oversight Development Works,
 - (1) must undertake or procure such monitoring and auditing of the Oversight Development Works as is necessary to ensure that, at all times, the Oversight Development Works are being performed in compliance with all OHS Legislation the requirements of this Agreement and the Health and Safety Management Plan;
 - (2) acknowledges that the State, the State Representative, or any other contractor or agent of the State can, at any reasonable time, review, inspect, monitor or otherwise observe the Developer's health and safety systems, work practices and procedures related to the Oversight Development Works; and
- (m) **(Health and Safety Requirements)**: must comply with the Health and Safety Requirements.

7.3 Principal Contractor

- (a) **(Appointment of Principal Contractor)** The State will:
 - (1) appoint the Builder or a related entity of the Developer as Principal Contractor, upon CBD North OSD Acceptance until Final Completion, in connection with the Oversight Development Works and the Construction Site; and
 - (2) authorise the Builder or a related entity of the Developer to manage or control the Construction Site to the extent necessary to discharge the duties of a Principal Contractor under the OHS Legislation.
- (b) **(Procure consent)**: The Developer must procure that the Builder or a related entity of the Developer consents to being appointed as Principal Contractor in respect of the Construction Site from CBD North OSD Acceptance, to the extent:
 - (1) requested by the owner of that land; and
 - (2) that the Builder will be carrying out 'construction work' within the meaning of regulation 5.12 of the OHS Regulations.
- (c) **(Obligations of Principal Contractor)** The Developer must ensure that the Builder:
 - (1) accepts the appointment as Principal Contractor and complies with all obligations imposed on a Principal Contractor under the OHS Legislation at its own cost;



- (2) displays Principal Contractor signs that are clearly visible from outside the Construction Site, identifying the Principal Contractor in accordance with OHS Legislation; and
 - (3) immediately notifies the State in writing if it believes the appointment referred to in clause 7.3(a)(1) is not sufficient to enable it to discharge the duties of a Principal Contractor under OHS Legislation.
- (d) **(Developer to assist):** The Developer must do all things necessary to assist, and refrain from doing anything that may impede, the Builder in discharging its Principal Contractor obligations under OHS Legislation.

7.4 Notification

- (a) **(Occurrence of Health and Safety Incidents):** the Developer must (and must ensure that all Subcontractors) or procure that the Builder, upon the occurrence of a Health and Safety Incident:
- (1) comply with any requirements under the OHS Legislation to notify any relevant Authority of the Health and Safety Incident;
 - (2) notify the State of the Health and Safety Incident:
 - (A) in the case of a Health and Safety Incident involving:
 - (i) an incident which is actually or potentially life threatening or life altering;
 - (ii) a workplace accident which is actually or potentially of a serious nature; or
 - (iii) an actual or potential injury to a member of the public,immediately when it is safe to do so by phone and confirmed by facsimile or email within 2 hours; and
 - (B) in all other cases, within 24 hours after the occurrence of the Health and Safety Incident;
 - (3) in relation to any Health and Safety Incident promptly provide to the State:
 - (A) a copy of any incident and investigation report;
 - (B) a copy of any notification to an Authority;
 - (C) the details of the potential or actual incident or issue;
 - (D) the actions taken and proposed to be taken (including both short term and long term actions);
 - (E) where requested, the key personnel or key organisations involved in taking those actions and their contact details;
 - (F) where requested, the proposed media response and approach to managing and dealing with the media;
 - (G) any entry reports and notices received from an Authority or its representative or any other person acting pursuant to the OHS Legislation, which arise out of or in connection with the Oversight Development or the Construction Site;
 - (H) updates of any material developments and status of completion of any correction actions;

- (I) as soon as practicable after the Health and Safety Incident has occurred, provide the State with evidence that the hazards or risks giving rise to the Health and Safety Incident have been appropriately identified and controlled to prevent the recurrence of the same or a similar Health and Safety Incident; and
 - (J) all other information reasonably requested by the State.
- (b) **(Reporting)**: If requested by the State in respect of the Health and Safety Incident, the Developer must:
 - (1) provide the State with a written health and safety alert, which summarises the facts and circumstances surrounding a Health and Safety Incident and which the State can circulate (in amended or un-amended form) to other persons in order to facilitate safety learning; and
 - (2) provide a briefing to the State regarding the Health and Safety Incident and response and ensure that the briefing is attended by those senior representative of the Developer and the Subcontractor who are nominated by the State (acting reasonably).

7.5 OHS Accreditation Scheme

The Developer:

- (a) **(OHS accreditation)**: warrants that the Builder is accredited under the OHS Accreditation Scheme; and
- (b) **(Builder requirements)**: while building work (as defined in section 6 of the Building and Construction Industry (Improving Productivity) Act 2016 (Cth)) is carried out, must ensure that the Builder:
 - (1) subject to the exclusions specified in the *Fair Work (Building Industry - Accreditation Scheme) Regulations 2016 (Cth)*, maintains accreditation under the OHS Accreditation Scheme while building work (as defined in section 6 of the *Building and Construction Industry (Improving Productivity) Act 2016 (Cth)*) is carried out; and
 - (2) complies with all conditions of the OHS Accreditation Scheme accreditation.

8 Industrial relations

8.1 Industrial relations warranties

The Developer warrants that:

- (a) before Financial Close, it informed itself of all matters relevant to the engagement of labour in connection with the Oversight Development Works; and
- (b) all labour engaged by a Subcontractor in connection with the performance of the Oversight Development Works will be engaged in such a manner which allows the Developer to comply with its obligations under this Agreement.



8.2 The Developer is responsible for industrial relations management

- (a) Except to the extent expressly set out in this Agreement, the Developer accepts responsibility and risk for industrial relations relating to the Oversight Development Works, including the management of Industrial Action in connection with the Oversight Development Works at its own expense.
- (b) The Developer must:
- (1) comply with, and ensure that all Subcontractors comply with, all Industrial Relations Laws and, upon request, provide the State with evidence of such compliance as the State reasonably requires;
 - (2) comply with, and ensure that the Developer D&C Workforce comply with, to the extent relevant, the IR Management Plan and, upon request, provide the State with evidence of such compliance as the State reasonably requires;
 - (3) cooperate with, and ensure that the Developer D&C Workforce cooperate with, any Associates of the State or other persons on the Site in order to maintain, to the extent permitted by Law, a stable industrial relations environment;
 - (4) upon request by the State, attend meetings convened by the State for the purpose of discussing labour matters or Industrial Relations Matters relevant or relating to the Oversight Development Works, the Site or the Metro Tunnel;
 - (5) prepare and submit to the State a Monthly IR Report;
 - (6) immediately advise the State in writing of any act, fact or circumstance associated with the activities of the Developer or any other person relevant to the ability of the Developer to perform or procure the performance of the Oversight Development Works in a manner consistent with this clause 8; and
 - (7) immediately notify the State of the particulars concerning any actual, or proposed, change to the Labour Conditions.
- (c) Notwithstanding any other provision of this Agreement, the Developer acknowledges and agrees that:
- (1) it accepts the risk of the existence of, and any new Law, or change in, or disallowance or repeal of, any existing Law, relating to the Commonwealth Building Code;
 - (2) it may not bring any claim under this Agreement for compensation, time, costs, expenses, reimbursement, modification or otherwise as a result of the existence, disallowance, application to any person, or any obligation to comply with, directly or indirectly, the Commonwealth Building Code; and
 - (3) any industrial action directly or indirectly arising in connection with the Commonwealth Building Code, including industrial action:
 - (A) in respect of any transitional or implementation arrangements concerning the Commonwealth Building Code;
 - (B) allowance or disallowance, or terms of allowance or disallowance, of or in relation to the Commonwealth Building Code; or



- (C) as a direct or indirect consequence of interactions between any person and the State (or its Associates), or an act or omission of the State, concerning the Commonwealth Building Code (including any disallowance motions in respect of the Commonwealth Building Code),
- will not be considered to be the result of any act or omission of the State or its Associates.
- (d) Prior to accessing the Site, the Developer must ensure that an IR Management Plan is prepared and submitted to the State in accordance with Attachment 6. The IR Management Plan must be reviewed and amended (if necessary) in accordance with Attachment 6 until Final Completion, and each amended version of the IR Management Plan must be resubmitted to the State in accordance with Attachment 6.
- (e) The Developer must only engage a person as a Subcontractor where the person satisfies the Developer that it:
- (1) has the capability and resources to comply with the IR Management Plan and Industrial Relations Laws; and
 - (2) will manage labour matters and Industrial Relations Matters while performing the Oversight Development Works in a manner that will not, to the extent permitted by Law, expose the Oversight Development Works, the Site or the Metro Tunnel to Industrial Action.
- (f) Until Final Completion, the Developer must or must procure the Builder to undertake such monitoring and auditing of the Oversight Development Works as is necessary to ensure that, at all times, the Oversight Development Works are being performed in compliance with all Industrial Relations Laws, the requirements of this Agreement and the IR Management Plan.
- (g) Where the Developer identifies a non-conformance under clause 8.2(f), the Developer must immediately notify the State of:
- (1) the details of the non-conformance; and
 - (2) the steps to be taken to rectify the non-conformance and the time by which such rectification will occur.
- (h) Following notification of a non-conformance under clause 8.2(g), the Developer must provide confirmation of rectification of that non-conformance and, upon request, provide the State with evidence of such rectification.

8.3 Industrial Action

- (a) The Developer must, to the extent permitted by Law, at its expense:
- (1) take all reasonable steps to:
 - (A) prevent the occurrence of;
 - (B) minimise the continuance of; and
 - (C) resolve,any Industrial Action;
 - (2) immediately advise the State of any:
 - (A) Industrial Action; or
 - (B) potential or threatened Industrial Action of which it becomes aware; and



- (3) provide the State with regular updates on:
 - (A) the reasonable steps taken, or proposed to be taken, in accordance with clause 8.3(a)(1); and
 - (B) the status of any actual, potential or threatened Industrial Action notified under clause 8.3(a)(2).
- (b) The Developer is responsible for all Loss, delay or disruption that any party suffers arising out of, or in connection with, any Industrial Action.
- (c) The State is not liable for, or in connection with, any Claim (and the Developer may not make any Claim) arising out of, or in connection with, any Industrial Action.

8.4 Right of entry

- (a) The Developer (either itself or by procuring the Builder do so) must immediately:
 - (1) inform the State, in a manner and form required by the State, of trends regarding entry to the Site by Union Officials including, but not limited to, trends for each union with respect to reasons for entry, regularity of entry and timing of entry; and
 - (2) notify the State of any dispute or disagreement arising in relation to right of entry to the Site or the Oversight Development Works.
- (b) The Developer must ensure that:
 - (1) any entry to the Site by a Union Official complies with Industrial Relations Laws; and
 - (2) the Union Official complies with the Health and Safety Management Plan when on-Site.

8.5 Liability and Indemnity

- (a) Subject to clause 8.5(b), the Developer accepts sole responsibility for preventing, and assumes the risk of, all Loss caused by, arising out of or in connection with:
 - (1) all Industrial Action affecting the Oversight Development Works;
 - (2) all Industrial Action by the Developer D&C Workforce.
- (b) The Developer's liability under clauses 8.5(a)(1) and 8.5(a)(2) is reduced to the extent that the relevant Loss has been caused or contributed to by any failure of the State to act in accordance with the requirements of this Agreement.
- (c) The Developer indemnifies, and holds harmless, the State and its Associates against any Loss or Claim of any nature arising under, out of or in connection with any non-compliance or breach by the Developer D&C Workforce of this clause 8.
 - (1) If it is reasonably necessary for the State to commence, or become involved in, proceedings relating to threatened or actual Industrial Action in connection with the Oversight Development Works or the Site as a result of any non-compliance or breach by the Developer D&C Workforce of this clause 8,

the Developer indemnifies the State and its Associates for any reasonable legal cost and expenses incurred in relation to such proceedings.



9 Approvals and Laws

9.1 Approvals to be obtained by the State

- (a) The Developer acknowledges that on or before the Agreement Date the State obtained the Planning Scheme Amendment.
- (b) [not disclosed].
- (c) If:
 - (1) the parties agree that a State Intervention Event has occurred; and
 - (2) the parties do not agree on an appropriate course of action or any amendments to the Oversight Development necessary to enable the Oversight Development to proceed on terms acceptable to the Developer acting reasonably,

within 60 days after the State receives notice under clause **Error! Reference source not found.**, the State or the Developer may terminate this Agreement by notice to the other without prejudice to any party's rights under this Agreement or at law arising prior to termination.

9.2 Approvals to be obtained by Developer

- (a) The Developer must at its own cost and expense:
 - (1) obtain, maintain and comply with all Approvals (other than the Planning Scheme Amendment); and
 - (2) comply with the Planning Scheme Amendment,which from time to time may be necessary for the Site, the Oversight Development Works and the Oversight Development, or the use or occupation of the Site, the Oversight Development Works and the Oversight Development, regardless of whether the Approval requires the compliance by either or both of the Developer and the State or any other person.
- (b) For the avoidance of doubt, if any aspect of an Approval or the Planning Scheme Amendment requires a secondary consent, plans to be submitted and endorsed, submission, verification or other supplementary action or information (whether as a condition of the Approval taking effect or otherwise), those further matters will be the responsibility of the Developer.

9.3 Compliance with Laws

The Developer must comply with all Laws from time to time applicable to it, the Site, the Oversight Development Works and the Oversight Development or the use or occupation of the Site, the Oversight Development Works and the Oversight Development.

9.4 Assistance from State

Without limiting any obligation of the Developer, prior to Final Completion if the State reasonably is able to assist the Developer in obtaining any Approval referred to in the preceding paragraphs of this clause 9, the State will, at the reasonable request of and at the cost and expense of the Developer, use its reasonable endeavours to provide such assistance.



9.5 Approvals prior to Construction Commencement

The Developer must prior to Construction Commencement:

- (a) provide the State with evidence that all Approvals (other than the Planning Scheme Amendment) required to be obtained by the Developer have been obtained and are in full force and effect and permit the Oversight Development Works to commence on and from Construction Commencement.

10 Construction Commencement

10.1 Construction Commencement

- (a) Following CBD North OSD Acceptance, the Developer must commence substantive construction of the Oversight Development on the Licenced Area (**Construction Commencement**) prior to the Construction Commencement Deadline. For the purposes of this clause, Construction Commencement means physically commencing the construction of the Oversight Development Works and diligently pursuing progress of the Oversight Development Works.
- (b) On and from Construction Commencement, the Developer must diligently pursue the Oversight Development Works and achieve Final Completion on or by the Oversight Development Sunset Date.
- (c) Without limiting clause 10.1(b), on and from Construction Commencement, the Developer must use reasonable endeavours to achieve Final Completion on or by the Scheduled Date for Final Completion provided that at no time is the Developer under an obligation to accelerate completion of the Oversight Development Works or incur additional costs or adopt an increased risk profile. All that is required of the Developer is to take steps to bring about Final Completion by the Scheduled Date for Final Completion so far as it is reasonably able to do so within the scope and timing of the resources which it would otherwise have allocated to the Oversight Development Works during its proposed program for the Oversight Development Works.
- (d) If the Developer considers that the Developer will not have achieved Final Completion prior to the Station Opening Date, then the Developer must within one month prior to the Station Opening Date:
 - (1) notify the State of the Developer's estimate of the date on which Final Completion will occur; and
 - (2) provide to the State an activation plan to apply from the Station Opening Date (**Scheduled Date Activation Plan**). The Scheduled Date Activation Plan must include the following elements:
 - (A) a framework of the nature and types of activation to be implemented by the Developer including an interim retail activation plan prior to the proposed date of Final Completion. The interim retail activation plan must provide that:
 - (i) to the extent that a tenancy has been procured and the relevant retail works are under construction, appropriate hoardings will be provided;
 - (ii) access to the Station will be maintained through an agreed management plan; and



- (iii) retail outlets to be leased will be activated with appropriate hoardings with artwork and/or signage; and
- (B) activation of construction hoardings surrounding the Construction Site with artist imagery and community message boards.

10.2 Activation of site prior to Construction Commencement

- (a) If CBD North OSD Acceptance occurs and the Developer (acting reasonably) does not anticipate that Construction Commencement will occur until sometime after CBD North OSD Acceptance, the Developer must prepare and implement a site activation plan which has the elements described in clause 10.2(b) (**Site Activation Plan**).
- (b) The Site Activation Project Plan must include the following elements:
 - (1) a framework of the nature and types of activation to be implemented by the Developer before Construction Commencement; and
 - (2) activation of construction hoardings surrounding the Construction Site with artist imagery and community message boards.

11 Oversight Development and Environmental Issues

11.1 Grant of Construction Licence

The State will procure the grant to the Developer a non-exclusive licence:

- (a) in respect of the Construction Site;
- (b) commencing on, or prior to date of CBD North OSD Acceptance; and
- (c) substantially in the form of, and on the terms specified in, the Construction Licence.

11.2 Use of Licenced Area

- (a) The State acknowledges and agrees that on and from the date the Construction Licence is granted, the Developer will be entitled to use the Licenced Area on the terms set out in the Construction Licence and the terms of this Agreement.
- (b) The Developer must comply with the following terms in relation to the Licenced Area:
 - (1) the Developer is responsible for ensuring that at all times the Licenced Area is left in a clean, tidy and safe condition and that all construction waste, rubbish and debris are removed promptly from the Licenced Area in accordance with Best D&C Practices;
 - (2) the Developer must ensure that at all times the physical appearance and amenity of the Licenced Area is maintained in such a way that it does not detract from the amenity of the Serviced Area;
 - (3) on Final Completion of the Oversight Development the Developer must remove all Plant and Equipment, facilities, vehicles (other than those required for the operation of the Oversight Development) and any



- construction waste, machinery, rubbish and debris from the laydown areas and other parts of the Licenced Area used for the Oversight Development Works; and
- (4) the Developer acknowledges and agrees that the State and its Associates, any Authorised Person, Project Co, and the Project D&C Subcontractor may require access to the Licenced Area on a daily or other periodic basis and the Developer must co-operate with the State, the Authorised Persons, Project Co and the Project D&C Subcontractor in ensuring that they are given reasonable access at all times to the Licenced Area.
- (c) When entering the Licensed Area in accordance with clause 11.2(b)(4), the State must and must ensure its Associates and any Authorised Person:
- (1) comply with the Oversight Development Access and Interface Protocols and any generally applicable safety and security requirements of the Developer;
- (2) do not unnecessarily interfere with the carrying out of the D&C Activities; and
- (3) do not damage the Oversight Development Works or the Licenced Area.
- (d) The Developer must consult regularly and as necessary with the State regarding:
- (1) the effect (if any) of the undertaking of the Oversight Development Works on the use of the Serviced Area; and
- (2) the procedures or arrangements (if any) that can be put in place by the Developer during the undertaking of the Oversight Development Works to:
- (A) minimise as far as reasonably practicable any disruption to the use of the Serviced Area; and
- (B) ensure as far as reasonably practicable that the use of the Serviced Area can be carried out safely.
- (e) The Developer is responsible for:
- (1) gaining access to; and
- (2) negotiating with persons holding interests in,
land or airspace not forming part of the Licenced Area which the Developer requires access to, or any other right in respect of, for the purpose of the carrying out the Oversight Development Works and obtaining access to and from the Licenced Area.
- (f) The Developer is not entitled to any Claim against the State in connection with access or a failure to gain or delay in gaining access, or any other right in respect of land or airspace not forming part of the Licenced Area.
- (g) The Developer indemnifies and will keep indemnified the State and its Associates from and against all Liabilities and Claims of every kind arising from the Developer's or its officers', employees', agents', Subcontractors' or consultants':
- (1) access to; or
- (2) actions in relation to gaining access to or negotiating with persons holding interests in,



land or airspace not forming part of the Licenced Area.

11.3 Station Works

- (a) **(Priority):** This clause 11.3 has priority over and operates notwithstanding the terms of clause 11.5.
- (b) **(Interface):** Without limiting clause 11.2(c), the Developer acknowledges that the State, any of its Associates and other persons including Project Co, the Project Co Associates, the Project D&C Subcontractor, Authorised Persons, and Precinct Users (together, **the Interface Parties**), may (subject to the Interface Agreement and the Oversight Development Access and Interface Protocols) carry out work, services, activities and functions on, adjacent to or in the vicinity of the Precinct.
- (c) **(Co-operation):** Except to the extent the Developer is expressly entitled to relief as a State Extension Event, the Developer bears all risk in respect of, and will not make any Claim against the State in relation to, the Interface Parties and must:
 - (1) permit the Interface Parties to undertake their work, services, activities and functions;
 - (2) fully co-operate with the Interface Parties;
 - (3) carefully co-ordinate and interface the Oversight Development Works with the work, services, activities and functions carried out or to be carried out by the Interface Parties;
 - (4) carry out the Oversight Development Works so as to minimise interference, disruption or delay to the work, services, activities and functions of the Interface Parties; and
 - (5) notify the State of any problems which the undertaking or intended undertaking of any works, services, activities or functions of the Interface Parties may have on the carrying out of the Oversight Development Works as soon as possible after becoming aware of such problems.
- (d) Without limiting clause 11.3(b), but subject to 11.3(c), the Developer must, at all times:
 - (1) attend all meetings called by the State to plan, review and determine coordinated activities and the management of interfaces (including access) between the Oversight Development Works and the construction, installation, commissioning and site acceptance testing of Project Co;
 - (2) continuously plan, program and perform Oversight Development Works so as to:
 - (A) coordinate its plans and designs with those of Project Co; and
 - (B) minimise any interference with, or hindrance or impact of, on or by, the performance of construction, installation, commissioning and site acceptance testing of Project Co;
 - (3) where any damage, interference or hindrance referred to in clause 11.3(d)(2) is the unavoidable consequence of the Oversight Development Works, immediately notify the State in writing, with a

view to reaching an agreed procedure to prevent or minimise any such damage, interference or hindrance; and

- (4) at all times cooperate with the State so as to promote and foster a coordinated and integrated approach to the Oversight Development Works and the construction, installation, commissioning and site acceptance testing of the Station Works and the Services.
- (e) Where the Developer in carrying out the Oversight Development Works is not complying with its obligations under clause 11.3 then the State may direct the Developer to take any reasonably appropriate action to ensure that the Developer complies with its obligations under clause 11.3.
- (f) The Developer:
 - (1) must comply with any direction given by the State pursuant to clause 11.3(e); and
 - (2) has no right to make any Claim against the State in respect of a valid direction given by the State pursuant to clause 11.3(e).

11.4 Other Developments

- (a) **(No claims)** Except to the extent the Developer is expressly entitled to relief under this Agreement, the Developer and each of its Associates will not be entitled to make any claim against the State, and will not be entitled to any relief under this Agreement or any other Oversight Development Agreement, in respect of any fact, matter or thing relating to the Station Works or operation of the Station or Oversight Development.
- (b) **(Dual role)** The parties acknowledge that the Developer may engage:
 - (1) the Project D&C Subcontractor as the Builder; and
 - (2) the Project Maintenance Subcontractor to provide facility management services in respect of the Oversight Development.

11.5 Coordination Plan

- (a) Prior to Construction Commencement, the Developer must at its own cost and expense prepare a plan (**Coordination Plan**) detailing:
 - (1) the construction program for the Oversight Development Works;
 - (2) the impact of the Oversight Development Works on the Station Works;
 - (3) the measures to be implemented to ensure that there is no interference with, disruption, obstruction, delay or hindrance to the carrying out of the Station Works as a result of the Oversight Development Works; and
 - (4) the measures to be implemented to ensure that the Oversight Development Works do not disrupt, obstruct or hinder the ongoing operation of the Station.
- (b) The Developer must submit the Coordination Plan to the State for the review and approval of the State. The State will advise the Developer within 15 Business Days if it does not approve the Coordination Plan submitted. The State may only not approve the Coordination Plan if the State acting reasonably considers that an aspect of the Oversight Development Works will or has the potential to adversely affect the Station Works or the ongoing operation of the Station. The State cannot require any amendment to the Coordination Plan



which would result in the Coordination Plan being inconsistent with or otherwise derogate from the Developer's rights under the Interface Agreement or the Oversight Development Access and Interface Protocols.

- (c) The Developer must comply with any direction or requirement required by the State to be included in the Coordination Plan to:
 - (1) minimise any adverse impact on the Station Works; or
 - (2) minimise any adverse impact on the ongoing operation of the Station.
- (d) The State or the Developer may refer any dispute in relation to the non-approval of the Coordination Plan under this clause 11.5 for resolution by an independent expert in accordance with clause 42.3, in which case the Coordination Plan will be as determined by the independent expert in accordance with that clause.
- (e) The State's review and approval of the Coordination Plan, or the determination of a dispute in relation to the Coordination Plan by an independent expert in accordance with clause 42.3 does not:
 - (1) entitle the Developer to make any Claim;
 - (2) in any way limit or change the Developer's obligations under this Agreement or any other Oversight Development Agreement; or
 - (3) relieve the Developer of any liabilities,with respect to the design, construction and commissioning of the Oversight Development Works.

12 Site conditions

12.1 Developer to inform itself

The Developer:

- (a) **(Suitability and risk assessment)**: warrants that it has, and it will be deemed to have, done everything (including all assessments tests or studies of the Site and its surroundings) that would be expected of a prudent, competent and experienced contractor in the position of the Developer:
 - (1) in assessing the risks regarding the Site Conditions;
 - (2) in ensuring that this Agreement contains allowances to protect it against any risks regarding the Site Conditions eventuating; and
 - (3) in order to determine the suitability of the Site and its surroundings for the Oversight Development; and
- (b) **(Sufficient access)**: acknowledges and agrees that:
 - (1) it has had sufficient access to the Site prior to Financial Close; and
 - (2) it has had the opportunity to carry out all assessments, tests and studies necessary,to determine the suitability of the Site and its surroundings for the Oversight Development and to familiarise itself with the Site Conditions.

12.2 Environmental issues

The Developer must:



- (a) **(no industrial waste or hazardous substance)**: during any period where the Developer is entitled to use or occupy the Site, not use or allow it to be used, such that:
 - (1) any spoil, Industrial Waste or Hazardous Substance is abandoned or dumped on the Site;
 - (2) any Industrial Waste or Hazardous Substance is handled, disposed of, disturbed, discharged or released in a manner which is likely to cause or contribute to an Environmental Hazard; or
 - (3) any other substance is handled, disposed of, disturbed, discharged, released, deposited to, or emanated from, the Site such that a state of Contamination occurs other than as permitted by Law or an Approval;
- (b) **(environmental responsibility)**: at all times carry out the D&C Activities in an environmentally responsible manner and in accordance with Best D&C Practices, so as to protect the Environment and take all reasonable and practicable measures to prevent or minimise adverse impacts on the Environment;
- (c) **(reports)**: promptly provide to the State copies of all reports, surveys, audits and monitoring results in respect of the Environmental Requirements when they are obtained;
- (d) **(manage waste disposal)**: manage and be responsible for the handling and proper disposal or removal of all waste, rubbish, debris, redundant materials, spoil and Industrial Waste produced by the D&C Activities in accordance with Best Industry Practices, all relevant Approvals and this Agreement;
- (e) **(directions)**: comply with all directions by the State regarding the removal from the Site and disposal of any Industrial Waste or Hazardous Substance; and
- (f) **(Pollution and Contamination)**: not cause or contribute to any Pollution or Contamination.

12.3 Contamination

- (a) **(Contamination caused or contributed to)**: The Developer must Remediate, to the standard required by and in accordance with, the Law and the Environmental Requirements, any Contamination which is caused or contributed to in the carrying out of the D&C Activities.
- (b) **(Contamination disturbed or interfered with)**: The Developer must Remediate, to the standard required by and in accordance with, the Law and the Environmental Requirements, any Contamination which is on, in, over or which has emanated or is emanating from or to the Site and which is disturbed, exacerbated or interfered with in the carrying out of the D&C Activities.

12.4 Contamination notification requirements

- (a) **(Notification)**: If the Developer discovers any Contamination on, in, over or emanating from or to the Site (whether or not the Developer has caused or contributed to that Contamination), it must notify the State as soon as practicable, but nevertheless within 5 Business Days after the discovery of the Contamination.
- (b) **(Notification requirements)**: The Developer's notice under clause 12.4(a) must contain all relevant details in relation to the Contamination, including:
 - (1) the type of Contamination;



- (2) the location of the Contamination; and
 - (3) the nature and extent of the Contamination,to the extent such details are known at the time the notification is provided.
- (c) **(Contamination Notice):** The Developer must, at all times comply, and ensure that all of its Associates comply, with any Contamination Notice relating to Contamination on, in, over, or that emanated or is emanating from or to, the Site, regardless of whether:
 - (1) the Contamination Notice is addressed to the State, the Developer or some other person; and
 - (2) the Contamination occurred before or after the Developer or any other person was given access to the Site.
- (d) **(Disputing a Contamination Notice):** Without limiting the Developer's obligation under this clause 12.4, nothing in this clause 12.4 prevents the Developer from disputing the issue of a Contamination Notice with the EPA or taking action against a third party with respect to the Contamination.
- (e) **(Parties not to cause service of Contamination Notice):** Subject to their respective obligations at Law, and the functions and powers of the EPA, none of the State, the Developer, or any of the Developer's Associates will do anything with the intent, directly or indirectly, of causing or being likely to cause the issue or service of a Contamination Notice.
- (f) **(Indemnity):** the Developer must indemnify the State against any Claim arising out of or in connection with any:
 - (1) Contamination to the extent that the Developer has caused or contributed to it that the Developer is required to Remediate under this clause 12.4;
 - (2) Contamination that has been caused or contributed to by the Developer to the extent that it would have been prevented or minimised by a prudent, experienced and competent contractor in the circumstances; or
 - (3) failure of the Developer to comply with any obligation under this Agreement in connection with Contamination that has been caused or contributed to by the Developer.

13 Native Title and Artefacts

13.1 Native Title

As between the State and the Developer, the State is responsible for:

- (a) dealing with any Native Title Claim in respect of any part of the Site, and taking any action required in accordance with the TOS Act or any LUAA in connection with the Oversight Development;
- (b) the payment of any compensation or other moneys required to be paid to the native title holders of any part of the Site as a consequence of a successful Native Title Claim; and



- (c) the payment of any compensation or other moneys required to be paid as a result of the application of the TOS Act or any LUAA applicable to the Oversight Development.

13.2 Artefacts

- (a) As between the State and the Developer, if an Artefact is discovered on or under the surface of the Site:
 - (1) it will be the absolute property of the State; and
 - (2) the Developer must:
 - (A) immediately notify the State of the discovery;
 - (B) permit the State to watch or examine any excavation on the Site; and
 - (C) take every reasonable precaution in carrying out the D&C Activities so as to prevent Artefacts being damaged or removed until appropriate arrangements for dealing with, or removing, the Artefacts have been made.

13.3 General Provision

If there is a:

- (a) Native Title Claim or Heritage Claim in connection with; or
- (b) discovery of Artefacts in,
any part of the Site, the Developer must:
 - (c) continue to carry out its obligations in accordance with this Agreement, except to the extent otherwise:
 - (1) directed by the State or the Commonwealth;
 - (2) ordered by a court or tribunal of competent jurisdiction; or
 - (3) required by Law; and
 - (d) provide all reasonable assistance to the State in connection with dealing with the Native Title Claim, Heritage Claim or Artefact discovery.

13.4 Cultural Heritage Management Plan

- (a) The Developer must comply with all reasonable directions of the State concerning Artefacts and the protection of Aboriginal Cultural Heritage under the *Aboriginal Heritage Act 2006 (Vic)*.
- (b) If, in accordance with clause 13.4(a) or pursuant to the terms of the *Aboriginal Heritage Act 2006 (Vic)*, the Developer is required to prepare a Cultural Heritage Management Plan in respect of the D&C Activities or is required to make any application in connection with that Cultural Heritage Management Plan:
 - (1) the State may, in its absolute discretion, elect to make the application to the exclusion of the Developer; and
 - (2) the Developer:
 - (A) must prepare all necessary documentation and information for consideration by the State;



- (B) must provide all necessary assistance reasonably required by the State to make the relevant application; and
 - (C) bears all risks associated with making the application and obtaining the necessary Approval.
 - (c) If a Cultural Heritage Management Plan is approved, the Developer must:
 - (1) comply with:
 - (A) the provisions and procedures of the Cultural Heritage Management Plan; and
 - (B) all reasonable directions of the State concerning Artefacts and the protection of Aboriginal Cultural Heritage; and
 - (2) immediately notify the State of any:
 - (A) breach or alleged or potential breach of; or
 - (B) non-compliance, or alleged or potential non-compliance, with,
- the conditions or requirements of the Cultural Heritage Management Plan.

14 General Obligations

14.1 Responsibility for Construction

The Developer:

- (a) is responsible for and is not entitled to make any Claim in connection with:
 - (1) the Construction Site and Site Conditions, except as specifically provided in this Agreement; and
 - (2) construction means, methods and techniques used to undertake the Oversight Development Works;
- (b) must provide everything (including labour, materials and plant) necessary for the design and construction of the Oversight Development Works;
- (c) will carry out all investigations necessary to ensure the adequacy and suitability of the Construction Site; and
- (d) must put in place suitable procedures or arrangements to deal with site management.

14.2 Interconnection

Subject to the terms of the Interface Agreement, where any Oversight Development Works are attached to or otherwise form part of the infrastructure leased or owned by any other person, the Developer must do all things reasonably necessary to assist that person to ensure proper integration of Oversight Development Works, once they have been completed, with the infrastructure which is owned or leased by that person.

15 Oversight Development Final Design Documentation

15.1 Development of Final Design Documentation

- (a) The Developer must, at its own cost and expense procure the development and completion of the Final Design Documentation to ensure that the Oversight Development Works:
- (1) are, subject to variations and modifications permitted under this Agreement, designed generally in accordance with the Concept Design Documentation (as approved in accordance with clause 15.2);
 - (2) are consistent with, and provide for the matters contained in, the Planning Scheme Amendment;
 - (3) incorporate any Project Agreement Modification; and
 - (4) comply with Best D&C Practices.
- (b) The State Representative will have the right to:
- (1) participate in key meetings;
 - (2) review and, in relation to any matter on which the State can decline approval under clause 15.3(b), comment on Final Design Documentation; and
 - (3) otherwise participate in the development of the elements of the Final Design Documentation,
- that relate to:
- (4) the physical and functional interfaces between the Oversight Development, the Station, public spaces and street frontages (**Interfaces**); and
 - (5) the Key Design Elements.
- (c) The Developer must bear all costs and expenses of the development of the Final Design Documentation.
- (d) Without limiting the Developer's obligations under this clause 15, the State acknowledges that:
- (1) in the development of the Final Design Documentation:
 - (A) if any element of the Final Design Documentation is disclosed to the State; and
 - (B) the State does not object or require changes in relation to that element within 10 Business Days after it is disclosed,the Developer will give the State a further request for the State's approval and if the State fails to respond to that further request within 20 Business Days of that further request, the State cannot in its capacity as counterparty under this Agreement subsequently object to or require changes in relation to that element.
 - (2) once Final Design Documentation becomes Approved Design Documentation for the Oversight Development Works for the purposes of this Agreement then the State in its capacity as counterparty under this Agreement cannot object to any Approved Design Documentation.



15.2 Variations by the Developer

- (a) Subject to clause 15.2(b), the Developer may change the Oversight Development, including the Final Design Documentation, at any time prior to Final Completion without the approval of the State.
- (b) The Developer must not change the Oversight Development without the prior written consent of the State (which consent will not be unreasonably withheld or delayed) if:
 - (1) the change is in relation to a Matter of State Concern; or
 - (2) the consequence of that proposed change is that the Oversight Development would not comply with the Advertising Restrictions.
- (c) Deleted.
- (d) The Developer must bear all costs and expenses of any change to the Oversight Development.
- (e) The State or the Developer may refer any dispute in relation to this clause 15.2 for resolution by an independent expert in accordance with clause 42.
- (f) Without limiting any other clause in this Agreement, this clause 15.2 ceases to have any effect on and from the Final Completion Date.

15.3 Submission of Final Design Documentation

- (a) The Developer must upon request by the State (which request may not be made at any time before [not disclosed] after the Financial Close Date unless otherwise agreed by the Developer or if the Final Design Documentation have been prepared by the Developer) and prior to finalising the Final Design Documentation, submit that documentation to the State for the State to review any Matters of State Concern.
- (b) The State will advise the Developer within 15 Business Days if it does not approve the Final Design Documentation submitted in accordance with clause 15.3(a). The State may only not approve the Final Design Documentation if the State reasonably considers that an aspect of the design of the Oversight Development will adversely affect a Matter of State Concern or does not comply with the Planning Scheme Amendment.
- (c) The State undertakes no responsibility or duty in respect of any aspect of the design of the Oversight Development.
- (d) Unless the State does not approve the Final Design Documentation under clause 15.3(b), that Final Design Documentation will be Approved Design Documentation for the Oversight Development Works for the purposes of this Agreement.
- (e) If the State does not approve the Final Design Documentation under clause 15.3(b), then the State will, within 15 Business Days after it decides to not approve the Final Design Documentation, notify the Developer that the State requires the Developer to make amendments to the Final Design Documentation, in which case:
 - (1) the Developer must amend, in consultation with the State, the Final Design Documentation as requested by the State and resubmit the amended Final Design Documentation within 15 Business Days after receipt of the State's notice; and



- (2) this clause 15.3 will apply in respect of the resubmitted Final Design Documentation as if it were originally submitted under clause 15.3(a).
- (f) The State or the Developer may refer any dispute in relation to the non-approval of the Final Design Documentation under this clause 15.3 for resolution by an independent expert in accordance with clause 42, in which case the Approved Design Documentation for the Oversight Development Works will be as determined by the independent expert in accordance with that clause.
- (g) The State's review and approval of the Final Design Documentation, or the determination of a dispute in relation to Final Design Documentation by an independent expert in accordance with clause 42, does not:
 - (1) entitle the Developer to make any Claim;
 - (2) in any way limit or change the Developer's obligations under this Agreement or any other Oversight Development Agreement; or
 - (3) relieve the Developer of any Liabilities,with respect to the design, construction and commissioning of the Oversight Development Works.

15.4 Easements

- (a) Within 90 days after the determination of the Approved Design Documentation, the Developer must submit to the State a proposed Easement Plan for the State's approval setting out any easements, covenants, restrictions or other dealings required by the Developer for the construction, operation or use of the Oversight Development.
- (b) If, within 20 Business Days after submission of the proposed Easement Plan under clause 15.4(a) the State must notify the Developer of its approval or rejection of the proposed Easement Plan. If the State rejects the proposed Easement Plan the State must provide details of the amendments it requires to the proposed Easement Plan and set out the basis for its requirement.
- (c) If the State notifies the Developer that it approves the proposed Easement Plan submitted under clause under clause 15.4(a), then the proposed approved by the State is taken to be the Easement Plan.
- (d) If the State notifies the Developer that the State rejects the proposed Easement Plan under clause 15.4(a) and requires the Developer to make amendments to the proposed Easement Plan:
 - (1) the Developer must amend the Easement Plan as requested by the State and resubmit the amended Easement Plan within 15 Business Days after receipt of the State's notice; and
 - (2) this clause 15.4 will apply in respect of the resubmitted Easement Plan as if it were originally submitted under clause 15.4(a).
- (e) The State cannot object to any easements, covenants, restrictions or other dealings specified in a proposed Easement Plan submitted under clause 15.4(a) if that easement, covenant, restriction or other dealing is:
 - (1) consistent with the Station Land Management Principles outlined in Attachment 11; or
 - (2) reasonably necessary for the construction, operation or use of the Oversight Development having regard to the Approved Design Documentation,



provided that such easements, covenants, restrictions or other dealings specified in a proposed Easement Plan do not materially impact or prevent the use of the Station Land for its intended purposes or materially and adversely affect the Rail Operations.

16 State Initiated Modifications or Variations

16.1 Application

- (a) The whole of this clause 16 applies to OSD Modifications other than Developer Unacceptable Conditions.
- (b) Clauses 16.2, 16.6, 16.7, 16.8(a) and 16.9 apply to Developer Unacceptable Conditions, on the basis that the Developer Unacceptable Condition is an OSD Modification Order which the State has issued.
- (c) The Developer may make a Claim under this clause 16 in respect of a Developer Unacceptable Condition of a kind described in either or both of paragraph (2) and (3) of the definition of Developer Unacceptable Condition only if it does so within 3 months after the later of:
 - (1) the endorsement of the master plan comprising part of the Incorporated Document; and
 - (2) [not disclosed].

16.2 Consultation

If the State is considering a State Initiated Modification or a State Initiated OSD Variation which either:

- (a) increases, decreases or omits any part of the Oversight Development Works;
- (b) varies the Oversight Development Works; or
- (c) may cause the Developer to:
 - (1) not be able to perform any obligation under an agreement for lease entered into with a tenant in relation to any part of the Oversight Development (for example, an obligation to grant a lease to the tenant); or
 - (2) not be able to procure an agreement to lease or lease,

the State Representative must first consult with the Developer to discuss details of the proposed State Initiated Modification or State Initiated OSD Variation.

16.3 Modification Request or Variation Notice

After consultation with the Developer in respect to an OSD Modification, the State may:

- (a) issue a Modification Request under the Project Agreement; or
- (b) issue a notice to the Developer entitled "State Initiated OSD Variation" (**Variation Notice**),

requesting the Developer to submit a OSD Modification Quote for a proposed State Initiated Modification or State Initiated OSD Variation which includes details of:

- (c) the proposed OSD Modification; and



- (d) any specific information that the State requires the Developer to include in the OSD Modification Quote or that may be relevant to the preparation of the OSD Modification Quote,

(OSD Modification Request).

16.4 OSD Modification Quote

- (a) **(Submission of OSD Modification Quote):** Unless the State withdraws an OSD Modification Request, the Developer must submit a OSD Modification Quote to the State:
- (1) within 20 Business Days of receipt of the OSD Modification Request; or
 - (2) at such later time as agreed by the State (acting reasonably, taking into account the size and complexity of the proposed OSD Modification and the information included in the OSD Modification Quote).
- (b) **(Contents of OSD Modification Quote):** The OSD Modification Quote must:
- (1) include details of the lump sum cost of the OSD Modification as determined under clause 16.6;
 - (2) include the Developer's opinion as to the impact on the Value at Final Completion of the State Initiated Modification or State Initiated OSD Variation;
 - (3) include details of the basis (if applicable) on which the Developer would be prepared to fund or to procure the funding of the lump sum cost of the OSD Modification as determined under clause 16.6 if the Developer, rather than the State, were to fund the OSD Modification;
 - (4) include details of any Extension Event required as a result of the State Initiated Modification or State Initiated OSD Variation;
 - (5) include details of any variations to any existing Approval or any new Approval required for the OSD Modification;
 - (6) include details of any amendments to any relevant warranty given by the Developer under this Agreement;
 - (7) be prepared so as to avoid or minimise the effect of any Extension Event to the extent reasonably practicable;
 - (8) include any other relevant information reasonably requested by the State,
- (OSD Modification Quote).**
- (c) **(Further details):** The State must provide the Developer with further details reasonably requested by the Developer to assist the Developer in preparing its OSD Modification Quote.

16.5 State Response to OSD Modification Quote

- (a) **(Information and changes):** Once it has provided the State with the OSD Modification Quote, the Developer must:
- (1) provide the State with any additional information the State notifies that it reasonably requires to assess the OSD Modification Quote; and



- (2) make any changes to the OSD Modification Quote which the State requests and with which it agrees.
- (b) **(State response to OSD Modification Quote):** Within 20 Business Days after receiving a OSD Modification Quote or such longer period as the State reasonably requires given:
- (1) the size and complexity of the proposed OSD Modification; and
 - (2) the need for any additional information not included in the OSD Modification Quote and the time when it is subsequently provided,
- the State must:
- (3) issue a OSD Modification Order to the Developer directing the Developer to carry out the OSD Modification on the terms set out in the OSD Modification Quote or as otherwise agreed by the State and the Developer, and the Developer must implement the OSD Modification in accordance with the OSD Modification Order and clauses 16.8(a) to 16.8(b) will apply;
 - (4) notify the Developer that it does not agree with the OSD Modification Quote, including supporting documentation and reasons; or
 - (5) notify the Developer that it does not wish to proceed with the proposed OSD Modification.
- (c) **(Further information):** If the State:
- (1) requests changes to the OSD Modification Quote in accordance with clause 16.5(a); or
 - (2) notifies the Developer that it does not agree with the OSD Modification Quote in accordance with clause 16.5(b)(4),
- the Developer must provide the State with an updated OSD Modification Quote, addressing the issues raised by the State, within 10 Business Days of the receipt of the State's notice and this clause 16.5 will apply again to that OSD Modification Quote.

16.6 Pricing an OSD Modification

- (a) In determining the lump sum cost of an OSD Modification, the Developer must determine the lump sum cost of the OSD Modification on an open book basis and the Developer may have regard to any costs which may be properly and reasonably incurred by the Developer in directly considering and carrying out the OSD Modification including:
- (1) trade costs;
 - (2) re-design costs;
 - (3) reasonable contingency;
 - (4) building margin;
 - (5) incremental finance costs;
 - (6) any additional costs associated with any agreement for sublease, development agreement or other third party agreement entered into by the Developer in respect of the Oversight Development;
 - (7) the impact of OSD Modification on the Value at Final Completion of the Oversight Development;



- (8) development application costs;
 - (9) statutory fees and charges;
 - (10) the Developer's overhead and development costs (consultants, etc);
 - (11) project management and cost planning;
 - (12) development management fee based on [not disclosed] of project costs;
 - (13) development margin of [not disclosed]; and
 - (14) any other costs to be reasonably incurred by the Developer.
- (b) Consistent with the open book basis referred to in clause 16.6(a), the Developer must promptly upon request by the State's Representative make available to the State's Representative all information regarding the cost of the OSD Modification to enable the State to check and satisfy itself about the lump sum cost of the OSD Modification,
- (c) If any OSD Modification involves a net saving on the cost of construction of the Oversight Development Works to the Developer after taking into account the matters in clause 16.6(a) then the Developer must pass on [not disclosed] of the benefit of the saving to be made by the Developer on account of the OSD Modification to the State.
- (d) In the event that the State does not accept the lump sum cost of an OSD Modification, subject to clause 16.7, the State may require the cost of the OSD Modification to be determined under clause 42.

16.7 Impact on Value at Completion

In the event that the State does not accept the Developer's opinion as to the impact on the Value at Final Completion of the State Initiated Modification or State Initiated OSD Variation, the State may require the impact on the Value at Final Completion of the OSD Modification to be determined under clause 42.

16.8 OSD Modification Orders

- (a) **(Developer to implement):** If the State issues a OSD Modification Order, then:
- (1) the Developer must undertake the OSD Modification on the terms set out in the OSD Modification Order;
 - (2) the parties will account to each other in respect of the OSD Modification Order in the manner set out in clause 16.9;
 - (3) the Development Plans will be deemed to be amended in accordance with the relevant amendments set out in the OSD Modification Order;
 - (4) the State and the Developer will work cooperatively to procure any amendment to the Planning Scheme Amendment required to effect the OSD Modification; and
 - (5) the Developer must carry out its obligations under this Agreement as amended in accordance with clause 16.8(a)(3).
- (b) **(No implementation without order):** The Developer must not begin any work or incur any cost, and will not have any entitlement to make any Claim in respect of a OSD Modification unless a OSD Modification Order has been issued by the State in accordance with this clause 16.8.

16.9 Adjustment to the Development Fee or payment by the State

- (a) Subject to clause 16.4(b)(3), if the impact on the lump sum cost to the Developer of undertaking the Oversight Development Works as a result of the OSD Modification as determined in accordance with clause 16.6 (**Modification Cost Adjustment**) results in:
- (1) an increase in costs the State must pay those costs to the Developer within 20 Business Days after the amount of the Modification Cost Adjustment is agreed or determined in accordance with clause 16.6; or
 - (2) a decrease in costs the Development Fee and Contract Price shall be increased by the amount of the Modification Cost Adjustment.
- (b) If the impact of OSD Modification on the Value at Final Completion of the Oversight Development as agreed or determined under clause 42 results in:
- (1) an increase in the Value at Final Completion of the Oversight Development, the First Instalment Development Fee and the Contract Price shall be reduced by the amount of the increase; or
 - (2) a decrease in the Value at Final Completion of the Oversight Development, the First Instalment Development Fee and Contract Price shall be reduced by the amount of the decrease,
- provided that:
- (3) if the OSD Modification occurs after the First Instalment Development Fee is paid then any increase or decrease will be made to the Second Instalment Development Fee; and
 - (4) if there is a decrease in the Value at Final Completion of the Oversight Development and the decrease exceeds the relevant part of the Development Fee against which it is to be offset, the State must pay to the Developer the difference between the reduction in the Value at Final Completion of the Oversight Development and the relevant Development Fee at the same time as the relevant Development Fee would otherwise have been payable by the Developer.

16.10 Directions giving rise to OSD Modification

- (a) In this clause 16.10, the Required Responsible Time means a reasonable time but in any case not more than 20 Business Days.
- (b) (**State direction**): If a direction by the State, other than a OSD Modification Order, constitutes or involves an OSD Modification, the Developer must, as a condition precedent to making a Claim against the State in connection with the direction:
- (1) within the Required Response Time of receiving the direction, give notice to the State that it considers the direction constitutes or involves an OSD Modification; and
 - (2) within 10 Business Days after giving the notice under clause 16.10(b)(1), submit an OSD Modification Quote to the State in respect of the direction.
- (c) (**Confirmation**): Within the Required Response Time of the State receiving a OSD Modification Quote from the Developer under clause 16.10(b)(2) the State may elect to:



- (1) confirm that the direction is in fact an OSD Modification and either:
 - (A) issue an OSD Modification Order; or
 - (B) vary the direction and confirm that the varied direction is a OSD Modification by issuing a OSD Modification Order,
in which case the Developer must undertake the OSD Modification on the basis of the OSD Modification Order and clause 16.8(a) will apply.
 - (2) withdraw the direction, in which case the Developer must not comply with the direction; or
 - (3) inform the Developer that, in the State's view, the direction is not a OSD Modification in which case the Developer must comply with the direction but may refer the matter to dispute resolution in accordance with clause 42.
- (d) **(No commencement)**: the Developer must not commence any work the subject of a direction which it believes constitutes a OSD Modification until the State has acted under clause 16.10(c).
- (e) **(Conditions for the Developer Claim)**: the Developer will not be entitled to make any Claim against the State in respect of a direction that gives rise to a OSD Modification unless it has given a notice under clause 16.10(b) and otherwise complies with this clause 16.10.

16.11 Payment for Quotes

If the Developer is required to prepare a OSD Modification Quote in accordance with clause 16 and prior to preparing a OSD Modification Quote, the Developer:

- (a) notifies the State that it will incur costs (whether internally or through an Associate or Related Body Corporate of an Associate or by engaging a third party) to provide design, engineering or quantity surveying or other services reasonably required to be outsourced to assist in the preparation of the OSD Modification Quote; and
- (b) provides details of the costs that will be incurred in preparing the OSD Modification Quote,

then in respect of a OSD Modification Quote, the State will either:

- (c) agree to pay the Developer the cost to prepare the OSD Modification Quote, in which case the Developer must proceed to prepare the OSD Modification Quote; or
- (d) withdraw the OSD Modification Request.

17 Project Management

- (a) The State and the Developer must establish a committee (**Oversite Development Project Control Group**) comprising at least one representative of each of them and a representative of such other persons as are nominated by the State or the Developer for representation on the Oversight Development Project Control Group.
- (b) In the period prior to Final Completion, the Oversight Development Project Control Group must:



- (1) meet at such times as the State and the Developer agree (and at least once each Quarter or such other period as agreed by the State and the Developer) to discuss any matters relating to the Oversight Development Works; and
 - (2) conduct its meetings in such a manner and in accordance with such procedures as its members may from time to time agree provided that at least 1 representative from each of the State and the Developer must be present in order for there to be a quorum at a meeting of the Oversight Development Project Control Group.
- (c) The Oversight Development Project Control Group will not have any legal responsibility to either the State or the Developer and will not have any power to require either the State or the Developer to act or refrain from acting in any way.
- (d) The decisions of the Oversight Development Project Control Group do not affect the rights or obligations of either the State or the Developer under any of the Oversight Development Agreements.

18 Sub-Contracting

- (a) Subject to clause 18(b), the Developer must ensure that the Building Contract provides that the Builder may only subcontract part of the Oversight Development Works (and not the Oversight Development Works as a whole).
- (b) The Developer may subcontract the performance of all or any part of the Oversight Development Works provided that in so doing the Developer will not be relieved of any of its Liabilities under this Agreement or any other Oversight Development Agreement and the Developer is at all times responsible for the performance of any such Subcontractors in relation to the Oversight Development Works and acts or omissions of the relevant Subcontractor will be deemed to be acts or omissions of the Developer.
- (c) Notwithstanding any other provision of this Agreement or any other Oversight Development Agreement, the Developer may not sub-contract, delegate or otherwise part with management or administration responsibilities for delivering its obligations in respect of the Oversight Development Works.

19 State's Right to Inspect

- (a) The Developer must allow the State Representative, and any person authorised by the State Representative at any time prior to Final Completion to inspect the Final Design Documentation.
- (b) The Developer must give such assistance as is reasonably required by the State Representative in respect of any inspection under clause 19(a), including providing access to such part of the Final Design Documentation as may be required by the State Representative or the relevant authorised person.
- (c) Inspection or failure to inspect by the State or any Authorised Person under this clause 19, does not:
- (1) entitle the Developer to make any Claim;
 - (2) in any way limit or change the Developer's obligations under this Agreement or any other Oversight Development Agreement; or



- (3) relieve the Developer of any Liabilities,
with respect to the design, construction and commissioning of the Oversight
Development Works.

20 General Obligations Prior to Final Completion

20.1 Site Conditions

Subject to clause 12 and 13:

- (a) the Developer will be responsible for complying with this Agreement despite the Site and Site Conditions and will carry out all investigations necessary to ensure the adequacy and suitability of the Site; and
- (b) the Developer will not be entitled to make any Claim in connection with the Site or Site Conditions other than in relation to any negligence of, or default under a Transaction Agreement by the State.

20.2 The Developer's reporting requirements

The Developer must submit to the State Representative and each other member of the Oversight Development Project Control Group by the 10th day of each month from Construction Commencement to Final Completion a written report for the previous month signed by an authorised representative of the Developer, which:

- (a) attaches a detailed report describing the progress of construction;
- (b) attaches a copy of any certificate provided by the Developer to an External Financier during that month in relation to the cost to complete the Oversight Development Works; and
- (c) includes such other up to date information relevant to the design, construction and completion of the Oversight Development Works as the State Representative may reasonably require.

20.3 Information

The Developer must, from Construction Commencement to Final Completion, provide the State Representative with any information relating to the Project or the Oversight Development (including access to documents and copies of documents) reasonably requested by the State Representative within 10 Business Days.

21 Timing for Completion of Oversight Development Works

21.1 Notice of delays

If the Developer considers that a delay in Construction Commencement or the progress of the Oversight Development Works has occurred or will occur such that the works will not achieve Final Completion on or by the Scheduled Date for Final Completion or the Oversight Development Sunset Date, the Developer must within a reasonable time (but no later than 10 Business Days after becoming aware of an delay or potential delay to the



Construction Commencement or the progress of the Oversight Development Works) notify the State stating the nature and cause of the delay or likely delay.

21.2 Extension Events

- (a) If:
- (1) Construction Commencement is or will be delayed by the occurrence of an Extension Event which delays or will delay the Developer in carrying out the Oversight Development Works; or
 - (2) Final Completion is or will be delayed by the occurrence of an Extension Event which will delay the Developer in carrying out the Oversight Development Works,
- the Developer must (if it wishes to claim an extension of time to the Construction Commencement Deadline or the Oversight Development Sunset Date, as applicable) as soon as practicable and, in any event, not later than 10 Business Days after the Developer first becomes aware of the delay or likely delay, give notice in writing (**Delay Notice**) to the State stating the nature, cause and the extent of the Extension Event and the Developer's reasonable prediction of the resulting delay with supporting evidence and stating a fair and reasonable period by which, in the Developer's opinion, the Construction Commencement Deadline or the Oversight Development Sunset Date should be extended.
- (b) The Developer may not claim an extension of time under clause 21.2(a) for any delay other than a delay caused by an Extension Event.

21.3 Extension

- (a) Subject to clause 21.3(d) and 21.7 and the Developer having complied with the preceding provisions of this clause 21 the State Representative will, as soon as reasonably practicable after receiving notice under clause 21.2(a), determine what, if any, period by which the Construction Commencement Deadline or Oversight Development Sunset Date is to be extended and will notify the Developer accordingly. If the Construction Commencement Deadline is extended and Oversight Development Sunset Date will be extended for the same period.
- (b) Where there are several causes of a delay and at least one cause is not an Extension Event (unless that cause is immaterial), then to the extent that the delays resulting from those causes are concurrent, the Developer will not be entitled to any extension of time in accordance with this clause 21.
- (c) A delay caused by any act or omission of the State or any of its Associates, or any failure by the State to comply with this clause 21 will not cause the Construction Commencement Deadline or the Oversight Development Sunset Date to be set at large but nothing in this paragraph will prejudice any right of the Developer to damages for breach of this Agreement by the State.
- (d) Despite anything contained in this clause 21, the maximum period of extension that the Developer is entitled to for a Total Financial Market Disruption is a total of [not disclosed].



21.4 Approval of Extension

If an Extension Event occurs and the State Representative determines in accordance with clause 21.3(a) that the Construction Commencement Deadline and/or the Oversight Development Sunset Date should be extended then:

- (a) the Developer will, subject to clause 21.7, be entitled to an extension;
- (b) the Construction Commencement Deadline or the Oversight Development Sunset Date (as applicable) will be extended as determined by the State Representative pursuant to clause 21.3(a); and
- (c) the Developer must provide to the State upon request an updated Coordination Plan which details the changes to the construction program included in the Coordination Plan as a result of the Extension Event.

21.5 Mitigation

The Developer's entitlement to an extension to the Construction Commencement Deadline or the Oversight Development Sunset Date under this clause 21 is reduced to the extent that the delay is as a result of a failure by the Developer to:

- (a) take all proper and reasonable steps to prevent or minimise the risk of the occurrence of the delay;
- (b) take all proper and reasonable steps to minimise the duration and consequences of the delay; and
- (c) comply with its obligations under this Agreement relating to Construction Commencement or Final Completion, as applicable (except to the extent that the Extension Event prevents or has prevented the Developer from doing so).

21.6 No Entitlement to Costs

- (a) The Developer is not entitled to any costs of delay or disruption in Construction Commencement or Final Completion as a result of the occurrence of an Extension Event except as set out in clause 21.6(b).
- (b) Where a State Extension Event occurs the Developer may submit notice to the State Representative as soon as practicable (and, in any event, within 20 Business Days) after the occurrence of the State Extension Event stating:
 - (1) any impact of the State Extension Event on the Value at Final Completion of the Oversight Development;
 - (2) any impact on the cost to the Developer of undertaking the Oversight Development Works as a result of the State Extension Event; and
 - (3) confirming, and to the extent possible demonstrating, that the costs were unavoidable, reasonable and justifiable and have arisen despite the Developer having taken all proper and reasonable steps to minimise any such costs.
- (c) Where the delay referred to in clause 21.1 exceeds a period of [not disclosed], the Developer must provide to the State and the State Representative further notice setting out:
 - (1) the actions being taken by the Developer to rectify or mitigate the delay; and
 - (2) the Developer's progress in rectifying or mitigating the delay; and



- (3) any updates to the information provided pursuant to the Delay Notice, or a notice previously provided under this clause 21.1,
- every [not disclosed] after the commencement of the delay until the Oversight Development Works are on schedule to achieve Final Completion on or by the Scheduled Date for Final Completion or the Oversight Development Sunset Date.
- (d) Upon receipt of a notice from the Developer under clause 21.6(b) or clause 21.6(c), the State Representative may request from the Developer any further information which the State Representative requires to assess the Developer's claim. Any dispute as to the amount of the Developer's claim must be determined by an independent expert in accordance with clause 42.
- (e) If the impact on the lump sum cost to the Developer of undertaking the Oversight Development Works as a result of the State Extension Event as agreed or determined in accordance with clause 42 (**SEE Cost Adjustment**) results in:
- (1) an increase in costs, the State must pay those costs to the Developer within 20 Business Days after the amount of the SEE Cost Adjustment is agreed or determined in accordance with clause 42; or
- (2) a decrease in costs, the Development Fee and Contract Price shall be increased by the amount of the SEE Cost Adjustment.
- (f) If the impact of State Extension Event on the Value at Final Completion of the Oversight Development as agreed or determined under clause 42 results in:
- (1) an increase in the Value at Final Completion of the Oversight Development, the First Instalment Development Fee (and the Contract Price) shall be reduced by the amount of the increase; or
- (2) a decrease in the Value at Final Completion of the Oversight Development, the First Instalment Development Fee and Contract Price shall be reduced by the amount of the decrease,
- provided that:
- (3) if the State Extension Event occurs after the First Instalment Development Fee is paid then any increase or decrease will be made to the Second Instalment Development Fee; and
- (4) if there is a decrease in the Value at Final Completion of the Oversight Development and the decrease exceeds the relevant part of the Development Fee against which it is to be offset, the State must pay to the Developer the difference between the reduction in the Value at Final Completion of the Oversight Development and the relevant Development Fee at the same time as the relevant Development Fee would otherwise have been payable by the Developer.
- (g) Despite anything contained in this clause 21.6. if the State Extension Event relates to a delay to the Project Activities (under the Project Agreement) in respect of which Project Co is granted relief under the Project Agreement for an event which constitutes a Compensable Extension Event (within the meaning of the Project Agreement) then the Developer is only entitled to all the increased costs to the Developer of undertaking the Oversight Development Works as a result of the State Extension Event as agreed or determined in accordance with clause 42 and is not entitled to any adjustment to the Development Fee.
- (h) Except as provided in this clause 21.7, no other costs of delay or disruption incurred by the Developer as a result of the occurrence of an Extension Event are payable by the State.

21.7 Reduction in State's liability for Relief Events

Subject to clause 21.8, the State's Liability and the Developer's entitlements in connection with any Relief Event will be reduced:

- (a) **(caused by Developer)**: to the extent that the Relief Event is caused or contributed to by:
 - (1) any breach of this Agreement by the Developer;
 - (2) any breach of any other Oversight Development Agreement by the Developer or any of its Associates who is a counterparty to the Oversight Development Agreement; or
 - (3) any act or omission by the Developer or any of its Associates other than to the extent any such act or omission is authorised or permitted under an Oversight Development Agreement;
- (b) **(caused by Project Co)**: to the extent that the Relief Event is caused or contributed to by:
 - (1) any breach of the Project Agreement by Project Co or any Project Co Associate; or
 - (2) any act or omission by the Project Co or any Project Co Associate other than to the extent any such act or omission is authorised or permitted under the Project Agreement;
- (c) **(failure to mitigate)**: to the extent the Developer, or any of its Associates, fails to:
 - (1) use all reasonable endeavours to mitigate, minimise or avoid the effects, consequences or duration of:
 - (A) any event giving rise to a Relief Event; or
 - (B) circumstances giving rise to a Relief Event,
(including by putting in place temporary measures reasonably required by the State); or
 - (2) take all reasonable steps which a prudent, competent and experienced developer in the circumstances of the Developer or the relevant Associate of the Developer would have taken to mitigate, minimise or avoid the effects, consequences or duration of the event or circumstances giving rise to a Relief Event; and
- (d) **(insurance proceeds)**: by the aggregate of any insurance proceeds:
 - (1) payable to the Developer or any of its Associates under any Insurances in respect of the event or circumstances giving rise to a Relief Event; and
 - (2) which would have been payable to the Developer or any of its Associates under any Insurance in respect of the event or circumstances giving rise to a Relief Event but for a failure by the Developer to comply with this Agreement or a failure by the Developer or any of its Associates to comply with the terms of those Insurances.

21.8 Exceptions to clause 21.7

Clause 21.7 does not:



- (a) limit any right of the Developer to an extension to the Construction Commencement Deadline or the Oversight Development Sunset Date as a result of an Extension Event caused or contributed to by Project Co or its Associates; or
- (b) affect any obligation of the State to pay, or the right of the Developer to receive, a Termination Payment.

22 Defects

22.1 Notification of Defects of State Concern

The State may advise the Developer of all Defects of State Concern in the Oversight Development Works after the State becomes aware of them.

22.2 Obligation to rectify

Subject to the following provisions, the Developer must correct and rectify any Defects of State Concern notified in writing by the State to the Developer during the Defects Liability Period as soon as practicable after it is advised of them and where the State indicates, on reasonable grounds, that a Defect of State Concern is of a kind which may potentially have a material effect on the Station or the Freehold Land if not addressed quickly, the Developer must correct and rectify that Defect as a matter of urgency, but if the Defect of State Concern is not reasonably capable of being rectified within 5 Business Days after the State has requested rectification, the Developer must, not later than 5 Business Days after the request is made give the State a plan for rectifying that Defect (**Rectification Plan**) within a reasonable period (having regard to the nature of the Defect) and must then comply with and diligently implement the Rectification Plan.

22.3 Access to Freehold Land

The Developer will allow the State and the State Representative to have access to the Freehold Land for the purpose of inspecting any Defects of State Concern and, if the Developer fails to rectify any Defect of State Concern in accordance with clause 22.2, carrying out any necessary rectification works, subject to the following provisions:

- (a) the State must give reasonable advance notice to the Developer of its wish to have access to the Freehold Land;
- (b) access for inspection will be taken at reasonable times stipulated by the Developer; and
- (c) rectification works must be carried out at times and in such manner as to minimise disruption to or interference with the use of the Freehold Land.

22.4 Cost of Rectification of Defects of State Concern

If and to the extent that rectification works are not carried out by the Builder within the period set out in clause 22.2, the parties agree as follows:

- (a) the Developer will meet and pay any additional costs in connection with the rectification of any Defects of State Concern; and
- (b) the Developer will pay or reimburse to the State any costs incurred by the State in connection with any rectification of Defects of State Concern undertaken by



the State if the Developer does not rectify the Defect of State Concern within a reasonable time after notice by the State to do so.

23 Standards and access

23.1 Application of clause 23

This clause 23 applies where:

- (a) Station Final Acceptance has occurred; and
- (b) all or any part of the Station Land is occupied by the Train Franchisee under the Train Infrastructure Lease.

23.2 Business protection

- (a) **Disruption** means any material and substantial interference to Transport Services resulting from:
 - (1) no entry point to the Station being open and accessible by the general public during the operating hours of the Station; or
 - (2) the shutting down of the Station; or
 - (3) the Station being without electricity, gas, telecommunications, water, drainage, waste water, or sewerage services; or
 - (4) a foul or block to the rail tracks on the Station Land,as a direct result of the Developer breaching its obligations under this Agreement.
- (b) The Developer acknowledges that if this clause 23 applies:
 - (1) during the period of construction of the Oversight Development Works the Transport Services are intended to continue to operate on a continuous basis for normal hours of operation unless otherwise agreed to by PTV and the Operator; and
 - (2) any Disruption to the Transport Services may result in the State, VicTrack, PTV and Operators incurring losses.
- (c) The Developer must not at any time cause any Disruption to any of the Transport Services other than in accordance with this clause 23.
- (d) The Developer must take all reasonable steps required by the State, PTV or the Train Franchisee to minimise the risk of any Disruption to the Transport Services.
- (e) The Developer must make all reasonable allowances and take all reasonable steps and measures that may be required, or that the State reasonably requires, for working in or close to, minimising the disruption of, or diverting any services including electricity, gas, telecommunications, water, drainage, waste water, sewerage, signalling, pedestrian and bicycle access, road, water, and public transport access, human services, public spaces, and public art of any Authority, on, above, below or adjacent to the Station Land during execution of the Oversight Development Works.
- (f) If the Developer causes any Disruption to any of the Transport Services under this clause 23 or the operations under the Train Franchisee Agreement, the



State may give the Developer a notice specifying that Disruption has occurred and detail the nature of that Disruption (**Disruption Event Notice**).

- (g) Upon receipt of a Disruption Event Notice, if:
- (1) the Disruption is capable of being remedied or cured, the Developer must remedy or cure the Disruption as soon as practicable after receipt of the Disruption Event Notice; or
 - (2) the Disruption is not capable of being remedied or cured within a reasonable period after receipt of the Disruption Event Notice it must promptly prepare and submit to the State Representative, a plan describing the measures to be taken by the Developer to ensure that ongoing construction works associated with completion of the Oversight Development Works will not cause any further Disruption (**Disruption Management Plan**).
- (h) If the Developer fails to promptly comply with the Disruption Management Plan, the State may give a notice to the Developer requiring the Developer to comply with the Disruption Management Plan within 10 Business Days of the notice being issued (DMP Compliance Notice).
- (i) If the Developer fails to comply with the DMP Compliance Notice, the State may immediately suspend the Developer from carrying out any Oversight Development Works until the Developer complies with the DMP Compliance Notice.

23.3 Site Access Arrangements

- (a) The Developer acknowledges that it may only have access to that part of the Station Land that is used for Rail Operations under and in accordance with a Side Deed, Rail Corridor Access Arrangement and a Site Access Agreement.
- (b) The Developer must if the Developer requires access to the Station Land in accordance with clause 23.3(a):
- (1) enter into and, if required by the State, procure the Builder to enter into a Side Deed in respect of the Oversight Development; and
 - (2) comply and procure the Builder to comply with each Side Deed.

23.4 Access conditions

Without limiting clause 23.3:

- (a) the Developer must secure the Freehold Land and all building works being carried out on the Freehold Land in a proper and professional manner, and take all steps necessary to keep the Freehold Land safe and secure and to prevent unauthorised access;
- (b) the Developer must make its own arrangements for any power, water and other services and utilities directly with service providers and must not connect to services provided to the Train Franchisee or others except as agreed with those parties;
- (c) the Developer must ensure that the Developer and the Developers' Associates entering the Station Land lock and secure all gates (other than during working hours adopted for the relevant works) and take all steps necessary to ensure that the Station Land and improvements on the Station Land are left safe and secure at all times and that unauthorised access is prohibited; and



- (d) any access to the Station Land by the Developer or the Developer's Associates is at the sole risk of the Developer in all things and the Developer:
 - (1) except in connection with any negligence of the State or breach by the State of a Transaction Document, releases the State to the full extent permitted by law, from all responsibility and liability which the State might otherwise have had in connection with any death, injury or loss and damage sustained by the Developer or any individual authorised by the Developer in and about the Freehold Land while exercising such rights; and
 - (2) indemnifies the State and its Associates from and against all liability which the State or its Associates (as applicable) may incur, and all loss and damage which the State or its Associates (as applicable) may suffer in connection with any death, injury, loss or damage suffered or incurred by any person in and about the Freehold Land caused by the negligence of the Developer or the Developer's Associates while exercising rights of access under this clause.

24 Train Franchise Agreement

24.1 Application of clause 24

This clause 24 applies where:

- (a) Station Final Acceptance has occurred; and
- (b) all or any part of the Station Land is occupied by the Train Franchisee under the Train Infrastructure Lease.

24.2 Cooperation

- (a) The Developer agrees to promptly and fully co-operate in the planning and delivery of the Oversight Development under the Train Franchise Agreement including:
 - (1) doing all things required to assist PTV, or the State, to facilitate the planning of the Oversight Development under Part 2 of the Train Franchise Agreement and comply with the requirements of PTV, or the State, in that regard including as to the preparation of the Design Documentation;
 - (2) for any part of the Oversight Development that is nominated as a State Project, doing all things required to assist PTV, or the State or any other person, as PTV's nominated project manager to deliver the Oversight Development under Part 3 of the Train Franchise Agreement and comply with the requirements of PTV, the State or any other person as PTV's nominated project manager in that regard.
- (b) Subject to clause 24.2(c), the State agrees to use reasonable endeavours to obtain any required approvals in connection with the Train Franchise Agreement, and any PTV Agreement, Rail Corridor Access Arrangement and Site Access Agreement.
- (c) The Developer must pay or reimburses the State's reasonable third party costs in providing assistance under clause 24.2(b).



24.3 Train Franchisee

- (a) The Developer acknowledges that:
- (1) part of the Station Land is occupied by the Train Franchisee under the Train Infrastructure Lease;
 - (2) the Developer's access to the Station Land is subject to the rights of the Train Franchisee under the Train Infrastructure Lease and the Train Franchise Agreement; and
 - (3) the Developer will not make any demands, objections, claim compensation or refuse or delay payment of any money due to the State arising out of this clause 24.
- (b) The Developer assumes responsibility for and indemnifies the State and its Associates against:
- (1) all losses incurred by the State or its Associates (as applicable);
 - (2) all liabilities incurred by the State or its Associates (as applicable); and
 - (3) all costs actually payable by the State and its Associates to its own legal representatives (whether or not under a costs agreement) and other expenses incurred by the State and its Associates in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal),
- caused by the negligence of the Developer or the Developer's Associates.

25 Final Completion

25.1 Final Completion

- (a) Final Completion will occur on the later of the date on which:
- (1) the Developer has provided to the State the Station Land Management Agreement executed by the Purchaser;
 - (2) the Purchaser has paid the Purchase Price to the State in accordance with the terms of the Contract of Sale;
 - (3) the Oversight Development Works are completed in accordance with the Final Design Documentation for the Oversight Development, other than for minor defects which would not have a material impact on a Matter of State Concern;
 - (4) all Approvals required for the occupation and use of the Oversight Development have been obtained (other than any Approvals associated with the fitout of the completed Oversight Development Works) and satisfactory evidence of compliance with the requirements of any Authority have been submitted by the Developer to the State; and
 - (5) to the extent that any retail tenancies are not to be opened by Final Completion, the Developer and the State agree an interim retail activation plan.
- (b) The Developer agrees that:



- (1) the Developer must provide the State with an interim retail activation plan no later than 90 days prior to the proposed date of Final Completion and the parties must seek to agree the contents of the retail activation plan within 45 days of receipt of the interim retail activation plan by the State; and
- (2) the interim retail activation plan must provide that:
 - (A) to the extent that a tenancy has been procured and the relevant retail works are under construction, appropriate hoardings will be provided;
 - (B) access to the station will be maintained through an agreed management plan; and
 - (C) retail outlets to be leased will be activated with appropriate hoardings with artwork and/or signage.

25.2 Notice of Final Completion

- (a) The Developer must give the State:
 - (1) a notice 60 Business Days from the date on which the Developer considers the Oversight Development Works will reach Final Completion advising the State of this date; and
 - (2) notice when the Developer considers the Oversight Development Works has reached Final Completion.
- (b) Within 5 Business Days after service of the Developer's notice under clause 25.2(a), the State and the Developer inspect the Oversight Development Works and the State may give to the Developer written notice of any defect in or omission from the Oversight Development Works which would have a material impact on a Matter of State Concern and which requires further work before Final Completion can be reached.

25.3 Certificate of Final Completion

- (a) Within 20 Business Days after the State receives a notice under clause 25.2(a)(2), the State may, by notice in writing, notify the Developer that it disputes the Developer's notice that Final Completion has been achieved and, in that notice, set out what in its opinion is required for Final Completion to be achieved.
- (b) If:
 - (1) the State issues a notice under clause 25.3(a) within 20 Business Days of receipt of the notice under 25.2(a)(1) or the State fails to issue a notice under clause 25.3(a) within 20 Business Days of receipt of the notice under 25.2(a)(1); and
 - (2) the Developer considers that Final Completion has been achieved,either party must refer the dispute to an independent expert for resolution in accordance with clause 42.3.
- (c) If:
 - (1) the State that Final Completion has been achieved in accordance with a notice given under 25.2(a)(1); or



- (2) the independent expert has made his or her determination that Final Completion has been achieved after referral of the matter in accordance with clause 25.3(b),

the Developer is taken to have achieved Final Completion in accordance with the notice given under 25.2(a)(1), or as otherwise agreed or determined.

25.4 Station Final Acceptance

- (a) If Station Final Acceptance occurs, or is reasonably likely to occur, prior to completion of the Oversight Development Works, in addition to the Developer's obligations under clause 24, the Developer must provide to the State a construction management plan demonstrating to the reasonable satisfaction of the State the measures to be taken by the Developer to ensure that ongoing construction work associated with completion of the Oversight Development Works will not cause any material interference to the operation of the Stations and the provision of the Services by Project Co.
- (b) The Developer must ensure that the construction management plan referred to in clause 25.4(a) is complied with at all times.

26 Development Fee and Contract of Sale

26.1 Development Fee

The Developer must pay the Development Fee in accordance with clause 26.2.

26.2 Payment of Development Fee

- (a) On or before the Final Completion Date, the Developer must pay the State an amount equal to the First Instalment Development Fee less any part of the Contract Price paid or payable under the Contract of Sale on settlement of the Contract of Sale by unendorsed cheque payable to the State and delivered to the State at the place notified by the State.
- (b) On or before the date which is [not disclosed] after the Final Completion Date, the Developer must pay the State an amount equal to the Second Instalment Development Fee less any part of the Contract Price paid or payable under the Contract of Sale on that date by unendorsed cheque payable to the State and delivered to the State at the place notified by the State.
- (c) The State and the Developer agree that if the Development Fee is adjusted under this Agreement, the Contract Price shall be adjusted in the same manner under the Contract of Sale.

26.3 Subdivision

Within 90 days after the determination of the Approved Design Documentation and no later than execution of the Contract of Sale, the Developer must at its own cost and expense submit to the State Representative for approval a draft freehold strata plan of subdivision which is based on, and consistent with the draft demarcation plans attached as Attachment 12 and which:

- (a) identifies the location and extent of each Lot; and



- (b) includes any easements, covenants, restrictions or other dealings in accordance with the Easement Plan approved by the State under clause 15.4;
- (c) takes into account amendments to the draft demarcation plans as a result of changes, if any, made to the Concept Design Documentation by the Final Design Documentation (and no other changes).

26.4 Purchaser

- (a) The Developer may at any time before the date which is 40 Business Days before Construction Commencement, notify the State of the Purchaser by serving written notice to that effect on the State.
- (b) Before serving a notice under clause 26.4(a), the Developer must obtain the State's consent to the proposed Purchaser which:
 - (1) the State cannot unreasonably withhold or delay if:
 - (A) in the event the State requires Probity Investigations to be carried out in respect of the proposed Purchaser, the State's probity requirements as described in clause 62 of the Project Agreement are satisfied; and
 - (B) the proposed Purchaser has obtained any required FIRB approval; and
 - (2) the State cannot unreasonably withhold if the proposed Purchaser is a party which has the financial capacity, experience and capability to perform the obligations of the purchaser under the Contract of Sale.
- (c) If the Purchaser seeks the State's consent to a Proposed Purchaser under clause 26.4(b) and the State does not give or withhold its consent within 10 Business Days after the request, the State is deemed not to have given its consent.
- (d) Following notification of a Purchaser under clause 26.4(a):
 - (1) the State must (or must procure the Secretary of Department of Economic Development, Jobs, Transport and Resources to) enter into the Contract of Sale with the Purchaser; and
 - (2) the Developer must procure that the Purchaser enters into the Contract of Sale with the State (or the Secretary of Department of Economic Development, Jobs, Transport and Resources),and the Developer acknowledges that:
 - (3) it will not be released or discharged from any obligation it owes to the State under this Agreement as a result of the notification of a Purchaser; and
 - (4) it remains at all times liable for the performance of this Agreement.

26.5 Early settlement

If, as a condition of procuring any finance required to undertake the Development Works, the Developer requires the Purchaser to have freehold title to the Freehold Land prior to Final Completion, then:

- (a) the Developer may give written notice to that effect to the State nominating a date on which freehold title is required to be transferred to the Purchaser (which must not be before CBD North OSD Acceptance);



- (b) the date for settlement under the Contract of Sale will be the later of:
 - (1) 3 months after service of the Developer's notice;
 - (2) the date nominated in the Developer's notice; and
 - (3) the date which is 10 Business Days after satisfaction of any conditions precedent under the Contract of Sale including without limitation registration of the Freehold Strata Plan,
- (c) the date for payment of the First Instalment Development Fee (less any part of the Contract Price paid or payable under the Contract of Sale on settlement of the Contract of Sale) is the date of settlement of the Contract of Sale.

26.6 No contract

Despite any other provision of this Agreement, the parties acknowledge and agree:

- (a) that this agreement is not an agreement for the transfer, conveyance or a transfer of the Freehold Land or any legal or equitable interest in the Freehold Land (including the granting such an interest) nor does it evidence or effect such transactions and cannot be construed as such
- (b) unless and until the Contract of Sale is entered into there is no agreement for the transfer, transfer or conveyance of the Freehold Land (or any legal or equitable interest in it).

26.7 Caveat

The Developer must not, and must ensure that the Purchaser does not, lodge (or permit the External Financiers to lodge) a caveat unless it relates to an interest arising directly from the Contract of Sale, however the caveat must not prohibit any subdivision applications with respect to the Freehold Land.

27 Use of Oversight Development

27.1 Station Land Management Agreement

- (a) No later than 120 Business Days prior to the date on which the Developer anticipates achieving Final Completion, the State agrees to provide the Developer with:
 - (1) a Station Land Management Plan; and
 - (2) a draft form of Station Land Management Agreement.
- (b) The parties must ensure that:
 - (1) they act reasonably, expeditiously and in good faith in finalising the Station Land Management Agreement and the Station Land Management Plan by Final Completion; and
 - (2) the Station Land Management Agreement must be substantially consistent with the principles contained in Attachment 11 and must be in a form reasonably acceptable to the parties having regard to the Oversight Development, the Station, the Section 173 Agreement and the Interfaces.



- (c) The Developer and the State must ensure the Station Land Management Plan and Station Land Management Agreement are consistent with the Easement Plan approved by the State in accordance with clause 15.4.
- (d) Within 40 Business Days after the State receives the Station Shared Services Plan outlining the information in clause 27.1(b), the State must provide the Developer with comments on the Station Land Management Plan.
- (e) If the Developer does not take into account the State's comments or requested changes to a Station Land Management Plan under clause 27.1(d), the Developer must, within 20 Business Days of receipt of the State's comments under clause 27.1(d).
- (f) If the State is not satisfied with the Developer's detailed reasons in clause 27.1(e) for not taking into account the State's comments or requested changes to the Station Land Management Plan, the parties agree that, within 10 Business Days after the State receives the Developer's detailed reasons under clause 27.1(e), the dispute will be referred for expert determination in accordance with clause 42.3.
- (g) Prior to Final Completion the Developer must:
 - (1) procure that the Purchaser sign the Station Land Management Agreement; and
 - (2) provide the Station Land Management Agreement signed by the Purchaser to the State.

The Developer acknowledges and agrees that the State will require a Station Land Management Registrable Agreement to be registered on the Freehold Land on or before completion under the Contract of Sale.

27.2 Advertising

Any advertising placed on the Oversight Development Works by or on behalf of the Developer must comply with the Advertising Restrictions.

28 Deleted

29 Intellectual Property Rights

29.1 Warranties

The Developer warrants to the State that:

- (a) **(No infringement or rights):** no Intellectual Property Rights or Moral Rights or other rights of any person will be infringed or breached:
 - (1) in delivering the Oversight Development; or
 - (2) by use or enjoyment of the Developer Materials; or
 - (3) by use or exercise of the Development Intellectual Property Rights, by the State, any of its Associates or any person nominated or authorised by the State in connection with this Agreement; and



- (b) **(ownership of rights)**: it owns, or has the authority to grant the rights granted in accordance with this clause 29 in connection with, the Development Intellectual Property Rights and neither:
- (1) the exercise of those rights by the State, any of its Associates or any person nominated or authorised by the State in connection with this Agreement; nor
 - (2) the possession or use of any materials in which those rights subsist in connection with this Agreement,
- will give rise to any Liability on the part of the State, any of its Associates or any person nominated or authorised by the State, including to pay any compensation (including any royalty) to any person, or give rise to a right entitling any person to make a Claim against the State, any of its Associates or any person nominated or authorised by the State for any attribution or acknowledgment or rectification in relation to the Development Intellectual Property Rights or any materials in which they subsist.

29.2 Grant of licence

The Developer:

- (a) **(grant)**: grants to the State;
- (b) **(procure of grant)**: without limiting the Developer's obligations under clause 29.5 of this Schedule, must procure that each of its Associates grants to the State (with effect from the date the relevant Development Intellectual Property Rights come into existence); and
- (c) **(all things necessary)**: must do all things necessary to give effect to the grant to the State of,

a world-wide, perpetual, irrevocable, non-exclusive, transferable, royalty-free licence (including the right to sub-license) to use, reproduce, modify, adapt, develop, communicate to the public, or otherwise exploit the Developer's Material, and to exercise all or any of the Development Intellectual Property Rights, for the purposes of:

- (d) **(Oversite Development)**: the Oversight Development (including where this Agreement is terminated for any reason other than for convenience under clause 35.2 of this Agreement, to complete any D&D Activities which have not been:
 - (1) carried out; or
 - (2) carried out in accordance with the Oversight Development Agreement as at the date of termination).
- (e) **(Oversite Development Agreements)**: the exercise of the rights of the State or its Associates in accordance with the Oversight Development Agreements; and
- (f) **(Developer Material)**: the procurement, design, supply, construction, installation, production, commissioning, completion, operation, maintenance, repair and alteration of the Developer Material on and from the date on which this Agreement expires pursuant to clause 45.1.

29.3 Developer Material

Without limiting the Developer's other obligations under this Agreement with respect to the delivery of any Developer Material, the Developer will provide, and procure that its Associates provide, all documentation, information and assistance and materials as the State may reasonably require for the State's:



- (a) use and enjoyment of the Developer Material; or
 - (b) use and exercise of the Development Intellectual Property Rights,
- in connection with the Oversight Development.

29.4 Indemnities

- (a) **(Intellectual Property Rights, Moral Rights or other rights):** The Developer must indemnify the Indemnified Persons against any Claim or Liability brought against, suffered or incurred by the Indemnified Persons arising in connection with any infringement, violation, alleged infringement or alleged violation by the Developer or any of its Associates or any Indemnified Person of any Intellectual Property Rights, Moral Rights or other rights of any person or any Liability which any one or more of the Indemnified Persons may have to pay compensation (including any royalty) to a third party or make any attribution or acknowledgement or rectification in relation to any Development Intellectual Property Rights or any Developer Material in connection with:
 - (1) the D&C Activities; and
 - (2) in the case of the Indemnified Persons:
 - (A) using or enjoying the Developer Material as delivered by or on behalf of the Developer to the State or as modified from time to time (but not to the extent that any Claim or Liability arises from any modification made by the State or third parties engaged by the State which is not as directed or approved by the Developer) in connection with this Agreement; or
 - (B) using or exercising the Development Intellectual Property Rights in the manner authorised by this Agreement.
- (b) **(Breach of warranties):** The Developer must indemnify the Indemnified Persons against any Liability or Claim arising from any breach of the warranties set out in clause 29.1 of this Agreement.
- (c) **(Indemnities under this clause 29.4):** In relation to any Claim or Liability for which an Indemnified Person seeks to be indemnified under clause 29.4(a) or 29.4(b) of this Agreement:
 - (1) the Developer may (subject to the Developer confirming to the State that the Claim or Liability is the subject of the indemnity in clause 29.4(a) or 29.4(b) of this Agreement) conduct any defence or settlement in any such Claim or in relation to any such Liability, provided that the Developer:
 - (A) keeps the State informed of all material steps in relation to the conduct of any defence or settlement;
 - (B) consults with, and complies with all reasonable requirements of, the State in relation to such defence or settlement including complying with the Model Litigant Guidelines; and
 - (C) ensures that no settlement is made on terms which involve any admission of liability on the part of any Indemnified Person without the prior consent of that Indemnified Person;
 - (2) the State must use reasonable endeavours to ensure Indemnified Persons provide all cooperation reasonably required by the Developer in relation to such defence; and



- (3) to the extent that the Claim or enjoyment or Liability under clause 29.4(a) or 29.4(b) of this Agreement comes to the attention of the State before it comes to the attention of the Developer, the State will notify the Developer of the Claim or enjoyment or Liability.
- (d) **(Interference with use or enjoyment of Developer Material):** If a Claim or Liability referred to in clause 29.4(a) of this Agreement substantially interferes with the Indemnified Persons' use or enjoyment of any Developer Material or the use or exercise of the Development Intellectual Property Rights, or the State reasonably believes, in consultation with the Developer, that such Claim or Liability may substantially interfere with such use or enjoyment, the Developer will (at the State's option, and without limiting any of the State's other rights under any Oversight Development Agreements):
- (1) replace the Developer Material or the subject matter of the relevant Development Intellectual Property Right, without additional charge with a non-infringing product or service of at least equivalent functionality and performance, and which otherwise meets all relevant requirements for that Developer Material in accordance with the Oversight Development Agreements;
 - (2) modify the Developer Material or the subject matter of the relevant Development Intellectual Property Right to overcome the infringement without additional charge and without materially impeding functionality or performance or rendering it non-compliant with any relevant requirements for that Developer Material in accordance with the Oversight Development Agreements; or
 - (3) obtain a licence for the Indemnified Persons to continue use and enjoyment of the Developer Material or the subject matter of the relevant Development Intellectual Property Right in accordance with the licence granted under clause 29.2 of this Agreement, and pay any additional fee required for such licence.
- (e) **(Intellectual Property Rights):** Neither the State's rights nor the Developer's liabilities or obligations, whether under this Agreement or otherwise according to Law, in connection with Intellectual Property Rights, will be limited by the terms of this clause 29.4.
- (f) **(Indemnified Persons)** For the purposes of this clause 29.4, the Indemnified Persons are each of:
- (1) the State;
 - (2) the State's Associates; and
 - (3) any person nominated or authorised by the State (including the respective sub-licensees of the State and its Associates) to use any Intellectual Property Rights.

29.5 Moral Rights

- (a) If the Developer, in the course of the Oversight Development, including in relation to the design of the Oversight Development Works, the Design Documentation, methods of working and materials used in the construction and commissioning of the Oversight Development Works and the Oversight Development itself, includes or makes use of any work or other subject matter in which copyright subsists (**Material**), the Developer must procure from every person (including any officer, employee, agent, consultant or Subcontractor of the Developer) who is an author of that Material a consent which is valid and effective under the



Copyright Act 1968 (Cth) and signed by that person by which (to the maximum extent permitted by Law) that person irrevocably and unconditionally consents to the State (including sub-licensees), the Developer and its Associates and any person authorised to do acts comprised in the copyright (**Beneficiaries**):

- (1) (**exercise of rights**): using, disclosing, reproducing, transmitting, exhibiting, communicating, adapting, publishing or otherwise exercising its rights in relation to the Material anywhere in the world in whatever form any of the Beneficiaries thinks fit (including the making of any distortions, additions or alterations to the Material or any adaptation thereof, or to any part of the Material or of any such adaptation of the Material in a manner which, but for the consent, infringes or may infringe that person's Moral Rights in the Material); and
- (2) (**no identification**): using, disclosing, reproducing, transmitting, exhibiting, communicating, adapting, publishing or otherwise exercising its rights in relation to the Material or any adaptation thereof (or any part of the Material or of any such adaptation) anywhere in the world without making any identification of that person in relation to the Material.

29.6 Third Party Materials

- (a) (**Application of Third Party Intellectual Property Rights**): Clauses 29.2 and 29.5 of this Agreement will not apply to any Intellectual Property Rights that are Third Party Intellectual Property Rights if, and only to the extent that:
 - (1) the material the subject of the relevant Intellectual Property Rights (the **Third Party Material**) is generally commercially available on reasonable commercial terms;
 - (2) the Developer and its Associates have been unable (despite their reasonable endeavours) to procure from the relevant third party the right to grant the licences in clauses 29.2 and 29.5 of this Agreement in respect of that Third Party Material;
 - (3) the Developer has notified the State that it has been unable to procure the necessary licence rights for that Third Party Material;
 - (4) the Developer has used its best endeavours to procure a licence for the State in respect of that Third Party Material (whether from the Developer or the relevant third party) on terms as close as possible to the terms of clauses 29.2 and 29.5 of this Agreement, and has notified the State of those terms; and
 - (5) the State has given its approval to the Third Party Material being excluded from the subject matter of the licenses granted in clauses 29.2 and 29.5 of this Agreement. This approval may be given at the State's sole discretion, and is subject to such conditions as the State sees fit.
- (b) (**No State approval**): The State not giving its approval in accordance with clause 29.6(a)(5) of this Agreement will not relieve the Developer from any of its obligations under this Agreement or any of the Oversight Development Agreements.
- (c) (**State withdraws approval**): If the State has reasonable grounds to withdraw, and notifies the Developer that it has withdrawn, its approval under this clause 29.6 in respect of any Third Party Material, the Developer must use its



reasonable endeavours to immediately procure for the State from the relevant third party (or parties), at the Developer's sole cost and expense, all licences necessary under the terms of this Agreement in respect of that Third Party Material.

- (d) **(Procurement of licences to Third Party Material):** If the State approves certain Third Party Material being excluded from the subject matter of the licenses granted in clauses 29.2 and 29.5 of this Schedule and instead being licensed to the State on certain terms notified under clause 29.6(a)(4) of this Agreement, the Developer must immediately grant to the State or procure from the relevant third party a licence for the State (as the case may be) on those terms.

29.7 Train Franchise Agreement: Intellectual Property

Clause 31 of the Train Franchise Agreement prevails over this clause 29 to the extent of any inconsistency and the Developer must grant rights to the State and PTV necessary to enable PTV to comply with clause 31 of the Train Franchise Agreement.

30 Taxes and Utility Services

30.1 General Liability for Taxes

- (a) Subject to clause **Error! Reference source not found.**, the Developer must pay any Liability for Taxes payable by the Developer and calculated by reference to this Agreement and any transaction evidenced or contemplated by them.
- (b) The Developer indemnifies the State and its Associates against any Liability for Taxes payable in respect of this Agreement or (following the transfer of the Freehold Land to the Purchaser) the Freehold Land, and any transaction evidenced or contemplated by them that is discharged or otherwise satisfied by the State or its Associates (as applicable). Nothing in this clause requires the Developer to be liable for or to pay any land tax (other than if the Developer becomes the Purchaser under the Contract of Sale).
- (c) The State acknowledges that the State remains responsible for any land tax, council rates or other Taxes assessed or levied in respect of the Freehold Land for the period prior to Final Completion.

30.2 Deleted

30.3 Utility Services

The Developer must:

- (a) pay all charges (including service charges) for Utility Services to or from the Site, together with any costs charged or levied by the service provider in respect of the provision or maintenance of the infrastructure which provides or supplies those Utility Services exclusively to the Site; and
- (b) if required by the State, and if no separate meter exists for recording or metering of any of the Utility Services or substances supplied to the Site, install, or arrange for the installation of, meters at the Developer's own cost and expense.



30.4 Shared Utility Services

Where the infrastructure which supplies or provides any of the Utility Services referred to in clause 30.3(a) supplies or provides those services not only to part of the Site but also to other land owned by or leased or licensed to the State or any other Authority of the State, the Developer must pay or reimburse the State (as the case may be), a proportion of any costs charged or levied by the supplier or provider in respect of the maintenance of that infrastructure, such proportion to be calculated as follows:

- (a) in respect of the infrastructure relating to the supply or provision of Utility Services except services referred to in clause 30.4(b), the proportion will be the proportion which the number of outlets for the applicable Utility Service within that part of the Site serviced by that infrastructure bears to the total number of outlets for that service within the total area of the land owned by or leased or licensed to the State which is serviced by that infrastructure; and
- (b) in respect of drainage, the proportion will be the proportion which the area of that part of the Site which is serviced by the relevant drain bears to the total area of the land owned by or leased or licensed to the State which is serviced by that drain.

31 [not disclosed]

[not disclosed]

32 Goods and Services Tax (GST)

- (a) **(GST exclusive amounts):** Unless otherwise expressly stated, all amounts referred to in this Agreement or any other Oversight Development Agreement are exclusive of GST.
- (b) **(GST payable by Supplier):** If GST becomes payable on any Taxable Supply made by a party (**Supplier**) under or in connection with this Agreement:
 - (1) any amount payable or consideration to be provided in accordance with any other provision of this Agreement for that supply (**Agreed Amount**) is exclusive of GST;
 - (2) an additional amount will be payable by the party which is the recipient of the Taxable Supply (**Recipient**), equal to the amount of GST payable on that Taxable Supply as calculated by the Supplier in accordance with the GST Law, which will be payable at the same time and in the same manner as for the Agreed Amount; and
 - (3) the Supplier will provide a Tax Invoice to the Recipient in connection with that supply, either at the time expressly set out in any other provision of this Agreement or no later than the time at which the Agreed Amount for that Taxable Supply is to be provided in accordance with this Agreement. The Recipient is not obliged to pay any amount in accordance with this clause 32(b) unless and until a Tax Invoice is received by the Recipient in connection with the Taxable Supply except where the Recipient is required to issue the Tax Invoice.



- (c) **(Variation in GST payable):** If for any reason, the GST payable by the Supplier in connection with a supply it makes under or in connection with this Agreement (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it received from the Recipient under clause 32(b) in connection with that supply, the Supplier will provide a refund or credit to, or will be entitled to receive from, the Recipient (as appropriate) the amount of this variation. Where an adjustment event occurs in relation to a supply and except where the Recipient is required to issue the Adjustment Note:
- (1) the Supplier will issue an Adjustment Note to the Recipient in connection with that supply within 14 days after becoming aware of that adjustment event occurring; and
 - (2) no additional amount will be payable by the Recipient unless and until an Adjustment Note is received by the Recipient.
- (d) **(GST ceasing to be payable):** No amount is payable by a party in accordance with clause 32(b) or 32(c) to the extent that the GST to which the amount relates has ceased to be payable by or refundable to the Supplier by the Commissioner of Taxation under the GST Law.
- (e) **(Expert determination):** If the Recipient is dissatisfied with any calculation to be made by the Supplier in accordance with this clause 32 the Recipient may, at its own expense and after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the President of the Institute of Chartered Accountants for expert determination, which will be final and binding on all parties (except in the case of manifest error). The expert will act as an expert and not as an arbitrator and must take into account the terms of this Agreement, the matters required to be taken into account by the Supplier in accordance with this clause 60 and any other matter considered by the expert to be relevant to the determination. The parties release the expert from any liability in acting as an expert, except in the case of fraud on the part of the expert.
- (f) **(Revenue net of GST):** Any reference in this Agreement or any Oversight Development Agreement Document to price, value, sales, revenue, profit or a similar amount (**Revenue**), is a reference to the GST exclusive component of that Revenue, unless the contrary intention is expressed.
- (g) **(Cost net of GST):** Any reference in this Agreement or any Oversight Development Agreement Document to cost, expense, liability or other similar amount (**Cost**) of a party, is a reference to that Cost reduced by the Input Tax Credits to which the party is entitled in respect of such Cost, unless the contrary intention is expressed.
- (h) **(Recipient Supply):** To the extent that the consideration provided for the Supplier's taxable supply to which clause 32(b) applies is a taxable supply made by the Recipient (**Recipient Supply**), then:
- (1) the additional amount for GST that would otherwise be payable by the Recipient to the Supplier in accordance with clause 32(b)(2) shall be reduced by the amount of GST payable by the Recipient on the Recipient Supply; and
 - (2) the Recipient must issue to the Supplier a tax invoice for any Recipient Supply at the same time that the Supplier is required to issue a tax invoice to the Recipient for the Supplier's corresponding taxable supply pursuant to clause 32(b)(3).



- (i) **(General obligation):** Each party agrees to do all things, including providing Tax Invoices and other documentation, that may be necessary or desirable to enable or assist the other party in determining its GST payable on any supply made by that other party in connection with this Agreement, or any Input Tax Credits, adjustments or refunds in relation to any amount of GST paid or payable in connection with any supply made in connection with this Agreement.
- (j) **(GST Groups):** For the purposes of this Agreement, a reference to GST payable on a Taxable Supply made by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member and a reference to an Input Tax Credit entitlement of a party includes any corresponding Input Tax Credit entitlement of the representative member of any GST group of which that party is a member, and if a party to this Agreement makes a Taxable Supply by virtue of entering into or performing this Agreement and the 'recipient' of that Taxable Supply (within the meaning of the GST Act) is an Associate of another party to this Agreement (which for this purpose includes, in relation to the State, the Secretary), that other party to this Agreement will be obliged either to pay the amount referred to in clause 32(b)(2) or procure that the actual recipient pays the relevant amount, and the payer of that amount shall be the 'Recipient' for the purposes of this clause 32 in relation to the relevant Taxable Supply.
- (k) **(Agreement to prevail):** If, but for this clause 32(k), a GST clause in another Oversight Development Agreement Document would apply in connection with a Taxable Supply to which this clause 32(k) also applies, then this clause 32(k) will apply in connection with that supply and the GST clause in the other Oversight Development Agreement Document will not apply.
- (l) **(Definitions):** In this clause 32 unless otherwise defined in this Agreement, terms used have the meanings given to them in the GST Law.

33 Payments

33.1 Interest

If any moneys due and owing to any party under this Agreement or any other Oversight Development Agreement remain unpaid after its due date, then interest will accrue daily at the Default Rate, and will be due and payable from the due date up to and including the date upon which the moneys are paid.

33.2 No Prejudice

Except to the extent expressly provided otherwise, suspension of any of the Developer's obligations under this Agreement or any other Oversight Development Agreement will not limit, prejudice or affect the State's power under this Agreement or any other Oversight Development Agreement to abate, deduct from, reduce, set-off or suspend payment of any amount payable under this Agreement or any other Oversight Development Agreement.



34 Default

34.1 Notification

If a Default occurs, the State Representative may give the Developer a notice in writing specifying that the Default has occurred and the nature of the Default (**Default Notice**).

34.2 Default capable of cure

- (a) Upon receipt of a Default Notice, if:
 - (1) the Default is capable of being remedied or cured within 20 Business Days, the Developer must remedy or cure the Default within 20 Business Days; or
 - (2) the Default is not capable of being remedied or cured within 20 Business Days, it must promptly (and within no more than 20 Business Days of receipt of the Default Notice) prepare and submit to the State Representative for its approval, a draft plan describing the actions and measures the Developer will diligently pursue for the future prevention, remedying or curing of the Default (**Draft Cure Plan**).
- (b) Within 10 Business Days after receipt of a Draft Cure Plan, the State must either (acting reasonably):
 - (1) accept the Draft Cure Plan by notifying the Developer; or
 - (2) reject the Draft Cure Plan by notifying the Developer and providing reasons to the Developer for its rejection.
- (c) If the State approves a Draft Cure Plan pursuant to clause 34.2(b)(1) (**Approved Cure Plan**):
 - (1) the Developer must comply with, and diligently pursue the remedy or cure of the Default in accordance with, the Approved Cure Plan; and
 - (2) the period of time in the Approved Cure Plan to remedy or cure the Default is the cure period (**Applicable Cure Period**).
- (d) If the Developer complies with clause 34.2(c), while the Developer is diligently pursuing an Approved Cure Plan the Default will be deemed to be remedied or cured.
- (e) If the State rejects a Draft Cure Plan pursuant to clause 34.2(b)(2), the Developer, in consultation in good faith with the State, must amend the Draft Cure Plan to meet the requirements of the State and submit the amended Draft Cure Plan to the State for its approval, in which case this clause 34.2 will apply to the amended Draft Cure Plan as if it were originally submitted under clause 34.2(a).

34.3 Extending Cure Periods

- (a) If the Developer reasonably determines that it requires an extension to an Applicable Cure Period it may (no later than the expiration of the then Applicable Cure Period) submit in writing to the State:
 - (1) evidence that the Developer has diligently pursued and is continuing to diligently pursue a remedy or cure of the applicable Default in accordance with the applicable Approved Cure Plan but that the



Default cannot, despite such diligence, be remedied or cured within the Applicable Cure Period; and

- (2) the period of time proposed by the Developer to be the extended Applicable Cure Period for the applicable Approved Cure Plan.
- (b) The State will not unreasonably refuse to grant an extension of the Applicable Cure Period for the applicable Approved Cure Plan if the Developer satisfies the requirements of clause 34.3(a).
- (c) If the State grants an extension of the Applicable Cure Period in accordance with clause 34.3(b), the Developer must comply with and diligently pursue the applicable Approved Cure Plan within that extended Applicable Cure Period.

34.4 Default not capable of cure

Upon receipt of a Default Notice, if the Default is not capable of being remedied or cured, the Developer must:

- (a) pay an amount of compensation which is reasonable having regard to the nature of the Default; and
- (b) provide a plan to the State detailing the steps the Developer will take to prevent the reoccurrence of that Default.

34.5 When a Default is capable of cure

A Default will be taken to be capable of cure if the Developer can by payment of compensation place the State in a position which is, in all material respects, the same as the position in which the State would have been had the Default not occurred.

34.6 Termination

- (a) If a Termination Event occurs, the State may terminate this Agreement in accordance with clause 35.
- (b) Nothing in clause 34.1 prejudices or limits the State:
 - (1) exercising any other right provided for or conferred on the State pursuant to this Agreement in relation to an event that is a Default; or
 - (2) suing the Developer for compensation in relation to an event that is a Default or exercising any available legal or equitable rights or remedies in relation to an event that is a Default (whether under this Agreement or not).

34.7 Meaning of 'diligent pursuit'

Any assessment or determination as to:

- (a) whether a person has diligently pursued something or is diligently pursuing something;
 - (b) whether something has been diligently pursued or is being diligently pursued; or
 - (c) what could be achieved were something to be diligently pursued,
- shall be made in the context of the actual circumstances prevailing at all relevant times but:
- (d) any lack of financial or technical resources shall be disregarded; and



- (e) the standard of pursuit shall be not less than what might reasonably be expected of a reasonable developer seeking to promptly comply with its obligations under this Agreement.

35 Termination

35.1 No other right to terminate

- (a) Despite any rule of law or equity to the contrary (and subject to clause 26), this Agreement may not be terminated other than in accordance with this clause 35.
- (b) Termination of this Agreement and the payment of the relevant Termination Payment will not in any way prejudice or limit the State's Claims against the Developer in respect of the events giving rise to the termination.

35.2 Voluntary termination

- (a) **(Voluntary termination notice):** The State may, at any time, voluntarily terminate this Agreement by giving the Developer no less than 90 days' notice.
- (b) **(Date of termination):** Voluntary termination of this Agreement will take effect upon the date specified in the notice given in accordance with clause 35.2(a).

35.3 Termination for Force Majeure

- (a) **(Force Majeure Termination Event notice):** If a Force Majeure Termination Event occurs, then either party may terminate this agreement by giving notice to the other party.
- (b) **(Date of termination):** Termination of this Agreement for a Force Majeure Termination Event will take effect upon the date specified in the notice given in accordance with clause 35.3(a).

35.4 Termination for Termination Event

- (a) **(Termination for Termination Event):** If a Termination Event occurs, the State may terminate this Agreement by giving notice to the Developer.
- (b) **(Date of termination):** Termination of this Agreement for a Termination Event will take effect upon the date specified in the notice given in accordance with clause 35.4(a).

35.5 Consequences of Termination

Upon termination of this Agreement, the rights and obligations of the parties under this Agreement will cease except for:

- (a) any rights or obligations accrued as a result of a Default under this Agreement or as a result of an antecedent breach of this Agreement by the State;
- (b) any rights or obligations which are expressed to continue after termination of this Agreement; and
- (c) as applicable, the rights and obligations of the parties under clause 35.6 and clause 45.



35.6 Termination Payment

- (a) If the State terminates this Agreement in accordance with clause 35.2, 35.3 or 35.4:
- (1) in the case of termination for an event described in paragraph 4 of the definition of Termination Event, clause 40.2(c) will apply and the State will have no obligation to make any payment to the Developer or the Purchaser with respect to termination;
 - (2) in the case of termination for an event described in paragraphs 1, 2 or 3 of the definition of Termination Event, the State must pay the Termination Payment to the Developer and the Purchaser in accordance with clause 35.6(b); and
 - (3) in the case of voluntary termination under clause 35.2 or a Project Termination Event as a result of a voluntary termination under clause 45.2 of the Project Agreement, the State:
 - (A) must pay the Termination Payment to the Developer and the Purchaser in accordance with clause 35.6(c); and
 - (B) in the case of a Project Termination Event, must use reasonable endeavours to enable the Developer to enter into negotiations with any relevant third party for the continued development of the Site,
 - (4) in the case of a Project Termination Event (other than as a result of a voluntary termination under clause 45.2 of the Project Agreement) or termination under clause 9.1(c), the State:
 - (A) must pay the Termination Payment to the Developer and the Purchaser in accordance with clause 35.6(d); and
 - (B) in the case of a Project Termination Event, must use reasonable endeavours to enable the Developer to enter into negotiations with any relevant third party for the continued development of the Site.
- (b) In the case of termination for an event specified in paragraphs 1, 2 or 3 of the definition of Termination Event, Termination Payment or TP means:
[not disclosed].
- (c) In the case of voluntary termination under clause 35.2 or a Project Termination Event as a result of a voluntary termination under clause 45.2 of the Project Agreement, Termination Payment or TP means:
[not disclosed].
- (d) In the case of a Project Termination Event (other than as a result of a voluntary termination under clause 45.2 of the Project Agreement) or termination under clause 9.1(c), Termination Payment or TP means:
[not disclosed].
- (e) The State must pay the amount of the Termination Payment within 20 Business Days following determination of the Termination Payment by the independent expert.



35.7 Waiver

If this Agreement is lawfully terminated by the State, the Developer waives any right it might otherwise have to pursue a claim of restitution of any kind including a claim of unjust enrichment or quantum meruit.

36 Force Majeure

36.1 Notification

- (a) If the Developer becomes aware of any matter likely to constitute a Force Majeure Event, the Developer must immediately give notice of that matter and all relevant particulars to the State.
- (b) Within 5 Business Days after the occurrence of a Force Majeure Event, the Developer must give to the State a notice containing full particulars of the Force Majeure Event including its nature and likely duration, the non-financial obligations affected by it and the nature, extent and likely duration of its effect on the Developer's ability to perform those obligations (**Force Majeure Report**).
- (c) Following the issue of a Force Majeure Report, the Developer must keep the State informed at reasonable intervals, and upon the request of the State, of:
 - (1) the likely duration of the applicable Force Majeure Event and of its effect on the Developer's ability to perform its non-financial obligations under this Agreement;
 - (2) the actions taken or the actions proposed to be taken by the Developer to mitigate or minimise the effects of that Force Majeure Event; and
 - (3) any other matter relevant to that Force Majeure Event or the Developer's obligations affected by that Force Majeure Event.

36.2 Suspension of Obligations

To the extent that it is prevented or delayed by a Force Majeure Event, the Developer's performance of its non-financial obligations under this Agreement will, subject to clause 36.3, be suspended to that extent from the date the Developer gives a Force Majeure Report in respect of that Force Majeure Event until the Developer ceases to be so prevented or delayed (**Cessation Date**) provided that clauses 36.1 is complied with.

36.3 Temporary Measures and Alternative Arrangements

During the suspension of any obligation under clause 36.2 the Developer must use its best endeavours (including incurring any reasonable expenditure of funds and rescheduling of manpower and resources) to remove or mitigate the preventing or delaying effect of each Force Majeure Event on the Developer's performance of the applicable non-financial obligations under this Agreement.

36.4 Notice of Cessation of Force Majeure

The Developer must give immediate notice to the State of the Cessation Date and must immediately after the Cessation Date resume performance of the applicable non-financial obligations suspended as a result of the particular Force Majeure Event.



37 Assignment

- (a) Prior to Final Completion, the Developer may not assign, transfer, dispose of, part with possession of, create or allow any interest in, or otherwise deal with, any of its rights or obligations under this Agreement (**Dealing**) without the State's consent which cannot be unreasonably withheld or delayed.
- (b) In seeking the State's consent to any Dealing, the Developer first must:
 - (1) inform the State in writing of any such proposed disposal;
 - (2) ensure that the assignee or transferee has the financial capability and the technical expertise, resources and abilities which are necessary for it to perform effectively the obligations of the Developer under this Agreement;
 - (3) ensure that the direct or indirect consequences of the assignment or transfer do not and will not materially or adversely affect the State's rights, or the State's ability or capacity to exercise its rights, under this Agreement;
 - (4) ensure that the assignee or transferee enters into such deeds or other agreements as are reasonably required by the State to ensure that the obligations of the Developer under this Agreement are assumed by the assignee or transferee which deed will include, where an assignee is reasonably able to comply with this Agreement after the date of the assignment, a release of the assignor on and from the date of the assignment; and
 - (5) ensure that the assignee or transferee obtains all necessary Approvals in order to perform its obligations under this Agreement.

38 Protection of People and Property

- (a) The Developer must in relation to its carrying out its obligations under this Agreement:
 - (1) provide all things and take all measures necessary to protect and ensure the safety of people and property;
 - (2) avoid or minimise unnecessary interference with the passage of people and vehicles and the operations or activities carried out of, on or from properties adjacent to the Site;
 - (3) prevent nuisance and unreasonable noise, dust, vibration and disturbance (including preventing such matters that would affect any property adjacent to the Site);
 - (4) unless required for purposes of public health or safety, not interfere (insofar as compliance with this Agreement permits) with the free movement of traffic (vehicular and pedestrian) into and out of, adjacent to, around, on or about the Site or block or impair access to any premises, carparks, loading bays, roads or pedestrian ways; and
 - (5) comply with all requirements of this Agreement in connection with protection of people and property,and must prove that its Associates, and its Subcontractors and their Associates do the same.



- (b) If the Developer or a Subcontractor or any of their respective officers, employees, agents or consultants, damage property, including but not limited to property on or adjacent to the Site, the Developer must promptly make good the damage and pay any compensation which the Developer is required by law to pay.

39 Developer's Indemnity

39.1 Indemnity

- (a) To the maximum extent permitted by Law, the Developer indemnifies and will keep the State and its Associates indemnified from and against all Claims (whether in tort or otherwise) or Liabilities (including legal costs, on a full indemnity basis) whatsoever which the State or its Associates (as applicable) suffers, incurs or becomes liable or may suffer, incur or become liable:
- (1) the occupation or use of the Freehold Land by the Developer, or its Associates in the undertaking of the Oversight Development Works;
 - (2) any Contamination or Pollution caused or contributed by the Developer or its Associates or any work performed by or for the Developer on that part of the Freehold Land on which the Oversight Development Works are being carried out which results in the release or disturbance of Contamination or Pollution;
 - (3) any damage to person or property arising out of the undertaking of the Oversight Development Works or other obligations under this Agreement; or
 - (4) in respect of any breach of the Developer's obligations under any of the Oversight Development Agreements,
- except to the extent that any such Claim or Liability is a consequence of a fraudulent, negligent, reckless, unlawful or malicious act or omission of the State (other than an act or omission authorised or permitted under this Agreement or any other Oversight Development Agreement) or breach by the State of any Oversight Development Agreement.
- (b) The obligations of the Developer under this clause 39 will continue after the expiration or other termination of the Oversight Development Agreements in respect of any act, deed, matter or thing happening before such expiration or termination.
- (c) The indemnity in clause 39.1 will not extend to losses, damages, liabilities, actions, suits, claims, demands, costs and expenses incurred or sustained as a result of delays or disruptions to Transport Services primarily caused by the undertaking of the Oversight Development Works. The Developer's liability in respect to these delays and disruptions is addressed in clause 24.
- (d) The Developer assumes responsibility for and indemnifies and covenants to keep the State and its Associates indemnified to the maximum extent permitted by law, against the difference (if any) between:
- (1) the amount of any loss, damage, cost and expense suffered or incurred by the State or its Associates for which, but for Part IVAA of the *Wrongs Act 1958* (Vic), the State would otherwise have been entitled to recover from the Developer; and

- (2) the liability to the State and its Associates of the Developer as determined by any court under Part IVAA of the *Wrongs Act 1958* (Vic).

39.2 Release

Except in connection with the negligence of the State or any breach by the State of a Transaction Document, the Developer releases, to the full extent permitted by Law, the State from all Claims and Liabilities of any kind which arise from the Developer's use or occupation of the Oversight Development or the Site or the performance of this Agreement (including any Claim made under Part 2A of the *Wrongs Act 1958* (Vic)).

39.3 Liability for Indirect or Consequential Loss

- (a) **(No liability of State):** Subject to clause 39.3(b):
 - (1) the State and its Associates do not have any Liability to the Developer or any of its Associates; and
 - (2) the Developer and its Associates are not entitled to make any Claim, for any Indirect or Consequential Loss incurred or sustained by the Developer or any of its Associates:
 - (3) as a consequence of any act or omission of the State, and its Associates (whether negligent or otherwise); or
 - (4) due to any breach of any Oversight Development Agreement by the State.
- (b) **(Exceptions to no State Liability):** The exclusion of Liability of the State and its Associates under clause 39.3(a) does not apply to:
 - (1) Liability arising from criminal acts or fraud on the part of the State or its Associates;
 - (2) Liability arising from wilful misconduct under any Oversight Development Agreement on the part of the State or its Associates;
 - (3) Liability arising from:
 - (A) any third party property loss or damage; or;
 - (B) any injury to, disease of, or death of a person;
 - (4) the extent that the parties cannot limit or exclude any Liability at Law; and
 - (5) the extent that the Oversight Development Agreements expressly confer an entitlement on the Developer to any amounts payable by the State to the Developer.
- (c) **(No liability of the Developer):** Subject to clause 39.3(d):
 - (1) the Developer and its Associates do not have any Liability to the State or its Associates; and
 - (2) the State or its Associates are not entitled to make any Claim, for any Indirect or Consequential Loss incurred or sustained by the State or its Associates:
 - (3) as a consequence of any act or omission of the Developer or any of its Associates (whether negligent or otherwise); or



- (4) due to any breach of a Oversight Development Agreement by the Developer or any of its Associates.
- (d) **(Exceptions to no Developer Liability):** The exclusion of Liability of the Developer and its Associates under clause 39.3(c) does not apply to:
 - (1) any such Liability of the Developer or its Associates to the extent that, in respect of the event or circumstances giving rise to the Liability:
 - (A) insurance proceeds are payable to the Developer or any of its Associates; or
 - (B) insurance proceeds would have been payable under any Insurances but for:
 - (i) the inclusion of clause 39.3(a);
 - (ii) a failure by the Developer to comply with this Agreement;
 - (iii) a failure by the Developer or any of its Associates to claim under the relevant Insurances; or
 - (iv) a failure by the Developer or any of its Associates to comply with the terms of the relevant Insurance (including the claims procedure under the relevant insurance),
up to the limits of indemnity required by this Agreement;
 - (2) Liability for which the Developer recovers pursuant to an indemnity under any of the Oversight Development Agreements;
 - (3) Liability arising from criminal acts, fraud or wilful misconduct on the part of the Developer or any of its Associates;
 - (4) Liability arising from:
 - (A) any third party property loss or damage; or
 - (B) any injury to, disease or death of a person,
caused or contributed by the Developer or any of its Associates;
 - (5) the extent that the parties cannot limit or exclude any Liability at Law;
 - (6) Liability for any deductible or any additional cost or expense payable under any Insurances with respect to, connected with, caused by or arising out of any breach of this Agreement or the relevant Insurances by the Developer or any of its Associates;
 - (7) any statutory fine or civil penalty arising from any breach of Law by the Developer or any of its Associates;
 - (8) any amounts payable or Liability incurred by the State (including to a third party) in rectifying a Defect, or otherwise in reinstating, repairing or rectifying any of the Oversight Development Works, for which the Developer is liable under this Agreement that is not a Liability described in paragraphs 1 or 3 of the definition of Indirect or Consequential Loss;
 - (9) abandonment of the whole or a substantial part of the Oversight Development Works by the Developer or its Associates;
 - (10) any amounts payable by the Developer to the State in accordance with any Oversight Development Agreement; and



- (11) Liability to the State or any of its Associates connected with, caused by or arising out of the Train Franchisee Coordination Agreement that is not a Liability described in paragraph 1 of the definition of Indirect or Consequential Loss.

40 Risk and Liability

40.1 Risk of Loss or Damage

- (a) Subject to clause 40.1(b), the Developer will:
- (1) bear the risk of; and
 - (2) not have any Claim against the State or its Associates as a result of, loss or damage to or destruction of the Oversight Development Works, the Oversight Development, or the Site.
- (b) Clause 40.1(a) does not apply to the extent that the loss or damage is caused by a fraudulent, reckless, unlawful or malicious act or omission of the State or its Associates or breach by the State or its Associates of this Agreement unless, and to the extent that, in respect of such loss or damage the Developer is entitled to and does recover under any policy of insurance required under clause 41.

40.2 Destruction

- (a) If prior to Final Completion, any part of the Oversight Development Works is wholly or partly damaged or destroyed, then the Developer must immediately take all measures necessary:
- (1) to minimise any serious danger, risk or hazard to any person or property and to avoid or minimise unnecessary interference with the passage of people and vehicles and the operations or activities carried out on, or from properties adjacent to the Site and the Oversight Development Works;
 - (2) to comply with all requirements of this Agreement in connection with the protection of people and property; and
 - (3) to make good the Oversight Development Works.
- (b) Subject to clause 40.2(c), the Developer must reinstate the Oversight Development Works as soon as practicable at the Developer's cost and expense.
- (c) The Developer may serve a notice in writing on the State (**Destruction Termination Notice**) confirming that the Developer does not wish to reinstate the Oversight Development Works in accordance with clause 40.2(b). On receipt of a Destruction Termination Notice this Agreement will terminate and be of no further force or effect. No compensation will be payable by the State to the Developer if this Agreement is terminated by the Developer in accordance with a Destruction Termination Notice, and the Developer releases the State against all Claims it may have against the State in connection with such termination.

41 Insurance

41.1 Insurance Generally

The Developer must obtain and maintain, or procure that the relevant person obtains and maintains, the insurances that a prudent developer, owner or service provider would obtain and maintain for a development of a type substantially similar to the Oversight Development (being insurances of the kind and on no less favourable terms than recorded in this clause 41) and to ensure that the State is named as a third party beneficiary under those insurance policies.

41.2 Developer's specific insurances

Without limiting clause 41.1, prior to entering onto the Freehold Land, the Developer must:

- (a) effect or procure and maintain until Final Completion of the Oversight Development Works and the Developer having otherwise complied with its obligations under the Oversight Development Agreements:
 - (1) public liability insurance for liability to all persons (including the State and the Developer) for a sum nominated by the State, being not less than [not disclosed] for any one event concerning personal injury to or death arising by accident of any person (not being a person who at the time of the accident is defined as a worker of the insured or the Developer under any Law concerning workers' compensation insurance) and concerning any injury, loss or damage to any property (real or personal) caused (directly or indirectly) by the execution of the Works (whether by the Developer, the State, a Subcontractor, the State Representative or any other person);
 - (2) insurance for an unlimited sum against any loss, cost, damage, liability or other detriment (whether arising under a Law concerning workers' compensation or employers' liability or at common law) suffered or incurred by any of its employees in or about the execution of the Oversight Development Works;
 - (3) insurance of Plant and Equipment on terms and conditions (including any exclusions or excesses) reasonably required by the State concerning loss or distribution of or damage to the property insured (whether caused by the Developer, the State or any other person) for its full reinstatement and replacement cost;
- (b) procure that the Builder:
 - (1) effects and maintains professional indemnity insurance for a sum not less than [not disclosed] in respect of any one claim and annually in aggregate (plus legal costs and expenses) for liability to all persons (including the State) concerning loss, costs, damage, liability or other detriment suffered or incurred (directly or indirectly) for any breach of duty owed in a professional capacity in connection with the Development; and
 - (2) without limiting clause 41.2(a)(1), ensures that all the Builder's sub-contractors and consultants effect and maintain adequate professional indemnity insurance as determined by the State acting reasonably; and



- (3) effects or procures and maintains until Final Completion of the Works and the Developer having otherwise complied with its obligations under the Oversight Development Agreements, insurance for an unlimited sum against any loss, cost, damage, liability or other detriment (whether arising under a Law concerning workers' compensation or employers' liability or at common law) suffered or incurred by any of the Builder's employees in or about the execution of the Works,

which policies may be on an annual renewal basis (rather than contract specific).

41.3 Developer insurance requirements

- (a) All insurances effected under clauses 41.1 and 41.2(a) must:
 - (1) be effected with an insurer approved by the State acting reasonably;
 - (2) note the interests of the State;
 - (3) include a requirement that the insurance office or company provide the State with 10 Business Days' notice of its intention to serve a cancellation notice in respect of the policy; and
 - (4) provide for payment of such amounts and cover such risks and contain such conditions, endorsements and exclusions as are acceptable to or required by the State, acting reasonably.
- (b) In relation to the insurance required under clause 41.2(b) the Developer must procure that the Builder:
 - (1) immediately advises the State of:
 - (A) any changes or amendments to the terms of the insurance; and
 - (B) claims that arise or potential claims that could arise;
 - (2) that could reduce or limit the professional indemnity insurance, in which case the Developer must procure that the Builder obtains additional professional indemnity insurance so that the professional indemnity insurance is maintained as the amount required under clause 41.2(b)(1);
 - (3) maintains such insurance until Final Completion of the Oversight Development Works and the Developer having otherwise complied with its obligations under the Oversight Development Agreements;
 - (4) renews such insurance for a further period of [not disclosed] following Final Completion of the Oversight Development Works and the Developer having otherwise complied with its obligations under the Oversight Development Agreements;
 - (5) procures that every Developer's Consultant engaged by the Builder has effected or procured and maintained until Final Completion of the Works and the Developer having otherwise complied with its obligations under the Oversight Development Agreements professional indemnity insurance for a sum not less than an amount determined by the Builder (acting reasonably) for liability to all persons (including the State) concerning loss, costs, damage, liability or other detriment suffered or incurred (directly or indirectly) in connection with the



execution of those parts of the Works carried out by that Developer's Consultant.

41.4 Proof of Insurance

- (a) The Developer must whenever reasonably requested in writing by the State, provide evidence to the State:
 - (1) of the insurances effected and maintained by the Developer and its Subcontractors under clause 41.1; and
 - (2) that the State is named as a third party beneficiary in accordance with clause 41.1.
- (b) If, after being requested in writing by the State to do so, the Developer fails to produce evidence of compliance with its insurance obligations under clause 41.1 to the satisfaction of the State, the State may effect and maintain the insurance and pay the premiums for that insurance. Any amount paid by the State will be a debt due and payable from the Developer to the State.

41.5 Notices from or to the insurer

Except to the extent prohibited by Law, the Developer must ensure that each policy of insurance required to be effected by the Developer in accordance with this Agreement contains provisions acceptable to the State that:

- (a) except in the case of professional indemnity and workers compensation insurance, provide that a notice of claim given to the insurer by any of the State, the Developer or any of the Developer 's Subcontractors or consultants will be accepted by the insurer as a notice of claim given by each of the State, the Developer, the Subcontractor and the consultant; and
- (b) except for professional indemnity, workers compensation and motor vehicle insurance, require the insurer, whenever the Developer fails to renew the policy or to pay a premium, to give 20 Business Days written notice in writing thereof forthwith to the State and the Developer prior to the insurer giving any notice of cancellation or non-renewal. If an insurer does not agree to include such a provision in any such policy, and on request from the State from time to time, without limiting clause 41.4, the Developer must provide evidence to the reasonable satisfaction of the State that all such policies have been renewed and all premiums paid.

41.6 Notices of Potential Claims

- (a) The Developer must, as soon as practicable, inform the State in writing of any occurrence or incident that may give rise to a material claim under a policy of insurance required by clause 41.1 and must keep the State informed of subsequent developments concerning that occurrence or the claim.
- (b) Clause 41.6(a) does not apply to:
 - (1) public liability insurance; and
 - (2) workers compensation insurance (including common law liability)
 - (3) to the extent that the insurance remains on an 'each and every' basis.
- (c) Clause 41.6(a) does not apply to professional indemnity insurance unless in the reasonable opinion of the Developer, the claim has the potential to reduce the limit of cover under that insurance to [not disclosed] or less.



41.7 Settlement of Claims

Upon settlement of a claim under the insurance required by clause 41, the Developer must pass through to the State the benefit of the Developer's insurance where the State has suffered Loss but only to the extent of that Loss.

41.8 Cross Liability

Wherever pursuant to this Agreement insurance is effected in more than one name, the policy of such insurance must, insofar as the policy may cover more than one insured:

- (a) provide that all insuring agreements and endorsements operate in the same manner as if there were a separate policy of insurance covering each party comprising the insured provided that the total liability of the insurers to all of the insured parties collectively shall not exceed the sums insured and limits of indemnity including any inner limits set by memorandum or endorsement stated in the policy;
- (b) provide that:
 - (1) the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties comprising the insured except where the rights of subrogation or recourse are acquired as a consequence of fraud, misrepresentation, non-disclosure or breach of any warranty or condition of the policy by the relevant insured party; and
 - (2) failure by any insured to observe and fulfil the terms of the policy does not prejudice the insurance in regard to any other insured party; and
- (c) contain a non-imputation clause providing that any non-disclosure or misrepresentation (whether fraudulent or otherwise), any breach of term or condition of the policy, or any fraud or other act, omission or default by one insured does not affect another insured provided that the said acts or omissions were not made with the connivance of that other insured.

41.9 Extent of Cover

- (a) If the State at any time reasonably requires the Developer to:
 - (1) insure against a risk not specifically provided for or contemplated under the insurances held by the Developer in accordance with clause 41.1; or
 - (2) increase the extent of or change the terms of existing insurance in relation to a risk,it may notify the Developer accordingly and request that the Developer give effect to the State's requirements as set out in the notice.
- (b) The Developer must promptly notify (and provide supporting evidence to) the State of the amount (if any) of any additional premium payable to effect a request by the State under this clause.
- (c) Within 10 Business Days after receipt of notification from the Developer of an additional premium (if any), the State must inform the Developer whether it requires the Developer to effect that insurance cover.
- (d) If the State notifies the Developer that the State requires the Developer to effect that insurance cover under clause 41.9(c), the Developer promptly must do so and the State must reimburse the amount of the additional premium to the

Developer within 20 Business Days after the Developer provides evidence satisfactory to the State that the insurance cover has been so effected.

41.10 Additional Requirements

The Developer must comply, and must ensure that any Subcontractor complies, with its obligations to take out and maintain registration and to pay all levies required to be paid, under the *Accident Compensation Act 1985* (Vic) and the *Accident Compensation (Workcover) Act 1992* (Vic) and to take out and maintain insurances required under the *Building Act 1993* (Vic).

42 Dispute Resolution

42.1 Procedure for resolving disputes

- (a) **(Disputes to be resolved):** Any Dispute arising under this Agreement must be resolved by the parties to that Dispute (**Disputing Parties**) in accordance with this clause 42.
- (b) **(Procedure):** The procedure that is to be followed to resolve a Dispute is as follows:
 - (1) firstly, the Dispute must be the subject of negotiation as required by clause 42.2;
 - (2) secondly, if the Dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 42.2(c)(1) the Disputing Parties may agree that the Dispute will be referred to an expert for determination in accordance with clauses 42.3 to 42.9 (inclusive) or to arbitration under clause 43; and
 - (3) thirdly, if:
 - (A) the Dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 42.2(c)(1) and irrespective of whether the Disputing Parties failed to meet as required by that clause or whether having so met the parties failed to agree whether the Dispute should be referred to an expert or to arbitration within 20 Business Days after the expiration of the period for negotiation referred to in clause 42.2(c)(1);
 - (B) the Dispute has been referred to expert determination and a determination is not made by the expert within 30 days after the expert's acceptance of appointment; or
 - (C) the Dispute is referred to expert determination and a notice of dissatisfaction is given in accordance with clause 42.6(a),then the Dispute must be referred to arbitration under clause 43.

42.2 Negotiation

- (a) **(Notification):** If a Dispute arises then a party may give notice to each other party requesting that the dispute be referred for resolution by negotiation between the Chief Executive Officers (or equivalent) of the Disputing Parties (**Representatives**).



- (b) **(Contents of Notice)**: A notice under clause 42.2(a) must:
 - (1) state that it is a notice under this clause 42; and
 - (2) include or be accompanied by particulars of the matters which are the subject of the Dispute.
- (c) **(Attempt to resolve Dispute)**: If a Dispute is referred for resolution by negotiation under clause 42.2(a), then:
 - (1) the Representatives must meet and attempt in good faith to resolve the Dispute (in whole or in part) within 10 Business Days of the date on which the notice under clause 42.2(a) is received (or such later date as the Disputing Parties may agree); and
 - (2) any agreement reached between the Representatives will be reduced to writing, signed by or on behalf of each Disputing Party and will be contractually binding on the Disputing Parties.

42.3 Expert determination

- (a) Where this Agreement requires a matter to be referred to or resolved by an expert or if:
 - (1) **(Dispute unresolved)**: a Dispute which has been referred to the Representatives for negotiation in accordance with clause 42.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 42.2(c)(1); and
 - (2) **(Disputing Parties agree)**: the Disputing Parties agree within 20 Business Days after the expiration of the period for negotiation referred to in clause 42.2(c)(1), that the dispute be referred to an expert for determination,then those parts of the Dispute which remain unresolved will be referred to an expert for determination under clauses 42.4 to 42.8.
- (b) For the avoidance of doubt:
 - (1) a Dispute may only be referred to an expert for determination by agreement of the Disputing Parties; and
 - (2) where this Agreement requires a matter to be referred directly to an expert, the dispute resolution procedures in clause 42.2(c)(1) will not apply.

42.4 Selection of expert

- (a) **(Exchange of lists of 3 preferred experts)**: Within 7 Business Days after the date on which the Disputing Parties agree to refer a Dispute to an expert for determination under clause 42.3, the Disputing Parties must exchange lists of 3 persons (in order of preference) who, if appointed, would satisfy the requirements of clause 42.4(d), from whom the expert is to be chosen.
- (b) **(Appointment of person who appears on both lists)**: Any person who appears on the list of all of the Disputing Parties exchanged under clause 42.4(a) will be appointed as the expert to determine a Dispute and if more than one person appears on the list of all of the Disputing Parties, the person given the highest order of priority by the party who gave the notice under clause 42.2(a) will be appointed.



- (c) **(Appointment if no person appears on both lists):** If no person appears on the list of all of the Disputing Parties and the Disputing Parties cannot otherwise agree an expert, the party which gave the notice under clause 42.2(a) must procure:
- (1) the president (or the senior non-executive officer, howsoever described) of the institute or governing body for the technical or professional discipline the subject of the relevant Dispute to nominate the expert, having regard to, but not being bound by, those persons proposed by the Disputing Parties under clause 42.4(a); or
 - (2) if there is no governing body for the technical or professional discipline the subject of the relevant Dispute or such governing body advises that it will not nominate an expert, the President of the Australian Centre for International Commercial Arbitration to nominate a person to act as the expert, having regard to, but not being bound by, those persons proposed by the Disputing Parties under clause 42.4(a),
within 7 Business Days of the exchange of notices under clause 42.4(a).
- (d) **(Appropriate skills):** It is the intention of the Disputing Parties that the expert appointed to determine a dispute will be an independent person with appropriate skills having regard to the nature of the matters in dispute.
- (e) **(No entitlement to challenge appointment):** No Disputing Party will be entitled to challenge the appointment of an expert under this clause 42.4 on the basis that the expert does not satisfy the requirements of clause 42.4(d).
- (f) **(Not an arbitration agreement):** Any agreement for expert determination under this Agreement will not constitute an arbitration agreement for the purposes of the *Commercial Arbitration Act 2011* (Vic).
- (g) **(Agreement):** Once an expert is appointed, the Disputing Parties must enter into an agreement with the expert on the terms of the Expert Determination Agreement or such other reasonable terms as the expert may require.

42.5 Rules of expert determination

The expert determination process will be administered, and the expert will be required to act, under the terms of the Expert Determination Agreement.

42.6 Expert finding

- (a) **(Notification):** The determination of the expert must be in writing and will be final and binding on the Disputing Parties unless, within 10 Business Days of receipt of the determination, a Disputing Party gives notice to each other Disputing Party of its dissatisfaction and intention to refer the matter to arbitration in accordance with clause 43.
- (b) **(Amendment to determination):** Upon submission by any Disputing Party, the expert may amend the determination to correct:
- (1) a clerical mistake;
 - (2) an error from an accidental slip or omission;
 - (3) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
 - (4) a defect in form.



42.7 Liability of expert

- (a) **(Liability of expert):** The Disputing Parties agree:
- (1) that the expert will not be liable in connection with the expert determination, except in the case of fraud on the part of the expert; and
 - (2) to indemnify the expert against any Claim or Liability in connection with the expert determination, except in the case of fraud on the part of the expert, in which case a Claim may be made against him or her by any person who is party to the dispute.
- (b) **(Engagement):** The Disputing Parties will jointly engage the expert services in connection with the expert determination proceedings and each Disputing Party will seek a separate Tax Invoice equal to its share of the costs of the expert.

42.8 Costs

The Disputing Parties must:

- (a) bear their own costs in connection with the expert determination proceedings; and
- (b) pay an equal portion of the costs of the expert.

42.9 Proportionate Liability

To the extent permitted by Law, the expert will have no power to apply or to have regard to the provisions of any proportionate liability legislation which might in the absence of this clause 42.9, have applied to any dispute referred to the expert in accordance with this clause 42

43 Arbitration

43.1 Reference to Arbitration

- (a) **(Dispute):** If:
- (1) a dispute:
 - (A) which has been referred to the parties' Representatives for negotiation in accordance with clause 42.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 42.2(c)(1); and
 - (B) the Disputing Parties do not agree to refer the dispute to an expert for determination; or
 - (2) in the case of a dispute which the Disputing Parties agree to refer to expert determination under clause 42.3:
 - (A) a determination is not made within 30 days of the expert's acceptance of the appointment; or
 - (B) a notice of dissatisfaction is given in accordance with clause 42.6,



then any Disputing Party may notify the other Disputing Parties that it requires the dispute to be referred to arbitration.

- (b) **(Referral)**: Upon receipt by a Disputing Party of a notice under clause 43.1(a), the dispute will be referred to arbitration.

43.2 Arbitration

- (a) **(ACICA Rules)**: Arbitration in accordance with this clause 43 will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Rules) as current at the date the Dispute is referred to arbitration and as otherwise set out in this clause 43.
- (b) **(Seat)**: The seat of the arbitration will be Melbourne, Victoria.
- (c) **(Language)**: The language of the arbitration will be English.

43.3 Appointment of arbitrator

The Disputing Parties will endeavour to agree on the arbitrator or arbitrators (if the parties agree to appoint three arbitrators), but if no such agreement is reached within 14 Business Days of the dispute being referred to arbitration in accordance with clause 43.1(b), the arbitrator or arbitrators will be appointed by the ACICA Rules.

43.4 General Principles for conduct of arbitration

- (a) **(Conduct of arbitration)**: The Disputing Parties agree that:
- (1) they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any dispute;
 - (2) any arbitration conducted in accordance with this clause 43 will not necessarily mimic court proceedings of the seat of the arbitration or the place where hearings take place (if different), and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and
 - (3) in conducting the arbitration, the arbitrator must take into account the matters set out in clauses 43.4(a)(1) and 43.4(a)(2).
- (b) **(Evidence in writing)**: All evidence in chief must be in writing unless otherwise ordered by the arbitrator.
- (c) **(Evidence and discovery)**: The rules for evidence and discovery will be the IBA Rules on the Taking of Evidence in International Arbitration current at the date of arbitration (or if there are no current rules, the most recent version of those rules).
- (d) **(Oral hearing)**: The oral hearing must be conducted as follows:
- (1) any oral hearing must take place in Melbourne, Victoria and all outstanding issues must be addressed at the oral hearing;
 - (2) the date and duration of the oral hearing must be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in clause 43.4(a) when determining the duration of the oral hearing;
 - (3) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;



- (4) the oral hearing must be conducted on a stop clock basis with the effect that the time available to the parties must be split equally between the parties so that each party has the same time to conduct its case unless in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the parties;
 - (5) not less than 28 days prior to the date fixed for oral hearing each of the Disputing Parties must give notice of those witnesses (both factual and expert) of each other Disputing Party that it wishes to attend the hearing for cross examination;
 - (6) in exceptional circumstances the arbitrator may amend the date of hearing and extend the time for the oral hearing set in accordance with clause 43.4(d)(2);
 - (7) a Disputing Party will not be bound to accept the written evidence of a witness submitted on behalf of the opposing party which is not challenged in cross examination; and
 - (8) each Disputing Party is expected to put its case on significant issues in cross examination of a relevant witness called by the other Disputing Party or, where it seeks to challenge the evidence of a witness not called for cross-examination by reference to other evidence, to identify that evidence in its written opening submissions so that the other Disputing Party may know the nature of and basis for the challenge to the witness' written evidence.
- (e) **(Experts):** Unless otherwise ordered each Disputing Party may only rely upon one expert witness in connection with any recognised area of specialisation.

43.5 Proportional liability

To the extent permitted by Law, the arbitrator will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this clause 43.5, have applied to any dispute referred to arbitration in accordance with this clause 43.

43.6 Extension of ambit of arbitration proceedings

- (a) **(Extending Disputes):** Where:
- (1) a dispute between the Disputing Parties to this Agreement is referred to arbitration in accordance with this clause 43; and
 - (2) there is some other dispute also between the Disputing Parties to and in accordance with this Agreement (whenever occurring),
- the arbitrator may, upon application being made to the arbitrator by one or more of the Disputing Parties at any time before a final award is made in relation to the first-mentioned dispute, make an order directing that the arbitration be extended so as to include the other dispute.
- (b) **(Arbitrator's order):** An arbitrator may make an order in accordance with clause 43.6(a) on such terms and conditions (if any) as the arbitrator thinks fit.

43.7 Award final and binding

- (a) **(Final and binding):** Subject to clause 43.7(b), any award will be final and binding on the Disputing Parties.



- (b) **(Appeal)**: Each Disputing Party consents to any appeal to a court where that appeal is made under the Commercial Arbitration Act 2011 (Vic) on a question of law arising in connection with an arbitral award made in accordance with this clause 43.

43.8 Continue to perform

Notwithstanding the existence of a dispute, each Disputing Party must continue to carry out its obligations in accordance with this Agreement.

43.9 Governing law of arbitration agreement

The Law governing this arbitration agreement is the law of Victoria, Australia.

43.10 Consolidation

The parties agree that section 27C of the Commercial Arbitration Act 2011 (Vic) will apply.

44 Priority Jobseekers

44.1 Priority Jobseekers' Requirements

The Developer must, in performing its obligations under this Agreement, satisfy the Priority Jobseekers' Requirements.

44.2 Reporting

- (a) **(Records)**: The Developer must prepare and maintain records demonstrating its performance against the Priority Jobseekers' Requirements.
- (b) **(Reporting)**: The Developer must provide to the State:
- (1) a report detailing the percentage of the Developer D&C Workforce which was comprised of Priority Jobseekers undertaking D&C Activities in Victoria, calculated as an Annualised Employee Equivalent against the Developer D&C Phase Workforce; and
 - (2) a statutory declaration made by a director of the Developer declaring that the information contained in the report is true and accurate,
- Quarterly and on the date of Final Completion.
- (c) **(Further information)**: At the request of the State, the Developer must provide further information or explanation in respect of the Developer's performance against the Priority Jobseekers' Requirements.

44.3 Verification of the Developer's compliance with the Priority Jobseekers' Requirements

- (a) **(Review of performance)**: The Developer must:
- (1) permit the State from time to time to undertake a review of the Developer's performance against the Priority Jobseekers' Requirements; and



- (2) ensure that its Associates give all reasonable assistance to any person authorised by the State to undertake such audit or inspection.
- (b) **(Authorisations):** The Developer acknowledges and agrees that the State is authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding the Developer's performance against the Priority Jobseekers' Requirements.
- (c) **(Additional obligations):** The obligations set out in this clause 44.3 are in addition to and do not derogate from any other obligation under this Agreement.

44.4 Use of Priority Jobseeker information

The Developer acknowledges and agrees that the State and the Department of Economic Development, Jobs, Transport and Resources may:

- (a) disclose statistical information contained in the reports provided under 44.2 and information obtained under clause 44.3;
- (b) consider statistical information contained in the reports provided under 44.2 and information obtained under clause 44.3 in the assessment or review of the Developer's and its Related Bodies Corporate's eligibility to tender for future Victorian Government contracts.

44.5 Supplier Code of Conduct

The Developer acknowledges and agrees that:

- (a) the Supplier Code of Conduct is an important part of the State's approach to procurement and describes the State's minimum expectations regarding the conduct of its suppliers;
- (b) it has read and aspires to comply with the Supplier Code of Conduct; and
- (c) the expectations set out in the Supplier Code of Conduct are not intended to reduce, alter or supersede any other obligations which may be imposed on the supplier, whether under this Agreement or at Law.

45 Rights and obligations at end of Agreement

45.1 Expiration of Agreement

Unless otherwise provided for in this Agreement, this Agreement will expire upon the later of:

- (a) the expiry of the Defects Liability Period;
- (b) Final Completion in accordance with clause 25;
- (c) the transfer of the Freehold Land title to the Developer in accordance with clause 26.

45.2 Novation

If this Agreement is terminated prior to Final Completion, upon the request of the State (in its discretion), the Developer must, for no consideration, other than any Termination Payment, if then due:



- (a) novate to the State or its nominee; and
 - (b) do all things reasonably necessary to give effect to such novation,
- any agreement (including any supply, service or maintenance agreement) relating to the execution of the whole or any part of the Oversight Development Works or the whole or any part of the Oversight Development.

45.3 Consequences of expiry

Upon expiry of this Agreement, the rights and obligations of the parties under this Agreement will cease except for:

- (a) any rights or obligations accrued as a result of a default by either party under this Agreement;
- (b) any rights or obligations which are expressed to continue after expiry of this Agreement; and
- (c) as applicable, the rights and obligations of the parties under this clause 45.

46 Confidential Information and disclosure

46.1 Confidential Information and disclosure by the State

- (a) **(Public Disclosure Obligations):** The State or any Authority may disclose any information in connection with the Oversight Development (including any Confidential Information):
 - (1) in accordance with Laws;
 - (2) to satisfy the disclosure requirements of the Victorian Auditor-General;
 - (3) to satisfy the requirements of Parliamentary accountability;
 - (4) where the disclosure is in the course of the official duties of VicRoads, the Department of Economic Development, Jobs, Transport and Resources, the Secretary, the Victorian Minister for Public Transport or the Treasurer of Victoria;
 - (5) to VicTrack, any Associate of the State or any person authorised or nominated by the State to the extent necessary for the purpose of the Oversight Development, Melbourne Metro Rail or the broader transport network provided they agree to maintaining the confidentiality of any Confidential Information;
 - (6) in annual reports of the State;
 - (7) in accordance with policies of the Victorian government; or
 - (8) to satisfy any other recognised public requirement,and Project Co must use all reasonable endeavours to assist the State or an Authority in meeting its Public Disclosure Obligations.
- (b) **(Priority Jobseekers' Requirements)** The State and the Department of Economic Development, Jobs, Transport and Resources may disclose statistical information in respect of the Developer's performance against the Priority Jobseekers' Requirements.



- (c) **(State's rights)**: in meeting its Public Disclosure Obligations or as otherwise considered necessary by the State the State may publish, disclose or make generally available each Oversight Development Agreement on a Victorian Government website.
- (d) **(Exercise of Licence)**: Nothing in this Agreement prevents the State and any sublicensees using or disclosing any information (including Confidential Information) to extent necessary or desirable for, or in connection with, the exercise of any licence granted under clause 29.

46.2 Confidential Information and disclosure by the Developer

- (a) **(Confidentiality obligation)**: Subject to clause 46.2(b), the Developer must treat as secret and confidential all Confidential Information in connection with this Agreement and any other Oversight Development Agreement.
- (b) **(Disclosure of Confidential Information)**: Without limiting the Developer's obligation under clause 46.2(a) and subject to clause 46.2(c), the Developer may disclose Confidential Information to:
 - (1) its Associates to the extent necessary for the purpose of undertaking the Oversight Development; or
 - (2) any External Financier, prospective financier, purchaser or equity investor of the Oversight Development, subject to the State having been provided necessary information in respect of the proposed parties and having carried out any Probity Investigation that the State considers necessary.
- (c) **(Confidentiality deed)**: Before disclosing any Confidential Information, the Developer must ensure that the person to whom the information is disclosed enters into a confidentiality deed with the Developer on terms reasonably acceptable to the State.

46.3 Disclosure by the Developer

- (a) **(Developer's disclosure obligations)**: Subject to clause 46.3(b), the Developer must:
 - (1) not make any public disclosures, announcements or statements in relation to the Oversight Development or the State's or any of the State's Associates' involvement in the Oversight Development without the State's prior consent;
 - (2) comply with any terms and conditions the State imposes and must use all reasonable endeavours to agree with the State the wording and timing of all public disclosures, announcements or statements by it or any of its Associates relating to the Oversight Development or the State's or any of the State's Associates' involvement in the Oversight Development before the relevant disclosure, announcement or statement is made; and
 - (3) as soon as practicable, give to the State a copy of any public disclosure, announcement or statement agreed to or approved by the State in accordance with this clause 46.3(a) or for which the State's consent or approval was not required in accordance with clause 46.3(b).



- (b) **(Permitted disclosure)**: For the purposes of clause 46.3(a), the Developer will not be required to obtain the State's consent or approval to the extent that any disclosure, announcement or statement is:
- (1) required by Law, provided that it:
 - (A) notifies the State of the requirement to make that disclosure; and
 - (B) takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;
 - (2) required to obtain legal or other advice from its advisers;
 - (3) is to any proposed purchaser or lessee of the whole or any part of the Oversight Development or any investor or potential investor in the Developer or any proposed purchaser or lessee of the whole or any part of the Oversight Development provided that any such person to whom any Confidential Information is disclosed covenants to comply with the obligations of confidentiality imposed on the Developer under this clause 46;
 - (4) required to be made to a court in the course of proceedings to which the Developer is a party; or
 - (5) required by a relevant stock exchange, subject to:
 - (A) such disclosure, announcement or statement not referring to the State's or any of its Associates' involvement in the Oversight Development; and
 - (B) the Developer having used all reasonable endeavours to obtain the State's consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant stock exchange.

47 Notices

47.1 Method of giving notices

All communications (including approvals, consents, directions, requirements, requests, Claims, notices, agreements and demands) in connection with this Agreement:

- (a) **(in writing)**: must be in writing;
- (b) **(addressed)**: must be addressed to the address specified in clause 47.2 (or as otherwise notified by that party to each other party from time to time);
- (c) **(signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(form of delivery)**: must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by both parties) to the email address of the addressee set out in clause 47.2; and
- (e) **(taken to be received)**: are taken to be received by the addressee at the address set out in clause 47.2:



- (1) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
- (2) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and
- (3) in the case of email, the first to occur of:
 - (A) receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - (B) the time that the communication enters an information system which is under the control of the addressee; or
 - (C) the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day.

47.2 Address for notices

For the purposes of this clause, a person (**sender**) may (and must, in the case of a Notice given to the State or State Representative) take the address and facsimile number of another person (**recipient**) to be:

- (a) the address and number set out below; or
- (b) where the recipient notifies the sender of another address or number, the last address or number so notified to it.

State and State Representative (as applicable)

Attention: Package Director, Tunnel and Stations PPP

Address: [not disclosed]

Developer

Attention: Scape Little Latrobe Operator Pty Ltd

Address: [not disclosed]

and to:

Attention: John Holland Nth OSD Developer Pty Ltd

Address: [not disclosed]



48 Miscellaneous

48.1 Governing Law and jurisdiction

- (a) **(Governing Law):** This Agreement is governed by, and must be construed according to, the Laws of Victoria, Australia.
- (b) **(Jurisdiction):** Without limiting clauses 42 and 43, each party irrevocably submits to the nonexclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Agreement.

48.2 Entire Agreement

To the extent permitted by Law and in relation to their subject matter, the Oversight Development Agreements:

- (a) **(entire understanding):** embody the entire understanding of the parties and constitute the entire terms agreed by the parties; and
- (b) **(prior agreements):** supersede any prior agreement of the parties.

48.3 Amendment

- (a) **(Agreement):** Except as otherwise expressly provided in this Agreement, this Agreement may only be varied by a deed executed by or on behalf of each party.
- (b) **(Other Oversight Development Agreements):** Except as otherwise expressly provided in the Oversight Development Agreements to which the State is a party, no amendment to any other Oversight Development Agreement to which the State is a party is valid or binding on a party unless made in writing and executed by the State and all other parties to the relevant Oversight Development Agreement.

48.4 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to both parties) required by Law or reasonably requested by another party to give effect to this Agreement.

48.5 Costs and Stamp Duty

Each party must bear its own costs arising out of the negotiation, preparation and execution of this Agreement.

48.6 Counterparts

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

48.7 Severance

If, at any time, a provision of this Agreement or any other Oversight Development Agreement is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:



- (a) any other provision of this Agreement or any other relevant Oversight Development Agreement; or
- (b) that provision under the Law of any other jurisdiction.

48.8 Survival of certain provisions

- (a) **(Surviving clauses):** All provisions of this Agreement which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of this Agreement will survive the rescission, termination or expiration of this Agreement, including any provision in connection with:
 - (1) the State's rights to set-off and recover money;
 - (2) confidentiality or privacy;
 - (3) Intellectual Property Rights;
 - (4) any obligation to make any records available to the State;
 - (5) any indemnity or financial security given in accordance with this Agreement; or
 - (6) any right or obligation arising on termination of this Agreement.
- (b) **(Interpretation):** No provision of this Agreement which is expressed to survive the termination of this Agreement will prevent any other provision of this Agreement, as a matter of interpretation, also surviving the termination of this Agreement.
- (c) **(Survival of rights and obligations):** No right or obligation of any party will merge on completion of any transaction in accordance with this Agreement. All rights and obligations in accordance with this Agreement survive the execution and delivery of any transfer or other document which implements any transaction in accordance with this Agreement.

48.9 Waiver

- (a) **(Writing):** A waiver given by a party in accordance with this Agreement is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver):** A failure to, a delay in or the partial exercise or enforcement of a right provided by Law or in accordance with this Agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or in accordance with this Agreement.
- (c) **(No waiver of another breach):** No waiver of a breach of a term of this Agreement operates as a waiver of another breach of that term or of a breach of any other term of this Agreement.

49 Guarantee and indemnity

49.1 Definitions

The following terms are defined in this clause 49:



- (a) **Guaranteed Obligations** means all of JH Developer's obligations under this Agreement; and
- (b) **Insolvency Event** means, in relation to a party or the Guarantor, the occurrence of any of the following events:
- (1) if an application is made (other than for a frivolous or vexatious reason) for the winding up or deregistration of a party and, where an application has been made for the dismissal or withdrawal of the application for winding up within 10 Business Days, the application is not dismissed or withdrawn within 30 Business Days;
 - (2) an order is made for the winding up of a party, except for the purpose of a reconstruction, amalgamation, merger or consolidation on terms approved by the State before that order is made where the reconstruction, amalgamation, merger or consolidation is implemented in accordance with the terms of the approval;
 - (3) if a party or the Guarantor passes a resolution for its winding up or deregistration, except for the purpose of a reconstruction, amalgamation, merger or consolidation on terms approved by the State before that resolution is passed where the reconstruction, amalgamation, merger or consolidation is implemented in accordance with the terms of that approval;
 - (4) if a receiver, receiver and manager, liquidator provisional liquidator, compulsory manager trustee for creditors or in bankruptcy or analogous person is appointed to, or the holder of a Security Interest takes (or appoints an agent to take) possession of, any property of a party or otherwise enforces its Security Interest;
 - (5) if a party, the Guarantor or any other person appoints an administrator to the party or the Guarantor;
 - (6) if a party or the Guarantor:
 - (A) suspends payment of its debts (other than as the result of a failure to pay a debt or claim which is the subject of a good faith dispute);
 - (B) ceases or threatens to cease to carry on all or a material part of its business;
 - (C) is or states that it is unable to pay its debts; or
 - (D) is deemed insolvent by virtue of its failure to comply with a statutory demand; or
 - (7) if a party or the Guarantor enters into a readjustment or rescheduling of its indebtedness or makes a general assignment for the benefit of or a composition with its creditors, without the prior consent of the State, except for the purposes of a solvent reconstruction or amalgamation approved in writing by the State; or
 - (8) any act is done or event occurs which has an analogous or similar effect to any of the events in paragraphs (1) to (7).
- (c) **JH Developer** means John Holland Nth OSD Developer Pty Ltd (ACN 623 274 564).
- (d) **Security Interest** means any mortgage, pledge, lien or charge or any security or preferential interest or arrangement of any kind and includes:

- (1) a "security interest" as defined in clause section 12 of the Personal Property Securities Act 2009 (Cth);
- (2) anything which gives a creditor priority to other creditors with respect to any asset; and
- (3) retention of title (other than in the ordinary course of day-to-day trading) and a deposit of money by way of security.

49.2 Consideration

The Guarantor acknowledges that the State are acting in reliance on the Guarantor incurring obligations and giving rights under this clause 49.

49.3 Guarantee

The Guarantor unconditionally and irrevocably guarantees to the State the due and punctual performance and observance by JH Developer of the Guaranteed Obligations. If JH Developer does not perform or observe the Guaranteed Obligations on time and in accordance with the provisions of this Agreement, then the Guarantor agrees to perform and observe the Guaranteed Obligations for the benefit of the State on demand from the State. A demand may be made at any time and from time to time.

49.4 Indemnity

- (a) The Guarantor unconditionally and irrevocably indemnifies the State for all Losses and Liabilities which it incurs or suffers because JH Developer fails to duly and punctually perform and observe the Guaranteed Obligations.
- (b) The remedies available to the State against the Guarantor for failing to comply for any reason with its obligations under clause 49.3 are limited to the right of the State to make a claim on the Guarantor under clause 49.4(a).

49.5 Additional indemnities

Whether or not the State exercises any rights it may have under clause 35.4, and without being affected by the exercise of any such rights, the Guarantor unconditionally and irrevocably indemnifies the State against any loss the State suffers because:

- (a) the liability to perform or observe the Guaranteed Obligations is unenforceable in whole or in part as a result of lack of capacity, power or authority or improper exercise of power or authority;
- (b) JH Developer does not observe, perform or comply with (whether full or in part) the Guaranteed Obligations;
- (c) the Guaranteed Obligations are rescinded or terminated by JH Developer, the State for any reason other than by reason of the wrongful repudiation or default by the State;
- (d) JH Developer disregards an order for specific performance of the Guaranteed Obligations;
- (e) JH Developer for any reason does not pay any consideration or sum that would have been payable under this Agreement if JH Developer had complied with all its obligations under this Agreement;
- (f) an Insolvency Event occurs with respect to JH Developer but only to the extent of obligations or monies which form part of the Guaranteed Obligations; or



- (g) the Guaranteed Obligations are not or have never been enforceable against the Guarantor or are not capable of observance, performance or compliance in full because of any other circumstance whatsoever including any transaction relating to the Guaranteed Obligations being illegal, void, voidable or unenforceable and whether or not the State knew or should have known anything about that transaction.

49.6 Guarantor as principal debtor

The Guarantor as principal debtor agrees to pay to the State (as directed and within 10 Business Days after a demand) a sum equal to the amount of any loss described in clauses 49.4 and 49.5. Any such demand must:

- (a) be in writing;
- (b) state that it is made under clause 49.4 or 49.5;
- (c) state and provide details of the amount being demanded and confirm that:
- (1) a written demand for payment of the amount has been made on JH Developer by the State (as relevant);
 - (2) at least 10 Business Days has passed since the demand on JH Developer was made; and
 - (3) the demand on JH Developer remains unsatisfied;
- (d) be signed by the State; and
- (e) be served in accordance with clause 47.

49.7 Extent of guarantee and indemnity

The guarantee provided in clause 49.3 and the indemnities provided in clauses 49.4 and 49.5 are continuing security and extend to all of the Guaranteed Obligations and other money payable under this Agreement.

49.8 Preservation of the State's rights

The Liabilities under this Agreement of the Guarantor as a guarantor or an indemnifier and the rights of the State under this Agreement are not affected by anything which might otherwise affect them at law or in equity including, without limitation, one or more of the following (whether occurring with or without the consent of a person):

- (a) the State or another person granting time or other indulgence (with or without the imposition of an additional burden) to, compounding or compromising with, or wholly or partially releasing, JH Developer, any other indemnifier or another person in any way;
- (b) laches, acquiescence, delay, acts, omissions or mistakes on the part of the State or another person or the State and another person;
- (c) any variation or novation of a right of the State or another person, or material alteration of this Agreement, in respect of JH Developer, the Guarantor or another person;
- (d) the transaction of business, expressly or impliedly, with, for or at the request of JH Developer, the Guarantor or another person;
- (e) changes which from time to time may take place in the membership, name or business of a firm, partnership, committee or association whether by death,



- retirement, admission or otherwise, whether or not the Guarantor or another person was a member;
- (f) a Security Interest being void, voidable or unenforceable;
 - (g) a person dealing in any way with a Security Interest, guarantee, judgment or negotiable instrument (including, without limitation, taking, abandoning or releasing (wholly or partially), realising, exchanging, varying, abstaining from perfecting or taking advantage of it);
 - (h) the death of any person or an Insolvency Event occurring in respect of any person;
 - (i) a change in the legal capacity, rights or obligations of a person;
 - (j) the fact that a person is a trustee, nominee, joint owner, joint venturer or a member of a partnership, firm or association;
 - (k) a judgment against JH Developer or another person;
 - (l) the receipt of a dividend after an Insolvency Event or the payment of a sum or sums into the account of JH Developer or another person at any time (whether received or paid jointly, jointly and severally or otherwise);
 - (m) any part of the Guaranteed Obligations being irrecoverable;
 - (n) an assignment of rights in connection with the Guaranteed Obligations;
 - (o) the acceptance of repudiation or other termination in connection with the Guaranteed Obligations;
 - (p) the invalidity or unenforceability of an obligation or liability of a person other than the Guarantor;
 - (q) invalidity or irregularity in the execution of this Agreement by the Guarantor or any deficiency in or irregularity in the exercise of the powers of the Guarantor to enter into or observe its obligations under this Agreement;
 - (r) any obligation of JH Developer and the Guarantor or any other guarantor being discharged by operation of law or otherwise; or
 - (s) property secured under a Security Interest being forfeited, extinguished, surrendered, resumed or determined.

49.9 Liabilities not affected

The liability of the Guarantor under this Agreement is not affected:

- (a) because any other person who was intended to enter into this Agreement, or otherwise become a co-surety or co-indemnifier for payment of the Guaranteed Obligations or other money payable under this Agreement has not done so or has not done so effectively; or
- (b) because a person who is a co-surety or co-indemnifier for payment of the Guaranteed Obligations or other money payable under this Agreement is discharged under an agreement or under statute or a principle of law or equity.

49.10 Suspension of Guarantor's rights

As long as the Guaranteed Obligations are outstanding or other money payable under this Agreement remains unpaid, the Guarantor cannot without the consent of the State:



- (a) in reduction of its Liability under this Agreement, raise a defence, set off or counterclaim available to itself, JH Developer or a co-surety or co-indemnifier against the State or claim a set off or make a counterclaim against the State;
- (b) make a Claim or enforce a right (including, without limitation, an Encumbrance) against JH Developer or the Parent Guarantor or against their estate or property;
- (c) prove in competition with the State if an Insolvency Event occurs in respect of JH Developer whether in respect of an amount paid by the Guarantor under this Agreement, in respect of another amount (including the proceeds of a Security Interest) applied by the State in reduction of the Guarantor's Liability under this Agreement, or otherwise; or
- (d) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of a Security Interest or guarantee or a share in it now or subsequently held for the Guaranteed Obligations or other money payable under this Agreement.

49.11 Other securities and obligations of Guarantor

The State's rights under this clause 49 are additional to and do not merge with or affect and are not affected by:

- (a) any Security Interest now or subsequently held by the State from JH Developer, the Guarantor or any other person; or
 - (b) any other obligation of the Guarantor to the State,
- notwithstanding any rule of law or equity or any statutory provision to the contrary.

49.12 Reinstatement of the State's rights

If a Claim is made that all or part of a payment, obligation, settlement, transaction, conveyance or transfer in connection with the Guaranteed Obligations or other money payable under this clause 49 is void or voidable under law relating to Insolvency Events or the protection of creditors or for any other reason and the Claim is upheld, conceded or compromised, then:

- (a) the State are each entitled immediately as against the Guarantor to the rights in respect of the Guaranteed Obligations or other money payable under this Agreement to which it would have been entitled if all or that part of that payment, obligation, settlement, transaction, conveyance or transfer had not taken place; and
- (b) promptly on request from the State (as the case may be), the Guarantor agrees to do any act and sign any document required or desirable to restore to the State any Security Interest or guarantee held by it under or in connection with this Agreement from the Guarantor immediately prior to that payment, obligation, settlement, transaction, conveyance or transfer.

49.13 Application of money

The State may apply money paid by JH Developer or JH Developer's estate, or the Guarantor or otherwise towards satisfaction of the Guaranteed Obligations and other money payable under this Agreement in the manner it sees fit.





Signing page

Executed as an agreement

State

Executed by
Minister for Public Transport
on behalf of the Crown in the right of the State of Victoria

sign here ► [not disclosed] _____
Minister

in the presence of

sign here ► [not disclosed] _____
Witness

print name [not disclosed] _____

Developer

Signed for
John Holland Nth OSD
Developer Pty Ltd ACN 623 274
564
by its attorney

in the presence of

sign here ► [not disclosed] _____
Attorney

sign here ► [not disclosed] _____
Witness

print name [not disclosed] _____

print name [not disclosed] _____



Developer

Signed for
**Scape Little Latrobe Operator
Pty Ltd ACN 607 697 183**
by

sign here ► [not disclosed] _____ *sign here* ► [not disclosed] _____
Director Director

print name [not disclosed] _____ *print name* [not disclosed] _____

Guarantor

Signed for
**John Holland Property
Developments Pty Ltd ACN 617
899 297**
by its attorney

in the presence of

sign here ► [not disclosed] _____ *sign here* ► [not disclosed] _____
Attorney Witness

print name [not disclosed] _____ *print name* [not disclosed] _____



HERBERT
SMITH
FREEHILLS

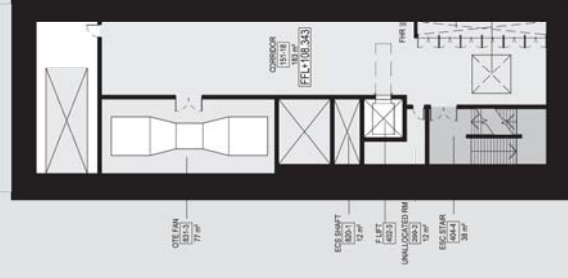
Attachment 1

Licensed Area

KEY



Licensed area



OTIFAN (81.3) 77 FT²

CONDOOR (151.18) 15 FT²

ESC STAIR (84.1) 31 FT²

UNLOADING RM (146.4) 14 FT²

FLIGHT (145.2) 14.5 FT²

ESC STAIR (84.2) 31 FT²

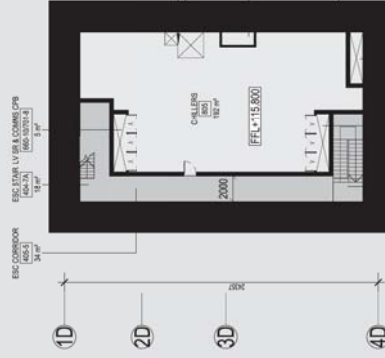
ESC SHFT (166.2) 12 FT²

11000

K1

K2

K3



1D

2D

3D

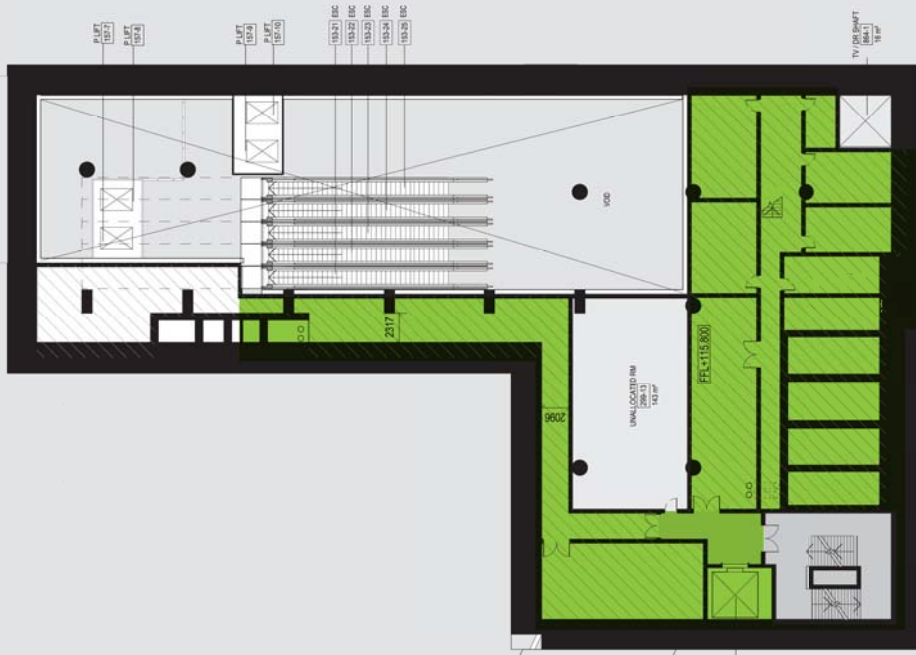
4D

15000

N1

N2

N3



P.LIFT (157.7) 15.8 FT²

P.LIFT (157.4) 15.7 FT²

P.LIFT (157.9) 15.8 FT²

P.LIFT (157.0) 15.7 FT²

15251 BEC

15252 BEC

15253 BEC

15254 BEC

15255 BEC

TV / OBS SHFT (88.4) 18 FT²

4270

LEVEL B1

KEY

 **Licensed area**



GROUND LEVEL

KEY



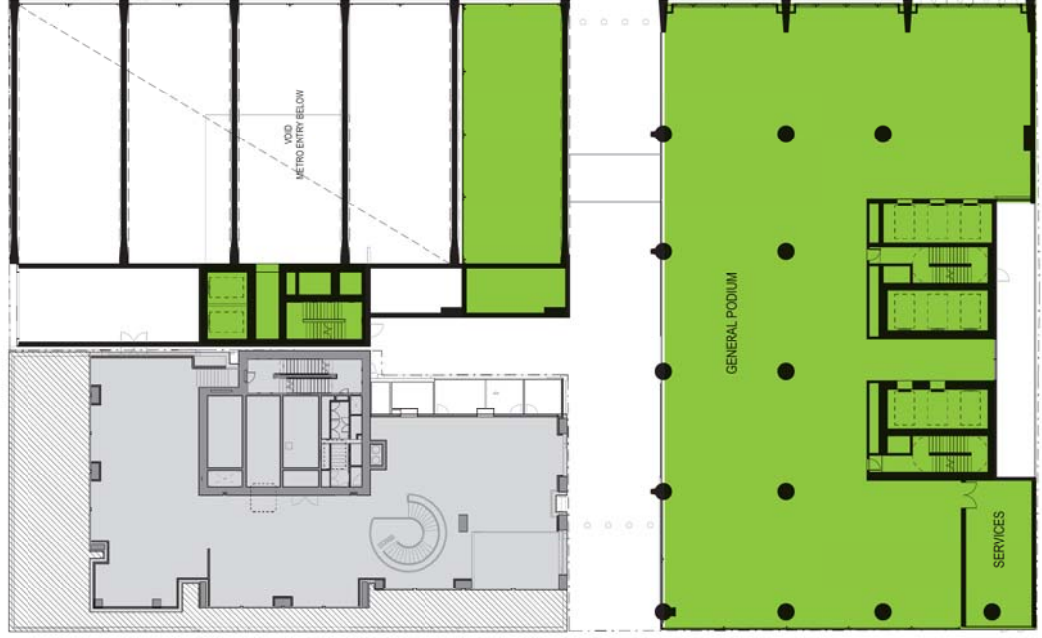
Licensed area



KEY



Licensed area





HERBERT
SMITH
FREEHILLS

Attachment 2

Construction Licence



HERBERT
SMITH
FREEHILLS

Approved Document

Construction Licence

[Insert [State]]

[Insert Developer]



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Construction Licence

Date ►

Between the parties

State **[Insert]**

Developer **[Insert]**
[Insert] of **[insert address]**

Recitals

- 1 The background to the Oversight Development is set out in the Commercial Development Agreement.
- 2 As part of the development and implementation of the Oversight Development Works, the State has agreed to grant, and the Developer has agreed to accept, a licence in respect of the Licensed Construction Areas on the terms and conditions contained in this Licence.

This agreement witnesses as follows:



1 Definitions and interpretation

1.1 Commercial Development Agreement definitions

Unless otherwise expressly defined, expressions used in this Licence have the meanings given to them in the Commercial Development Agreement.

1.2 Definitions

In this Licence, unless the context otherwise requires:

| Term | Meaning |
|--|---|
| Amended Licensed Construction Area Plan | has the meaning given in clause 4.1(b)(1). |
| Authority | means any government or governmental, semi-governmental or local government authority, local council, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality or any person having jurisdiction over the Licensed Construction Areas, the Developer, the State or any of them or anything in relation to any of them. |
| Commercial Development Agreement | the document entitled "Commercial Development Agreement" between the State and Developer dated <i>[insert]</i> . |
| Hoardings | temporary barriers, fences, enclosures, barricades, booms and other like structures (including fixed signage) on or around the Licensed Construction Areas in order to prevent public access to the Licensed Construction Areas. |
| Licence | means this construction licence and includes all Schedules, Exhibits, Attachments and Annexures to it. |
| Licence Commencement Date | means the date of CBD North OSD Acceptance. |
| Licence Fee | means ██████████ |
| Licensed Construction | has the meaning given in clause 4.1 and includes any Amended |



| Term | Meaning |
|------------------------------------|--|
| Area Plan | Licensed Construction Area Plan. |
| Licensed Construction Areas | means that part of the subdivided stratum (limited in height and depth) which is identified in the Licensed Construction Area Plan. |
| Permitted Use | means: <ol style="list-style-type: none">1 the performance of the D&C Activities and the Oversight Development Works in accordance with the Commercial Development Agreement and this Licence;2 the storage and location of any equipment, vehicles and machinery necessary for the carrying out of the D&C Activities and the Oversight Development Works, unless otherwise specified by the State;3 the exercise by the Developer of its rights and the compliance by the Developer with its obligations under the Commercial Development Agreement, to the extent to which they relate to the Licensed Construction Areas; and4 any other purpose agreed by the State. |
| Requirement | includes any requirement, notice, order, demand, direction, recommendation, request, stipulation or similar notification received from or given by any Authority or pursuant to any Law whether in writing or otherwise and notwithstanding to whom such a Requirement is addressed or directed. |
| Temporary Works Areas | [those parts of the Licensed Construction Areas marked blue hatched and green hatched on the Licensed Construction Area Plan.] |
| Term | the term of this Licence as described in clause 6. |

1.3 Interpretation

In this Licence:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa and a word indicating a gender includes every other gender;
- (c) **(references)**: a reference to:



- (1) a party, clause, Schedule, Exhibit, Attachment or Annexure is a reference to a party, clause, Schedule, Exhibit, Attachment or Annexure of or to this Licence; and
- (2) a section is a reference to a section of a Schedule;
- (d) **(document as amended)**: a reference to this Licence or to any other deed, agreement, document or instrument includes a reference to this Licence or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **(“includes”)**: “includes” will be read as if followed by the phrase “(without limitation)”;
- (j) **(“or”)**: the meaning of “or” will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) **(“\$”)**: a reference to “\$”, “AUD” or “dollar” is to Australian currency;
- (m) **(time)**: a reference to time is a reference to time in Melbourne, Australia;
- (n) **(rights)**: a reference to a right includes any benefit, remedy, function, duty, obligation, Liability, interest, entitlement, title, discretion, authority or power;
- (o) **(obligations and liabilities)**: a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (p) **(“may”)**: the term “may”, when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;
- (q) **(construction)**: where there is a reference to an Authority, institute or association or other body referred to in this Licence which:
 - (1) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Licence is deemed to refer to that other entity; or



- (2) ceases to exist, this Licence is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (r) (“**remedy**”): the use of the word “remedy” or any form of it in this Licence means that the event to be remedied must be remedied or its effects overcome; and
- (s) (**contra proferentem rule not to apply**): each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

1.4 **Business Day**

If the day on or by which anything is to be done in accordance with this Licence is not a Business Day, that thing must be done no later than the next Business Day.

1.5 **Provisions limiting or excluding liability, rights or obligations**

- (a) A right of the State or an obligation of the Developer under this Licence will not limit or exclude any other right of the State or obligation of the Developer under this Licence unless expressly stated.
- (b) Any provision of this Licence which seeks, either expressly or by implication, to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.

1.6 **Approvals, directions and notices in writing**

Unless otherwise expressly provided in this Licence or agreed between the parties, all approvals, consents, directions, requirements, requests, claims, notices, agreements and demands given or required to be given under this Licence must be given in writing.

1.7 **Prior approval or consent**

Where the Developer is required by this Licence to obtain the State’s consent or approval to an action, document or thing, unless otherwise expressly stated, that consent or approval must be obtained prior to the actions, document or thing occurring or coming into effect.

1.8 **Action without delay**

Unless there is a provision in this Licence which specifies a period of time in which something must be done by the parties, all things must be done without undue delay.

1.9 **Relationship of the parties**

Unless otherwise expressly provided, nothing in this Licence:

- (a) (**no additional relationship**): creates a partnership, joint venture, fiduciary, employment or agency relationship between the parties; or
- (b) (**no good faith**): imposes any duty of good faith on the State.



1.10 State's rights and obligations

- (a) **(Acknowledgement):** The parties acknowledge the substance, operation and potential effect and consequences of clause 1.9 (*State's executive rights and duties*) of the Commercial Development Agreement in relation to this Licence.
- (b) **(No Claim):** Subject to clause 1.10(c), the Developer will not be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its statutory or executive rights or duties.
- (c) **(Liability for breach):** Clauses 1.10(a) and 1.10(b) do not limit any Liability which the State would have to the Developer under this Licence as a result of a breach by the State of a term of this Licence but for these clauses.

1.11 Reasonable endeavours of the State

Any statement in this Licence providing that the State will use or exercise "reasonable endeavours" or "act reasonably" in relation to an outcome, means that the State:

- (a) **(relevant steps):** will take steps to bring about the relevant outcome so far as it is reasonably able to do so, having regard to its resources and other responsibilities;
- (b) **(no guarantee):** cannot guarantee the relevant outcome; and
- (c) **(no obligation):** is not required to:
 - (1) exercise a right of any Government Party, or to influence, over-ride, interfere with or direct any other Government Party in the proper exercise and performance of its legal, statutory or executive duties and functions;
 - (2) exercise a power or discretion in a manner that the State regards as not in the public interest;
 - (3) develop or implement new policy;
 - (4) procure legislation; or
 - (5) act in any way that the State regards as not in the public interest.

1.12 Cost of carrying out obligations

Each party must carry out its obligations under this Licence at its own cost, unless expressly provided otherwise.

1.13 Development Agreement

- (a) This Licence is subject to the terms and conditions of the Commercial Development Agreement.
- (b) If there is any inconsistency between the terms of this Licence and the terms of the Commercial Development Agreement, the Commercial Development Agreement will prevail.
- (c) The Developer agrees that nothing in this Licence will in any way operate as a bar to the exercise by the State of, or a waiver of or modification to, the State's rights under the Commercial Development Agreement.



- (d) The Developer must allow the State to exercise its rights under the Commercial Development Agreement (subject to the provisions of the Commercial Development Agreement) with respect to the Freehold Land (including the Licensed Construction Areas) despite this Licence without:
 - (1) any interference or disturbance from the Developer; or
 - (2) any restriction imposed by the Developer.
- (e) The exercise of the State's rights under the Commercial Development Agreement in no way will be a breach of this Licence.
- (f) Despite the termination, expiry or otherwise ending of the Commercial Development Agreement, the obligations of the Developer under the Commercial Development Agreement continue to apply to the Licensed Construction Areas to the same extent they relate to the Licensed Construction Areas until this Licence ends under clause 6.

2 Delegation

2.1 Right to delegate

The Developer acknowledges that the State may exercise any right, statutory or otherwise, it has to appoint a person as a delegate to perform any of its rights under this Licence.

2.2 Notice of delegation

The State will give the Developer notice of:

- (a) **(delegate)**: any delegate so appointed, setting out the delegated rights and including a copy of the relevant instrument of appointment; and
- (b) **(revocation or change)**: any revocation or change of any delegation contemplated by clause 2.3.

2.3 Revocation or amendment of delegation

Any such delegation may be revoked, changed, delegated, limited or made subject to such conditions as the State determines from time to time.

2.4 No limitation of obligations

The appointment of a delegate to perform some or all of the rights of the State under this Licence does not limit the rights or obligations of the State under this Licence.

3 Negation of representations and warranties

The State makes no representations (express or implied) and gives no warranties (express or implied):



- (a) **(suitability of purposes)**: that the Licensed Construction Areas or any other land is now or will remain suitable or adequate for all or any of the purposes contemplated by this Licence or in the Commercial Development Agreement; and
- (b) **(Commercial Development Agreement representations)**: as to the matters specified in clause 3.3 (*Developer's Acknowledgement, Waiver and Indemnity*) of the Commercial Development Agreement,

and all warranties (if any) and representations (if any) implied by Law, are to the extent permitted by Law, expressly negated.

4 Grant of Licence

4.1 Licensed Construction Areas

- (a) **(Licensed Construction Areas at the Licence Commencement Date)**: At the Licence Commencement Date, the Licensed Construction Areas will, for the purposes of this Licence, be comprised of the land identified in the plan set out in Attachment 1 (**Licensed Construction Area Plan**).
- (b) **(Amendment of the Licensed Construction Areas)**: If, at any time, the parties to this Licence wish to vary, for the purposes of this Licence, the land which comprises the Licensed Construction Areas, then:

- (1) the State must prepare and provide the Developer with an amended version of the Licensed Construction Area Plan (**Amended Licensed Construction Area Plan**), which identifies any amendments to Licensed Construction Areas; and
- (2) both parties must sign the Amended Licensed Construction Area Plan as an acknowledgement of their agreement to the variation of the Licensed Construction Areas,

and from the date on which the Amended Licensed Construction Area Plan has been signed by both parties:

- (3) the Amended Licensed Construction Area Plan will be deemed to have replaced the Licensed Construction Area Plan; and
- (4) the Licensed Construction Areas will, for the purposes of this Licence, be deemed to be the areas shown on the Amended Licensed Construction Area Plan.

4.2 Licence over the Licensed Construction Areas

- (a) **(Grant of licence)**: The State grants to the Developer and its Associates for the Term a non-exclusive licence to use the Licensed Construction Areas for the Permitted Use on the terms of this Licence and the Commercial Development Agreement.
- (b) **(Period)**: The Developer must only remain on the Licensed Construction Areas for the minimum period as is reasonably necessary for the Permitted Use.



- (c) **(Sub-licence):** The Developer may sub-licence all or part of the Licensed Construction Areas with the consent of the State, such consent not to be unreasonably withheld or delayed.

4.3 Nature of interest

- (a) **(Nature of interest):** The Developer acknowledges and agrees that:
- (1) the rights conferred on the Developer by this Licence rest in contract only and do not confer a proprietary interest on the Developer; and
 - (2) its rights and obligations arising out of or in relation to the Licensed Construction Areas are as set out in the Commercial Development Agreement and this Licence.
- (b) **(Ownership and access)** Without limiting the generality of clause 4.3(a), the Developer acknowledges and agrees that:
- (1) ownership and control of the Licensed Construction Areas remains vested in the relevant owner of the land at all times;
 - (2) this Licence does not grant the Developer ownership, control or legal entitlement to exclusive possession of the Licensed Construction Areas nor does it extend to the Developer an entitlement to rents or profits in respect of the Licensed Construction Areas;
 - (3) the Developer and any of its Associates can access the Licensed Construction Areas only for the Permitted Use; and
 - (4) the Developer may not construct any permanent works on the Temporary Works Areas.

4.4 Responsibility of the Developer

The Developer acknowledges and agrees that it has the same responsibilities to third parties in connection with persons, property and all other aspects of the Licensed Construction Areas which it would have if it held the freehold title to the Licensed Construction Areas.

4.5 Liability

The parties acknowledge and agree that the Developer is required to indemnify the State under clause 39 of the Commercial Development Agreement in connection with its use and occupation of the Licensed Construction Areas.

5 Payments

5.1 Licence Fee

The Developer must pay the Licence Fee to the State, if demanded by the State.



5.2 Utilities

The parties acknowledge and agree that the rights and obligations of the Developer in relation to Utilities are set out in the Commercial Development Agreement, including clause 30.3 (*Utility Services*) of the Commercial Development Agreement.

5.3 Payment by the State

If the Developer defaults in the payment of any of the costs or charges referred to in clause 5.2, the State may (without limiting any other rights and remedies of the State) pay the costs or charges, and any amount paid by the State will be a debt due and payable from the Developer to the State.

6 Term of Licence

This Licence takes effect on the Licence Commencement Date and continues until the earlier of:

- (a) the termination, expiry or otherwise ending of the Commercial Development Agreement; and
- (b) the Date of Final Completion.

7 Approval to demolish structures, etc

Except where specified or required under the Commercial Development Agreement, the Developer must submit to the State for approval (with such approval not to be unreasonably withheld or delayed by the State), prior to submitting to the responsible authority under any relevant planning scheme (if required), any proposal to demolish any structure or building in, on, under or over the Licensed Construction Areas.

8 Hoardings

The Developer must procure that Hoardings are constructed and maintained enclosing the Licensed Construction Areas to the State's reasonable satisfaction and ensure that the Hoardings are maintained until the earlier of completion of the Oversight Development Works and the Term.

9 Harm minimisation

The Developer must:

- (a) **(use of Licenced Construction Area)**: in using or occupying the Licenced Construction Area; and



- (b) **(performing D&C Activities and the Oversight Development Works)**: except to the extent necessary to undertake the D&C Activities and the Oversight Development Works, and otherwise to comply with its obligations under the Commercial Development Agreement,

cause as little harm and inconvenience and do as little damage as reasonably possible to the Licenced Construction Area (and any adjacent area) and any improvement or foliage on the Licenced Construction Area or any adjacent area (including any Relevant Utility Infrastructure).

10 Removal of materials and make good

Without limiting its obligations under the Commercial Development Agreement:

- (a) **(during Term)**: during the Term, as soon as practicable after completion of any Oversight Development Activities on any part of the Licensed Construction Areas; and
- (b) **(prior to Term ending)**: prior to the end of the Term, the Developer must:
- (c) **(removal of equipment)**: remove all plant, equipment, machinery, facilities and vehicles (except to the extent they form part of the Relevant Infrastructure);
- (d) **(clean and safe condition)**: ensure that the relevant part of the Licensed Construction Areas is left in a clean and safe condition;
- (e) **(removal of rubbish)**: ensure that all waste, rubbish, debris and redundant materials are removed promptly from the Licensed Construction Areas in accordance with Best D&C Practices;
- (f) **(public use and occupation)**: without limiting clause 10(d), ensure that any relevant part of the Licensed Construction Areas which will become open to the public is safe for public use and occupation; and
- (g) **(damage)**: except to the extent necessary to comply with its obligations under the Commercial Development Agreement (including where specified or required under the PS&TR), make good all damage caused by the Developer's use and occupation of the Licensed Construction Areas.

11 Maintenance and repair

11.1 Maintenance

The Developer, at its cost, during the Term and any extension or holding over must keep and maintain the Licensed Construction Areas in accordance with the Commercial Development Agreement.

11.2 State's right of access

Without limitation to any rights of access in the Commercial Development Agreement, but subject to clause 11.2(c) of the Commercial Development Agreement, the State and any



officer, agent, adviser, consultant, contractor or employee of the State may at all reasonable times enter the Licensed Construction Areas (with or without vehicles and equipment), including to:

- (a) **(investigations)**: make reasonable investigations as the State, any officer, agent, adviser, consultant, contractor or employee of the State or those authorised by the State deem necessary for the purpose of ascertaining whether or not there has been any breach of any of the terms, covenants or conditions expressed or implied in this Licence;
- (b) **(compliance)**: carry out any maintenance, repairs, alterations, additions or other work necessary to comply with the State's obligations under this Licence, at Law or in respect of the exercise by the State of any statutory functions;
- (c) **(Developer repairs)**: carry out any maintenance, repairs, alterations, additions or other work which the State elects to do but which the Developer is required or liable to do under this Licence by any Law or by any Requirement but fails to do so within the time specified or otherwise allowed for that work to be done; or
- (d) **(other powers)**: exercise any other powers and rights of the State under this Licence or the Commercial Development Agreement.

12 GST

- (a) **(Supply)**: If GST is or will be or is purported to be payable on the supply of any good, service or thing (a **Supply**) by either party under this Licence, to the extent the consideration otherwise provided for that Supply is not stated to include an amount in respect of GST on that Supply, the party receiving the Supply must pay to the party making the Supply on demand a sum equal to any GST payable by the supplier in respect of that Supply.
- (b) **(Reimbursement)**: To the extent that one party is required to reimburse the other party for costs incurred by the other party, those costs do not include any amount in respect of GST for which the other party is entitled to claim an input tax credit.
- (c) **(Valid tax invoice)**: A party's obligation to pay an amount under clause 12(a) is subject to a valid tax invoice being delivered to that party.
- (d) **(Licence Fee)**: The Licence Fee under this Licence is exclusive of GST.
- (e) **(Commercial Development Agreement to prevail)**: If clause 32 (*Goods and Services Tax (GST)*) of the Commercial Development Agreement would apply in connection with a Taxable Supply to which this clause 12 also applies then clause 32 (*Goods and Services Tax (GST)*) of the Commercial Development Agreement will apply in connection with that supply and the provisions of this clause 12 (but for this clause 12(e)) will not apply.
- (f) **(Definitions)**: In this clause 12, unless otherwise defined in this Licence, terms used have the meanings given to them in the GST Law.



13 Dispute Resolution and Arbitration

If any dispute or difference of opinion arises between the parties under this Licence, each party may refer any such matter for resolution in accordance with this clause 13 and the dispute or difference of opinion must be resolved in the same manner that disputes or differences of opinion under the Commercial Development Agreement are resolved. Accordingly, the provisions of clauses 42 (*Dispute Resolution*) and 43 (*Arbitration*) of the Commercial Development Agreement are incorporated into this Licence but as if:

- (c) the only persons party to the Commercial Development Agreement, and the only persons party to the relevant dispute or difference of opinion, are the parties to the relevant dispute; and
- (d) the only matters for expert determination under those provisions are the matters referred for expert determination under this Licence.

14 Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) under or in connection with this Licence:

- (a) **(in writing)**: must be in writing;
- (b) **(addressees)**: must be addressed as set out below (or as otherwise notified by that party to each other party from time to time);

State

Attention: **[insert]**

Address: **[insert]**

Email: **[insert]**

Developer

Attention: **[insert]**

Address: **[insert]**

Email: **[insert]**

- (c) **(signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(form of delivery)**: must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by both parties) to the email address of the addressee set out in clause 14(b); and
- (e) **(taken to be received)**: are taken to be received by the addressee at the address set out in clause 14(b):
 - (1) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;



- (2) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and
- (3) in the case of email, the first to occur of:
 - (A) receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - (B) the time that the communication enters an information system which is under the control of the addressee; or
 - (C) the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day.

15 Representations and Warranties

15.1 State's representations and warranties

The State represents and warrants for the benefit of the Developer that:

- (a) **(power to execute)**: it has the power to execute, deliver and carry out its obligations under this Licence and all necessary action has been taken to authorise that execution, delivery and performance;
- (b) **(binding obligation)**: this Licence constitutes a valid and legally binding obligation on it in accordance with its terms; and
- (c) **(no violation of any Law)**: the execution, delivery and performance of this Licence does not violate any Law to which the State is subject.

15.2 Developer's representations and warranties

The Developer represents and warrants for the benefit of the State that:

- (a) **(power to execute)**: it has the power to execute, deliver and carry out its obligations under this Licence and all necessary action has been taken to authorise that execution, delivery and performance;
- (b) **(no violation of any Law)**: the execution, delivery and performance of this Licence does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;
- (c) **(binding obligation)**: this Licence constitutes a valid and legally binding obligation on it in accordance with its terms; and
- (d) **(duly registered)**: it is duly registered, properly constituted and remains in existence.



16 Miscellaneous

16.1 Governing Law and jurisdiction

- (a) **(Governing Law):** This Licence is governed by, and must be construed according to, the Laws of Victoria, Australia.
- (b) **(Jurisdiction):** Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Licence.

16.2 Entire agreement

To the extent permitted by Law, in relation to its subject matter, this Licence and the Commercial Development Agreement:

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

16.3 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to that party) required by Law or reasonably requested by another party to give effect to this Licence.

16.4 Surviving provisions

- (a) **(Survival):** All provisions of this Licence which, expressly or by implication from their nature, are intended to survive the rescission, termination or expiration of this Licence will survive the rescission, termination or expiration of this Licence.
- (b) **(Interpretation):** No provision of this Licence which is expressed to survive the termination of this Licence will prevent any other provision of this Licence, as a matter of interpretation, also surviving the termination of this Licence.

16.5 Waiver

- (a) **(Writing):** A waiver given by a party in accordance with this Licence is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver):** A failure to, a delay in or the partial exercise or enforcement of a right, power or remedy provided by Law or in accordance with this Licence by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or in accordance with this Licence.
- (c) **(No waiver of another breach):** No waiver of a breach of a term of this Licence operates as a waiver of another breach of that term or of a breach of any other term of this Licence.



16.6 Consents, approvals and directions

- (a) **(State):** A consent or approval required in accordance with this Licence from the State may be given or withheld, or may be given subject to any conditions, as the State (in its absolute discretion) thinks fit, unless this Licence expressly provides otherwise.
- (b) **(Developer):** A consent or approval required under this Licence from the Developer may not be unreasonably withheld, unless this Licence expressly provides otherwise.

16.7 Amendments

Except as otherwise expressly provided in this Licence, this Licence may only be varied by a deed executed by or on behalf of each party.

16.8 Severance

If, at any time, a provision of this Licence is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (e) any other provision of this Licence; or
- (f) that provision under the Law of any other jurisdiction.

16.9 Counterparts

This Licence may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same agreement.

16.10 Moratorium

To the extent permitted by Law, the application to this Licence or to any party of any Law or any requirement or any moratorium having the effect of extending or reducing the Term, reducing or postponing the payment of the Licence Fee or any part of it or otherwise affecting the operation of the terms of this Licence or its application to any party is excluded and negated.

16.11 Proportionate liability

- (g) **(Exclusion of Wrongs Act):** The operation of Part IVAA of the *Wrongs Act 1958* (Vic) is excluded in relation to all and any rights, obligations or liabilities of either party under this Licence whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (h) **(Rights, obligations and liabilities):** Without limiting clause 16.11(g), the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Licence and not otherwise, whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.



16.12 No merger

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this Licence. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

16.13 No representation or reliance

- (i) **(No representation):** Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Licence, except for representations or inducements expressly set out in this Licence.
- (j) **(No reliance):** Each party acknowledges and confirms that it does not enter into this Licence in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Licence.



HERBERT
SMITH
FREEHILLS

Signing page

Executed as an agreement



HERBERT
SMITH
FREEHILLS

Attachment 1

Licensed Construction Area Plan



HERBERT
SMITH
FREEHILLS

Attachment 3

Contract of Sale

Contract of Sale CBD North

Secretary of Department of Economic Development,
Jobs, Transport and Resources

[Purchaser]

Day of Sale: _____



HERBERT
SMITH
FREEHILLS

CONTRACT OF SALE OF REAL ESTATE - PARTICULARS OF SALE

Part 1 of the standard form of contract prescribed by the Estate Agents (Contracts) Regulations 2008

Property Address: CBD North, Lot [#] on the Strata Plan, Swanston Street, Melbourne

The vendor agrees to sell and the purchaser agrees to buy the property, being the land and the goods, for the price and on the terms set out in this contract.

The terms of this contract are contained in the -

- Particulars of sale; and
- Special conditions, if any; and
- General conditions

in that order of priority.

IMPORTANT NOTICE TO PURCHASERS

Cooling-off period

Section 31

Sale of Land Act 1962

You may end this contract within 3 clear business days of the day that you sign the contract if none of the exceptions listed below applies to you.

You must either give the vendor or the vendor's agent **written** notice that you are ending the contract or leave the notice at the address of the vendor or the vendor's agent to end this contract within this time in accordance with this cooling-off provision.

You are entitled to a refund of all the money you paid EXCEPT for \$100 or 0.2% of the purchase price (whichever is more) if you end the contract in this way.

EXCEPTIONS

The 3-day cooling-off period does not apply if -

- you bought the property at or within 3 clear business days **before or after** a publicly advertised auction; or
- the property is used primarily for industrial or commercial purposes; or
- the property is more than 20 hectares in size and is used primarily for farming; or
- you and the vendor have previously signed a contract for the sale of the same land in substantially the same terms; or
- you are an estate agent or a corporate body.

SIGNING OF THIS CONTRACT

**WARNING: THIS IS A LEGALLY BINDING AGREEMENT.
YOU SHOULD READ THIS CONTRACT BEFORE SIGNING IT.**

Purchasers should ensure that prior to signing this contract, they have received –

- a copy of the section 32 statement required to be given by a vendor under section 32 of the **Sale of Land Act 1962** in accordance with Division 2 of Part II of that Act; and
- a copy of the full terms of this contract.

The authority of a person signing -

- under power of attorney; or
- as director of a corporation; or
- as an agent authorised in writing by one of the parties

must be noted beneath the signature.

Any person whose signature is secured by an estate agent acknowledges being given by the agent at the time of signing a copy of the terms of this contract.

SIGNED BY THE PURCHASER

See contract signing page _____ on ____ / ____ / 20____

print name of person signing

state nature of authority if applicable (e.g. "director", "attorney under power of attorney")

This offer will lapse unless accepted within 20 clear business days (3 clear business days if none specified).

SIGNED BY THE VENDOR

See contract signing page _____ on ____ / ____ / 20____

print name of person signing

state nature of authority if applicable (e.g. "director", "attorney under power of attorney")

The **DAY OF SALE** is the date by which both parties have signed this contract

NOTICE TO PURCHASERS OF PROPERTY "OFF-THE-PLAN"

Off-the-plan sales

Section 9AA(1A)
Sale of Land Act 1962

You may negotiate with the vendor about the amount of the deposit moneys payable under the contract of sale, up to 10 per cent of the purchase price.

A substantial period of time may elapse between the day on which you sign the contract of sale and the day on which you become the registered proprietor of the lot.

The value of the lot may change between the day on which you sign the contract of sale of that lot and the day on which you become the registered proprietor.

Particulars of sale

Vendor's estate agent

Not applicable

Vendor

Secretary of Department of Economic Development, Jobs, Transport and Resources

c/- [not disclosed]

Vendor's legal practitioner or conveyancer

[not disclosed]

[not disclosed]

Telephone: [not disclosed]

Fax: [not disclosed]

DX: [not disclosed]

email: [not disclosed]

Purchaser

Purchaser's legal practitioner or conveyancer

Telephone:

Fax:

DX:

email:

Land (general conditions 3 and 9)

The land is Lot [#] on the Strata Plan being part of the land comprised in Certificate of Title Volume [#] Folio [#]

Property address

The address of the land is: CBD North, Lot [#] on the Strata Plan, 381 Swanston Street, Melbourne

Goods sold with the land (general condition 2.3(f))

Nil

Payment (general condition 11)

Price \$

Deposit \$[not disclosed]

Balance \$ _____ payable at settlement

GST (general condition 13)

The price includes GST (if any) unless the words 'plus GST' appear in this box

Plus GST

If this is a sale of a 'farming business' or 'going concern' then add the words 'farming business' or 'going concern' in this box

[]

If the margin scheme will be used to calculate GST then add the words 'margin scheme' in this box

[]

Settlement (general condition 10)

The Price (less the amount of the Deposit paid) must be paid 10 Business Days after the later of:

- (i) the date that the Vendor receives notice from the Purchaser that the Strata Plan is registered; and
- (ii) the date of CBD North OSD Acceptance; and
- (iii) the date that the Station Land Management Agreement is executed by the Purchaser and delivered to the Vendor for signing.

Lease (general condition 1.1)

At settlement the purchaser is entitled to vacant possession of the property unless the words 'subject to lease' appear in this box

[]

in which case refer to general condition 1.1. If 'subject to lease' then particulars of the lease are:

Terms contract (general condition 23)

If this contract is intended to be a terms contract within the meaning of the ~~Sale of Land Act 1962~~ then add the words 'terms contract' in this box

[]

and refer to general condition 23 and add any further provisions by way of special conditions.

Loan (general condition 14)

The following details apply if this contract is subject to a loan being approved:

Lender: _____

Loan amount \$ _____

Approval date _____ / _____ / 20_____

Special conditions

This contract does not include any special conditions unless the words 'special conditions' appear in this box

[**Special Conditions**]

If the contract is subject to 'special conditions' then particulars of the special conditions are:

See attached

Encumbrances:

The property is not sold subject to an existing mortgage.

The property is sold subject to the following encumbrances:

All registered and unregistered encumbrances, easements, covenants and restrictions including:

- a) any disclosed in the Vendor's Statement;
- b) any created by Section 98 of the *Transfer of Land Act* or implied under the **Subdivision Act**;
- c) any encumbrances or easements referred to or described in the Strata Plan or any stage of it;
- d) any contemplated by any planning permit relating to the Land or required by any Authority including any conditions which may be imposed in connection with any Approval including any agreement entered into or to be entered into under section 173 of the *Planning and Environment Act 1987*;
- e) any vested in any Authority; and
- f) any required or contemplated by this contract.



HERBERT
SMITH
FREEHILLS



HERBERT
SMITH
FREEHILLS

Contract signing page

Executed as a deed

State

Signed by
**The Secretary of the Department
of Economic Development,
Jobs, Transport and Resources**

sign here ► _____
Minister

Witness

print name _____

CONTRACT OF SALE OF REAL ESTATE - GENERAL CONDITIONS

Part 2 of the standard form of contract prescribed by the Estate Agents (Contracts) Regulations 2008

TITLE

1. Encumbrances

- 1.1 The purchaser buys the property subject to:
- (a) any encumbrance shown in the section 32 statement other than mortgages or caveats; and
 - (b) any reservations in the crown grant; and
 - (c) any lease referred to in the particulars of sale.
- 1.2 The purchaser indemnifies the vendor against all obligations under any lease that are to be performed by the landlord after settlement.
- 1.3 In this general condition 'section 32 statement' means a statement required to be given by a vendor under section 32 of the **Sale of Land Act 1962** in accordance with Division 2 of Part II of that Act.

2. Vendor warranties

- 2.1 The vendor warrants that these general conditions 1 to 28 are identical to the general conditions 1 to 28 in the standard form of contract of sale of real estate prescribed by the Estate Agents (Contracts) Regulations 2008 for the purposes of section 53A of the **Estate Agents Act 1980**.
- 2.2 The warranties in general conditions 2.3 and 2.4 replace the purchaser's right to make requisitions and inquiries.
- 2.3 The vendor warrants that the vendor:
- (a) has, or by the due date for settlement will have, the right to sell the land; and
 - (b) is under no legal disability; and
 - (c) is in possession of the land, either personally or through a tenant; and
 - (d) has not previously sold or granted any option to purchase, agreed to a lease or granted a pre-emptive right which is current over the land and which gives another party rights which have priority over the interest of the purchaser; and
 - (e) will at settlement be the holder of an unencumbered estate in fee simple in the land; and
 - (f) will at settlement be the unencumbered owner of any improvements, fixtures, fittings and goods sold with the land.
- 2.4 The vendor further warrants that the vendor has no knowledge of any of the following:
- (a) public rights of way over the land;
 - (b) easements over the land;
 - (c) lease or other possessory agreement affecting the land;
 - (d) notice or order affecting the land which will not be dealt with at settlement, other than the usual rate notices and any land tax notices;
 - (e) legal proceedings which would render the sale of the land void or voidable or capable of being set aside.
- 2.5 The warranties in general conditions 2.3 and 2.4 are subject to any contrary provisions in this contract and disclosures in the section 32 statement required to be given by the vendor under section 32 of the **Sale of Land Act 1962** in accordance with Division 2 of Part II of that Act.
- 2.6 If sections 137B and 137C of the **Building Act 1993** apply to this contract, the vendor warrants that:
- (a) all domestic building work carried out in relation to the construction by or on behalf of the vendor of the home was carried out in a proper and workmanlike manner; and
 - (b) all materials used in that domestic building work were good and suitable for the purpose for which they were used and that, unless otherwise stated in the contract, those materials were new; and
 - (c) domestic building work was carried out in accordance with all laws and legal requirements, including, without limiting the generality of this warranty, the **Building Act 1993** and regulations made under the **Building Act 1993**.
- 2.7 Words and phrases used in general condition 2.6 which are defined in the **Building Act 1993** have the same meaning in general condition 2.6.

3. Identity of the land

- 3.1 An omission or mistake in the description of the property or any deficiency in the area, description or measurements of the land does not invalidate the sale.
- 3.2 The purchaser may not:
- (a) make any objection or claim for compensation for any alleged misdescription of the property or any deficiency in its area or measurements; or
 - (b) require the vendor to amend title or pay any cost of amending title.

4. Services

- 4.1 The vendor does not represent that the services are adequate for the purchaser's proposed use of the property and the vendor advises the purchaser to make appropriate inquiries. The condition of the services may change between the day of sale and settlement and the vendor does not promise that the services will be in the same condition at settlement as they were on the day of sale.
- 4.2 The purchaser is responsible for the connection of all services to the property after settlement and the payment of any associated cost.

5. Consents

The vendor must obtain any necessary consent or licence required for the sale. The contract will be at an end and all money paid must be refunded if any necessary consent or licence is not obtained by settlement.

6. Transfer

The transfer of land document must be prepared by the purchaser and delivered to the vendor at least 10 days before settlement. The delivery of the transfer of land document is not acceptance of title. The vendor must prepare any document required for assessment of duty on this transaction relating to matters that are or should be within the knowledge of the vendor and, if requested by the purchaser,

must provide a copy of that document at least 3 days before settlement.

7. Release of security interest

- 7.1 This general condition applies if any part of the property is subject to a security interest to which the **Personal Property Securities Act 2009 (Cth)** applies.
- 7.2 For the purposes of enabling the purchaser to search the Personal Property Securities Register for any security interests affecting any personal property for which the purchaser may be entitled to a release, statement, approval or correction in accordance with general condition 7.4, the purchaser may request the vendor to provide the vendor's date of birth to the purchaser. The vendor must comply with a request made by the purchaser under this condition if the purchaser makes the request at least 21 days before the due date for settlement.
- 7.3 If the purchaser is given the details of the vendor's date of birth under condition 7.2, the purchaser must—
- (a) only use the vendor's date of birth for the purposes specified in condition 7.2; and
 - (b) keep the date of birth of the vendor secure and confidential.
- 7.4 The vendor must ensure that at or before settlement, the purchaser receives—
- (a) a release from the secured party releasing the property from the security interest; or
 - (b) a statement in writing in accordance with section 275(1)(b) of the **Personal Property Securities Act 2009 (Cth)** setting out that the amount or obligation that is secured is nil at settlement; or
 - (c) a written approval or correction in accordance with section 275(1)(c) of the **Personal Property Securities Act 2009 (Cth)** indicating that, on settlement, the personal property included in the contract is not or will not be property in which the security interest is granted.
- 7.5 Subject to general condition 7.6, the vendor is not obliged to ensure that the purchaser receives a release, statement, approval or correction in respect of personal property—
- (a) that—
 - (i) the purchaser intends to use predominantly for personal, domestic or household purposes; and
 - (ii) has a market value of not more than \$5000 or, if a greater amount has been prescribed for the purposes of section 47(1) of the **Personal Property Securities Act 2009 (Cth)**, not more than that prescribed amount; or
 - (b) that is sold in the ordinary course of the vendor's business of selling personal property of that kind.
- 7.6 The vendor is obliged to ensure that the purchaser receives a release, statement, approval or correction in respect of personal property described in general condition 7.5 if—
- (a) the personal property is of a kind that may or must be described by serial number in the Personal Property Securities Register; or
 - (b) the purchaser has actual or constructive knowledge that the sale constitutes a breach of the security agreement that provides for the security interest.
- 7.7 A release for the purposes of general condition 7.4(a) must be in writing.
- 7.8 A release for the purposes of general condition 7.4(a) must be effective in releasing the goods from the security interest and be in a form which allows the purchaser to take title to the goods free of that security interest.
- 7.9 If the purchaser receives a release under general condition 7.4(a) the purchaser must provide the vendor with a copy of the release at or as soon as practicable after settlement.
- 7.10 In addition to ensuring that a release is received under general condition 7.4(a), the vendor must ensure that at or before settlement the purchaser receives a written undertaking from a secured party to register a financing change statement to reflect that release if the property being released includes goods of a kind that are described by serial number in the Personal Property Securities Register.
- 7.11 The purchaser must advise the vendor of any security interest that is registered on or before the day of sale on the Personal Properties Securities Register, which the purchaser reasonably requires to be released, at least 21 days before the due date for settlement.
- 7.12 The vendor may delay settlement until 21 days after the purchaser advises the vendor of the security interests that the purchaser reasonably requires to be released if the purchaser does not provide an advice under general condition 7.11.
- 7.13 If settlement is delayed under general condition 7.12 the purchaser must pay the vendor—
- (a) interest from the due date for settlement until the date on which settlement occurs or 21 days after the vendor receives the advice, whichever is the earlier; and
 - (b) any reasonable costs incurred by the vendor as a result of the delay—
as though the purchaser was in default.
- 7.14 The vendor is not required to ensure that the purchaser receives a release in respect of the land. This general condition 7.14 applies despite general condition 7.1.
- 7.15 Words and phrases which are defined in the Personal Property Securities Act 2009 (Cth) have the same meaning in general condition 7 unless the context requires otherwise.

8. Builder warranty insurance

The vendor warrants that the vendor will provide at settlement details of any current builder warranty insurance in the vendor's possession relating to the property if requested in writing to do so at least 21 days before settlement.

9. General law land

- 9.1 This general condition only applies if any part of the land is not under the operation of the Transfer of Land Act 1958.
- 9.2 The vendor is taken to be the holder of an unencumbered estate in fee simple in the land if there is an unbroken chain of title starting at least 30 years before the day of sale proving on the face of the documents the ownership of the entire legal and equitable estate without the aid of other evidence.
- 9.3 The purchaser is entitled to inspect the vendor's chain of title on request at such place in Victoria as the vendor nominates.

- 9.4 The purchaser is taken to have accepted the vendor's title if:
- (a) 21 days have elapsed since the day of sale; and
 - (b) the purchaser has not reasonably objected to the title or reasonably required the vendor to remedy a defect in the title.
- 9.5 The contract will be at an end if:
- (a) the vendor gives the purchaser a notice that the vendor is unable or unwilling to satisfy the purchaser's objection or requirement and that the contract will end if the objection or requirement is not withdrawn within 14 days of the giving of the notice; and
 - (b) the objection or requirement is not withdrawn in that time.
- 9.6 If the contract ends in accordance with general condition 9.5, the deposit must be returned to the purchaser and neither party has a claim against the other in damages.
- 9.7 General condition 10.1 should be read, in respect of that part of the land which is not under the operation of the Transfer of Land Act 1958, as if the reference to 'registered proprietor' is a reference to 'owner'.

MONEY

10. Settlement

- 10.1 At settlement:
- (a) the purchaser must pay the balance; and
 - (b) the vendor must:
 - (i) do all things necessary to enable the purchaser to become the registered proprietor of the land; and
 - (ii) give either vacant possession or receipt of rents and profits in accordance with the particulars of sale.
- 10.2 The vendor's obligations under this general condition continue after settlement.
- 10.3 Settlement must be conducted between the hours of 10.00 a.m. and 4.00 p.m. unless the parties agree otherwise.

11. Payment

- 11.1 The purchaser must pay the deposit:
- (a) to the vendor's licensed estate agent; or
 - (b) if there is no estate agent, to the vendor's legal practitioner or conveyancer; or
 - (c) if the vendor directs, into a special purpose account in an authorised deposit-taking institution in Victoria specified by the vendor in the joint names of the purchaser and the vendor.
- 11.2 If the land sold is a lot on an unregistered plan of subdivision, the deposit:
- (a) must not exceed 10% of the price; and
 - (b) must be paid to the vendor's estate agent, legal practitioner or conveyancer and held by the estate agent, legal practitioner or conveyancer on trust for the purchaser until the registration of the plan of subdivision.
- 11.3 The purchaser must pay all money other than the deposit:
- (a) to the vendor, or the vendor's legal practitioner or conveyancer; or
 - (b) in accordance with a written direction of the vendor or the vendor's legal practitioner or conveyancer.
- 11.4 At settlement, payments may be made or tendered:
- (a) in cash; or
 - (b) by cheque drawn on an authorised deposit-taking institution; or
 - (c) if the parties agree, by electronically transferring the payment in the form of cleared funds.
- 11.5 For the purpose of this general condition 'authorised deposit-taking institution' means a body corporate in relation to which an authority under section 9(3) of the Banking Act 1959 (Cth) is in force.
- 11.6 At settlement, the purchaser must pay the fees on up to three cheques drawn on an authorised deposit-taking institution. If the vendor requests that any additional cheques be drawn on an authorised deposit-taking institution, the vendor must reimburse the purchaser for the fees incurred.

12. Stakeholding

- 12.1 The deposit must be released to the vendor if:
- (a) the vendor provides particulars, to the satisfaction of the purchaser, that either:
 - (i) there are no debts secured against the property; or
 - (ii) if there are any debts, the total amount of those debts does not exceed 80% of the sale price; and
 - (b) at least 28 days have elapsed since the particulars were given to the purchaser under paragraph (a); and
 - (c) all conditions of section 27 of the **Sale of Land Act 1962** have been satisfied.
- 12.2 The stakeholder must pay the deposit and any interest to the party entitled when the deposit is released, the contract is settled, or the contract is ended.
- 12.3 The stakeholder may pay the deposit and any interest into court if it is reasonable to do so.

13. GST

- 13.1 The purchaser does not have to pay the vendor any GST payable by the vendor in respect of a taxable supply made under this contract in addition to the price unless the particulars of sale specify that the price is 'plus GST'. However the purchaser must pay to the vendor any GST payable by the vendor:
- (a) solely as a result of any action taken or intended to be taken by the purchaser after the day of sale, including a change of use; or
 - (b) if the particulars of sale specify that the supply made under this contract is of land on which a farming business is carried on and the supply (or a part of it) does not satisfy the requirements of section 38-480 of the GST Act; or
 - (c) if the particulars of sale specify that the supply made under this contract is of a going concern and the supply (or a part of it) does not satisfy the requirements of section 38-325 of the GST Act.
- 13.2 The purchaser must pay to the vendor any GST payable by the vendor in respect of a taxable supply made under this contract in addition to the price if the particulars of sale specify that the price is 'plus GST'.

- 13.3 If the purchaser is liable to pay GST, the purchaser is not required to make payment until provided with a tax invoice, unless the margin scheme applies.
- 13.4 If the particulars of sale specify that the supply made under this contract is of land on which a 'farming business' is carried on:
- (a) the vendor warrants that the property is land on which a farming business has been carried on for the period of 5 years preceding the date of supply; and
 - (b) the purchaser warrants that the purchaser intends that a farming business will be carried on after settlement on the property.
- 13.5 If the particulars of sale specify that the supply made under this contract is a 'going concern':
- (a) the parties agree that this contract is for the supply of a going concern; and
 - (b) the purchaser warrants that the purchaser is, or prior to settlement will be, registered for GST; and
 - (c) the vendor warrants that the vendor will carry on the going concern until the date of supply.
- 13.6 If the particulars of sale specify that the supply made under this contract is a 'margin scheme' supply, the parties agree that the margin scheme applies to this contract.
- 13.7 This general condition will not merge on either settlement or registration.
- 13.8 In this general condition:
- (a) 'GST Act' means A New Tax System (Goods and Services Tax) Act 1999 (Cth); and
 - (b) 'GST' includes penalties and interest.

14. Loan

- 14.1 If the particulars of sale specify that this contract is subject to a loan being approved, this contract is subject to the lender approving the loan on the security of the property by the approval date or any later date allowed by the vendor.
- 14.2 The purchaser may end the contract if the loan is not approved by the approval date, but only if the purchaser:
- (a) immediately applied for the loan; and
 - (b) did everything reasonably required to obtain approval of the loan; and
 - (c) serves written notice ending the contract on the vendor within 2 clear business days after the approval date or any later date allowed by the vendor; and
 - (d) is not in default under any other condition of this contract when the notice is given.
- 14.3 All money must be immediately refunded to the purchaser if the contract is ended.

15. Adjustments

- 15.1 All periodic outgoings payable by the vendor, and any rent and other income received in respect of the property must be apportioned between the parties on the settlement date and any adjustments paid and received as appropriate.
- 15.2 The periodic outgoings and rent and other income must be apportioned on the following basis:
- (a) the vendor is liable for the periodic outgoings and entitled to the rent and other income up to and including the day of settlement; and
 - (b) the land is treated as the only land of which the vendor is owner (as defined in the Land Tax Act 2005); and
 - (c) the vendor is taken to own the land as a resident Australian beneficial owner; and
 - (d) any personal statutory benefit available to each party is disregarded in calculating apportionment.

TRANSACTIONAL

16. Time

- 16.1 Time is of the essence of this contract.
- 16.2 Time is extended until the next business day if the time for performing any action falls on a Saturday, Sunday or bank holiday.

17. Service

- 17.1 Any document sent by—
- (a) post is taken to have been served on the next business day after posting, unless proved otherwise;
 - (b) email is taken to have been served at the time of receipt within the meaning of section 13A of the **Electronic Transactions (Victoria) Act 2000**.
- 17.2 Any demand, notice or document required to be served by or on any party may be served by or on the legal practitioner or conveyancer for that party. It is sufficiently served if served on the party or on the legal practitioner or conveyancer—
- (a) personally; or
 - (b) by pre-paid post; or
 - (c) in any manner authorised by law or the Supreme Court for service of documents, including any manner authorised for service on or by a legal practitioner; or
 - (d) by email.
- 17.3 This general condition applies to the service of any demand, notice or document by or on any party, whether the expression 'give' or 'serve' or any other expression is used.

18. Nominee

The purchaser may nominate a substitute or additional transferee, but the named purchaser remains personally liable for the due performance of all the purchaser's obligations under this contract.

19. Liability of signatory

Any signatory for a proprietary limited company purchaser is personally liable for the due performance of the purchaser's obligations as if the signatory were the purchaser in the case of a default by a proprietary limited company purchaser.

20. Guarantee

The vendor may require one or more directors of the purchaser to guarantee the purchaser's performance of this contract if the purchaser is a proprietary limited company.

21. Notices

The purchaser is responsible for any notice, order, demand or levy imposing liability on the property that is issued or made on or after the day of sale that does not relate to periodic outgoings. The purchaser may enter the property to comply with that responsibility where action is required before settlement.

22. Inspection

The purchaser and/or another person authorised by the purchaser may inspect the property at any reasonable time during the 7 days preceding and including the settlement day.

23. Terms contract

23.1 If this is a 'terms contract' as defined in the **Sale of Land Act 1962**:

- (a) any mortgage affecting the land sold must be discharged as to that land before the purchaser becomes entitled to possession or to the receipt of rents and profits unless the vendor satisfies section 29M of the Sale of Land Act 1962; and
- (b) the deposit and all other money payable under the contract (other than any money payable in excess of the amount required to so discharge the mortgage) must be paid to a legal practitioner or conveyancer or a licensed estate agent to be applied in or towards discharging the mortgage.

23.2 While any money remains owing each of the following applies:

- (a) the purchaser must maintain full damage and destruction insurance of the property and public risk insurance noting all parties having an insurable interest with an insurer approved in writing by the vendor;
- (b) the purchaser must deliver copies of the signed insurance application forms, the policies and the insurance receipts to the vendor not less than 10 days before taking possession of the property or becoming entitled to receipt of the rents and profits;
- (c) the purchaser must deliver copies of any amendments to the policies and the insurance receipts on each amendment or renewal as evidence of the status of the policies from time to time;
- (d) the vendor may pay any renewal premiums or take out the insurance if the purchaser fails to meet these obligations;
- (e) insurance costs paid by the vendor under paragraph (d) must be refunded by the purchaser on demand without affecting the vendor's other rights under this contract;
- (f) the purchaser must maintain and operate the property in good repair (fair wear and tear excepted) and keep the property safe, lawful, structurally sound, weatherproof and free from contaminations and dangerous substances;
- (g) the property must not be altered in any way without the written consent of the vendor which must not be unreasonably refused or delayed;
- (h) the purchaser must observe all obligations that affect owners or occupiers of land;
- (i) the vendor and/or other person authorised by the vendor may enter the property at any reasonable time to inspect it on giving 7 days written notice, but not more than twice in a year.

24. Loss or damage before settlement

24.1 The vendor carries the risk of loss or damage to the property until settlement.

24.2 The vendor must deliver the property to the purchaser at settlement in the same condition it was in on the day of sale, except for fair wear and tear.

24.3 The purchaser must not delay settlement because one or more of the goods is not in the condition required by general condition 24.2, but may claim compensation from the vendor after settlement.

24.4 The purchaser may nominate an amount not exceeding \$5,000 to be held by a stakeholder to be appointed by the parties if the property is not in the condition required by general condition 24.2 at settlement.

24.5 The nominated amount may be deducted from the amount due to the vendor at settlement and paid to the stakeholder, but only if the purchaser also pays an amount equal to the nominated amount to the stakeholder.

24.6 The stakeholder must pay the amounts referred to in general condition 24.5 in accordance with the determination of the dispute, including any order for payment of the costs of the resolution of the dispute.

25. Breach

A party who breaches this contract must pay to the other party on demand:

- (a) compensation for any reasonably foreseeable loss to the other party resulting from the breach; and
- (b) any interest due under this contract as a result of the breach.

DEFAULT

26. Interest

Interest at a rate of 2% per annum plus the rate for the time being fixed by section 2 of the **Penalty Interest Rates Act 1983** is payable on any money owing under the contract during the period of default, without affecting any other rights of the offended party.

27. Default notice

27.1 A party is not entitled to exercise any rights arising from the other party's default, other than the right to receive interest and the right to sue for money owing, until the other party is given and fails to comply with a written default notice.

27.2 The default notice must:

- (a) specify the particulars of the default; and
- (b) state that it is the offended party's intention to exercise the rights arising from the default unless, within 14 days of the notice being given-
 - (i) the default is remedied; and
 - (ii) the reasonable costs incurred as a result of the default and any interest payable are paid.

28. Default not remedied

28.1 All unpaid money under the contract becomes immediately payable to the vendor if the default has been made by the purchaser and is not remedied and the costs and interest are not paid.

28.2 The contract immediately ends if:

- (a) the default notice also states that unless the default is remedied and the reasonable costs and interest are paid, the contract will be ended in accordance with this general condition; and
- (b) the default is not remedied and the reasonable costs and interest are not paid by the end of the period of the default notice.

28.3 If the contract ends by a default notice given by the purchaser:

- (a) the purchaser must be repaid any money paid under the contract and be paid any interest and reasonable costs payable under the contract; and
- (b) all those amounts are a charge on the land until payment; and
- (c) the purchaser may also recover any loss otherwise recoverable.

28.4 If the contract ends by a default notice given by the vendor:

- (a) the deposit up to 10% of the price is forfeited to the vendor as the vendor's absolute property, whether the deposit has been paid or not; and
- (b) the vendor is entitled to possession of the property; and
- (c) in addition to any other remedy, the vendor may within one year of the contract ending either:
 - (i) retain the property and sue for damages for breach of contract; or
 - (ii) resell the property in any manner and recover any deficiency in the price on the resale and any resulting expenses by way of liquidated damages; and
- (d) the vendor may retain any part of the price paid until the vendor's damages have been determined and may apply that money towards those damages; and
- (e) any determination of the vendor's damages must take into account the amount forfeited to the vendor.

28.5 The ending of the contract does not affect the rights of the offended party as a consequence of the default.



Special conditions

1 Definitions and interpretation

1.1 Definitions

The meanings of the terms used in this contract are set out below.

| Term | Meaning |
|--|--|
| Act | the <i>Subdivision Act 1988</i> (Vic). |
| Advertising Restrictions | the restrictions set out in Attachment 5. |
| Buyback Notice | a written notice from the Vendor to the Purchaser of the Vendor's intention to purchase the Land and any improvements. |
| Business Day | a weekday on which trading banks in Victoria are open for business. |
| CDA (OSD North) | the agreement entitled "commercial development agreement" made between the Vendor and [#] in connection with the development of the Land dated on or about the date of this contract. |
| Corporations Act | the <i>Corporations Act 2001</i> (Cth). |
| Developer | has the meaning given by the CDA (OSD North). |
| DMA | the development management agreement between the Purchaser and the Developer entered into in connection with the parties' respective obligations in connection with the development contemplated by the CDA (OSD North). |
| FIRB | the Treasurer of the Commonwealth of Australia. |
| First Instalment Contract Price | [not disclosed] |



| Term | Meaning |
|---|---|
| General Conditions | the conditions contained in Part 2 of the standard form contract prescribed by the <i>Estate Agents (Contracts) Regulations 2008</i> (Vic). |
| General Registrable Agreement | an agreement of that name in the form attached as Attachment 2 |
| Government Agency | any government, semi-government, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity. |
| Latest Date for Registration | [not disclosed] or any later date the parties agree on in writing. |
| Lot | a lot on the Strata Plan. |
| Legal Practitioner | includes a conveyancer who is a licensee within the meaning of the <i>Conveyancers Act 2006</i> (Vic). |
| Particulars | the particulars of sale forming part of this contract. |
| Registrar | the Registrar of Titles. |
| RFP | the same meaning as in the CDA (OSD North). |
| Second Instalment Contract Price | [not disclosed] |
| Settlement Date | the date on which vacant possession of the Property is given, namely, on acceptance of title and payment of the Balance. |
| Settlement Due Date | the due date for payment of the Balance specified in the Particulars. |
| Station Land | lot [#] on the Strata Plan. |
| Station Land Management | a land management agreement between the Purchaser and the Vendor prepared in accordance with the CDA (OSD North). |



| Term | Meaning |
|--|--|
| Agreement | |
| Station Land Management Registrable Agreement | means an agreement under section 173 of the <i>Planning and Environment Act 1987</i> (Vic) in substantially similar form to the agreement in Attachment 3. |
| Station Shared Services | means specific services and structures which are shared across the Station Land and the Land including structures, plant, services, infrastructure, egress and circulation. |
| Strata Plan | proposed plan of subdivision PS[#] being the proposed 2 lot subdivision of all of the land into a lower lot containing the station, and an upper lot containing the OSD Development |
| Transfer | the instrument of transfer. |
| Vendor's Statement | the statement signed by the Vendor and given to the Purchaser under section 32 of the <i>Sale of Land Act 1962</i> (Vic). |

1.2 Incorporated definitions

- (a) A word or phrase (other than one defined in special condition 1.1) specified in the Particulars has the same meaning in this contract.
- (b) A word or phrase (other than one defined in special condition 1.1) specified in the CDA (OSD North) has the same meaning in this contract.

1.3 Interpretation

In this contract:

- (a) Headings and bold type are for convenience only and do not affect the interpretation of this contract.
- (b) The singular includes the plural and the plural includes the singular.
- (c) Words of any gender include all genders.
- (d) Other parts of speech and grammatical forms of a word or phrase defined in this contract have a corresponding meaning.
- (e) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual.
- (f) A reference to a special condition, party, schedule, attachment or exhibit is a reference to a special condition of, and a party, schedule, attachment or exhibit to, this contract.



- (g) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
- (h) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.
- (i) A reference to a party to a document includes that party's successors and permitted assignees.
- (j) A reference to the Purchaser's Legal Practitioners includes other legal practitioners for the Purchaser of whom the Vendor's Legal Practitioners are notified in writing.
- (k) A promise on the part of 2 or more persons binds them jointly and severally.
- (l) A reference to an agreement other than this contract includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing.
- (m) A reference to liquidation or insolvency includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding-up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death.
- (n) No provision of this contract will be construed adversely to a party because that party was responsible for the preparation of this contract or that provision.
- (o) A reference to a body, other than a party to this contract (including an institute, association or authority), whether statutory or not:
 - (1) which ceases to exist; or
 - (2) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions.
- (p) A reference to a time is a reference to the time in Victoria.

1.4 Interpretation of inclusive expressions

Specifying anything in this contract after the words 'include' or 'for example' or similar expressions does not limit what else is included.

1.5 Variation of General Conditions

The following General Conditions are amended as follows:

- (a) General Condition 2.4(c) (Vendor Warranties) – delete the words 'or other possessory agreement affecting the land';
- (b) General Condition 2.6 (Vendor warranties) is deleted;
- (c) General Condition 3 (Identity of the land) is deleted;
- (d) General Condition 5 (Consents) is deleted;
- (e) General Condition 6 (Transfer) is deleted;
- (f) General Condition 7 (Release of security interest) is deleted;
- (g) General Condition 8 (Builder warranty insurance) is deleted;



- (h) General Condition 11 (Payment) is deleted;
- (i) General Condition 13 (GST) is deleted;
- (j) General Condition 14 (Loan) is deleted;
- (k) General Condition 18 (Nominee) is deleted;
- (l) General Condition 19 (Liability of signatory) is deleted;
- (m) General Condition 20 (Guarantee) is deleted; and
- (n) General Condition 24 (Loss or damage before settlement) is deleted.

1.6 Inconsistency between General Conditions and special conditions

If there is any inconsistency between the General Conditions and these special conditions, the special conditions prevail.

1.7 CDA (OSD North) - Termination

- (a) If the CDA (OSD North) is terminated for any reason whatsoever prior to settlement under this contract, then either party may terminate this contract.
- (b) If the CDA (OSD North) is terminated for any reason whatsoever after settlement of this contract, then special condition 21 applies.
- (c) This special condition is an essential term.
- (d) For the purposes of special condition 1.7(a), the Vendor is not required to issue a Default Notice under General Condition 27 and General Condition 28.4 will apply as if the Vendor had issued a Default Notice under special condition 1.7(a).

2 Identity of Land

2.1 Identity

The Purchaser acknowledges that the land offered for sale and inspected by the Purchaser is identical to the Land.

2.2 No amendment of title

The Purchaser must not ask the Vendor to amend title or to pay for the cost of doing so.

2.3 No claim for compensation

The Purchaser must not make any objection or claim for compensation or set-off, or refuse or delay payment of the Price, because of:

- (a) any misdescription of the Land;
- (b) any deficiency in its area or measurements of the Land;
- (c) any encroachment upon the Land;
- (d) any improvements not being erected within the boundaries of the Land; or



- (e) any failure to comply with a law relating to the Property or a requirement of any Government Agency.

3 When risk passes

Subject to the terms of the CDA (OSD North), the Property is at the risk of the Vendor until the earlier of:

- (a) the Settlement Date; or
 - (b) the date of possession,
- and on that date risk passes to the Purchaser.

4 Planning restrictions

4.1 Restrictions

The Purchaser buys the Property subject to any restrictions on its use or development under the *Planning and Environment Act 1987* (Vic) and any planning scheme.

4.2 Registrable agreements

The Purchaser will execute and deliver to the Vendor on the Day of Sale the General Registrable Agreement, and the Purchaser acknowledges that the Vendor will arrange for registration of this agreement on the Land and may arrange registration before the Settlement Date at its option.

5 Section 32 acknowledgment

The Purchaser acknowledges that before executing this contract or any other document relating to the purchase of the Property, the Purchaser received the Vendor's Statement from the Vendor.

6 Deposit

6.1 Payment

- (a) The Purchaser must pay the Deposit to the Vendor's Legal Practitioners and the Deposit must be held by the Vendor's Legal Practitioners on trust for the Purchaser until the Strata Plan is registered by the Registrar.
- (b) Following registration of the Plan, the Deposit is to be held by the Vendor's Legal Practitioner as stakeholder under section 24 of the *Sale of Land Act 1962* (Vic).



6.2 Default

If the Purchaser does not pay the Deposit by the date specified in the Particulars, the Purchaser is in default under this contract and General Conditions 27 and 28 will apply.

7 Subdivision

7.1 Registration of Strata Plan

- (a) The Purchaser must at its own cost and expense as soon as practicable submit to the Vendor Representative for the Vendor's approval (in respect of which the Vendor must act reasonably):
- (1) an updated Strata Plan of subdivision which is based on, and consistent with the draft Strata Plan attached as Attachment 5 to the CDA (OSD North) and which:
 - (A) identifies the location and extent of each Lot;
 - (B) includes any easements, covenants, restrictions or other dealings in accordance with the Easement Plan agreed under clause 15.4 of the CDA (OSD North);
 - (C) takes into account amendments to the draft Strata Plan as a result of changes, if any, made to the Concept Design Documentation by the Final Design Documentation (and no other changes);
 - (2) a certificate which certifies that the Freehold Works have been constructed within all relevant boundaries signed by a licenced surveyor (the Strata Plan); and
 - (3) a report which identifies the amendments (if any) required to be made to the draft Strata Plan as a result of changes, if any, made to the Concept Design Documentation by the Final Design Documentation.
- (b) If required by the Vendor, the Purchaser must make available, at the cost and expense of the Purchaser, the appropriate personnel to explain the Strata Plan or provide information in relation to the Strata Plan in such form as the Vendor reasonably requests.
- (c) If the Vendor approves the Strata Plan submitted by the Purchaser in accordance with special condition 7.1(a), then the Vendor will:
- (1) cause the Strata Plan to be submitted to the relevant Authority for certification and issue of a statement of compliance; and
 - (2) once the statement of compliance is issued, cause the Strata Plan to be lodged for registration at Land Victoria.
- (d) If the Vendor submits amendments to the Strata Plan, then:
- (1) the Purchaser and the Vendor must consult in good faith with respect to, and use their reasonable endeavours to establish, the amendments required to the Strata Plan; and
 - (2) if, and to the extent that, those amendments are agreed, the Vendor will:



- (A) cause the Strata Plan agreed by the Vendor and the Purchaser to be submitted to the relevant Authority for certification and issue of a statement of compliance; and
 - (B) once a statement of compliance is issued, cause the revised Strata Plan to be lodged for registration at Land Victoria.
- (e) If the Vendor and the Purchaser do not agree on the amendments required to the Strata Plan within 10 Business Days after the commencement of the consultation pursuant to special condition 7.1(d) then:
 - (1) the Vendor and the Purchaser must refer the dispute to an independent expert for resolution in accordance with clause 42 of the CDA (OSD North); and
 - (2) when the independent expert has made his or her determination in relation to any matter referred pursuant to this special condition 7.1(e) the Vendor must:
 - (A) cause the Strata Plan as determined by the independent expert to be submitted to the relevant Authority for certification and issue of a statement of compliance; and
 - (B) once a statement of compliance is issued, cause the Strata Plan to be lodged for registration with Land Victoria.
- (f) The Purchaser must provide the Vendor with all assistance and documentation reasonably required by the Vendor to enable the Strata Plan to be registered by Land Victoria.

7.2 Time for Registration of Strata Plan and completion of Building

- (a) If the Strata Plan is not registered by the Registrar on or before the Latest Date for Registration, either party may rescind this contract at any time before the Strata Plan is registered by giving written notice to the other party, in which case the Deposit must be repaid to the Purchaser and neither party will have any further liability to the other under this contract.
- (b) The period between the Day of Sale and the Latest Date for Registration is the specified period for the purpose of section 9AE of the *Sale of Land Act 1962* (Vic).

8 Use of Oversight Development – Restrictive Covenant

8.1 Restrictive Covenant

- (a) The Purchaser must include in the Transfer of Land restrictive covenants to run with the Land at law and in equity and to appear as an encumbrance on the certificate of title as follows:

“The Transferee for itself, its heirs, executors, administrators, assigns, successors and transferees, and the registered proprietor of the lot transferred and every part thereof and as separate covenants, covenants with the Minister for [insert] on behalf of the Crown in right of the State of Victoria (**State**) and its successors, assigns and transferees and the registered proprietor or proprietors of the land comprised in Plan of Subdivision No. PS[#] and every part or parts thereof (other than the lot transferred) that the Transferee will not operate or permit the operation of any Prohibited Business on the lot transferred.



For the purposes of this covenant, **Prohibited Business** means:

- (1) a business involving:
 - (A) the sale, provision or operation of:
 - (B) sexually explicit or pornographic goods;
 - (C) brothels;
 - (D) tattoo parlours;
 - (E) guns, firearms, explosives or offensive weapons; or
- (2) any other business or activity which the State (acting reasonably) notifies the Transferee would be offensive to users of the underground train station adjoining the lot transferred (except that it is acknowledged that the sale of alcohol does not of itself constitute an offensive activity),

and it is intended that the above covenants appear as an encumbrance on the certificate of title to the lot transferred and each part or parts of the lot transferred and that the burden of the above covenants run at law and in equity with the lot transferred and each part or parts of the lot transferred.”

8.2 Purchaser to procure compliance

The Purchaser must, until such time as the restrictive covenants are registered on the title to the Property ensure that any person to whom it sells, transfers, grants, disposes or otherwise deals with any estate or interest in the Property or grants or gives any licence to use or occupy the Property or in whose favour it grants or creates any estate or interest in the Land covenants to observe the above restrictive covenants.

8.3 Non-merger

The provisions of this special condition 8 do not merge on transfer of the Land and continue to have full effect.

9 Advertising

Any advertising placed on the Property by or on behalf of the Purchaser must:

- (a) comply with all applicable Laws and Approvals;
- (b) comply with voluntary codes of conduct established by the advertising industry; and
- (c) comply with the Advertising Restrictions.

The provisions of this special condition 9 do not merge on transfer of the Land and continue to have full effect.

10 Station Land Management Agreement

- (a) No later than 120 Business Days prior to the date on which the Developer anticipates achieving Final Completion, the Vendor agrees to provide the Purchaser with a draft form of Station Land Management Agreement.



- (b) The parties must ensure that:
 - (1) they act reasonably, expeditiously and in good faith in finalising the Station Land Management Agreement by Final Completion;
 - (2) the Station Land Management Agreement must be substantially consistent with the principles contained in the CDA (OSD North) and must be in a form reasonably acceptable to the parties having regard to the Oversight Development, the Station, the Section 173 Agreement and the Interfaces; and
 - (3) the Station Land Management Agreement provides for the allocation of costs and responsibilities for the use, maintenance and costs associated with the Station Shared Services.
- (c) Prior to settlement the Purchaser must:
 - (1) sign the Station Land Management Agreement; and
 - (2) provide the Station Land Management Agreement signed by the Purchaser to the Vendor.
- (d) The Purchaser acknowledges and agrees that the Vendor will require the Station Land Management Registrable Agreement to be registered on the title to the Land on or before settlement.
- (e) The provisions of this special condition 10 do not merge on transfer of the Land and continue to have full effect.

11 Delivery of Transfer and document for assessment of duty

11.1 Time for delivery

The Purchaser must deliver the Transfer to the Vendor's Legal Practitioners at least 10 Business Days before the Settlement Due Date.

11.2 Late delivery of Transfer

If the Purchaser does not comply with special condition 11.1:

- (a) the Vendor need not settle this contract until 10 Business Days after the date the Purchaser delivers the Transfer to the Vendor's Legal Practitioners; and
- (b) if, under special condition 11.2(a), the Vendor settles this contract after the Settlement Due Date, the Purchaser acknowledges it is in default in payment of the Balance from the Settlement Due Date until the Settlement Date.

11.3 [not disclosed]

[not disclosed]



12 Settlement

12.1 Time and place

Settlement must take place on the Settlement Due Date at the offices of the Vendor's Legal Practitioners or at any other place that they nominate.

12.2 Price

The Purchaser must pay the Price in accordance with special condition 12.3.

12.3 Payment of Price

- (a) On the Settlement Due Date, the Purchaser must pay the Vendor an amount equal to the First Instalment Contract Price.
- (b) On or before the date which is 2 years after the Final Completion Date, the Purchaser must pay the Vendor an amount equal to the Second Instalment Contract Price.
- (c) At settlement the Purchaser must pay the Vendor the First Instalment Contract Price plus or minus any adjustments made in accordance with this contract, by:
 - (1) an unendorsed bank cheque issued by a trading bank carrying on business in Victoria in favour of the Vendor or as the Vendor or the Vendor's Legal Practitioners otherwise direct in writing;
 - (2) cash; or
 - (3) if the parties agree, by electronic transfer of cleared funds.

12.4 Late settlement

If settlement takes place after 3.00pm on the Settlement Due Date, the Purchaser is taken to be in default in payment of the Balance until the next Business Day.

13 Security for Payments under CDA (OSD North)

At settlement the Purchaser must provide to the Vendor:

- (a) a second ranking mortgage over the Land as security for payment of the Second Instalment Contract Price under the CDA (OSD North) by the Developer;
- (b) procure that any financier to the Vendor enters into a tripartite agreement in a form consistent with the Financier Principles set out in the CDA (OSD North) which is on terms acceptable to the Vendor.

14 Council and water rates

- (a) The Purchaser acknowledges that the Land may not be rateable by the Melbourne City Council and the relevant water authority as at the Day of Sale.



- (b) The Purchaser agrees that if, in connection with any use or action by or on behalf of the Purchaser, or the Purchaser becoming owner of the Land, the Land becomes rateable by the Melbourne City Council and the relevant water authority, the Purchaser shall be responsible for payment of all council rates, assessments, charges or fees and any water service charges assessed or payable in connection with the Land after Final Completion, regardless of any statutory provision to the contrary, and the Purchaser shall indemnify the Vendor and keep the Vendor indemnified from and against the payment of any such rates, assessments, charges or fee which become payable to either the Melbourne City Council and the relevant water authority.
- (c) The State will reimburse to the Purchaser any amount incurred by the Purchaser in respect of land tax, council rates, assessments, charges or fees assessed or payable in connection with the Land prior to Final Completion (including where settlement occurs prior to Final Completion) and will reimburse those amounts before the later of 7 days prior to the due date for payment of the relevant amount and 20 Business Days after receipt of the relevant assessment and a tax invoice.

15 Land tax

15.1 Definitions

In this special condition 15:

| Term | Meaning |
|-----------------------------------|---|
| Actual Land Tax | the actual land tax payable by the Purchaser in respect to the Property from the Final Completion Date until the date which is 2 years after the Final Completion Date. |
| Actual Site Value | the site value of the Property on the date which is 2 years after the Final Completion Date. |
| Base Land Tax Amount | [not disclosed] as adjusted under special condition 15.2. |
| Land Tax Adjustment Amount | the amount determined under special condition 15.3. |

15.2 Adjustment of Base Land Tax Amount

- (a) For the purposes of this special condition 15, the Base Land Tax Amount shall be:
- (1) if Final Completion occurs after 2024, increased by [not disclosed] on 1 January each year after 1 January 2024 (so that, for example, on 1



January 2025 the Base Land Tax Amount is [not disclosed] increased by [not disclosed]); and

- (2) if Final Completion occurs before 2024, decreased by [not disclosed] per annum (so that, for example, on 31 December 2023 the Base Land Tax Amount is [not disclosed] decreased by [not disclosed]).

15.3 Calculation of the Land Tax Adjustment Amount

On the date which is 2 years after the Final Completion Date, the parties shall determine the Land Tax Adjustment Amount which is the net present value of the following amount based on a discount rate of [not disclosed]:

Amount = [A+B] – C

A = the Actual Land Tax

B = the amount of land tax payable by the Purchaser in respect to the Property for the land tax period occurring immediately prior to the date which is 2 years after the Final Completion Date increased annually by [not disclosed] per [not disclosed] for a period of [not disclosed]

C = the Base Land Tax Amount for the 12 month period occurring immediately prior to the Final Completion increased annually by [not disclosed] per [not disclosed] for a period of [not disclosed]

15.4 Set-off

The Land Tax Adjustment Amount shall be set-off against the Second Instalment Contract Price payable by the Purchaser.

15.5 Example

The table in Attachment 8 illustrates how the Land Tax Adjustment Amount will be determined.

15.6 No Merger

This special condition shall not merge on settlement but shall enure for the benefit of the parties.

16 Security Interests

- (a) The Vendor is not obliged to ensure that the Purchaser receives a release, statement, approval or correction in respect of any personal property subject to a security interest under the Personal Property Securities Act 2009 (Cth).
- (b) If the Purchaser receives a release from a secured party releasing a security interest in respect of the Property, the Purchaser must provide the Vendor with a copy of the release at or as soon as practicable after the date settlement is effected.
- (c) Words and phrases used in this special condition 16 which are defined in the Personal Property Securities Act 2009 (Cth) have the same meaning in this special condition 16.



17 FIRB

- (a) The Purchaser warrants to the Vendor that, before the Day of Sale, the Purchaser has obtained the approval of FIRB and any other body in existence in Australia which by virtue of any law or otherwise exercises control or supervision over the acquisition of real estate, required for the purchase of the Property.
- (b) The Purchaser indemnifies the Vendor against any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment which the Vendor pays, suffers, incurs or is liable for as a result of a breach of the warranty contained in special condition 17(a).

18 Clearance Certificate

- (a) On or before settlement the Vendor will serve a valid clearance certificate issued by the Australian Taxation Office under s.14-220 of the Taxation Administration Act 1953 (Cth) on the Purchaser.
- (b) If the Vendor does not serve a valid clearance certificate, the Purchaser can withhold an amount in accordance with Subdivision 14-D of the Taxation Administration Act 1953 (Cth) on settlement. The Purchaser cannot rescind or terminate if the Vendor does not serve a clearance certificate.

19 GST

- (a) Any reference in this special condition to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Unless expressly included, the consideration for any supply made under or in connection with this contract does not include an amount on account of GST in respect of the supply (**GST Exclusive Consideration**) except as provided under this special condition.
- (c) Any amount referred to in this contract (other than an amount referred to in special condition 19(h)) which is relevant in determining a payment to be made by one of the parties to the other is, unless indicated otherwise, a reference to that amount expressed on a GST exclusive basis.
- (d) To the extent that GST is payable in respect of any supply made by a party (**Supplier**) under or in connection with this contract, the consideration to be provided under this contract for that supply (unless it is expressly stated to include GST) is increased by an amount equal to the GST Exclusive Consideration (or its GST exclusive market value if applicable) multiplied by the rate at which GST is imposed in respect of the supply.
- (e) The recipient must pay the additional amount payable under special condition 19(d) to the Supplier at the same time as the GST Exclusive Consideration is otherwise required to be provided.
- (f) The Supplier must issue a tax invoice to the recipient of the taxable supply at or before the time of payment of the consideration for the supply as increased on



account of GST under special condition 19(d) or at such other time as the parties agree.

- (g) Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with this contract the Supplier must determine the net GST in relation to the supply (taking into account any adjustment) and if the net GST differs from the amount previously paid under special condition 19(e), the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.
- (h) If one of the parties to this contract is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with this contract, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the party being reimbursed or indemnified (or its representative member) is entitled in relation to that loss, cost, expense or outgoing and then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST in accordance with special condition 19(d).

20 General

20.1 Further action

Each party must do everything necessary or desirable to give effect to the provisions and purposes of this contract.

20.2 Unenforceable provision

Any provision in this contract that is invalid or unenforceable is to be read down, if possible, so as to be valid and enforceable, and otherwise shall be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this contract or affecting the validity or enforceability of that provision.

20.3 Counterparts

This contract may be executed in any number of counterparts that together will constitute one instrument. A party may execute this contract by signing any counterpart.

20.4 No merger

A provision of this contract which can take effect after the Settlement Date does not merge on settlement and continues to bind the parties.

20.5 Waiver

- (a) A party waives a right under this contract only if it does so in writing.
- (b) A party does not waive a right simply because it:
 - (1) fails to exercise the right;
 - (2) delays exercising the right; or
 - (3) only exercises part of the right.



- (c) A waiver of one breach of a term of this contract does not operate as a waiver of another breach of the same term or a breach of any other term.

20.6 Whole agreement

This contract and the CDA (OSD North) constitute the whole agreement between the parties and contains all representations, warranties, promises and agreements of the parties in respect of its subject matter.

20.7 Assignment

- (a) The Purchaser must not assign its rights or obligations under this contract without the consent of the State.
- (b) The Purchaser acknowledges that under the DMA the Purchaser is not permitted to nominate or part with any interest in this contract without the prior written consent of the Developer.

20.8 Governing law and jurisdiction

- (a) This contract is governed by the laws of Victoria and, where applicable, the Commonwealth of Australia.
- (b) The parties irrevocably submit to the exclusive jurisdiction of the courts of Victoria and, where applicable, the Commonwealth of Australia.

20.9 Variation

A variation of any term of this contract must be in writing and signed by the parties or the parties' Legal Practitioner.

21 Buy Back

[Drafting Note: Insertion of this special condition depends on timing of transfer of title to the Purchaser]

21.1 Buyback

If the CDA (OSD North) is terminated for any reason whatsoever after settlement of this contract but before Final Completion, then the Vendor may give the Purchaser a Buyback Notice.

21.2 Terms of sale

- (a) If the Vendor gives the Purchaser a Buyback Notice in accordance with special condition 21.1, the Vendor (as purchaser) and Purchaser (as vendor) must enter into a contract of sale of real estate for the Land and any improvements.
- (b) The contract referred to in special condition 21.2(a) will be on the following terms:
- (1) the day of sale shall be 5 days after the date the Buyback Notice is received by the Purchaser;
 - (2) the purchase price shall be [not disclosed]; and



- (3) the contract shall otherwise contain the conditions contained in the standard Law Institute form of contract for the sale of real estate current as at the day of sale under the buyback contract but excluding special conditions 7, 8, 9, 10, 13, 15 and this special condition 21.
- (c) The Vendor must arrange for preparation of the contract of sale and the Purchaser will if required by the Vendor execute any further documentation to formally record any contract created pursuant to special condition 21.2.
- (d) Each party must do all such acts and things and execute all documents to implement and give effect to the provisions of this special condition 21.2, including without limitation to produce all documents of title.

21.3 Vendor's Statement

For the purposes of this special condition 21 and section 32 of the Sale of Land Act 1962, the Purchaser will be deemed to have given a Vendor's Statement to the Vendor on the Day of Sale.



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Attachment 1

Strata Plan



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Attachment 2

General Registrable Agreement



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Attachment 3

Station Land Management Registrable Agreement



Attachment 4

Advertising Restrictions

No external advertising shall be placed on the Property by the Purchaser which is visible from outside the Property unless the Vendor consents in writing. The Vendor will not unreasonably withhold its consent to any proposed external advertising which is:

- (a) associated with and incidental to an approved use or development of the Property by the Purchaser; and
- (b) either:
 - (1) outlined in the Developer's response to the RFP and agreed to by the Vendor; or
 - (2) not prohibited by the Developer's response to the RFP.



Attachment 5

Land Tax Example



Attachment 4

Advertising Restrictions

No external advertising shall be placed on the Site by the Developer which is visible from outside the Site unless the State consents in writing. The State will not unreasonably withhold its consent to any proposed external advertising which is:

- (a) associated with and incidental to an approved use or development of the site by the Developer; or
- (b) outlined in the Developer's response to the RFP and agreed to by the State; or
- (c) is permitted by the Incorporated Document.



Attachment 5

Financier Principles

- (1) The parties will be the Developer's financier (or its representative), the State, the Developer and the Purchaser.
- (2) Subject to the form of security being acceptable to the State having regard to standard industry practice for development projects of this nature, the State to consent to financier's security and confirm that the creation of the security (including over this Agreement and the Contract of Sale) does not, and exercise of an enforcing party's power in connection with the security will not, of itself contravene or constitute a default or termination event under the commercial development agreement or entitle the State to exercise any right or power in connection with, or terminate, the commercial development agreement.
- (3) The State and the borrower agree not to amend or vary the commercial development agreement without financier's prior consent.
- (4) The State agrees to transfer title to the Freehold Land in accordance with terms of the Development Agreement.
- (5) The financier deed will provide that the State may terminate this Agreement if the State complies with certain requirements. These requirements will include the following:
 - (a) the State must first provide the financier with notice of the project default by the Developer and the termination right.
 - (b) the financier must have an agreed time (**State Standstill Period**) which commences from date of receipt of the notice from the State to determine whether it wishes to exercise its cure rights and/or step-in and, if so, commence that action.
 - (c) the State Standstill Period will need to allow sufficient time for the financier to consider the facts and make a decision how it wishes to act and commence to take action such period not to exceed 20 Business Days.
 - (d) the State may only terminate if the financier elects not to cure/step-in or fails to take action to do so within the State Standstill Period.
- (6) Details of the cure period will depend on the financier but the following is a typical regime:
 - (a) the State will give notice of a default event ("**CDA Default Event**") to the financier ("**CDA Default Notice**"); and
 - (b) the financier has at least 20 Business Days' from receipt of CDA Default Notice to notify the State of its intention to remedy/take steps to remedy the CDA Default Event by developing a Financier Cure Program;
 - (i) if the financier gives notice to develop a Financier Cure Program, the State and financier are to meet to agree that program and if they cannot agree it is referred to the dispute resolution provisions for the project;

- (ii) if a Financier Cure Program is in place and it becomes clear that the cure period under it is no longer appropriate to cure the CDA Default Event and the financier has been diligently pursuing the cure activities, an extension may be requested (with supporting evidence of why) at least 10 Business Days' before expiry of the existing cure period;
- (iii) the direct deed will have a maximum imposed on the length of any cure period extension.

A Financier Cure Program may involve the financier seeking an assignment of the rights of the Developer or Purchaser, or causing a change of control of those entities, in each case such to the financier complying with the obligations under clause 37 of this Agreement. If the Financier Cure Program involves assignment, the financier will have at least 120 days to effect the assignment acknowledging that it must procure compliance with this Agreement during that period.

- (c) the State cannot terminate this Agreement unless it has given a CDA Default Notice and:
 - (i) the financier does not respond within at least 20 Business Days of receipt of that notice; or
 - (ii) the financier notifies the State within at least 20 Business Days of receipt of that notice that it doesn't intend to remedy; or
 - (iii) the financier notifies the State within 15 at least 20 Business Days of receipt of that notice that it does intend to remedy (see paragraph (6)(b) above); and
 - (A) the CDA Default Event is not remedied within the cure period; or
 - (B) the financier does not diligently pursue cure activities, provided that the State has given the financier notice of this failure and such failure hasn't been remedied within at least 20 Business Days' of receipt of such notice.
- (d) Enforcing Party's rights – the financier or other enforcing party may exercise rights and perform obligations of the borrower if it is enforcing the securities.
- (e) Provided the borrower's obligations are being performed in accordance with this Agreement the State may not rely on the mere fact of an enforcement of the securities (including if an insolvency event has occurred) as a right to terminate this Agreement.
- (f) Financier step-in and cure rights – the relevant enforcing party will be given a step-in right to allow it to exercise the rights of the Developer under this agreement and to comply with the obligations of the Developer under this agreement.
- (g) Financier step-out rights – the relevant enforcing party will have a right to step-out.
- (h) Assignment rights – the financier will have the ability to sell the Oversight Development to another developer and will be able to assign this Agreement without the consent of the State if the proposed assignee satisfies the requirements in clause 37(b)(1)-(5).



Attachment 6

Industrial relations

1 Industrial Relations Objectives

- (a) The State's expectation for the Oversight Development Works is that they will be completed with no or minimal disruptions due to employment or industrial relations issues.
- (b) The State requires effective management of employment and industrial relations issues and risks to be a priority during both the planning and carrying out of the Oversight Development Works.
- (c) The State expects that the Developer's management of employment and industrial relations matters in connection with the Oversight Development Works:
 - (1) aims to achieve a stable working environment;
 - (2) promotes productive and efficient work practices to achieve the timely completion of the Oversight Development Works;
 - (3) provides flexible work practices that support minimising disruption to the transport network;
 - (4) minimises lost time and disruption;
 - (5) ensures ongoing compliance with all Industrial Relations Laws and administrative requirements; and
 - (6) does not compromise the successful completion of the Oversight Development Works on time and at an acceptable cost.

2 IR Management Plan

The Developer must:

- (a) ensure that the IR Management Plan complies with applicable Industrial Relations Laws, and this Attachment;
- (b) ensure that the IR Management Plan demonstrates how employment and industrial relations issues and risks related to the Oversight Development Works are managed;
- (c) prepare, submit and resubmit a IR Management Plan to the State for review in accordance with clause 8.2;
- (d) ensure that the IR Management Plan is a single document for the whole of the Oversight Development Works and, as a minimum, includes:
 - (1) the Developer's strategy for managing all persons in the Developer D&C Workforce who are performing the Oversight Development Works so as to meet the industrial relations objectives in accordance with clause 1 of this Attachment;

- (2) identification of the employment and industrial relations issues that are relevant to the Developer D&C Workforce or are likely to emerge in performance of the Agreement including, but not limited to, the following:
- (A) labour requirements (e.g. skills/numbers and unskilled labour required, and manner of supply, recruitment, engagement, termination and/or redundancy of labour to allow for changing demands across the life of the Oversight Development Works);
 - (B) engagement of the required labour including, but not limited to, mobilisation plans and selection procedures (e.g. reference checks and inductions);
 - (C) approach to developing and maintaining a productive workforce, ensuring the optimal use of labour requirements (e.g. flexible approach to managing inclement weather and calendar);
 - (D) sourcing, selection and training of suitably experienced construction supervisors;
 - (E) the negotiation and establishment of terms and conditions of directly-employed labour throughout the life of the Oversight Development Works (e.g. establishment of terms and conditions of employment, identification of likely employee representatives and method of engagement with representatives);
 - (F) approach to relationship management with employees and employee representatives including, but not limited to, the approach and processes for communicating and consulting with the workforce;
 - (G) general approach to the use and engagement of labour hire;
 - (H) managing rights of entry for the Oversight Development Works and/or to the Site;
 - (I) ensuring compliance with statutory workplace rights including, but not limited to, freedom of association, freedom from unlawful coercion and freedom from unlawful discrimination, for the Developer D&C Workforce performing the Oversight Development Works;
 - (J) the provision of training opportunities (e.g. apprenticeships and traineeships) in connection with the Oversight Development Works and issues arising in relation to such training (e.g. number of opportunities, external training, support mechanisms);
 - (K) performance and conduct management of the Developer D&C Workforce performing the Oversight Development Works (e.g. disciplinary processes to be applied);
 - (L) identification of proposed Site rules (e.g. induction, access) and approach to the provision of amenities;
- (3) identification of employment and industrial relations risks in relation to the Oversight Development Works and the details of the proposed approach to managing those risks, including, but not limited to, the following:

- (A) approach to fair treatment, dispute avoidance and settlement procedures;
 - (B) approach to dealing with demarcation disputes;
 - (C) response to Industrial Action (both threatened and actual) including in respect of Subcontractors;
 - (D) approach to management of disputes in relation to rights of entry;
 - (E) approach to achieving no lost time or limitations due to industrial relations disputes; and
 - (F) approach to dispute resolution in the event of incidents (i.e. grievance disputes, inclement weather and site issues);
- (4) procedures for the management of Subcontractors including, but not limited to, the following:
- (A) measures to select Subcontractors who have the skills, capacity and resources to comply with Industrial Relations Laws, employment obligations and the IR Management Plan (to the extent relevant to the Subcontractor);
 - (B) conditions regulating the engagement of Subcontractors to ensure they comply with Industrial Relations Laws, employment obligations and the IR Management Plan (to the extent relevant to the Subcontractor) across the life of the Oversight Development Works;
 - (C) processes for dealing with Subcontractors and other contractors including, but not limited to, identification of likely employee representatives and methods for engaging with those representatives; and
 - (D) monitoring of Subcontractor compliance with industrial relations requirements;
- (e) review, and if necessary amend or update, the IR Management Plan every 6 months and upon the occurrence of any one of the following:
- (1) Industrial Action; and
 - (2) a request by the State to do so;
- (f) resubmit the IR Management Plan to the State where it has been amended under clause 2(e) of this Schedule.

3 Monthly IR Report

- (a) The Developer must prepare and submit to the State a Monthly IR Report in the form set out in Attachment 7 (or otherwise in a form nominated by the State) identifying any issues that have arisen in the previous calendar month that have or could give rise to non-compliance or notification obligations under clause 8.



Attachment 7

Monthly IR Report

THIS FORM IS TO BE SENT TO MMRA BY THE 4TH WORKING DAY OF EACH MONTH

Project Manager:

Work Package or
Project:

Reporting Month / Year:

PERSONNEL

Identify the subcontractors who have performed work on the project within the relevant reporting period.

Identify any major changes to the workforce anticipated over the current/next reporting period - e.g. engagement of new subcontractors or cessation of existing subcontractors, changes to reporting lines or of key personnel.

Confirm that special contractual or enterprise agreement obligations owed by subcontractors in relation to key industrial matters (e.g. in relation to RDOs, inclement weather, and public holidays), have been reviewed and factored into your industrial relations management.

WORKPLACE HARMONY

Identify any grievance or dispute resolution procedures that have been initiated within the relevant reporting period.

Identify any relevant Court or Tribunal proceedings that have been initiated within the reporting period.

Summarise the status of any pre-existing disputes or claims, including any relevant outcomes (to the extent that this information can be provided).



| | |
|--|--|
| Provide a general summary of interfacing issues with subcontractors and other stakeholders (e.g. unions). | |
| INDUSTRIAL ISSUES | |
| Summarise the status of your enterprise bargaining negotiations (if any), and those of any subcontractors performing work in the forthcoming reporting period | |
| Provide information about actual or threatened industrial issues, including matters which were the subject of an Incident Report during the relevant reporting period. | |
| Summarise any significant union activity that occurred during the relevant reporting period, including in relation to right of entry, demarcation disputes, enterprise bargaining, and freedom of association | |
| Explain or project the impact of any industrial issues on relevant deliverables. | |
| GENERAL MATTERS | |
| Identify any significant interactions between employees / subcontractors and other relevant stakeholders such as local government, rail authorities or regulators. | |
| Identify any relevant accomplishments within the relevant period (e.g. achievements in relation to the Government's social procurement objectives such as those relating to apprenticeships, upskilling of target demographics and use of local labour). | |
| Identify any areas of non-compliance with either the IR Management Plan, or other relevant workplace laws, during the relevant reporting period. | |
| Provide an analysis how its progress is consistent with the industrial relations objectives | |
| Project Manager's Comments: (expand or use reverse of sheet if necessary) | |



| | | | |
|---------|--|-------|--|
| | | | |
| Signed: | | Date: | |



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FREEHILLS

Attachment 8

Concept Design Documentation

[not disclosed]



Attachment 9

Health and Safety Requirements

1 Definitions

The meanings of the terms used in this Attachment are set out below.

| Term | Meaning |
|--|---|
| Emergency / Emergencies | means a potential or actual incident that: <ol style="list-style-type: none">1 poses significant harm to people, property, the environment or the local community; or2 requires assistance from external emergency services agencies. |
| Emergency Response and Incident Management Plan (ERIMP) | means the plan described in section 4.1 |
| Emergency Response and Incident Management Workshop | means the workshop described in section 4.3. |
| Emergency Service Organisations | means any one or more of Victoria Police, MFB, Ambulance Victoria or the State Emergency Service as the context requires. |
| Health and Safety Compliance Audits | means the audits described in section 5.3 |
| Health and Safety Management Plan Audit | means the audits described in section 5.2 |



| Term | Meaning |
|--|--|
| Health and Safety Performance Report Template | means the template provided by the State entitled 'Monthly Safety Report Form' upon which the Developer must base its Health and Safety Performance Report. |
| Health and Safety Risk Assessment | means the risk assessment described in section 2.3 |
| Heavy Vehicle National Law | means the <i>Heavy Vehicle National Law Application Act 2013 (Vic)</i> and related: <ol style="list-style-type: none">3 Regulations;4 Codes of practise;5 other compliance codes;6 directions on safety or other notices issued by any relevant authority; and7 standards relevant and applicable to any part of the Oversight Development Works. |
| High Risk Work | has the meaning given in the OHS Regulations. |
| Incident Management System | means the State's incident management system. |
| Independent Safety Auditor | means the suitably qualified and independent person described in section 5.1 |
| Integrated Crisis Framework | means the document entitled 'Integrated Crisis Framework - A Common Appendix for all MM Project Partners' provided by the State. |
| Safety Strategy and Culture Workshop | means the workshop described in section 2.1(b). |
| Safe Work Method Statement | means a document that sets out the high risk construction work activities to be carried out at a workplace, the hazards arising from these activities and the measures to be put in place to control the risks. |

2 General

2.1 State's objectives and overarching requirement

- (a) The Developer must consider the following principles throughout the performance of the Oversight Development Works:
- (1) an overriding commitment to preventing catastrophic incidents, fatalities and serious injuries;
 - (2) safety is not a priority that can be reordered, but is a value associated with every priority;
 - (3) development of a work environment based on employee involvement, accountability, team work, education, training and visible safety leadership;
 - (4) continuous improvement, innovation, knowledge sharing and learning from incidents;
 - (5) reinforcement of the need for employees to actively care about their co-workers; and
 - (6) recognition of group and individual achievement.
- (b) Prior to the preparation of the Health and Safety Management Plan and in addition to its obligations under clause 5.2 (f) of the Agreement, the Developer must conduct a Safety Strategy and Culture Workshop. The Developer must ensure that:
- (1) key Stakeholders and any personnel nominated by the State are invited to attend the Safety Strategy and Culture Workshop;
 - (2) the Safety Strategy and Culture Workshop covers, as a minimum, the following:
 - (A) how the Developer's safety culture will initially be fostered and maintained throughout the Oversight Development Works;
 - (B) proposed lead indicators which align with the Developer's safety culture and planned strategic activities; and
 - (C) identification of role specific safety accountabilities and deliverables for senior leaders, management and workforce; and
- (c) at least one full day is allocated for the Safety Strategy and Culture Workshop.

2.2 Safety Forums

The Developer must ensure the following personnel attend any Project related safety forums that are coordinated by the State and held throughout the Oversight Development Works:

- (a) key personnel employed or engaged by the Subcontractors responsible for project management of health and safety issues;
- (b) the Site health and safety professional(s);
- (c) safety and management representatives from any Subcontractors; and



- (d) any other relevant safety or management representatives from the Developer and Subcontractors, who are requested to attend by the State.

2.3 Health and Safety Risk Assessment

The Developer must maintain a current and thorough written risk assessment detailing all significant health and safety risks, and provide the assessment to the State when requested.

2.4 Notification and Reporting

For the purpose of facilitating the sharing of health and safety information across work packages, the Developer must:

- (a) promptly enter into the Incident Management System details of all Health and Safety Incidents, any associated reports and any updates to information in respect of a Health and Safety Incident; and
- (b) each month upload to the Incident Management System a report in the form of the Health and Safety Performance Report Template.

3 Health and Safety Management Plan

- (a) The Developer must prepare and update the Health and Safety Management Plan in accordance with the Agreement.
- (b) The Health and Safety Management Plan must:
 - (1) describe how workplace health and safety will be managed at the Site, for the duration of the Oversight Development Works;
 - (2) ensure that the Oversight Development Works are undertaken in accordance with the principles set out in this Schedule;
 - (3) be a single volume for the whole of the Oversight Development Works (including any Oversight Development Works performed by Subcontractors); and
 - (4) as a minimum, comply with the following requirements:
 - (A) all applicable OHS Legislation, without limitation, this includes general duty provisions applying to the Developer, Principal Contractor provisions and specific regulations regarding construction work; and
 - (B) BS6164: 2011 and AS4801:2001 or a comparative international standard.
- (c) The Health and Safety Management Plan must include, as a minimum:
 - (1) the Developer's health and safety policy and objectives;
 - (2) demonstration of how the outcomes of the Safety Strategy and Culture Workshop have been incorporated;
 - (3) the Health and Safety Risk Assessment;
 - (4) the details required to be included in a health and safety coordination plan under the OHS Regulations;

- (5) details of the organisational structure of the Subcontractors including, but not limited to, identification of those roles with specific health and safety responsibilities, such as the roles and responsibilities of the health and safety professionals and description of the rationale for safety resourcing;
- (6) details of how the Developer will manage safety for the Oversight Development Works, including in relation to:
 - (A) underground safety and supervision;
 - (B) any demolition activities;
 - (C) heavy lifting and safe crane operations;
 - (D) HV installation and management;
 - (E) working in confined spaces;
 - (F) traffic and vehicle interaction;
 - (G) management of heavy vehicle movements (giving consideration to the use of GPS tracking to manage heavy vehicle movements) and loading/ unloading;
 - (H) pedestrian and cyclist protection;
 - (I) mental health;
 - (J) occupational illnesses and disease;
 - (K) flood management;
 - (L) spoil management;
 - (M) compliance with the Heavy Vehicle National Law;
 - (N) hazardous materials;
 - (O) fatigue;
 - (P) identification of high risk activities and field verification of the effectiveness of critical controls in place to manage those activities; and
 - (Q) prevention of impacts to underground services;
- (7) procedures and responsibilities for:
 - (A) preparation, implementation, review and updating of the Health and Safety Management Plan;
 - (B) identifying hazards and risks associated with the Oversight Development Works, including preparation, review and updating of the Health and Safety Risk Assessment and establishing appropriate controls which must be in accordance with the hierarchy of controls during the Oversight Development Works;
 - (C) providing such information, instruction and training as is necessary to ensure risks are appropriately eliminated or controlled;
 - (D) the management of Subcontractors;
 - (E) ensuring the preparation and implementation of Safe Work Method Statements for all High Risk Work;

- (F) reviewing the effectiveness of the Health and Safety Management Plan, particular controls implemented under the Health and Safety Management Plan, and where necessary revising the Health and Safety Management Plan and the controls implemented thereunder;
- (G) monitoring and verification of the effectiveness of critical controls for high risk activities;
- (H) complying with the Heavy Vehicle National Law;
- (I) managing hazards and risks associated with fatigue;
- (J) managing hazards and risks associated with hazardous materials;
- (K) reporting and investigation of Health and Safety Incidents;
- (L) arrangements for ensuring appropriate Site-specific and task-specific induction and training is undertaken by all relevant Subcontractors and other persons who attend the Site to ensure they are aware of the requirements of the Health and Safety Management Plan and safety controls identified therein;
- (M) arrangements for ensuring induction and training;
- (N) arrangements for ensuring training addresses the risk profile and emergency procedures for that part of the Site;
- (O) performance monitoring and auditing arrangements including an audit schedule;
- (P) arrangements for facilitating the Health and Safety Management Plan Audit and the Health and Safety Compliance Audits, and for the prompt rectification of any non-conformances identified;
- (Q) arrangements for consulting with Subcontractors;
- (R) arrangements for consulting with and providing safety information to relevant stakeholders; and
- (S) managing public safety during the Oversight Development Works, including control measures and ongoing verification of the effectiveness of these control measures.

4 Emergency Response and Incident Management

4.1 Emergency Response and Incident Management Plan

- (a) The Developer must prepare and update the Emergency Response and Incident Management Plan (ERIMP).
- (b) The ERIMP must comply with OHS Legislation and must ensure reporting and investigation of Health and Safety Incidents by the Developer and all Subcontractors.
- (c) The ERIMP must, at a minimum, provide details of the following:
 - (1) roles and responsibilities in the event of an Emergency or crisis;



- (2) procedures for managing and controlling Emergencies, incidents or crises;
 - (3) details of safe egress or evacuation of the Site following an Incident or Emergency;
 - (4) emergency and crisis contacts list (including contacts for out of hours);
 - (5) details of first aid and emergency equipment kept on Site;
 - (6) procedures for locating and/or identifying all workers who may have been involved in or affected by the Emergency or Incident;
 - (7) procedures for training workers in relation to Emergencies and incidents;
 - (8) details of possible emergency or crisis scenarios that may occur during the Oversight Development Works and how those emergencies are proposed to be managed;
 - (9) details for contacting, notifying and interfacing with relevant government agencies, Emergency Service Organisations and other relevant stakeholders, such as Utility Providers and municipal councils;
 - (10) specific Emergency Service Organisations' information relating to their respective capabilities and functions. This information must be sourced directly from the relevant Emergency Service Organisations or from the State;
 - (11) procedures for the immediate notification to the State of incidents which may give rise to a public interest or be communicated to Victorians through the media;
 - (12) means for compliance with and coordination of any other emergency notification requirements under the Agreement; and
 - (13) procedures for testing and reviewing the ERIMP throughout the life of the Oversight Development Works.
- (d) The ERIMP must address and be consistent with the Integrated Crisis Framework.

4.2 Emergency Contacts

The Developer must advise the State of the names and telephone numbers of employees or representatives who can be contacted in an emergency and out of hours and keep this list current.

4.3 Emergency Response and Incident Management Workshop

- (a) The Developer must facilitate an Emergency Response and Incident Management Workshop with the State prior to finalising the Emergency Response and Incident Management Plan.
- (b) The Developer must:
 - (1) invite nominees of the State to attend the Emergency Response and Incident Management Workshop;
 - (2) ensure representatives from the Developer's Subcontractors attend the Emergency Response and Incident Management Workshop; and

- (3) take into consideration the views expressed by attendees of the Emergency Response and Incident Management Workshop when finalising the Emergency Response and Incident Management Plan to be submitted to the State.

4.4 Emergency Service Organisations

- (a) The Developer must establish consultation arrangements with the Emergency Service Organisations within 20 Business Days of Financial Close. This consultation must, as a minimum:
 - (1) outline the Oversight Development Works and any potential disruptions to emergency services travel routes, road closures and the like;
 - (2) establish a notification process whereby the Emergency Service Organisations receive no less than 10 Business Days' notification of anticipated potential disruptions to emergency services travel routes (including but not limited to road closures);
 - (3) reach a joint understanding of the capability of the Developer, its Subcontractors and Emergency Service Organisations which must be included in the Emergency Response and Incident Management Plan and the risk assessment; and
 - (4) develop a process for ongoing consultation between the Developer, the Emergency Service Organisations and the State regarding Oversight Development Works throughout the Term.
- (b) The Developer must coordinate with the key institutional stakeholders that have an emergency management responsibility to ensure that their emergency response capabilities are not hindered.
- (c) The Developer must coordinate with relevant stakeholders to ensure that alternative arrangements for on street emergency assembly points are in place where existing emergency assembly points are impacted by the Oversight Development Works.

5 Health and Safety Audits

5.1 Independent Safety Auditor

The Independent Safety Auditor appointed by the Developer under the Agreement must:

- (a) be approved by the State (acting reasonably);
- (b) be a contractor independent of the Developer, and free of any other separate commitment or obligation to the Developer or its Subcontractors;
- (c) not have been involved in the development of the Health and Safety Management Plan or any associated sub-plan; and
- (d) have demonstrated competence, experience and training in workplace health and safety and audits in construction.

5.2 Health and Safety Management Plan Audit

- (a) The Independent Safety Auditor must perform Health and Safety Management Plan Audits that verify that the Health and Safety Management Plan:



- (1) appropriately addresses the risks identified in the risk assessment; and
 - (2) is in accordance with the requirements specified in these Health and Safety Requirements and the Agreement.
- (b) The Developer must ensure that the Independent Safety Auditor provides it with the following:
- (1) a report regarding the Health and Safety Management Plan Audit; and
 - (2) a declaration, which includes:
 - (A) details of the Independent Safety Auditor's skills, qualifications and expertise;
 - (B) a statement that the Health and Safety Management Plan complies with the requirements of the Agreement; and
 - (C) a statement that all non-conformances identified in the report described in item (1) have been rectified.
- (c) The declaration must be submitted to the State at the same time the Health and Safety Management Plan is submitted to the State.
- (d) Any amendment(s) to the Health and Safety Management Plan after submission of the declaration must be referred to the Independent Safety Auditor for review and written confirmation that the declaration remains valid.

5.3 Health and Safety Compliance Audits

- (a) The Independent Safety Auditor must perform Health and Safety Compliance Audits that verify that the Oversight Development Works are being performed in compliance with:
- (1) OHS Legislation, the Health and Safety Requirements and the Agreement; and
 - (2) the Health and Safety Management Plan.
- (b) The Health and Safety Compliance Audits must, as a minimum, include:
- (1) review of relevant documentation and records generated as a result of implementing the Health and Safety Management Plan;
 - (2) inspection of all parts of the Site where the Oversight Development Works, or part thereof, are being performed;
 - (3) a sample of observations of the Oversight Development Works being performed, including a sample of high risk work being performed;
 - (4) consultation with a sample of the workforce performing the Oversight Development Works in relation to the Health and Safety Management Plan and its implementation; and
 - (5) review of actions and close-out of previous non-conformances.
- (c) Following a Health and Safety Compliance Audit the Independent Safety Auditor must prepare a report that:
- (1) provides evidence of or a detailed summary of the audit methodology;
 - (2) identifies any non-conformances or areas for improvement;
 - (3) provides recommendations as to appropriate control measures to address those non-conformances;



- (4) nominates the timeframes for resolution of any non-conformances identified; and
 - (5) conform to the State's requirements for classification of non-conformances, and any other reasonable reporting requirements of the State.
- (d) The Developer must provide evidence of the close out of any non-conformances identified as a result of the audit in the Health and Safety Performance Report.
- (e) The Developer must ensure a Health and Safety Compliance Audit is performed by an Independent Safety Auditor once within the first 3 months following commencement of the Oversight Development Works and at least every 6 months thereafter.
- (f) The Developer must submit an audit and compliance schedule within the Health and Safety Management Plan and Health and Safety Performance Report.

6 Road Safety

6.1 Safety equipment on vehicles

Without limiting the Developer's obligations under the Heavy Vehicle National Law, the Developer must ensure that all heavy vehicles used during the performance of Oversight Development Works have:

- (a) side under run guards fitted (unless the Developer can demonstrate to the satisfaction of the State that the vehicle will not perform the function for which it is intended if side under run guards are fitted);
- (b) front, rear and side blind spots completely eliminated or minimised as far as practical and possible, through the use of fully operational direct and indirect vision aids, sensors and audible or visual driver alerts;
- (c) equipment fitted with an audible means of warning other road users of a left manoeuvre; and
- (d) prominent signage on the vehicle to warn cyclists and other road users of the dangers of passing the vehicle on the inside or of getting too close to the vehicle.

6.2 Driver training

Throughout the performance of the Oversight Development Works, the Developer must ensure that all heavy vehicle drivers, including drivers employed by the Developer's subcontractors, undergo training (to include a mix of theoretical, e-learning, practical and on the job training) and continuous professional development covering the safety of vulnerable road users and on-road hazard awareness.

7 Hazardous Materials

- (a) Prior to the commencement of the Oversight Development Works, the Developer must engage an independent hazardous materials auditor to perform an audit of



any structures at the Site in accordance with the requirements of the *Occupational Health and Safety Regulations 2017 (Vic)*.

- (b) The Developer must promptly provide a copy of the hazardous materials audit to the State.



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Attachment 10

Builder's Side Deed



HERBERT
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FREEHILLS

Deed

11 December 2017

Metro Tunnel
Tunnel and Stations PPP

Builder Direct Deed

The Minister for [Public Transport] on behalf of the
Crown in right of the State of Victoria

[Insert Developer]

[Insert Builder]

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Builder Direct Deed

Date ►

Between the parties

State The Minister for [Public Transport] on behalf of the Crown in right of the State of Victoria.

Developer **[Insert]**
[Insert ABN] of **[insert address]**

Builder **[Insert]**
[Insert ABN] of **[insert address]**

Recitals 1 The background to the Oversight Development is set out in the Commercial Development Agreement.
2 The Developer and the Builder are or will become parties to the Building Contract.
3 The Builder has agreed to grant to the State certain rights in relation to the Building Contract.

This deed witnesses as follows:

1 Defined terms and interpretation

1.1 Commercial Development Agreement definitions

Unless otherwise expressly defined, expressions used in this Deed have the meanings given to them in or for the purposes of the Commercial Development Agreement.

1.2 Definitions

In this Deed, unless the context requires otherwise:

| Term | Meaning |
|--|--|
| Additional Obligor | means a company or other entity which is wholly owned by the State. |
| Additional Obligor Step-In Notice | has the meaning given in clause 7.1(a)(3). |
| Additional Obligor Step-Out Date | has the meaning given in clause 7.3(d). |
| Agreed Amount | has the meaning given in clause 13(b)(1). |
| Assumption Date | has the meaning given in clause 7.3(a). |
| Building Contract | means the document entitled ' [insert] ' dated on or about the date of this Deed between the Developer and the Builder. |
| Builder Associate | means any: <ol style="list-style-type: none"> 1 Builder Relevant Person in respect of the Builder only (excluding the Developer Representative); and 2 officer, agent, adviser, consultant, contractor or employee of the Builder. |
| Builder Relevant Person | means: <ol style="list-style-type: none"> 1 a director or secretary of the Builder; or 2 any officer or employee, consultant, contractor or agent of the |

| Term | Meaning |
|---|---|
| | <p>Builder who:</p> <ul style="list-style-type: none"> a has the ability to exercise influence or control in relation to the Builder, or in matters relating to the Oversight Development; b works in any role in connection with the Oversight Development Works, including undertaking any task for the purpose of the Building Contract or this Deed; or c has access to Confidential Information in connection with the Oversight Development. |
| Builder Statement | has the meaning given in clause 6.4. |
| Commercial Development Agreement | means the Commercial Development Agreement for the Project entered into by the State and the Developer on or about [insert], as amended from time to time. |
| Cost | has the meaning given in clause 13(g). |
| Deed | means this deed and includes all Schedules, Exhibits, Attachments and Annexures to it. |
| Default Event | <p>means any:</p> <ul style="list-style-type: none"> 1 breach by the Developer of any of its obligations under the Building Contract; or 2 other event or circumstance, <p>which alone or with the giving of notice or passage of time or both, would entitle the Builder to terminate, rescind, accept the repudiation of, or suspend any or all of its obligations under, the Building Contract.</p> |
| Default Event Notice | has the meaning given in clause 6.2(a). |
| Developer's Rights | has the meaning given in clause 7.3(b)(1)(A). |
| Disputing Parties | has the meaning given in clause 9.1(a). |
| Finance Direct Deed | means the document entitled "Finance Direct Deed" dated [#] between the Developer, the State, the Developer's financier. |



| Term | Meaning |
|--------------------------------|---|
| Material Adverse Effect | means a material adverse effect on: <ol style="list-style-type: none">1 the ability of each of the Developer or the Builder to perform and observe their respective obligations under any Commercial Development Agreement to which it is a party; or2 the rights of the State under any Commercial Development Agreement, or the ability or capacity of the State to exercise its rights or perform its obligations under a Commercial Development Agreement. |
| Novation Notice | has the meaning given in clause 8.1(a). |
| Novation Notice Date | means: <ol style="list-style-type: none">1 in relation to clause 8.3, the later of the date of the Novation Notice and the date the Builder consents or is deemed (in accordance with clause 8.3(d)) to have consented to the novation; and2 otherwise, the date of the Novation Notice. |
| Project Agreement | means the document entitled 'Project Agreement' between the State and Project Co dated [insert] . |
| Recipient | has the meaning given in clause 13(b)(2). |
| Representative | has the meaning given in clause 9.2(a). |
| Revenue | has the meaning given in clause 13(f). |
| State Cure Notice | has the meaning given in clause 6.2(c). |
| Step-In Period | has the meaning given in clause 7.1(b). |
| Step-In Right | has the meaning given in clause 7.1(a). |
| Substitute Party | has the meaning given in clause 8.1(a). |
| Supplier | has the meaning given in clause 13(b). |

1.3 Interpretation

In this Deed:

- (a) (**headings**): headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;
- and unless the context otherwise requires:
- (b) (**count and gender**): a word importing the singular includes the plural and vice versa and a word indicating a gender includes every other gender;
 - (c) (**references**): a reference to:
 - (1) a party, clause, Schedule, Exhibit, or Annexure is a reference to a party, clause, Schedule, Exhibit or Annexure of or to this Deed; and
 - (2) a section is a reference to a section of a Schedule;
 - (d) (**Deed as amended**): a reference to this Deed or to any other deed, agreement, document or instrument includes a reference to this Deed or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
 - (e) (**party**): a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
 - (f) (**person**): a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
 - (g) (**legislation**): a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
 - (h) (**definitions**): if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
 - (i) (**'includes'**): 'includes' will be read as if followed by the phrase '(without limitation)';
 - (j) (**'or'**): the meaning of 'or' will be that of the inclusive, being one, some or all of a number of possibilities;
 - (k) (**information**): a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
 - (l) (**'\$'**): a reference to '\$', AUD or dollar is to Australian currency;
 - (m) (**time**): a reference to time is a reference to time in Melbourne, Australia;
 - (n) (**rights**): a reference to a right includes any benefit, remedy, function, discretion, authority or power;
 - (o) (**obligations and liabilities**): a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
 - (p) (**'may'**): the term 'may', when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or

remedy in its absolute and unfettered discretion and the State has no obligation to do so;

- (q) **(construction)**: where there is a reference to an Authority, institute or association or other body referred to in this Deed which:
 - (1) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or
 - (2) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (r) **(remedy)**: the use of the words 'remedy' or 'cure' or any form of such words in this Deed means that the event to be remedied or cured must be remedied or cured or its effects overcome; and
- (s) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

1.4 Priority of documents

To the extent of any inconsistency, ambiguity or discrepancy between this Deed and the Building Contract, this Deed prevails.

1.5 Commercial Development Agreements and Finance Direct Deed

The Builder acknowledges that it has received a copy of the Project Agreement, and the Finance Direct Deed.

1.6 Business Day

If the day on or by which anything is to be done in accordance with this Deed is not a Business Day, that thing must be done no later than the next Business Day.

1.7 Prior approval or consent

Where the Builder are required by this Deed to obtain the State's consent or approval to an action, document or thing, unless otherwise expressly stated, that consent or approval must be obtained prior to the actions, document or thing occurring or coming into effect.

1.8 Action without delay

Unless there is a provision in this Deed which specifies a period of time in which something must be done by the parties, all things must be done without undue delay.

1.9 Provisions limiting or excluding Liability, rights or obligations

- (a) **(No limit)**: A right of the State or any obligation of the Builder or the Developer under this Deed will not limit or exclude any other right of the State or obligation of the Builder or the Developer under this Deed unless expressly stated.
- (b) **(Permitted by Law)**: Any provision of this Deed which seeks, either expressly or by implication, to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.

1.10 Relationship of the parties

Unless otherwise expressly provided, this Deed does not:

- (a) **(no additional relationship)**: create a partnership, joint venture, fiduciary, employment or agency relationship between the parties; or
- (b) **(no good faith)**: impose any duty of good faith on the State.

1.11 Approvals, directions and notices in writing

Unless otherwise expressly provided in this Deed or agreed between the parties, all approvals, consents, directions, requirements, requests, claims, notices, agreements and demands given or required to be given under this Deed must be given in writing.

1.12 State's rights and obligations

- (a) **(Acknowledgement)**: The parties acknowledge the substance, operation and potential effect and consequences of clause 1.9 of the Commercial Development Agreement in relation to this Deed.
- (b) **(No Claim)**: Subject to clause 1.12(c), the Developer and the Builder will not be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its executive or statutory rights or duties.
- (c) **(Liability for breach)**: Clauses 1.12(a) and 1.12(b) do not limit any Liability which the State would have had to the Developer or the Builder under any Commercial Development Agreement as a result of a breach by the State of a term of any Commercial Development Agreement but for these clauses.

1.13 Reasonable endeavours of State

Any statement in this Deed providing that the State will use or exercise 'reasonable endeavours' or 'act reasonably' in relation to an outcome, means that the State:

- (a) **(relevant steps)**: will take steps to bring about the relevant outcome so far as it is reasonably able to do so, having regard to its resources and other responsibilities;
- (b) **(no guarantee)**: cannot guarantee the relevant outcome; and
- (c) **(no obligation)**: is not required to:
 - (1) exercise a right of any Government Party, or to influence, over-ride, interfere with or direct any other Government Party in the proper exercise and performance of its legal, executive or statutory rights and duties and functions;
 - (2) exercise a power or discretion in a manner that the State regards as not in the public interest;
 - (3) develop or implement new policy;
 - (4) procure legislation; or
 - (5) act in any way that the State regards as not in the public interest.

2 Conditions precedent

The satisfaction or waiver of the Conditions Precedent in accordance with clause 4 of the Commercial Development Agreement, is a condition precedent to the coming into operation of this Deed (other than this clause 2 and clauses 1.1 to 1.3, 1.6, 1.7, 1.10, 1.11, 1.12, 1.13, 4, 9, 10, 12, 14, 15 and 16).

3 Acknowledgments

3.1 By the Developer

The Developer is bound by, and must cooperate in the implementation of, this Deed. It acknowledges that this Deed is intended to benefit only the Builder and the State, and does not in any way affect any obligation or right of the Developer under the Building Contract or under any Commercial Development Agreement except as expressly set out herein.

3.2 Information

The Developer and the Builder each acknowledge and agree that:

- (a) **(information purpose):** any information, data and documents provided by the State or a State Associate:
 - (1) are provided for information purposes only and all of the State's or a State Associates' Intellectual Property Rights therein remain the property of the State or the State Associate (as the case may be); and
 - (2) do not form part of this Deed or constitute an invitation, offer or recommendation by or on behalf of the State or a State Associate;
- (b) **(no Liability):** to the extent permitted by Law, none of the State or the State Associates will have any Liability to the Builder or any Builder Associate, nor will the Builder or any Builder Associate be entitled to make any Claim against the State, or seek, pursue or obtain an indemnity against or contribution to Liability from the State or a State Associate arising in connection with:
 - (1) the provision of, or purported reliance upon, or use of, any information, data and documents referred to in clause 3.2(a) by the Builder or any other person to whom such information is disclosed by the Builder, the Builder Associate, or any person on behalf of the Builder or any Builder Associate;
 - (2) any reference to the State in the Building Contract; or
 - (3) any review of, comments upon, acceptance, approval or certification of the form or substance of the Building Contract by the State.

3.3 Building Contract not to affect State rights

The Developer and the Builder each acknowledge and agree that:

- (a) **(rights not affected):** where the Builder is expressed in the Building Contract to have a right (or possible right) to compensation or relief which is dependent on or determined by reference to the Commercial Development Agreement or an equivalent or similar right of the Developer:

- (1) this does not of itself expand the Developer's rights, or the State's Liability, under the Commercial Development Agreement to include the compensation or relief to which the Builder is or may become entitled under the Building Contract; and
 - (2) the Developer's rights, and the State's Liability, under the Commercial Development Agreement will be determined solely in accordance with the terms of the Commercial Development Agreement;
- (b) **(risk of discrepancy)**: as between the State (on the one hand) and the Developer and the Builder (on the other hand), the Developer and the Builder accept and will bear the risk of any inconsistency, ambiguity or discrepancy between the terms of the Building Contract and the Commercial Development Agreement; and
- (c) **(dealing directly with State)**: notwithstanding anything to the contrary in the Building Contract, no Builder has any right to deal directly with the State or participate in any meeting, consultation or process (including negotiation or dispute resolution) unless:
- (1) expressly provided to the contrary in the Commercial Development Agreement or this Deed; or
 - (2) the State consents.

4 Representations and warranties by the Builder

The Builder represents and warrants for the benefit of the State that:

- (a) **(power to execute)**: it has the power to execute, deliver and carry out its obligations under this Deed and the Building Contract to which it is a party and all necessary action has been taken to authorise that execution, delivery and performance;
- (b) **(legality)**: the execution, delivery and performance of this Deed and the Building Contract to which it is a party does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;
- (c) **(validity)**: this Deed and the Building Contract to which it is a party constitutes a valid and legally binding obligation on it in accordance with its terms;
- (d) **(registration)**: it is duly registered, properly constituted and remains in existence;
- (e) **(no trust relationship)**: except as stated in this Deed, it is not the trustee or responsible entity of any trust nor does it hold any property subject to or impressed by any trust in relation to the Oversight Development Works;
- (f) **(information true and correct)**: all information provided by it to the State is true and correct to the best of its knowledge and belief (having undertaken enquiries reasonably expected of a skilled professional carrying out the obligations of the Builder under the Building Contract) as at the date on which it is provided and no Builder is aware of any material facts or circumstances that have not been disclosed to the State and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this Deed or to consent to the entry into the Building Contract;
- (g) **(litigation)**: no Claim against it is current or pending or (to its knowledge) is threatened, which will or is likely to have a material adverse effect upon it or its ability to perform its financial and other obligations under this Deed, the Building

Contract, or any other Commercial Development Agreement to which it is a party;

- (h) **(Insolvency Event)**: no Insolvency Event has occurred in respect of it;
- (i) **(accounts)**: in respect of its accounts:
 - (1) its most recent consolidated audited (if the requirement for auditing is applicable) accounts give a true and fair view of its and its subsidiaries' state of affairs as at the date to which they relate and the results of its and its subsidiaries' operations for the accounting period ended on such date;
 - (2) there has been no material adverse change in its or its subsidiaries' state of affairs since such date; and
 - (3) such accounts have been prepared in accordance with the Corporations Act and accounting principles and practices generally accepted in Australia consistently applied, except to the extent of departures from such principles and practices disclosed in such accounts;
- (j) **(no default)**:
 - (1) no default has occurred under any document or agreement binding on it or its assets which relates to financial indebtedness; and
 - (2) nothing else has occurred,which, with the giving of notice or lapse of time, constitute an event of default, cancellation, prepayment event (pursuant to a bona fide right to exercise prepayment) or similar event (whatever called) under any such document or agreement, would have a Material Adverse Effect;
- (k) **(no immunity)**: neither it nor any of its assets enjoys any immunity from set off, suit or execution; and
- (l) **(own investigations)**: in entering into this Deed, the Building Contract to which it is a party, and any other Commercial Development Agreement to which it is a party it relied upon its own investigations and has not relied upon any representation or warranty about its subject matter by the State, the Developer or any other person unless in respect of the Developer or any other person, other than the State or any of its Associates, it is expressly permitted to do so in accordance with a Commercial Development Agreement to which it is a party.

5 Undertakings of the Builder

The Builder undertakes to the State as follows:

- (a) **(notification of Default Event)**: in the case of the Builder, it will notify the State of any Default Event promptly after it gives notice of that Default Event in accordance with clause *[insert]* (**[Notice of Developer Event of Default]**) of the Building Contract;
- (b) **(documents in relation to Default Event)**: in the case of the Builder, it will promptly give the State a copy of all documents issued by the Builder to the Developer in relation to a Default Event;
- (c) **(deed of accession)**: it will not novate, assign or substitute any of its rights, obligations or interest in the Building Contract without first procuring that the proposed novatee, assignee or substitute executes a deed in favour of the State

(in form and substance approved by the State) pursuant to which the novatee, assignee or substitute agrees to accept and be bound by this Deed as if it were the Builder;

- (d) **(attend meetings and inspections)**: it will (when reasonably requested by the State):
- (1) attend meetings with the State or any of its Associates;
 - (2) provide the State, any of its Associates and other authorised personnel with:
 - (A) in the case of the Builder, full access to the Site to the extent provided in the Commercial Development Agreement and to the extent that the Builder has access or is granted access under the Building Contract; and
 - (B) any other information, records or documents that the State, any of its Associates (acting reasonably) require in relation to the carrying out of the performance of the obligations under or compliance with the Building Contract or any information required by the State to comply with requests from the Victorian Auditor-General; and
- (e) **(access to records)**: in the case of the Builder, at the request of the State (acting reasonably), the Builder will:
- (1) permit the State and any of its Associates to inspect all records, reports, plans, programs, specifications, and technical documents prepared or kept by the Builder in relation to the performance of its obligations under the Building Contract or otherwise relating to the Oversight Development; and
 - (2) supply the State and any of its Associates with a copy of any such report or document which they may require from time to time, but excluding any financial, pricing or commercially sensitive information.

6 Right to cure before termination of the Building Contract

6.1 State's cure rights

- (a) **(Provide State with notices)**: The Builder must give the State:
- (1) Default Event Notices; and
 - (2) State Cure Notices,
- as required by clause 6.2.
- (b) **(State Cure Notice)**: On receiving a State Cure Notice, and subject to the Financier Direct Deed, the State may (but is not obliged to) take steps to:
- (1) remedy, or procure the remedy of, that Default Event; or
 - (2) if the Default Event is not capable of remedy, commence and continue to perform the obligations of the Developer under the Building Contract.

6.2 Termination or suspension with cause

This clause 6.2 and clause 6.3 do not limit the Builder's rights under the Building and Construction Industry Security of Payment Act 2002. The Builder may only exercise a right under the Building Contract to terminate, rescind, accept the repudiation of, or (subject to clause 6.3) suspend the performance of any or all of its obligations under the Building Contract if:

- (a) **(prior notice)**: the Builder has given to the State prior notice setting out details of the Default Event giving rise to that proposed exercise in accordance with clause 6.4 (**Default Event Notice**);
- (b) **(expiration of remedy period)** any remedy period available to the Financiers in respect of the Default Event under the Finance Direct Deed has expired without a remedy being achieved;
- (c) **(State cure notice)**: the Builder has given notice to the State (**State Cure Notice**) confirming that any remedy period available to the Financiers in respect of the Default Event under the Finance Direct Deed has expired without a remedy being achieved; and
- (d) **(Default Event remedy)**: where:
 - (1) the Default Event is capable of remedy within 20 Business Days after the date on which the State received the State Cure Notice, the Default Event has not been remedied within that 20 Business Day period;
 - (2) the Default Event is capable of remedy within a period longer than 20 Business Days after the date on which the State received the State Cure Notice, the State has not commenced remedying the Default Event within that 20 Business Day period or, having commenced remedying, has not continued to diligently pursue that remedy;
 - (3) the Default Event is not capable of remedy and the Default Event Notice contains a claim for reasonable compensation for the Default Event, the Developer or the State (or another person on behalf of either of them) has not paid or otherwise provided that compensation to the Builder:
 - (A) to the extent that the relevant amount of compensation has been referred to dispute resolution under clauses 9 to 10, within 20 Business Days after that dispute is resolved; or
 - (B) otherwise within 20 Business Days after the date on which the State received the State Cure Notice;
 - (4) the Default Event is not capable of remedy and the Default Event Notice does not contain a claim for reasonable compensation for the Default Event, the State does not commence and continue to perform the Developer's obligations under the Building Contract within 20 Business Days after the date on which the State received the State Cure Notice; or
 - (5) the State notifies the Builder that it elects not to remedy, or procure the remedy of, the Default Event.

6.3 Early suspension of Builder's obligations

If:

- (a) **(right to suspend)**: the Builder, but for the operation of clause 6.2, would have a right to suspend the performance of its obligations under the Building Contract;
- (b) **(State Cure Notice)**: the Builder has issued a State Cure Notice to the State with respect to that Default Event;
- (c) **(dispute, non-payment or expired period)**: either:
 - (1) the State has not undertaken to pay to the Builder the amounts payable under the Building Contract within 10 Business Days of:
 - (A) subject to clause 6.3(c)(2), the date of receipt of the State Cure Notice; or
 - (B) if the State refers the amounts in the Default Event Notice to dispute resolution under clauses 9 to 10 (which it cannot do in relation to an amount that has been certified under the Building Contract or determined in accordance with the Building and Construction Industry Security of Payment Act 2002), the dispute being determined; or
 - (2) without limiting clause 6.2(d), the State has undertaken to pay the Builder amounts payable under the Building Contract for a stated period and that period has expired without the State paying such amounts or without that period being extended by the State (acting reasonably); and
- (d) **(not remedied)**: the Default Event has not otherwise been remedied, then the Builder may suspend performance of its obligations under the Building Contract.

6.4 Builder Statements

As part of any Default Event Notice, the Builder must include a statement of:

- (a) **(all amounts due and payable)**: all amounts due and payable to the Builder under the Building Contract on or before the date of the Default Event Notice but remaining unpaid at such date;
- (b) **(monetary claim)**: the nature and, to the best of the Builder's knowledge and belief, the amount of any monetary claim asserted by the Builder arising in connection with the Building Contract against the Developer; and
- (c) **(Intention to terminate)**: where the Builder intends to terminate the Building Contract due to a default or breach of condition of a non-financial nature or intends to claim damages or to seek some other form of relief:
 - (1) the provisions of the Building Contract alleged to have been breached or not fulfilled;
 - (2) sufficient information to enable the State to identify the material facts;
 - (3) the steps reasonably required to remedy the Default Event (if reasonably capable of remedy);
 - (4) the time within which the specified steps can reasonably be expected to be taken;
 - (5) if applicable, the amount of damages claimed and the manner in which they have been calculated; and
 - (6) if applicable, the other relief to be sought,

(being the **Builder Statement**).

6.5 Warranty of accuracy and waiver

The Builder:

- (a) **(warranty)**: warrants to the State that each Builder Statement will, subject to unintended error which the Builder agrees to rectify, be a true, complete and accurate statement of the amounts or other relief to which the Builder considers itself entitled; and
- (b) **(waiver)**: waives and abandons all Claims then known or which ought reasonably to have been known to the Builder arising in connection with the Building Contract prior to the date of the Default Event Notice which would entitle the Builder to terminate the Building Contract or suspend the performance of its obligations under it other than the claims disclosed in the Builder Statement.

6.6 Verification of Builder Statements

The State may appoint one or more independent chartered accountants, technical advisers or other appropriately qualified persons to verify (at the cost of the Developer) the Builder Statement, and the Builder must, subject to such persons executing an appropriate confidentiality agreement as the Builder may reasonably request, permit such persons to have access to and to make copies of all records, documents, data and accounting and other information not subject to legal (including, without limitation, solicitor and own client) and other professional privilege which is reasonably required with a view to confirming the accuracy and completeness of such Builder Statement.

6.7 Builder Statements to be conclusive evidence

- (a) **(Reliance)**: The State is entitled to rely on the Builder Statement for the purpose of determining the extent of the matters occurring prior to a Default Event which are required to be remedied and the requirements to effect the remedy of that Default Event by a State.
- (b) **(Conclusive evidence)**: The Builder Statement will, to the extent provided for in clause 6.4 and 6.5, be conclusive evidence in favour of any State that the Builder has waived and abandoned all Claims then known or which ought reasonably to have been known to the Builder arising in connection with the Building Contract prior to the date of the Default Event Notice other than the Claims disclosed in the Builder Statement.
- (c) **(Claims against the Developer)**: Clauses 6.5(b), 6.7(a) and 6.7(b) are without prejudice to the rights of the Builder to pursue any Claims against the Developer following the end of the Step-In Period or termination of the Building Contract.
- (d) **(Disputes)**: For the avoidance of doubt, the Builder Statement will not prevent any State from disputing the amount of any Claim or other relief sought by the Builder or the existence of any default by the Developer under the Building Contract (but the State cannot dispute an amount that has been certified under the Building Contract or determined in accordance with the Building and Construction Industry Security of Payment Act 2002). In the case of any such dispute:
 - (1) the time periods set out in clause 6.2(d) will continue to apply to those amounts and obligations (if any) which are not in dispute;
 - (2) the dispute must be referred to dispute resolution under clauses 9 to 10; and

- (3) during the period of dispute resolution, all parties must continue to perform their obligations under this Deed and the Commercial Development Agreements.

7 Step-In by the State

7.1 Step-In Right

- (a) **(Exercise):** Following receipt of a State Cure Notice or otherwise as permitted under any Commercial Development Agreement, the State may:
 - (1) itself enter into possession of any or all of the assets of the Developer;
 - (2) take such other action as it is permitted to take under the terms of the Commercial Development Agreements; or
 - (3) by notice to the Builder (**Additional Obligor Step-In Notice**), procure that an Additional Obligor assumes jointly and severally with the Developer all of the Developer's rights and obligations under the Building Contract,(each a **Step-In Right**).
- (b) **(Step-In Period):** The period from the date on which the Builder receives notice of the exercise of any Step-In Right to the earliest of:
 - (1) the Additional Obligor Step-Out Date;
 - (2) the date on which the Builder terminates the Building Contract;
 - (3) the date of any transfer under clause 8; and
 - (4) the date which the State has notified the Builder will be the date that the State ceases to exercise its Step-In Rights,is the **Step-In Period**.
- (c) **(Acknowledgment):** The Builder acknowledges that the exercise by the State of a Step-In Right in the manner contemplated by this Deed will not of itself contravene the Building Contract, or constitute a Default Event under the Building Contract or entitle the Builder to exercise any right (including termination) under the Building Contract.

7.2 Step-In by the State

- (a) **(Rights):** Subject to the Finance Direct Deed, the State may at any time during a Step-In Period, exercise all or any of its rights and carry out all or any of the obligations of the Developer in connection with the Building Contract, as if it were the Developer to the exclusion of the Developer.
- (b) **(No Liability):** The Developer and the Builder each agree that, subject to clause 7.3(b):
 - (1) none of the State or its Associates will have any Liability; and
 - (2) none of the Developer or the Builder will be entitled to make, continue or enforce any Claim against the State or any of its Associates,arising in connection with the Building Contract or this Deed by reason only of the State or any of its Associates exercising any of the Developer's rights, or performing any of the Developer's obligations under the Building Contract other

than, and then only to the extent of, Liability for fraudulent, reckless, unlawful or malicious acts or omissions, or wilful misconduct of the State or any State Associate.

7.3 Step-In using Additional Obligor

- (a) **(Assumption Date):** If clause 7.1(a)(3) applies, the Additional Obligor will become a party to the Building Contract on the date on which the Additional Obligor Step-In Notice is given to the Builder or such later date as the Builder and the State may agree (**Assumption Date**).
- (b) **(Rights and obligations of Additional Obligor):** During a Step-In Period in respect of which the State has exercised a Step-In Right:
- (1) subject to clause 7.3(b)(2), the Additional Obligor will be:
 - (A) entitled to exercise the rights of the Developer under the Building Contract (excluding any accrued rights of the Developer in respect of any damage, loss, cost, charge, expense, outgoing or payment to the extent that the rights arose prior to the Assumption Date) (**Developer's Rights**); and
 - (B) liable for the performance or non-performance of all the Developer's obligations under the Building Contract arising on or after the Assumption Date except as released in accordance with clause 7.3(e);
 - (2) as between the Developer, the Builder and the Additional Obligor, only the Additional Obligor is authorised to deal with the Builder and to exercise the Developer's Rights;
 - (3) the Developer acknowledges that it will be legally bound by all the acts and omissions of the Additional Obligor in so dealing with the Builder and in exercising the Developer's Rights;
 - (4) the Additional Obligor will be bound by any earlier decision, directions, approvals, notices or consents given or made prior to the Assumption Date;
 - (5) clause 14 will apply to the Builder and the Additional Obligor as if the address and email address of the Additional Obligor (as notified to the Builder and the Developer) were set out in addition to those of the Developer; and
 - (6) the Builder will owe their respective obligations under the Building Contract to the Developer and the Additional Obligor jointly but the performance by the Builder in favour of either the Developer or the Additional Obligor will be a good discharge of the relevant obligations under the Building Contract.
- (c) **(No Liability):** Without prejudice to the Builder's rights under clauses 6.2 and 6.3, the Additional Obligor will have no obligation to, and no Liability in respect of, remedying any default or breach of the Developer under the Building Contract arising prior to the Assumption Date.
- (d) **(Additional Obligor Step-Out Date):** The Additional Obligor may at any time give the Builder notice terminating the Additional Obligor's rights and obligations under the Building Contract (without affecting the continuation of the Developer's obligations or liabilities towards the Builder under the Building

Contract). Such notice must specify the date on which it takes effect, which must be:

- (1) at least 30 days after the date of the notice; or
 - (2) if a Novation Notice has been given, the Novation Notice Date, **(Additional Obligor Step-Out Date)**.
- (e) **(Release)**: On and from the Additional Obligor Step-Out Date, as between the Builder and the Additional Obligor only, each of the Builder and the Additional Obligor will be released from all obligations under the Building Contract (except for those obligations owed to each other which have arisen during the relevant Step-In Period), whether or not a Claim has been made in respect of those obligations or they have not fallen due to be performed or have not been performed. For the avoidance of doubt, on and from the Additional Obligor Step-Out Date, the Builder will continue to owe their obligations under the Building Contract to:
- (1) the Developer; or
 - (2) if a Novation Notice has been given, to the Substitute Party.

7.4 Indemnity

The Developer must indemnify the State, its Associates and any Additional Obligor against any Claim or Liability (including any Claim made by, or Liability to, a third party) the State, any of its Associates or any Additional Obligor suffers or incurs arising in connection with taking any action under clause 7.2 or clause 7.3.

8 State's option to novate to the State or third party

8.1 Option

- (a) **(Novation Notice)**: The State may require a novation of the Building Contract upon the termination of the Commercial Development Agreement by giving a notice **(Novation Notice)** to the Builder. The Novation Notice must specify the person to whom the State intends to novate the Building Contract whether this be the State or another person **(Substitute Party)**.
- (b) **(Builder's obligations to continue)**: If the State issues a Novation Notice then (without prejudice to the Builder's rights under clauses 6.2 and 6.3) the Builder, until the Novation Notice Date, must continue to perform their respective obligations under the Building Contract.
- (c) **(Builder to continue work)**: If the Builder has exercised any rights it has to suspend the performance of any of its obligations under the Building Contract, the Builder must recommence performance of those obligations from the Novation Notice Date or the date on which the cause of the suspension is remedied (whichever is the earlier).
- (d) **(Novation Notice not a Default Event)**: The Builder acknowledges that the giving of a Novation Notice by the State will not of itself contravene, or constitute a Default Event under, the Building Contract, or entitle the Builder to exercise any power (including termination) under it.

8.2 Novation to Substitute Party

- (a) **(Effect of novation):** Subject to clause 8.3, with effect from the Novation Notice Date:
- (1) the Substitute Party will assume (and if the Substitute Party is not the State, the State will procure that the Substitute Party assumes):
 - (A) any obligation of the Developer under the Building Contract arising before the Novation Notice Date insofar as it relates to the payment of an amount of money that:
 - 1) is due and payable under the terms of the Building Contract; and
 - 2) is not the subject of a dispute under the Building Contract (or is the subject of a dispute under the Building Contract in which case the Substitute Party will, on the determination of such dispute, assume such obligations in accordance with that determination); and
 - (B) the obligations of the Developer under the Building Contract arising on and from the Novation Notice Date (including obligations in relation to the payment of amounts which become due and payable in respect of work performed before the Novation Notice Date) subject to any amendments to the Building Contract agreed in accordance with clause 8.2(a)(6);
 - (2) without prejudice to any then accrued rights against the Developer (other than termination), any Builder's right to suspend under the Building Contract which exists at the Novation Notice Date will be of no further effect;
 - (3) subject to any amendments agreed to the Building Contract in accordance with clause 8.2(a)(6), the Substitute Party will have all the rights of the Developer under the Building Contract (excluding any accrued rights of the Developer in respect of any damage, loss, cost, charge, expense, outgoing or payment to the extent that those rights arose prior to the Novation Notice Date and are the subject of any unresolved dispute referred to in clause 8.2(a)(1)(A));
 - (4) subject to clause 8.2(a)(3) and any amendments agreed to the Building Contract in accordance with clause 8.2(a)(6), the Builder will:
 - (A) be bound by and must comply with the provisions of the Building Contract as if the Substitute Party were the Developer; and
 - (B) be entitled to any extensions of time and other entitlements which accrued to the Builder prior to the Novation Notice Date;
 - (5) the Developer is released from all of its obligations and Liabilities under the Building Contract, excluding any accrued obligations or Liabilities of the Developer to the extent that those accrued obligations or Liabilities:
 - (A) arose in connection with events occurring prior to the Novation Notice Date; and

- (B) are not obligations and Liabilities assumed by the Substitute Party under clause 8.2(a)(1);
 - (6) the Builder and the Substitute Party will promptly negotiate in good faith, any amendments to the Building Contract that are necessary to reflect the termination of the Commercial Development Agreement; and
 - (7) for the avoidance of doubt, any caps on Liability in the Building Contract will continue to apply, but so that any Liability of the Builder incurred to the Developer prior to the Novation Notice Date is taken into account in respect of any ongoing Liability of the Builder to the Substitute Party.
- (b) **(No set off):** The Builder is not entitled to exercise any right of set off, deduction, abatement or counterclaim against the Substitute Party if, and to the extent that, such right arose prior to the Novation Notice Date.
- (c) **(Novation Deed):** Subject to clause 8.3(b), the Developer, the Builder and the Substitute Party must enter into an agreement in form and substance reasonably requested by the Substitute Party reflecting the novation of the Building Contract as contemplated in clause 8.2(a) and take such other action as is required to vest in the Substitute Party full legal and equitable title to any retention account, bank guarantee, performance bond, letter of credit or other security held by the Developer to secure the obligations of the Builder under the Building Contract.
- (d) **(Attorney):** For valuable consideration, the Developer and the Builder each irrevocably appoint the State, on its behalf and in its name or otherwise, as its attorney to do anything which the Developer or the Builder is obliged to do (but has not done within 5 Business Days of request) under clause 8.2(c). Each of the Developer and the Builder ratifies and confirms and agrees to ratify and confirm whatever any such attorney lawfully does in the exercise of the power of attorney in this clause 8.2(d). This clause 8.2(d) does not apply where the Builder objects on reasonable grounds to the proposed novation.

8.3 Novation to a Substitute Party other than the State

- (a) **(Information to be provided by the State):** If the State gives a Novation Notice that states that the Developer must novate the Building Contract Documents to a Substitute Party other than the State or a State Associate, the State must, at the time it gives the Novation Notice, provide to the Builder the following particulars of the Substitute Party:
- (1) its name, place of incorporation and identity of shareholder(s) (including, unless a shareholder is listed on a securities exchange, the ultimate shareholders);
 - (2) if available, its most recent published audited accounts; and
 - (3) sufficient particulars of the finance available to the Substitute Party to enable the Builder to decide whether to grant its consent to the Substitute Party.
- (b) **(Consent by the Builder):** A novation to, and the giving of a Novation Notice with respect to, a Substitute Party other than the State or a State Associate in accordance with this clause 8 will only be effective, and the Builder will only be required to enter into a novation agreement under clause 8.2(c), if the Builder consents to that novation (such consent not to be unreasonably withheld or delayed) or are deemed to have consented in accordance with clause 8.3(d).

- (c) **(Further information):** The State must as soon as practicable supply the Builder with such additional information to that provided under clause 8.3(a) as the Builder reasonably requires to enable it to decide whether to grant consent under clause 8.3(b), and the Builder must consider such information expeditiously and inform the State promptly if it reasonably requires further information.
- (d) **(Deemed consent):** The Builder's consent to the novation will be deemed to be given if the Builder have not notified the State under clause 8.3(e)(2) within 15 Business Days of the later of:
- (1) the receipt of the Novation Notice; and
 - (2) the receipt of the State's response to the Builder' request for information under clause 8.3(c).
- (e) **(Unreasonably withholding consent):** The Builder is not entitled to refuse consent to the novation unless:
- (1) the grounds for refusal are reasonable and are based on:
 - (A) the proposed novation deed referred to in clause 8.2(c) for the Substitute Party to assume the rights and obligations of the Developer under the Building Contract not being effective to substitute the Substitute Party for the Developer;
 - (B) the Substitute Party not having the legal capacity, power and authorisation to become a party to and perform the obligations of the Developer in accordance with the Building Contract including any necessary authorisations and consents;
 - (C) the technical competence or financial standing of the Substitute Party being insufficient for it to meet the obligations of the Developer in accordance with the Building Contract; or
 - (D) the Builder being placed in breach of any Laws by the proposed novation; and
 - (2) it has notified the State of such reasons.
- (f) **(If the Builder withholds consent):** If the Builder withholds its consent to a Novation Notice under this clause 8.3, this will not prejudice the ability of the State to give one or more subsequent Novation Notices, and information under clause 8.3(a), containing changed particulars relating to the same Substitute Party or particulars relating to another Substitute Party.

8.4 Accrued obligations and liabilities

Clause 8.2 does not operate to:

- (a) **(State not to assume):** require the State to assume any obligations or Liabilities arising from, or which are required to be performed in connection with the Building Contract prior to the Novation Notice Date unless expressly required to do so in clause 8.2; or
- (b) **(Release the Developer):** release the Developer from such obligations or Liabilities unless expressly provided for in clause 8.2.

9 Dispute Resolution

9.1 Procedure for resolving disputes

- (a) **(Disputes to be resolved)**: Any dispute arising under this Deed must be resolved by the parties to that dispute (**Disputing Parties**) in accordance with clause 9 and clause 10.
- (b) **(Procedure)**: The procedure that is to be followed to resolve a dispute is as follows:
 - (1) firstly, the dispute must be the subject of negotiation as required by clause 9.2;
 - (2) secondly, if the dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 9.2(c)(1) the Disputing Parties may agree that the dispute will be referred to an expert for determination in accordance with clauses 9.4 to 9.9 or to arbitration under clause 10; and
 - (3) thirdly, if:
 - (A) the dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 9.2(c)(1) and irrespective of whether the Disputing Parties failed to meet as required by that clause or whether having so met the Disputing Parties failed to agree whether the Dispute should be referred to an expert or to arbitration within 20 Business Days after the expiration of the period for negotiation referred to in clause 9.2(c)(1);
 - (B) the dispute has been referred to expert determination and a determination is not made by the expert within 30 days after the expert's acceptance of appointment; or
 - (C) the dispute is referred to expert determination and a notice of dissatisfaction is given in accordance with clause 9.6(a),
 - (4) then the dispute must be referred to arbitration in accordance with clause 10.

9.2 Negotiation

- (a) **(Notification)**: If a dispute arises then a party may give notice to each other Disputing Party requesting that the dispute be referred for resolution by negotiation between the Chief Executive Officers (or equivalent) of the Disputing Parties (**Representatives**).
- (b) **(Contents of Notice)**: A notice under clause 9.2(a) must:
 - (1) state that it is a notice under this clause 9; and
 - (2) include or be accompanied by particulars of the matters which are the subject of the dispute.
- (c) **(Attempt to resolve Dispute)**: If a dispute is referred for resolution by negotiation under clause 9.2(a), then:
 - (1) the Representatives must meet and attempt in good faith to resolve the dispute (in whole or in part) within 10 Business Days of the date

on which the notice under clause 9.2(a) is received (or such later date as the Disputing Parties may agree); and

- (2) any agreement reached between the Representatives will be reduced to writing, signed by or on behalf of each Disputing Party and will be contractually binding on the Disputing Parties.

9.3 Expert determination

If:

- (a) **(dispute unresolved by Representatives)**: a dispute which has been referred to the Representatives for negotiation in accordance with clause 9.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 9.2(c)(1); and
- (b) **(referral to expert)**: the Disputing Parties agree within 20 Business Days after the expiration of the period for negotiation referred to in clause 9.2(c)(1), that the dispute be referred to an expert for determination,

then those parts of the dispute which remain unresolved will be referred to an expert for determination under clauses 9.4 to 9.9. For the avoidance of doubt, a dispute may only be referred to an expert for determination by agreement of the Disputing Parties.

9.4 Selection of expert

- (a) **(Exchange of lists of 3 preferred experts)**: Within 7 Business Days after the date on which the Disputing Parties agree to refer a dispute to an expert for determination under clause 9.3, the Disputing Parties must exchange lists of 3 persons (in order of preference) who, if appointed, would satisfy the requirements of clause 9.4(d), from whom the expert is to be chosen.
- (b) **(Appointment of person who appears on both lists)**: Any person who appears on the list of all Disputing Parties exchanged under clause 9.4(a) will be appointed as the expert to determine a dispute and if more than one person appears on the list of all Disputing Parties, the person given the highest order of priority by the party who gave the notice under clause 9.2(a) will be appointed.
- (c) **(Appointment if no person appears on both lists)**: If no person appears on the list of all the Disputing Parties, the party which gave the notice under clause 9.2(a) must procure:
 - (1) the president (or the senior non-executive officer, howsoever described) of the institute or governing body for the technical or professional discipline the subject of the relevant dispute to nominate the expert, having regard to, but not being bound by, those persons proposed by the Disputing Parties under clause 9.4(a); or
 - (2) if there is no governing body for the technical or professional discipline the subject of the relevant dispute or the Disputing Parties cannot agree the technical or professional discipline relevant to the dispute or such governing body advises that it will not nominate an expert, the Australian Centre for International Commercial Arbitration to nominate a person to act as the expert, having regard to, but not being bound by, those persons proposed by the Disputing Parties under clause 9.4(a),

within 7 Business Days of the exchange of notices under clause 9.4(a).

- (d) **(Appropriate skills):** It is the intention of the parties that the expert appointed to determine a dispute will be an independent person with appropriate skills having regard to the nature of the matters in dispute.
- (e) **(No entitlement to challenge appointment):** No Disputing Party will be entitled to challenge the appointment of an expert under this clause 9.4 on the basis that the expert does not satisfy the requirements of clause 9.4(d).
- (f) **(Not an arbitration agreement):** Any agreement for expert determination under this Deed will not constitute an arbitration agreement for the purposes of the *Commercial Arbitration Act 2011 (Vic)*.
- (g) **(Agreement):** Once an expert is appointed, the Disputing Parties must enter into an agreement with the expert on the terms of the Expert Determination Agreement or such other reasonable terms as the expert may require.

9.5 Rules of expert determination

The expert determination process will be administered, and the expert will be required to act, under the terms of the Expert Determination Agreement.

9.6 Expert finding

- (a) **(Notification):** The determination of the expert must be in writing and will be final and binding on the Disputing Parties unless, within 10 Business Days of receipt of the determination, a Disputing Party gives notice to each other Disputing Party of its dissatisfaction and intention to refer the matter to arbitration in accordance with clause 10.
- (b) **(Amendment to determination):** Upon submission by any Disputing Party, the expert may amend the determination to correct:
 - (1) a clerical mistake;
 - (2) an error from an accidental slip or omission;
 - (3) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
 - (4) a defect in form.

9.7 Liability of expert

- (a) **(Liability of expert):** The Disputing Parties agree:
 - (1) that the expert will not be Liable in connection with the expert determination, except in the case of fraud on the part of the expert; and
 - (2) to indemnify the expert against any Claim or Liability in connection with the expert determination, except in the case of fraud on the part of the expert, in which case a Claim may be made against him or her by any person who is a party to the dispute.
- (b) **(Engagement):** The Disputing Parties will jointly engage the expert services in connection with the expert determination proceedings and each Disputing Party will seek a separate Tax Invoice equal to its share of the cost of the expert.

9.8 Costs

The Disputing Parties must:

- (a) **(own costs)**: bear their own costs in connection with the expert determination proceedings; and
- (b) **(engagement)**: pay an equal portion of the costs of the expert.

9.9 Proportionate Liability

To the extent permitted by Law, the Expert will have no power to apply or to have regard to the provisions of any proportionate liability legislation which might in the absence of this clause 9.9, have applied to any dispute referred to the Expert in accordance with this clause 9.

10 Arbitration

10.1 Reference to Arbitration

- (a) **(Dispute)**: If:
 - (1) a dispute:
 - (A) which has been referred to the Disputing Parties' Representatives for negotiation in accordance with clause 9.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 9.2(c)(1); and
 - (B) the Disputing Parties do not agree to refer the dispute to an expert for determination; or
 - (2) in the case of a dispute which the Disputing Parties agree to refer to expert determination under clause 9.3:
 - (A) a determination is not made within 30 days of the expert's acceptance of the appointment; or
 - (B) a notice of dissatisfaction is given in accordance with clause 9.6(a),then any Disputing Party may notify the other Disputing Parties that it requires the dispute to be referred to arbitration.
- (b) **(Referral)**: Upon receipt by a Disputing Party of a notice under clause 10.1(a), the dispute will be referred to arbitration.

10.2 Arbitration

- (a) **(ACICA Rules)**: Arbitration in accordance with this clause 10 will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Rules) as current at the date the Dispute is referred to arbitration and as otherwise set out in this clause 10 with this clause 10 having priority to the extent of any inconsistency.
- (b) **(Seat)**: The seat of the arbitration will be Melbourne, Victoria.
- (c) **(Language)**: The language of the arbitration will be English.

10.3 Appointment of arbitrator

The parties will endeavour to agree on the arbitrator or arbitrators (if the parties agree to appoint three arbitrators), but if no such agreement is reached within 14 Business Days of the dispute being referred to arbitration in accordance with clause 10.1(b), the arbitrator or arbitrators will be appointed in accordance with the ACICA Rules.

10.4 General Principles for conduct of arbitration

- (a) **(Conduct of arbitration):** The Disputing Parties agree that:
- (1) they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any dispute;
 - (2) any arbitration conducted in accordance with this clause 10 will not necessarily mimic court proceedings of the seat of the arbitration or the place where hearings take place (if different), and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and
 - (3) in conducting the arbitration, the arbitrator must take into account the matters set out in clauses 10.4(a)(1) and 10.4(a)(2).
- (b) **(Evidence in writing):** All evidence in chief must be in writing unless otherwise ordered by the arbitrator.
- (c) **(Evidence and discovery):** The rules for evidence and discovery will be the IBA Rules on the Taking of Evidence in International Arbitration current at the date of arbitration (or if there are no current rules, the most recent version of those rules).
- (d) **(Oral hearing):** The oral hearing must be conducted as follows:
- (1) any oral hearing must take place in Melbourne, Victoria and all outstanding issues must be addressed at the oral hearing;
 - (2) the date and duration of the oral hearing must be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in clause 10.4(a) when determining the duration of the oral hearing;
 - (3) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
 - (4) the oral hearing must be conducted on a stop clock basis with the effect that the time available to the Disputing Parties must be split equally between the Disputing Parties so that each party has the same time to conduct its case unless, in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the Disputing Parties;
 - (5) not less than 28 days prior to the date fixed for oral hearing each of the Disputing Parties must give notice of those witnesses (both factual and expert) of each other Disputing Party that it wishes to attend the hearing for cross examination;
 - (6) in exceptional circumstances the arbitrator may amend the date of hearing and extend the time for the oral hearing set in accordance with clause 10.4(d)(2);

- (7) a Disputing Party will not be bound to accept the written evidence of a witness submitted on behalf of an opposing Disputing Party which is not challenged in cross examination; and
 - (8) each Disputing Party is expected to put its case on significant issues in cross examination of a relevant witness called by the other Disputing Party or, where it seeks to challenge the evidence of a witness not called for cross-examination by reference to other evidence, to identify that evidence in its written opening submissions so that the other Disputing Party may know the nature of and basis for the challenge to the witness' written evidence.
- (e) **(Experts):** Unless otherwise ordered each Disputing Party may only rely upon one expert witness in connection with any recognised area of specialisation.

10.5 Proportional liability

To the extent permitted by Law, the arbitrator will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this clause 10.5, have applied to any dispute referred to arbitration in accordance with this clause 10.

10.6 Extension of ambit of arbitration proceedings

- (a) **(Extending Disputes):** Where:
- (1) a dispute between the Disputing Parties to this Deed is referred to arbitration in accordance with this clause 10; and
 - (2) there is some other dispute also between the Disputing Parties to and in accordance with this Deed (whenever occurring),
- the arbitrator may, upon application being made to the arbitrator by one or more of the Disputing Parties at any time before a final award is made in relation to the first-mentioned dispute, make an order directing that the arbitration be extended so as to include the other dispute.
- (b) **(Arbitrator's order):** An arbitrator may make an order in accordance with clause 10.6(a) on such terms and conditions (if any) as the arbitrator thinks fit.

10.7 Award final and binding

- (a) **(Final and binding):** Subject to clause 10.7(b), any award will be final and binding on the Disputing Parties.
- (b) **(Appeal):** Each Disputing Party consents to any appeal to a court where that appeal is made under the *Commercial Arbitration Act 2011* (Vic) on a question of law arising in connection with an arbitral award made in accordance with this clause 10.

10.8 Continue to perform

Notwithstanding the existence of a dispute, each Disputing Party must continue to carry out its obligations in accordance with this Deed.

10.9 Governing law of arbitration agreement

The Law governing this arbitration agreement is the law of Victoria, Australia.

10.10 Interlocutory relief

Clause 9 and clause 10 do not prevent a Disputing Party from seeking urgent interlocutory relief from a court of competent jurisdiction where, in that Disputing Party's reasonable opinion, that action is necessary to protect that Disputing Party's rights.

11 Termination of this Deed

- (a) **(Satisfaction of obligations under the Building Contract):** This Deed will terminate upon the performance and satisfaction of all of the obligations under the Building Contract.
- (b) **(Does not affect rights of parties):** The termination of this Deed does not affect the rights of any party which have accrued to that party before the date of termination.

12 Insurances

- (a) **(Insurances):** Notwithstanding anything else contained in the Building Contract or this Deed, the Builder will:
 - (1) take out all insurances as are required to be taken out by it under the Building Contract; and
 - (2) otherwise comply with all of its obligations in relation to insurance in the Building Contract.
- (b) **(Not to prejudice):** The Developer and the Builder must each ensure that it does not do or omit to do anything or does not permit anything to be done or omitted to be done whereby any insurance policy required under the Building Contract may be prejudiced.
- (c) **(Void or Voidable):** If any default occurs by the Builder in effecting or maintaining such insurance policy or if any such insurance policy becomes void or voidable, the State may (but is not obliged to) effect or maintain that Insurance policy at the cost of the Builder or, failing it, the Developer.
- (d) **(State to be covered):** If required by the Commercial Development Agreement, in respect of any insurance contract entered into by the Builder as contemplated by clause 12(a), the Builder must ensure that the State and the State's Associates are specified as a person to whom the insurance cover provided by that contract extends.
- (e) **(All documents, evidence and information):** The Developer and the Builder must each do all things necessary and provide all documents, evidence and information necessary to enable the State to collect or recover any moneys due or to become due to the State in respect of any insurance policy required under the Building Contract at the cost of the Builder or, failing it, the Developer.
- (f) **(Cancellation, lapse or material change):** Without prejudice to clauses 12(a) to 12(e), neither the Developer nor the Builder will cause or take any steps to bring about the cancellation, lapse, material change, reduction or any rescinding of any such insurance policy unless it has first obtained the consent of the State.

- (g) **(Notify the State):** The Developer and the Builder must each immediately notify the State of any cancellation, lapse, material change, reduction, or any rescinding of any such insurance policy, and of the occurrence of any event giving rise to any claim under any such insurance policy in respect of the Oversight Development.
- (h) **(Several obligations):** Notwithstanding clause 1.3(o), but subject to the obligations of the Developer under the terms of the Commercial Development Agreement, the obligations of the Developer and the Builder in this clause 12 are several.

13 Goods and Services Tax (GST)

- (a) **(GST exclusive amounts):** Unless otherwise expressly stated, all amounts referred to in this Deed, the Building Contract, or any Commercial Development Agreement are exclusive of GST.
- (b) **(GST payable by Supplier):** If GST becomes payable on any Taxable Supply made by a party (**Supplier**) under or in connection with this Deed:
 - (1) any amount payable or consideration to be provided in accordance with any other provision of this Deed for that supply (**Agreed Amount**) is exclusive of GST;
 - (2) an additional amount will be payable by the party which is the recipient of the Taxable Supply (**Recipient**), equal to the amount of GST payable on that Taxable Supply as calculated by the Supplier in accordance with the GST Law, payable at the same time and in the same manner as for the Agreed Amount; and
 - (3) the Supplier will provide a Tax Invoice to the Recipient in connection with that supply, either at the time expressly set out in any other provision of this Deed or no later than the time at which the Agreed Amount for that Taxable Supply is to be provided in accordance with this Deed. The Recipient is not obliged to pay any amount in accordance with this clause 13(b) unless and until a Tax Invoice is received by the Recipient in connection with the Taxable Supply except where the Recipient is required to issue the Tax Invoice.
- (c) **(Variation in GST payable):** If for any reason, the GST payable by the Supplier in connection with a supply it makes under or in connection with this Deed (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it received from the Recipient under clause 13(b) in connection with that supply, the Supplier will provide a refund or credit to, or will be entitled to receive from, the Recipient (as appropriate) the amount of this variation. Where an adjustment event occurs in relation to a supply and except where the Recipient is required to issue the Adjustment Note:
 - (1) the Supplier will issue an Adjustment Note to the Recipient in connection with that supply within 14 days after becoming aware of that adjustment event occurring; and
 - (2) no additional amount will be payable by the Recipient unless and until an Adjustment Note is received by the Recipient.
- (d) **(GST ceasing to be payable):** No amount is payable by a party in accordance with clause 13(b) or 13(c) to the extent that the GST to which the amount

relates has ceased to be payable by or refundable to the Supplier by the Commissioner of Taxation under the GST Law.

- (e) **(Expert determination):** If the Recipient is dissatisfied with any calculation to be made by the Supplier in accordance with this clause 13 the Recipient may, at its own expense and after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the President of the Institute of Chartered Accountants for expert determination, which will be final and binding on all parties (except in the case of manifest error on the face of the expert determination). The expert will act as an expert and not as an arbitrator and must take into account the terms of this Deed, the matters required to be taken into account by the Supplier in accordance with this clause 13 and any other matter considered by the expert to be relevant to the determination. The parties release the expert from any liability in acting as an expert, except in the case of fraud on the part of the expert.
- (f) **(Revenue net of GST):** Any reference in this Deed to price, value, sales, revenue, profit or a similar amount (**Revenue**) is a reference to the GST exclusive component of that Revenue, unless the contrary intention is expressed.
- (g) **(Cost net of GST):** Any reference in this Deed to cost, expense, liability or other similar amount (**Cost**) of a party is a reference to that Cost reduced by the Input Tax Credits to which the party is entitled in respect of such Cost, unless the contrary intention is expressed.
- (h) **(General obligation):** Each party agrees to do all things, including providing Tax Invoices and other documentation, that may be necessary or desirable to enable or assist the other party in determining its GST payable on any supply made by that other party in connection with this Deed, or any input tax credits, adjustments or refunds in relation to any amount of GST paid or payable in connection with any supply made in connection with this Deed.
- (i) **(GST Groups):** For the purposes of this Deed, a reference to GST payable on a Taxable Supply made by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member and a reference to an input tax credit entitlement of a party includes any corresponding input tax credit entitlement of the representative member of any GST group of which that party is a member.
- (j) **(Definitions):** In this clause 13 unless otherwise defined in this Deed, terms used have the meanings given to them in the GST Law.

14 Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Deed:

- (a) **(in writing):** must be in writing;
- (b) **(addressed):** must be addressed as set out below (or as otherwise notified by that party to each other party from time to time);

State:

Attention: **[Insert]**

Address: **[Insert]**

Email: **[Insert]**

Developer:

Attention: [Insert]

Address: [Insert]

Email: [Insert]

Builder:

Attention: [Insert]

Address: [Insert]

Email: [Insert]

- (c) **(signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(form of delivery)**: must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by the parties) to the email address of the addressee set out in clause 14(b); and
- (e) **(taken to be received)**: are taken to be received by the addressee at the address set out in clause 14(b):
 - (1) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00am on the next Business Day;
 - (2) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and
 - (3) in the case of email, the first to occur of:
 - (A) receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - (B) the time that the communication enters an information system which is under the control of the addressee; or
 - (C) the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00am on the next Business Day.

15 Confidential Information and disclosure

15.1 Confidential Information and disclosure by the State

The Builder acknowledge and agree that:

- (a) **(Public Disclosure Obligations):** the State or any Authority may disclose any information in connection with the Oversight Development (including any Confidential Information) in accordance with its Public Disclosure Obligations and the Builder must use all reasonable endeavours to assist the State or an Authority in meeting its Public Disclosure Obligations;
- (b) **(Other purposes):** the State or any Authority may disclose any information in connection with the Oversight Development (including any Confidential Information) to its consultants and legal and other advisors and in connection with:
 - (1) any Re-franchising; and
 - (2) the requirements of the Commercial Development Agreements;
- (c) **(State's rights):** in meeting its Public Disclosure Obligations or as otherwise considered necessary by the State, the State may publish, disclose or make generally available each Commercial Development Agreement on a Victorian Government website;
- (d) **(Exercise of licence):** nothing in this Deed prevents the State and any sublicensees using or disclosing any information (including Confidential Information) to the extent necessary or desirable for, or in connection with, the exercise of any licence granted under clause 29 (*Intellectual Property Rights*) of the Commercial Development Agreement.

15.2 Confidential Information and disclosure by the Developer and the Builder

- (a) **(Confidentiality obligation):** Subject to clause 15.2(b), the Developer and the Builder must treat as secret and confidential all Confidential Information in connection with this Deed and any other Commercial Development Agreement.
- (b) **(Disclosure of Confidential Information):** Without limiting the Developer's and the Builder's obligations under clause 15.2(a) and subject to clause 15.2(c), the Developer and the Builder may each disclose Confidential Information to:
 - (1) its Associates to the extent necessary for the purpose of undertaking the Oversight Development; or
 - (2) any Financier, prospective financier or equity investor of the Oversight Development, subject to the State having been provided necessary information in respect of the proposed parties and having carried out any Probity Investigation that the State considers necessary.
- (c) **(Confidentiality deed):** Before disclosing any Confidential Information, the Developer or the Builder (whichever is disclosing the Confidential Information) must ensure that the person to whom the information is disclosed enters into a confidentiality deed with the Developer or the Builder (whichever is disclosing the Confidential Information) on terms reasonably acceptable to the State.

15.3 Disclosure by the Builder

- (a) **(The Builder's disclosure obligations):** Subject to clause 15.3(b), the Builder must:
 - (1) not make any public disclosures, announcements or statements in relation to the Oversight Development or the State's or any of the State's Associates' involvement in the Oversight Development without the State's prior consent;

- (2) comply with any terms and conditions the State imposes and must use all reasonable endeavours to agree with the State the wording and timing of all public disclosures, announcements or statements by it or any of its Associates relating to the Oversight Development or the State's or any of the State's Associates' involvement in the Oversight Development before the relevant disclosure, announcement or statement is made; and
 - (3) as soon as practicable, give to the State a copy of any public disclosure, announcement or statement agreed to or approved by the State in accordance with this clause 15.3(a) or for which the State's consent or approval was not required in accordance with clause 15.3(b).
- (b) **(Permitted disclosure):** For the purposes of clause 15.3(a), the Builder will not be required to obtain the State's consent or approval to the extent that any disclosure, announcement or statement is:
- (1) required by Law, provided that it:
 - (A) notifies the State of the requirement to make that disclosure; and
 - (B) takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;
 - (2) required to obtain legal or other advice from its advisers;
 - (3) required to be made to a court in the course of proceedings to which any Builder is a party; or
 - (4) required by a relevant stock exchange, subject to:
 - (A) such disclosure, announcement or statement not referring to the State's or any of its Associates' involvement in the Oversight Development; and
 - (B) the Builder having used all reasonable endeavours to obtain the State's consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant stock exchange.

16 Miscellaneous

16.1 Governing Law and jurisdiction

- (a) **(Governing Law):** This Deed is governed by, and must be construed according to, the Laws of Victoria, Australia.
- (b) **(Jurisdiction):** Without limiting clauses 9 to 10, each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Deed.

16.2 Entire agreement

To the extent permitted by Law and in relation to its subject matter, this Deed:

- (a) **(entire understanding)**: embodies the entire understanding of the parties and constitutes the entire terms agreed by the parties; and
- (b) **(prior agreements)**: supersedes any prior agreement of the parties.

16.3 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to the parties) required by Law or reasonably requested by another party to give effect to this Deed.

16.4 Survival of certain provisions

- (a) **(Surviving clauses)**: All provisions of this Deed which, expressly or by implication from their nature, are intended to survive the rescission, termination or expiration of this Deed will survive the rescission, termination or expiration of this Deed, including any provisions in connection with:
 - (1) the State's rights to set-off and recover money;
 - (2) confidentiality or privacy;
 - (3) Intellectual Property Rights;
 - (4) any obligation to make any information and records available to the State;
 - (5) any indemnity or financial security given in accordance with this Deed;
 - (6) any right or obligation arising on termination of this Deed; or
 - (7) any limitation of liability.
- (b) **(Interpretation)**: No provision of this Deed which is expressed to survive the rescission, termination or expiration of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the rescission, termination or expiration of this Deed.
- (c) **(Survival of rights and obligations)**: No right or obligation of any party will merge on completion of any transaction under this Deed. All rights and obligations in accordance with this Deed survive the execution and delivery of any transfer or other document which implements any transaction in accordance with this Deed.

16.5 Waiver

- (a) **(Writing)**: A waiver given by a party in accordance with this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver)**: A failure to, a delay in or the partial exercise or enforcement of a right provided by Law or in accordance with this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or in accordance with this Deed.
- (c) **(No waiver of another breach)**: No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

16.6 Consents, approvals and directions

- (a) **(State)**: A consent or approval required in accordance with this Deed from the State may be given or withheld, or may be given subject to any conditions, as the State thinks fit, unless this Deed expressly provides otherwise.
- (b) **(Developer or Builder)**: A consent or approval required in accordance with this Deed from the Developer or the Builder may not be unreasonably withheld or delayed, unless this Deed expressly provides otherwise.

16.7 Amendments

Except as otherwise expressly provided in this Deed, this Deed may only be varied by a deed executed by or on behalf of each party.

16.8 Expenses

Except as otherwise expressly provided in this Deed (or as between the State and the Developer in the Commercial Development Agreement), each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

16.9 Severance

If, at any time, a provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) **(under this Deed)**: any other provision of this Deed; or
- (b) **(under another jurisdiction)**: that provision under the Law of any other jurisdiction.

16.10 Counterparts

This Deed may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same deed.

16.11 Moratorium legislation

To the fullest extent permitted by Law, the provisions of all Laws which operate to lessen or affect in favour of a party other than the State any obligation under this Deed, or to prejudicially affect the exercise by the State of any right, power or remedy under this Deed or otherwise, are expressly waived.

16.12 Proportionate liability

- (a) **(Excluded operation of Wrongs Act)**: The operation of Part IVAA of the *Wrongs Act 1958* (Vic) is excluded in relation to all and any rights, obligations or liabilities of any party under this Deed whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) **(Rights, obligations and liabilities)**: Without limiting clause 16.12(a), the rights, obligations and liabilities of the parties (including those relating to

proportionate liability) are as specified in this Deed and not otherwise, whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

16.13 Indemnity held on trust

- (a) **(Benefit of indemnities):** The State holds on trust for its Associates the benefit of:
 - (1) each indemnity and release given by the Developer or the Builder under this Deed in favour of the State's Associates; and
 - (2) each right in this Deed to the extent that such right is expressly provided to be for the benefit of the State or State's Associates.
- (b) **(Developer and Builder acknowledgement):** Each of the Developer and the Builder acknowledge the existence of such trusts and consent to:
 - (1) the State exercising rights in relation to, or otherwise enforcing such indemnities, releases and rights on behalf of its Associates; and
 - (2) the State's Associates exercising rights in relation to, or otherwise enforcing the indemnities, releases and those rights as if they were a party to this Deed.
- (c) **(Consent not required):** The parties agree that the State does not require the consent of its Associates to amend or waive any provision of any Commercial Development Agreement.

16.14 Assignment

Except as expressly contemplated by this Deed, none of the Developer or the Builder may assign or transfer any of its rights or obligations under this Deed or the Building Contract.



Signing page

Executed as a deed

[State Note: Execution blocks to be inserted.]



HERBERT
SMITH
FREEHILLS

Attachment 11

Station Land Management Registrable Agreement and Station Land Management Principles



HERBERT
SMITH
FREEHILLS

Agreement

Station Land Management Registrable Agreement

[Owner]

[Responsible Authority]



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The agreement

Station Land Management Registrable Agreement

Date ►

Between the parties

Owner **[Owner]**
ACN [#] of [#]

State **[State]**
ACN [#] of [#]

Responsible Authority **[Responsible Authority]**
of [#]

Recitals

- 1 The Owner is, at the date of this agreement, the registered proprietor of Lot S2.
- 2 The State is, at the date of this agreement, the registered proprietor of Lot S1.
- 3 The Responsible Authority is the responsible authority under the Act for the administration and enforcement of the Planning Scheme.
- 4 The parties have agreed that without limiting or restricting their respective powers to enter into this agreement and insofar as it can be so treated, this agreement is made pursuant to section 173 of the Act.

The parties agree as set out in the Operative part of this agreement, in consideration of, among other things, the mutual promises contained in this agreement.



Operative part

1 Definitions and interpretation

1.1 Agreement components

This agreement includes any schedule.

1.2 Definitions

The meanings of the terms used in this document are set out below.

| Term | Meaning |
|----------------------------------|--|
| Act | <i>Planning and Environment Act 1987.</i> |
| Adjustment Note | includes any document or record accepted by the Commissioner of Taxation as an adjustment note. |
| Business Day | a day that is not: 1 a Saturday or Sunday; or 2 a day that is wholly or partly observed as a public holiday throughout Victoria. |
| GST | includes any replacement or subsequent similar tax. |
| Land | Lot S1 and Lot S2 |
| Land Management Agreement | the agreement described in clause [#] |
| Lot S1 | the land contained in certificate of title volume [<i>insert volume</i>] folio [<i>insert folio</i>]. |
| Lot S2 | the land contained in certificate of title volume [<i>insert volume</i>] folio [<i>insert folio</i>]. |
| Oversite Development | [#] |

| Term | Meaning |
|----------------------------|--|
| Plan of Subdivision | [#] |
| Planning Scheme | the Melbourne Planning Scheme. |
| Shared Facilities | all services, access and any other items and facilities (both physical and non physical) which are shared between 2 or more lots on the Land, including but not limited to garbage facilities, telecommunications, fire services, water meters and supply, electrical facilities, gas meters and supply. |
| Tax Invoice | includes any document or record accepted by the Commissioner of Taxation as a tax invoice. |

1.3 Interpretation

- (a) In this agreement:
- (1) headings and bold type are for convenience only and do not affect the interpretation of this agreement;
 - (2) words importing the singular include the plural and vice versa;
 - (3) words importing a gender include any gender;
 - (4) where a word or phrase has a particular meaning, other grammatical forms of that word or phrase have a corresponding meaning;
 - (5) a covenant or obligation on the part of two or more persons binds them jointly and severally;
 - (6) a reference to any party in its capacity as owner of the Land includes its successors, assigns and transferees in all respects to the whole or any part of the Land;
 - (7) a reference to a legislative enactment or a subordinate instrument (including the Act and the Planning Scheme) or any provision in any of them is a reference to that enactment, instrument, or provision as amended, re-enacted or remade (with or without modification) from time to time or a corresponding future enactment, instrument or provision.
- (b) Where this agreement requires something to be done by a certain day and that day is not a Business Day, that thing must be done on or by the next Business Day.

2 Operation

2.1 Agreement to operate as section 173 agreement

- (a) Without limiting any operation or effect which this agreement otherwise has, the parties acknowledge that this agreement is made under section 173 of the Act.
- (b) The use and development of the Land is subject to the conditions and obligations set out in this agreement, which is intended to achieve or advance the objectives of planning in Victoria (as set out in section 4(1) of the Act) and of the Planning Scheme.

2.2 Proper law

This agreement is governed by, and the parties submit to, the jurisdiction of the laws of the Responsible Authority of Victoria.

2.3 Commencement

This agreement is effective immediately upon signing.

2.4 End of agreement

- (a) This agreement may be ended by agreement between the parties and in accordance with the Act, or otherwise as provided for in this agreement.
- (b) If this agreement ends, the Responsible Authority must without delay tell the Registrar of Titles that this agreement has ended (either in whole or in part, which is applicable) pursuant to section 183 of the Act.

2.5 Reading down and severability

If a provision of this agreement is void, or voidable by a party, unenforceable or illegal, but would not be so if read down or severed from the agreement, it must be read down or severed accordingly.

3 Owner's covenants

3.1 Implied easements

The parties acknowledge that there is an extensive reliance in the Plan of Subdivision on implied easements under section 12(2) of the *Subdivision Act 1998*. These implied easements include, but are not limited to:

- (a) rights of support and shelter;
- (b) rights of way to access parts lots;
- (c) rights of way to access lots on the Stage I Subdivision which are encumbered by express easements;
- (d) air ventilation rights for Lot S1 over the exhaust plenum and associated fan rooms and service infrastructure; and

- (e) rights over stair pressurisation units, hydraulic risers and communication cupboards.

3.2 Land Management Agreement

The parties acknowledge that:

- (a) there is no common property on the Plan of Subdivision;
- (b) the Oversight Development has Shared Facilities;
- (c) a Land Management Agreement will affect all lots on the Oversight Development;
- (d) the owners (and any future owners) of the lots on the Plan of Subdivision and the bodies corporate for any residential components will be parties to a Land Management

3.3 Agreement.

The parties acknowledge and agree that the Land Management Agreement will be an agreement and set of rules that regulates the management of the Shared Facilities, the buildings at the Oversight Development and the Oversight Development generally. The Land Management Agreement is not limited to, but must include all of the items specified in Attachment 1.

3.4 Dealings with the Land

The Owner must not sell, lease, transfer, dispose of, assign, or otherwise part with possession of all or part of the Land unless the relevant transaction documentation includes a covenant under which the transacting parties acknowledge that:

- (a) whilst there is no common property on the Plan of Subdivision, the Oversight Development has Shared Facilities which will be managed by a Land Management Agreement; and
- (b) the Council has no role in the preparation, operation and administration of the Land Management Agreement.

This clause 3.4 does not apply to temporary licences granted by any of the Oversight Parties in relation to the Land.

4 GST

4.1 GST pass-on

If GST is or will be imposed on a supply made under or in connection with this agreement, the supplier may, to the extent that the consideration otherwise provided for that supply under this agreement is not stated to already include an amount in respect of the GST on the supply:

- (a) increase the consideration otherwise provided for that supply under this agreement by the amount of the GST; or
- (b) otherwise recover from the recipient the amount of the GST.

4.2 Tax invoice

The recovery of any amount in respect of GST by the supplier under this agreement is subject to the issuing of the relevant Tax Invoice or Adjustment Note to the recipient. Subject to any other provision of this agreement, the recipient must pay any amount in respect of GST within 7 days of the issuing of the relevant Tax Invoice or Adjustment Note to the recipient.

5 General provisions

5.1 Obligation to run with the land

If this agreement is registered with the Registrar of Titles, any obligation imposed under this agreement on the Owner takes effect as a covenant which is annexed to and runs at law and in equity with the Land and binds the Owner, its successors, assigns and transferees, and the registered proprietor for the time being of the whole or any part of the Land.

5.2 General acknowledgment

The parties expressly acknowledge that any obligation imposed upon Responsible Authority under this agreement does not fetter the future exercise of any statutory discretion by Responsible Authority, and the provisions of this agreement must be read accordingly.

5.3 Further documents

The parties must do all things, and prepare and sign all further documents, necessary to give effect to this agreement and to ensure that this agreement is fully carried out.

5.4 Registration

Without the limiting the scope and generality of clause 5.3, the parties must do all things necessary to enable the Responsible Authority, in its discretion, to register this agreement with the Registrar of Titles in accordance with section 181 of the Act.

5.5 Notice

Any notice or document under this agreement may be served on the parties by being left at or posted by prepaid letter addressed to the person at its address stated at the commencement of this agreement (or any other address which is notified to all parties from time to time) and is conclusively regarded as having been served 48 hours after it is posted.

5.6 Costs

Each party must pay their own costs and expenses of and incidental to the negotiation, preparation, stamping and registration of this agreement.



Signing page

Executed as an agreement

Owner

Signed, sealed and delivered by
[Owner]
by

sign here ► _____
Company Secretary/Director

sign here ► _____
Director

print name _____

print name _____

Responsible Authority

Signed, sealed and delivered by
[Responsible Authority]
by

sign here ► _____
Signature of Chief Executive Officer

sign here ► _____
Signature of General Counsel

print name _____

print name _____



Attachment 1

Attachment 1 – Land Management Agreement

- General obligations of the parties, including to act reasonably and in good faith, comply with easements, management of Shared Facilities to an appropriate standard, payment of contributions to various funds, constituting a Management Committee constituted under the Land Management Agreement.
- Maintenance of the lots on the plans of subdivision .
- Appointing representatives to represent and vote for parties at meetings and emergency meetings of the Management Committee.
- Authorisation of proxies to vote at meetings and emergency meetings of the Management Committee.
- Restrictions on significant variations to the lots on the plans of subdivision .
- Establishing and operating a Management Committee .
- Each party being a member of the Management Committee .
- Outlining the functions and powers of the Management Committee, including holding meetings and emergency meetings, determining contributions to various funds, operating, repairing and maintaining Shared Facilities, effecting insurances, appointing contractors to perform some of the functions in relation to Shared Facilities and monitoring the performance of those contractors.
- Methodology for decisions of the Management Committee being made at meetings or emergency meetings.
- Appointment of officers (secretary, treasurer and chairperson) for the Management Committee.
- Appointing managers to assist the Management Committee perform its functions and exercise its powers under the Land Management Agreement.
- Delegation of some of the powers of the Management Committee to the manager or managers.
- Appointment of a manager to undertake some of the management functions associated with the lots on the plans of subdivision.
- The Management Committee keeping records in relation to its functions .
- The Management Committee providing certificates outlining outstanding contributions to various funds.
- The Management Committee gaining access to Shared Facilities and not unreasonably interfering with the parties' use of the areas.
- The power of the Management Committee to do work in an emergency.
- The procedures for meetings of the Management Committee, including the procedures for ordinary meetings and emergency meetings.
- Voting rights at meetings and emergency meetings of the Management Committee.
- The items to be subject of ordinary resolutions and unanimous resolutions.



- The establishment of an administrative fund to pay for operating and maintaining Shared Facilities.
- Establishment of a sinking fund to pay for the renewal and replacement of Shared Facilities.
- Determining contributions for the administrative fund and sinking fund.
- Identification of the Shared Facilities.
- Changing and adding to the Shared Facilities.
- Dispute resolution procedure.

Station Land Management Agreement – Draft key principles

Draft: 13 December 2017

1. What is the Station Land Management Agreement?

1.1 Management of Station and the Oversight Development

The Station Land Management Agreement will contain a set of rules that regulate the management and operation of the Station and the OSD. The Station Land Management Agreement is intended to facilitate the efficient and cost effective management and operation of the Controlled Parts of the Station and the OSD and the use and payment of the Controlled Parts amongst the State and the OSD Owner.

1.2 Management Committee

The Station Land Management Agreement will require the parties (other than Project Co) to form a Management Committee. The Management Committee is responsible for overseeing the operation and management of the Controlled Parts of the Station and the OSD on behalf of the State and the OSD Owner.

1.3 Project Co

Except as otherwise expressly set out in this term sheet as an obligation of Project Co (and excluding all of the more general references to other parties in this term sheet), Project Co will be a party to the Station Land Management Agreement for the purpose only of deriving the benefit of the obligations imposed on the OSD Owner contemplated by the following paragraphs:

- (a) 2.2(e), which contemplates an obligation on the OSD Owner to provide Project Co and its subcontractors with access to the OSD and Public Realm Areas to:
 - (i) inspect, maintain and repair the Maintained Assets and to reattach and maintain Station lighting, sprinklers and the like which are attached to the OSD; and
 - (ii) undertake the Permitted Commercial Opportunities and carry out the Maintenance Services;
- (b) 6.1(c), which contemplates the State and the OSD Owner being required to prepare and agree with Project Co a protocol for the use and maintenance of any facilities shared by the Station and the OSD which each party must comply with;
- (c) 6.1(d), which contemplates an obligation on the OSD Owner not to damage the Maintained Assets or the Commercial Opportunities Works, not to interfere with or disrupt the carrying out by Project Co of the Maintenance Services or the pursuit of the Permitted Commercial Opportunities;
- (d) 6.1(e), which contemplates an obligation on the OSD Owner to rectify any damage it causes to the Maintained Assets or Commercial Opportunities Works (and if not rectified by a time agreed by the parties (acting reasonably) to reimburse Project Co for the cost and loss of doing so itself);
- (e) 6.1(h), which contemplates an obligation on the OSD Owner to progressively contribute to the cost to Project Co of maintaining and repairing those areas and elements within the Station that constitute Shared Infrastructure; and
- (f) 6.1(j), which contemplates an obligation on the OSD Owner to maintain (and not alter) those components of the OSD that directly or indirectly performs a role in protecting the condition or functionality of the Station (unless otherwise agreed by Project Co),

and will not, by reason of the Station Land Management Agreement, assume any obligation or liability to the State, the Train Franchisee or the OSD Owner.

The parties acknowledge that there are no Permitted Commercial Opportunities or Public Realm Areas on the OSD.

2. Shared Facilities which are the subject of the Station Land Management Agreement

2.1 Shared Facilities

- (a) Shared Facilities is defined under this clause 2.1.
- (b) Shared Facilities means a service, facility or an area on the Land or part of the Land that:
 - (i) is used by the OSD Owner and the Station Operator;
 - (ii) is located in the OSD and is used by the Station Operator; or
 - (iii) is located in the Station and is used by the OSD Owner,
- (c) **[Drafting note: Repetition with below?]** Specifically, the Shared Facilities will include:
 - (i) the Slab which is the ground floor slab including foundation works and vertical risers above ground floor required to support the structure of the improvements on the Land;
 - (ii) shared structure (including the vertical risers above ground floor);
 - (iii) shared infrastructure including without limitation the loading facility;
 - (iv) vehicular access;
 - (v) plant and equipment;
 - (vi) lift wells;
 - (vii) building risers;
 - (viii) station entrances and exits (including but not limited to ingress/egress, circulation and escalators, all public accessways on the ground floor and all land required for emergency access to or egress from the Station);
 - (ix) exhaust escapes;
 - (x) services; and
 - (xi) integrated waste / waste disposal facilities / areas
- (d) Unanimous resolution by the parties to the Station Land Management Agreement (including Project Co) will be required to add to / remove from / change the Shared Facilities. Project Co must vote in favour of a proposed resolution if it is supported by the State and the OSD Owner unless the resolution would, if passed, materially adversely affect the performance of its obligations under the Project Agreement
- (e) Shared Facilities specifically excludes any services, facilities or areas which are exclusively used or benefit one of the Station Operator or the OSD Owner. For example, all areas leased by retail and office tenants in the OSD will not be Shared Facilities.

2.2 Access Plan

- (a) The Station Land Management Agreement will annex the Access Plan.
- (b) Access Plan to be able to be updated from time to time by agreement between the State, Project Co and OSD Owner.
- (c) The proposed pedestrian and cycle pathways, waste disposal and vehicle access facilities must remain accessible to all occupants of the Land in perpetuity.

- (d) All motor vehicles entering and exiting the Land must, with the exception of the goods yard, do so in a forward direction only, except where reversing out of the Land in order to exit onto Little La Trobe Street in a forward direction. In the case of the goods yard, vehicles must reverse in and drive out in a forward direction.
- (e) To the extent the Shared Facilities and Public Realm Areas constitute part of the OSD, the OSD Owner will procure that the State, the Train Franchisee, Project Co and its subcontractors have access to the relevant Shared Facilities and Public Realm Areas for the following purposes:
 - (i) to inspect, maintain and repair the Maintained Assets including risers, plant and other areas that directly interface with the OSD; and
 - (ii) otherwise for the purposes of undertaking the Permitted Commercial Opportunities and carrying out the Maintenance Services in the following manner:
 - (A) direct access to the areas shown in **[red]** on the Access Plan; and
 - (B) access through the OSD site in the areas shown in **[blue]** on the Access Plan; and
 - (C) managed access (with reasonable notice to the managing agent) to the goods lift shown in **[green]** on the Access Plan in order to allow Project Co and its subcontractors to access their plant and equipment on the roof of the OSD.
- (f) To the extent the Shared Facilities constitute part of the Station, the State will procure that the OSD Owner (and its invitees, tenants and subcontractors) have access to the Shared Facilities for the following purposes:
 - (i) to inspect, maintain and repair the OSD including waste, services, drainage, electrical, risers, plant and other areas that directly interface with the Station; and
 - (ii) end of trip and other purposes associated with the OSD,
 in the locations shown on the Access Plan as coloured in **[orange]** subject to the Train Franchisee Rail Safety Requirements and reasonable security and access requirements of the State or the Train Franchisee.

2.3 Allocation of responsibilities of each party to the Station Land Management Agreement

- (a) Prior to execution of the Station Land Management Agreement, the parties must agree whether the Management Committee or the State or OSD Owner will be responsible for the operation, management, control, maintenance, repair and placement of a Shared Facility.
- (b) The Management Committee may by Special Resolution (and with the consent of the owner in whose lot the Shared Facility is located) amend the allocation of responsibility for the management, care, conduct, maintenance, repair, operation, cleaning and replacement of a Shared Facility.
- (c) The Public Realm Areas may not be developed or used for any use inconsistent with their function as Public Realm Areas.

2.4 Permitted uses

- (a) The OSD and the Station may be used for any use permitted under the relevant planning controls.
- (b) The use and any further development of the Land must comply with the advertising signage strategy approved under the Metro Tunnel: Over Site Development – CBD North, Incorporated Document (October 2017) as amended from time to time.

3. The Management Committee

3.1 Membership

The members of Management Committee will be:

- (a) the OSD Owner;
- (b) the Station Operator; and
- (c) the State,

(Members)

3.2 Structure of Management Committee

- (a) The OSD Owner will have one vote on the Management Committee.
- (b) The State and the Station Operator together will have one vote in total.
- (c) The Management Committee will meet at least annually.

3.3 Powers and responsibilities

- (a) The Management Committee is responsible for operating and managing the Shared Facilities on behalf of the OSD Owner and Station Operator.
- (b) The Management Committee's powers and responsibilities (which may be delegated to an appointed Manager) will include:
 - (i) maintaining, repairing and operating the Shared Facilities to a high standard;
 - (ii) determining and levying from members of the Management Committee contributions to be made to the Administrative Fund and the Sinking Fund and the respective share of levies must be determined based on reasonable principles which are consistent with market expectations; and
 - (iii) making rules to facilitate the maintenance, management and operation of the Shared Facilities (which may not interfere with the OSD Owner's or Station Operator's reasonable use and enjoyment of the OSD and the Station).

3.4 Rules

- (a) The Management Committee may make rules by resolution.
- (b) The rules must only relate to the Shared Facilities and PPP/OSD Protocol.

3.5 Establishment costs

The establishment costs are to be agreed as part of the finalisation of the Station Land Management Agreement and allocated based on reasonable principles which are consistent with market expectations.

4. Financial management

4.1 Administrative Fund and Sinking Fund contributions

- (a) The Management Committee must establish an Administrative Fund and a Sinking Fund within one month of the date of the Station Land Management Agreement.
- (b) The Management Committee will levy from Members contributions to the Administrative Fund and the Sinking Fund.
- (c) The money paid to the Administrative Fund will be used for the day to day expenses of the Shared Facilities in accordance with the PPP/OSD Protocol (including maintenance, repair, cleaning, insurance, security, WHS, pest control, inspection etc).

- (d) The money paid to the Sinking Fund will be used to pay for the renewal and replacement of Shared Facilities from time to time.
- (e) Each Member's contribution to each Fund in relation to Shared Facilities which exist at the date of the Station Land Management Agreement will be determined with reference to a pre-agreed Shared Facilities Register which will contain an apportionment as between the Members.
- (f) If the Shared Facilities Register does not contain an apportionment, or Shared Facilities are constructed or varied after the date of the Station Land Management Agreement, then Member's contributions will be determined in accordance with a Shared Facility Apportionment Report (to be prepared by an independent expert and which calculates apportionment based on reasonable principles which are consistent with market expectations including estimated level of usage and benefit etc.).
- (g) The Management Committee will determine a budget for each financial year in respect of the allocation of the money in each Fund (to be approved by resolution of the Committee). Any surplus at the expiry of a financial year will be applied to the following year's budget and the Management Committee must have regard to that surplus when determining the budget for the following financial year.
- (h) The parties agree to work together in order to keep the costs of maintenance, repair and outgoings of Shared Facilities down (for example, shared costs of cleaners, contractors etc.).
- (i) If a party fails to contribute to either the Administrative Fund or the Sinking Fund as required (**Non-contributing Party**):
 - (i) that amount which the Non-contributing Party has failed to contribute becomes a debt due and accrues interest calculated daily and capitalised monthly at the rate of [not disclosed]; and
 - (ii) any of the remaining parties (**Contributing Party**) may step in and make the required contribution(s).

4.2 Insurance

The OSD Owner must effect and maintain the following insurances in respect of the OSD and in respect of each Shared Facility which it owns and the Station Operator must effect and maintain the following insurances in respect of the Station and in respect of each Shared Facility which it owns:

- (a) Industrial Special Risks insurance; and
- (b) machinery breakdown insurance for Shared Facilities plant and equipment that is not covered under warranty for Shared Facilities within their part of the Land; and
- (c) public liability insurance for a cover of an amount which is appropriate and which must not be less than [not disclosed]; and
- (d) workers compensation insurance if required by law; and
- (e) enough insurance cover to pay for increased costs during the period of insurance.

Each party must ensure that the policies which it effects note the interest of the other party.

5. Rights of Access

5.1 Management Committee's right to access areas other than Shared Facilities

- (a) The Management Committee (and its employees, agents and contractors) will have the power to gain access to areas other than the Shared Facilities with reasonable notice for the purposes of operating, testing, using, maintaining or replacing Shared Facilities.
- (b) Each member must provide access to the Management Committee for these purposes.

- (c) To the extent reasonably practicable, the Management Committee must minimise disruption in exercising its right of access. The Management Committee must rectify any damage it causes promptly at its own sole cost.
- (d) In an emergency, the Management Committee may enter these areas without notice.

5.2 OSD Owner, Station Operator and State rights of access

- (a) To the extent reasonably necessary, the State, the OSD Owner and the Station Operator must allow each other access to areas other than the Shared Facilities for the purposes of access to the Shared Facilities and to do anything reasonably required in respect of the Shared Facilities. These rights of access will be subject to any easements that will be granted.
- (b) To the extent reasonably practicable, a party exercising its right of access must minimise disruption and must rectify any damage it causes.

6. Rights and obligations of State / OSD Owner / Station Operator

6.1 Maintenance and repair

- (a) Each party agrees at its cost to:
 - (i) maintain its part of the Land (excluding any Shared Facilities for which the Management Committee has responsibility for maintenance and repair or another party has been allocated responsibility for maintenance and repair) and keep it clean, in good repair and condition and accessible to the extent required in order to access the Shared Facilities; and
 - (ii) maintain, clean and keep in good repair external fixtures or fittings in its part of the Land.
- (b) If the Management Committee itself or another party is allocated responsibility to operate, manage, control, maintain, repair and replace a Shared Facility, then that party or the Management Committee (whichever is applicable) must operate, manage, control, maintain, repair and replace the Shared Facility.
- (c) **(Maintenance Phase):** The State must:
 - (i) facilitate the preparation of a Maintenance Phase protocol for CBD North Station to be agreed between all relevant entities (including the OSD Owner), the State and Project Co) which governs the interface between:
 - (A) on the one hand, the CBD North Station; and
 - (B) on the other hand, the corresponding completed Oversight Development Works;**(PPP/ OSD Protocol);** and
 - (ii) seek input from, and involve Project Co and the OSD Owner in the preparation of each of the PPP/ OSD Protocol (including as may be updated from time to time during the Maintenance Phase).
- (d) The State and the OSD Owner must:
 - (i) not damage the Maintained Assets or the Commercial Opportunities Works;
 - (ii) maintain the shared assets to an agreed standard and fitness for purpose; and
 - (iii) not interfere with or disrupt the carrying out by Project Co of the Maintenance Services or the pursuit of the Permitted Commercial Opportunities; and
 - (iv) comply with the agreed PPP/ OSD Protocol.
- (e) If the OSD Owner:

- (i) causes any damage to the Maintained Assets or Commercial Opportunities Works, the OSD Owner must promptly rectify the damage within the period of time agreed by the OSD Owner and Project Co (acting reasonably); and
 - (ii) fails to rectify the damage to the Maintained Assets or Commercial Opportunities Works within the period agreed under clause 6.1(e)(i), Project Co may rectify the damage itself in which case the OSD Owner must reimburse Project Co the costs incurred by Project Co in rectifying the damage.
- (f) The State will indemnify the OSD Owner from and against any lost, loss or liability caused by Project Co in the exercise of its rights under this document.
- (g) **(Built form of the Station):** To the extent that the built form of the Station is directly or indirectly performing a role in protecting the condition or functionality of the OSD (including by providing structural support, access routes, shared infrastructure, amenities for the retail, or as adjacent tenancies to access ways), the State must procure that Project Co and the State (and their tenants):
- (i) maintain the relevant component of the completed Station and Shared Infrastructure so that at all times it remains fit for purpose; and
 - (ii) do not alter the relevant component of the completed Oversight Development Works without the OSD Owner's prior written consent.
- (h) **(Shared cost of maintenance and repair):** The State will procure that OSD Owner and the State progressively contributes to the cost to Project Co and the State of maintaining and repairing those areas and elements within the CBD North Station that constitute Shared Infrastructure.

Shared Infrastructure means infrastructure or building components which form part of the CBD North Station which the completed Oversight Development Works relies on or uses as part of the operation of the completed Oversight Development Works, in each case excluding the Foundation Works.

-
- (i) If the State does not maintain the Shared Infrastructure in accordance with the PPP/ OSD Protocol, the OSD Owner will have the right to repair and maintain the relevant assets and will invoice the State for the cost of those works and the State agrees to pay those costs.
 - (j) **(Built form of OSD):** To the extent that the built form of the OSD is directly or indirectly performing a role in protecting the condition or functionality of the Station (including by providing structural support, emergency access routes, or shared infrastructure,), the OSD Owner (and its tenants) must:
 - (i) maintain the relevant component of the completed OSD and Shared Facilities within the OSD so that at all times they remain capable of performing their role in protecting the condition or functionality of the Station; and
 - (ii) not alter the relevant component of the completed OSD without the State's and Project Co's prior written consent (acting reasonably).

For clarity, the State's consent is only required for redevelopment/refurbishment works in respect of the relevant component of the completed OSD referred to in this clause 6.1(j) and any other redevelopment/refurbishment works are addressed under clause 8.1 and 8.2.

- (k) Each party agrees that they will be liable for damage or loss they cause if they do or fail to do something under the Station Land Management Agreement. However, the liability of a party does not include damage or loss to the extent caused or contributed to by the person suffering the damage or loss.

7. Fire safety and protection and essential safety measures

7.1 A party must:

- (a) immediately notify the Management Committee of any defect in or damage to a fire safety device which comes to its attention; and
- (b) comply with laws about fire control; and
- (c) notify the Management Committee if it changes the security system in its part of the Land.

7.2 Each party must not:

- (a) interfere with, obstruct or damage fire safety devices; or
- (b) do anything that will activate a fire safety device unless there is a fire or other emergency in the Station or OSD; or
- (c) keep flammable materials on a Shared Facility unless that material is necessary for the operation of the Shared Facility.

7.3 Each party must, at its cost:

- (a) cause annual safety measures reports (**ESM Reports**) to be prepared in respect of their part of the Land in accordance with the buildings regulations; and
- (b) provide a copy of each ESM Report to the Management Committee within 30 days after they are prepared.

7.4 For so long as the fire services to Controlled Parts or between parts of the Land are interdependent, each party must not do anything to adversely affect the fire services.

7.5 The parties must agree a co-ordinated site-wide safety management plan / protocol in respect of fire safety and essential safety measures and ensure that it is in place all times.

8. Further development

8.1 Upgrade works

The OSD Owner may refurbish its assets provided it obtains the State's consent (such consent not to be unreasonably withheld) in respect of those areas which are relevant components of the OSD the subject of clause 6.1(j).

8.2 Redevelopment

- (a) The OSD Owner and the Station Operator may redevelop their respective areas of the Land in their absolute discretion, so long as the proposed upgrade or redevelopment does not materially affect the Shared Facilities, Public Realm Areas or the other party's site.
- (b) If the redevelopment is of a substantial nature requiring structural demolition and which will materially impact the operation of the Shared Facilities or the other party's site, then consent of the Management Committee will need to be obtained.
- (c) If the redevelopment is of a nature which will materially adversely impact the Public Realm Areas, then the consent of the State will need to be obtained such consent not to be unreasonably withheld or delayed.
- (d) Parties to subsequently agree a schedule of key criteria in relation to redevelopment as part of the finalisation of the Station Land Management Agreement.

9. Dealings with interest

9.1 Assignment

- (a) If the OSD Owner transfers its interest in the OSD, it must procure that its assignee executes a deed of covenant under which the assignee is bound by the terms of the Station Land Management Agreement.
- (b) If the Station Operator assigns its interest in **[insert]**, it must procure that its assignee executes a deed of covenant under which the assignee is bound by the terms of the Station Land Management Agreement.
- (c) A change in control (majority shareholding) of any party will be treated as an assignment for the purposes of this document.

10. Dispute Resolution

- (a) Parties to negotiate resolution failing which an independent expert to be appointed.
- (b) Independent expert's determination is final and binding.

11. Retail

- (a) Without limiting paragraph 6.1(d) or 8.2, the OSD Owner may, at its discretion:
 - (i) core hole [drill]; and
 - (ii) carry out any other activities

into the and onto the underside of the Slab for the purposes of providing retail related service requirements to the OSD (eg sewerage and drainage facilities) to the OSD sub-tenants in its absolute discretion.
- (b) The OSD Owner must ensure that any works undertaken in accordance with paragraph 11(a):
 - (i) do not affect the structural integrity of the Slab and must repair and make good any damage caused to the Slab caused or contributed to by any works undertaken in accordance with clause 11(a);
 - (ii) are undertaken in a proper and workmanlike manner and complying with all laws;
 - (iii) are carried out by qualified contractors and employees approved by the State, acting reasonably.
- (c) The Management Committee must provide access to the OSD Owner for the purposes of these works.

12. Reinstatement

- (a) In the event that the Shared Facilities are damaged or destroyed, the party in whose part of the Land the Shared Facility that has been destroyed must arrange for the reinstatement of the Shared Facility. However, if a Shared Facility is for the exclusive use of a party but located in another party's part of the Land, the party which has exclusive use of that Shared Facility has the obligation to reinstate the Shared Facility to the position it was prior to the damage or destruction.
- (b) The party's obligation to reinstate the Shared Facilities will not apply where there is a unanimous resolution reached by the Management Committee objecting to their reinstatement.
- (c) A party who receives proceeds from an insurance policy must pay a reasonable amount of the proceeds to cover the reinstatement of the Shared Facility or Facilities which have been destroyed or damaged. The Management Committee must open a bank account in an Australian bank for the purposes of depositing funds. The funds must be used for the purposes of rebuilding and reinstating the relevant Shared Facilities.
- (d) If there is a shortfall between the insurance proceeds for damage or destruction to the Shared Facilities and the cost of reinstatement or replacement, then to the extent that:

- (i) the shortfall is a result of a party's negligence, default or breach of this document, the relevant party must pay the shortfall (or if there is more than one relevant party, the relevant party's proportionate share of the shortfall) to the Management Committee in accordance with a payment program advised by the Management Committee (acting reasonably); and
- (ii) the shortfall is not the result of a party's negligence, default or breach of this document, each party must pay the amount of the shortfall to the Management Committee in proportions determined by the Management Committee and in accordance with a payment program advised by the Management Committee (acting reasonably).

13. Definitions and interpretation

- (a) The following terms are defined in this document:
 - (i) **Commercial Development Agreement** means the Commercial Development Agreement for the development of the OSD entered into between the State the unincorporated joint venture comprising John Holland Nth OSD Developer Pty Ltd (ACN 623 274 564) and Scape Little Latrobe Operator Pty Ltd (ACN 607 697 183) and John Holland Property Developments Pty Ltd ACN 617 899 297.
 - (ii) **Commercial Opportunities Works** has the meaning given in the Project Agreement.
 - (iii) **Controlled Parts** means the:
 - (A) Public Realm Areas; and
 - (B) Shared Facilities.
 - (iv) **Freehold Land** has the meaning set out in the Commercial Development Agreement.
 - (v) **Land** means the whole of the land on which the OSD and Station are located.
 - (vi) **Maintained Assets** has the meaning given in the Project Agreement.
 - (vii) **Maintenance Services** has the meaning given in the Project Agreement.
 - (viii) **OSD** means the Oversight Development Site.
 - (ix) **OSD Owner** means the owner of the Oversight Development Works and the Freehold Land.
 - (x) **Permitted Commercial Opportunities** has the meaning given in the Project Agreement.
 - (xi) **Project Agreement** means the document entitled 'Project Agreement – Tunnel and Stations PPP' between the State and Project Co.
 - (xii) **Public Accessways Plan** means a plan which shows the general arrangement of proposed public accessways including pedestrian and cycle walkways and including all land required for emergency access to or egress from the Station.
 - (xiii) **Public Realm Areas** means the public accessways through the Station and the OSD and the surrounding roads, as shown on the Public Accessways Plan (but exclude any retail areas including external seating associated with the retail areas).
 - (xiv) **Project Co** has the meaning given under the Commercial Development Agreement and includes its permitted assignees.
 - (xv) **Shared Facilities** has the meaning giving in clause 2.1 and **Shared Facility** has the same meaning.

- (xvi) **Shared Facilities Register** means a register of the Shared Facilities as updated from time to time.
 - (xvii) **State** means the Minister for Public Transport on behalf of the Crown in right of the State of Victoria.
 - (xviii) **Station** means [has the meaning given under the Commercial Development Agreement].
 - (xix) **Station Operator** means [*insert*].
- (b) Capitalised terms which are undefined and are defined in the Commercial Development Agreement have the meaning given under the Commercial Development Agreement.
 - (c) A reference to a party includes its successors and permitted assignees.






HERBERT
SMITH
FREEHILLS

Attachment 12

Freehold Demarcation Plans

INDICATIVE DEMARCATION PLAN - BASEMENT LEVEL B1

LEGEND

| | |
|---|---|
|  | Melbourne Metro Rail Project |
|  | OSD - CBD North incorporated document |
|  | Melbourne Metro Rail Project with shared access |



LEGEND

PPP Only

OSD

PPP land with shared access

CITY



08/12/2017

OWNERSHIP DEMARCATION DIAGRAM_L00

LEGEND

PPP Only

OSD

PPP land with shared access

CITY



08/12/2017

OWNERSHIP DEMARCATION DIAGRAM_L01

LEGEND

PPP Only

OSD

PPP land with shared access

CITY



08/12/2017

OWNERSHIP DEMARCATION DIAGRAM_L02

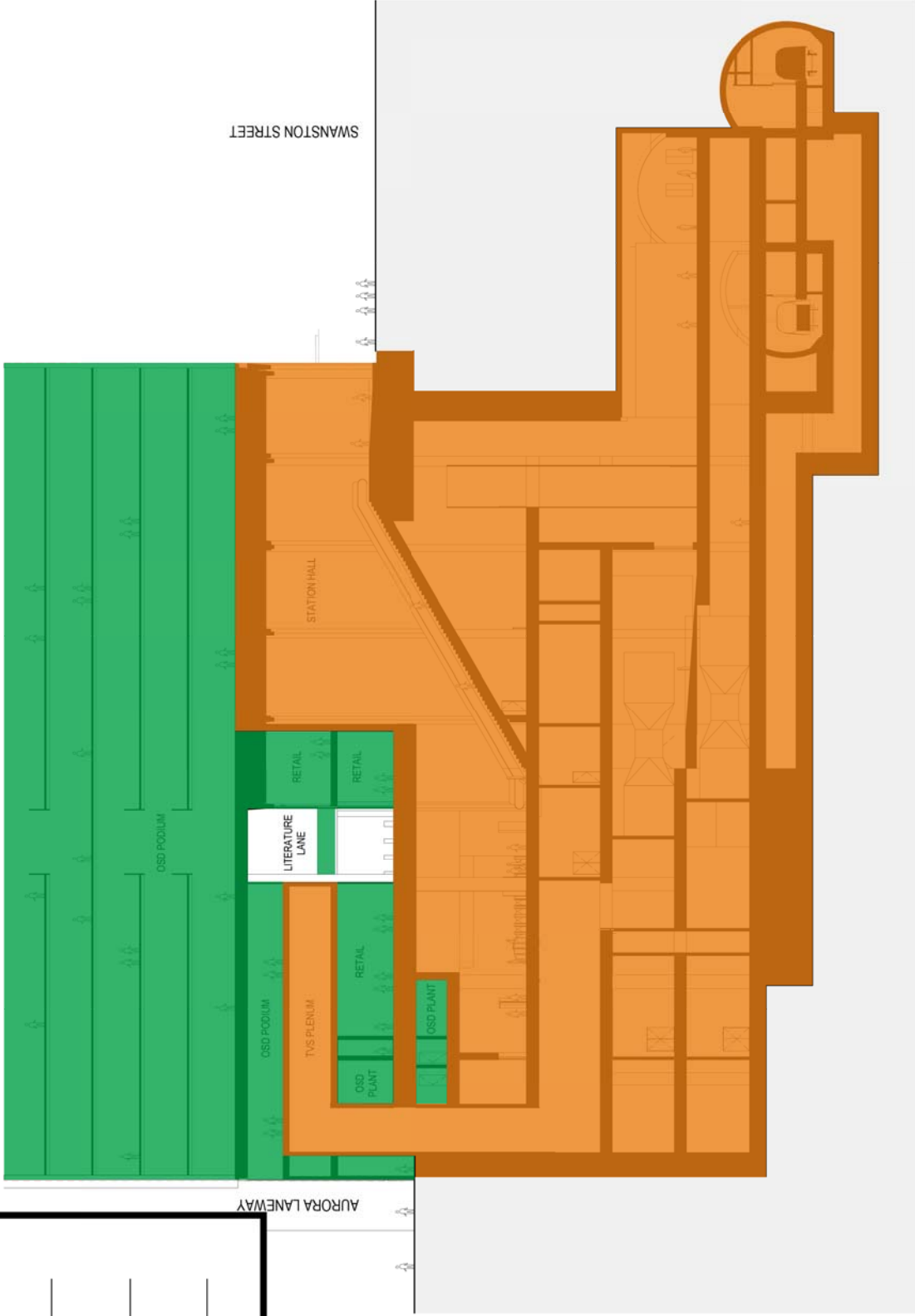
LEGEND

PPP Only

OSD

PPP land with shared access

CITY



08/12/2017

DEMARICATION DIAGRAM - E/W SECTION



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Attachment 13

Incorporated Document

Metro Tunnel: Over Site Development – CBD North

Incorporated Document

October 2017

Incorporated Document in the Melbourne Planning Scheme pursuant to section 6(2)(j) of the *Planning and Environment Act 1987* (Vic).

1. INTRODUCTION

- 1.1 This document is an Incorporated Document in the schedule to Clause 52.03 and the schedule to Clause 81.01 of the Melbourne Planning Scheme (**Planning Scheme**), and is made pursuant to section 6(2)(j) of the *Planning and Environment Act 1987*.
- 1.2 This Incorporated Document is to be read in conjunction with 'Melbourne Metro Rail Project – Incorporated Document, May 2017, as amended from time to time (**MMRP Incorporated Document**).

2. PURPOSE

- 2.1 The purpose of this Incorporated Document is to permit and facilitate the use and development of the land described in Clause 3 for the purposes of an over site development above the Railway station approved under the MMRP Incorporated Document (**OSD**) in accordance with the controls in clauses 4, 5 and 6 of this document.

3. LAND DESCRIPTION

- 3.1 This Incorporated Document applies to the land as defined by the black lines as shown on the map in Appendix 1 (**OSD Land**).

4. THIS DOCUMENT ALLOWS

- 4.1 This document allows for demolition, including bulk excavation and the development and use of the OSD Land for Accommodation (including but not limited to Serviced Apartments, Residential Building, Student Accommodation and Residential Hotel but excluding any beds within the podium levels of the building/s), Education Centre, Office, Place of Assembly (other than Amusement parlour and Nightclub), Restricted Recreation Facility, Retail Premises (other than Adult sex bookshop, Department store, Hotel, Supermarket, and Tavern unless with the consent of the Minister for Planning) and advertising signage and staging generally in accordance with the following plans and subject to the requirements of this Incorporated Document:

- a) Building envelope plans prepared by Hassell dated October 2017 and numbered:
 - I. TAS-CYP-OS-00-DRG-ARC-CBN-01
 - II. TAS-CYP-OS-00-DRG-ARC-CBN-02
 - III. TAS-CYP-OS-00-DRG-ARC-CBN-03.

In this document **OSD Incorporated Plans** means the above drawings.

5. CONTROL

- 5.1 The controls in this Incorporated Document prevail over any contrary or inconsistent provisions in the Planning Scheme except as provided for in clause 5.3.
- 5.2 Despite any provision to the contrary or any inconsistent provision in the Planning Scheme, no planning permit is required for, and no provision in the Planning Scheme operates to prohibit, control or restrict any works required for integration with the Railway station on the OSD Land, site preparation, demolition, bulk excavation works and site retention works, provision of bicycle parking, advertising signs and the development and use of the OSD Land in accordance with this Incorporated Document for the purposes of, or related to, developing and using the OSD except as provided for in clause 5.3.
- 5.3 The control in clause 5.1 of this Incorporated Document does not apply to:

- a) the use and development of land for the purposes of the Metro Tunnel Project which is subject to the controls in the MMRP Incorporated Document.
 - b) advertising signs unless they are in accordance with the Advertising Signage Strategy approved under condition 6.15.
- 5.4 The subdivision of any part of the OSD Land is exempt from a public open space contribution under clause 52.01 of the Planning Scheme and the subdivision of the OSD Land is a class that is exempt from any public open space requirement under the Subdivision Act 1988.
- 5.5 The ‘Melbourne Metro Rail Project – Infrastructure Protection Areas – Incorporated Document (December 2016)’ and schedule 70 to Clause 43.02 (Design and Development Overlay) of the Planning Scheme do not apply to use and development carried out under this Incorporated Document.

6. CONDITIONS

- 6.1 The development and use permitted by this Incorporated Document must be undertaken in accordance with the following conditions:

6.2 MASTERPLAN

- 6.2.1 Prior to the submission of the development plans under condition 6.3, a masterplan generally in accordance with the OSD Incorporated Plans must be submitted to and approved by the Minister for Planning in consultation with the Melbourne City Council. The masterplan must include:

- a) Masterplan design objectives;
- b) Proposed uses;
- c) Design response to support internal amenity;
- d) Demarcation between the OSD and the development and use approved under the MMRP Incorporated Document;
- e) Building adaptability;
- f) Indicative design;
- g) Shadow analysis;
- h) Façade concept;
- i) Wind study;
- j) Waste management concept;
- k) Bicycle parking concept which includes the number and type of bicycle facilities to be provided on OSD Land in accordance with the requirements set out in the tables at Appendix 3 and Appendix 4, unless the Minister for Planning is satisfied that a lesser number is sufficient; and
- l) Public realm and amenity.

- 6.2.2 The masterplan approved under condition 6.2.1 may only be amended, from time to time, at the request of the developer of the OSD Land, with the approval of the Minister for Planning in consultation with the Melbourne City Council. Any amendments to the masterplan must be generally in accordance with the OSD Incorporated Plans.

6.3 DEVELOPMENT PLANS

- 6.3.1 Prior to commencement of building or works associated with the OSD (excluding any works required for integration with the Railway station on the OSD Land, demolition, bulk excavation and site preparation works), development plans generally in accordance with the masterplan approved under condition 6.2, must be submitted to and be approved by the Minister for Planning in consultation with Melbourne City Council.

6.3.2 The development plans must include, as appropriate:

- a) Detailed site layout plans including the proposed uses;
- b) Architectural and public realm plans and elevations including lighting, signage, pedestrian access, bicycle access, waste collection and storage, loading and other ancillary facilities;
- c) Demarcation between the OSD and the development and use approved under the MMRP Incorporated Document;
- d) A detailed development schedule;
- e) Detailed plans demonstrating that any canopy(ies) and any other projections to Swanston Street do not encroach upon street tree protection zones to accommodate street trees;
- f) Any detail as required by the façade strategy approved under condition 6.8, and perspectives of the proposal showing the design functionality, quality and relationships within the context of the Railway station precinct and the Railway station infrastructure, consistent with the façade strategy approved under condition 6.8; and
- g) Any further detail that is required to demonstrate integration of the OSD with the Metro Tunnel Project and associated work.

6.3.3 Prior to the submission of the development plans under condition 6.3.1 to the Minister for Planning for approval, the development plans must be referred to the Urban Design and Architectural Advice Panel (UDAAP) or as nominated by the Minister for Planning. The UDAAP or the nominated body must have regard to the urban context report specified by condition 6.3.4 and the masterplan approved under condition 6.2. The development plans submitted to the Minister for Planning for approval must be accompanied by all written comments received from the UDAAP or the nominated body.

6.3.4 In conjunction with the submission of the development plans to the Minister for Planning, the following reports must be submitted to the Minister for Planning for endorsement:

- a) An urban context report which demonstrates how the OSD achieves the recommended objectives and design outcomes, set out in section 4.6 of the *CBD North Over Site Development Urban Context Report (Jones and Whitehead) (October 2017)* to the extent relevant to the OSD and not already documented in the masterplan approved under condition 6.2; and
- b) A wind analysis report prepared by a suitably qualified person. The wind analysis report must:
 - I. Demonstrate compliance with the wind effects requirements of Appendix 2;
 - II. Explain the effect of the proposed development on the wind conditions in publicly accessible areas within a distance equal to half the longest width of the building, measured from all façades, or half the total height of the building, whichever is greater;
 - III. At a minimum, model the wind effects of the proposed development and its surrounding buildings (existing and proposed) using wind tunnel testing;
 - IV. Identify the principal role of each portion of the publicly accessible areas for sitting, standing or walking purposes;
 - V. Not rely on street trees or any other element such as screens, within public areas for wind mitigation; and
 - VI. Consider the approved conditions that include the ventilation/extractor vents that are included in the Metro Tunnel Project works approved under the MMRP Incorporated Document.

6.4 LAYOUT NOT ALTERED

- 6.4.1 The development and use must be carried out in accordance with the approved development plans except for any alterations or modifications with the prior written consent of the Minister for Planning. The scope of approval of any alterations is limited to the extent of the alterations or modifications to the development plan.

6.5 STAGING

- 6.5.1 The development authorised by this Incorporated Document may be completed in stages if a staging plan is submitted and approved to the satisfaction of the Minister for Planning in consultation with Melbourne Metro Rail Authority.
- 6.5.2 A staging plan must set out when development plans and other plans as required by this Incorporated Document will be submitted for each stage.
- 6.5.3 Any corresponding obligations under this Incorporated Document may be completed in stages.

6.6 CONSTRUCTION MANAGEMENT PLAN

- 6.6.1 Prior to commencement of development, a construction management plan (**CMP**) must be submitted and approved by the Melbourne City Council. The CMP must be prepared in accordance with the *Melbourne City Council – Construction Management Plan Guidelines (Guidelines)* and must be consistent with the Construction Environmental Management Plan (**CEMP**) required under the MMRP Incorporated Document Environmental Management Framework. To the extent of any inconsistency between the Guidelines and the CEMP, the requirements of the CEMP shall prevail. The CMP is to consider, but not be limited to, the following:

- a) Public safety, amenity and site security;
- b) Operating hours, noise and vibration controls;
- c) Air and dust management;
- d) Stormwater and sediment control;
- e) Waste and materials reuse;
- f) Traffic management consistent with the construction traffic management plan approved under condition 6.7;
- g) Demolition;
- h) Bulk excavation;
- i) Management of the construction site and land disturbance;
- j) Discharge of polluted waters;
- k) Disposal of contaminated soil (if any);
- l) Asbestos (if any); and
- m) Pollution of ground water.

- 6.6.2 The approved CMP must be implemented to the satisfaction of the Melbourne City Council and must not be altered without the prior consent of the Melbourne City Council.

6.7 CONSTRUCTION TRAFFIC MANAGEMENT PLAN

- 6.7.1 Prior to commencement of development (or any stage of development), a Construction Traffic Management Plan (**CTMP**) must be submitted to and approved by Transport for Victoria, in consultation with Melbourne City Council.
- 6.7.2 The CTMP must outline how public transport operations and traffic will be managed throughout the construction of the development and how impacts to public transport are mitigated. The endorsed CTMP must be implemented in accordance with the standards as at the date of this

Incorporated Document to the satisfaction of Transport for Victoria and must not be altered without the prior consent of Transport for Victoria. All traffic management and mitigation costs will be at the full cost of the developer.

- 6.7.3 The CTMP must also provide information on truck routes, the number of trucks per hours accessing the site and truck waiting areas outside the city and detail how traffic, including pedestrians and cyclists, will be managed around the OSD Land and other road closures associated with the development of the OSD Land.

6.8 FAÇADE STRATEGY

- 6.8.1 In conjunction with the submission of development plans under condition 6.3, a façade strategy, generally in accordance with the façade concept within the masterplan (condition 6.2), must be submitted to and be approved by the Minister for Planning, in consultation with UDAAP (or the body nominated under condition 6.3.3) and Melbourne City Council. All materials, finishes and colours must be consistent with the approved façade concept to the satisfaction of the Minister for Planning. The façade strategy for the development must include:

- a) A concise description by the architect of the building design concept and how the façade works to achieve this;
- b) A schedule of colours, materials and finishes, including the colour, type and quality of materials showing their application and appearance. This can be demonstrated in coloured elevations or renders from key viewpoints, to show the materials and finishes linking them to a physical sample board with clear coding;
- c) Elevation details generally at a scale of 1:50 illustrating typical podium details, entries and doors, typical privacy screening and utilities, typical tower detail, and any special features which are important to the building's presentation;
- d) Cross sections or other method of demonstrating the façade systems, including fixing details indicating junctions between materials and significant changes in form and/or material;
- e) Information about how the façade will be accessed and maintained and cleaned, including planting where proposed;
- f) Example prototype and/or precedents that demonstrate the intended design outcome indicated in plans and perspective images;
- g) Detail to confirm external glazing must be of a type that does not reflect more than 20% of visible light when measured at an angle of incidence normal to the glass surface; and
- h) Any detail on building plant and equipment on the roofs, balcony areas, common areas, public through fares so that they are concealed and incorporated into the design. The construction of any additional plant machinery and equipment, including but not limited to all air-conditioning equipment, ducts, flues, and communications equipment must be suitably screened.

- 6.8.2 The approved façade strategy must not be altered without the prior consent of the Minister for Planning in consultation with UDAAP (or as nominated by the Minister for Planning) and the Melbourne City Council.

6.9 LOADING, BICYCLE AND VEHICLE ACCESS

- 6.9.1 The development plans submitted under condition 6.3 must meet the following requirements:
- a) The development must not allow for motor vehicular access to the OSD via either Swanston Street and La Trobe Street;
 - b) The development must allow for loading and waste collection services to occur via Little La Trobe Street within the shared facility provided under the MMRP Incorporated Document or an alternative to the satisfaction of the Minister for Planning;

- c) No additional motor vehicle access point is to be provided to Little La Trobe Street to accommodate both loading and waste collection (shared) beyond the single access point provided under the MMRP Incorporated Document or an alternative to the satisfaction of the Minister for Planning;
 - d) The design of bicycles spaces is generally in accordance with Appendix 3; and
 - e) Bicycle signage is provided in accordance with Appendix 3.
 - f) The number and type of bicycle facilities to be provided complies with the bicycle parking concept within the masterplan.
- 6.9.2 On site loading and unloading must occur within the shared facility provided under the MMRP Incorporated Document unless an alternative is provided to the satisfaction of the Minister for Planning. Vehicle movements may occur by reverse-in and forward-out motion in accordance with AS 2890.2-2002, Australian Standard Parking facilities, Part 2: Off-street commercial vehiclefacilities.
- 6.9.3 If new motor vehicle crossings or pedestrian entrances are constructed by the developer of the OSD, the existing street levels adjacent to the site must not be altered for such purpose without the prior written approval of the Melbourne City Council.
- 6.9.4 If new motor vehicle crossings are constructed by the developer of the OSD, all necessary motor vehicle crossings must be constructed and all unnecessary motor vehicle crossings demolished and the footpaths adjacent to all boundaries of the property must be reconstructed in sawn bluestone and to accommodate street trees, at no cost to the Minister for Planning or the Melbourne City Council and to the satisfaction of the Melbourne City Council.

6.10 WASTE MANAGEMENT PLAN

- 6.10.1 Prior to commencement of development (excluding any works required for integration with the Railway station on the OSD Land, demolition, bulk excavation and site retention works), a Waste Management Plan (**WMP**) prepared by a suitably qualified and experienced waste engineer must be submitted to and approved by Melbourne City Council. The WMP must be generally in accordance with the waste management concept within the masterplan (condition 6.2), and meet the following requirements:
- a) Waste management systems must demonstrate that both OSD and underground station waste services can operate in a compatible and efficient way;
 - b) Storage facilities for all garbage and other waste material must be located within the OSD Land;
 - c) A warning device/sign must be installed at the car park entry and loading bay area alerting pedestrians when vehicles are exiting the building, to the satisfaction of the Melbourne City Council;
 - d) All access ways and associated structures should be designed as a minimum to accommodate Australian Standard Small Rigid Vehicle (6.4m length) waste collection vehicles; and
 - e) The development must allow for waste management services in accordance with *The Melbourne City Council's Guidelines for Waste Management Plans (2017)*.
- 6.10.2 The approved WMP must be implemented to the satisfaction of the Melbourne City Council. Waste storage and collection arrangements must not be altered without the prior consent of the Melbourne City Council.

6.11 ENVIRONMENTALLY SUSTAINABLE DESIGN STATEMENT & INTERNAL AMENITY

- 6.11.1 Prior to commencement of development (excluding any works required for integration with the Railway station on the OSD Land, demolition, bulk excavation and site retention works), an environmentally sustainable design statement (**ESD Statement**) from a suitably qualified

environmental engineer must be submitted, to the satisfaction of the Minister for Planning and in consultation with Melbourne City Council. The ESD Statement must:

- a) demonstrate that the building is capable of achieving a minimum 5-star Green Star rating under the Green Star Design & As built rating tool of the Green Building Council of Australia (as at October 2017), and 5 Star NABERS indoor environment office energy rating and 4 Star NABERS indoor environment office waste rating (as at October 2017);
- b) Demonstrate consideration of ESD opportunities in the OSD including the following:
 - i. integrated water sensitive urban design and sustainable stormwater management systems;
 - ii. integrated waste management systems including efficient and smart waste management solutions;
 - iii. sustainable materials;
 - iv. integrated urban biodiversity including green infrastructure and biophilic design; and
 - v. sustainable construction outcomes; and
- c) Demonstrate consideration of decentralised energy opportunities including the use of on-site renewable energy systems or alternate energy sources, including but limited to solar photovoltaic solutions, geothermal energy, and co-gen/tri-gen systems.

6.11.2 The approved ESD Statement must be implemented to the satisfaction of the Minister for Planning and must not be altered without the prior consent of the Minister for Planning.

6.12 STUDENT HOUSING MANAGEMENT PLAN

6.12.1 If any of the OSD Land will be developed for the purpose of student housing, before the use commences a Student Housing Management Plan (**SHMP**) must be submitted to and approved by the Melbourne City Council. The SHMP should meet the following requirements:

- a) Permanent display of a notice confirming the operators are using an approved Management Plan in a common area, which is available on request;
- b) Provision for at-call contact details of a suitably responsible contact person for response 24 hours a day and seven days a week, to be displayed so they are clearly visible to any person entering the site;
- c) Provision of information on community and education services, including health, counselling and cultural services;
- d) Provision of information on local public transport and to encourage walking (e.g. information on facilities within walking distance, local public transport timetables, outlets for purchase of Myki tickets, car share services etc);
- e) House rules confirming occupancy and behaviour of students and visitors;
- f) Resolution process for disputes between students and complaints from persons not residing on the site;
- g) Areas where washed clothes may be dried;
- h) Details of rubbish bin storage and waste collection;
- i) Employment of a suitably qualified manager or lead tenant who is accommodated onsite;
- j) The nature of the management of the complex and the contact details of the manager/lead tenant;
- k) Critical Incident Management and Emergency & Evacuation Procedures;
- l) Management procedures over holiday periods; and
- m) Information for students on how to use the building effectively, efficiently and responsibly.

6.12.2 The approved SHMP must be implemented to the satisfaction of the Melbourne City Council, and must not be altered without the prior consent of the Melbourne City Council.

6.13 **STORMWATER**

6.13.1 A storm water drainage system for the development must be constructed at no cost to Melbourne City Council and provision must be made to connect this system to Melbourne City Council's underground stormwater drainage system or the Railway station stormwater system, and where necessary, upgrade the system to accept the discharge from the site in accordance with plans and specifications first approved by Melbourne City Council.

6.14 **ACOUSTIC AMENITY REPORT**

6.14.1 Prior to the commencement of development (excluding any works required for integration with the Railway station on the OSD Land, demolition, bulk excavation and site retention works), a report from a qualified acoustic consultant demonstrating that the development has been designed to limit internal noise levels in habitable rooms of residential or other noise sensitive uses adjacent to high levels of external noise (with windows closed) to a maximum of 45dB and otherwise in accordance with the relevant Australian Standards for acoustic control (**Acoustic Amenity Report**) must be submitted to and endorsed by the Minister for Planning. The features and recommendations of the endorsed Acoustic Amenity Report be implemented to the satisfaction of the Minister for Planning.

6.14.2 Any building that will accommodate new residential or other noise sensitive uses must:

- i. be designed and constructed to include noise attenuation measures; and
- ii. have external glazing, doors, air conditioning systems and ventilation systems which have been designed to meet the specifications of the requirements of a recognized acoustic consultant.

6.14.3 For the purposes of this condition, noise sensitive uses are those that have an element of residential accommodation and are nested under the definition of Accommodation in the Planning Scheme.

6.15 **SIGNAGE STRATEGY**

6.15.1 Prior to commencement of development (excluding any works required for integration with the Railway station on the OSD Land, demolition, bulk excavation and site retention works) a Signage Strategy must be submitted to and approved by the Minister for Planning, in consultation with Melbourne City Council. The Signage Strategy submitted for approval must include, but is not limited to, indicative locations or elevations for signs, an assessment of the cumulative impact of all signs and wayfinding within the OSD precinct to demonstrate how proposed signs do not result in visual clutter, as well as measures to prevent interference with station access and wayfinding.

6.16 **LEGAL AGREEMENTS**

6.16.1 Prior to commencement of development, the owner(s) of the OSD Land must enter into an agreement(s) under section 173 of the Planning and Environment Act 1987 with the responsible authority and the Minister for Planning. The owner(s) of the land to be developed must pay all of DELWP's and or Council's reasonable legal costs and expenses of the agreement(s), including preparation, and execution. The agreement(s) must provide for a Land Management Agreement to be entered into between the owner(s) and the State in respect of services and

structures shared across the Railway station and OSD; including structures, plant, services, infrastructure, egress and circulation, integrated waste management and access arrangements.

6.17 DECISION GUIDELINES

- a) In considering approval of the development plans under condition 6.3 the Minister for Planning must consider the extent to which the development plans are generally in accordance with the masterplan approved under condition 6.2.

6.17.1 In considering any amendments to the masterplan under condition 6.2.2, the Minister for Planning must consider whether approval of the plan will:

- a) facilitate an integrated, transit oriented development that includes publicly available spaces at the lower levels adjacent to the Railway station on the OSD Land, and does not adversely impact the operation of the station (including but not limited to passenger movement and station access);
- b) facilitate a development that provides a high quality architectural response; and
- c) in association with adjoining existing and potential development, support high quality pedestrian amenity in the public realm, in relation to human scale.

7. EXPIRY

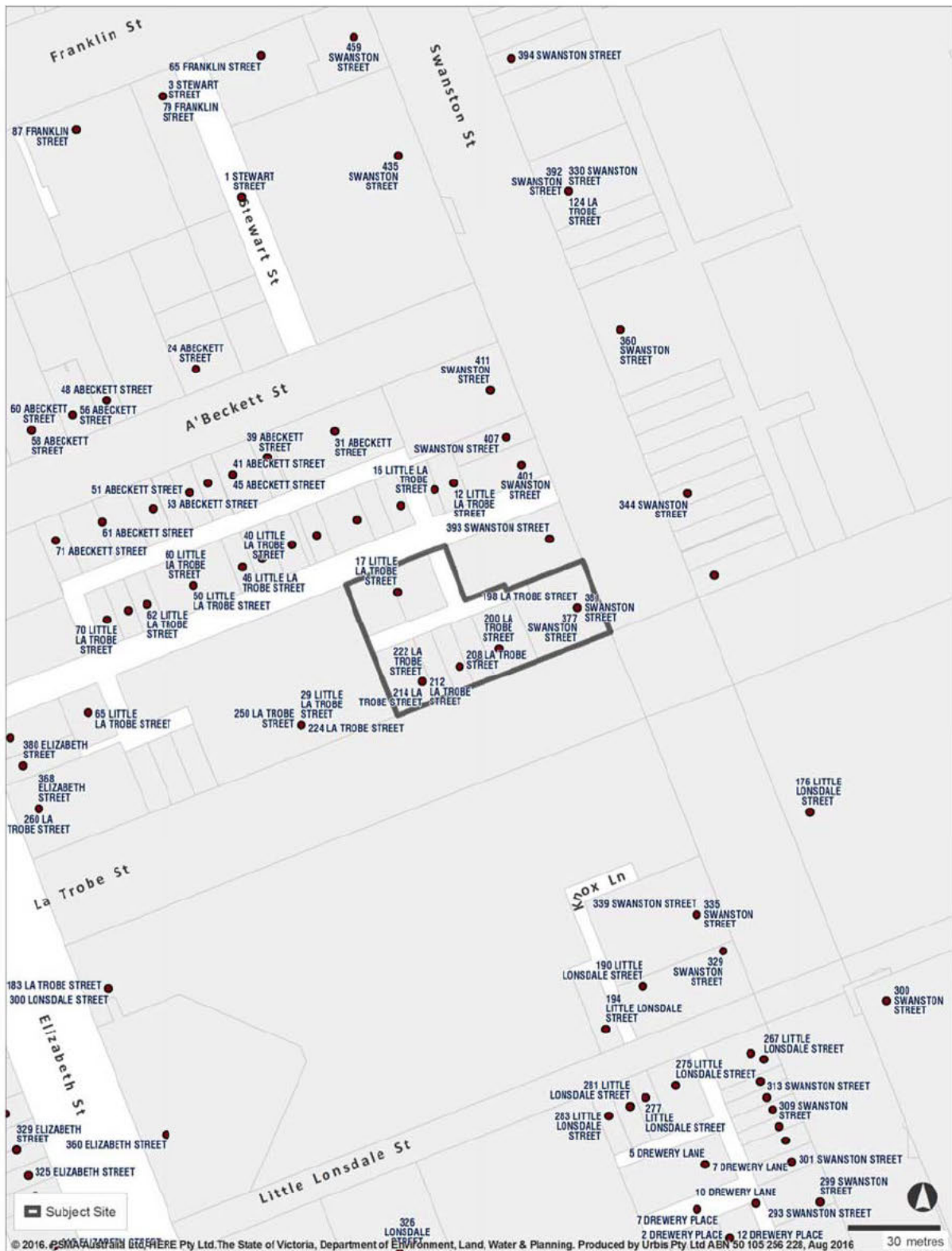
7.1 The control in this Incorporated Document expires if any of the following circumstances applies:

- 7.1.1 The development allowed by the control is not started by 31 December 2025.
- 7.1.2 The development allowed by this control is not completed by 31 December 2028.
- 7.1.3 The use allowed by the control is not started by 31 December 2028.
- 7.1.4 The Railway station on the OSD Land is relocated or deleted from the Metro Tunnel Project.

7.2 The Minister for Planning may extend these periods if a request is made in writing before the expiry date or within six months afterwards.

END OF DOCUMENT

APPENDIX 1 – OSD LAND (CBD NORTH)



APPENDIX 2 – WIND EFFECTS

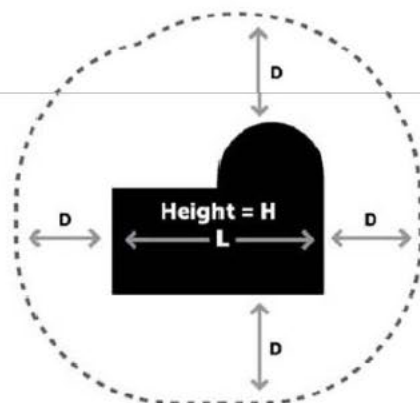
Definitions (from Design and Development Overlay – Schedule 10)

- **unsafe wind conditions** means the hourly maximum 3 second gust which exceeds 20 metres/second from any wind direction considering at least 16 wind directions with the corresponding exceedance percentage.
- **comfortable wind conditions** means a mean wind speed from any wind direction with probability of exceedance less than 20% of the time, equal to or less than:
 - 3 metres/second for sitting areas
 - 4 metres/second for standing areas
 - 5 metres/second for walking areas.
- **mean wind speed** means the maximum of:
 - Hourly mean wind speed, or
 - Gust equivalent mean speed (3 second gust wind speed divided by 1.85).

Design requirements

- Development comprising buildings and works with a total building height in excess of 40 metres must not cause unsafe wind conditions in publicly accessible areas, within a distance equal to half the longest width of the building above 40 metres in height measured from all facades, or half the total height of the building, whichever is greater as shown in Figure 1,
- Development comprising buildings and works with a total building height in excess of 40 metres should achieve comfortable wind conditions in publicly accessible areas within a distance equal to half the longest width of the building above 40 metres in height measured from all facades, or half the total height of the building, whichever is greater as shown in Figure 1.

Figure 1



Assessment distance D = greater of:
L/2 (Half longest width of building)
OR
H/2 (Half overall height of building)

APPENDIX 3 – BICYCLE PARKING DESIGN REQUIREMENTS

Bicycle spaces

Bicycle spaces should:

- Provide a space for a bicycle of minimum dimensions of 1.7 metres in length, 1.2 metres in height and 0.7 metres in width at the handlebars.
- Be located to allow a bicycle to be ridden to within 30 metres of the bicycle parking space.
- Be located to provide convenient access from surrounding bicycle routes and main building entrances.
- Not interfere with reasonable access to doorways, loading areas, access covers, furniture, services and infrastructure.
- Not cause a hazard.
- Be adequately lit during periods of use.

Bicycle rails

A bicycle rail must:

- Be securely fixed to a wall or to the floor or ground.
- Be in a highly visible location for bicycle security (when not in a compound).
- Be of a shape that allows a cyclist to easily lock the bicycle frame and wheels.
- Be located to allow easy access to park, lock and remove the bicycle.

Bicycle compounds and lockers

A bicycle compound or a bicycle locker must:

- Be located to provide convenient access to other bicycle facilities including showers and change rooms.
- Be fully enclosed.
- Be able to be locked.
- If outside, provide weather protection for the bicycle.
- A bicycle locker must provide a bicycle parking space for at least one bicycle.
- A bicycle compound must:
 - Include wall or floor rails for bicycle parking.
 - Provide an internal access path of at least 1.5 metres in width.

Bicycle signage

If bicycle facilities are required by this Incorporated Document, bicycle signage that directs the cyclists to the bicycle facilities must be provided to the satisfaction of the Minister for Planning.

Bicycle signage should:

- Be at least 0.3 metres wide and 0.45 metres high.
- Display a white bicycle on a blue background on the top half of the sign.
- Display information about the direction of facilities on the bottom half of the sign.

APPENDIX 4 - REQUIRED BICYCLE FACILITIES

Tables 1, 2 and 3 to this Appendix set out the number and type of bicycle facilities required. Bicycle facilities are required if the use is listed in column 1 of the table. The number of bicycle facilities required for a use is the sum of columns 2 and 3 of the tables.

If in calculating the number of bicycle facilities the result is not a whole number, the required number of bicycle facilities is the nearest whole number. If the fraction is one-half, the requirement is the next whole number.

A bicycle space for an employee or resident must be provided either in a bicycle locker or at a bicycle rail in a lockable compound.

A bicycle space for a visitor, shopper or student must be provided at a bicycle rail.

Table 1 – Bicycle spaces

| Use | Employee/resident | Visitor/shopper/student |
|--|---|---|
| Amusement parlour | None | 2 plus 1 to each 50 sq m of net floor area |
| Convenience restaurant | 1 to each 25 sq m of floor area available to the public | 2 |
| Dwelling other than specified in this table | In developments of four or more storeys, 1 to each 5 dwellings | In developments of four or more storeys, 1 to each 10 dwellings |
| Education centre other than specified in this table | 1 to each 20 employees | 1 to each 20 full-time students |
| Hotel | 1 to each 25 sq m of bar floor area available to the public, plus 1 to each 100 sq m of lounge floor area available to the public | 1 to each 25 sq m of bar floor area available to the public, plus 1 to each 100 sq m of lounge floor area available to the public |
| Library | 1 to each 500 sq m of net floor area | 4 plus 2 to each 200 sq m of net floor area |
| Medical centre | 1 to each 8 practitioners | 1 to each 4 practitioners |
| Minor sports and recreation facility | 1 per 4 employees | 1 to each 200 sq m of net floor Area |
| Motel | 1 to each 40 rooms | None |
| Nursing home | 1 to each 7 beds | 1 to each 60 beds |
| Office other than specified in this table | 1 to each 300 sq m of net floor area if the net floor area exceeds 1000 sq m | 1 to each 1000 sq m of net floor area if the net floor area exceeds 1000 sq m |
| Place of assembly other than specified in this table | 1 to each 1500 sq m of net floor area | 2 plus 1 to each 1500 sq m of net floor area |
| Primary school | 1 to each 20 employees | 1 to each 5 pupils over year 4 |
| Residential building other than specified in this table | In developments of four or more storeys, 1 to each 10 lodging rooms | In developments of four or more storeys, 1 to each 10 lodging rooms |
| Restaurant | 1 to each 100 sq m of floor area available to the public | 2 plus 1 to each 200 sq m of floor area available to the public if the floor area available to the public exceeds 400 sq m. |
| Retail premises other than specified in this table | 1 to each 300 sq m of leasable floor area | 1 to each 500 sq m of leasable floor area |
| Secondary school | 1 to each 20 employees | 1 to each 5 pupils |
| Shop | 1 to each 600 sq m of leasable floor area if the leasable floor area exceeds 1000 sq metres | 1 to each 500 sq m of leasable floor area if the leasable floor area exceeds 1000 sq metres |
| Take-away food premises | 1 to each 100 sq m of net floor Area | 1 to each 50 sq m of net floor Area |

TABLE 2 – SHOWERS

| Use | Employee/resident | Visitor/shopper/student |
|----------------------------------|--|--------------------------------|
| Any use listed in Table 1 | If 5 or more employee bicycle spaces are required, 1 shower for the first 5 employee bicycle spaces, plus 1 to each 10 employee bicycle spaces thereafter. | None |

TABLE 3 – CHANGE ROOMS

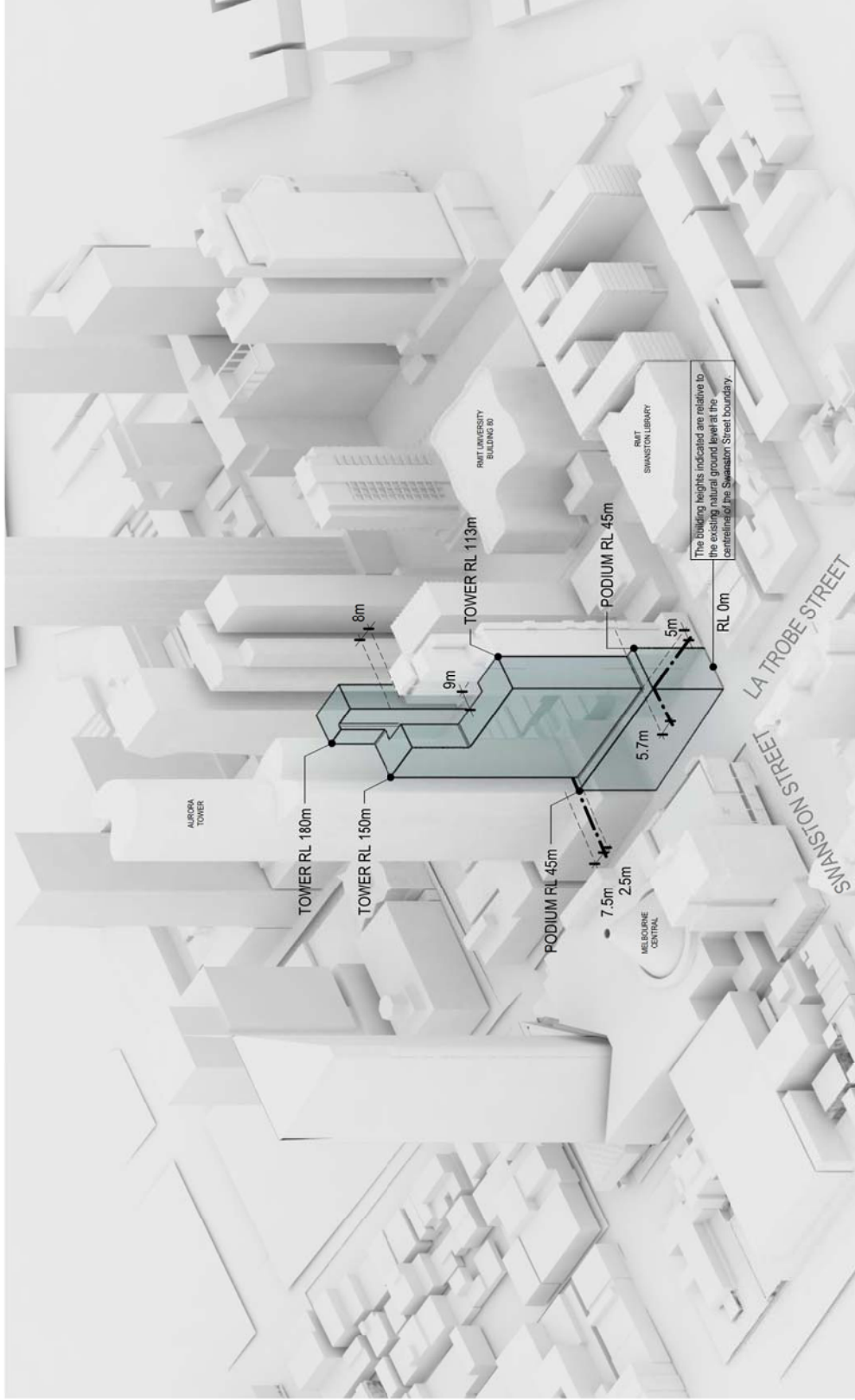
| Use | Employee/resident | Visitor/shopper/student |
|----------------------------------|--|--------------------------------|
| Any use listed in Table 1 | 1 change room or direct access to a communal change room to each shower. The change room may be a combined shower and change room. | None |

**OVER SITE DEVELOPMENT
CBD NORTH
INCORPORATED PLANS 2017**

OCTOBER 2017

BUILDING ENVELOPE PLAN 1*

TAS-CYP-05-00-DRG-ARC-CBN-01



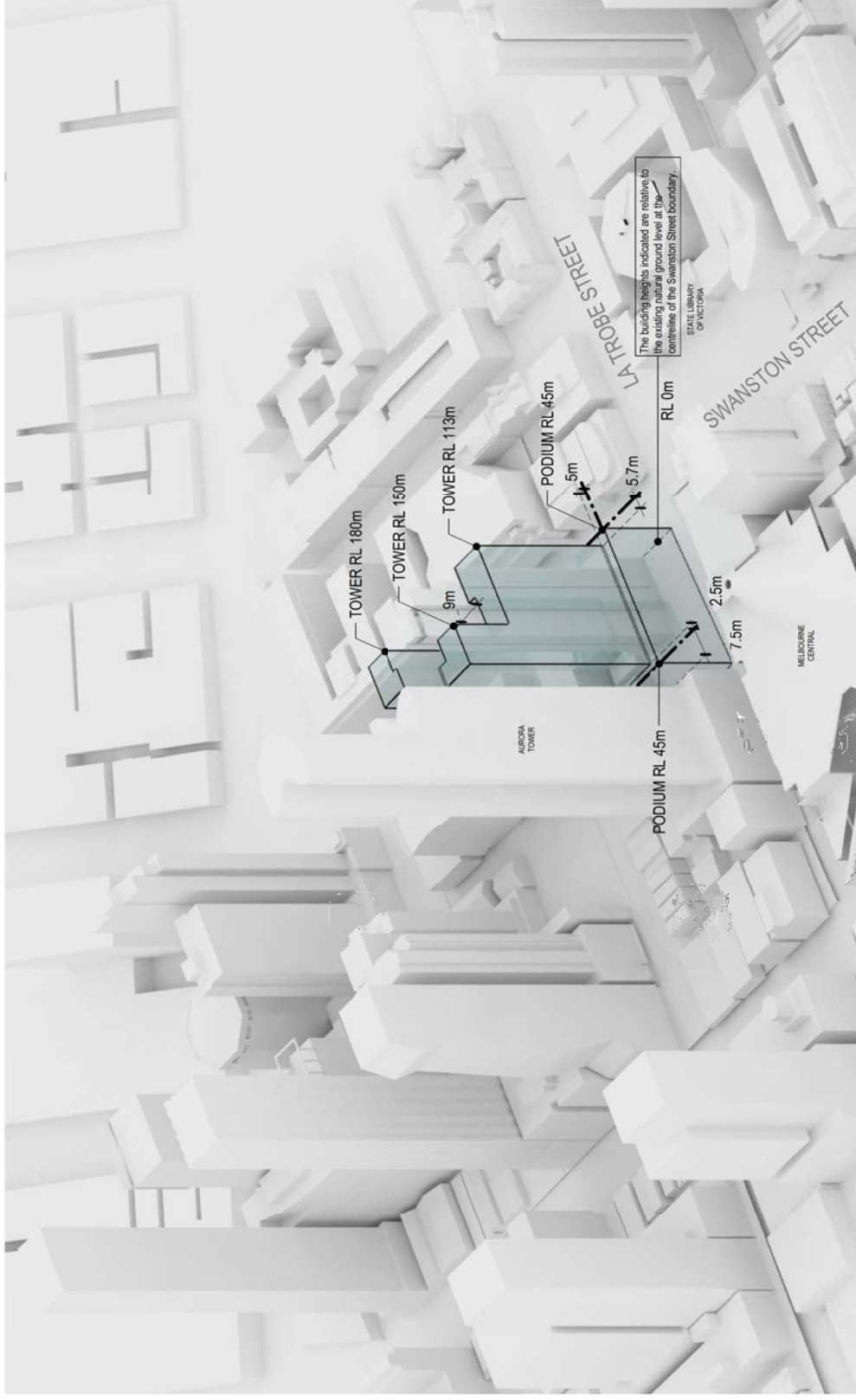
FROM SOUTH-EAST

* NOTES

- i. The Building Envelope Plan illustrates the indicative Building Envelope, excluding:
 - a. The parapet, non-habitable architectural features not more than 3.0m in height, lift over runs, lift motor rooms, plant rooms and building services which will be setback at least 3.0m from the building facade other than on the western (Aurora facing) facade which can have no setback from the facade.
 - b. A 300mm articulation zone beyond all sides of the Building Envelope to allow for architectural detailing and expression (non-habitable space).
 - c. Devices required for wind amelioration, or architectural features, including but not limited to blades, fins, awnings or a veranda roof over the footpath may exceed the building envelope.
- ii. Any increase to the building heights indicated on the Building Envelope Plan required for a matter listed above in notes(i) (a)-(c) must demonstrate that there is no net increase in shadow impact (from the combined impact of existing, under construction (393 Swanston Street and 224-252 La Trobe Street (Aurora)) and planning permit approved (2011013727A and TP-2013-817) shadows as at October 2017), on the State Library Forecourt between the hours of 11am and 3pm from 22 April to 22 September.
- iii. The setback dimensions are minimum permissible setbacks.

BUILDING ENVELOPE PLAN 2*

TAS-CYP-OS-00-DRG-ARC-CBN-02



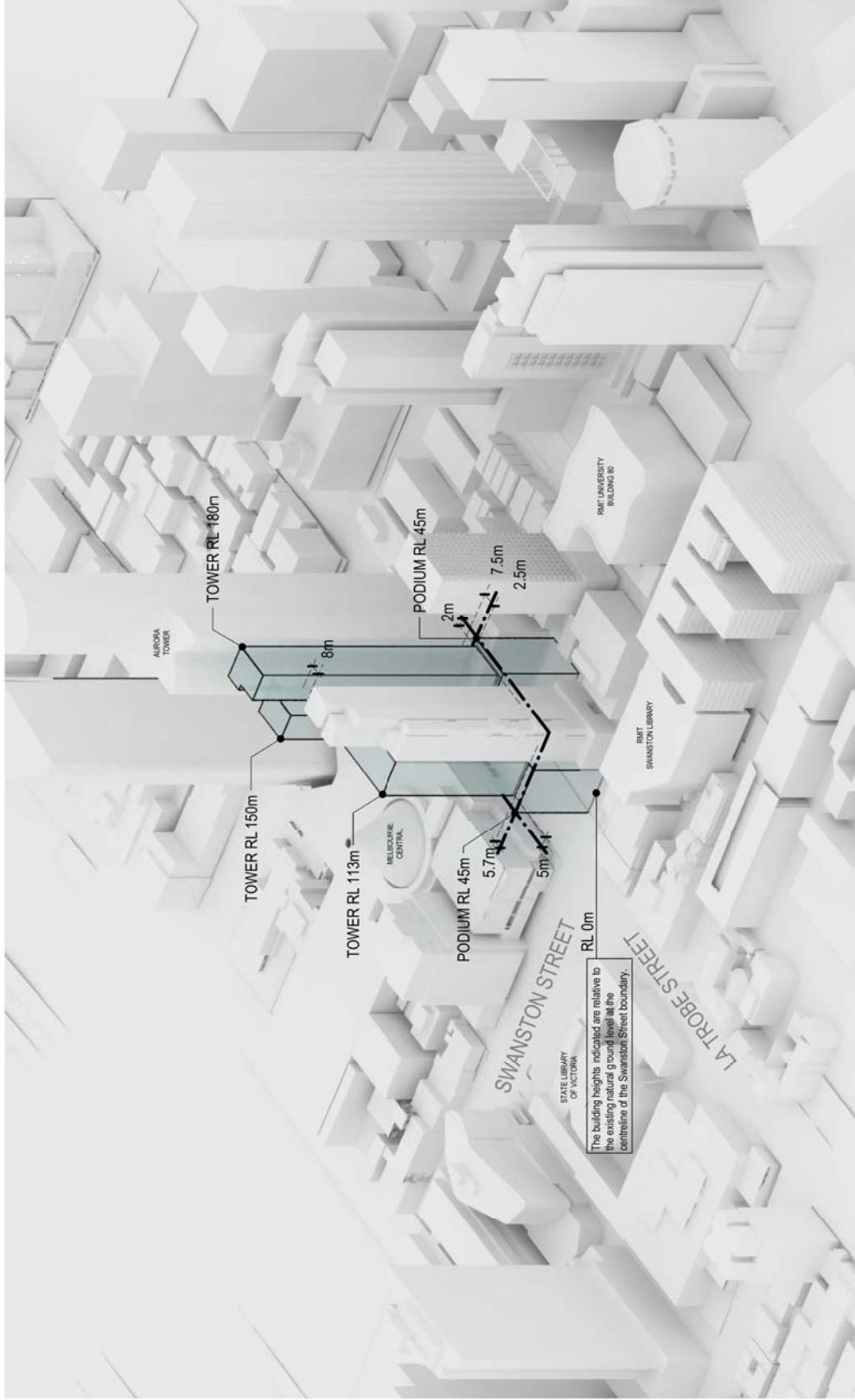
FROM SOUTH-WEST

*NOTES

- i. The Building Envelope Plan illustrates the indicative Building Envelope, excluding:
 - a. The parapet, non-habitable architectural features not more than 3.0m in height, lift over runs, lift motor rooms, plant rooms and building services which will be setback at least 3.0m from the building facade other than on the western (Aurora facing) facade which can have no setback from the facade.
 - b. A 300mm articulation zone beyond all sides of the Building Envelope to allow for architectural detailing and expression (non-habitable space).
 - c. Devices required for wind amelioration, or architectural features, including but not limited to blades, fins, awnings or a veranda roof over the footpath may exceed the building envelope.
- ii. Any increase to the building heights indicated on the Building Envelope Plan required for a matter listed above in notes(i) (a)-(c) must demonstrate that there is no net increase in shadow impact (from the combined impact of existing, under construction (393 Swanston Street and 224-252 La Trobe Street (Aurora)) and planning permit approved (2011013727A and TP-2013-817) shadows as at October 2017), on the State Library Forecourt between the hours of 11am and 3pm from 22 April to 22 September.
- iii. The setback dimensions are minimum permissible setbacks.

BUILDING ENVELOPE PLAN 3*

TAS-CYP-05-00-DRG-ARC-CBN-03



*NOTES

- i. The Building Envelope Plan illustrates the indicative Building Envelope, excluding:
 - a. The parapet, non-habitable architectural features not more than 3.0m in height, lift over runs, lift motor rooms, plant rooms and building services which will be setback at least 3.0m from the building facade other than on the western (Aurora facing) facade which can have no setback from the facade.
 - b. A 300mm articulation zone beyond all sides of the Building Envelope to allow for architectural detailing and expression (non-habitable space).
 - c. Devices required for wind amelioration, or architectural features, including but not limited to blades, fins, awnings or a veranda roof over the footpath may exceed the building envelope.
- ii. Any increase to the building heights indicated on the Building Envelope Plan required for a matter listed above in notes(i) (a)-(c) must demonstrate that there is no net increase in shadow impact (from the combined impact of existing, under construction (393 Swanston Street and 224-252 La Trobe Street (Aurora)) and planning permit approved (2011013727A and TP-2013-817) shadows as at October 2017), on the State Library Forecourt between the hours of 11am and 3pm from 22 April to 22 September.
- iii. The setback dimensions are minimum permissible setbacks.

FROM NORTH-EAST



Execution version

Melbourne Metro

PPP and OSD Interface Agreement (CBD North)

[not disclosed];

[not disclosed];

[not disclosed]; and

[not disclosed],

(together, Cross Yarra Partnership) (ABN 57 956 065 885) (**Project Co**)

The unincorporated joint venture comprising John Holland Nth OSD Developer Pty Ltd (ACN 623 274 564) and Scape Little Latrobe Operator Pty Ltd (ACN 607 697 183) (**OSD Developer**)

The unincorporated joint venture comprising Lendlease Engineering Pty Ltd (ACN 000 201 516), John Holland Pty Ltd (ABN 11 004 282 268) and Bouygues Construction Australia Pty Ltd (ABN 37 144 013 801) (**PPP D&C Subcontractor**)

The Minister for Public Transport on behalf of the Crown in right of the State of Victoria

[not disclosed]



HERBERT
SMITH
FREEHILLS

Agreement

Metro Tunnel
Tunnel and Stations PPP

Commercial Development Agreement CBD South

Minister for Public Transport on behalf of the Crown
in right of the State of Victoria

Lendlease (OSD South) Pty Limited as trustee for
the Lendlease (OSD South) Trust



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Commercial Development Agreement

Date ►

Between the parties

State **Minister for Public Transport on behalf of the Crown in right of the State of Victoria**

Developer **Lendlease (OSD South) Pty Limited ACN 610 047 464 as trustee for the Lendlease (OSD South) Trust**
of Level 14, Tower Three, International Towers Sydney, Exchange Place, 300 Barangaroo Avenue, Barangaroo NSW 2000

Recitals

- 1 Associated with the 'Tunnel and Stations PPP' component of the Metro Tunnel and for the purpose of an approved project in accordance with the *Major Transport Projects Facilitation Act 2009* (Vic), the State agrees for the Developer to undertake the Oversight Development.
- 2 The State and the Developer wish to enter into this Agreement and, as applicable, the other Oversight Development Agreements, to record the terms on which the Oversight Development will be developed and implemented by the Developer.

The parties agree as follows:



1 Definitions and interpretation

1.1 Definitions

The meanings of the terms used in this agreement are set out below.

| Term | Meaning |
|-------------------------------------|--|
| Aboriginal Cultural Heritage | has the meaning given in the <i>Aboriginal Heritage Act 2006 (Vic)</i> . |
| Access Protocols | has the meaning given to that term in the Interface Agreement. |
| Adjustment Note | has the meaning given by the GST Law. |
| Advertising Restrictions | the restrictions set out in Attachment 7. |
| Agreement | includes this agreement including any attachments. |
| Agreement Date | the date of this Agreement. |
| Applicable Cure Period | has the meaning given to it in clause 35.2(c)(2). |
| Approval | any licence, permit, authorisation, endorsement of plan, consent, assessment, approval, determination, certificate, accreditation, registration, clearance, permission or the like (as amended or substituted from time to time) which is issued by or obtained from or is required to be issued or obtained from any Authority or any other person or in accordance with any Law, which must be obtained or satisfied in connection with the Oversight Development. |
| Approved Cure Plan | has the meaning given to it in clause 35.2(c). |
| Artefacts | any fossils, bones, artefacts, coins, articles of antiquity, valuable materials, structures or other remains, or things or structures of a scientific, geological, historical, cultural, heritage, archaeological or Aboriginal nature or interest or things otherwise of value, including any items of cultural heritage significance under the <i>Aboriginal</i> |

| Term | Meaning |
|---------------------------------|--|
| | <p><i>Heritage Act 2006 (Vic).</i></p> |
| <p>Associate</p> | <p>in relation to a person, any officer, employee, agent, consultant or adviser of that party and:</p> <p>1 in the case of the State means:</p> <ul style="list-style-type: none"> • the State Representative; • MMRA; • any Authority (other than the Commonwealth of Australia or its Associates); and • any officer, employee, agent, contractor, consultant or adviser of the State, the State Representative, MMRA or Authority, <p>each acting in connection with the Oversight Development, but does not include the Developer and its Associates, Project Co and its Associates, the Independent Reviewer, the Train Franchisee, or a contractor or alliance delivering a work package for the Project (including the State in its capacity of 'participant' in the 'Rail Systems Alliance' or the 'Rail Infrastructure Alliance' for the Project);</p> <p>2 in the case of the Developer includes:</p> <ul style="list-style-type: none"> • any Subcontractors; and • any Related Body Corporate, officer, employee, agent, contractor, consultant or adviser of the Developer and Subcontractors, <p>each acting in connection with the Oversight Development, but excludes:</p> <ul style="list-style-type: none"> • the State and its Associates; • the Independent Certifier; and • Project Co and the Project Co Associates (other than to the extent that such Associates are engaged by the Developer for the purposes of the design, construction, operation or maintenance of the Oversight Development Works). |
| <p>Authorised Person</p> | <p>any person authorised by the State to access the Licenced Area or the Lease Land (as applicable) including a contractor or alliance delivering a work package for the Project.</p> |
| <p>Authority</p> | <p>any government or any governmental, semi-governmental or local government authority, local council, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality and any person having jurisdiction over any part of the Oversight Development Works or the Oversight Development.</p> |

| Term | Meaning |
|-------------------------------|--|
| Best D&C Practices | <p>design, manufacturing, construction, installation, commissioning and repair practices which are carried out:</p> <ol style="list-style-type: none"> 1 with the skill, care and diligence which may reasonably be expected of a skilled professional carrying out design, manufacturing, construction, installation, commissioning and repair work similar to the Oversight Development Works; 2 with due expedition and without delay; 3 in a manner which is safe to all people and the Environment; 4 with the intent of ensuring reliable long term and safe operation of the Oversight Development; 5 by trained and experienced personnel utilising high quality and safe proper equipment, tools, procedures and industry standards; 6 with an adequate number of personnel, materials, resources and supplies; 7 using new and high quality fixtures, fittings, finishes and materials which are: <ul style="list-style-type: none"> • free from defects; and • appropriate for the environment in which they are intended to be used under normal conditions and reasonably anticipated abnormal conditions or which would be reasonably anticipated by a skilled professional carrying out design, manufacturing, construction, installation, commissioning and repair work similar to the D&C Activities. |
| Best Industry Practice | <p>industry practices appropriate to the construction and development of mixed commercial and retail developments, as would be reasonably expected of a skilled and experienced Australian operator engaged in similar developments to the Oversight Development under the same or similar circumstances and conditions.</p> |
| Builder | <p>the builder appointed by the Developer to construct the Oversight Development.</p> |
| Builder's Side Deed | <p>the side deed between the State, the Developer and the Builder to be entered into pursuant to clause 5.2.</p> |
| Building Contract | <p>the building contract between the Developer and the Builder in relation to the Oversight Development Works entered into as contemplated by this Agreement.</p> |
| Business Day | <p>a day that is not a Saturday, Sunday or public holiday in</p> |



| Term | Meaning |
|--|--|
| | Melbourne, Victoria pursuant to the <i>Public Holidays Act 1994 (Vic)</i> . |
| CBD South | the land contained in certificates of title Volume 11890 Folio 561, Volume 11879 Folio 996, Volume 11879 Folio 999, Volume 11880 Folio 008, Volume 11880 Folio 009, Volume 11880 Folio 010 and Volume 11879 Folio 849. |
| CBD South OSD Acceptance | the later of: <ol style="list-style-type: none">1 [not disclosed]; and2 subject to the Project D&C Subcontractor providing a Handover Notice in accordance with clause 9.1(a) of the Interface Agreement, either:<ol style="list-style-type: none">(i) the date that the Developer issues a notice under clause 9.1(e)(i) of the Interface Agreement accepting Completion (PPP); or(ii) if a party to the Interface Agreement refers whether Completion (PPP) has been achieved for resolution under clause 17 of the Interface Agreement, the date that it is determined that Completion (PPP) has been achieved. |
| Certificate of Final Completion | a certificate issued by the Developer in accordance with clause 25.4 certifying to the State that Final Completion has been achieved. |
| Cessation Date | has the meaning set out in clause 38.2. |
| Change in Law | any one or more of the following: <ol style="list-style-type: none">1 a change in, or repeal of, an existing Law;2 the enactment or judicial determination of a new Law; or3 a change in the way a Law is applied or interpreted as a result of a decision of a court of competent jurisdiction, but does not include: <ol style="list-style-type: none">4 a change in the way a Law is applied or interpreted due to:<ul style="list-style-type: none">– the failure of the Developer or any of its Associates to comply a Law or Approval; or– an illegal act or omission of the Developer or any of its Associates;5 any new Approval or change in an Approval resulting from:<ul style="list-style-type: none">– an act or omission of the Developer or any of its Associates;or |

| Term | Meaning |
|-----------------------------------|---|
| | <ul style="list-style-type: none"> - a change to the design or delivery methodology in relation to the Oversight Development Works where the change is consistent with the Concept Design Documents; <p>6 any new Law or change in existing Law relating to Taxes including the <i>Income Tax Assessment Act 1936</i> (Cth), the <i>Income Tax Assessment Act 1997</i> (Cth) and the GST Law; or</p> <p>7 any new Law or change in any existing Law which was not in force at the date of this Agreement but which:</p> <ul style="list-style-type: none"> - had been published in the Government Gazette by way of bill, draft bill or draft statutory instrument or otherwise specifically referred to prior to the date of this Agreement; - a party exercising Best Industry Practices would have reasonably foreseen or anticipated prior to the date of this Agreement; or - is substantially the same as a Law in force prior to the date of this Agreement. |
| Claim | <p>includes any claim, action, demand or suit or proceeding (including by way of contribution or indemnity) made:</p> <ol style="list-style-type: none"> 1 in connection with the Oversight Development Agreements or the Oversight Development; or 2 at Law or for specific performance, restitution, payment of money (including damages). |
| Clearance Certificate | <p>a certificate in respect of the State and the Lease Land given by the Commissioner under section 14-220 of Schedule 1 of the <i>Taxation Administration Act 1953</i> (Cth).</p> |
| COM Alternative Conditions | <p>[not disclosed]</p> |
| COM Conditions | <p>[not disclosed]</p> |
| Commencement Date | <p>the date on which the last of the conditions precedent in clause 4.2 to be satisfied or waived is satisfied or waived.</p> |
| Commercial Lease | <p>the lease for the Lease Land between the State and the Tenant to be entered into pursuant to clause 26.1 in the form set out in Attachment 5.</p> |
| Commercial Lease Plan | <p>the survey plan as determined under clause 26.2, a draft of which is contained in Attachment 6.</p> |



| Term | Meaning |
|---|---|
| Commonwealth Building Code | each of: <ol style="list-style-type: none">1 the <i>Building Code 2013</i> (Cth);2 the 'Supporting Guidelines' (April 2016);3 the <i>Code for the Tendering and Performance of Building Work 2016</i> (Cth); and any other documents issued under section 34 of the <i>Building and Construction Industry (Improving Productivity) Act 2016</i> (Cth) by legislative instrument. |
| Compensable Extension Event | has the meaning in the Project Agreement. |
| Completion (PPP) | has the meaning in the Interface Agreement. |
| Concept Design Documents | all drawings, plans, specifications and other information required for the Oversight Development Works as contained in Attachment 8. |
| Conditions Precedent Deadline Date | the date which is 30 days after the date of the Agreement Date. |
| Confidential Information | the: <ol style="list-style-type: none">1 Oversight Development Agreements;2 Development Information;3 information provided by:<ul style="list-style-type: none">• the State or any of its Associates to the Developer or any of its Associates; or• the Developer or any of its Associates to the State or any of its Associates,in accordance with this Agreement whether prior to or after the date of this Agreement;4 the Developer Material; and5 other information in connection with the D&C Activities which the Developer is required to keep confidential in complying with any Privacy Principles or any applicable Law. |
| Consideration | has the meaning given by the GST Law. |
| Construction Commencement | has the meaning given to that term in clause 11. |



| Term | Meaning |
|---|--|
| Construction Commencement Deadline | [not disclosed] |
| Construction Licence | any licence granted in accordance with clause 12.1 in connection with the Oversight Development Works, in the form set out in Attachment 3. |
| Construction Site | the area to be used for construction within the Site. |
| Contamination | a condition of land, air, soil, water (including groundwater) resulting from past or present Pollution and which shares any of the characteristics of Pollution. |
| Contamination Notice | a notice, order or direction given, or purporting to have been given, under the <i>Environment Protection Act 1970</i> (Vic) or any other Law which requires a person to Remediate any Contamination in, on, under or emanating from the Construction Site or any other land within the vicinity of the Construction Site used or occupied by the Developer or its Associates for the Project. |
| Corporations Act | the <i>Corporations Act 2001</i> (Cth). |
| Cultural Heritage Management Plan | a cultural heritage management plan to be prepared and approved under the <i>Aboriginal Heritage Act 2006</i> (Vic) for the D&C Activities. |
| Date for Completion (PPP) | has the meaning given under the Interface Agreement. |
| D&C Activities | all things which the Developer is, or may be, required to carry out or do: <ol style="list-style-type: none">1 in connection with the Oversight Development Works; or2 to otherwise comply with its obligations under the Oversight Development Agreements prior to Final Completion. |
| Deal | assign, transfer, mortgage, grant any security interest, create any superior interest, grant a concurrent lease to the Commercial Lease or otherwise deal with the legal and/or beneficial interest in CBD South and/or the Commercial Lease. |



| Term | Meaning |
|---------------------------------------|--|
| Default | <ol style="list-style-type: none">1 a representation, warranty or statement made or given by the Developer in this Agreement or any other Oversight Development Agreement being false or misleading in any material particular when made or given; or2 a default by the Developer in a material respect, or in a persistent or repeated fashion, in the due observance and performance of any of its obligations under this Agreement or any other Oversight Development Agreement. |
| Default Notice | has the meaning given in clause 35.1. |
| Default Rate | for a period, the cash rate determined by the Reserve Bank of Australia, plus a margin of [not disclosed] per annum. |
| Defects Liability Period | the period commencing on the date the Oversight Development Works reach or are deemed to have reached Final Completion under this Agreement and ending 12 months after that date, and if during that period the Developer rectifies Defects of State Concern, the Defects Liability Period for the rectified Defects of State Concern will recommence on the date of completion of the work required to give effect to the rectification and end 12 months after that date provided that the maximum Defects Liability Period will not be longer than 24 months after the date Final Completion has occurred under this Agreement. |
| Defect of State Concern | any Defect in a part of the Oversight Development Works which relates to the façade treatments, public spaces or street frontages or in any way affects Matters of State Concern. |
| Delay Notice | has the meaning set out in clause 21.3(a). |
| Destruction Termination Notice | has the meaning given in clause 42.2(c). |
| Developer D&C Workforce | the workforce employed or otherwise engaged by the Developer or any Subcontractor undertaking all or any part of the D&C Activities in Australia or New Zealand and includes persons performing a head office, corporate or governance role to the extent such role is in connection with the Oversight Development, provided that to the extent a person undertakes multiple roles in connection with the Oversight Development, that person may not be counted more than once. |

| Term | Meaning |
|--|--|
| Developer Material | <p>each of:</p> <ol style="list-style-type: none"> 1 all drawings, plans, specifications and other information required for the Oversight Development Works including all documents submitted as part of any application for the Planning Scheme Amendment, including the Concept Design Documents, the Reviewable Design Documentation and the Endorsed Plans, as the context requires; 2 method of working and materials used in, or intended to be used in the construction and completion of the Oversight Development Works; 3 all other documentation, information (including data bases and drafts), models, systems and technology in which Intellectual Property Rights are capable of subsisting which the Developer or any of its Associates prepare or use in carrying out the D&C Activities, but does not include software tools which are: <ul style="list-style-type: none"> • used internally the Developer or any of its Associates to create, but which are not incorporated into, the materials described in paragraphs 1 to 3 of this definition; or • generally commercially available; and 4 any other deliverables required to be delivered by the Developer or any of its Associates to the State in accordance with the Oversight Development Agreements. |
| Developer Unacceptable Conditions | Developer Unacceptable Conditions – General and Developer Unacceptable Conditions - GFA. |
| Developer Unacceptable Conditions – General | in respect of a Planning Permission, a condition which is taken to be a Developer Unacceptable Condition under clause 1. |
| Developer Unacceptable Conditions – GFA | in respect of a Planning Permission, a condition which is taken to be a Developer Unacceptable Condition under clause 1. |
| Developer's Investor | <ol style="list-style-type: none"> 1 a Lendlease Fund; or 2 a third party which enters into any arrangement with the Developer pursuant to which: <ul style="list-style-type: none"> – that third party contributes capital in relation to the Oversight Development (in any form); and – the Developer remains responsible for the performance of its obligations under this Agreement; or 3 a subsidiary (as defined in the Corporations Act) or related entity (as defined in the Corporations Act) of Lendlease |



| Term | Meaning |
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| | Corporation Limited ACN 000 226 228. |
| Developer's Investor Side Deed | the deed of that name to be entered into between the State, the Developer and a Developer's Investor substantially in the form of Attachment 16 or such other form as is required by the Developer's Investor where the State agrees to that alternative form (and the State may not unreasonably withhold or delay consent to that alternative form). |
| Developer's Representative | the person appointed under clause 49.3. |
| Development Fee | [not disclosed], as adjusted in accordance with this Agreement. |
| Development Information | <p>all documents and information provided by the State and its Associates to the Developer in connection with the Oversight Development:</p> <ol style="list-style-type: none">1 prior to the date of this Agreement, which is not incorporated into this Agreement;2 after the date of this Agreement, which the State is not required by this Agreement to provide to the Developer; and3 without limiting paragraph 1, any report provided by the State or any of the State's Associates in relation to any site information. |
| Development Intellectual Property Rights | <p>all Intellectual Property Rights in:</p> <ol style="list-style-type: none">1 any Developer Material, including any such Intellectual Property Rights:<ul style="list-style-type: none">• existing at the date of this Agreement; or• which come into existence after the date of this Agreement, including those derived from Intellectual Property Rights existing at the date of this Agreement; and2 any information, ideas, documents, equipment or material of any kind and however embodied, which are supplied, brought to or used by or on behalf of the Developer in undertaking the Development (including each method of working used by or on behalf of the Developer in carrying out the D&C Activities) or which are made available to the State in accordance with this Agreement by or on behalf of the Developer, whether or not forming part of the Developer Material and whether or not owned by a third party. |
| Development Plans | any documents, drawings and plans to be submitted under the <i>Metro Tunnel: Over Site Development – CBD South, Incorporated Document (October 2017)</i> published on 5 December 2017 as |

| Term | Meaning |
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| | amended from time to time and as prepared in accordance with clause 16.1. |
| Disclosed Information | <p>all information of whatever nature which is obtained by or on behalf of the Developer or any of its Associates from the State, any of the State's Associates or any Authority relating in any way to the Oversight Development including:</p> <ol style="list-style-type: none"> 1 the RFP and all documentation issued in connection with the Oversight Development, including, without limitation, any report prepared by a third party on the instructions of the State and the contents of the data room operated by, or on behalf of, the State during the tendering process; 2 all material disclosed in presentations by or on behalf of the State or any of the State's Associates in connection with the Oversight Development; 3 all discussions and negotiations between the State and the State's Associates on the one hand and the Developer and its Associates on the other hand relating to the Oversight Development or the Oversight Development Agreements to which the State is a party; and 4 any other information disclosed to, or obtained by or on behalf of, the Developer or any of its Associates from the State or any of the State's Associates or which is otherwise acquired by or on behalf of, or comes to the knowledge of, the Developer or any of its Associates, whether the information is in oral, visual, electronic or written form or is recorded in any other medium. |
| Discriminatory Change in Law | <p>a Change in Law, the terms of which apply solely to:</p> <ol style="list-style-type: none"> 1 the Developer; 2 the Oversight Development; 3 the Station so that that Change in Law has a consequential impact on the Oversight Development; and/or 4 the activities contemplated by this Agreement, <p>and not to persons, businesses, or activities in general.</p> |
| Dispute | any dispute between the State and the Developer arising in connection with this Agreement or the D&C Activities (including questions concerning this Agreement's existence, meaning or validity). |
| Disruption | has the meaning given in clause 1. |
| Draft Cure Plan | has the meaning given in clause 35.2(a). |



| Term | Meaning |
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| Endorsed Plans | the plans endorsed by the Minister for Planning as part of any Planning Permission. |
| Entity | has the meaning given in section 64A of the Corporations Act, but is also deemed to include a joint venture within the meaning of Australian Accounting Standard 131 (AASB 131). |
| Environment | the physical factors of the surroundings of humans and other life forms, including the land, soil, plants, habitat, waters, atmosphere, climate, sounds, odours, tastes, biodiversity and the social and aesthetic values of landscape. |
| Environmental Hazard | a state of danger to human beings or the Environment whether imminent or otherwise resulting from the location, storage, handling or release of any substance having toxic, corrosive, flammable, explosive, infectious or otherwise dangerous characteristics. |
| Environmental Law | in relation to the Site any Law relating to the Environment including any law relating to land use, planning, pollution of air, water, soil or groundwater, chemicals, waste, the use of transport, the storage and handling of dangerous goods, the health or safety of any person, or any other matters relating to but not limited to the protection of the Environment, health or property. |
| Environmental Requirements | all Laws relating to the Environment and the conditions and requirements of any Approval relating to the Environment together with all environmental safeguards and measures necessary to avoid, reduce, minimise or mitigate the environmental impacts of the D&C Activities. |
| EPA | the Environment Protection Authority constituted under the <i>Environment Protection Act 1970 (Vic)</i> . |
| Expiry Date | if: <ol style="list-style-type: none">1 the Lease commences on the day immediately after the Final Completion Date, the date which is 99 years after that date; or2 the Lease commences on a date specified in the Lease Commencement Notice, 99 years after that date plus any additional period to allow for the Developer to achieve Final Completion under this agreement. |
| Extension Event | <ol style="list-style-type: none">1 a breach by the State of this Agreement (but does not in any circumstances include any act or omission of the State which is |

| Term | Meaning |
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| | <p>otherwise authorised or permitted by this Agreement);</p> <p>2 a Force Majeure Event;</p> <p>3 a State Initiated Modification or a State Initiated Variation directed by the State Representative under clause 17 except where the need for the State Initiated Variation was a result of a breach of obligations by the Developer under this Agreement;</p> <p>4 any Discriminatory Change in Law;</p> <p>5 a material delay caused by anything related to the delivery of the Metro Tunnel which has occurred or arisen (directly or indirectly) as a result of or in connection with a breach by the State of the Project Agreement or the Interface Agreement;</p> <p>6 a delay caused by a suspension of the Oversight Development Works by the Project D&C Subcontractor under the Interface Agreement; or</p> <p>7 any Industrial Action which directly affects the Oversight Development and which:</p> <ul style="list-style-type: none"> – is the direct result of an act or omission of the State or its Associates in relation to the Oversight Development or Metro Tunnel not being an act or omission authorised or permitted in accordance with this Agreement; and – occurs only at the Site or otherwise only in respect of the Oversight Development or Metro Tunnel, <p>but does not include Industrial Action which arises:</p> <ul style="list-style-type: none"> – solely as a result of the State’s decision to proceed with the Project as a public private partnership; – as a result of an act or omission of the State in its capacity as a participant in the Rail Infrastructure Alliance or the Rail Systems Alliance (as defined in the Project Agreement); or – directly or indirectly in connection with the Commonwealth Building Code, including any transitional or implementation arrangements, or disallowance motion, concerning the Commonwealth Building Code. |
| External Finance | the finance to be secured by the Developer from the External Financier to enable the Developer to comply with its obligations under this Agreement. |
| External Financier | the financial institution from whom the Developer secures the External Finance. |
| Fair Market Value | the fair market value of the Oversight Development as at the Termination Date as determined by an independent expert as between a willing but not anxious seller (who is ceasing to be the Developer) and a willing but not anxious buyer (who is becoming the Developer), on the basis that this Agreement as existing |

| Term | Meaning |
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| | <p>immediately prior to the Termination Date continues to operate.</p> <p>In determining Fair Market Value, the independent expert must assess the market value:</p> <ol style="list-style-type: none"> 1 as if the willing buyer was bidding in a public tender process for the right to design, construct, commission and finance the remaining Oversight Development Works and maintain the Oversight Development, from the Termination Date in accordance with the terms of this Agreement and the Commercial Lease; and 2 taking into account: <ul style="list-style-type: none"> – if there is no Developer's Investor or Tenant, the development receipts (excluding any development costs incurred by the Developer) which the Developer would otherwise have expected to receive in the ordinary course if the Developer had procured a Developer's Investor or a Tenant; – any costs required to be incurred to complete the Oversight Development Works in accordance with this Agreement; and – any costs required to be incurred to enable the buyer (who is becoming the Developer) to perform the Developer's obligations under this Agreement and the Commercial Lease. |
| Final Completion | the completion of the Oversight Development Works in accordance with clause 25.1. |
| Final Completion Date | the date specified as the date on which Final Completion was achieved as set out in the Certificate of Final Completion. |
| Financial Close | the date on which all the Conditions Precedent are satisfied or waived in accordance with clause 4.2. |
| Financial Close Date | the date on which Financial Close is achieved. |
| FIRB Approval | <ol style="list-style-type: none"> 1 written advice from or on behalf of the Treasurer of the Commonwealth of Australia that the Commonwealth Government does not object to the Oversight Development; 2 written approval from the Foreign Investment Review Board under the <i>Foreign Acquisitions and Takeovers Act 1975</i> (Cth) or any business policy of the Commonwealth Government allowing the Developer to enter into this Agreement; or 3 the failure by the Treasurer of the Commonwealth of Australia to make an order under Part 3 of the <i>Foreign Acquisitions and Takeovers Act 1975</i> (Cth) (other than an interim order under section 68) in respect of entry or performance by the Developer |



| Term | Meaning |
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| | of this Agreement within the time limits specified in section 77 of that Act. |
| Force Majeure Event | <p>each of the following events:</p> <ol style="list-style-type: none">1 earthquake, tropical cyclone, natural disaster, landslide, seismic activity, tsunami or mudslide;2 a flood which might, at the Agreement Date, be expected to occur less frequently than once in every 100 years;3 war, act of a public enemy (whether war is declared or not), civil war, rebellion, revolution, military usurped power, military insurrection, military commotion or other like hostilities;4 chemical, nuclear or biological contamination;5 ionising radiation or contamination by radioactivity;6 explosion caused by events referred to in paragraphs 1 or 3;7 an act of terrorism;8 any other event that causes:<ul style="list-style-type: none">– the destruction of the Oversight Development Works; or– obstruction to the access of the Oversight Development Works which prevents the Developer from undertaking works associated with the Oversight Development,which was not caused or contributed to by the Developer or any of Developer's Associates or Project Co or any of Project Co Associates; and which prevents the Developer from carrying out all or a material part of the D&C Activities or prevents the State from carrying out all or a material part of its obligations under this Agreement. |
| Force Majeure Report | has the meaning given in clause 38.1(b). |
| Force Majeure Termination Event | a Force Majeure Event which prevents the Developer from carrying out all or a material part of the Oversight Development Works or prevents the State from carrying out all or a material part of its obligations under Oversight Development Agreements for a continuous period exceeding 18 months. |
| Gross Floor Area or GFA | the total floor area of a building, measured from the outside of external walls or the centre of party walls, and associated plant areas and includes all roofed areas. |
| Government Party or Parties | all and any of the State and any Authority. |



| Term | Meaning |
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| GST | has the meaning given by the GST Law and where appropriate includes Notional GST. |
| GST Act | the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth). |
| GST Amount | to the extent the Consideration is consideration for a Taxable Supply an amount equal to the Consideration provided for that Taxable Supply (excluding any Consideration payable pursuant to clause 33) multiplied by the prevailing rate of GST (10% as at the Commencement Date). |
| GST Group | has the meaning given by the GST Law. |
| GST Law | has the meaning given by the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth). |
| GST Registered | has the meaning given to the term 'registered' by the GST Law. |
| Hazardous Substance | any substance which would or might reasonably be expected to cause damage or injury to any person, any property or the Environment. |
| Health and Safety Incident | any incident that: <ol style="list-style-type: none">1 is required to be notified to an Authority under any OHS Legislation;2 results or could potentially result in injury, illness or disease requiring a person to miss more than one day of work (for the avoidance of doubt, this includes 'near misses');3 results in an injury that requires treatment by a medical practitioner;4 results in, or could potentially result, in injury, illness or disease to a member of the public (for the avoidance of doubt, this includes 'near misses'); or5 results, or could potentially result, in damage to Oversight Development or other property, plant or equipment, and that poses a material risk of an incident referred to in paragraphs 1 to 4 above. |
| Health and Safety Management Plan | the plan of that name prepared and updated by the Developer in accordance with the Health and Safety Requirements. |



| Term | Meaning |
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| Health and Safety Requirements | those matters set out in Attachment 12 and any direction, instruction, request or requirement relevant or necessary for compliance by the State with any applicable Workplace Health and Safety Laws, and including any such matter of which the Developer has been informed by the State either orally or in writing. |
| Health Privacy Principles | the Health Privacy Principles set out in the <i>Health Records Act 2001</i> (Vic). |
| Heritage Claim | a claim made in connection with a requirement under any Law for the protection, preservation or removal of any Artefact. |
| Independent Certifier | a person jointly appointed by the Developer and the State (at the Developer's cost) under clause 5.3 and the Independent Certifier Deed attached to this Agreement at Attachment 17. |
| Independent Reviewer | the person appointed from time to time as the independent reviewer pursuant to the Project Agreement. |
| Indirect or Consequential Loss | any: <ol style="list-style-type: none">1 loss of opportunity, profit, anticipated profit, business, business opportunities, revenue or any failure to realise anticipated savings;2 penalties payable by the State or any of its Associates under agreements other than this Agreement; or3 penalties payable by the Developer or any of its Associates under agreements other than this Agreement. |
| Industrial Action | labour matters and Industrial Relations Matters affecting the Site or the Oversight Development Works, including: <ol style="list-style-type: none">1 a strike, lockout, demarcation, ban, limitation on work, industrial dispute or any other action that meets the definition of industrial action in section 19 of the <i>Fair Work Act 2009</i> (Cth);2 any claim relating to labour or industrial arrangements applicable to any of the Developer D&C Workforce; and3 any besetting or obstruction of the Site. |
| Industrial Relations Laws | all workplace, employment or industrial relations related: <ol style="list-style-type: none">1 Law;2 principles of common law or equity established by decisions of Courts; |



| Term | Meaning |
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| | <p>3 standards, codes and guidelines, relevant and applicable to any part of the Oversight Development Works, as amended from time to time.</p> |
| Industrial Relations Matter | <p>any industrial relations matter arising out of, or in connection with, the Site or the Oversight Development Works including:</p> <ol style="list-style-type: none">1 a claim for payment for or on behalf of any of the Developer D&C Workforce;2 a claim for payment in the nature of a site allowance;3 a claim arising out of, or in connection with, changes in State or Commonwealth work practices or requirements, including any changes resulting from current State or Commonwealth initiatives, negotiated contracts or agreements, conditions on payments, increases in labour costs, overtime costs, changed work practices or procedures, site allowances and any bonuses allowable or payable within the construction industry; and any reduction in the construction industry working hours per week. |
| Industrial Waste | <p>has the same meaning as in the <i>Environment Protection Act 1970</i> (Vic) and regulations thereto.</p> |
| Information Privacy Principles | <p>the Information Privacy Principles set out in the <i>Information Privacy Act 2000</i> (Vic) or the <i>Privacy and Data Protection Act 2014</i> (Vic) (as in force from time to time).</p> |
| Input Tax Credit | <p>has the meaning given by the GST Law and a reference to an Input Tax Credit to which a party is entitled includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.</p> |
| Insurances | <p>the insurances required to be effected and maintained in accordance with this Agreement.</p> |
| Intellectual Property Rights | <p>includes any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future, including rights of any kind in:</p> <ol style="list-style-type: none">1 inventions, discoveries and novel designs, whether or not registered or registrable as patents, innovation patents or designs, including developments or improvements of equipment, technology, processes, methods or techniques;2 literary works, dramatic works, musical works, artistic works, cinematograph films, television broadcasts, sound broadcasts, published editions of works and any other subject matter in which copyright (including future copyright and rights in the |



| Term | Meaning |
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| | <p>nature of or analogous to copyright) may, or may upon creation of the subject matter, subsist anywhere in the world;</p> <p>3 registered and unregistered trade marks and service marks, including goodwill in the business concerned in the relevant goods and/or services;</p> <p>4 trade, business or company names;</p> <p>5 internet domain names; and</p> <p>6 proprietary rights under the <i>Circuit Layouts Act 1989</i> (Cth), whether created or in existence before or after the date of this Agreement.</p> |
| Interface Agreement | the interface agreement to be entered into on or about the date of this Agreement between, amongst any others the State, the Developer, Project Co and the Project D&C Subcontractor. |
| Interface Works | means: <p>1 OSD Works for PPP;</p> <p>2 PPP Works for OSD,</p> as each of those terms are defined in the Interface Agreement. |
| Interfaces | means: <p>1 the facade treatment, external architectural elements and ground plane entrance design; and</p> <p>2 the physical and functional interfaces between the Oversight Development, the Station, public spaces, and street frontages and which includes all of the retail areas and walkways on the ground floor plane identified in the Retail Plan.</p> |
| IR Management Plan | the industrial relations management plan to be developed by the Developer in accordance with Attachment 10. |
| Labour Conditions | any labour arrangements applicable to the Developer D&C Workforce for, or in connection with, the Oversight Development Works. |
| Land Victoria | the Victorian Government agency known as 'Land Victoria' responsible for land administration and land information in Victoria, including the registration of land titles. |
| Law | all laws, including common law equity and statute any regulation, |



| Term | Meaning |
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| | order, rule, subordinate legislation or other document enforceable under any statute, regulation, order, rule or subordinate legislation. |
| Lease Access Plan | a plan showing the access rights required over: <ol style="list-style-type: none">1 the Station Land for the use and operation of the Oversight Development; and2 the Lease Land for the use and operation of the Station Land, an initial draft Lease Access Plan is annexed in Attachment 4. |
| Lease Commencement Date | the earlier of: <ol style="list-style-type: none">1 the date specified in the Lease Commencement Notice; and2 the day immediately after the Final Completion Date. |
| Lease Commencement Notice | has the meaning given under clause 26.5(a). |
| Lease Land | the land forming the site of the Oversight Development as described in the Commercial Lease Plan. |
| Lendlease Fund | <ol style="list-style-type: none">1 a fund of which a wholly owned subsidiary (as defined in the Corporations Act) of Lendlease Corporation Limited ACN 000 226 228 is the investment manager, trustee or responsible entity; or2 any wholly owned sub-fund of a fund in paragraph 1 above. |
| Liability | any debt, obligation, cost, expense, loss, damage, compensation, charge or liability of any kind, including those that are prospective or contingent and those the amount of which is not ascertained or ascertainable. |
| Licensed Area | the area marked in green on the map contained in Attachment 2, excluding any part of that area which pursuant to the Project Agreement becomes a 'Maintenance Area' (as that term is defined in the Project Agreement). |
| Loss or Losses | any Liability (including legal and other professional expenses) of any kind whatsoever and includes but is not limited to direct and indirect, consequential or special damage, loss of profits, loss of use, loss of revenue, anticipated revenue, interest or other such claim arising from any cause whatsoever whether or not such loss, damage or claim is based on contract, statute, warranty, tort |



| Term | Meaning |
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| | (including negligence), indemnity or otherwise. |
| LUAA | a land use activity agreement entered into in accordance with the TOS Act. |
| Major Projects Skills Guarantee | Major Projects Skills Guarantee policy which applied from 1 January 2016. |
| Matters of State Concern | matters concerning or in connection with: <ol style="list-style-type: none">1 works or uses which do not comply with the Planning Scheme Amendment;2 integration between the Oversight Development Works and any adjacent railway infrastructure;3 safety or operational requirements of the State or Rail Operations including building envelopes or building elevations for the Oversight Development Works or external finishes of buildings which, in each case, impact, or may potentially impact, safety or operational requirements of the State or Rail Operations; and4 the Interfaces. |
| Metro Tunnel | the twin nine-kilometre rail tunnels from Kensington to South Yarra and five underground Stations, as part of the new Sunbury to Cranbourne / Pakenham line including all enabling and complementary works or services associated with them. |
| Minister for Planning | the Minister for Planning for the State of Victoria. |
| MMRA | Melbourne Metro Rail Authority. |
| Modification | a Modification (as defined in the Project Agreement) under the Project Agreement. |
| Modification Order | a Modification Order (as defined in the Project Agreement) under the Project Agreement. |
| Modification Request | a Modification Request (as defined in the Project Agreement) under the Project Agreement. |



| Term | Meaning |
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| Monthly IR Report | a monthly industrial relations report to be prepared by the Developer in accordance with Attachment 10 and Attachment 11. |
| Moral Rights | non-assignable moral rights as defined in the <i>Copyright Act 1968</i> (Cth) and similar non-assignable personal rights of authors and producers, directors and screenwriters anywhere in the world. |
| Native Title Claim | any claim or application under any Law or future Law relating to native title, including any application under section 61 of the <i>Native Title Act 1993</i> (Cth). |
| Notional GST | where, in relation to the Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations and the <i>National Taxation Reform (Consequential Provisions) Act 2000</i> (Vic) (NTR Act) or a direction given under section 5 of the NTR Act, the supplier is obliged to make voluntary or notional GST payments, in which case Notional GST means those voluntary or notional payments. For the avoidance of doubt, Notional GST amounts will be calculated as if the GST Act applies to the relevant supplies. |
| OHS Accreditation Scheme | the Australian Government Building and Construction Work Health and Safety Accreditation Scheme established by the <i>Building and Construction Industry (Improving Productivity) Act 2016</i> (Cth) and the <i>Fair Work (Building Industry- Accreditation Scheme) Regulations 2016</i> (as preserved by the <i>Building and Construction Industry (Consequential and Transitional Provisions) Act 2016</i> (Cth)), as amended from time to time. |
| OHS Legislation | <p>all safety-related:</p> <ol style="list-style-type: none">1 Laws;2 codes of practice;3 other compliance codes;4 directions on safety or notices issued by any relevant Government Agency; and5 standards, <p>relevant and applicable to any part of the Oversight Development Works and includes, but is not limited to, the <i>Occupational Health and Safety Act 2004</i> (Vic), the <i>Heavy Vehicle National Law Application Act 2013</i> (Vic) and the <i>Rail Safety National Law Application Act 2013</i> (Vic) and associated regulations.</p> |
| OHS Regulations | the <i>Occupational Health and Safety Regulations 2017</i> (Vic). |



| Term | Meaning |
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| Operator | any operator or operators licensed or authorised by PTV or VicTrack to operate rail services on the Station Land and includes the Train Franchisee. |
| OSD Modification | a State Initiated Modification or State Initiated Variation referred to in clause 17.1. |
| OSD Modification Order | a direction by the State under clause 17.4(b). |
| OSD Modification Quote | the quote prepared by the Developer in accordance with clause 17.3. |
| Oversite Development | <p>the development of the Lease Land for retail and commercial purposes by the Developer at the Precinct generally in accordance with the Concept Design Documents which, for the avoidance of doubt excludes:</p> <ol style="list-style-type: none">1 any public or open space on the ground level at the Precinct; and2 any part of that area which pursuant to the Project Agreement becomes a 'Maintenance Area' (as that term is defined in the Project Agreement). |
| Oversite Development Access and Interface Protocols | the plan of that name which sets out the procedures and protocols for accessing the Licenced Area prior to Final Completion, being the Access Protocols. |
| Oversite Development Agreements | <ol style="list-style-type: none">1 this Agreement;2 the Construction Licence;3 the Commercial Lease;4 the Interface Agreement;5 the Developer's Investor Side Deed; and6 the Builder's Side Deed. |
| Oversite Development Project Control Group | has the meaning set out in clause 18.1(a). |
| Oversite Development | the date falling 45 months after the Construction Commencement |

| Term | Meaning |
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| Sunset Date | Deadline. |
| Oversite Development Works | all works to be carried out by the Developer to complete the Oversite Development in accordance with the Development Plans, Reviewable Design Documentation and Endorsed Plans including temporary construction works and remedial works. |
| Planning Permission | any development plans required by the Planning Scheme Amendment. |
| Planning Scheme | any planning scheme made under the <i>Planning and Environment Act 1987</i> (Vic) applicable to all or any part of the Site. |
| Planning Scheme Amendment | the amendment of the Planning Scheme C316 by incorporation of the document titled ' <i>Metro Tunnel: Over Site Development – CBD South, Incorporated Document (October 2017)</i> ' dated 5 December 2017 pursuant to Section 6(2)(j) of the <i>Planning and Environment Act 1987</i> (Vic). |
| Plant and Equipment | all plant, machinery and equipment and other items used by, or brought onto the Lease Land by, the Developer, the Builder, any Subcontractors, consultant, or any other party other than the State for the purpose of enabling or facilitating the Oversite Development Works which is not and will not become part of the Oversite Development or is not and will not be used for operating or maintaining the Oversite Development. |
| Pollution | includes any solid, liquid, gas, odour, heat, sound, vibration, radiation or substance present in any segment of the Environment (other than those naturally present in a given segment of the Environment) which alone or in combination makes or may make the Environment: <ol style="list-style-type: none"> <li data-bbox="598 1545 1244 1601">1 unsafe or unfit for habitation or occupation by persons or animals; <li data-bbox="598 1612 1109 1646">2 degraded in its capacity to support plant life; <li data-bbox="598 1657 821 1691">3 contaminated; or <li data-bbox="598 1702 1029 1736">4 otherwise environmentally degraded. |
| Power | any power, right, authority, discretion or remedy, whether express or implied. |
| PPP D&C | has the meaning given in the Interface Agreement. |



| Term | Meaning |
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| Practical Completion | <p>when the Oversight Development Works and the Interfaces have been completed to a water tight condition generally (having regard to State Initiated Modifications and Variations carried out under this Agreement) in accordance with the approved Reviewable Design Documentation and Endorsed Plans for the Oversight Development, other than for minor defects:</p> <ol style="list-style-type: none">1 which do not restrict access to and from the Station (disregarding minor or insignificant obstructions);2 the existence and rectification of which will not prevent the Oversight Development being used to access the Station for its intended use; and3 which do not cause any legal restriction on the use or occupation of the Oversight Development for accessing the Station for its intended use. <p>Any fitout to be undertaken or completed by the Developer in respect to the commercial or retail spaces constructed by the Developer as Oversight Development Works is not required to be carried out as part of Practical Completion.</p> |
| Precinct | <p>the area outlined on the map set out in Attachment 1.</p> |
| Precinct Users | <p>the Station Users (other than Project Co) and any person occupying or using any other part of the Precinct for any purpose whatsoever.</p> |
| Pre-Existing Contamination | <p>any Contamination existing in, on, under or emanated or emanating from the Site at the Agreement Date.</p> |
| Principal Contractor | <p>has the meaning given in the OHS Legislation.</p> |
| Principal Contractor Handover Date | <p>the date that the Builder becomes the Principal Contractor for the Construction Site as determined under the Interface Agreement.</p> |
| Privacy Principles | <p>each of:</p> <ol style="list-style-type: none">1 the Health Privacy Principles; and2 the Information Privacy Principles. |
| Probity Investigations | <p>any probity or criminal investigations to report on the character, integrity or honesty of a person or Entity, including:</p> <ol style="list-style-type: none">1 investigations into commercial structure, business and credit history, prior contract compliance or any criminal records or pending charges; and |



| Term | Meaning |
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| | <p>2 interviews of any person or research into any relevant activity that is or might reasonably be expected to be the subject of criminal or other regulatory investigation.</p> |
| Prohibited Business | <p>a business involving:</p> <ol style="list-style-type: none">1 the sale, provision or operation of:<ul style="list-style-type: none">• sexually explicit or pornographic goods;• brothels;• tattoo parlours;• guns, firearms, explosives or offensive weapons;2 any other business or activity which the State (acting reasonably) notifies the Developer would be offensive to users of the Station; or3 the provision of student accommodation. |
| Project | <p>the financing and undertaking of the 'Tunnel and Stations PPP' component of the Metro Tunnel by Project Co.</p> |
| Project Activities | <p>has the meaning given to that term in the Project Agreement.</p> |
| Project Agreement | <p>the document of the same name between the State and Project Co dated on or about the date of this Agreement.</p> |
| Project Agreement Modification | <p>a Modification under the Project Agreement which requires a change to the Oversight Development Works including addition, increase, decrease, omission, deletion, demolition or removal to or from the Oversight Development Works.</p> |
| Project Co | <p>means:</p> <ol style="list-style-type: none">1 Cross Yarra 1 Pty Ltd ACN 622 572 856 as trustee for Cross Yarra Trust 1 for and on behalf of Cross Yarra Partnership;2 Cross Yarra 2 Pty Ltd ACN 622 569 135 as trustee for Cross Yarra Trust 2 for and on behalf of Cross Yarra Partnership;3 Cross Yarra 3 Pty Ltd ACN 622 572 954 as trustee for Cross Yarra Trust 3 for and on behalf of Cross Yarra Partnership; and4 John Holland (CY) Custodian Pty Ltd ACN 622 569 288 as trustee for John Holland (CY) Trust for and on behalf of Cross Yarra Partnership, <p>(together, Cross Yarra Partnership ABN 57 956 065 885), and any person who in addition or substitution is engaged by the</p> |



| Term | Meaning |
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| | State to carry out all or substantially all of the 'D&C Activities' and 'Maintenance Services' (as those terms are defined in the Project Agreement). |
| Project Co Associate | an 'Associate' (as defined in the Project Agreement) of Project Co. |
| Project D&C Subcontractor | as at the date of this Agreement, the unincorporated joint venture comprising Lendlease Engineering Pty Ltd (ACN 000 201 516), John Holland Pty Ltd (ABN 11 004 282 268) and Bouygues Construction Australia Pty Ltd (ABN 37 144 013 801 and any person who in addition or substitution is engaged by Project Co to carry out all or substantially all of the 'D&C Activities' (as that term is defined in the Project Agreement). |
| Project Maintenance Subcontractor | any person engaged by Project Co to carry out all, or substantially all of the 'Services' as that term is defined in the Project Agreement. |
| Project Termination Event | the State has terminated the Project Agreement under clause 45.4(a) (<i>Termination</i>) of the Project Agreement prior to the date specified in paragraph 2 of the definition of CBD South OSD Acceptance. |
| Proposal | the binding proposal to undertake the Oversight Development submitted as part of the response to the RFP. |
| PTV Agreement | a deed or agreement between the State and PTV under which the State assumes obligations and liabilities incurred by PTV under the Train Franchise Agreement and the Train Infrastructure Lease in connection with the Oversight Development. |
| Public Disclosure Obligations | has the meaning given in clause 48.1(a). |
| Quarter | a period of three months commencing on 1 January, 1 April, 1 July or 1 October in any year, provided that: <ol style="list-style-type: none">the first Quarter commences on the Commencement Date and ends on the next 31 December, 31 March, 30 June or 30 September (whichever first occurs); andthe last Quarter commences on the last 1 January, 1 April, 1 July or 1 October (whichever last occurs) and ends on the Final Completion Date. |



| Term | Meaning |
|-------------------------------|---|
| Rail Operations | has the meaning given to that term in the Project Agreement. |
| Rates and Taxes | all municipal rates, water rates sewerage rates, drainage rates and other rates, Taxes, assessments, charges, costs and expenses (including for the construction of any private street, channel, kerbing, flagging or paving of any footway or pathway abutting the Site) which may at any time be payable to any Authority other than GST but does not include any portion of such charges which relate to the provision of Utility Services. |
| Real Property Dealing | any of the following which affects the Land: <ol style="list-style-type: none">1 plan of consolidation other than a plan of consolidation of CBD South into one title;2 plan of subdivision;3 right of way;4 easement;5 restrictive covenant;6 any agreement which is registrable on the title to CBD South (including any agreement made pursuant to section 173 of the Planning and Environment Act 1987 (Vic));7 any other deed, agreement or instrument which:<ul style="list-style-type: none">– is capable of being registered on title; or– terms or covenants are capable of running with the Land; or8 any removal or amendment to any of the above. |
| Recipient | has the meaning given in clause 33(b)(2). |
| Related Body Corporate | has the meaning given to that term in the Corporations Act. |
| Relief Event | an event which entitles the Developer to: <ol style="list-style-type: none">1 an extension of time;2 compensation;3 any amount payable by the State;4 relief or suspension from carrying out any of the Developer's obligations under this Agreement; or5 bring any other Claim against the State, in accordance with clauses 21.5, 21.7 or 17. |



| Term | Meaning |
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| Remediate or Remediation | to remove, disperse, abate, destroy, dispose of, neutralise, remediate, treat, cap, contain, excavate, manage or otherwise test, monitor or assess (as applicable). |
| Retail Plan | the plan attached at Attachment 13. |
| Reviewable Design Documentation | the Development Plans. |
| RFP | the document of that name in relation to the Project issued by the State dated September 2016 as updated by addenda. |
| Scheduled Date for Final Completion | the Date for Final Acceptance under the Project Agreement. |
| Section 173 Agreement | an agreement registered on the title comprised in the Lease Land under Section 173 of the <i>Planning and Environment Act 1987 (Vic)</i> . |
| Serviced Area | the site where the Station is to be built and the area on which the Station is located, including all buildings, plant, equipment and other facilities located thereon. |
| Services | has the meaning given in the Project Agreement. |
| Site | <ol style="list-style-type: none">1 for the period from the Agreement Date up to and including the Final Completion Date, the Licenced Area; and2 for the period from the day after the Final Completion Date until the expiry of the Oversight Development Lease, the Lease Land. |
| Site Conditions | the following conditions (whether latent or otherwise) relating to the Site: <ol style="list-style-type: none">1 groundwater, groundwater hydrology and the effects of any dewatering;2 physical conditions above, on or below the Site;3 physical condition above the surface of the Site, including the condition of and circumstances affecting all improvements on the Site, equipment, goods, materials and other things on the Site;4 demography of the Site surface and sub-surface conditions and geology including rock or other materials encountered at the |



| Term | Meaning |
|-------------------------------------|---|
| | Site; 5 climatic and weather conditions, rain surface water run-off and drainage, water seepage, wind, windblown, dust and sand in season; 6 all existing Utility Infrastructure and Utility Services above, on or below the surface of the Site and the location of the all facilities with which such Utility Services are connected; 7 any Pollution or Contamination; 8 all Easements over or in connection with the Site; and 9 all other physical conditions and characteristics of the Site above, on or below the surface of the Site which may affect the performance by the Developer of its obligations under this Agreement. |
| State Extension Event | an event referred to in paragraphs 1, 3, 4, 5, 6 (but only to the extent caused or contributed to by the State) or 7 of the definition of Extension Event. |
| State Indemnified Associate | any officer, employee or agent of the State each acting directly in respect of the Oversight Development. |
| State Initiated Modification | any Modification Order issued by the State under this Agreement as a result of a Project Agreement Modification. |
| State Initiated Variation | a variation to the Oversight Development Works in relation to Matters of State Concern (other than a State Initiated Modification). |
| State OSD Modification | has the meaning in the Interface Agreement. |
| State Project | a project nominated under clause 10.3 of the Train Franchise Agreement. |
| State Representative | the person appointed as the state representative in accordance with the Project Agreement. |
| Station | the buildings, equipment, plant and other infrastructure relation to the underground train station at CBD South to be procured, designed, constructed and completed by Project Co in accordance with the Project Agreement. |



| Term | Meaning |
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| Station Final Acceptance | the Station Works are certified as having been completed under clause 24.5 (<i>Final Acceptance</i>) of the Project Agreement. |
| Station Land | all parts of CBD South other than the Lease Land. |
| Station Land Management Agreement | a land management agreement between the Tenant and the State containing the principles outlined in Attachment 14, the purpose of which is to regulate the use, maintenance and costs associated with the Station Shared Services, and is otherwise in a form agreed by those parties. |
| Station Land Management Plan | a plan to be finalised between the Tenant and the State under clause 28.3 and which reflects the requirements of the Station Land Management Agreement. |
| Station Shared Services | specific services and structures which are shared across the Station Land and Lease Land including structures, plant, services, infrastructure, egress and circulation. |
| Station Users | all persons who fall within any of the categories described below: <ol style="list-style-type: none">1 patrons or event organisers attending the Station, or any part thereof;2 employees, contractors, sub-contractors and authorised officers of Project Co or Subcontractors employed or contracted in relation to the Station (or any part thereof) or delivery of the Services;3 members of the public attending the Station, or any part thereof;4 visitors to the Station (or any part thereof) for any purpose; and5 any person who has dealings with the Project Maintenance Subcontractor in relation to the Station, or any part thereof. |
| Station Works | the permanent and physical works required for the development and construction of the Station in accordance with the Project Agreement. |
| Subcontractor | <ol style="list-style-type: none">1 the Builder; or2 a person engaged by or on behalf of the Developer or the Builder in relation to the Oversight Development Works or a person whose contract is in connection with the Oversight Development Works and is in a chain of contracts where the ultimate contract is with the Developer or the Builder, including for the supply of material or goods for those works. |



| Term | Meaning |
|------------------------------------|--|
| Supplier Code of Conduct | the document titled 'Procurement - Supplier Code of Conduct' issued by the State (as amended from time to time) and, as at the date of this Agreement, available at http://www.procurement.vic.gov.au/Suppliers/Supplier-Code-of-Conduct . |
| Survey Plan and Certificate | the document described in clause 26.2(a)(1) and 26.2(a)(2). |
| Tax | includes any tax, levy (including congestion levy), impost, deduction, charge, rate (other than utility and council rates), duty, compulsory loan or withholding which is levied or imposed by a Authority, including without limitation any such amount imposed on an equivalence basis and withholding, income, stamp, transaction or capital gains tax, payroll tax, fringe benefits tax, duty or charge together with any related additional tax, further additional tax, interest, penalty, fine, charge, fee or like amount. |
| Tax Invoice | has the meaning given by the GST Law. |
| Taxable Supply | has the meaning given by the GST Law excluding the reference to section 84-5 of the GST Act. |
| Tenant | a party who has entered into the Commercial Lease with the State for the lease of the Leasehold Land, being the Developer's Investor or the Developer. |
| Termination Date | the date specified in clause 37.2(a), clause 37.3(a) or clause 37.4(a) (as relevant). |
| Termination Event | <ol style="list-style-type: none">1 a failure by the Developer to comply with its obligations under clause 35.2(c), 35.3(c) or 35.4 (as relevant);2 Construction Commencement has not occurred by the Construction Commencement Deadline;3 Final Completion of the Oversight Development Works has not occurred by the Oversight Development Sunset Date;4 the Oversight Development Works are damaged or destroyed and the Developer elects not to reinstate the Oversight Development Works in accordance with clause 42.2; or5 a Project Termination Event. |
| Termination Payment | the amount payable by the State to the Developer on termination of |



| Term | Meaning |
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| | this Agreement in accordance with clause 37.6. |
| TOS Act | the <i>Traditional Owner Settlement Act 2010 (Vic)</i> . |
| Train Franchisee | has the meaning given to that term under the Project Agreement. |
| Train Franchise Agreement | has the meaning given to that term in the Project Agreement. |
| Train Infrastructure Lease | has the meaning given to that term in the Project Agreement. |
| Transport Services | all present or future services provided from time to time by any person at or in connection with the Station Land and includes, without limitation passenger rail and tram services, or both. |
| Union Official | any officer, official, delegate, employee or representative of an employee organisation registered under Industrial Relations Laws. |
| Urban Design Principles | the urban design principles attached as Attachment 9. |
| Utility Infrastructure | any item of plant or equipment for delivering Utility Services. |
| Utility Service | any utility service, including water, electricity, gas, telephone, drainage, waste, sewerage and electronic communications (including fibre optic feeds). |
| Utility Services | any utility service, including water, electricity, gas, telephone, drainage, waste, sewerage and electronic communications (including fibre optic feeds). |
| Verifiable Costs | <p>the verifiable costs of the improvements constructed as part of the Oversight Development Works incurred by the Developer or the Tenant as at the date of termination, being the design, construction, the Development Fee paid and reasonable development costs for the relevant state of construction</p> <p>The costs of improvements must exclude:</p> <p>1 the costs of variations to the Oversight Development Works,</p> |

| Term | Meaning |
|-----------------|---|
| | <p>where the Developer has been unable to demonstrate to the State's reasonable satisfaction that such variations were implemented properly and in accordance with the Oversight Development Agreements; and</p> <p>2 any costs for which the Developer owes under the Oversight Development Agreements by reason of its own default.</p> |
| VicRoads | the Roads Corporation within the meaning of section 3 of the <i>Transport Integration Act 2010</i> (Vic). |
| VicTrack | the Victorian Rail Track, a body corporate established under the Rail Corporations Act 1996 (Vic); |
| Works | has the meaning given to that term in the Project Agreement. |

1.2 Interpretation

In this Agreement:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;
- and unless the context otherwise requires:
- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa and a word indicating a gender includes every other gender
- (c) **(Agreement and Schedule references)**: a reference to:
- (1) a party, clause, Schedule or Attachment is a reference to a clause of, or a Schedule of or Attachment to, this Agreement; and
 - (2) a section is a reference to a section of a Schedule;
- (d) **(Agreement as amended)**: a reference to this Agreement or to any other deed, agreement, document or instrument includes a reference to this Agreement or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;



- (h) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **(‘includes’)**: ‘includes’ will be read as if followed by the phrase ‘(without limitation)’;
- (j) **(‘or’)**: the meaning of ‘or’ will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) **(‘\$’)**: a reference to ‘\$’, AUD or dollar is to Australian currency;
- (m) **(time)**: a reference to time is a reference to time in Melbourne, Australia;
- (n) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (o) **(obligations and liabilities)**: a reference to an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (p) **(‘may’)**: the term ‘may’, when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;
- (q) **(Authorities)**: where there is a reference to an Authority, institute or association or other body referred to in this Agreement which:
 - (1) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Agreement is deemed to refer to that other entity; or
 - (2) ceases to exist, this Agreement is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (r) **(remedy)**: the use of the words ‘remedy’, ‘cure’ or any form of such words in this Agreement means that the event to be remedied or cured must be remedied or cured or its effects overcome;
- (s) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

1.3 Business Day

If the day on or by which anything is to be done in accordance with this Agreement is not a Business Day, that thing must be done no later than the next Business Day.

1.4 Approvals, directions and notices in writing

Unless otherwise expressly provided in this Agreement or agreed between the parties, all approvals, consents, directions, requirements, requests, Claims, notices, agreements and demands must be given in writing.



1.5 Prior approval or consent

Where the Developer is required by this Agreement to obtain the State's or the State Representative's consent or approval to an action, document or thing, unless otherwise expressly stated, that consent or approval must be obtained prior to the actions, document or thing occurring or coming into effect.

1.6 Action without delay

Unless there is a provision in this Agreement which specifies a period of time in which something must be done by the parties, all things must be done without undue delay.

1.7 Provisions limiting or excluding Liability, rights or obligations

- (a) A right of the State or an obligation of the Developer under this Agreement will not limit or exclude any other right of the State or obligation of the Developer under this Agreement unless expressly stated.
- (b) Any provision of this Agreement which seeks, either expressly or by implication, to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.
- (c) Any indemnity in this Agreement is to be construed as being reduced to the extent that the relevant Loss was caused or contributed to by any negligent act or omission or default of the indemnified party.
- (d) If anything needs to be done by a party under this Agreement and no time frame is specified, that thing must be done within 15 Business Days.

1.8 Relationship of the parties

Unless otherwise expressly provided, nothing in this Agreement or any other Oversight Development Agreement:

- (a) **(no additional relationship)**: creates a partnership, joint venture, fiduciary, employment or agency relationship between the State and the Developer; or
- (b) **(no good faith)**: imposes any duty of good faith on either party.

1.9 State's executive rights and duties

- (a) **(State's own interests)**: Unless otherwise expressly provided in the Agreement, nothing in the Oversight Development Agreements to which the State is a party gives rise to any duty on the part of the State to consider interests other than its own interests when exercising any of its rights or carrying out any of its obligations in accordance with those Oversight Development Agreements.
- (b) **(Commercial Lease)**: The State will exercise its executive and statutory right or duty in the grant of the Commercial Lease in accordance with the terms of this Agreement.
- (c) **(State's rights)**: Subject to anything expressly provided or implied in the Agreement to the contrary, the parties agree that:
 - (1) the State is not obliged to exercise any executive or statutory right or duty, or to influence, over-ride, interfere with or direct any other Government Party in the proper exercise and performance of any of

- its executive or statutory rights or duties; and
- (2) nothing expressly provided or implied in the Agreement has the effect of constraining the State or placing any fetter on the State's discretion to exercise or not to exercise any of its executive or statutory rights or duties.
- (d) **(No Claim)**: Subject to clause 1.9(e), the Developer will not be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its executive or statutory rights or duties.
- (e) **(Liability for breach)**: Clauses 1.9(a) to 1.9(d) do not limit any Liability which the State would have had to the Developer under any Agreement as a result of a breach by the State of a term of any Agreement to which it is a party but for these clauses.

1.10 Reasonable endeavours

Any statement in an Agreement providing that a party will use or exercise 'reasonable endeavours' or 'act reasonably' in relation to an outcome, means that that party:

- (a) **(relevant steps)**: will take steps to bring about the relevant outcome so far as it is reasonably able to do so, having regard to its resources and other responsibilities;
- (b) **(no guarantee)**: cannot guarantee the relevant outcome; and
- (c) **(no obligation)**: where the party is the State, is not required to:
- (1) exercise a right of any Government Party, or to influence, over-ride, interfere with or direct any other Government Party in the proper exercise and performance of its legal, statutory or executive duties and functions;
 - (2) exercise a power or discretion in a manner that the State regards as not in the public interest;
 - (3) develop or implement new policy;
 - (4) procure legislation; or
 - (5) act in any way that the State regards as not in the public interest.

1.11 State representatives

- (a) **(State representatives)**: The State may exercise any of its rights or carry out any of its obligations in accordance with this Agreement through the State Representative.
- (b) **(Agent)**: The State Representative must be a natural person and will act as the agent of the State.
- (c) **(State Representative)**: The State Representative will exercise the rights and carry out the obligations of the State as set out in the Oversight Development Agreements to which it is a party, including its ability to give and receive directions and notices.
- (d) **(Delegation)**: The State may vary or terminate the duties of the State Representative as it sees fit, including delegating its representative's duties to a new representative.
- (e) **(Notice)**: Where the State varies, terminates or delegates the duties of its

representatives in accordance with clause 1.11(d), the State will promptly notify the Developer of the variation, termination or delegation, including the identity of any new representative and the new representative's duties (if applicable) and of any further variation, termination or delegation.

2 Oversight Development risk and costs

Except to the extent that this Agreement or another Oversight Development Agreement expressly provides to the contrary, the Developer:

- (a) accepts all risks relating to the Oversight Development and the Developer will not be entitled to make any Claim against the State or seek to be indemnified by the State for or against any Liability arising from any risk relating to the Oversight Development; and
- (b) is responsible for all costs it incurs in carrying out its obligations under this Agreement and that are associated in any way with the development or delivery of the Oversight Development (excluding risks accepted by Project Co under the Project Agreement).

3 Representations and Warranties

3.1 Representations by the State

The State represents and warrants for the benefit of the Developer that:

- (a) **(power to execute)**: the State has:
 - (1) the power to execute the Oversight Development Agreements to which it is a party and does so through the Minister for Public Transport on behalf of the Crown in right of the State of Victoria; and
 - (2) the power to deliver and carry out its obligations under those Oversight Development Agreements,and all necessary action has been taken (or will at the relevant time be taken) to authorise their execution, delivery and performance;
- (b) **(validity)**: those Oversight Development Agreements constitute valid and legally binding obligations on it in accordance with their terms;
- (c) **(legality)**: the execution, delivery and performance of those Oversight Development Agreements does not violate any Law to which the State is subject; and
- (d) **(disputes)**: no litigation, arbitration, tax claim, dispute or administrative proceeding (in this paragraph each a **Proceeding**) is current or pending or (to its knowledge) threatened, which will or is likely to have a material adverse effect upon it (or any applicable Associate) or its ability to perform its financial and other obligations under the Oversight Development Agreements.

3.2 Representations by Developer

The Developer represents and warrants for the benefit of the State that:



- (a) **(power to execute)**: it has the power to execute, deliver and perform any Oversight Development Agreement to which it is a party;
- (b) **(authorisations)**: it has taken all necessary corporate actions to authorise, execute, deliver and perform its obligations under each Oversight Development Agreement to which it is a party;
- (c) **(validity)**: those Oversight Development Agreements to which it is a party constitute valid and legally binding obligations on it in accordance with their terms;
- (d) **(legality)**: the execution, delivery and performance of those Oversight Development Agreements to which it is a party does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;
- (e) **(disputes)**: no litigation, arbitration, tax claim, dispute or administrative proceeding (each a **Proceeding**) is current or pending or (to its knowledge) threatened, which will or is likely to have a material adverse effect upon it (or any applicable Associate) or its ability to perform its financial and other obligations under the Oversight Development Agreements;
- (f) **(FIRB)**: any FIRB Approval required by the Developer to enter into the Oversight Development Agreements has been obtained; and
- (g) **(Design and construction)**: it has or will procure the resources, expertise and experience necessary to design, construct and complete the Oversight Development Works and nothing in this clause 3.2(g) will in any way limit or reduce any other obligation or liability of the Developer under this Agreement.

3.3 Developer's Acknowledgement

- (a) The Developer acknowledges and agrees that, except as expressly set out in this Agreement, neither the State nor any of its Associates has made any representation, given any advice or given any warranty or undertaking of any kind in respect of:
 - (1) any of the Oversight Development Agreements;
 - (2) any transaction or arrangement contemplated under any of the Oversight Development Agreements; or
 - (3) any other matter relevant to the Developer's decision to enter into the Oversight Development Agreements.
- (b) Without limiting clause 3.3(a), the Developer acknowledges and agrees that:
 - (1) the Disclosed Information, and all Intellectual Property Rights in the Disclosed Information, will remain the property of the State or any of its Associates (as the case may be);
 - (2) the Disclosed Information does not constitute an invitation, offer or recommendation by or on behalf of the State or any of its Associates;
 - (3) the purpose of the Disclosed Information is to provide the Developer and its Associates with information to assist in preparing and lodging a proposal for the Oversight Development;
 - (4) the Disclosed Information does not purport to contain all of the information that the Developer and its Associates required for the purposes of preparing and lodging a proposal (including the Proposal) or making the decision to enter into the Oversight Development

- Agreements and did not purport to have been prepared having regard to the Developer's or its Associate's business objectives, financial situation or particular needs;
- (5) the Developer and its Associates will not in any way rely upon:
 - (A) the Disclosed Information; or
 - (B) a failure by the State or any of its Associates to provide any information to the Developer or its Associates;
 - (6) the Developer and its Associates have carried out all relevant investigations and have examined and acquainted themselves concerning:
 - (A) all aspects of the Oversight Development;
 - (B) the contents, correctness and sufficiency of the Disclosed Information;
 - (C) all information which is relevant to the risks, contingencies and other circumstances related to the Oversight Development which could affect their decision to enter into the Oversight Development Agreements;
 - (D) the Site and Site Conditions; and
 - (E) all amounts payable between the parties to the Oversight Development Agreements;
 - (7) on the basis that the Disclosed Information has been given in good faith and that the State has no knowledge that any part of the Disclosed Information is misleading or deceptive (but acknowledging that neither the State, its Associates nor any person acting on behalf of or associated with any of them is under any obligation to make and that none of them has made enquiries to verify that state of knowledge) any statement, representation, term, warranty, condition, promise or undertaking made, given or agreed to by the State, its Associates or any person acting on behalf of or associated with any of them in any prior negotiation, arrangement, understanding or agreement has no effect except to the extent expressly set out or incorporated in any of the Oversight Development Agreements;
 - (8) neither the State nor any of its Associates is under any obligation to:
 - (A) notify the Developer or any of its Associates or provide any other information to the Developer or any of its Associates if it becomes aware of any inaccuracy, incompleteness or change in the whole or any part of the Disclosed Information; or
 - (B) update the whole or any part of the Disclosed Information, although, the State or any of its Associates may do so at their sole discretion; and
 - (9) the acknowledgements under this clause 3.3(b) are in addition to and do not replace the terms and conditions already agreed to or accepted by the Developer or its Associates when receiving the Disclosed Information.

3.4 Repetition of representations and warranties



The representations and warranties and acknowledgments in clauses 3.2 (other than sub-clause (e)) and 3.3(b)(5), (7) and (8) are taken to be repeated by the Developer on the Final Completion Date and in respect of the representations and warranties in clauses 3.3(b)(5), (7) and (8) are taken to be repeated on each anniversary of the Final Completion Date, with reference to the facts and circumstances subsisting at that date.

3.5 Reliance on Representations

- (a) Each party acknowledges and agrees that the other of them has entered into the Oversight Development Agreements (to the extent that each is a party to the relevant Oversight Development Agreement) in reliance on the representations and warranties contained in this clause 3.
- (b) Each party acknowledges and agrees that all of its representations, warranties, acknowledgements and agreements under clauses 3.1, 3.2 and 3.3 survive the execution and delivery of the Oversight Development Agreements and the completion of the transactions contemplated by any of them.

3.6 Exclusion of Warranties

To the maximum extent permitted by Law (and except as otherwise expressly provided in this Agreement) all terms, conditions, promises, undertakings, representations, warranties and statements (whether express, implied, written, oral, collateral, statutory or otherwise) which would be implied or incorporated into any of the Oversight Development Agreements are excluded and the State disclaims all Liability in relation to them.

3.7 Obligations to Notify of Proceedings

Each party must inform the other if any Proceeding referred to respectively in clause 3.1(d) or 3.2(e) becomes current, pending or threatened where that Proceeding will or is likely to have a material adverse effect upon its or any of its Associates ability to perform any of its obligations under any of the Oversight Development Agreements.

4 Conditions Precedent

4.1 Commencement of obligations

This Agreement (other than clauses 1, 3, 30, 40, 44, 47, 48, 49, 50 and this clause 4) does not commence until each of the conditions precedent set out in clause 4.2 has been satisfied or waived in accordance with this clause 4.

4.2 Conditions Precedent

- (a) This Agreement is conditional on:
 - (1) the State receiving original copies of this Agreement and the Interface Agreement; and
 - (2) the issue and delivery of a notice under clause 3.2(c) (*Satisfaction of Conditions Precedent*) of the Project Agreement.
- (b) Unless the condition precedent in clause 4.2(a) has been satisfied or waived by 2.00pm (local time) on the Conditions Precedent Deadline Date, except to the extent that the State otherwise specifies, the parties will no longer be bound by

the terms of the Oversight Development Agreements, each of the Oversight Development Agreements will be taken to have been terminated on that date, the Oversight Development Agreements will be of no further force or effect and neither party will be entitled to any Claim against the other under or in respect of the Oversight Development Agreements or in respect of the reimbursement of costs or expenses or otherwise in connection with the Oversight Development, other than any Claim in relation to a breach of clause 3.

5 Ancillary deeds

5.1 Developer's Investor Side Deed

If the Developer enters into any arrangement with a Developer's Investor for the Oversight Development then, if required by the Developer's Investor, the:

- (a) Developer will and must procure that the Developer's Investor will enter into the Developer's Investor Side Deed; and
- (b) State will enter into the Developer's Investor Side Deed.

5.2 Builder's Side Deed

- (a) On or prior to the date that the Developer enters into the Building Contract with the Builder for the Oversight Development Works then the:
 - (1) Developer will and must procure that the Builder, the Developer's Investor (if applicable) and the Developer's Investor's financier (if applicable) to enter into one or more Builder's Side Deed (as required) on terms acceptable to the Developer, Builder, the State, the Developer's Investor and the Developer's Investor's financier (if applicable) generally in the form of the Builder's Side Deed contained in Attachment 15; and
 - (2) State will enter into the Builder's Side Deed.
- (b) The parties acknowledge and agree that:
 - (1) there may be more than one Builder's Side Deed depending on when the Developer procures a Developer's Investor; and
 - (2) if there is more than one Builder's Side Deed, the parties will enter into those Builder's Side Deeds and any intercreditor deeds as reasonably required by the Developer's Investor or the Developer's Investor's financier which allows, amongst other things, the Developer's Investor and/or the Developer's Investor's financier to step into the Building Contract in priority to the State.

5.3 Appointment of Independent Certifier

- (a) Within 6 months of the date of this deed the parties agree to appoint an Independent Certifier pursuant to the Independent Certifier Deed.
- (b) The Independent Certifier will be a firm as agreed by the parties (acting reasonably).
- (c) The Independent Certifier's decisions under this Agreement shall be made in keeping with the obligations under the Independent Certifier Deed as an



assessor, certifier and valuer and not as an arbitrator.

- (d) The Developer and the State are not relieved of any responsibility or liability under this Agreement as a result of any act or omission of the Independent Certifier.
- (e) Any decision of the Independent Certifier will be conclusive evidence of the matter being determined unless the decision has been made through manifest error or fraud.
- (f) The parties will not be liable to each other for any act or omission of the Independent Certifier whether under or purportedly under a provision of this Agreement, the Independent Certifier's Deed or otherwise.
- (g) The Developer will be liable for all costs associated with the appointment of the Independent Certifier.

6 [not disclosed]

[not disclosed]

7 No State liability Interface Works

7.1 No liability for any Claim

The State is not liable to the Developer in any way in relation to the Interface Works including in respect of any Claim in relation to the Interface Works.

7.2 No warranty, etc

Without limiting clause 7.1, the State gives no warranty, and the Developer must make its own enquiries, in relation to the Interface Works, including:

- (a) the design, construction and commissioning of the Interface Works;
- (b) whether the Interface Works, have been, or will be, carried out:
 - (1) in accordance with all applicable Laws and Approvals;
 - (2) so that they are:
 - (A) fit for and suitable for their intended purpose;
 - (B) free from defects in design; and
 - (C) free from Contamination.

7.3 Release

The Developer releases the State to the fullest extent permitted by law from any Claims

by or liabilities to the Developer whatever, arising out of or in connection with the Interface Works.

8 Health and safety

8.1 State's objectives and overarching requirements

- (a) **(State requirements):** The State requires:
- (1) the D&C Activities to be completed with safety as the paramount consideration;
 - (2) the management of safety during the planning and carrying out of the D&C Activities to be of the highest priority;
 - (3) all health and safety risks to be either eliminated or controlled so far as reasonably practicable; and
 - (4) that all participants in the Oversight Development, including those who are a party to this Agreement or otherwise involved in the delivery of the D&C Activities, work to prevent harm and inspire exceptional health and safety performance.
- (b) **(Developer acknowledgement):** the Developer acknowledges and agrees that:
- (1) safety is a core value for the Oversight Development and the carrying out of the D&C Activities;
 - (2) it must aspire to achieve that all people will have the highest level of protection during the carrying out of the D&C Activities to ensure, so far as is reasonably practicable, that no harm to individuals arises;
 - (3) effective engagement and consultation with relevant stakeholders regarding health and safety matters is necessary at all stages of the carrying out of the D&C Activities; and
 - (4) in carrying out the D&C Activities, it must promote a culture where employees and contractors are encouraged to identify, address and prevent risks and unsafe behaviour.

8.2 The Developer's general OHS obligations

The Developer:

- (a) **(general OHS)** accepts that it is responsible for all aspects of health and safety relating to the Oversight Development Works from Financial Close, except in relation to the obligations of any Principal Contractor under the OHS Legislation appointed in accordance with clause 8.3, until the expiration of this Agreement in accordance with clause 47.1 and it cannot delegate or assign this responsibility to a third party without the prior written approval of the State;
- (b) **(access and egress)** accepts that it is responsible for ensuring that at all times the Construction Site is secure and that access and egress to the Construction Site is controlled, including during non-work times, and does not pose a risk to the health and safety of any person (to avoid doubt, where responsibility for access and egress is shared, the Developer is required to consult with other parties to ensure that the requirements of this clause 8 are met);
- (c) **(cooperation)** must cooperate, and ensure the cooperation of its Associates,



with the State in respect of the discharge of any occupational health and safety obligations of the State, in connection with the Oversight Development under the OHS Legislation and must:

- (1) comply with all reasonable requests of the State to assist it to discharge its obligations;
 - (2) refrain from doing anything that may impede the State in discharging its obligations;
 - (3) notify the State immediately of any non-compliance or potential non-compliance in connection with the OHS Legislation or any other significant occupational health and safety incident that occurs in connection with the Oversight Development or the Construction Site or the Serviced Area; and
 - (4) require that all sub-contracts contain clauses equivalent to clauses 8.1(b)(1) to (3).
- (d) **(Safety culture)**: must demonstrate the implementation of a positive safety culture by implementing programs to support a positive safety culture for all Oversight Development Works;
- (e) **(Builder)**: must ensure that the Builder carries out the Oversight Development Works in accordance with:
- (1) a safety management system independently certified to AS4801-2001 by a JAS-ANZ accredited certification body maintained for the duration of the Project Activities; and
 - (2) the Health and Safety Management Plan.
- (f) **(Health and Safety Management Plan)**: must ensure that a Health and Safety Management Plan is:
- (1) prepared and submitted to the State for review;
 - (2) updated to address any comments raised by the State during that review;
 - (3) maintained and resubmitted as necessary to the State until Final Completion in accordance with Health and Safety Requirements; and
 - (4) is retained at the Site and available for inspection by the State at all times;
- (g) **(Health and safety professionals)**: must ensure that an adequate number of health and safety professionals are appointed to ensure that the Oversight Development Works are carried out safely and without risk to health. For the purpose of this clause 8.2(g), a health and safety professional must:
- (1) be employed in a full time capacity as a safety professional;
 - (2) as a minimum, have had suitable experience as a safety professional in construction safety on a full time basis for at least 3 years and possess the required technical skills and knowledge to perform the role, which may include the attainment of a recognised certificate, degree or post graduate qualification in a safety or OHS risk management discipline; and
 - (3) be able to demonstrate competence, experience and training in safety;
- (h) **(Occupational Health and Safety Manager)**: must ensure that a suitably



experienced and qualified person be appointed as 'Occupational Health and Safety Manager' for the Oversight Development to, without limiting any obligation of the Developer, be responsible for compliance with this clause 8.2 and the implementation of the Health and Safety Management Plan;

- (i) **(Independent Safety Auditor)**: must:
 - (1) engage an Independent Safety Auditor to undertake audits of the Oversight Development Works to verify compliance with this Agreement and the Health and Safety Management Plan;
 - (2) allow 4 full Business Days per year for the conduct of audits in accordance with this clause 8.2(i), although these 4 days need not be consecutive. and
 - (3) provide to the State, within 30 Business Days of the end of 1 January and 1 July each calendar year during the Oversight Development Works, an audit report, prepared by the Independent Safety Auditor in respect of,

the Developer's compliance with its obligations in respect of health and safety including in respect of the Health and Safety Management Plan;
- (j) **(Health and Safety Management Plan audit)**: must, prior to submitting the Health and Safety Management Plan for review in accordance with clause 8.2(f):
 - (1) engage an Independent Safety Auditor to undertake an audit of the Health and Safety Management Plan in accordance with the Health and Safety Requirements ; and
 - (2) provide to the State an audit report, prepared by the Independent Safety Auditor, in respect of the Health and Safety Management Plan;
- (k) **(Implement audit findings)**: must, if an audit report prepared by the Independent Safety Auditor reveals any non-conformances or areas for safety improvement, promptly (and in any event, in the timeframes specified in the audit report) take such steps as are necessary to resolve those non-conformances and provide evidence of those steps to the State;
- (l) **(Monitoring)**: throughout the construction of the Oversight Development Works,
 - (1) must undertake such monitoring and auditing of the Oversight Development Works as is necessary to ensure that, at all times, the Oversight Development Works are being performed in compliance with all OHS Legislation, the requirements of this Agreement and the Health and Safety Management Plan;
 - (2) acknowledges that the State, the State Representative, or any other contractor or agent of the State can, at any reasonable time, review, inspect, monitor or otherwise observe the Developer's health and safety systems, work practices and procedures related to the Oversight Development Works; and
- (m) **(Health and Safety Requirements)**: must comply with the Health and Safety Requirements.

8.3 Principal Contractor

- (a) **(Appointment of Principal Contractor)** The State will:
 - (1) appoint the Builder as Principal Contractor, from the Principal

- Contractor Handover Date until Final Completion, in connection with the Oversight Development Works and the Construction Site; and
- (2) authorise the Builder to manage or control the Construction Site to the extent necessary to discharge the duties of a Principal Contractor under the OHS Legislation.
- (b) **(Procure consent)**: The Developer must procure that the Builder consents to being appointed as Principal Contractor in respect of the Construction Site from the Principal Contractor Handover Date, to the extent:
- (1) requested by the owner of that land; and
- (2) that the Builder will be carrying out 'construction work' within the meaning of regulation 5.12 of the OHS Regulations.
- (c) **(Obligations of Principal Contractor)** The Developer must ensure that the Builder:
- (1) complies with all obligations imposed on a Principal Contractor under the OHS Legislation at its own cost;
- (2) displays Principal Contractor signs that are clearly visible from outside the Construction Site, identifying the Principal Contractor in accordance with OHS Legislation; and
- (3) promptly notifies the State in writing if it believes the appointment referred to in clause 8.3(a)(1) is not sufficient to enable it to discharge the duties of a Principal Contractor under OHS Legislation.
- (d) **(Parties to assist)**: Each party must do all things necessary to assist, and refrain from doing anything that may impede, the Builder in discharging its Principal Contractor obligations under OHS Legislation.

8.4 Notification

- (a) **(Occurrence of Health and Safety Incidents)**: the Developer must (and must ensure that all Subcontractors), upon the occurrence of a Health and Safety Incident:
- (1) comply with any requirements under the OHS Legislation to notify any relevant Authority of the Health and Safety Incident;
- (2) notify the State of the Health and Safety Incident:
- (A) in the case of a Health and Safety Incident involving:
- (i) an incident which is actually or potentially life threatening or life altering;
- (ii) a workplace accident which is actually or potentially of a serious nature; or
- (iii) an actual or potential serious injury to a member of the public,
- immediately when it is safe to do so by phone and confirmed by facsimile or email within 2 hours or as soon as possible thereafter; and
- (B) in all other cases, within 24 hours after the occurrence of the Health and Safety Incident;
- (3) promptly provide to the State:

- (A) a copy of any notification to an Authority;
 - (B) the details of the potential or actual incident or issue;
 - (C) the actions taken and proposed to be taken (including both short term and long term actions);
 - (D) where requested, the key personnel or key organisations involved in taking those actions and their contact details;
 - (E) where requested, the proposed media response and approach to managing and dealing with the media;
 - (F) any entry reports and notices received from an Authority or its representative or any other person acting pursuant to the OHS Legislation, which arise out of or in connection with the Oversight Development or the Construction Site;
 - (G) updates of any material developments and status of completion of any correction actions;
 - (H) as soon as practicable after the Health and Safety Incident has occurred, provide the State with evidence that the hazards or risks giving rise to the Health and Safety Incident have been appropriately identified and controlled to prevent the recurrence of the same or a similar Health and Safety Incident; and
 - (I) all other information reasonably requested by the State.
- (b) **(Reporting)**: If requested by the State in respect of the Health and Safety Incident, the Developer must:
- (1) provide the State with a written health and safety alert, which summarises the facts and circumstances surrounding a Health and Safety Incident and which the State can circulate (in amended or un-amended form) to other persons in order to facilitate safety learning; and
 - (2) provide a briefing to the State regarding the Health and Safety Incident and response and ensure that the briefing is attended by those senior representative of the Developer and the Subcontractor who are nominated by the State (acting reasonably).

8.5 OHS Accreditation Scheme

The Developer:

- (a) **(OHS accreditation)**: warrants that the Builder is accredited under the OHS Accreditation Scheme; and
- (b) **(Builder requirements)**: while building work (as defined in section 6 of the Building and Construction Industry (Improving Productivity) Act 2016 (Cth)) is carried out, must ensure that the Builder:
 - (1) subject to the exclusions specified in the *Fair Work (Building Industry - Accreditation Scheme) Regulations 2016* (Cth), maintains accreditation under the OHS Accreditation Scheme while building work (as defined in section 6 of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth)) is carried out; and
 - (2) complies with all conditions of the OHS Accreditation Scheme accreditation.

9 Industrial relations

9.1 Industrial relations warranties

The Developer warrants that:

- (a) before Financial Close, it informed itself of all matters relevant to the engagement of labour in connection with the Oversight Development Works; and
- (b) all labour engaged by a Subcontractor in connection with the performance of the Oversight Development Works will be engaged in such a manner which allows the Developer to comply with its obligations under this Agreement.

9.2 The Developer is responsible for industrial relations management

- (a) Except to the extent expressly set out in this Agreement, the Developer accepts responsibility and risk for industrial relations relating to the Oversight Development Works, including the management of Industrial Action in connection with the Oversight Development Works at its own expense.
- (b) The Developer must:
 - (1) comply with, and ensure that all Subcontractors comply with, all Industrial Relations Laws and, upon request, provide the State with evidence of such compliance as the State reasonably requires;
 - (2) comply with, and ensure that the Developer D&C Workforce comply with, to the extent relevant, the IR Management Plan and, upon request, provide the State with evidence of such compliance as the State reasonably requires;
 - (3) cooperate with, and ensure that the Developer D&C Workforce cooperate with, any Associates of the State or other persons on the Site in order to maintain, to the extent permitted by Law, a stable industrial relations environment;
 - (4) upon request by the State, attend meetings convened by the State for the purpose of discussing labour matters or Industrial Relations Matters relevant or relating to the Oversight Development Works, the Site or the Metro Tunnel;
 - (5) prepare and submit to the State a Monthly IR Report;
 - (6) immediately advise the State in writing of any act, fact or circumstance associated with the activities of the Developer or any other person relevant to the ability of the Developer to perform or procure the performance of the Oversight Development Works in a manner consistent with this clause 9; and
 - (7) immediately notify the State of the particulars concerning any actual, or proposed, change to the Labour Conditions.

- (c) Notwithstanding any other provision of this Agreement, the Developer acknowledges and agrees that:
- (1) it accepts the risk of the existence of, and any new Law, or change in, or disallowance or repeal of, any existing Law, relating to the Commonwealth Building Code;
 - (2) it may not bring any claim under this Agreement for compensation, time, costs, expenses, reimbursement, modification or otherwise as a result of the existence, disallowance, application to any person, or any obligation to comply with, directly or indirectly, the Commonwealth Building Code; and
 - (3) any industrial action directly or indirectly arising in connection with the Commonwealth Building Code, including industrial action:
 - (A) in respect of any transitional or implementation arrangements concerning the Commonwealth Building Code;
 - (B) allowance or disallowance, or terms of allowance or disallowance, of or in relation to the Commonwealth Building Code; or
 - (C) as a direct or indirect consequence of interactions between any person and the State (or its Associates), or an act or omission of the State, concerning the Commonwealth Building Code (including any disallowance motions in respect of the Commonwealth Building Code),

will not be considered to be the result of any act or omission of the State or its Associates.

- (d) Prior to accessing the Site, the Developer must ensure that an IR Management Plan is prepared and submitted to the State in accordance with Attachment 10. The IR Management Plan must be reviewed and amended (if necessary) in accordance with Attachment 10 until Final Completion, and each amended version of the IR Management Plan must be resubmitted to the State in accordance with Attachment 10.
- (e) The Developer must only engage a person as a Subcontractor where the person satisfies the Developer that it:
- (1) has the capability and resources to comply with the IR Management Plan and Industrial Relations Laws; and
 - (2) will manage labour matters and Industrial Relations Matters while performing the Oversight Development Works in a manner that will not, to the extent permitted by Law, expose the Oversight Development Works, the Site or the Metro Tunnel to Industrial Action.
- (f) Until Final Completion, the Developer must undertake such monitoring and auditing of the Oversight Development Works as is necessary to ensure that, at all times, the Oversight Development Works are being performed in

compliance with all Industrial Relations Laws, the requirements of this Agreement and the IR Management Plan.

- (g) Where the Developer identifies a non-conformance under clause 9.2(f), the Developer must immediately notify the State of:
 - (1) the details of the non-conformance; and
 - (2) the steps to be taken to rectify the non-conformance and the time by which such rectification will occur.
- (h) Following notification of a non-conformance under clause 9.2(g), the Developer must provide confirmation of rectification of that non-conformance and, upon request, provide the State with evidence of such rectification.

9.3 Industrial Action

- (a) The Developer must, to the extent permitted by Law, at its expense:
 - (1) take all reasonable steps to:
 - (A) prevent the occurrence of;
 - (B) minimise the continuance of; and
 - (C) resolve,
 any Industrial Action;
 - (2) immediately advise the State of any:
 - (A) Industrial Action; or
 - (B) potential or threatened Industrial Action of which it becomes aware; and
 - (3) provide the State with regular updates on:
 - (A) the reasonable steps taken, or proposed to be taken, in accordance with clause 9.3(a)(1); and
 - (B) the status of any actual, potential or threatened Industrial Action notified under clause 9.3(a)(2).
- (b) Subject to clause 9.2, the Developer is responsible for all Loss, delay or disruption that any party suffers arising out of, or in connection with, any Industrial Action except in relation to Losses arising out of, or in connection with any Industrial Action which directly affects the Oversight Development and which:
 - (1) is the direct result of an act or omission of the State or its Associates in relation to the Oversight Development or Metro Tunnel not being an act or omission authorised or permitted in accordance with this Agreement; and

- (2) occurs only at the Site or otherwise only in respect of the Oversight Development or Metro Tunnel.
 - (c) The State is not liable for, or in connection with, any Claim (and the Developer may not make any Claim) arising out of, or in connection with, any Industrial Action.

9.4 Right of entry

- (a) The Developer must immediately:
 - (1) inform the State, in a manner and form required by the State, of trends regarding entry to the Site by Union Officials including, but not limited to, trends for each union with respect to reasons for entry, regularity of entry and timing of entry; and
 - (2) notify the State of any dispute or disagreement arising in relation to right of entry to the Site or the Oversight Development Works.
- (b) The Developer must ensure that:
 - (1) any entry to the Site by a Union Official complies with Industrial Relations Laws; and
 - (2) the Union Official complies with the Health and Safety Management Plan when on-Site.

10 Approvals and Laws

10.1 Approvals to be obtained by the State

The parties acknowledge that on or before the Agreement Date, the State has obtained the Planning Scheme Amendment which is on acceptable terms to both parties.

10.2 Approvals to be obtained by Developer

- (a) The Developer must at its own cost and expense:
 - (1) obtain, maintain and comply with all Approvals (other than the Planning Scheme Amendment); and
 - (2) comply with the Planning Scheme Amendment including all conditions requiring the submission of plans for approval of the Oversight Development Works and Oversight Development, which from time to time may be necessary or appropriate for the Site, the Oversight Development Works and the Oversight Development, or the use or occupation of the Site, the Oversight Development Works and the Oversight Development, regardless of whether the Approval requires the compliance by either or both of the Developer and the State or any other person (but only to the extent that the Developer is reasonably able to comply or procure compliance with a condition imposed on the State or any other person).
- (b) For the avoidance of doubt, if any aspect of an Approval or the Planning Scheme Amendment requires a secondary consent, plans to be submitted and endorsed, submission, verification or other supplementary action or information

(whether as a condition of the Approval taking effect or otherwise), those further matters will be the responsibility of the Developer.

10.3 Compliance with Laws

The Developer must comply with all Laws from time to time applicable to it, the Site, the Oversight Development Works and the Oversight Development or the use or occupation of the Site, the Oversight Development Works and the Oversight Development.

10.4 Assistance from State

Without limiting any obligation of the Developer, prior to Final Completion if the State reasonably is able to assist the Developer in obtaining any Approval referred to in the preceding paragraphs of this clause 10, the State will, at the reasonable request of and at the cost and expense of the Developer, use its reasonable endeavours to provide such assistance.

11 Construction Commencement and Final Completion

11.1 Construction Commencement and Final Completion

- (a) Following CBD South OSD Acceptance, the Developer must commence substantive construction of the Oversight Development on the Licenced Area (**Construction Commencement**) prior to the Construction Commencement Deadline. For the purposes of this clause, Construction Commencement means physically commencing the construction of the Oversight Development Works and diligently pursuing progress of the Oversight Development Works.
- (b) On and from Construction Commencement, the Developer must diligently pursue the Oversight Development Works and achieve Final Completion on or by the Scheduled Date for Final Completion.
- (c) The Developer may, by giving not less than 10 Business Days' notice to the State, commence substantive construction of the Oversight Development on the Licenced Area at any time after the date specified in paragraph 2 of the definition of CBD South OSD Acceptance. For the avoidance of doubt, CBD South OSD Acceptance does not occur solely by virtue of the Developer commencing substantive construction under this clause 11.1(c).

11.2 Activation of site prior to Construction Commencement

- (a) If the Developer (acting reasonably) does not anticipate that Construction Commencement will occur within 1 month of CBD South OSD Acceptance, the Developer must prepare and implement a site activation plan which has the elements described in clause 11.2(b) (**Site Activation Plan**).
- (b) The Site Activation Project Plan must include the following elements:
 - (1) a framework of the nature and types of activation to be implemented by the Developer before Construction Commencement; and
 - (2) activation of construction hoardings surrounding the Construction Site Portion with artist imagery and community message boards.



11.3 [not disclosed]

[not disclosed]

12 Oversight Development and Environmental Issues

12.1 Grant of Construction Licence

The State will procure the grant to the Developer a non-exclusive licence:

- (a) in respect of the Construction Site;
- (b) commencing on, or prior to date of CBD South OSD Acceptance;
- (c) substantially in the form of, and on the terms specified in, the Construction Licence; and
- (d) otherwise on such other terms imposed by the State (acting reasonably):
 - (1) having regard to the nature, location, hours and mode of construction of the Oversight Development Works for which the Construction Licence is granted; and
 - (2) in consultation with the Developer.

12.2 Use of Licenced Area

- (a) The State acknowledges and agrees that on and from the date the Construction Licence is granted, the Developer will be entitled to use the Licenced Area on the terms set out in the Construction Licence and the terms of this Agreement.
- (b) To the extent reasonably practicable in a construction environment, the Developer must comply with the following terms in relation to the Licenced Area:
 - (1) the Developer is responsible for ensuring that at all times the Licenced Area is left in a clean, tidy and safe condition and that all construction waste, rubbish and debris are removed promptly from the Licenced Area in accordance with Best D&C Practices;
 - (2) the Developer must ensure that at all times the physical appearance and amenity of the Licenced Area is maintained in such a way that it does not detract from the amenity of the Serviced Area; and
 - (3) on Final Completion of the Oversight Development the Developer must remove all Plant and Equipment, facilities, vehicles (other than those required for the operation of the Oversight Development) and any construction waste, machinery, rubbish and debris from the laydown areas and other parts of the Licenced Area used for the Oversight Development Works.
- (c) The Developer acknowledges and agrees that the State and its Associates, any Authorised Person, Project Co, and the Project D&C Subcontractor may require access to the Licenced Area on a daily or other periodic basis and the Developer must co-operate with the State, the Authorised Persons, Project Co and the Project D&C Subcontractor in ensuring that they are given reasonable access at all times to the Licenced Area.



- (d) When entering the Licensed Area in accordance with clause 12.2(c), the State must and must ensure its Associates and any Authorised Person:
- (1) comply with the Oversight Development Access and Interface Protocols and any generally applicable safety and security requirements of the Developer;
 - (2) do not unnecessarily interfere with the carrying out of the D&C Activities; and
 - (3) do not damage the Oversight Development Works or the Licenced Area.
- (e) The Developer must consult regularly and as necessary with the State regarding:
- (1) the effect (if any) of the undertaking of the Oversight Development Works on the use of the Serviced Area; and
 - (2) the procedures or arrangements (if any) that can be put in place by the Developer during the undertaking of the Oversight Development Works to:
 - (A) minimise as far as reasonably practicable any disruption to the use of the Serviced Area; and
 - (B) ensure as far as reasonably practicable that the use of the Serviced Area can be carried out safely,having regard to the conditions of Approvals.
- (f) The Developer is responsible for:
- (1) gaining access to; and
 - (2) negotiating with persons holding interests in, land or airspace not forming part of the Licenced Area which the Developer requires access to, or any other right in respect of, for the purpose of the carrying out the Oversight Development Works and obtaining access to and from the Licenced Area.
- (g) The Developer is not entitled to any Claim against the State in connection with access or a failure to gain or delay in gaining access, or any other right in respect of land or airspace not forming part of the Licenced Area.

12.3 Station Works

- (a) **(Priority):** This clause 12.3 has priority over and operates notwithstanding the terms of clause 12.5.
- (b) **(Interface):** Without limiting clause 12.2(d), the Developer acknowledges that the State, any of its Associates and other persons including Project Co, the Project Co Associates, the Project D&C Subcontractor, Authorised Persons, and Precinct Users (together, **the Interface Parties**), may (subject to the Interface Agreement and the Oversight Development Access and Interface Protocols) carry out work, services, activities and functions on, adjacent to or in the vicinity of the Precinct.
- (c) **(Co-operation):** The Developer must:
- (1) permit the Interface Parties to undertake their work, services, activities and functions;



- (2) fully co-operate with the Interface Parties;
 - (3) carefully co-ordinate and interface the Oversight Development Works with the work, services, activities and functions carried out or to be carried out by the Interface Parties;
 - (4) carry out the Oversight Development Works so as to minimise interference, disruption or delay to the work, services, activities and functions of the Interface Parties; and
 - (5) notify the State of any serious problems which the undertaking or intended undertaking of any works, services, activities or functions of the Interface Parties may have on the carrying out of the Oversight Development Works as soon as practicable after becoming aware of such problems.
- (d) Without limiting clause 12.3(b), but subject to 12.3(c), the Developer must, at all times:
- (1) after receiving at least 5 Business Days' notice from the State requesting the relevant meeting, attend all meetings called by the State to plan, review and determine coordinated activities and the management of interfaces (including access) between the Oversight Development Works and the construction, installation, commissioning and site acceptance testing of Project Co;
 - (2) regularly plan, program and perform Oversight Development Works so as to:
 - (A) coordinate its plans and designs and those of Project Co; and
 - (B) minimise any interference with, or hindrance or impact of, on or by, the performance of construction, installation, commissioning and site acceptance testing of Project Co;
 - (3) where any damage, interference or hindrance referred to in clause 12.3(d)(2) is the unavoidable consequence of the Oversight Development Works, promptly notify the State in writing, with a view to reaching an agreed procedure to prevent or minimise any such damage, interference or hindrance; and
 - (4) at all times cooperate with the State so as to promote and foster a coordinated and integrated approach to the Oversight Development Works and the construction, installation, commissioning and site acceptance testing of the Station Works and the Services.
- (e) Where the Developer in carrying out the Oversight Development Works is not complying with its obligations under this clause 12.3 then the State may direct the Developer to take any reasonably appropriate action to ensure that the Developer complies with its obligations under this clause 12.3.
- (f) The Developer:
- (1) must comply with any direction given by the State pursuant to clause 12.3(e); and
 - (2) has no right to make any Claim against the State in respect of a valid direction given by the State pursuant to clause 12.3(e).

12.4 Other Developments



- (a) **(No claims)** Except to the extent the Developer is expressly entitled to relief under this Agreement, the Developer and each of its Associates will not be entitled to make any claim against the State, and will not be entitled to any relief under this Agreement or any other Oversight Development Agreement, in respect of any fact, matter or thing relating to the Station Works or operation of the Station or Oversight Development.
- (b) **(Dual role)** The parties acknowledge that the Developer may engage:
 - (1) the Project D&C Subcontractor as the Builder; and
 - (2) the Project Maintenance Subcontractor to provide facility management services in respect of the Oversight Development.

12.5 Coordination Plan

- (a) Prior to Construction Commencement, the Developer must at its own cost and expense prepare a plan (**Coordination Plan**) detailing:
 - (1) the construction program for the Oversight Development Works;
 - (2) the impact of the Oversight Development Works on the Station Works;
 - (3) the measures to be implemented to ensure that there is no interference with, disruption, obstruction, delay or hindrance to the carrying out of the Station Works as a result of the Oversight Development Works; and
 - (4) the measures to be implemented to ensure that the Oversight Development Works do not disrupt, obstruct or hinder the ongoing operation of the Station.
- (b) The Developer must submit the Coordination Plan to the State for the review and approval of the State. The State will advise the Developer within 15 Business Days if it does not approve the Coordination Plan submitted. The State may only not approve the Coordination Plan if the State acting reasonably considers that an aspect of the Oversight Development Works will or has the potential to materially adversely affect the Station Works or the ongoing operation of the Station. The State cannot require any amendment to the Coordination Plan which would result in the Coordination Plan being inconsistent with or otherwise derogate from the Developer's rights under the Interface Agreement or the Oversight Development Access and Interface Protocols.
- (c) The Developer must comply with any direction or requirement required by the State to be included in the Coordination Plan to:
 - (1) minimise any adverse impact on the Station Works; or
 - (2) minimise any adverse impact on the ongoing operation of the Station.
- (d) The State or the Developer may refer any dispute in relation to the non-approval of the Coordination Plan under this clause 12.5 for resolution by an independent expert in accordance with clause 44.3, in which case the Coordination Plan will be as determined by the independent expert in accordance with that clause.
- (e) The State's review and approval of the Coordination Plan, or the determination of a dispute in relation to the Coordination Plan by an independent expert in accordance with clause 44.3 does not:
 - (1) entitle the Developer to make any Claim;
 - (2) in any way limit or change the Developer's obligations under this

- Agreement or any other Oversight Development Agreement; or
- (3) relieve the Developer of any liabilities,
- with respect to the design, construction and commissioning of the Oversight Development Works.

13 Site conditions

13.1 Developer to inform itself

The Developer:

- (a) **(Suitability and risk assessment)**: warrants that it has, and it will be deemed to have, done everything (including all assessments tests or studies of the Site and its surroundings) that would be expected of a prudent, competent and experienced contractor in the position of the Developer:
- (1) in assessing the risks regarding the Site Conditions;
 - (2) in ensuring that this Agreement contains allowances to protect it against any risks regarding the Site Conditions eventuating; and
 - (3) in order to determine the suitability of the Site and its surroundings for the Oversight Development; and
- (b) **(Sufficient access)**: acknowledges and agrees that:
- (1) it has had sufficient access to the Site prior to Financial Close; and
 - (2) it has had the opportunity to carry out all assessments, tests and studies necessary,
- to determine the suitability of the Site and its surroundings for the Oversight Development and to familiarise itself with the Site Conditions.

13.2 Environmental issues

The Developer must:

- (a) **(no industrial waste or hazardous substance)**: during any period where the Developer is entitled to use or occupy the Site, not use or allow it to be used, such that:
- (1) any spoil, Industrial Waste or Hazardous Substance is abandoned or dumped on the Site;
 - (2) any Industrial Waste or Hazardous Substance is handled, disposed of, disturbed, discharged or released in a manner which is likely to cause or contribute to an Environmental Hazard; or
 - (3) any other substance is handled, disposed of, disturbed, discharged, released, deposited to, or emanated from, the Site such that a state of Contamination occurs other than as permitted by Law or an Approval;
- (b) **(environmental responsibility)**: at all times carry out the D&C Activities in an environmentally responsible manner and in accordance with Best D&C Practices, so as to protect the Environment and take all reasonable and practicable measures to prevent or minimise adverse impacts on the Environment;



- (c) **(reports)**: promptly provide to the State copies of all reports, surveys, audits and monitoring results in respect of the Environmental Requirements when they are obtained;
- (d) **(manage waste disposal)**: manage and be responsible for the handling and proper disposal or removal of all waste, rubbish, debris, redundant materials, spoil and Industrial Waste produced by the D&C Activities in accordance with Best Industry Practices, all relevant Approvals and this Agreement;
- (e) **(directions)**: comply with all directions by the State regarding the removal from the Site and disposal of any Industrial Waste or Hazardous Substance; and
- (f) **(Pollution and Contamination)**: not cause or contribute to any Pollution or Contamination.

13.3 Contamination

- (a) **(Contamination caused or contributed to)**: The Developer must Remediate, to the standard required by and in accordance with, the Law and the Environmental Requirements, any Contamination which is caused or contributed to in the carrying out of the D&C Activities.
- (b) **(Contamination disturbed or interfered with)**: The Developer must Remediate, to the standard required by and in accordance with, the Law and the Environmental Requirements, any Contamination which is on, in, over, under or which has emanated or is emanating from or to the Site and which is disturbed, exacerbated or interfered with in the carrying out of the D&C Activities.

13.4 Contamination notification requirements

- (a) **(Notification)**: If the Developer discovers any Contamination on, in, over, under or emanating from or to the Site (whether or not the Developer has caused or contributed to that Contamination), it must notify the State as soon as practicable, but nevertheless within 5 Business Days after the discovery of the Contamination.
- (b) **(Notification requirements)**: The Developer's notice under clause 13.4(a) must contain all relevant details in relation to the Contamination, including:
 - (1) the type of Contamination;
 - (2) the location of the Contamination; and
 - (3) the nature and extent of the Contamination,to the extent such details are known at the time the notification is provided.
- (c) **(Contamination Notice)**: The Developer must, at all times comply, and ensure that all of its Associates comply, with any Contamination Notice relating to Contamination on or that emanated or is emanating from or to, the Site, regardless of whether:
 - (1) the Contamination Notice is addressed to the State, the Developer or some other person; and
 - (2) the Contamination occurred before or after the Developer or any other person was given access to the Site,provided that nothing in this clause 13.4(c) requires the Developer to comply or ensure compliance with any Contamination Notice relating to existing in-ground



Contamination or to any Contamination caused by the State or its Associates any time after the Developer or its Associates are given access to the Site. If the Contamination identified in the Contamination Notice was caused by the State or its Associates, the State must comply with that Contamination Notice.

- (d) **(Disputing a Contamination Notice):** Without limiting the Developer's obligation under this clause 13.4, nothing in this clause 13.4 prevents the Developer from disputing the issue of a Contamination Notice with the EPA or taking action against a third party with respect to the Contamination.
- (e) **(Parties not to cause service of Contamination Notice):** Subject to their respective obligations at Law, and the functions and powers of the EPA, none of the State, the Developer, or any of the Developer's Associates will do anything with the intent, directly or indirectly, of causing or being likely to cause the issue or service of a Contamination Notice.

14 Native Title and Artefacts

14.1 Native Title

As between the State and the Developer, the State is responsible for:

- (a) dealing with any Native Title Claim in respect of any part of the Site, and taking any action required in accordance with the TOS Act or any LUAA in connection with the Oversight Development;
- (b) the payment of any compensation or other moneys required to be paid to the native title holders of any part of the Site as a consequence of a successful Native Title Claim; and
- (c) the payment of any compensation or other moneys required to be paid as a result of the application of the TOS Act or any LUAA applicable to the Oversight Development.

14.2 Artefacts

As between the State and the Developer, if an Artefact is discovered on or under the surface of the Site:

- (a) it will be the absolute property of the State; and
- (b) the Developer must:
 - (1) immediately notify the State of the discovery;
 - (2) permit the State to watch or examine any excavation on the Site; and
 - (3) take every reasonable precaution in carrying out the D&C Activities so as to prevent Artefacts being damaged or removed until appropriate arrangements for dealing with, or removing, the Artefacts have been made.

14.3 General Provision

If there is a:

- (a) Native Title Claim or Heritage Claim in connection with; or



- (b) discovery of Artefacts in, any part of the Site, the Developer must:
- (c) continue to carry out its obligations in accordance with this Agreement, except to the extent otherwise:
 - (1) directed by the State or the Commonwealth;
 - (2) ordered by a court or tribunal of competent jurisdiction; or
 - (3) required by Law; and
- (d) provide all reasonable assistance to the State in connection with dealing with the Native Title Claim, Heritage Claim or Artefact discovery.

14.4 Cultural Heritage Management Plan

- (a) The Developer must comply with all reasonable directions of the State concerning Artefacts and the protection of Aboriginal Cultural Heritage under the *Aboriginal Heritage Act 2006 (Vic)*.
- (b) If, in accordance with clause 14.4(a) or pursuant to the terms of the *Aboriginal Heritage Act 2006 (Vic)*, the Developer is required to prepare a Cultural Heritage Management Plan in respect of the D&C Activities or is required to make any application in connection with that Cultural Heritage Management Plan:
 - (1) the State may, in its absolute discretion, elect to make the application to the exclusion of the Developer; and
 - (2) the Developer:
 - (A) must prepare all necessary documentation and information for consideration by the State;
 - (B) must provide all necessary assistance reasonably required by the State to make the relevant application; and
 - (C) bears all risks associated with making the application and obtaining the necessary Approval.
- (c) If a Cultural Heritage Management Plan is approved, the Developer must:
 - (1) comply with:
 - (A) the provisions and procedures of the Cultural Heritage Management Plan; and
 - (B) all reasonable directions of the State concerning Artefacts and the protection of Aboriginal Cultural Heritage; and
 - (2) immediately notify the State of any:
 - (A) breach or alleged or potential breach of; or
 - (B) non-compliance, or alleged or potential non-compliance, with,the conditions or requirements of the Cultural Heritage Management Plan.



15.1 Responsibility for Construction

The Developer:

- (a) is responsible for and is not entitled to make any Claim in connection with:
 - (1) the Construction Site and Site Conditions, except as specifically provided in this Agreement; and
 - (2) construction means, methods and techniques used to undertake the Oversight Development Works;
- (b) must provide everything (including labour, materials and plant) necessary for the design and construction of the Oversight Development Works;
- (c) will carry out all investigations necessary to ensure the adequacy and suitability of the Construction Site; and
- (d) must put in place suitable procedures or arrangements to deal with site management.

15.2 Interconnection

Subject to the terms of the Interface Agreement, where any Oversight Development Works are attached to or otherwise form part of the infrastructure leased or owned by any other person, the Developer must do all things reasonably necessary to assist that person to ensure proper integration of Oversight Development Works, once they have been completed, with the infrastructure which is owned or leased by that person.

16 Oversight Development design documentation

16.1 Development of Development Plans

- (a) The Developer must, at its own cost and expense procure the development and completion of the Development Plans, Reviewable Design Documentation and Endorsed Plans to ensure that the Oversight Development Works:
 - (1) are designed generally in accordance with the Proposal, including the Concept Design Documents;
 - (2) are consistent with, and provide for the matters contained in, the Planning Scheme Amendment and Urban Design Principles;
 - (3) incorporate any Project Agreement Modification (provided the Project Agreement Modification costs have been paid); and
 - (4) comply with Best D&C Practices.
- (b) The State will have the right to participate in key meetings and review and comment on the Reviewable Design Documentation but any comments must be limited to issues concerning the Interfaces.
- (c) If the State does not provide its comments on the Reviewable Design Documentation with respect to the Interfaces within 20 Business Days of being provided with the Reviewable Design Documentation, the Developer will give the State a further request for the State's approval and if the State fails to respond to that further request within 10 Business Days of that further request, the State is deemed to have approved the Reviewable Design Documentation.



- (d) Any dispute in relation to this clause 16.1 is to be referred to a dispute resolution group comprising two senior representatives each of the State and the Developer for resolution.
- (e) The Developer must bear all costs and expenses of the development of the Development Plans, Reviewable Design Documentation and Endorsed Plans.

16.2 Section 173 Agreements

- (a) The Developer must, if requested by the State, enter into a Section 173 Agreement required by the Planning Scheme on terms reasonably requested by the State which will be confined to the implementation of the matters contemplated by the Planning Scheme or Planning Scheme Amendment.
- (b) The State must, if requested by the Developer, enter into a Section 173 Agreement required by any Planning Permission on terms reasonably requested by the Developer which will be confined to the implementation of the matters contemplated by that Planning Permission.

16.3 [not disclosed]

[not disclosed]

16.4 Variations by the Developer

- (a) Subject to clause 1.1, 16.4(b) and 16.4(c), the Developer may change the Oversight Development, including the Development Plans, Reviewable Design Documentation and Endorsed Plans, at any time for any purpose (including to achieve any outcome desired by the Developer, to respond to changed market conditions or to accommodate sub-tenants' requirements) prior to Final Completion without the approval of the State.
- (b) Notwithstanding any other provision of this clause 16.4, the Developer must not change the Oversight Development in any way that will have a material adverse effect on the structure or operation of the Station without the prior written approval of the State (which approval or rejection must not be unreasonably delayed).
- (c) The Developer must not change the Oversight Development without the prior written consent of the State (which consent will not be unreasonably withheld or delayed) if the consequence of that proposed change:
 - (1) is that the Interfaces of the Oversight Development are not generally in accordance with the Interfaces set out in the Concept Design Documents; or
 - (2) would result in the Oversight Development not complying with the Advertising Restrictions or the Urban Design Principles.
- (d) The Developer must ensure that any changes to the Oversight Development, do not result in Final Completion being unachievable by the Scheduled Date for Final Completion.
- (e) The Developer must bear all costs and expenses of any change to the Oversight Development.
- (f) If the State fails to respond to a request for its approval under this clause 16.4 within 20 Business Days of a request, the Developer will give the State a further request for the State's approval and if the State fails to respond to that further



request within 10 Business Days of that further request, the State is deemed to have approved the Developer's requested change to the Oversight Development.

- (g) The State or the Developer may refer any dispute in relation to this clause 16.4 for resolution by an independent expert in accordance with clause 44.
- (h) Without limiting any other clause in this Agreement, this clause 16.4 ceases to have any effect on and from the Final Completion Date.

16.5 Submission of Development Plans and Reviewable Design Documentation

- (a) The Developer must upon request by the State (which request may not be made at any time before 2 years after the Financial Close Date unless otherwise agreed by the Developer or if the Reviewable Design Documentation or the Development Plans have been prepared by the Developer) submit any Reviewable Design Documentation or Development Plans to the State for its review and approval as soon as reasonably practicable after receiving the request from the State.
- (b) Any State request for Reviewable Design Documentation or Development Plans will be limited to those aspects of the design which relate to the Interfaces. The State will not request any Reviewable Design Documentation or Development Plans relating to the internal finishes or fittings or building performance specifications of the Oversight Development except to the extent that they impact on the Interfaces.
- (c) The State will advise the Developer within 15 Business Days if it does not approve the Reviewable Design Documentation or Development Plans submitted in accordance with clause 16.5(a). The State may only not approve the Reviewable Design Documentation or Development Plans if the State reasonably considers that an aspect of the design of the Oversight Development:
 - (1) will or has the potential to adversely affect the Station Works, the Station, the Interfaces or the safety of people; or
 - (2) is not consistent with, or does not provide for the matters contained in, the Planning Scheme Amendment or the Urban Design Principles.
- (d) The State undertakes no responsibility or duty in respect of any aspect of the design of the Oversight Development.
- (e) Unless the State does not approve the Development Plans within the 15 Business Days' time frame under clause 16.5(c), that Development Plans will be the Development Plans for the Oversight Development Works for the purposes of this Agreement.
- (f) Unless the State does not approve the Reviewable Design Documentation within the 15 Business Days' time frame under clause 16.5(c), that Reviewable Design Documentation will be the approved Reviewable Design Documentation for the Oversight Development Works for the purposes of this Agreement.
- (g) If the State does not approve the Reviewable Design Documentation or Development Plans under clause 16.5(c), then the State will, within 15 Business Days after it advises the Developer that it does not approve the Reviewable Design Documentation or Development Plans, notify the Developer that the State requires the Developer to make amendments to the Reviewable Design Documentation or Development Plans to address the aspect of the design of concern to the State under clause 16.5(c), in which case:
 - (1) the Developer must amend, in consultation with the State, the

Reviewable Design Documentation or Development Plans as requested by the State and resubmit the amended Reviewable Design Documentation or Development Plans within 15 Business Days after receipt of the State's notice; and

- (2) this clause 16.5 will apply in respect of the resubmitted Reviewable Design Documentation or Development Plans as if it were originally submitted under clause 16.5(a).
- (h) Any dispute in relation to the non-approval of the Reviewable Design Documentation or Development Plans under this clause 16.5 is to be referred to a dispute resolution group comprising two senior representatives each of the State and the Developer for resolution.
- (i) The State's review and approval of the Reviewable Design Documentation or Development Plans, or the determination of a dispute in relation to Reviewable Design Documentation or Development Plans by an independent expert in accordance with clause 44, does not:
 - (1) entitle the Developer to make any Claim;
 - (2) in any way limit or change the Developer's obligations under this Agreement or any other Oversight Development Agreement; or
 - (3) relieve the Developer of any Liabilities,with respect to the design, construction and commissioning of the Oversight Development Works.

16.6 Lease Access Plan

- (a) Prior to Construction Commencement, the Developer must submit to the State a revised Lease Access Plan for the State's approval setting out access rights required over:
 - (1) the Station Land for the use and operation of the Oversight Development; and
 - (2) the Lease Land for the use and operation of the Station Land.
- (b) If, within 20 Business Days after submission of the revised Lease Access Plan under clause 16.6(a) the State must notify the Developer of its approval or rejection of the revised Lease Access Plan. If the State rejects the revised Lease Access Plan the State must provide details of the amendments it requires to the revised Lease Access Plan and set out the basis for its requirement.
- (c) If the State notifies the Developer that it approves the revised Lease Access Plan submitted under clause under clause 16.6(a), then the revised Lease Access Plan approved by the State is taken to be the Lease Access Plan.
- (d) If the State notifies the Developer that the State rejects the revised Lease Access Plan under clause 16.6(a) and requires the Developer to make amendments to the revised Lease Access Plan:
 - (1) the Developer must amend the Lease Access Plan as requested by the State and resubmit the amended Lease Access Plan within 15 Business Days after receipt of the State's notice; and
 - (2) this clause 16.6 will apply in respect of the resubmitted Lease Access Plan as if it were originally submitted under clause 16.6(a).
- (e) The State cannot unreasonably object to any access rights specified in a



revised Lease Access Plan submitted under clause 16.6(a) if that access right is reasonably necessary for the operation or use of the Oversight Development having regard to the Endorsed Plans, provided that such access rights specified in a revised Lease Access Plan do not materially impact on the use of the Station Land or Rail Operations.

17 State Initiated Modifications or Variations

17.1 Consultation

If the State is considering a State Initiated Modification or a State Initiated Variation the State Representative must consult with the Developer to discuss details of the proposed State Initiated Modification or State Initiated Variation to determine whether it:

- (a) will increase, decrease or omit any part of the Oversight Development Works in relation to Matters of State Concern;
- (b) will vary the Oversight Development Works or require additional work to be executed in relation to Matters of State Concern; or
- (c) would cause the Developer to:
 - (1) not be able to perform any obligation under an agreement for sublease entered into with a sub-tenant in relation to any part of the Oversight Development (for example, an obligation to grant a sublease to the sub-tenant);
 - (2) not be able to procure an agreement to sub-lease or sub-lease or compromise a prospective agreement to sub-lease or sub-lease;
 - (3) not be able to lodge a Development Plan;
 - (4) not be able to perform any obligation owing to the Developer's Investor including any obligation under any Developer's Investor Side Deed;
 - (5) compromise the Developer's ability to procure a prospective Developer's Investor; or
 - (6) have a liability to the Project D&C Subcontractor under the Interface Agreement.

17.2 Modification Request or Variation Notice

- (a) For the avoidance of doubt, the State cannot request a variation to the Oversight Development other than in accordance with this clause 17.
- (b) After consultation with the Developer in respect to an OSD Modification, the State:
 - (1) must in respect of a Project Agreement Modification, issue a State Initiated Modification; and
 - (2) may, in respect of any other OSD Modification issue a notice to the Developer entitled "State Initiated Variation"

(Variation Notice),



requesting the Developer to submit an OSD Modification Quote for a proposed State Initiated Modification or proposed State Initiated Variation which includes details of:

- (3) the proposed OSD Modification; and
- (4) any specific information that the State requires the Developer to include in the OSD Modification Quote or that may be relevant to the preparation of the OSD Modification Quote,

(OSD Modification Request).

17.3 OSD Modification Quote

- (a) **(Response to OSD Modification Request):** Unless the State withdraws an OSD Modification Request, the Developer:
 - (1) must submit a OSD Modification Quote in response to the OSD Modification Request to the State:
 - (A) within 20 Business Days of receipt of the OSD Modification Request; or
 - (B) at such later time as determined by the Developer (acting reasonably, taking into account the size and complexity of the proposed OSD Modification and the information to be included in the OSD Modification Quote and any consent required from the Project D&C Subcontractor).
- (b) **(Contents of OSD Modification Quote):** The OSD Modification Quote must:
 - (1) in the case of a State Initiated Modification be prepared in accordance with clause 38 of the Project Agreement;
 - (2) include details of the lump sum cost of the OSD Modification as determined under clause 17.5;
 - (3) include details of the basis (if applicable) on which the Developer would be prepared to fund or to procure the funding of the whole or part of the OSD Modification calculated and the cost difference if the Developer, rather than the State, were to fund the OSD Modification;
 - (4) if:
 - (A) the OSD Modification will cause D&C Activities on the critical path contained in the then current Coordination Plan to be delayed; and
 - (B) the delay is beyond the reasonable control of the Developer and its Associates,include details of any extension requested to the Construction Commencement Deadline and/or the Oversight Development Sunset Date required as a consequence of the OSD Modification;
 - (5) include details of any variations to any existing Approval or any new Approval required for the OSD Modification;
 - (6) include details of any amendments to any relevant warranty given by the Developer under this Agreement;
 - (7) be prepared so as to avoid or minimise:

- (A) any delay in achieving Construction Commencement Deadline and/or the Oversight Development Sunset Date;
- (B) any delay in achieving Final Completion by the Scheduled Date for Final Completion; and
- (8) include any other relevant information requested by the State,

(OSD Modification Quote).

- (c) **(Further details):** The State must provide the Developer with further details reasonably requested by the Developer to assist the Developer in preparing its OSD Modification Quote.

17.4 State Response to OSD Modification Quote

- (a) **(Information and changes):** Once it has provided the State with the OSD Modification Quote, the Developer must:
 - (1) provide the State with any additional information the State notifies that it reasonably requires to assess the OSD Modification Quote; and
 - (2) make any changes to the OSD Modification Quote which the State requests and with which the Developer agrees.
- (b) **(State response to OSD Modification Quote):** Within 20 Business Days after receiving a OSD Modification Quote or such longer period reasonably notified by the Developer given:
 - (1) the size and complexity of the proposed OSD Modification; and
 - (2) the need for any additional information not included in the OSD Modification Quote and the time when it is subsequently provided,the State must:
 - (3) issue a OSD Modification Order to the Developer directing the Developer to carry out the OSD Modification on the terms set out in the OSD Modification Quote or as reasonably determined by the State and the Developer, and the Developer must implement the OSD Modification in accordance with the OSD Modification Order and clauses 17.6(a) to 17.6(b) will apply;
 - (4) issue a OSD Modification Order to the Developer directing the Developer to carry out the OSD Modification but notifying the Developer that it does not agree with the OSD Modification Quote, including supporting documentation and reasons; or
 - (5) unless the OSD Modification Quote is in respect of a State Initiated Modification, notify the Developer that it does not wish to proceed with the proposed OSD Modification.
- (c) **(Further information):** If the State requests changes to the OSD Modification Quote in accordance with clause 17.4(a) the Developer must provide the State with an updated OSD Modification Quote, addressing the issues raised by the State, within 10 Business Days of the receipt of the State's notice and this clause 17.4 will apply again to that OSD Modification Quote.

17.5 [not disclosed]

[not disclosed]

17.6 OSD Modification Orders

- (a) **(Developer to implement):** If the State issues an OSD Modification Order, then:
- (1) the Developer must undertake the OSD Modification on the terms set out in the OSD Modification Order;
 - (2) the Developer will be entitled to payment of the amount for undertaking the OSD Modification in accordance with clause 17.7:
 - (A) if the State issues a notice under clause 17.4(b)(3), set out in the OSD Modification Order; or
 - (B) if the State issues a notice under clause 17.4(b)(4), determined by the Independent Certifier under clause 0 or 0 (as applicable);
 - (3) the Development Plans will be deemed to be amended in accordance with the relevant amendments set out in the OSD Modification Order; and
 - (4) the Developer must carry out its obligations under this Agreement as amended.
- (b) **(No implementation without order):** The Developer must not begin any work or incur any cost, and will not have any entitlement to make any Claim in respect of an OSD Modification unless an OSD Modification Order has been issued by the State in accordance with this clause 17.6.

17.7 [not disclosed]

[not disclosed]

17.8 Directions giving rise to OSD Modification

- (a) **(State direction):** The Developer must, as a condition precedent to making a Claim against the State in connection with a direction by the State, other than an OSD Modification:
- (1) within 10 Business Days of receiving the direction, give notice to the State whether it considers the direction constitutes or involves an OSD Modification; and
 - (2) if so, within 25 Business Days after giving the notice under clause 17.8(a)(1), submit an OSD Modification Quote to the State in respect of the direction.
- (b) **(Confirmation):** Within 5 Business Days of the State receiving a OSD Modification Quote from the Developer under clause 17.8(a)(2) the State may elect to:
- (1) confirm that the direction is in fact an OSD Modification and either:
 - (A) issue an OSD Modification Order; or
 - (B) vary the direction and confirm that the varied direction is a OSD Modification by issuing a OSD Modification Order,in which case the Developer must undertake the OSD Modification on the basis of the OSD Modification Order and clause 17.6(a) will apply.



- (2) withdraw the direction, in which case the Developer must not comply with the direction; or
 - (3) inform the Developer that, in the State's view, the direction is not a OSD Modification in which case the Developer must comply with the direction but may refer the matter to dispute resolution in accordance with clause 44.
- (c) **(No commencement)**: the Developer must not commence any work the subject of a direction which it believes constitutes a OSD Modification until the State has acted under clause 17.8(b).
- (d) **(Conditions for the Developer Claim)**: the Developer will not be entitled to make any Claim against the State in respect of a direction that gives rise to a OSD Modification unless it has given a notice under clause 17.8(a) and otherwise complies with this clause 17.8.

17.9 Payment for Quotes

If the Developer is required to prepare a OSD Modification Quote in accordance with clause 17 and prior to preparing a OSD Modification Quote, the Developer:

- (a) notifies the State that it needs to engage a third party other than an Associate or Related Body Corporate of an Associate to provide design, engineering or quantity surveying or other services reasonably required to be outsourced to assist in the preparation of the OSD Modification Quote; and
- (b) provides details of the third party costs that will be incurred in preparing the OSD Modification Quote,

then in respect of a OSD Modification Quote, the State will either:

- (c) agree to pay the Developer the cost to prepare the OSD Modification Quote, in which case the Developer must proceed to prepare the OSD Modification Quote; or
- (d) withdraw the OSD Modification Request.

17.10 [not disclosed]

[not disclosed]

18 Project Management

18.1 Oversight Development Project Control Group

- (a) The State and the Developer must establish a committee (**Oversite Development Project Control Group**) comprising at least one representative of each of them and a representative of such other persons as are nominated by the State or the Developer for representation on the Oversight Development Project Control Group.
- (b) In the period prior to Final Completion, the Oversight Development Project Control Group must:
 - (1) meet at such times as the State and the Developer agree (and at least once each Quarter or such other period as agreed by the State and



- the Developer) to discuss any matters relating to the Oversight Development Works; and
- (2) conduct its meetings in such a manner and in accordance with such procedures as its members may from time to time agree provided that at least 1 representative from each of the State and the Developer must be present in order for there to be a quorum at a meeting of the Oversight Development Project Control Group.
- (c) The Oversight Development Project Control Group will not have any legal responsibility to either the State or the Developer and will not have any power to require either the State or the Developer to act or refrain from acting in any way.
- (d) The decisions of the Oversight Development Project Control Group do not affect the rights or obligations of either the State or the Developer under any of the Oversight Development Agreements.

19 Sub-Contracting

- (a) Subject to clause 19(b), the Developer must ensure that the Building Contract provides that the Builder may only subcontract part of the Oversight Development Works (and not the Oversight Development Works as a whole).
- (b) The Developer may subcontract the performance of all or any part of the Oversight Development Works provided that in so doing the Developer will not be relieved of any of its Liabilities under this Agreement or any other Oversight Development Agreement and the Developer is at all times responsible for the performance of any such Subcontractors in relation to the Oversight Development Works and acts or omissions of the relevant Subcontractor will be deemed to be acts or omissions of the Developer.

20 General Obligations Prior to Final Completion

20.1 Site Conditions

Subject to clause 13:

- (a) the Developer will be responsible for the Site and Site Conditions and will carry out all investigations necessary to ensure the adequacy and suitability of the Site; and
- (b) the Developer will not be entitled to make any Claim in connection with the Site or Site Conditions.

20.2 Developer's reporting requirements

The Developer must submit to the State Representative and each other member of the Oversight Development Project Control Group by the 10th day of every month from Construction Commencement to Final Completion a written report for the previous month signed by an authorised representative of the Developer, which attaches a detailed report describing the progress of construction prepared in the form to be agreed by the parties (acting reasonably).



20.3 Information

The Developer must, from Construction Commencement to Final Completion, provide the State Representative with any information relating to the Project or the Oversight Development (including access to documents and copies of documents) reasonably requested by the State Representative within 10 Business Days.

21 Timing for Completion of Oversight Development Works

21.1 Notice of delays

If the Developer considers that a delay in Construction Commencement or the progress of the Oversight Development Works has occurred or will occur such that the works will not achieve Final Completion on or by the Scheduled Date for Final Completion or the Oversight Development Sunset Date, the Developer must promptly notify the State stating the nature and cause of the delay or likely delay. To the extent possible, the Developer must advise the State of an impending delay in sufficient time to enable action to be taken to avoid the delay to the extent practicable.

21.2 Information

As soon as practicable but not later than 10 Business Days after a Delay Notice is given to the State, the Developer must give further notice to the State with supporting evidence (including details of the activities affected by any Extension Event which impacts Construction Commencement or the achievement of Final Completion) stating:

- (a) a fair and reasonable period by which, in the Developer's opinion:
 - (1) the Construction Commencement Deadline or
 - (2) the Oversight Development Sunset Date,should be extended; or
- (b) a fair and reasonable period by which Final Completion has been delayed due to a State Extension Event.

21.3 Extension Events

- (a) If:
 - (1) Construction Commencement is or will be delayed by the occurrence of an Extension Event which prevents or will prevent the Developer from achieving Construction Commencement by the Construction Commencement Deadline; or
 - (2) Final Completion is or will be delayed by the occurrence of an Extension Event which will prevent the Developer from achieving Final Completion on or by the Oversight Development Sunset Date,

the Developer must (if it wishes to claim an extension of time to the Construction Commencement Deadline or the Oversight Development Sunset Date, as applicable) as soon as practicable and, in any event, not later than 10 Business Days after the Developer first becomes aware of the delay or likely delay, give notice in writing (**Delay Notice**) to the State and the Independent Certifier stating the nature, cause and the extent of the Extension Event and the



Developer's reasonable prediction of the resulting delay.

- (b) The Developer may not claim an extension of time under clause 21.3(a) for any delay other than a delay caused by an Extension Event.
- (c) If the Developer wishes to claim costs due to a State Extension Event delaying the Developer from achieving Final Completion by the Scheduled Date for Final Completion, the Developer must as soon as practicable and, in any event, not later than 10 Business Days after the Developer first becomes aware of the delay or likely delay, give notice in writing to the State and the Independent Certifier stating the nature, cause and the extent of the Extension Event and the Developer's reasonable prediction of the resulting delay.

21.4 Extension and delay

- (a) Subject to clause 21.7 and the Developer having complied with the preceding provisions of this clause 21.1, 21.2(a) and 21.3(a) the Independent Certifier will, as soon as reasonably practicable after receiving notice under clause 21.3(a), determine what, if any, period by which the Construction Commencement Deadline or the Oversight Development Sunset Date is to be extended and will notify the Developer accordingly. If the Construction Commencement Deadline is extended, the Oversight Development Sunset Date will be extended for the same period.
- (b) Subject to clause 21.7 and the Developer having complied with the preceding provisions of this clause 21.1, 21.2(b) and 21.3(c) the Independent Certifier will, as soon as reasonably practicable after receiving notice under clause 21.3(c), determine what, if any, the period by which the Final Completion has been delayed due to that State Extension Event.
- (c) Where there are several causes of a delay and at least one cause is not an Extension Event (unless that cause is immaterial), then to the extent that the delays resulting from those causes are concurrent, the Developer will not be entitled to any extension of time in accordance with this clause 21.
- (d) A delay caused by any act or omission of the State or any of its Associates, or any failure by the State to comply with this clause 21 will not cause the Construction Commencement Deadline or the Oversight Development Sunset Date to be set at large but nothing in this paragraph will prejudice any right of the Developer to damages for breach of this Agreement by the State.

21.5 Approval of Extension

If an Extension Event occurs and the Independent Certifier determines in accordance with clause 21.4(a) that the Construction Commencement Deadline and/or the Oversight Development Sunset Date should be extended then:

- (a) the Developer will, subject to clause 21.7, be entitled to an extension;
- (b) the Construction Commencement Deadline and/or the Oversight Development Sunset Date (as applicable) will be extended as determined by the Independent Certifier pursuant to clause 21.4(a); and
- (c) the Developer must provide to the State upon request an updated Coordination Plan which details the changes to the construction program included in the Coordination Plan as a result of the Extension Event.

21.6 Mitigation



The Developer is entitled to an extension to the Construction Commencement Deadline and/or the Oversight Development Sunset Date under this clause 21 and the costs in clause 21.7, only if, and to the extent that:

- (a) an Extension Event has occurred which has directly caused a delay in Construction Commencement or the achievement of Final Completion on or prior to the Scheduled Date for Final Completion or the Oversight Development Sunset Date;
- (b) the Developer has notified the State, and the Independent Certifier, and submitted its claim strictly within the time periods specified in clauses 21.2 and 21.3; and
- (c) the Developer has:
 - (1) taken all proper and reasonable steps to prevent or minimise the risk of the occurrence of the delay;
 - (2) taken all proper and reasonable steps to minimise the duration and consequences of the delay;
 - (3) not unduly delayed Construction Commencement or Final Completion, as applicable; and
 - (4) complied with its obligations under this Agreement relating to Construction Commencement or Final Completion, as applicable (except to the extent that the Extension Event prevents or has prevented the Developer from doing so).

21.7 No Entitlement to Costs

- (a) The Developer is not entitled to any costs of delay or disruption in Construction Commencement or Final Completion as a result of the occurrence of an Extension Event except as set out in clause 21.7(b).
- (b) Where:
 - (1) an extension of time has been granted to the Developer pursuant to clause 21.5 as a result of the occurrence of a State Extension Event:
 - (A) which prevents or will prevent the Developer from achieving Construction Commencement by the Construction Commencement Deadline; or
 - (B) which prevents or will prevent the Developer from achieving Final Completion on or by the Oversight Development Sunset Date; or
 - (2) the Developer has been delayed in achieving Final Completion on or by the Scheduled Date for Final Completion as a result of the occurrence of a State Extension Event as determined by the Independent Certifier under clause 21.4(b),

then the Developer must, if it wishes to claim any costs associated with the delay including:

- (3) incremental financing costs
- (4) any additional costs incurred or to be incurred by the Developer under or in connection with a sublease or an agreement for sublease entered into with a sub-tenant in relation to any part of the Oversight Development;



- (5) any additional costs incurred or to be incurred by the Developer for the failure to perform any obligation owing to the Developer's Investor; and
- (6) any additional cost incurred or to be incurred by the Developer under or in connection with the Developer's commercial arrangements with the Developer's Investor, including under any Developer's Investor Side Deed,

submit notice to the Independent Certifier as soon as practicable (and, in any event, within 10 Business Days) after the occurrence of the State Extension Event stating:

- (7) the quantum of the costs caused by the delay and incurred by the Developer; and
 - (8) confirming, and to the extent possible demonstrating, that the costs were unavoidable, reasonable and justifiable and have arisen despite the Developer having taken all proper and reasonable steps to minimise any such costs.
- (c) Where the delay referred to in clause 21.1 exceeds a period of two months, the Developer must provide to the State and the Independent Certifier further notice setting out:

- (1) the actions being taken by the Developer to rectify the delay;
- (2) the Developer's progress in rectifying the delay; and
- (3) any updates to the information provided pursuant to the Delay Notice, or a notice previously provided under this clause 21.7(c),

every two months after the commencement of the delay until the Oversight Development Works are on schedule to achieve Final Completion on or by the Oversight Development Sunset Date.

- (d) Upon receipt of a notice from the Developer under clause 21.7(b) or clause 21.7(c), the Independent Certifier may request from the Developer any further information which the Independent Certifier requires to assess any claim for delay costs contained therein and, upon receipt of any such further information, or, if no information is requested, within 10 Business Days after receipt of the notice, certify the amount payable to the Developer in respect of the costs claimed by the Developer in respect of sub clause 21.7(b)(7) and 21.7(b)(8) which directly result from the actual delay caused to the Developer in achieving Construction Commencement by the Construction Commencement Deadline or achieving Final Completion on or by the Oversight Development Sunset Date.
- (e) The State's obligation under clause 21.7(b) is to pay only up to the amount calculated by the Independent Certifier, having regard to the notice submitted by the Developer pursuant to clause 21.7(b) and the liquidated damages payable under the Interface Agreement (and the State must pay this amount within 20 Business Days of the Independent Certifier's certification).
- (f) Except as provided in this clause 21.7, no other costs of delay or disruption incurred by the Developer as a result of the occurrence of an Extension Event are payable by the State.

21.8 Reduction in State's liability for Relief Events

The State's Liability and the Developer's entitlements in connection with any Relief Event will be reduced:



- (a) **(caused by Developer)**: to the extent that the Relief Event is caused or contributed to by:
- (1) any breach of this Agreement by the Developer;
 - (2) any breach of any other Oversight Development Agreement by the Developer or any of its Associates who is a counterparty to the Oversight Development Agreement; or
 - (3) any act or omission by the Developer or any of its Associates other than to the extent any such act or omission is authorised or permitted under an Oversight Development Agreement;
- (b) **(caused by Project Co)**: to the extent that the Relief Event is caused or contributed to by:
- (1) any breach of the Project Agreement by Project Co or any Project Co Associate; or
 - (2) any act or omission by Project Co or any Project Co Associate other than to the extent any such act or omission is authorised or permitted under the Project Agreement;
- (c) **(failure to mitigate)**: to the extent the Developer, or any of its Associates, fails to:
- (1) use all reasonable endeavours to mitigate, minimise or avoid the effects, consequences or duration of:
 - (A) any event giving rise to a Relief Event; or
 - (B) circumstances giving rise to a Relief Event,
(including by putting in place temporary measures reasonably required by the State provided that the Developer is not required to take any such measures if those measures would result in time, cost or expense such that a prudent, competent and experienced developer in the circumstances of the Developer would not undertake in response to the Relief Event); or
 - (2) take all reasonable steps which a prudent, competent and experienced developer in the circumstances of the Developer or the relevant Associate of the Developer would have taken to mitigate, minimise or avoid the effects, consequences or duration of the event or circumstances giving rise to a Relief Event; and
- (d) **(insurance proceeds)**: by the aggregate of any insurance proceeds:
- (1) payable to the Developer or any of its Associates under any Insurances in respect of the event or circumstances giving rise to a Relief Event; and
 - (2) which would have been payable to the Developer or any of its Associates under any Insurance in respect of the event or circumstances giving rise to a Relief Event but for a failure by the Developer to comply with this Agreement or a failure by the Developer or any of its Associates to comply with the terms of those Insurances.



22.1 Notification of Defects of State Concern

The State may advise the Developer of all Defects of State Concern in the Oversight Development Works after the State becomes aware of them.

22.2 Obligation to rectify

- (a) Subject to the following provisions, the Developer must correct and rectify any Defects of State Concern notified in writing by the State to the Developer during the Defects Liability Period as soon as practicable after it is advised of them and where the State indicates, on reasonable grounds, that a Defect of State Concern is of a kind which may potentially have a material effect on the Station or the Lease Land if not addressed quickly, the Developer must correct and rectify that Defect of State Concern as a matter of urgency, but if the Defect of State Concern is not reasonably capable of being rectified within 5 Business Days after the State has requested rectification, the Developer must, not later than 5 Business Days after the request is made, give the State a plan for rectifying that Defect of State Concern (**Rectification Plan**) within a reasonable period (having regard to the nature of the Defect of State Concern) and must then comply with and diligently implement the Rectification Plan.
- (b) Any dispute about a Defect of State Concern is to be referred to the Independent Certifier for determination.

22.3 Access to Lease Land

The Developer will allow the State and the Independent Certifier to have access to the Lease Land for the purpose of inspecting any Defects of State Concern and, if the Developer fails to rectify any Defect of State Concern in accordance with clause 22.2, carrying out any necessary rectification works, subject to the following provisions:

- (a) the State must give reasonable advance notice to the Developer of its wish to have access to the Lease Land;
- (b) access for inspection will be taken at reasonable times stipulated by the Developer and in accordance with the Station Land Management Agreement; and
- (c) rectification of Defects of State Concern must be carried out at times and in such manner as to minimise disruption to or interference with the use of the Lease Land.

22.4 Cost of Rectification of Defects of State Concern

If and to the extent that rectification works are not carried out by the Builder, or any security provided by the Builder under the Building Contract is insufficient to meet the cost of carrying out those rectification works, the parties agree as follows:

- (a) the Developer will meet and pay any additional costs in connection with the rectification of any Defects of State Concern; and
- (b) the Developer will pay or reimburse to the State any costs actually, reasonably and properly incurred by the State in connection with any rectification of Defects of State Concern undertaken by the State as determined by the Independent Certifier.

22.5 Release of Security



Despite any clause in this Agreement, the Developer may not release any security it holds under the Building Contract in relation to the rectification of Defects of State Concern without the approval of the State, which approval may be withheld unless all Defects of State Concern have been rectified.

23 [not disclosed]

[not disclosed]

24 Train Franchise Agreement

24.1 Application of clause 24

This clause 24 applies where:

- (a) Station Final Acceptance has occurred; and
- (b) all or any part of the Station Land is occupied by the Train Franchisee under the Train Infrastructure Lease.

24.2 Cooperation

- (a) The Developer agrees to promptly and fully co-operate in the planning and delivery of the Oversight Development under the Train Franchise Agreement including:
 - (1) doing all things required to assist PTV, or the State, to facilitate the planning of the Oversight Development under Part 2 of the Train Franchise Agreement and comply with the requirements of PTV, or the State; and
 - (2) for any part of the Oversight Development that is nominated as a State Project, doing all things required to assist PTV, or the State or any other person, as PTV's nominated project manager to deliver the Oversight Development under Part 3 of the Train Franchise Agreement and comply with the requirements of PTV, the State or any other person as PTV's nominated project manager in that regard.

24.3 Disruptions to rail services

- (a) Where the primary cause of the delay or disruption with respect to the operations under the Train Franchise Agreement was:
 - (1) a Disruption; or
 - (2) any other incident arising out of or a breach of this Agreement,the State may give the Developer a notice specifying that a Disruption event has occurred and detail the nature of that Disruption (**Disruption Event Notice**).
- (b) Upon receipt of a Disruption Event Notice, if:
 - (1) the Disruption is capable of being remedied or cured, the Developer



- must remedy or cure the Disruption as soon as practicable after receipt of the Disruption Event Notice; or
- (2) the Disruption is not capable of being remedied or cured within a reasonable period after receipt of the Disruption Event Notice the Developer must promptly prepare and submit to the State Representative, a plan describing the measures to be taken by the Developer to ensure that ongoing construction works associated with completion of the Oversight Development Works will not cause any further Disruption (**Disruption Management Plan**).
 - (c) If the Developer fails to comply with the Disruption Management Plan, the State may give a notice to the Developer requiring the Developer to comply with the Disruption Management Plan within 10 Business Days of the notice of receipt of the Disruption Event Notice (**DMP Compliance Notice**).
 - (d) If the Developer fails to comply with the DMP Compliance Notice, the State may immediately suspend the Developer from carrying out any Oversight Development Works until the Developer complies with the DMP Compliance Notice.

24.4 Train Franchisee

- (a) The Developer acknowledges that:
 - (1) part of the Station Land is occupied by the Train Franchisee under the Train Infrastructure Lease;
 - (2) the Developer's access to the Station Land is subject to the Station Land Management Agreement; and
 - (3) the Developer will not make any demands, objections, claim compensation or refuse or delay payment of any money due to the State arising out of this clause 24.

25 Final Completion

25.1 Final Completion

- (a) Final Completion will occur on the later of the date on which:
 - (1) the Station Land Management Agreement is in an agreed final form;
 - (2) the Independent Certifier certifies to the State and the Developer that the Oversight Development Works have achieved Practical Completion;
 - (3) [not disclosed];
 - (4) [not disclosed];
 - (5) [not disclosed]; and
 - (6) [not disclosed].
- (b) For the purposes of clause 25.1(a)(5):
 - (1) the Developer must provide the State with an interim retail activation plan no later than 90 days prior to the proposed date of Final Completion and the parties must seek to agree the contents of the

retail activation plan within 45 days of receipt of the interim retail activation plan by the State; and

- (2) the interim retail activation plan must provide that:
- (A) to the extent that a tenant has been procured for a retail tenancy and the relevant retail works are under construction, appropriate hoardings will be provided;
 - (B) access to the station will be maintained through an agreed management plan; and
 - (C) retail outlets to be leased will be activated with appropriate hoardings with artwork and/or signage.

25.2 Notices of completion

- (a) The Developer must give the State:
- (1) a notice 60 Business Days from the date on which the Developer considers the Oversight Development Works will reach Practical Completion and Final Completion advising the State of these dates;
 - (2) a notice when the Developer considers the Oversight Development Works have reached Practical Completion; and
 - (3) a notice when the Developer considers the Oversight Development Works have reached Final Completion (including specifying the date on which the Oversight Development Works reached Practical Completion as certified by the Independent Certifier).
- (b) To the extent reasonably practicable, the notice under clause 25.2(a)(1) must attach evidence showing the status of each of the conditions required to be met in order for the Developer to achieve Practical Completion and Final Completion.

25.3 Certificate of Practical Completion of Oversight Development Works

- (a) The State, the Developer and the Independent Certifier must together inspect the Oversight Development Works as soon as possible after the date which the Developer considers the Oversight Development Works have reached Practical Completion as specified in the notice given by the Developer under clause 25.2(a)(2).
- (b) If after an inspection under clause 25.3(a) the Independent Certifier is of the opinion that:
- (1) Practical Completion has been reached, the Independent Certifier must promptly issue a Certificate of Practical Completion specifying the Practical Completion has occurred; or
 - (2) Practical Completion has not been reached, the Independent Certifier must as soon as possible, prepare and provide to the parties a notice detailing reasons why Practical Completion has not been reached.
- (c) When the reasons notified by the Independent Certifier under clause 25.3(b)(2) have been made good in accordance with this Agreement, the Developer must give a notice of when it considers the Oversight Development Works have reached Practical Completion and this clause 25.3 will apply again.
- (d) The Independent Certifier's decisions are final and binding on the parties.



25.4 Certificate of Final Completion

- (a) As soon possible after the State receives a notice under clause 25.2(a)(3), the State, acting reasonably, must issue a written notice to the Developer advising the Developer:
- (1) that it is of the opinion that the remaining matters of Final Completion other than in respect of Practical Completion (which the Independent Certifier's decision is final and binding in accordance with clause 25.3) (**Remaining Matters of Final Completion**) have been achieved; or
 - (2) that it is not of the opinion that the Remaining Matters of Final Completion have been achieved, including detailed reasons of why it does not consider that the Remaining Matters of Final Completion have been achieved.
- (b) If:
- (1) the State does not issue a notice under clause 25.4(a) within 20 Business Days of receipt of the notice under clause 25.2(a)(3); or
 - (2) the Developer, acting reasonably, considers that the Remaining Matters of Final Completion have been achieved, despite the State's issuing a notice under clause 25.4(a)(2),
- the matter must be referred to the Independent Certifier.
- (c) If:
- (1) the State issues a notice in accordance with clause 25.4(a)(1); or
 - (2) the Independent Certifier has made his or her determination that the Remaining Matters of Final Completion have been achieved after referral of the matter in accordance with clause 25.4(b),
- the Developer must deliver to the State a Certificate of Final Completion and Final Completion will be taken to have occurred on the date specified in the certificate.

25.5 Station Final Acceptance

- (a) If Station Final Acceptance occurs, or is reasonably likely to occur, prior to completion of the Oversight Development Works, in addition to the Developer's obligations under clause 23, the Developer must provide to the State, at least 2 months prior to the estimated date of Station Final Acceptance, a construction management plan demonstrating to the satisfaction of the State the measures to be taken by the Developer to ensure that ongoing construction work associated with completion of the Oversight Development Works will not cause any material interference to the operation of the Stations and the provision of the Services by Project Co.
- (b) The Developer must ensure that the construction management plan referred to in clause 25.5(a) is complied with at all times.

26 Agreement to Lease

26.1 Commercial Lease



- (a) Subject to clause 26.5, on the earlier of:
- (1) the Final Completion Date; and
 - (2) the date specified in the Lease Commencement Notice given to the State in accordance with clause 26.5,
- the State must grant, or procure the grant of, a lease of the Lease Land to the Tenant for a term commencing on the Lease Commencement Date and expiring on the Expiry Date on the terms and conditions set out in the Commercial Lease.
- (b) The State must take all steps and do all things necessary to ensure that, at the time of its execution of the Commercial Lease, the State is the registered proprietor of the Lease Land, or is otherwise entitled to grant, or procure the grant of, the Commercial Lease to the Tenant and must, subject to clause 26.1(c), and if requested by the Developer, execute, or cause to be executed, the Commercial Lease in registrable form and do all things reasonably required by the Developer to enable the Commercial Lease to be registered at Land Victoria.
- (c) No later than 5 Business Days (or such shorter period as the State agrees) prior to Lease Commencement Date, the Developer must deliver to the State two counterparts of the Commercial Lease executed by the Tenant.
- (d) The Developer on behalf of the Tenant authorises the State to complete the Commercial Lease by inserting:
- (1) the Lease Land in the lodging form for the Commercial Lease;
 - (2) the Lease Commencement Date in the lodging form for the Commercial Lease;
 - (3) the Expiry Date in the lodging form for the Commercial Lease;
 - (4) pursuant to clause 26.2(g), the Commercial Lease Plan as Schedule 1 of the Commercial Lease; and
 - (5) any other particulars necessary to complete the Commercial Lease.
- (e) The State must complete the counterparts of the Commercial Lease delivered by the Developer, execute, or cause to be executed, each counterpart and return one of the completed and executed counterparts to the Developer within 10 Business Days after receipt of the Commercial Lease executed by the Tenant under clause 26.2(c).
- (f) Pending completion and execution of the Commercial Lease by, or at the direction of, the State under clause 26.1(e), the parties to the Commercial Lease will be bound by the terms and conditions of the Commercial Lease presented by the Developer pursuant to clause 26.1(c) from the Lease Commencement Date irrespective of whether the State has completed and executed, or cause to be executed, the Commercial Lease by that date.
- (g) For the purposes of clause 26.1(d)(4), the draft Commercial Lease Plan attached as Attachment 6 will be the Commercial Lease Plan on the Lease Commencement Date and form part of the Commercial Lease until replaced by the operation of clause 26.2.

26.2 Commercial Lease Plan

- (a) The Developer must at its own cost and expense following completion of the Oversight Development Works submit to the State Representative for approval:



- (1) updated survey plans which are based on, and consistent with the draft Commercial Lease Plan attached as Attachment 6 and which:
 - (A) identifies the location and extent of the Oversight Development;
 - (B) identifies the leased areas to be included in the Commercial Lease; and
 - (C) takes into account amendments to the draft Commercial Lease Plan as a result of changes, if any, made to the Concept Design Documents by the Reviewable Design Documentation or the Endorsed Plans (and no other changes); and
 - (2) a certificate which certifies that the Oversight Development Works have been constructed within all relevant boundaries, signed by a licensed surveyor (the **Survey Plan and Certificate**); and
 - (3) a report which identifies the amendments (if any) required to be made to the draft Commercial Lease Plan as a result of changes, if any, made to the Concept Design Documents by the Reviewable Design Documentation or the Endorsed Plans.
- (b) If required by the State, the Developer must make available, at the cost and expense of the Developer, the appropriate personnel to explain the Survey Plan and Certificate or provide information in relation to the Survey Plan and Certificate in such form as the State reasonably requests.
 - (c) The State must, within 20 Business Days after the date the State has received all relevant documents and information from the Developer in accordance with clauses 26.2(a) and 26.2(b):
 - (1) approve the Survey Plan and Certificate; or
 - (2) submit amendments to the Survey Plan and Certificate.
 - (d) If the State approves the Survey Plan and Certificate submitted by the Developer in accordance with clause 26.2(a)(1) and 26.2(a)(2), then the Survey Plan and Certificate will be the Commercial Lease Plan.
 - (e) If the State submits amendments to the Survey Plan and Certificate, then:
 - (1) the Developer and the State must consult in good faith with respect to, and use their reasonable endeavours to establish, the amendments required to the Survey Plan and Certificate; and
 - (2) if, and to the extent that, those amendments are agreed, the revised Survey Plan and Certificate agreed by the State and the Developer will be the Commercial Lease Plan.
 - (f) If the State and the Developer do not agree on the amendments required to the Survey Plan and Certificate within 10 Business Days after the commencement of the consultation pursuant to clause 26.2(e) then:
 - (1) the State and the Developer must refer the dispute to an independent expert for resolution in accordance with clause 44.3; and
 - (2) when the independent expert has made his or her determination in relation to any matter referred pursuant to this clause 26.2(f) the Survey Plan and Certificate as determined by the independent expert will be the Commercial Lease Plan.
 - (g) The Commercial Lease Plan will, upon coming into existence pursuant to this



clause 26.2, be deemed to form Schedule 1 of the Commercial Lease, and the State must promptly annex the Commercial Lease Plan to the execution copies of the Commercial Lease.

- (h) The parties agree that if at any time the Developer or Tenant obtains or intends to obtain planning approval for areas beyond the Lease Land as indicated in Attachment 6, the Developer may request that additional land be included in the Lease Land and the State will consider this in good faith.

26.3 Termination of this Agreement

The parties acknowledge and agree that if this Agreement is terminated by either the Developer or the State for any reason prior to Final Completion, the Developer ceases to have any entitlement to call for the Commercial Lease and has no further interest or entitlement (whether legal or equitable) in or to the Site.

26.4 Nomination under Commercial Lease

- (a) Subject to clause 26.4(c), the Developer may nominate a Developer's Investor in substitution for the Developer for the purpose of entering into the Commercial Lease.
- (b) If the Developer's Investor is a Lendlease Fund, the Developer may nominate that Lendlease Fund under clause 26.4(a) by giving notice to the State together with details of identity and corporate structure of that Lendlease Fund. For the avoidance of doubt, the State's prior approval is not required if the Developer's Investor is a Lendlease Fund.
- (c) If the Developer's Investor is not a Lendlease Fund, the Developer may nominate that Developer's Investor under clause 26.4(a) only if:
 - (1) in the event the State requires Probity Investigations to be carried out in respect of the Developer's Investor, the State's probity requirements as described in clause 62 of the Project Agreement are satisfied; and
 - (2) the Developer's Investor has obtained any required FIRB approval or the Developer's Investor will obtain any required FIRB approval within 60 days of the date the Developer nominates that Developer's Investor under clause 26.4(a); and
 - (3) the State is satisfied (acting reasonably) that the Developer's Investor has the financial capacity, experience and capability to perform the obligations of the Developer under the Commercial Lease to at least the standards required by the Commercial Lease.
- (d) For any nomination under clause 26.4(a) the Developer acknowledges that:
 - (1) it will not be released or discharged from any obligation it owes to the State under this Agreement as a result of the nomination; and
 - (2) it remains at all times liable for the performance of this Agreement.

26.5 Early commencement of Commercial Lease

- (a) The Developer may at any time after CBD South OSD Acceptance, give the State written notice requiring the State to grant the Commercial Lease to the Tenant from a date which is not less than 1 month after the date of the notice from the Developer (**Lease Commencement Notice**).
- (b) The Developer acknowledges that despite the issuing of a Lease



Commencement Notice to the State in accordance with this clause 26.5, the Developer:

- (1) will not be released or discharged from any obligation under this Agreement; and
- (2) remains at all times liable for the performance of this Agreement.

27 [not disclosed]

[not disclosed]

28 Use of Oversight Development

28.1 Prohibited Business

- (a) Subject to clause 28.1(c), the Developer must not operate or permit the operation of any Prohibited Business at the Oversight Development or on the Lease Land.
- (b) The Lease Land and the Oversight Development must only be used by the Developer, or be permitted by the Developer to be used by others, for purposes which are permitted under the Planning Scheme and which are not Prohibited Businesses.
- (c) If the State has notified the Developer of a business or activity which is offensive to users of the Station for the purpose of the definition of Prohibited Business, the Developer may only permit the operation of that Prohibited Business if, at the time the State notified the Developer of that business or activity, the Developer had already commenced negotiations with a proposed sub-tenant which use of that sub-tenancy for that Prohibited Business (which use may continue for that sub-tenancy until the expiry of that sublease).

28.2 Advertising

- (a) Any advertising placed on the Lease Land or any part of the Oversight Development or the Oversight Development Works by or on behalf of the Developer must:
 - (1) comply with all applicable Laws and Approvals;
 - (2) not depict subject matter which is or reasonably would be regarded as offensive; and
 - (3) comply with the Advertising Restrictions.
- (b) At the request of the Developer, the State must do all things reasonably necessary to assist the Developer to obtain all necessary advertising Approvals.

28.3 Station Land Management Agreement



- (a) No later than 120 Business Days prior to the Scheduled Date for Final Completion the State agrees to provide the Developer with:
 - (1) a Station Land Management Plan; and
 - (2) a draft form of Station Land Management Agreement substantially consistent with the principles contained in Attachment 14.
- (b) The parties must ensure that:
 - (1) they act reasonably, expeditiously and in good faith in finalising the Station Land Management Agreement and the Station Land Management Plan by Final Completion; and
 - (2) the Station Land Management Agreement must be substantially consistent with the principles contained in Attachment 14 and must be in a form reasonably acceptable to the parties having regard to the Oversight Development, the Station, the Section 173 Agreement and the Interfaces.
- (c) The State and the Developer must ensure the:
 - (1) the Station Land Management Plan and Station Land Management Agreement include the Lease Access Plan as approved by the State in accordance with clause 16.6; and
 - (2) the Station Land Management Plan and Station Land Management Agreement are consistent with the Lease Access Plan as approved by the State in accordance with clause 16.6.
- (d) Within 40 Business Days after the State receives the Station Land Management Plan outlining the information in clause 28.3(b), the State must provide the Developer with comments on the Station Land Management Plan.
- (e) The Developer must take into account the State's comments given under clause 28.3(d) in finalising that Station Land Management Plan.
- (f) If the Developer does not take into account the State's comments or requested changes to a Station Land Management Plan under clause 28.3(d), the Developer must, within 20 Business Days of receipt of the State's comments under clause 28.3(d), provide to the State detailed reasons.
- (g) If the State is not satisfied with the Developer's detailed reasons in clause 28.3(f) for not taking into account the State's comments or requested changes to the Station Land Management Plan, the parties agree that, within 10 Business Days after the State receives the Developer's detailed reasons under clause 28.3(f), the dispute will be referred for expert determination in accordance with clause 44.3.
- (h) Prior to Final Completion the Developer must:
 - (1) procure that the Tenant sign the Station Land Management Agreement; and
 - (2) provide the Station Land Management Agreement signed by the Tenant to the State.

28.4 Dealings with CBD South by the State

- (a) The State must not Deal with CBD South other than in accordance with this clause 28.4.
- (b) The State may transfer CBD South to any other Government Agency



representing the Crown.

- (c) The State must not transfer, or grant a concurrent lease in respect of, its interest in CBD South to a third party.
- (d) The State must not (without the Developer's prior approval which must not be unreasonably withheld or which approval may be given with such conditions as determined by the Developer acting reasonably) grant or register or permit to be granted or registered in respect of the CBD South any Real Property Dealing which negatively affects:
 - (1) any part of the Lease Land;
 - (2) the Tenant's access to or use of any of CBD South or those parts of CBD South which the Tenant may require under the Commercial Lease;
 - (3) the Tenant's rights under the Commercial Lease; or
 - (4) the ability of either party to perform its obligations under the Commercial Lease.

29 Development Fee

- (a) The Developer must pay the Development Fee in accordance with this clause 29.
- (b) [not disclosed].
- (c) If after the Development Fee has been paid, the Development Fee is increased or decreased under the terms of this Agreement, the parties must adjust the Development Fee within 5 Business Days of the Final Completion Date.

30 Intellectual Property Rights

30.1 Definitions

In this clause:

- (a) **Security Interest** means any mortgage, pledge, lien or charge or any security or preferential interest or arrangement of any kind and includes:
 - (1) a "security interest" as defined in clause section 12 of the *Personal Property Securities Act 2009 (Cth)*;
 - (2) anything which gives a creditor priority to other creditors with respect to any asset; and
 - (3) retention of title (other than in the ordinary course of day-to-day trading) and a deposit of money by way of security.
- (b) **Moral Rights Consent** means a consent by the owner of such rights.

30.2 No infringement of Developer Material

- (a) The Developer represents and warrants that:

- (1) neither the development nor use for or in relation to the Oversight Development of any Developer Material (or any component or any modification, adaptation or derivative of any Developer Material) will infringe any Intellectual Property Rights, Moral Rights or other rights of any person or otherwise contravene any Law or give rise to any Liability to make royalty or other payments to any person;
- (2) there is not, and the Developer must not create or allow, any Security Interest over any Intellectual Property Rights in any Developer Material (or any component or any modification, adaptation or derivative of any Developer Material) that prevents the Developer Material from being used in accordance with the licence granted under clause 30.3(b);
- (3) it holds all rights and interests (including all Intellectual Property Rights) in, or has obtained all necessary licences, consents and waivers (including in respect of Moral Rights) relating to, any Developer Material to be licensed to the State under clause 30.3(b) and is not, and will not be, prevented from so licensing these rights and interests;
- (4) it has the right to sub-licence to the State, on the terms of clause 30.3(b), any Developer Material the Intellectual Property Rights or Moral Rights in which are owned by a third party; and
- (5) there has not, and will not be, any assignments, licences, options or other dealings with the Intellectual Property Rights or Moral Rights in the Developer Material licensed to the State under the licence granted under clause 30.3(b), in a way that conflicts with or derogates from, or would conflict with or derogate from, these rights.

30.3 Licence of Developer Material

- (a) This clause 30.3 only applies if this Agreement has been terminated under clause 37.
- (b) The Developer gives to the State an irrevocable, perpetual, fully paid-up royalty free, non-exclusive licence to use (including to reproduce and adapt), any Developer Material for the purposes of the Oversight Development or involving the Oversight Development Works or the Site.
- (c) The licence granted under clause 30.3(b):
 - (1) includes a licence of all the Intellectual Property Rights in the Developer Material for the purposes referred to in clause 30.3(b);
 - (2) includes the right to sub-licence use of any Developer Material to any person for the purposes referred to in clause 30.3(b); and
 - (3) will survive fundamental breach, repudiation, rescission, frustration, suspension, discharge, termination or expiration of this Agreement.
- (d) The Developer may register or patent any registrable or patentable Intellectual Property Right which it:
 - (1) develops;
 - (2) discovers; or
 - (3) first reduces to practice,
 in respect of the Oversight Development, but in doing so, must not conflict with or



derogate from the licence granted under clause 30.3(b).

- (e) The State acknowledges that, except as provided for under this clause 30.3, the Developer and applicable third parties retain ownership of the Intellectual Property Rights in all Developer Material developed by the Developer or those third parties in connection with the Oversight Development.
- (f) The Developer will be responsible for, and will release each of the State and the State Related Parties, and any sub-licensees permitted under the licence granted under clause 30.3(b), on demand, from and against all Liability for:
 - (1) any Claims brought by any third party; and
 - (2) any other Loss,which may arise out of, or in consequence of, an actual, potential or alleged breach of a representation or warranty given under clause 30.3(b).
- (g) If there is, or is likely to be, a claim of the type described in clause 30.3(f), the Developer must, at its expense, use its best endeavours to:
 - (1) modify or replace the Developer Material or the aspect of the Oversight Development Works that is subject of the Claim so that the infringement (or alleged infringement) is removed; and
 - (2) if the modification or replacement under clause 30.3(g)(1) cannot be achieved, promptly procure the right for the State to continue to use the Developer Material or the aspect of the Oversight Development Works that is subject of the Claim.
- (h) Without limiting clause 30.3(g), where the State wishes to contest a claim of the type described in clause 30.3(f):
 - (1) the State will give notice of the relevant claim as soon as reasonably practicable setting out full particulars of the claim;
 - (2) the State may either:
 - (A) require that the Developer, at its own expense and with the assistance and cooperation of the State, have the conduct of the claim, including its compromise or settlement; or
 - (B) at the Developer's expense and with the assistance and cooperation of the Developer, have the conduct of the claim, including its compromise or settlement;
 - (3) if the State wishes to have conduct of the claim, the Developer will give reasonable security to the State for any cost or Liability arising out of the conduct of the claim by the State; and
 - (4) if the State wishes the Developer to have conduct of the claim, the Developer must not enter into any compromise or settlement of the claim without the prior written consent of the State.

30.4 Moral rights

The Developer, in respect of the Developer Material:

- (a) to the extent permitted by Law, will not, and will take all reasonable steps to ensure that the Developer's Associates and any Subcontractor do not sue, enforce any Claim, bring any action or exercise any cure in respect of any breach or alleged breach of any person's Moral Rights (whether before or after the Commencement Date) in respect of any Developer Material against:



- (1) the State or the State's Associates; or
 - (2) any third party to whom the State sub-licenses (whether express or implied), or grants any other right to use, possess, modify, vary or amend any Developer Material;
- (b) will use all reasonable endeavours to procure (without coercion) that all individuals who are, or are to be, or may be, authors of any Developer Material, sign, date and return to the Developer a Moral Rights Consent (in consideration for the payment of [not disclosed] to that individual) prior to those individuals commencing work on the creation of any Developer Material, or as soon as practicable thereafter, in which each such individual becomes bound by the obligations to the State as set out in the Moral Rights Consent, and to pay each such individual the sum of [not disclosed] on behalf of the State;
- (c) will within 5 Business Days after a request by the State, provide to the State any Moral Rights Consent which is obtained pursuant to clause 30.4(b) as requested by the State; and
- (d) will maintain an up-to-date record of the names and contact details of each person who is an author of any Developer Material and the Developer Material of which such person is an author, and provide a copy of any updated records to the State upon request.

30.5 Developer Material

Without limiting the Developer's other obligations under this Agreement with respect to the delivery of any Developer Material, the Developer will provide, and procure that its Associates provide in electronic format, all documentation, information and assistance and materials as the State may reasonably require for the State's:

- (a) use and enjoyment of the Developer Material; or
 - (b) use and exercise of the Development Intellectual Property Rights,
- in connection with the Oversight Development.

31 Taxes and Utility Services

31.1 General Liability for Taxes

Subject to clauses 33 and 32 and other than the State's obligation to pay Rates and Taxes under clause 31.2, the Developer must pay any Liability for Taxes payable by the Developer in the ordinary course of the Developer's business and calculated by reference to this Agreement and any transaction evidenced or contemplated by them. References to Taxes in this clause 31.1 excludes stamp duty.

31.2 Liability for Rates and Taxes

The State must pay all Rates and Taxes assessed in respect of the Site for the period until the Final Completion Date irrespective of whether or not the assessment is addressed to the State or the Developer.

31.3 Utility Services

The Developer must:



- (a) pay all charges (including service charges) for Utility Services to or from the Site, together with any costs charged or levied by the service provider in respect of the provision or maintenance of the infrastructure which provides or supplies those Utility Services exclusively to the Site; and
- (b) if required by the State, and if no separate meter exists for recording or metering of any of the Utility Services or substances supplied to the Site, install, or arrange for the installation of, meters at the Developer's own cost and expense.

31.4 Shared Utility Services

Where the infrastructure which supplies or provides any of the Utility Services referred to in clause 31.3(a) supplies or provides those services not only to part of the Site but also to other land owned by or leased or licensed to the State or any other Authority of the State, the Developer must pay or reimburse the State (as the case may be), a proportion of any costs charged or levied by the supplier or provider in respect of the maintenance of that infrastructure, such proportion to be calculated as follows:

- (a) in respect of the infrastructure relating to the supply or provision of Utility Services except services referred to in clause 31.4(b), the proportion will be the proportion which the number of outlets for the applicable Utility Service within that part of the Site serviced by that infrastructure bears to the total number of outlets for that service within the total area of the land owned by or leased or licensed to the State which is serviced by that infrastructure; and
- (b) in respect of drainage, the proportion will be the proportion which the area of that part of the Site which is serviced by the relevant drain bears to the total area of the land owned by or leased or licensed to the State which is serviced by that drain.

32 [not disclosed]

[not disclosed]

33 Goods and Services Tax (GST)

- (a) **(GST exclusive amounts):** Unless otherwise expressly stated, all amounts referred to in this Agreement or any other Oversight Development Agreement are exclusive of GST.
- (b) **(GST payable by Supplier):** If GST becomes payable on any Taxable Supply made by a party (**Supplier**) under or in connection with this Agreement:
 - (1) any amount payable or consideration to be provided in accordance with any other provision of this Agreement for that supply (**Agreed Amount**) is exclusive of GST;
 - (2) an additional amount will be payable by the party which is the recipient of the Taxable Supply (**Recipient**), equal to the amount of GST payable on that Taxable Supply as calculated by the Supplier in accordance with the GST Law, which will be payable at the same time and in the same manner as for the Agreed Amount; and



- (3) the Supplier will provide a Tax Invoice to the Recipient in connection with that supply, either at the time expressly set out in any other provision of this Agreement or no later than the time at which the Agreed Amount for that Taxable Supply is to be provided in accordance with this Agreement. The Recipient is not obliged to pay any amount in accordance with this clause 33(b) unless and until a Tax Invoice is received by the Recipient in connection with the Taxable Supply except where the Recipient is required to issue the Tax Invoice.
- (c) **(Variation in GST payable):** If for any reason, the GST payable by the Supplier in connection with a supply it makes under or in connection with this Agreement (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it received from the Recipient under clause 33(b) in connection with that supply, the Supplier will provide a refund or credit to, or will be entitled to receive from, the Recipient (as appropriate) the amount of this variation. Where an adjustment event occurs in relation to a supply and except where the Recipient is required to issue the Adjustment Note:
- (1) the Supplier will issue an Adjustment Note to the Recipient in connection with that supply within 14 days after becoming aware of that adjustment event occurring; and
- (2) no additional amount will be payable by the Recipient unless and until an Adjustment Note is received by the Recipient.
- (d) **(GST ceasing to be payable):** No amount is payable by a party in accordance with clause 33(b) or 33(c) to the extent that the GST to which the amount relates has ceased to be payable by or refundable to the Supplier by the Commissioner of Taxation under the GST Law.
- (e) **(Expert determination):** If the Recipient is dissatisfied with any calculation to be made by the Supplier in accordance with this clause 33 the Recipient may, at its own expense and after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the President of the Institute of Chartered Accountants for expert determination, which will be final and binding on all parties (except in the case of manifest error). The expert will act as an expert and not as an arbitrator and must take into account the terms of this Agreement, the matters required to be taken into account by the Supplier in accordance with this clause 60 and any other matter considered by the expert to be relevant to the determination. The parties release the expert from any liability in acting as an expert, except in the case of fraud on the part of the expert.
- (f) **(Revenue net of GST):** Any reference in this Agreement or any Oversight Development Agreement Document to price, value, sales, revenue, profit or a similar amount (**Revenue**), is a reference to the GST exclusive component of that Revenue, unless the contrary intention is expressed.
- (g) **(Cost net of GST):** Any reference in this Agreement or any Oversight Development Agreement Document to cost, expense, liability or other similar amount (**Cost**) of a party, is a reference to that Cost reduced by the Input Tax Credits to which the party is entitled in respect of such Cost, unless the contrary intention is expressed.
- (h) **(Recipient Supply):** To the extent that the consideration provided for the Supplier's taxable supply to which clause 33(b) applies is a taxable supply made by the Recipient (**Recipient Supply**), then:



- (1) the additional amount for GST that would otherwise be payable by the Recipient to the Supplier in accordance with clause 33(b)(2) shall be reduced by the amount of GST payable by the Recipient on the Recipient Supply; and
 - (2) the Recipient must issue to the Supplier a tax invoice for any Recipient Supply at the same time that the Supplier is required to issue a tax invoice to the Recipient for the Supplier's corresponding taxable supply pursuant to clause 33(b)(3).
- (i) **(General obligation):** Each party agrees to do all things, including providing Tax Invoices and other documentation, that may be necessary or desirable to enable or assist the other party in determining its GST payable on any supply made by that other party in connection with this Agreement, or any Input Tax Credits, adjustments or refunds in relation to any amount of GST paid or payable in connection with any supply made in connection with this Agreement.
 - (j) **(GST Groups):** For the purposes of this Agreement, a reference to GST payable on a Taxable Supply made by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member and a reference to an Input Tax Credit entitlement of a party includes any corresponding Input Tax Credit entitlement of the representative member of any GST group of which that party is a member, and if a party to this Agreement makes a Taxable Supply by virtue of entering into or performing this Agreement and the 'recipient' of that Taxable Supply (within the meaning of the GST Act) is an Associate of another party to this Agreement (which for this purpose includes, in relation to the State, the Secretary), that other party to this Agreement will be obliged either to pay the amount referred to in clause 33(b)(2) or procure that the actual recipient pays the relevant amount, and the payer of that amount shall be the 'Recipient' for the purposes of this clause 33 in relation to the relevant Taxable Supply.
 - (k) **(Agreement to prevail):** If, but for this clause 33(k), a GST clause in another Oversight Development Agreement Document would apply in connection with a Taxable Supply to which this clause 33 also applies, then this clause 33 will apply in connection with that supply and the GST clause in the other Oversight Development Agreement Document will not apply.
 - (l) **(Definitions):** In this clause 33 unless otherwise defined in this Agreement, terms used have the meanings given to them in the GST Law.

34 Payments

34.1 Interest

If any moneys due and owing to any party under this Agreement or any other Oversight Development Agreement remain unpaid after its due date, then interest will accrue daily at the Default Rate, and will be due and payable from the due date up to and including the date upon which the moneys are paid.

34.2 No Prejudice

Except to the extent expressly provided otherwise, suspension of any of the Developer's obligations under this Agreement or any other Oversight Development Agreement will not limit, prejudice or affect the State's power under this Agreement or any other Oversight

Development Agreement to abate, deduct from, reduce, set-off or suspend payment of any amount payable under this Agreement or any other Oversight Development Agreement.

35 Default

35.1 Notification

If a Default occurs, the State Representative may give the Developer a notice in writing specifying that the Default has occurred and the nature of the Default (**Default Notice**).

35.2 Default capable of cure

- (a) Upon receipt of a Default Notice, if:
 - (1) the Default is capable of being remedied or cured, the Developer must remedy or cure the Default within 20 Business Days; or
 - (2) the Default is not capable of being remedied or cured within 20 Business Days it must promptly (and within no more than 20 Business Days of receipt of the Default Notice) prepare and submit to the State Representative for its approval, a draft plan describing the actions and measures the Developer will diligently pursue for the future prevention, remedying or curing of the Default having regard to the cause of the Default (**Draft Cure Plan**).
- (b) Within 10 Business Days after receipt of a Draft Cure Plan, the State must either (acting reasonably):
 - (1) accept the Draft Cure Plan by notifying the Developer; or
 - (2) reject the Draft Cure Plan by notifying the Developer and providing reasons to the Developer for its rejection.
- (c) If the State approves a Draft Cure Plan pursuant to clause 35.2(b)(1) (**Approved Cure Plan**):
 - (1) the Developer must comply with, and diligently pursue the remedy or cure of the Default in accordance with, the Approved Cure Plan; and
 - (2) the period of time in the Approved Cure Plan to remedy or cure the Default is the cure period (**Applicable Cure Period**).
- (d) If the Developer complies with clause 35.2(c), while the Developer is diligently pursuing an Approved Cure Plan the Default will be deemed to be remedied or cured.
- (e) If the State rejects a Draft Cure Plan pursuant to clause 35.2(b)(2), the Developer, in consultation in good faith with the State, must amend the Draft Cure Plan to meet the requirements of the State and submit the amended Draft Cure Plan to the State for its approval, in which case this clause 35.2 will apply to the amended Draft Cure Plan as if it were originally submitted under clause 35.2(a).

35.3 Extending Cure Periods

- (a) If the Developer reasonably determines that it requires an extension to an



Applicable Cure Period it may (no later than the expiration of the then Applicable Cure Period) submit in writing to the State:

- (1) evidence that the Developer has diligently pursued and is continuing to diligently pursue a remedy or cure of the applicable Default in accordance with the applicable Approved Cure Plan but that the Default cannot, despite such diligence, be remedied or cured within the Applicable Cure Period; and
 - (2) the period of time proposed by the Developer to be the extended Applicable Cure Period for the applicable Approved Cure Plan.
- (b) The State will not unreasonably refuse to grant an extension of the Applicable Cure Period for the applicable Approved Cure Plan if the Developer satisfies the requirements of clause 35.3(a).
- (c) If the State grants an extension of the Applicable Cure Period in accordance with clause 35.3(b), the Developer must comply with and diligently pursue the applicable Approved Cure Plan within that extended Applicable Cure Period.

35.4 Default not capable of cure

Upon receipt of a Default Notice, if the Default is not capable of being remedied or cured within 20 Business Days, the Developer must:

- (a) pay an amount of compensation reasonably determined by the State; and
- (b) provide a plan to the State detailing the steps the Developer will take to prevent the reoccurrence of that Default.

35.5 When a Default is capable of cure

A Default will be taken to be capable of cure if the Developer can, by action or payment of compensation, place the State in a position which is, in all material respects, the same as the position in which the State would have been had the Default not occurred.

35.6 Termination

- (a) If a Termination Event occurs, the State may terminate this Agreement in accordance with clause 37.
- (b) Nothing in clause 35.1 prejudices or limits the State:
 - (1) exercising any other right provided for or conferred on the State pursuant to this Agreement or the Commercial Lease in relation to an event that is a Default; or
 - (2) suing the Developer for compensation in relation to an event that is a Default or exercising any available legal or equitable rights or remedies in relation to an event that is a Default (whether under this Agreement or not).

35.7 Meaning of 'diligent pursuit'

Any assessment or determination as to:

- (a) whether a person has diligently pursued something or is diligently pursuing something;
- (b) whether something has been diligently pursued or is being diligently pursued; or



- (c) what could be achieved were something to be diligently pursued, shall be made in the context of the actual circumstances prevailing at all relevant times but:
- (d) any lack of financial or technical resources shall be disregarded; and
- (e) the standard of pursuit shall be not less than what might reasonably be expected of a reasonable developer seeking to promptly comply with its obligations under this Agreement or the Commercial Lease.

36 State Default

- (a) The State agrees that should the State breach an obligation imposed on it by this Agreement, the Developer may, if it is, or reasonably ought to have been, aware of such breach, provide written notice to the State describing the nature of the State's breach, when the breach occurred and what action, consistent with the rights and obligations of the parties under this Agreement, the Developer reasonably requires the State to take all necessary actions to remedy such breach.
- (b) The Developer is entitled to take such action as may be available to it under this Agreement or pursuant to any Law in respect of any breach by the State that is not remedied within the period stipulated in the notice under clause 36(a), including seeking damages and/or injunctive, declaratory or other urgent relief in respect of the performance or non-performance of this Agreement.

37 Termination

37.1 No other right to terminate

- (a) Despite any rule of law or equity to the contrary (and subject to clauses 4.2, 1, 17.7 and 42.2), this Agreement may not be terminated other than in accordance with this clause 37.
- (b) Termination of this Agreement and the payment of the relevant Termination Payment will not in any way prejudice or limit the State's Claims against the Developer in respect of the events giving rise to the termination.

37.2 Voluntary termination

- (a) **(Voluntary termination notice):** The State may, at any time, voluntarily terminate this Agreement by giving the Developer no less than 90 days' notice.
- (b) **(Date of termination):** Voluntary termination of this Agreement will take effect upon the date specified in the notice given in accordance with clause 37.2(a).

37.3 Termination for Force Majeure

- (a) **(Force Majeure Termination Event notice):** If a Force Majeure Termination Event occurs, then either party may terminate this agreement by giving notice to the other party.



- (b) **(Date of termination):** Termination of this Agreement for a Force Majeure Termination Event will take effect upon the date specified in the notice given in accordance with clause 37.3(a).

37.4 Termination for Termination Event

- (a) **(Termination for Termination Event):** If a Termination Event occurs, the State may terminate this Agreement by giving notice to the Developer.
- (b) **(Date of termination):** Termination of this Agreement for a Termination Event will take effect upon the date specified in the notice given in accordance with clause 37.4(a).

37.5 Consequences of Termination

Upon termination of this Agreement, the rights and obligations of the parties under this Agreement will cease except for:

- (a) any rights or obligations accrued as a result of a Default under this Agreement or as a result of an antecedent breach of this Agreement by the State;
- (b) any rights or obligations which are expressed to continue after termination of this Agreement; and
- (c) as applicable, the rights and obligations of the parties under clause 37.6 and clause 47.

37.6 Termination Payment

- (a) If the State terminates this Agreement in accordance with clause 37.2, 37.3 or 37.4:
 - (1) if the Commercial Lease is in effect, the Commercial Lease will also terminate at the same time that this Agreement terminates and the Developer has no further interest or entitlement (whether legal or equitable) in or to the Site;
 - (2) in the case of termination for an event described in paragraph 4 of the definition of Termination Event, clause 42.2(c) will apply and the State will have no obligation to make any payment to the Developer with respect to termination except where the damage or destruction is caused by the act or omission of the State or its Associates (whether negligent or otherwise) in which case clause 1.1(a) applies;
 - (3) in the case of termination for an event described in paragraphs 1, 2 or 3 of the definition of Termination Event, the State must pay the Termination Payment to the Developer in accordance with clause 1.1(a);
 - (4) in the case of termination for a Force Majeure Termination Event the State must pay the Termination Payment to the Developer in accordance with clause 1.1(a);
 - (5) in the case of voluntary termination under clause 37.2, the State must pay the Termination Payment to the Developer in accordance with clause 1.1(a); and
 - (6) in the case of a Project Termination Event, the State will have no obligation to make any payment to the Developer but the State will use reasonable endeavours to enable and facilitate the Developer to

enter into negotiations with any relevant third party for the continued development of the Site.

- (b) If this Agreement is terminated under clause 1 or 17.7 by either the State or the Developer: [not disclosed]
- (c) In the case of termination for an event specified in paragraphs 1, 2 or 3 of the definition of Termination Event, Termination Payment or TP means: [not disclosed]
- (d) In the case of termination for convenience pursuant to clause 37.2 or a termination under clause 17.7, or for the purposes of clause 37.6(a)(2), Termination Payment or TP means: [not disclosed]
- (e) In the case of termination for a Force Majeure Termination Event. Termination Payment or TP means: [not disclosed]
- (f) in the case of termination under clause 6, (termination due a Developer Unacceptable Condition), Termination Payment or TP means: [not disclosed]
- (g) The State must pay the amount of the Termination Payment within 20 Business Days following determination of the Termination Payment by the independent expert.

37.7 Waiver

If this Agreement is lawfully terminated by the State, the Developer waives any right it might otherwise have to pursue a claim of restitution of any kind including a claim of unjust enrichment or quantum meruit.

38 Force Majeure

38.1 Notification

- (a) If the Developer becomes aware of any matter likely to constitute a Force Majeure Event, the Developer must immediately give notice of that matter and all relevant particulars to the State.
- (b) Within 5 Business Days after the occurrence of a Force Majeure Event, the Developer must give to the State a notice containing full particulars of the Force Majeure Event including its nature and likely duration, the non-financial obligations affected by it and the nature, extent and likely duration of its effect on the Developer's ability to perform those obligations (**Force Majeure Report**).
- (c) Following the issue of a Force Majeure Report, the Developer must keep the State informed at reasonable intervals, and upon the request of the State, of:
 - (1) the likely duration of the applicable Force Majeure Event and of its effect on the Developer's ability to perform its non-financial obligations under this Agreement;
 - (2) the actions taken or the actions proposed to be taken by the Developer to mitigate or minimise the effects of that Force Majeure Event; and
 - (3) any other matter relevant to that Force Majeure Event or the Developer's obligations affected by that Force Majeure Event.



38.2 Suspension of Obligations

To the extent that it is prevented or delayed by a Force Majeure Event, the Developer's performance of its non-financial obligations under this Agreement will, subject to clause 38.3, be suspended to that extent from the date the Developer gives a Force Majeure Report in respect of that Force Majeure Event until the Developer ceases to be so prevented or delayed (**Cessation Date**) provided that clause 38.1 is complied with.

38.3 Temporary Measures and Alternative Arrangements

During the suspension of any obligation under clause 38.2 the Developer must use its reasonable endeavours (including incurring any reasonable expenditure of funds and rescheduling of manpower and resources) to remove or mitigate the preventing or delaying effect of each Force Majeure Event on the Developer's performance of the applicable non-financial obligations under this Agreement.

38.4 Notice of Cessation of Force Majeure

The Developer must give immediate notice to the State of the Cessation Date and must immediately after the Cessation Date resume performance of the applicable non-financial obligations suspended as a result of the particular Force Majeure Event.

39 Assignment

- (a) Prior to Final Completion, subject to clause 39(b), the Developer may not assign, transfer, dispose of, part with possession of, create or allow any interest in, or otherwise deal with, any of its rights or obligations under this Agreement without the State's consent.
- (b) The Developer may assign, transfer, dispose of, part with possession of, create or allow any interest in, or otherwise deal with, any of its rights or obligations under this Agreement provided that the Developer first must:
 - (1) inform the State in writing of any such proposed disposal;
 - (2) ensure that the assignee or transferee has the financial capability and the technical expertise, resources and abilities which are necessary for it to perform effectively the obligations of the Developer under this Agreement;
 - (3) ensure that the direct or indirect consequences of the assignment or transfer do not and will not materially or adversely affect the State's rights, or the State's ability or capacity to exercise its rights, under this Agreement;
 - (4) ensure that the assignee or transferee enters into such deeds or other agreements as are reasonably required by the State to ensure that the obligations of the Developer under this Agreement are assumed by the assignee or transferee; and
 - (5) ensure that the assignee or transferee obtains all necessary Approvals in order to perform its obligations under this Agreement.

40 Protection of People and Property

- (a) The Developer must in relation to its carrying out its obligations under this Agreement:
- (1) provide all things and take all measures necessary to protect and ensure the safety of people and property;
 - (2) avoid or minimise unnecessary interference with the passage of people and vehicles and the operations or activities carried out of, on or from properties adjacent to the Site;
 - (3) prevent nuisance and unreasonable noise, dust, vibration and disturbance (including preventing such matters that would affect any property adjacent to the Site);
 - (4) unless required for purposes of public health or safety, not interfere (insofar as compliance with this Agreement permits) with the free movement of traffic (vehicular and pedestrian) into and out of, adjacent to, around, on or about the Site or block or impair access to any premises, car parks, loading bays, roads or pedestrian ways; and
 - (5) comply with all requirements of this Agreement in connection with protection of people and property,
- and must prove that its Associates, and its Subcontractors and their Associates do the same.
- (b) If the Developer or a Subcontractor or any of their respective officers, employees, agents or consultants, damage property, including but not limited to property on or adjacent to the Site, the Developer must promptly make good the damage and pay any compensation which the Developer is required by law to pay.

41 Developer's Indemnity

41.1 Indemnity by the Developer

- (a) To the maximum extent permitted by Law, the Developer indemnifies and will keep the State and its State Indemnified Associates indemnified from and against all Claims (whether in tort or otherwise) or Liabilities (including legal costs, on a full indemnity basis) whatsoever which the State or its State Indemnified Associates (as applicable) suffers, incurs or becomes liable or may suffer, incur or become liable:
- (1) the occupation or use of the Lease Land by the Developer, or the Developer's Associates;
 - (2) the undertaking of the Oversight Development Works or Interface Works in breach of this Agreement;
 - (3) any Contamination or Pollution caused or contributed by the Developer or its Associates or any work performed by or for the Developer on that part of the Lease Land on which the Oversight Development Works are being carried out which results in the release or disturbance of Contamination or Pollution;

- (4) any damage to person or property arising out of the undertaking of the Oversight Development Works or other obligations under this Agreement; or
- (5) in respect of the Developer's or its Subcontractors':
 - (A) access to; or
 - (B) actions in relation to gaining access to or negotiating with persons holding interests in,
 - land or airspace not forming part of the Licensed Area;
 except that any such Claim or Liability is reduced by operation of clause 1.7(c).
- (b) The obligations of the Developer under this clause 41 will continue after the expiration or other termination of the Oversight Development Agreements in respect of any act, deed, matter or thing happening before such expiration or termination.
- (c) The indemnity in clause 41.1 will not extend to losses, damages, liabilities, actions, suits, claims, demands, costs and expenses incurred or sustained as a result of delays or disruptions to Transport Services or Rail Operations or under or in connection with the Train Franchisee Agreement, the PTV Agreement and Train Infrastructure Lease caused by the undertaking of the Oversight Development Works

41.2 Release

- (a) The Developer releases, to the full extent permitted by Law, the State from all Claims and Liabilities of any kind which arise from the Developer's use or occupation of the Oversight Development or the Site or the performance of this Agreement (including any Claim made under Part 2A of the *Wrongs Act 1958* (Vic)).
- (b) The Developer releases the State, VicTrack, the Train Franchisee, PTV from any claim it may have, at any time, against the State, VicTrack, the Train Franchisee, PTV in relation to:
 - (1) any information, data or other material provided by the State or on behalf of in assessing or undertaking the Oversight Development or in entering into this Agreement or any other Transaction Document; and
 - (2) any loss or claim arising from the Development not meeting the financial returns anticipated by the Developer and/or any shortfall in revenue from the Oversight Development relative to the Developer's expectations.

41.3 Liability for Indirect or Consequential Loss

- (a) **(No liability of State):** Subject to clause 41.3(b):
 - (1) the State and its Associates do not have any Liability to the Developer or any of its Associates; and
 - (2) the Developer and its Associates are not entitled to make any Claim, for any Indirect or Consequential Loss incurred or sustained by the Developer or any of its Associates:
 - (3) as a consequence of any act or omission of the State, and its Associates (whether negligent or otherwise); or

- (4) due to any breach of any Oversight Development Agreement by the State.
- (b) **(Exceptions to no State Liability):** The exclusion of Liability of the State and its Associates under clause 41.3(a) does not apply to:
- (1) Liability arising from criminal acts or fraud on the part of the State or its Associates;
 - (2) Liability arising from wilful misconduct under any Oversight Development Agreement on the part of the State or its Associates;
 - (3) the extent that the parties cannot limit or exclude any Liability at Law;
 - (4) any statutory fine or civil penalty arising from any breach of Law by the State or any of its Associates; and
 - (5) the extent that the Oversight Development Agreements expressly confer an entitlement on the Developer to any amounts payable by the State to the Developer.
- (c) **(No liability of the Developer):** Subject to clause 41.3(d):
- (1) the Developer and its Associates do not have any Liability to the State or its Associates; and
 - (2) the State or its Associates are not entitled to make any Claim, for any Indirect or Consequential Loss incurred or sustained by the State or its Associates:
 - (3) as a consequence of any act or omission of the Developer or any of its Associates (whether negligent or otherwise); or
 - (4) due to any breach of an Oversight Development Agreement by the Developer or any of its Associates.
- (d) **(Exceptions to no Developer Liability):** The exclusion of Liability of the Developer and its Associates under clause 41.3(c) does not apply to:
- (1) any such Liability of the Developer or its Associates to the extent that, in respect of the event or circumstances giving rise to the Liability:
 - (A) insurance proceeds are payable to the Developer or any of its Associates; or
 - (B) insurance proceeds would have been payable under any Insurances but for:
 - (i) the inclusion of clause 41.3(a) and 41.3(c);
 - (ii) a failure by the Developer to comply with this Agreement;
 - (iii) a failure by the Developer or any of its Associates to claim under the relevant Insurances; or
 - (iv) a failure by the Developer or any of its Associates to comply with the terms of the relevant Insurance (including the claims procedure under the relevant insurance), up to the limits of indemnity required by this Agreement;
 - (2) Liability for which the Developer recovers pursuant to an indemnity under any of the Oversight Development Agreements;

- (3) Liability arising from criminal acts, fraud or wilful misconduct on the part of the Developer or any of its Associates;
- (4) the extent that the parties cannot limit or exclude any Liability at Law;
- (5) any statutory fine or civil penalty arising from any breach of Law by the Developer or any of its Associates;
- (6) abandonment of the whole or a substantial part of the Oversight Development Works by the Developer or its Associates; and
- (7) any amounts payable by the Developer to the State in accordance with any Oversight Development Agreement.

42 Risk and Liability

42.1 Risk of Loss or Damage

- (a) Subject to clause 42.1(b), the Developer will:
 - (1) bear the risk of; and
 - (2) not have any Claim against the State or its Associates as a result of, loss or damage to or destruction of the Oversight Development Works, the Oversight Development, or the Site.
- (b) Clause 42.1(a) does not apply to the extent that the loss or damage is a direct consequence of an act or omission of the State or its Associates or breach by the State or its Associates of this Agreement unless, and to the extent that, in respect of such loss or damage the Developer is entitled to and does recover under any policy of insurance required under clause 43.

42.2 Destruction

- (a) If prior to Final Completion, any part of the Oversight Development Works is wholly or partly damaged or destroyed, then the Developer must as soon as practicable take all measures necessary:
 - (1) to minimise any serious danger, risk or hazard to any person or property and to avoid or minimise unnecessary interference with the passage of people and vehicles and the operations or activities carried out on, or from properties adjacent to the Site and the Oversight Development Works;
 - (2) to comply with all requirements of this Agreement in connection with the protection of people and property; and
 - (3) to make good the Oversight Development Works.
- (b) Subject to clause 42.2(c), the Developer must reinstate the Oversight Development Works as soon as practicable at the Developer's cost and expense subject to the Developer having the full benefit of insurance proceeds to reinstate the Oversight Development Works.
- (c) The Developer may serve a notice in writing on the State (**Destruction Termination Notice**) confirming that the Developer does not wish to reinstate the Oversight Development Works in accordance with clause 42.2(b). On receipt of a Destruction Termination Notice this Agreement will terminate and be of no



further force or effect. No compensation will be payable by the State to the Developer if this Agreement is terminated by the Developer in accordance with a Destruction Termination Notice, and the Developer releases the State against all Claims it may have against the State in connection with such termination, except where the damage or destruction is caused by the act or omission of the State or its Associates (whether negligent or otherwise).

43 Insurance

43.1 Insurance Generally

The Developer must obtain and maintain, or procure that the relevant person obtains and maintains, the insurances specified in clause 43.2.

43.2 Developer's specific insurances

Prior to entering onto the Lease Land, the Developer must:

- (a) effect or procure and maintain until Final Completion of the Oversight Development Works and the Developer having otherwise complied with its obligations under the Oversight Development Agreements:
 - (1) public liability insurance for liability to all persons (including the State and the Developer) for a sum nominated by the State, being not less than [not disclosed] for any one event concerning personal injury to or death arising by accident of any person (not being a person who at the time of the accident is defined as a worker of the insured or the Developer under any Law concerning workers' compensation insurance) and concerning any injury, loss or damage to any property (real or personal) caused (directly or indirectly) by the execution of the Works (whether by the Developer, the State, a Subcontractor, the State Representative or any other person);
 - (2) insurance for an unlimited sum against any loss, cost, damage, liability or other detriment (whether arising under a Law concerning workers' compensation or employers' liability or at common law) suffered or incurred by any of its employees in or about the execution of the Oversight Development Works;
 - (3) insurance of Plant and Equipment on terms and conditions (including any exclusions or excesses) reasonably required by the State concerning loss or distribution of or damage to the property insured (whether caused by the Developer, the State or any other person) for its full reinstatement and replacement cost;
- (b) procure that the Builder:
 - (1) effects and maintains professional indemnity insurance for a sum not less than [not disclosed] in respect of any one claim and annually in aggregate (plus legal costs and expenses) for liability to all persons (including the State) concerning loss, costs, damage, liability or other detriment suffered or incurred (directly or indirectly) for any breach of duty owed in a professional capacity in connection with the Development;
 - (2) without limiting clause 43.2(a)(1), ensures that all the Builder's sub-

contractors and consultants effect and maintain adequate professional indemnity insurance as determined by the State acting reasonably;
and

- (3) effects or procures and maintains until Final Completion of the Works and the Developer having otherwise complied with its obligations under the Oversight Development Agreements, insurance for an unlimited sum against any loss, cost, damage, liability or other detriment (whether arising under a Law concerning workers' compensation or employers' liability or at common law) suffered or incurred by any of the Builder's employees in or about the execution of the Works,

which policies may be on an annual renewal basis (rather than contract specific).

43.3 Developer insurance requirements

- (a) All insurances effected under clauses 43.1 and 43.2(a) must:
 - (1) be effected with an insurer approved by the State acting reasonably;
 - (2) note the interests of the State;
 - (3) include a requirement that the insurance office or company provide the State with 10 Business Days notice of its intention to serve a cancellation notice in respect of the policy; and
 - (4) provide for payment of such amounts and cover such risks and contain such conditions, endorsements and exclusions as are acceptable to or required by the State, acting reasonably.
- (b) In relation to the insurance required under clause 43.2(b) the Developer must procure that the Builder:
 - (1) immediately advises the State of:
 - (A) any changes or amendments to the terms of the insurance;
and
 - (B) claims that arise or potential claims that could arise;
that could reduce or limit the professional indemnity insurance, in which case the Developer must procure that the Builder obtains additional professional indemnity insurance so that the professional indemnity insurance is maintained as the amount required under clause 43.2(b)(1);
 - (2) maintains such insurance until Final Completion of the Oversight Development Works and the Developer having otherwise complied with its obligations under the Oversight Development Agreements;
 - (3) renews such insurance for a further period of 7 years following Final Completion of the Oversight Development Works and the Developer having otherwise complied with its obligations under the Oversight Development Agreements;
 - (4) procures that every Developer's Consultant engaged by the Builder has effected or procured and maintained until Final Completion of the Works and the Developer having otherwise complied with its obligations under the Oversight Development Agreements professional indemnity insurance for a sum not less than an amount determined by



the Developer (acting reasonably) for liability to all persons (including the State) concerning loss, costs, damage, liability or other detriment suffered or incurred (directly or indirectly) in connection with the execution of those parts of the Works carried out by that Developer's Consultant.

43.4 State to assist

Without limiting the Developer's obligations under this clause 43, the State agrees to use its reasonable endeavours to assist the Developer in obtaining the following insurance policies from Victorian Insurance Management Authority:

- (a) contract works insurance for the whole of the Oversight Development Works concerning loss or destruction of or damage to the property insured (whether caused by the Developer, the State or any other person) for its full reinstatement and replacement cost;
- (b) public liability insurance for liability to all persons (including the State and the Developer) for a sum nominated by the State, being not less than [not disclosed] for any one event concerning personal injury to or death arising by accident of any person (not being a person who at the time of the accident is defined as a worker of the insured or the Developer under any Law concerning workers' compensation insurance) and concerning any injury, loss or damage to any property (real or personal) caused (directly or indirectly) by the execution of the Works (whether by the Developer, the State, a Contractor, a Subcontractor, the State's Representative or any other person; and
- (c) advanced loss of profits insurance for an amount not less than [not disclosed].

43.5 Proof of Insurance

- (a) The Developer must whenever reasonably requested in writing by the State, provide to the State certificates of currency of the insurances effected and maintained by the Developer and its Subcontractors under clause 43.1.
- (b) If, after being requested in writing by the State to do so, the Developer fails to produce the certificates of currency, the State may effect and maintain the insurance and pay the premiums for that insurance. Any amount paid by the State will be a debt due and payable from the Developer to the State.

43.6 Notices from or to the insurer

Except to the extent prohibited by Law, the Developer must ensure that each policy of insurance required to be effected by the Developer in accordance with this Agreement contains provisions that:

- (a) except in the case of professional indemnity and workers compensation insurance, provide that a notice of claim given to the insurer by any of the State, the Developer or any of the Developer's Subcontractors or consultants will be accepted by the insurer as a notice of claim given by each of the State, the Developer, the Subcontractor and the consultant; and
- (b) except for professional indemnity, workers compensation and motor vehicle insurance, require the insurer, whenever the Developer fails to renew the policy or to pay a premium, to give 20 Business Days written notice in writing thereof forthwith to the Developer prior to the insurer giving any notice of cancellation or non-renewal. The Developer will forward copies of any such notices to the State.

43.7 Notices of Potential Claims

- (a) The Developer must, as soon as practicable, inform the State in writing of any occurrence or incident that may give rise to a material claim under a policy of insurance required by clause 43.1 and must keep the State informed of subsequent developments concerning that occurrence or the claim, except where to do so may prejudice the Developer's claim against its insurers.
- (b) Clause 43.7(a) does not apply to:
 - (1) public liability insurance; and
 - (2) workers compensation insurance (including common law liability)to the extent that the insurance remains on an 'each and every' basis.

43.8 Settlement of Claims

Upon settlement of a claim under the insurance required by clause 43, the Developer must pass through to the State the benefit of the Developer's insurance where the State has suffered Loss.

43.9 Cross Liability

Wherever pursuant to this Agreement insurance is effected in more than one name, the policy of such insurance must, insofar as the policy may cover more than one insured:

- (a) provide that all insuring agreements and endorsements operate in the same manner as if there were a separate policy of insurance covering each party comprising the insured provided that the total liability of the insurers to all of the insured parties collectively shall not exceed the sums insured and limits of indemnity including any inner limits set by memorandum or endorsement stated in the policy;
- (b) provide that:
 - (1) the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties comprising the insured except where the rights of subrogation or recourse are acquired as a consequence of fraud, misrepresentation, non-disclosure or breach of any warranty or condition of the policy by the relevant insured party; and
 - (2) failure by any insured to observe and fulfil the terms of the policy does not prejudice the insurance in regard to any other insured party; and
- (c) contain a non-imputation clause providing that any non-disclosure or misrepresentation (whether fraudulent or otherwise), any breach of term or condition of the policy, or any fraud or other act, omission or default by one insured does not affect another insured provided that the said acts or omissions were not made with the connivance of that other insured.

43.10 Extent of Cover

- (a) If the State at any time reasonably requires the Developer to:
 - (1) insure against a risk not specifically provided for or contemplated under the insurances held by the Developer in accordance with clause 43.1; or



- (2) increase the extent of or change the terms of existing insurance in relation to a risk,

it may notify the Developer accordingly and request that the Developer give effect to the State's requirements as set out in the notice.

- (b) The Developer must promptly notify (and provide supporting evidence to) the State of the amount (if any) of any additional premium payable to effect a request by the State under this clause.
- (c) Within 10 Business Days after receipt of notification from the Developer of an additional premium (if any), the State must inform the Developer whether it requires the Developer to effect that insurance cover.
- (d) If the State notifies the Developer that the State requires the Developer to effect that insurance cover under clause 43.10(c), the Developer promptly must do so and the State must reimburse the amount of the additional premium to the Developer within 20 Business Days after the Developer provides evidence satisfactory to the State that the insurance cover has been so effected.

43.11 Additional Requirements

The Developer must comply, and must ensure that any Subcontractor complies, with its obligations to take out and maintain registration and to pay all levies required to be paid, under the *Accident Compensation Act 1985* (Vic) and the *Accident Compensation (Workcover) Act 1992* (Vic) and to take out and maintain insurances required under the *Building Act 1993* (Vic).

44 Dispute Resolution

44.1 Procedure for resolving disputes

- (a) **(Disputes to be resolved):** Any Dispute arising under this Agreement (except for any Dispute about the purported termination of this Agreement in which case this clause 44 does not apply) must be resolved by the parties to that Dispute **(Disputing Parties)** in accordance with this clause 44.
- (b) **(Procedure):** The procedure that is to be followed to resolve a Dispute is as follows:
 - (1) firstly, the Dispute must be the subject of negotiation as required by clause 44.2;
 - (2) secondly, if the Dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 44.2(c)(1) the Disputing Parties may agree that the Dispute will be referred to an expert for determination in accordance with clauses 44.3 to 44.9 (inclusive) or to arbitration under clause 45; and
 - (3) thirdly, if:
 - (A) the Dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 44.2(c)(1) and irrespective of whether the Disputing Parties failed to meet as required by that clause or whether having so met the parties failed to agree whether the Dispute should be referred to an expert or to arbitration within 20

Business Days after the expiration of the period for negotiation referred to in clause 44.2(c)(1);

- (B) the Dispute has been referred to expert determination and a determination is not made by the expert within 30 days after the expert's acceptance of appointment; or
 - (C) the Dispute is referred to expert determination and a notice of dissatisfaction is given in accordance with clause 44.6(a),
- then the Dispute must be referred to arbitration under clause 45.

44.2 Negotiation

- (a) **(Notification)**: If a Dispute arises then a party may give notice to each other party requesting that the dispute be referred for resolution by negotiation between the Chief Executive Officers (or equivalent) of the Disputing Parties **(Representatives)**.
- (b) **(Contents of Notice)**: A notice under clause 44.2(a) must:
 - (1) state that it is a notice under this clause 44; and
 - (2) include or be accompanied by particulars of the matters which are the subject of the Dispute.
- (c) **(Attempt to resolve Dispute)**: If a Dispute is referred for resolution by negotiation under clause 44.2(a), then:
 - (1) the Representatives must meet and attempt in good faith to resolve the Dispute (in whole or in part) within 10 Business Days of the date on which the notice under clause 44.2(a) is received (or such later date as the Disputing Parties may agree); and
 - (2) any agreement reached between the Representatives will be reduced to writing, signed by or on behalf of each Disputing Party and will be contractually binding on the Disputing Parties.

44.3 Expert determination

- (a) Subject to clause 44.3(b), where this Agreement requires a matter to be referred to or resolved by an expert or if:
 - (1) **(Dispute unresolved)**: a Dispute which has been referred to the Representatives for negotiation in accordance with clause 44.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 44.2(c)(1); and
 - (2) **(Disputing Parties agree)**: the Disputing Parties agree within 20 Business Days after the expiration of the period for negotiation referred to in clause 44.2(c)(1), that the dispute be referred to an expert for determination,

then those parts of the Dispute which remain unresolved will be referred to an expert for determination under clauses 44.4 to 44.8.
- (b) For the avoidance of doubt:
 - (1) a Dispute may only be referred to an expert for determination by agreement of the Disputing Parties;
 - (2) subject to clause 44.3(b)(3), where this Agreement requires a matter



to be referred directly to an expert, the dispute resolution procedures in clause 44.2(c)(1) will not apply; and

- (3) despite any other provision in this Agreement, a matter cannot be referred to an expert if the determination of that expert will give a party the right to terminate this Agreement.

44.4 Selection of expert

- (a) **(Exchange of lists of 3 preferred experts):** Within 7 Business Days after the date on which the Disputing Parties agree to refer a Dispute to an expert for determination under clause 44.3, the Disputing Parties must exchange lists of 3 persons (in order of preference) who, if appointed, would satisfy the requirements of clause 44.4(d), from whom the expert is to be chosen.
- (b) **(Appointment of person who appears on both lists):** Any person who appears on the list of all of the Disputing Parties exchanged under clause 44.4(a) will be appointed as the expert to determine a Dispute and if more than one person appears on the list of all of the Disputing Parties, the person given the highest order of priority by the party who gave the notice under clause 44.2(a) will be appointed.
- (c) **(Appointment if no person appears on both lists):** If no person appears on the list of all of the Disputing Parties and the Disputing Parties cannot otherwise agree an expert, the party which gave the notice under clause 44.2(a) must procure:
 - (1) the president (or the senior non-executive officer, howsoever described) of the institute or governing body for the technical or professional discipline the subject of the relevant Dispute to nominate the expert, having regard to, but not being bound by, those persons proposed by the Disputing Parties under clause 44.4(a); or
 - (2) if there is no governing body for the technical or professional discipline the subject of the relevant Dispute or such governing body advises that it will not nominate an expert, the President of the Australian Centre for International Commercial Arbitration to nominate a person to act as the expert, having regard to, but not being bound by, those persons proposed by the Disputing Parties under clause 44.4(a),
within 7 Business Days of the exchange of notices under clause 44.4(a).
- (d) **(Appropriate skills):** It is the intention of the Disputing Parties that the expert appointed to determine a dispute will be an independent person with appropriate skills having regard to the nature of the matters in dispute.
- (e) **(No entitlement to challenge appointment):** No Disputing Party will be entitled to challenge the appointment of an expert under this clause 44.4 on the basis that the expert does not satisfy the requirements of clause 44.4(d).
- (f) **(Not an arbitration agreement):** Any agreement for expert determination under this Deed will not constitute an arbitration agreement for the purposes of the *Commercial Arbitration Act 2011 (Vic)*.
- (g) **(Agreement):** Once an expert is appointed, the Disputing Parties must enter into an agreement with the expert on the terms of the Expert Determination Agreement or such other reasonable terms as the expert may require.

44.5 Rules of expert determination



The expert determination process will be administered, and the expert will be required to act, under the terms of the Expert Determination Agreement.

44.6 Expert finding

- (a) **(Notification):** The determination of the expert must be in writing and will be final and binding on the Disputing Parties unless, within 10 Business Days of receipt of the determination, a Disputing Party gives notice to each other Disputing Party of its dissatisfaction and intention to refer the matter to arbitration in accordance with clause 45.
- (b) **(Amendment to determination):** Upon submission by any Disputing Party, the expert may amend the determination to correct:
 - (1) a clerical mistake;
 - (2) an error from an accidental slip or omission;
 - (3) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
 - (4) a defect in form.

44.7 Liability of expert

- (a) **(Liability of expert):** The Disputing Parties agree:
 - (1) that the expert will not be liable in connection with the expert determination, except in the case of fraud on the part of the expert; and
 - (2) to indemnify the expert against any Claim or Liability in connection with the expert determination, except in the case of fraud on the part of the expert, in which case a Claim may be made against him or her by any person who is party to the dispute.
- (b) **(Engagement):** The Disputing Parties will jointly engage the expert services in connection with the expert determination proceedings and each Disputing Party will seek a separate Tax Invoice equal to its share of the costs of the expert.

44.8 Costs

The Disputing Parties must:

- (a) bear their own costs in connection with the expert determination proceedings; and
- (b) pay an equal portion of the costs of the expert.

44.9 Proportionate Liability

To the extent permitted by Law, the expert will have no power to apply or to have regard to the provisions of any proportionate liability legislation which might in the absence of this clause 44.9, have applied to any dispute referred to the expert in accordance with this clause 44

45 Arbitration



45.1 Reference to Arbitration

- (a) **(Dispute):** If:
- (1) a dispute:
 - (A) which has been referred to the parties' Representatives for negotiation in accordance with clause 44.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 44.2(c)(1); and
 - (B) the Disputing Parties do not agree to refer the dispute to an expert for determination; or
 - (2) in the case of a dispute which the Disputing Parties agree to refer to expert determination under clause 44.3:
 - (A) a determination is not made within 30 days of the expert's acceptance of the appointment; or
 - (B) a notice of dissatisfaction is given in accordance with clause 44.6,
- then any Disputing Party may notify the other Disputing Parties that it requires the dispute to be referred to arbitration.
- (b) **(Referral):** Upon receipt by a Disputing Party of a notice under clause 45.1(a), the dispute will be referred to arbitration.

45.2 Arbitration

- (a) **(ACICA Rules):** Arbitration in accordance with this clause 45 will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Rules) as current at the date the Dispute is referred to arbitration and as otherwise set out in this clause 45.
- (b) **(Seat):** The seat of the arbitration will be Melbourne, Victoria.
- (c) **(Language):** The language of the arbitration will be English.

45.3 Appointment of arbitrator

The Disputing Parties will endeavour to agree on the arbitrator or arbitrators (if the parties agree to appoint three arbitrators), but if no such agreement is reached within 14 Business Days of the dispute being referred to arbitration in accordance with clause 45.1(b), the arbitrator or arbitrators will be appointed by the ACICA Rules.

45.4 General Principles for conduct of arbitration

- (a) **(Conduct of arbitration):** The Disputing Parties agree that:
- (1) they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any dispute;
 - (2) any arbitration conducted in accordance with this clause 45 will not necessarily mimic court proceedings of the seat of the arbitration or the place where hearings take place (if different), and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and
 - (3) in conducting the arbitration, the arbitrator must take into account the



matters set out in clauses 45.4(a)(1) and 45.4(a)(2).

- (b) **(Evidence in writing):** All evidence in chief must be in writing unless otherwise ordered by the arbitrator.
- (c) **(Evidence and discovery):** The rules for evidence and discovery will be the IBA Rules on the Taking of Evidence in International Arbitration current at the date of arbitration (or if there are no current rules, the most recent version of those rules).
- (d) **(Oral hearing):** The oral hearing must be conducted as follows:
 - (1) any oral hearing must take place in Melbourne, Victoria and all outstanding issues must be addressed at the oral hearing;
 - (2) the date and duration of the oral hearing must be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in clause 45.4(a) when determining the duration of the oral hearing;
 - (3) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
 - (4) the oral hearing must be conducted on a stop clock basis with the effect that the time available to the parties must be split equally between the parties so that each party has the same time to conduct its case unless in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the parties;
 - (5) not less than 28 days prior to the date fixed for oral hearing each of the Disputing Parties must give notice of those witnesses (both factual and expert) of each other Disputing Party that it wishes to attend the hearing for cross examination;
 - (6) in exceptional circumstances the arbitrator may amend the date of hearing and extend the time for the oral hearing set in accordance with clause 45.4(d)(2);
 - (7) a Disputing Party will not be bound to accept the written evidence of a witness submitted on behalf of the opposing party which is not challenged in cross examination; and
 - (8) each Disputing Party is expected to put its case on significant issues in cross examination of a relevant witness called by the other Disputing Party or, where it seeks to challenge the evidence of a witness not called for cross-examination by reference to other evidence, to identify that evidence in its written opening submissions so that the other Disputing Party may know the nature of and basis for the challenge to the witness' written evidence.
- (e) **(Experts):** Unless otherwise ordered each Disputing Party may only rely upon one expert witness in connection with any recognised area of specialisation.

45.5 Proportional liability

To the extent permitted by Law, the arbitrator will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this clause 45.5, have applied to any dispute referred to arbitration in accordance with this clause 45.



45.6 Extension of ambit of arbitration proceedings

- (a) **(Extending Disputes):** Where:
- (1) a dispute between the Disputing Parties to this Deed is referred to arbitration in accordance with this clause 45; and
 - (2) there is some other dispute also between the Disputing Parties to and in accordance with this Deed (whenever occurring),
- the arbitrator may, upon application being made to the arbitrator by one or more of the Disputing Parties at any time before a final award is made in relation to the first-mentioned dispute, make an order directing that the arbitration be extended so as to include the other dispute.
- (b) **(Arbitrator's order):** An arbitrator may make an order in accordance with clause 45.6(a) on such terms and conditions (if any) as the arbitrator thinks fit.

45.7 Award final and binding

- (a) **(Final and binding):** Subject to clause 45.7(b), any award will be final and binding on the Disputing Parties.
- (b) **(Appeal):** Each Disputing Party consents to any appeal to a court where that appeal is made under the Commercial Arbitration Act 2011 (Vic) on a question of law arising in connection with an arbitral award made in accordance with this clause 45.

45.8 Continue to perform

Notwithstanding the existence of a dispute, each Disputing Party must continue to carry out its obligations in accordance with this Deed.

45.9 Governing law of arbitration agreement

The Law governing this arbitration agreement is the law of Victoria, Australia.

45.10 Consolidation

The parties agree that section 27C of the Commercial Arbitration Act 2011 (Vic) will apply.

46 Major Projects Skills Guarantee

46.1 Major Projects Skills Guarantee Compliance Plan

- (a) The Developer must, in performing its obligations under this Agreement, comply with the Major Projects Skills Guarantee.
- (b) The following terms are defined in this clause:
- (1) **Apprentice** means a person whom an employer has undertaken to train under a Training Contract.
 - (2) **Engineering Cadets** means those persons who are combining formal

university training in an engineering or related discipline with practical work experience.

- (3) **Trainee** means a person (other than an Apprentice) employed under a Training Contract.
- (4) **Training Contract** has the meaning given in the *Education and Training Reform Act 2006* (Vic).

46.2 Reporting

- (a) **(Records)**: The Developer must prepare and maintain records demonstrating its performance against the Major Projects Skills Guarantee.
- (b) **(Reporting)**: The Developer must provide to the State:
 - (1) a report detailing the labour hours performed by:
 - (A) Apprentices, Trainees or Engineering Cadets, either separately or in any combination; or
 - (B) pre-existing or new Apprentices, Trainees or Engineering Cadets, either separately or in any combination; and
 - (2) a statutory declaration made by a director of the Developer declaring that the information contained in the report is true and accurate, Quarterly and on the date of Final Completion.
- (c) **(Further information)**: At the request of the State, the Developer must provide further information or explanation in respect of the Developer's performance against the Major Projects Skills Guarantee.

46.3 Verification of the Developer's compliance with the Major Projects Skills Guarantee

- (a) **(Review of performance)**: The Developer must:
 - (1) permit the State from time to time to undertake a review of the Developer's performance against the Major Projects Skills Guarantee; and
 - (2) ensure that its Associates give all reasonable assistance to any person authorised by the State to undertake such audit or inspection.
- (b) **(Authorisations)**: The Developer acknowledges and agrees that the State is authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding the Developer's performance against the Major Projects Skills Guarantee.
- (c) **(Additional obligations)**: The obligations set out in this clause 46.3 are in addition to and do not derogate from any other obligation under this Agreement.

46.4 Use of Major Projects Skills Guarantee information

The Developer acknowledges and agrees that the State and the Department of Economic Development, Jobs, Transport and Resources may:

- (a) disclose statistical information contained in the reports provided under 46.2 and information obtained under clause 46.3; and
- (b) consider statistical information contained in the reports provided under 46.2 and



information obtained under clause 46.3 in the assessment or review of the Developer's and its Related Bodies Corporate's eligibility to tender for future Victorian Government contracts.

46.5 Builder

Despite any other provision of this clause 46, the Developer may satisfy its obligations under this clause 46 by procuring the Builder to comply with those obligations.

46.6 Supplier Code of Conduct

The Developer acknowledges and agrees that:

- (a) the Supplier Code of Conduct is an important part of the State's approach to procurement and describes the State's minimum expectations regarding the conduct of its suppliers;
- (b) it has read and aspires to comply with the Supplier Code of Conduct; and
- (c) the expectations set out in the Supplier Code of Conduct are not intended to reduce, alter or supersede any other obligations which may be imposed on the supplier, whether under this Agreement or at Law.

47 Rights and obligations at end of Agreement

47.1 Expiration of Agreement

Unless otherwise provided for in this Agreement, this Agreement will expire on the later of:

- (a) the expiry of the Defects Liability Period;
 - (b) the day Final Completion occurs;
- the date of payment of the Development Fee to the State; and
- (c) the grant of the Lease under clause 26.1.

47.2 Novation

If this Agreement is terminated prior to Final Completion, upon the request of the State (in its discretion), the Developer must, for no consideration, other than any Termination Payment, if then due:

- (a) novate to the State or its nominee; and
- (b) do all things reasonably necessary to give effect to such novation,

any agreement (including any supply, service or maintenance agreement) relating to the execution of the whole or any part of the Oversight Development Works or the whole or any part of the Oversight Development.

47.3 Consequences of expiry

Upon expiry of this Agreement, the rights and obligations of the parties under this Agreement will cease except for:



- (a) any rights or obligations accrued as a result of a default by either party under this Agreement;
- (b) any rights or obligations which are expressed to continue after expiry of this Agreement; and
- (c) as applicable, the rights and obligations of the parties under this clause 47.

47.4 Continuation of Oversight Developments

The Developer agrees that upon expiry of this Agreement, while the Developer or a successor has occupancy rights with respect to the Site, the Developer will comply or procure the acceptance or novation of any Section 173 Agreement or annexures by a successor (on terms satisfactory to the State).

48 Confidential Information and disclosure

48.1 Confidential Information and disclosure by the State

- (a) **(Public Disclosure Obligations):** The State or any Authority may disclose any information in connection with the Oversight Development (including any Confidential Information):
 - (1) in accordance with Laws;
 - (2) to satisfy the disclosure requirements of the Victorian Auditor-General;
 - (3) to satisfy the requirements of Parliamentary accountability;
 - (4) where the disclosure is in the course of the official duties of VicRoads, the Department of Economic Development, Jobs, Transport and Resources, the Secretary, the Victorian Minister for Public Transport or the Treasurer of Victoria;
 - (5) to VicTrack, any Associate of the State or any person authorised or nominated by the State to the extent necessary for the purpose of the Oversight Development, Melbourne Metro Rail or the broader transport network provided they agree to maintaining the confidentiality of any Confidential Information;
 - (6) in annual reports of the State;
 - (7) in accordance with policies of the Victorian government; or
 - (8) to satisfy any other recognised public requirement,and Project Co must use all reasonable endeavours to assist the State or an Authority in meeting its Public Disclosure Obligations.
- (b) **(Major Projects Skills Guarantee Requirements)** The State and the Department of Economic Development, Jobs, Transport and Resources may disclose statistical information in respect of the Developer's performance against the Major Projects Skills Guarantee.
- (c) **(State's rights):** in meeting its Public Disclosure Obligations or as otherwise considered necessary by the State the State may publish, disclose or make generally available each Oversight Development Agreement on a Victorian Government website.

- (d) **(Exercise of Licence):** Nothing in this Agreement prevents the State and any sublicensees using or disclosing any information (including Confidential Information) to extent necessary or desirable for, or in connection with, the exercise of any licence granted under clause 30.

48.2 Confidential Information and disclosure by the Developer

- (a) **(Confidentiality obligation):** Subject to clause 48.2(b), the Developer must treat as secret and confidential all Confidential Information in connection with this Agreement and any other Oversight Development Agreement.
- (b) **(Disclosure of Confidential Information):** Without limiting the Developer's obligation under clause 48.2(a) and subject to clause 48.2(c), the Developer may disclose Confidential Information to:
- (1) its Associates to the extent necessary for the purpose of undertaking the Oversight Development;
 - (2) any Developer's Investor or prospective Developer's Investor; or
 - (3) any subtenant or prospective subtenant of premises in the Lease Land for the purpose of entering into an agreement for sublease;
 - (4) any External Financier, prospective financier or equity investor of the Oversight Development, subject to the State having been provided necessary information in respect of the proposed parties and having carried out any Probity Investigation that the State considers necessary.
- (c) **(Confidentiality deed):** Before disclosing any Confidential Information, the Developer must ensure that the person to whom the information is disclosed enters into a confidentiality deed with the Developer on terms reasonably acceptable to the State.

48.3 Disclosure by the Developer

- (a) **(Developer's disclosure obligations):** Subject to clause 48.3(b), the Developer must:
- (1) not make any public disclosures, announcements or statements in relation to the Oversight Development or the State's or any of the State's Associates' involvement in the Oversight Development without the State's prior consent;
 - (2) comply with any terms and conditions the State imposes and must use all reasonable endeavours to agree with the State the wording and timing of all public disclosures, announcements or statements by it or any of its Associates relating to the Oversight Development or the State's or any of the State's Associates' involvement in the Oversight Development before the relevant disclosure, announcement or statement is made; and
 - (3) as soon as practicable, give to the State a copy of any public disclosure, announcement or statement agreed to or approved by the State in accordance with this clause 48.3(a) or for which the State's consent or approval was not required in accordance with clause 48.3(b).
- (b) **(Permitted disclosure):** For the purposes of clause 48.3(a), the Developer will not be required to obtain the State's consent or approval to the extent that any



disclosure, announcement or statement is:

- (1) required by Law, provided that it:
 - (A) notifies the State of the requirement to make that disclosure; and
 - (B) takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;
- (2) required to obtain legal or other advice from its advisers;
- (3) required to be made to a court in the course of proceedings to which the Developer is a party; or
- (4) required by a relevant stock exchange, subject to:
 - (A) such disclosure, announcement or statement not referring to the State's or any of its Associates' involvement in the Oversight Development; and
 - (B) the Developer having used all reasonable endeavours to obtain the State's consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant stock exchange.

49 Notices

49.1 Method of giving notices

All communications (including approvals, consents, directions, requirements, requests, Claims, notices, agreements and demands) in connection with this Agreement:

- (a) **(in writing)**: must be in writing;
- (b) **(addressed)**: must be addressed to the address specified in clause 49.2 (or as otherwise notified by that party to each other party from time to time);
- (c) **(form of delivery)**: must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by both parties) to the email address of the addressee set out in clause 49.2; and
- (d) **(taken to be received)**: are taken to be received by the addressee at the address set out in clause 49.2:
 - (1) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
 - (2) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and
 - (3) in the case of email, the first to occur of:
 - (A) receipt by the sender of any email acknowledgement from the addressee's information system showing that the



communication has been delivered to the email address of that addressee;

- (B) the time that the communication enters an information system which is under the control of the addressee; or
- (C) the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day.

49.2 Address for notices

For the purposes of this clause, a person (**sender**) may (and must, in the case of a Notice given to the State or State Representative) take the address of another person (**recipient**) to be:

- (a) the address set out below; or
- (b) where the recipient notifies the sender of another address, the last address so notified to it.

State and State Representative (as applicable)

Attention: Package Director, Tunnel and Stations PPP

Address: [not disclosed]

Developer

Attention: Company Secretary

Address: [not disclosed]

Developer's Representative

Attention: Project Director or equivalent position

Address: [not disclosed]

49.3 Developer's Representative

- (a) The Developer may appoint a representative from time to time to receive and give all Notices under this Agreement.
- (b) A Notice given by the Developer's Representative is deemed to be a Notice given by the Developer.
- (c) At the date of this Agreement, the Developer's Representative is identified in clause 49.2.
- (d) The Developer may nominate a substitute Developer's Representative by giving notice to the State.
- (e) A copy of all Notices given to the Developer must be given to the Developer's Representative (if applicable).



50 Miscellaneous

50.1 Governing Law and jurisdiction

- (a) **(Governing Law):** This Agreement is governed by, and must be construed according to, the Laws of Victoria, Australia.
- (b) **(Jurisdiction):** Without limiting clauses 44 and 45, each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Agreement.

50.2 Entire Agreement

To the extent permitted by Law and in relation to their subject matter, the Oversight Development Agreements:

- (a) **(entire understanding):** embody the entire understanding of the parties and constitute the entire terms agreed by the parties; and
- (b) **(prior agreements):** supersede any prior agreement of the parties.

50.3 Amendment

- (a) **(Agreement):** Except as otherwise expressly provided in this Agreement, this Agreement may only be varied by a deed executed by or on behalf of each party.
- (b) **(Other Oversight Development Agreements):** Except as otherwise expressly provided in the Oversight Development Agreements to which the State is a party, no amendment to any other Oversight Development Agreement to which the State is a party is valid or binding on a party unless made in writing and executed by the State and all other parties to the relevant Oversight Development Agreement.

50.4 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to both parties) required by Law or reasonably requested by another party to give effect to this Agreement.

50.5 Costs

Each party must bear its own costs arising out of the negotiation, preparation and execution of this Agreement.

50.6 Counterparts

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

50.7 Severance

If, at any time, a provision of this Agreement or any other Oversight Development Agreement is or becomes illegal, invalid or unenforceable in any respect under the Law of



any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this Agreement or any other relevant Oversight Development Agreement; or
- (b) that provision under the Law of any other jurisdiction.

50.8 Survival of certain provisions

- (a) **(Surviving clauses):** All provisions of this Agreement which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of this Agreement will survive the rescission, termination or expiration of this Agreement, including any provision in connection with:
 - (1) the State's rights to set-off and recover money;
 - (2) confidentiality or privacy;
 - (3) Intellectual Property Rights;
 - (4) any obligation to make any records available to the State;
 - (5) any indemnity or financial security given in accordance with this Agreement; or
 - (6) any right or obligation arising on termination of this Agreement.
- (b) **(Interpretation):** No provision of this Agreement which is expressed to survive the termination of this Agreement will prevent any other provision of this Agreement, as a matter of interpretation, also surviving the termination of this Agreement.
- (c) **(Survival of rights and obligations):** No right or obligation of any party will merge on completion of any transaction in accordance with this Agreement. All rights and obligations in accordance with this Agreement survive the execution and delivery of any transfer or other document which implements any transaction in accordance with this Agreement.

50.9 Waiver

- (a) **(Writing):** A waiver given by a party in accordance with this Agreement is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver):** A failure to, a delay in or the partial exercise or enforcement of a right provided by Law or in accordance with this Agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or in accordance with this Agreement.
- (c) **(No waiver of another breach):** No waiver of a breach of a term of this Agreement operates as a waiver of another breach of that term or of a breach of any other term of this Agreement.

51 [not disclosed]

[not disclosed]



HERBERT
SMITH
FREEHILLS



Signing page

Executed as an agreement

State

Signed by
**The Minister for Public
Transport on behalf of the
Crown in right of the State of
Victoria**

in the presence of

sign here ► [not disclosed]
Minister

sign here ► [not disclosed]
Witness

print name [not disclosed]

print name [not disclosed]

**Executed by Lendlease (OSD South) Pty
Limited as trustee for the Lendlease (OSD
South) Trust** by being signed, sealed and
delivered by its attorneys under power of attorney
dated

who declare that they have no notice of revocation
of the power of attorney, in the presence of

[not disclosed]
Signature of witness

[not disclosed]
Signature of attorney

[not disclosed]
Name of witness (print)

[not disclosed]
Name of attorney

[not disclosed]

[not disclosed]
Signature of attorney

[not disclosed]

[not disclosed]
Name of attorney

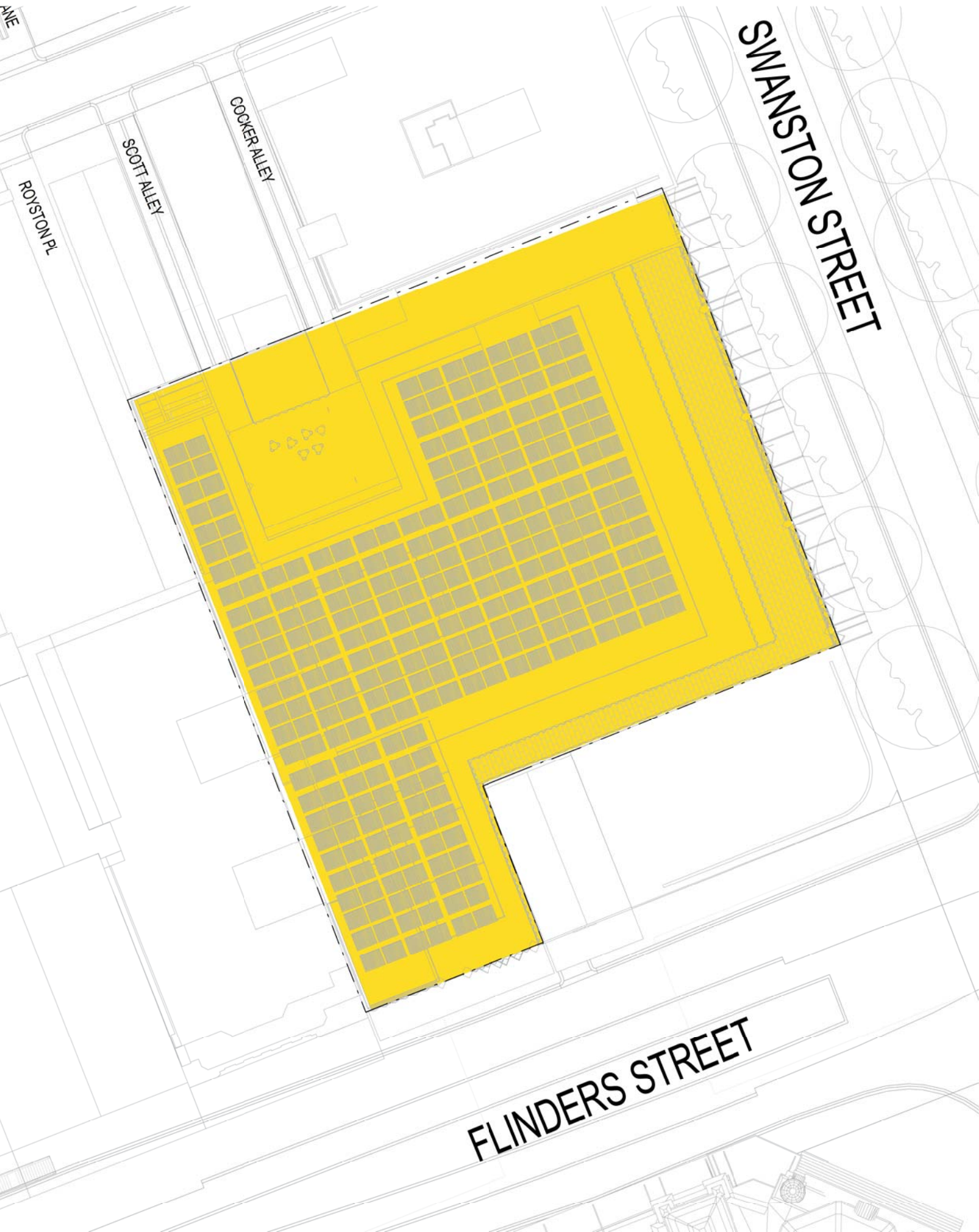


HERBERT
SMITH
FREEHILLS

Attachment 1

Precinct map

ATTACHMENT 1: PRECINCT



ROYSTON PL.

SCOTT ALLEY

COCKER ALLEY

SWANSTON STREET

FLINDERS STREET



HERBERT
SMITH
FREEHILLS

Attachment 2

Licensed area

ATTACHMENT 2: LICENCED AREA



Access via State Government easement/carriage way



HERBERT
SMITH
FREEHILLS

Attachment 3

Construction Licence



HERBERT
SMITH
FREEHILLS

Approved Document

Construction Licence

[Insert [State]]

[Insert Developer]



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Construction Licence

Date ►

Between the parties

State **[Insert]**

Developer **[Insert]**
[Insert] of **[insert address]**

Recitals

- 1 The background to the Oversight Development is set out in the Commercial Development Agreement.
- 2 As part of the development and implementation of the Oversight Development Works, the State has agreed to grant, and Developer has agreed to accept, a licence in respect of the Licensed Construction Areas on the terms and conditions contained in this Licence.

This agreement witnesses as follows:



1 Definitions and interpretation

1.1 Commercial Development Agreement definitions

Unless otherwise expressly defined, expressions used in this Licence have the meanings given to them in the Commercial Development Agreement.

1.2 Definitions

In this Licence, unless the context otherwise requires:

| Term | Meaning |
|--|---|
| Amended Licensed Construction Area Plan | has the meaning given in clause 4.1(b)(1). |
| Authority | means any government or governmental, semi-governmental or local government authority, local council, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality or any person having jurisdiction over the Licensed Construction Areas, the Developer, the State or any of them or anything in relation to any of them. |
| Commercial Development Agreement | the document entitled "Commercial Development Agreement" between the State and Developer dated <i>[insert]</i> . |
| Hoardings | temporary barriers, fences, enclosures, barricades, booms and other like structures (including fixed signage) on or around the Licensed Construction Areas in order to prevent public access to the Licensed Construction Areas. |
| Licence | means this construction licence and includes all Schedules, Exhibits, Attachments and Annexures to it. |
| Licence Commencement Date | means the date of CBD South OSD Acceptance. |
| Licence Fee | means [not disclosed] |
| Licensed Construction Area Plan | has the meaning given in clause 4.1 and includes any Amended Licensed Construction Area Plan. |



| Term | Meaning |
|------------------------------------|---|
| Licensed Construction Areas | means that part of the subdivided stratum (limited in height and depth) which is identified in the Licensed Construction Area Plan. |
| Permitted Use | means: <ol style="list-style-type: none">1 the performance of the D&C Activities and the Oversight Development Works in accordance with the Commercial Development Agreement and this Licence;2 the storage and location of any equipment, vehicles and machinery necessary for the carrying out of the D&C Activities and the Oversight Development Works;3 the exercise by the Developer of its rights and the compliance by the Developer with its obligations under the Commercial Development Agreement, to the extent to which they relate to the Licensed Construction Areas; and4 any other purpose agreed by the State. |
| Requirement | includes any requirement, notice, order, demand, direction, recommendation, request, stipulation or similar notification received from or given by any Authority or pursuant to any Law whether in writing or otherwise and notwithstanding to whom such a Requirement is addressed or directed. |
| Temporary Works Areas | [those parts of the Licensed Construction Areas marked blue hatched and green hatched on the Licensed Construction Area Plan.] |
| Term | the term of this Licence as described in clause 6. |

1.3 Interpretation

In this Licence:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa and a word indicating a gender includes every other gender;
- (c) **(references)**: a reference to:
- (1) a party, clause, Schedule, Exhibit, Attachment or Annexure is a reference to a party, clause, Schedule, Exhibit, Attachment or Annexure of or to this Licence; and
 - (2) a section is a reference to a section of a Schedule;



- (d) **(document as amended)**: a reference to this Licence or to any other deed, agreement, document or instrument includes a reference to this Licence or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **(“includes”)**: “includes” will be read as if followed by the phrase “(without limitation)”;
- (j) **(“or”)**: the meaning of “or” will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) **(“\$”)**: a reference to “\$”, “AUD” or “dollar” is to Australian currency;
- (m) **(time)**: a reference to time is a reference to time in Melbourne, Australia;
- (n) **(rights)**: a reference to a right includes any benefit, remedy, function, duty, obligation, Liability, interest, entitlement, title, discretion, authority or power;
- (o) **(obligations and liabilities)**: a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (p) **(“may”)**: the term “may”, when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;
- (q) **(construction)**: where there is a reference to an Authority, institute or association or other body referred to in this Licence which:
 - (1) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Licence is deemed to refer to that other entity; or
 - (2) ceases to exist, this Licence is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (r) **(“remedy”)**: the use of the word “remedy” or any form of it in this Licence means that the event to be remedied must be remedied or its effects overcome; and



- (s) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

1.4 Business Day

If the day on or by which anything is to be done in accordance with this Licence is not a Business Day, that thing must be done no later than the next Business Day.

1.5 Provisions limiting or excluding liability, rights or obligations

- (a) A right of the State or an obligation of the Developer under this Licence will not limit or exclude any other right of the State or obligation of the Developer under this Licence unless expressly stated.
- (b) Any provision of this Licence which seeks, either expressly or by implication, to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.

1.6 Approvals, directions and notices in writing

Unless otherwise expressly provided in this Licence or agreed between the parties, all approvals, consents, directions, requirements, requests, claims, notices, agreements and demands given or required to be given under this Licence must be given in writing.

1.7 Prior approval or consent

Where the Developer is required by this Licence to obtain the State's consent or approval to an action, document or thing, unless otherwise expressly stated, that consent or approval must be obtained prior to the actions, document or thing occurring or coming into effect.

1.8 Action without delay

Unless there is a provision in this Licence which specifies a period of time in which something must be done by the parties, all things must be done without undue delay.

1.9 Relationship of the parties

Unless otherwise expressly provided, nothing in this Licence:

- (a) **(no additional relationship)**: creates a partnership, joint venture, fiduciary, employment or agency relationship between the parties; or
- (b) **(no good faith)**: imposes any duty of good faith on the State.

1.10 State's rights and obligations

- (a) **(Acknowledgement)**: The parties acknowledge the substance, operation and potential effect and consequences of clause 1.9 (*State's executive rights and duties*) of the Commercial Development Agreement in relation to this Licence.
- (b) **(No Claim)**: Subject to clause 1.10(c), the Developer will not be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its statutory or executive rights or duties.



- (c) **(Liability for breach):** Clauses 1.10(a) and 1.10(b) do not limit any Liability which the State would have to the Developer under this Licence as a result of a breach by the State of a term of this Licence but for these clauses.

1.11 Reasonable endeavours of the State

Any statement in this Licence providing that the State will use or exercise “reasonable endeavours” or “act reasonably” in relation to an outcome, means that the State:

- (a) **(relevant steps):** will take steps to bring about the relevant outcome so far as it is reasonably able to do so, having regard to its resources and other responsibilities;
- (b) **(no guarantee):** cannot guarantee the relevant outcome; and
- (c) **(no obligation):** is not required to:
- (1) exercise a right of any Government Party, or to influence, over-ride, interfere with or direct any other Government Party in the proper exercise and performance of its legal, statutory or executive duties and functions;
 - (2) exercise a power or discretion in a manner that the State regards as not in the public interest;
 - (3) develop or implement new policy;
 - (4) procure legislation; or
 - (5) act in any way that the State regards as not in the public interest.

1.12 Cost of carrying out obligations

Each party must carry out its obligations under this Licence at its own cost, unless expressly provided otherwise.

1.13 Development Agreement

- (a) This Licence is subject to the terms and conditions of the Commercial Development Agreement.
- (b) If there is any inconsistency between the terms of this Licence and the terms of the Commercial Development Agreement, the Commercial Development Agreement will prevail.
- (c) The Developer agrees that nothing in this Licence will in any way operate as a bar to the exercise by the State of, or a waiver of or modification to, the State's rights under the Commercial Development Agreement.
- (d) The Developer must allow the State to exercise its rights under the Commercial Development Agreement (subject to the provisions of the Commercial Development Agreement) with respect to the Lease Land (including the Licensed Construction Areas) despite this Licence without:
- (1) any interference or disturbance from the Developer; or
 - (2) any restriction imposed by the Developer.
- (e) The exercise of the State's rights under the Commercial Development Agreement in no way will be a breach of this Licence.



[Lendlease Note: The intention of this clause is a bit unclear. The DA and clause 6 provides that the Licence terminates when the CDA terminates.]

2 Delegation

2.1 Right to delegate

The Developer acknowledges that the State may exercise any right, statutory or otherwise, it has to appoint a person as a delegate to perform any of its rights under this Licence.

2.2 Notice of delegation

The State will give the Developer notice of:

- (a) **(delegate)**: any delegate so appointed, setting out the delegated rights and including a copy of the relevant instrument of appointment; and
- (b) **(revocation or change)**: any revocation or change of any delegation contemplated by clause 2.3.

2.3 Revocation or amendment of delegation

Any such delegation may be revoked, changed, delegated, limited or made subject to such conditions as the State determines from time to time.

2.4 No limitation of obligations

The appointment of a delegate to perform some or all of the rights of the State under this Licence does not limit the rights or obligations of the State under this Licence.

3 Negation of representations and warranties

The State makes no representations (express or implied) and gives no warranties (express or implied):

- (a) **(suitability of purposes)**: that the Licensed Construction Areas or any other land is now or will remain suitable or adequate for all or any of the purposes contemplated by this Licence or in the Commercial Development Agreement; and
- (b) **(Commercial Development Agreement representations)**: as to the matters specified in clause [#] (*No representations from the State*) of the Commercial Development Agreement,

and all warranties (if any) and representations (if any) implied by Law, are to the extent permitted by Law, expressly negated.



4 Grant of Licence

4.1 Licensed Construction Areas

- (a) **(Licensed Construction Areas at the Licence Commencement Date):** At the Licence Commencement Date, the Licensed Construction Areas will, for the purposes of this Licence, be comprised of the land identified in the plan set out in Attachment 1 (**Licensed Construction Area Plan**).
- (b) **(Amendment of the Licensed Construction Areas):** If, at any time during the Term, the parties to this Licence wish to vary, for the purposes of this Licence, the land which comprises the Licensed Construction Areas, then:
- (1) the State must prepare and provide the Developer with an amended version of the Licensed Construction Area Plan (**Amended Licensed Construction Area Plan**), which identifies any amendments to Licensed Construction Areas; and
 - (2) both parties must sign the Amended Licensed Construction Area Plan as an acknowledgement of their agreement to the variation of the Licensed Construction Areas,
- and from the date on which the Amended Licensed Construction Area Plan has been signed by both parties:
- (3) the Amended Licensed Construction Area Plan will be deemed to have replaced the Licensed Construction Area Plan; and
 - (4) the Licensed Construction Areas will, for the purposes of this Licence, be deemed to be the areas shown on the Amended Licensed Construction Area Plan.
- (c) **(Amendment of the Licensed Construction Areas if Commercial Lease commences):** Without limiting clause 4.1(b), if the Developer provides notice to the State requiring the early commencement of the Commercial Lease under clause 25.5 of the Commercial Development Agreement, then from the Lease Commencement Date:
- (1) the Licensed Construction Areas will be varied so that the Lease Land is excluded;
 - (2) the Developer will be released from all obligations under this Licence to the extent those obligations relate to the Lease Land;
 - (3) the Developer will cease to have all rights under this Licence to the extent those rights relate to the Lease Land; and
 - (4) to the extent of any inconsistency between this Licence and the Commercial Lease, the terms of the Commercial Lease will prevail.

4.2 Licence over the Licensed Construction Areas

- (a) **(Grant of licence):** The State grants to the Developer for the Term a non-exclusive licence to use the Licensed Construction Areas for the Permitted Use on the terms of this Licence and the Commercial Development Agreement.
- (b) **(Period):** The Developer must only remain on the Licensed Construction Areas for the minimum period as is reasonably necessary for the Permitted Use.



- (c) **(Sub-licence)**: The Developer may sub-licence all or part of the Licensed Construction Areas with the consent of the State, such consent not to be unreasonably withheld.

4.3 Nature of interest

- (a) **(Nature of interest)**: The Developer acknowledges and agrees that:
- (1) the rights conferred on the Developer by this Licence rest in contract only and do not confer a proprietary interest on the Developer; and
 - (2) its rights and obligations arising out of or in relation to the Licensed Construction Areas are as set out in the Commercial Development Agreement.
- (b) **(Stateship and access)** Without limiting the generality of clause 4.3(a), the Developer acknowledges and agrees that:
- (1) ownership and control of the Licensed Construction Areas remains vested in the relevant owner of the land at all times;
 - (2) this Licence does not grant the Developer ownership, control or legal entitlement to exclusive possession of the Licensed Construction Areas nor does it extend to the Developer an entitlement to rents or profits in respect of the Licensed Construction Areas;
 - (3) the Developer and any of its Associates can access the Licensed Construction Areas only for the Permitted Use; and
 - (4) the Developer may not construct any permanent works on the Temporary Works Areas.

4.4 Responsibility of the Developer

The Developer acknowledges and agrees that it has the same responsibilities to third parties in connection with persons, property and all other aspects of the Licensed Construction Areas which it would have if it held the freehold title to the Licensed Construction Areas.

4.5 Liability

The parties acknowledge and agree that the Developer is required to indemnify the State under clause 41 (*Risk and Liability*) of the Commercial Development Agreement in connection with its use and occupation of the Licensed Construction Areas.

5 Payments

5.1 Licence Fee

The Developer must pay the Licence Fee to the State, if demanded by the State.



5.2 Utilities

The parties acknowledge and agree that the rights and obligations of the Developer in relation to Utilities are set out in the Commercial Development Agreement, including clause 30.3 (*Utility Services*) of the Commercial Development Agreement.

5.3 Payment by the State

If the Developer defaults in the payment of any of the costs or charges referred to in clause 5.2, the State may (without limiting any other rights and remedies of the State) pay the costs or charges, and any amount paid by the State will be a debt due and payable from the Developer to the State.

6 Term of Licence

This Licence takes effect on the Licence Commencement Date and continues until the earlier of:

- (a) the termination of the Commercial Development Agreement; and
- (b) the Final Completion Date.

7 Approval to demolish structures, etc

Except where specified or required under the Commercial Development Agreement, the Developer must submit to the State for approval (with such approval not to be unreasonably withheld by the State), prior to submitting to the responsible authority under any relevant planning scheme (if required), any proposal to demolish any structure or building in, on, under or over the Licensed Construction Areas.

8 Hoardings

The Developer must procure that Hoardings are constructed and maintained enclosing the Licensed Construction Areas to the State's reasonable satisfaction and ensure that the Hoardings are maintained for so long as is required to complete the Oversight Development Works.

9 Harm minimisation

The Developer must:

- (a) **(use of Licenced Construction Area)**: in using or occupying the Licenced Construction Area; and
- (b) **(performing D&C Activities and the Oversight Development Works)**: except to the extent necessary to undertake the D&C Activities and the Oversight



Development Works, and otherwise to comply with its obligations under the Commercial Development Agreement,

cause as little harm and inconvenience and do as little damage as reasonably possible to the Licenced Construction Area (and any adjacent area) and any improvement or foliage on the Licenced Construction Area or any adjacent area (including any Relevant Utility Infrastructure).

10 Removal of materials and make good

Without limiting its obligations under the Commercial Development Agreement:

- (a) **(during Term)**: during the Term, as soon as practicable after completion of any Oversight Development Activities on any part of the Licensed Construction Areas; and
- (b) **(prior to Term ending)**: prior to the end of the Term, to the extent reasonably practicable in a construction environment, the Developer must:
 - (c) **(removal of equipment)**: remove all plant, equipment, machinery, facilities and vehicles (except to the extent they form part of the Relevant Infrastructure);
 - (d) **(clean and safe condition)**: ensure that the relevant part of the Licensed Construction Areas is left in a clean and safe condition;
 - (e) **(removal of rubbish)**: ensure that all waste, rubbish, debris and redundant materials are removed promptly from the Licensed Construction Areas in accordance with Best D&C Practices;
 - (f) **(public use and occupation)**: without limiting clause 10(d), ensure that any relevant part of the Licensed Construction Areas which will become open to the public is safe for public use and occupation; and
 - (g) **(damage)**: to the extent necessary to comply with its obligations under the Commercial Development Agreement, make good all damage caused by the Developer's use and occupation of the Licensed Construction Areas.

11 Maintenance and repair

11.1 Maintenance

The Developer, at its cost, during the Term and any extension or holding over must keep and maintain the Licensed Construction Areas in accordance with the Commercial Development Agreement.

11.2 State's right of access

Without limitation to any rights of access in the Commercial Development Agreement, the State and any officer, agent, adviser, consultant, contractor or employee of the State may at all reasonable times enter the Licensed Construction Areas (with or without vehicles and equipment), including to:



- (a) **(investigations)**: make reasonable investigations as the State, any officer, agent, adviser, consultant, contractor or employee of the State or those authorised by the State deem necessary for the purpose of ascertaining whether or not there has been any breach of any of the terms, covenants or conditions expressed or implied in this Licence;
- (b) **(compliance)**: carry out any maintenance, repairs, alterations, additions or other work necessary to comply with the State's obligations under this Licence, at Law or in respect of the exercise by the State of any statutory functions;
- (c) **(Developer repairs)**: carry out any maintenance, repairs, alterations, additions or other work which the State elects to do but which the Developer is required or liable to do under this Licence by any Law or by any Requirement but fails to do so within the time specified or otherwise allowed for that work to be done; or
- (d) **(other powers)**: exercise any other powers and rights of the State under this Licence or the Commercial Development Agreement.

12 GST

- (a) **(Supply)**: If GST is or will be or is purported to be payable on the supply of any good, service or thing (a **Supply**) by either party under this Licence, to the extent the consideration otherwise provided for that Supply is not stated to include an amount in respect of GST on that Supply, the party receiving the Supply must pay to the party making the Supply on demand a sum equal to any GST payable by the supplier in respect of that Supply.
- (b) **(Reimbursement)**: To the extent that one party is required to reimburse the other party for costs incurred by the other party, those costs do not include any amount in respect of GST for which the other party is entitled to claim an input tax credit.
- (c) **(Valid tax invoice)**: A party's obligation to pay an amount under clause 12(a) is subject to a valid tax invoice being delivered to that party.
- (d) **(Licence Fee)**: The Licence Fee under this Licence is exclusive of GST.
- (e) **(Commercial Development Agreement to prevail)**: If clause 32 (*Goods and Services Tax*) of the Commercial Development Agreement would apply in connection with a Taxable Supply to which this clause 12 also applies then clause 32 (*Goods and Services Tax*) of the Commercial Development Agreement will apply in connection with that supply and the provisions of this clause 12 (but for this clause 12(e)) will not apply.
- (f) **(Definitions)**: In this clause 12, unless otherwise defined in this Licence, terms used have the meanings given to them in the GST Law.

13 Dispute Resolution and Arbitration

If any dispute or difference of opinion arises between the parties under this Licence, each party may refer any such matter for resolution in accordance with this clause 13 and the dispute or difference of opinion must be resolved in the same manner that disputes or differences of opinion under the Commercial Development Agreement are resolved.



Accordingly, the provisions of clauses 43 (*Dispute Resolution*) and 44 (*Arbitration*) of the Commercial Development Agreement are incorporated into this Licence but as if:

- (c) the only persons party to the Commercial Development Agreement, and the only persons party to the relevant dispute or difference of opinion, are the parties to the relevant dispute; and
- (d) the only matters for expert determination under those provisions are the matters referred for expert determination under this Licence.

14 Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) under or in connection with this Licence:

- (a) **(in writing)**: must be in writing;
- (b) **(addressees)**: must be addressed as set out below (or as otherwise notified by that party to each other party from time to time);

State

Attention: **[insert]**

Address: **[insert]**

Email: **[insert]**

Developer

Attention: **[insert]**

Address: **[insert]**

Email: **[insert]**

- (c) **(signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(form of delivery)**: must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by both parties) to the email address of the addressee set out in clause 14(b); and
- (e) **(taken to be received)**: are taken to be received by the addressee at the address set out in clause 14(b):
 - (1) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
 - (2) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and
 - (3) in the case of email, the first to occur of:
 - (A) receipt by the sender of any email acknowledgement from the addressee's information system showing that the



communication has been delivered to the email address of that addressee;

- (B) the time that the communication enters an information system which is under the control of the addressee; or
- (C) the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day.

15 Representations and Warranties

15.1 State's representations and warranties

The State represents and warrants for the benefit of the Developer that:

- (a) **(power to execute)**: it has the power to execute, deliver and carry out its obligations under this Licence and all necessary action has been taken to authorise that execution, delivery and performance;
- (b) **(binding obligation)**: this Licence constitutes a valid and legally binding obligation on it in accordance with its terms; and
- (c) **(no violation of any Law)**: the execution, delivery and performance of this Licence does not violate any Law to which the State is subject.

15.2 Developer's representations and warranties

The Developer represents and warrants for the benefit of the State that:

- (a) **(power to execute)**: it has the power to execute, deliver and carry out its obligations under this Licence and all necessary action has been taken to authorise that execution, delivery and performance;
- (b) **(no violation of any Law)**: the execution, delivery and performance of this Licence does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;
- (c) **(binding obligation)**: this Licence constitutes a valid and legally binding obligation on it in accordance with its terms; and
- (d) **(duly registered)**: it is duly registered, properly constituted and remains in existence.

16 Miscellaneous

16.1 Governing Law and jurisdiction

- (a) **(Governing Law)**: This Licence is governed by, and must be construed according to, the Laws of Victoria, Australia.



- (b) **(Jurisdiction):** Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Licence.

16.2 Entire agreement

To the extent permitted by Law, in relation to its subject matter, this Licence and the Commercial Development Agreement:

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

16.3 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to that party) required by Law or reasonably requested by another party to give effect to this Licence.

16.4 Surviving provisions

- (a) **(Survival):** All provisions of this Licence which, expressly or by implication from their nature, are intended to survive the rescission, termination or expiration of this Licence will survive the rescission, termination or expiration of this Licence.
- (b) **(Interpretation):** No provision of this Licence which is expressed to survive the termination of this Licence will prevent any other provision of this Licence, as a matter of interpretation, also surviving the termination of this Licence.

16.5 Waiver

- (a) **(Writing):** A waiver given by a party in accordance with this Licence is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver):** A failure to, a delay in or the partial exercise or enforcement of a right, power or remedy provided by Law or in accordance with this Licence by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or in accordance with this Licence.
- (c) **(No waiver of another breach):** No waiver of a breach of a term of this Licence operates as a waiver of another breach of that term or of a breach of any other term of this Licence.

16.6 Consents, approvals and directions

- (a) **(State):** A consent or approval required in accordance with this Licence from the State may be given or withheld, or may be given subject to any conditions, as the State (in its absolute discretion) thinks fit, unless this Licence expressly provides otherwise.
- (b) **(Developer):** A consent or approval required under this Licence from the Developer may not be unreasonably withheld, unless this Licence expressly provides otherwise.



16.7 Amendments

Except as otherwise expressly provided in this Licence, this Licence may only be varied by a deed executed by or on behalf of each party.

16.8 Severance

If, at any time, a provision of this Licence is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (e) any other provision of this Licence; or
- (f) that provision under the Law of any other jurisdiction.

16.9 Counterparts

This Licence may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same agreement.

16.10 Moratorium

To the extent permitted by Law, the application to this Licence or to any party of any Law or any requirement or any moratorium having the effect of extending or reducing the Term, reducing or postponing the payment of the Licence Fee or any part of it or otherwise affecting the operation of the terms of this Licence or its application to any party is excluded and negated.

16.11 Proportionate liability

- (g) **(Exclusion of Wrongs Act):** The operation of Part IVAA of the *Wrongs Act 1958* (Vic) is excluded in relation to all and any rights, obligations or liabilities of either party under this Licence whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (h) **(Rights, obligations and liabilities):** Without limiting clause 16.11(g), the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Licence and not otherwise, whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

16.12 No merger

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this Licence. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

16.13 No representation or reliance

- (i) **(No representation):** Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to



it to enter into this Licence, except for representations or inducements expressly set out in this Licence.

- (j) **(No reliance)**: Each party acknowledges and confirms that it does not enter into this Licence in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Licence.



HERBERT
SMITH
FREEHILLS

Signing page

Executed as an agreement



HERBERT
SMITH
FREEHILLS

Attachment 1

Licensed Construction Area Plan



HERBERT
SMITH
FREEHILLS

Attachment 4

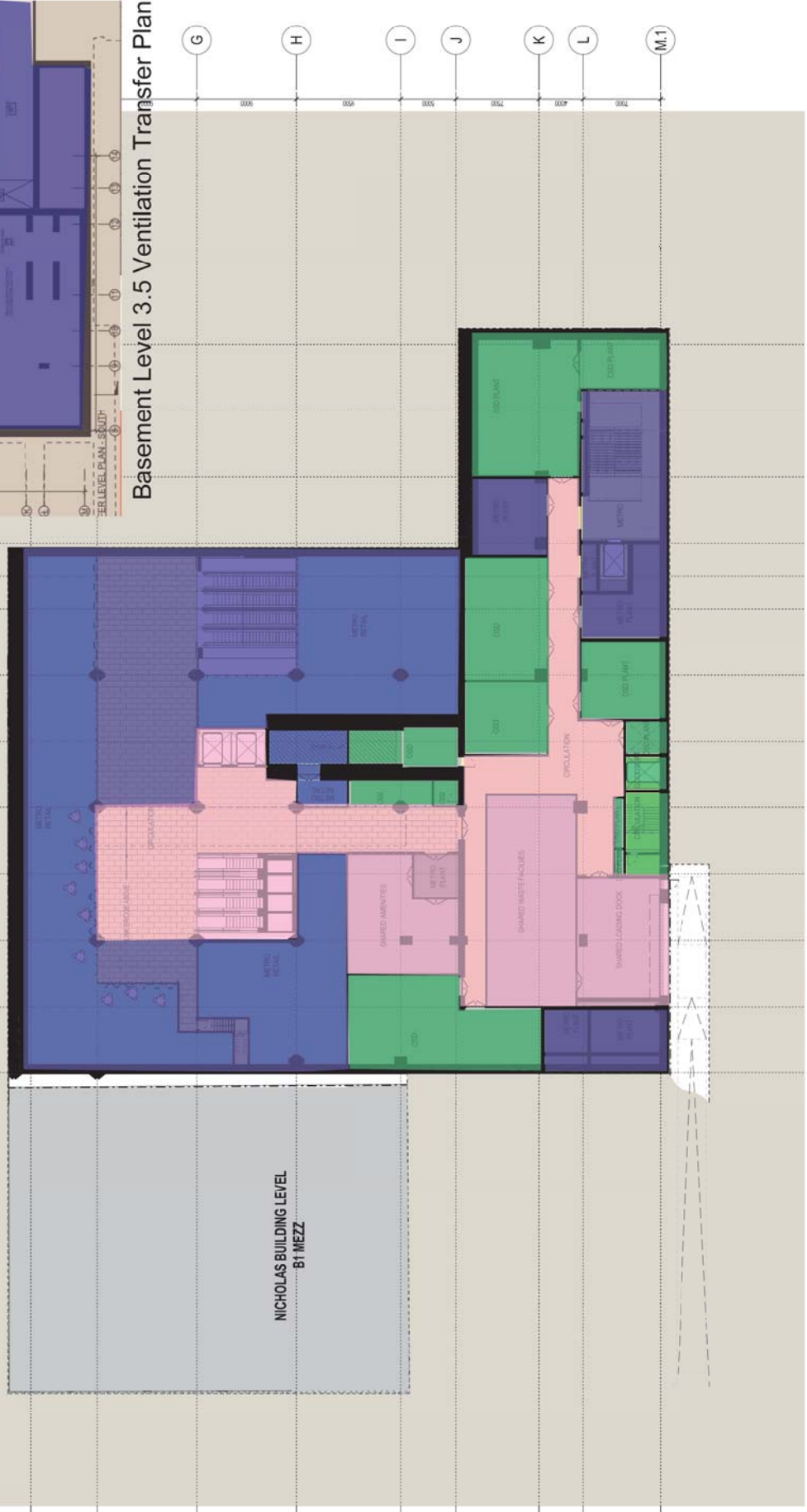
Lease Access Plan



Attachment 4 - Lease Access Plan

Legend

- Metro
- Metro with Shared Access for OSD South
- OSD South



OSD South - Lease Access Plan

Attachment 4
 Basement 1 Mezzanine
 Revision 02
 14.12.2017



Legend

Metro

Metro with Shared Access for OSD South

OSD South



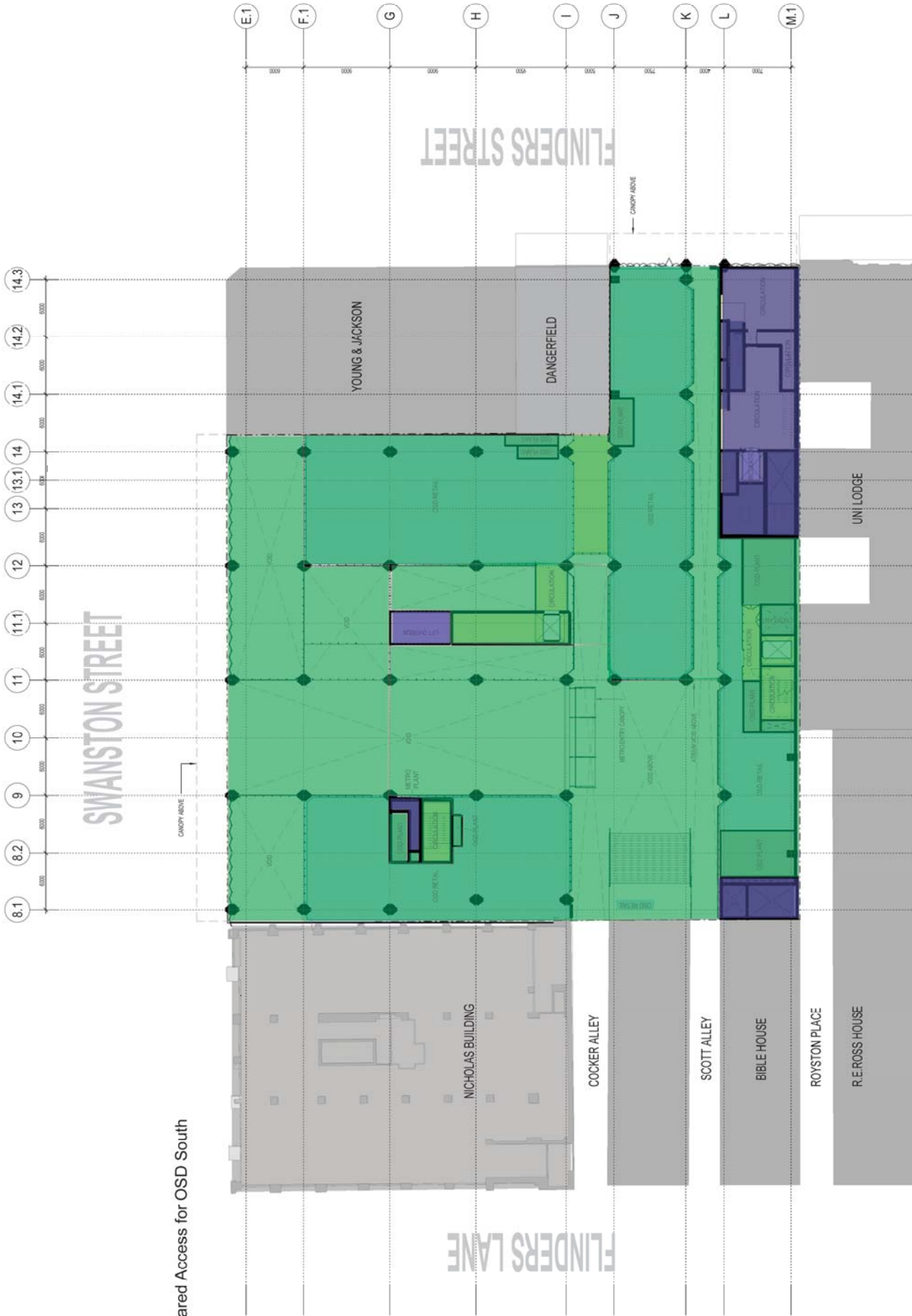
OSD South - Lease Access Plan

Attachment 4
Ground Floor
Revision 02
14.12.2017



Legend

-  Metro
-  Metro with Shared Access for OSD South
-  OSD South






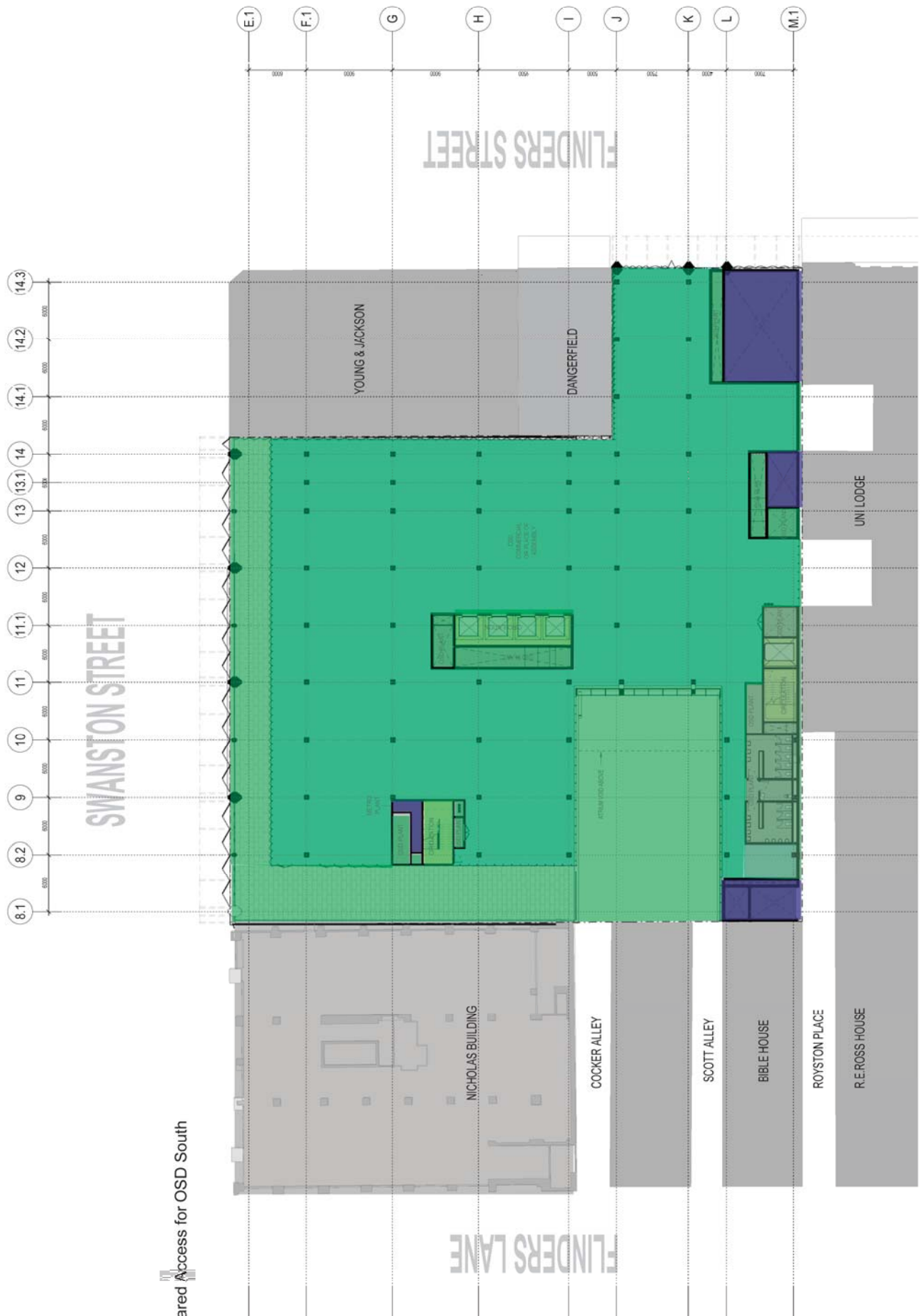
OSD South - Lease Access Plan

Attachment 4
 Ground Floor Mezzanine
 Revision 02
 14.12.2017



Legend

-  Metro
-  Metro with Shared Access for OSD South
-  OSD South



OSD South - Lease Access Plan

Attachment 4

Level 1

Revision 01

13.12.2017



Legend



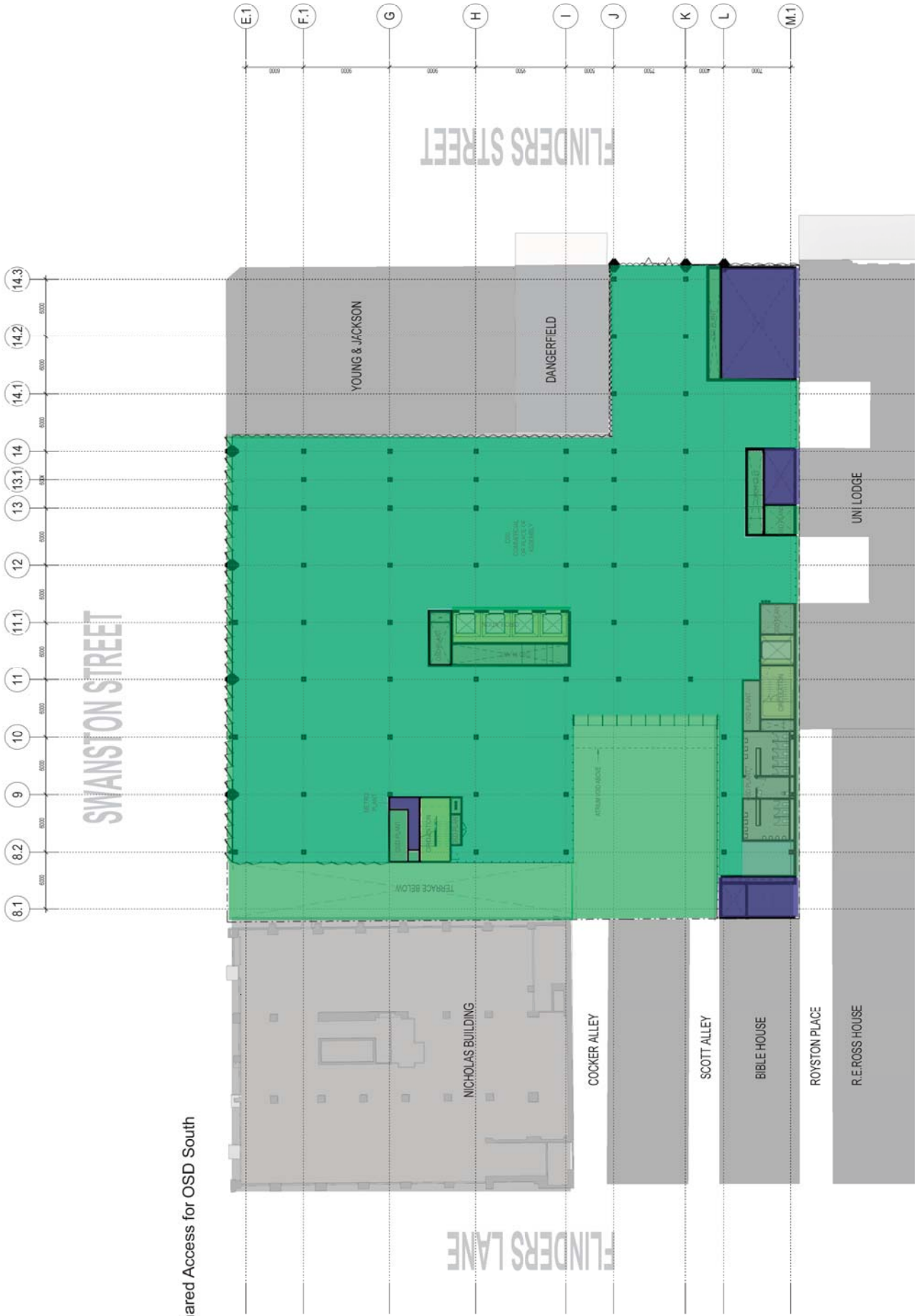
Metro



Metro with Shared Access for OSD South



OSD South



OSD South - Lease Access Plan

Attachment 4

Level 2-5

Revision 02

14.12.2017



Legend

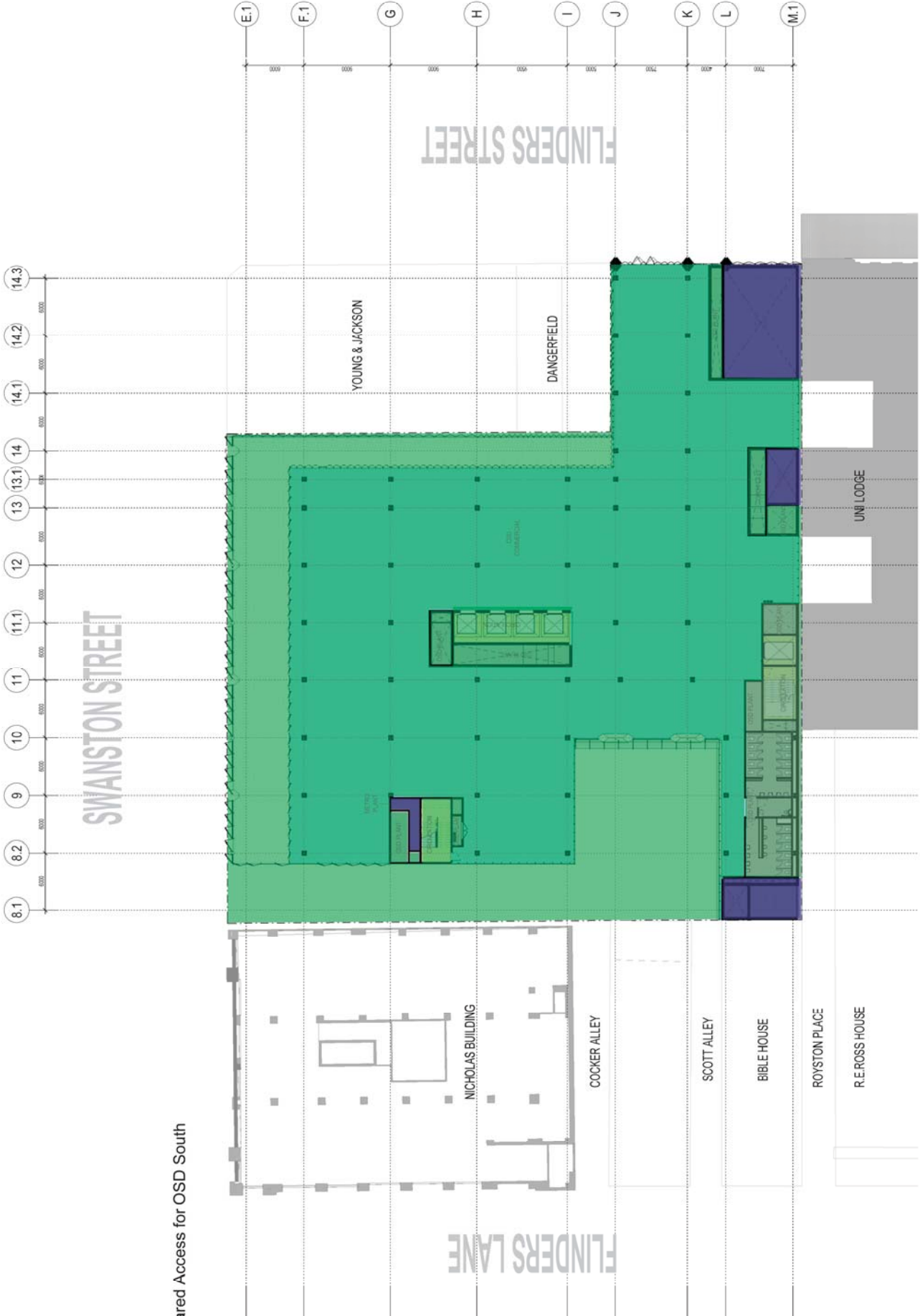
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Metro with Shared Access for OSD South



OSD South



OSD South - Lease Access Plan

Attachment 4

Level 6

Revision 02

14.12.2017

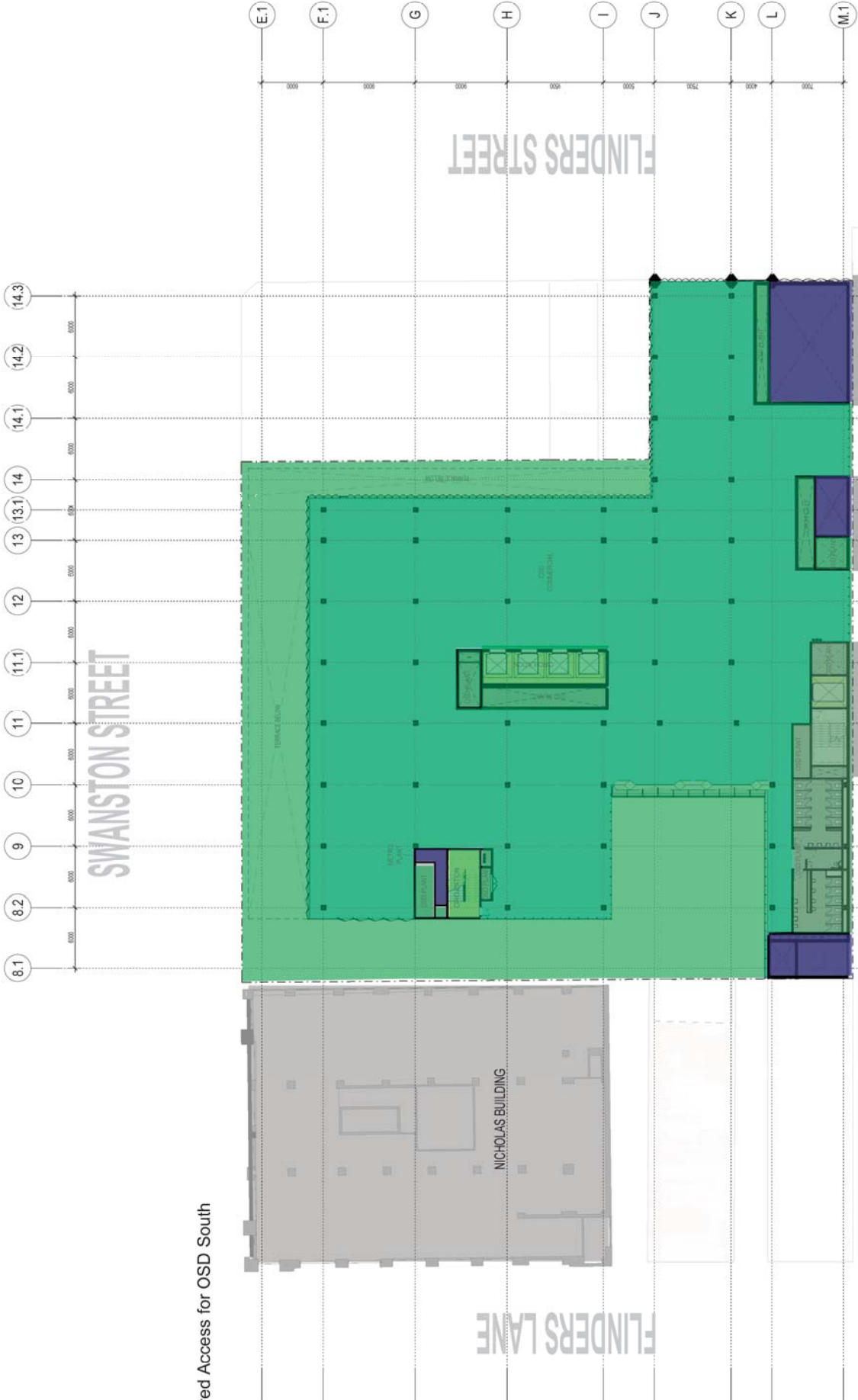


Legend

Metro

Metro with Shared Access for OSD South

OSD South



OSD South - Lease Access Plan

Attachment 4

Level 7

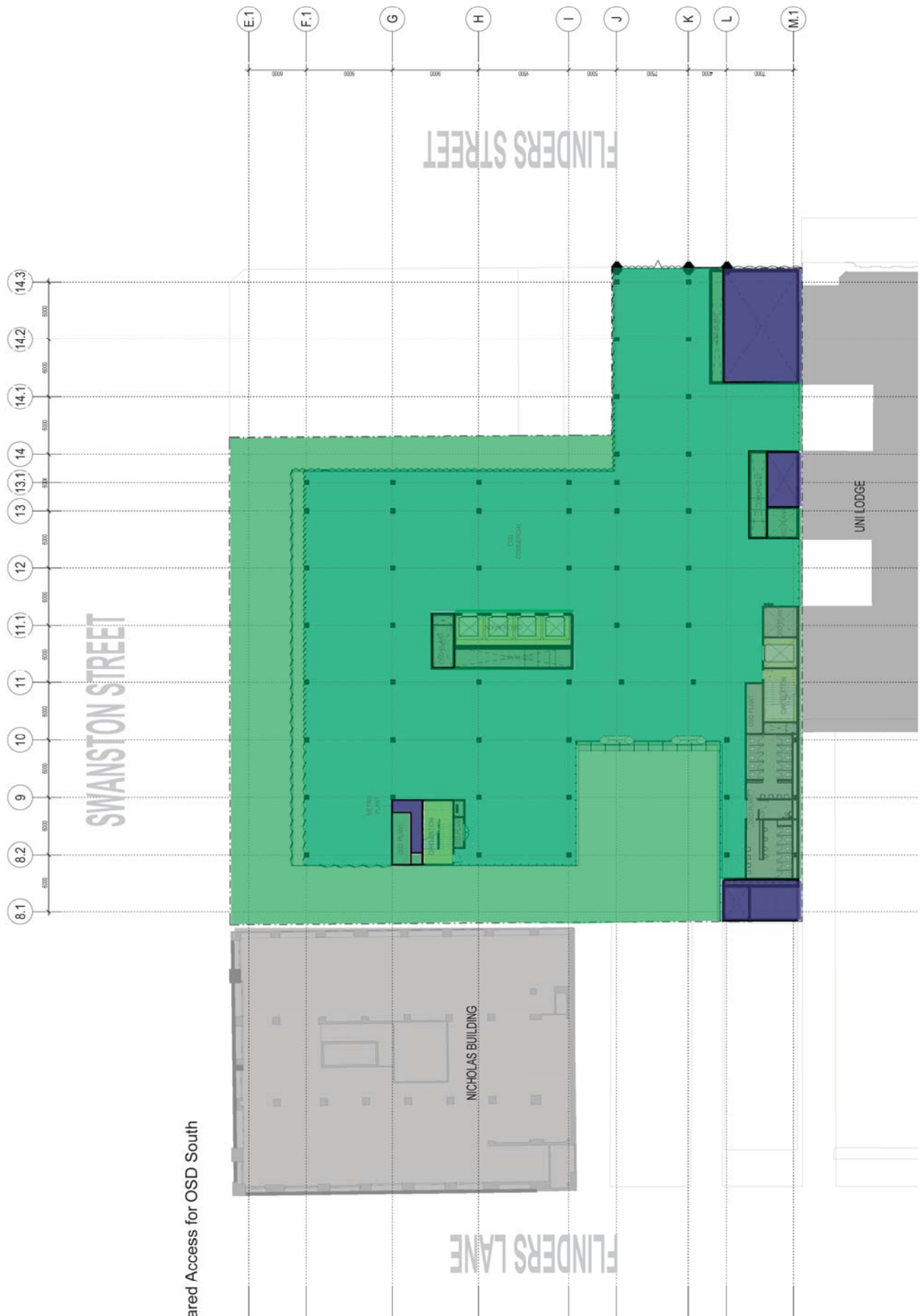
Revision 01

13.12.2017



Legend

-  Metro
-  Metro with Shared Access for OSD South
-  OSD South



OSD South - Lease Access Plan

Attachment 4

Level 8

Revision 02

14.12.2017



Legend

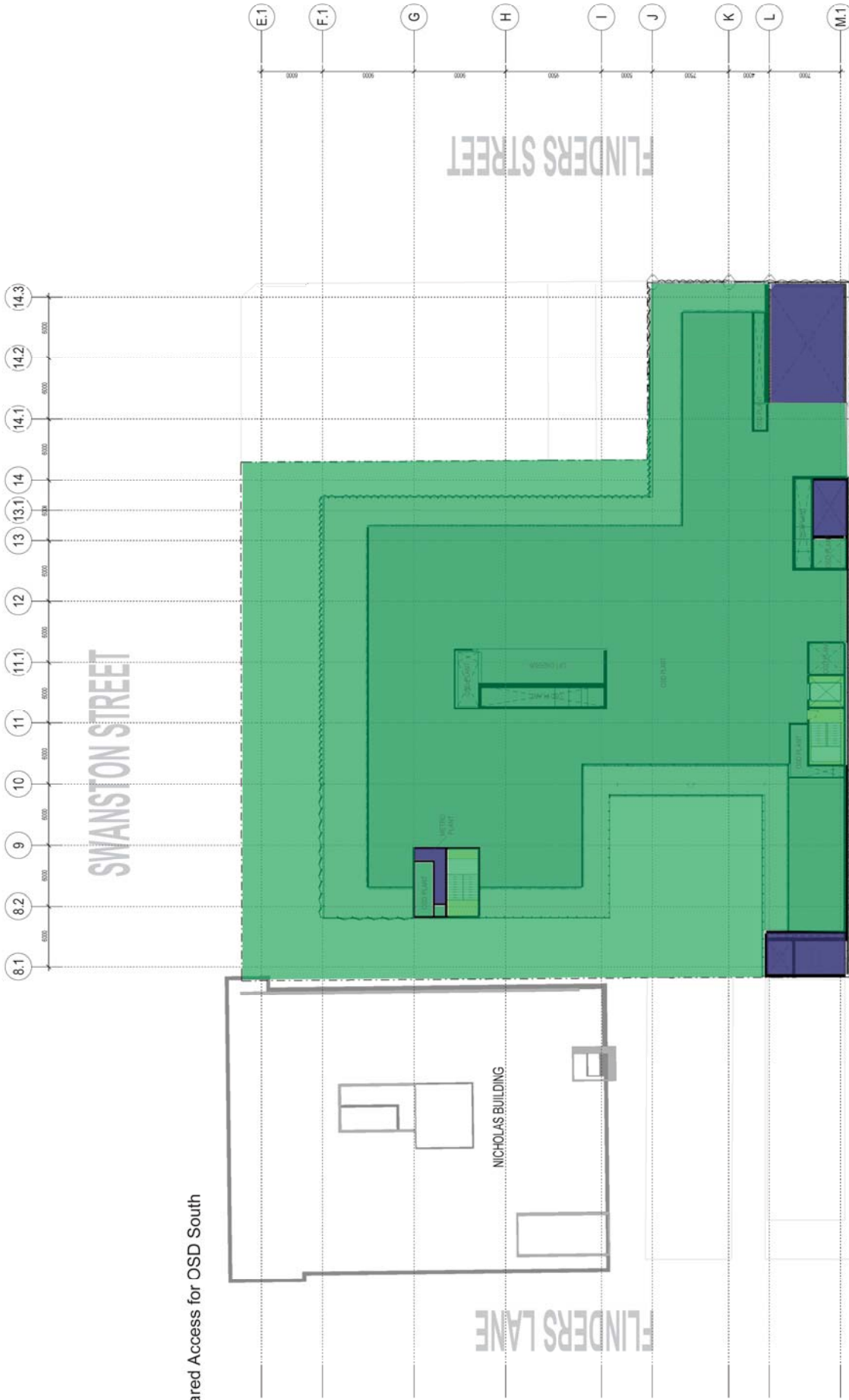
Metro



Metro with Shared Access for OSD South



OSD South



OSD South - Lease Access Plan

Attachment 4

Roof

Revision 02

14.12.2017



HERBERT
SMITH
FREEHILLS

Attachment 5

Commercial Lease

LEASE

The parties covenant with each other as follows:

1 Term and Overholding

1.1 Expiry Date

Each party is authorised to insert:

- (a) the date in the definition of Final Completion Date; and
- (b) the Expiry Date,

into this Lease once Final Completion (as defined in the Development Agreement) has occurred.

1.2 Holding Over

- (a) The Lessee becomes a monthly lessee if the Lessee continues to occupy the Land after the end of the Lease without protest by the Lessor and other than pursuant to the grant of a further lease.
- (b) Subject to clause 1.2(a), the monthly tenancy is on the terms and at the rent the Lessor specifies but if the Lessor does not specify the terms or the rent, the monthly tenancy is on the same terms as apply during the Term of this Lease (so far as those terms are applicable to a monthly tenancy) with a monthly rent that is one twelfth of the Rent.

2 Payments

2.1 Rent

- (a) The Lessee must pay the Rent to the Lessor if demanded.
- (b) In addition to the Rent, the Lessee must pay to the Lessor the Capital Sum in accordance with the terms of the Development Agreement.

2.2 Outgoings

- (a) The Lessee must pay to the Relevant Authority or reimburse the Lessor all rates, charges, State and Federal land tax and other property taxes, assessments, charges, costs and expenses which are assessed or may at any time be payable in respect of the Land so that there is no cost to the Lessor in owning the Land and as if the Land was owned by the Lessee. The Lessor must promptly refer to the Lessee any notices, rates, assessments the Lessor receives in relation to the Land as promptly as reasonably possible in order that the Lessee may meet its obligations under this clause.

- (b) To the extent that the rates and taxes referred to in clause 2.2(a) are separately assessed in respect of the Land, the Lessee must pay to the Relevant Authority or reimburse the Lessor on demand all such rates and taxes.
- (c) If the Land is not separately assessed the Lessee must pay the Lessor the proportion of the rates and taxes referred to in clause 2.2(a) that the area of the Land bears to the total area assessed.

2.3 Objection to valuation

- (a) The Lessor must promptly notify the Lessee in writing of all valuations of the Land made by a Relevant Authority which are issued in the name of the Lessor to enable the Lessee to assess whether it wishes to object to the valuation.
- (b) If the Lessee (acting reasonably) wishes to object to the valuation, the Lessee must give the Lessor a notice which includes reasonable details of the basis of the Lessee's objection, within 20 Business Days of receiving a notice under clause 2.3(a).
- (c) The Lessor must permit the Lessee to object to any valuation identified in a notice from the Lessee under clause 2.3(b), and for that purpose use the Lessor's name provided that:
 - (1) the Lessee will be responsible for all costs payable by the Lessor as a result of the Lessee's objection; and
 - (2) the Lessee must neither propose any compromise agreement to the Relevant Authority, nor reach any compromise agreement with the Authority, without the prior consent in writing of the Lessor, which will be not unreasonably withheld.

2.4 Services

The Lessee must pay when due all charges for services consumed in or provided to the Land, including, without limitation, gas, electricity, water and telephone.

2.5 Goods and Services Tax

- (a) With the exception of the term 'GST', any reference in this clause to a term defined or used in the GST Act is, unless the context indicates otherwise, a reference to that term as defined or used in the GST Act.
- (b) Any amount referred to in this Lease which is relevant in determining a payment to be made by one of the parties to the other is, unless indicated otherwise, a reference to that amount expressed on a GST exclusive basis.
- (c) If GST is imposed on a supply made under or in connection with this Lease the consideration for the supply is increased by an amount equal to the consideration otherwise payable for the supply multiplied by the rate at which the GST is imposed under the GST Act. The additional consideration is, subject to the supplier issuing a tax invoice to the recipient, payable at the same time and in the same manner as the consideration to which it relates.
- (d) If a party refunds to the other party any consideration for a taxable supply, that party must also refund an amount in respect of any amount paid on account of GST in respect of that taxable supply.
- (e) If one of the parties to this Lease is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with this Lease, then

the amount of the reimbursement or indemnity payment must be reduced by an amount equal to any input tax credit to which the party being reimbursed or indemnified (or its representative member) is entitled in relation to that loss, cost, expense or outgoing.

- (f) In this clause 2.5:
- (1) 'GST' has the meaning given to that expression in the GST Act; and
 - (2) 'GST Act' means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

3 Insurance, Indemnities and Release

3.1 Obligation to Insure

The Lessee must:

- (a) insure its use of the Land against any injury, loss or damage which is commonly covered by public liability insurance, including occupier's liability insurance, for at least [not disclosed] or any other amount reasonably required by the Lessor having regard to common market practice for similar properties in Melbourne CBD; and
- (b) maintain insurances which are required by Law.

3.2 Lessee's assumption of responsibilities

The Lessee uses and occupies the Land and the Lessee's improvements at the Lessee's own risk and agrees to take and be subject to the same responsibilities to which it would be subject in respect of persons and property if, during the Term, it was the owner and occupier of the freehold of the Land and the Lessee indemnifies and will keep the Lessor indemnified in that regard.

3.3 Lessee's Releases and Indemnities

- (a) The Lessee uses the Land and the Lessee's improvements at its own risk and releases the Lessor to the full extent permitted by Law in connection with any claim or demand resulting from any accident, damage, injury or death occurring at the Land except to the extent it is caused or contributed to by the negligence or default of the Lessor or the Lessor's Associates.
- (b) The Lessee indemnifies the Lessor and holds it harmless for and against all liability for damage, expenses, cost or loss to any other person or property that the Lessor may sustain or incur caused by, arising out of or in connection with, whether directly or indirectly:
 - (1) anything occurring on the Land except to the extent it is caused or contributed to by the negligence or default of the Lessor or the Lessor's Associates;
 - (2) any act, omission, negligence or default of the Lessee; and
 - (3) the Lessor doing anything which the Lessee must do under this Lease but which the Lessee has not done or which the Lessor reasonably considers the Lessee has not done properly.

- (c) Despite clause 3.3(b):
- (1) the Lessee and the Lessee's Associates do not have any liability to the Lessor or the Lessor's Associates; and
 - (2) the Lessor or the Lessor's Associates are not entitled to make any claim,
- for any Indirect or Consequential Loss incurred or sustained by the Lessor or the Lessor's Associates:
- (3) as a consequence of any act or omission of the Lessee or any of the Lessee's Associates (whether negligent or otherwise); or
 - (4) due to any breach of this Lease by the Lessee or any of the Lessee's Associates.

4 Use of Land

4.1 Maintenance

The Lessee must keep the Land safe and in good repair, order and condition having regard to the age of the buildings on the Land and to similar buildings in the Melbourne CBD.

4.2 Requirements of Government Agencies

- (a) The Lessee must comply promptly with all Laws in respect of the Lessee's use of the Land and any requirements, notices, orders, permits, licences, consents, grants, certificates, sealing or other approvals obtained or required to be obtained from any Government Agency having jurisdiction or authority in respect of the Land or the use of the Land (**Approvals**).
- (b) Without limiting any other rights of the Lessor, the Lessor may elect at the cost of the Lessee to comply with any Approval referred to in clause 4.2(a) either in full or in part where the Lessee fails to comply within the time limit imposed by the Government Agency.
- (c) The Lessee must pay to the Lessor on demand all costs incurred by or on behalf of the Lessor in complying with any Approval referred to in clause 4.2(a).

4.3 Lessee's acknowledgement

The Lessee acknowledges and agrees that:

- (a) this is a ground lease and that accordingly the Lessor has no obligation to:
 - (1) carry out any maintenance, replacement or repair whether of a structural nature or any other nature; and
 - (2) take out any insurances in connection with the Lessee's improvements on the Land; and
- (b) neither the Lessor nor any other person on the Lessor's behalf has made any representation, given any advice or given any warranty as to the nature or geology of the Land or with respect to the location or availability of any services

within, from or to the Land or in relation to any rights of entry, access or exit to or from the Land.

4.4 Permitted Use

- (a) Prior to and on the Final Completion Date, the Lessee may only use and occupy the Land for the purpose of the construction of the Oversight Development Works by the Developer in accordance with the Development Agreement.
- (b) From the Final Completion Date:
 - (1) clause 4.4(a) ceases to have any effect.
 - (2) subject to clauses 4.7, the Lessee may use and occupy the Land for any purpose permitted by Law.

4.5 Lessee's Proposed Development

- (a) The Lessee agrees to develop and use the Land in a manner which is consistent with the Development Plans and the development and use of the Land permitted by Law.
- (b) As between the Lessor and the Lessee, the Lessee accepts responsibility for all Site Conditions subject to the provisions of the Development Agreement.
- (c) This clause 4.5 ceases to have any effect from Final Completion Date.

4.6 Further construction and alterations

- (a) After the Final Completion Date, the Lessee may at the Lessee's option and expense during the Term after complying with the requirements of any Government Agency having jurisdiction in the matter to the extent required by Law with the prior consent of the Lessor which consent must not be unreasonably withheld or delayed install, erect, construct, dismantle, replace and renew upon the Land any building or structure.
- (b) Clause 4.6(a) does not apply and the Lessor's consent is not required for the following works which the Lessee may carry out any changes which apply to:
 - (1) internal layouts of the buildings on the Land;
 - (2) internal components of the buildings on the Land, such as repainting, renovation and refresh works;
 - (3) internal tenancy fitouts;
 - (4) the removal, replacement or upgrade of any of any Lessee's plant and equipment;
 - (5) the removal or replacement of any Lessee's property that has reached the end of its economic life or has otherwise become redundant; or
 - (6) the dismantling or removal of insubstantial or minor parts of the Lessee's property erected on the Land required due to necessary maintenance or repairs,
- (c) The parties agree that if at any time the Lessee obtains or intends to obtain planning approval for areas beyond the Land as indicated in Schedule 1, the Lessee may request that additional land be included in the Land and the Lessor will consider this in good faith.

4.7 Prohibited Business

- (a) The Lessee must not operate or permit the operation of any Prohibited Business on the Land.
- (b) The Land must only be used by the Lessee, or be permitted by the Lessee to be used by others, for purposes which are permitted under the Planning Scheme and which are not Prohibited Businesses.

4.8 Advertising

- (a) The Lessee may:
 - (1) determine and change the name of the buildings on the Land; and
 - (2) place advertising on any part of the Land.
- (b) The exercise of the Lessee's rights under clause 4.8(a) must to the extent applicable:
 - (1) comply with the Advertising Restrictions;
 - (2) comply with all applicable Laws and Approvals;
 - (3) comply with voluntary codes of conduct established by the advertising industry; and
 - (4) not depict subject matter which is or reasonably would be regarded as offensive.

4.9 Station Land Management Agreement

- (a) The Lessee and the Lessor must at all times comply with its obligations under the Station Land Management Agreement.
- (b) A breach of the a party's obligations under the Station Land Management Agreement will also be deemed to be a breach of that party's obligations under this Lease.

4.10 OH&S

- (a) The Lessor appoints the Lessee to perform or ensure the performance of the role of Principal Contractor in respect of any 'construction project' which meets the applicable threshold under the OHS Regulations undertaken and authorises the Lessee to manage and control the Land to the extent necessary to discharge the duties of a Principal Contractor under OHS Legislation.
- (b) The Lessee's agrees to discharge and perform the duties of Principal Contractor under OHS Legislation in respect of any 'construction project' which meets the applicable threshold under the OHS Regulations undertaken on the Land, unless:
 - (1) another person has the capability and resources to comply with the duties of Principal Contractor under OHS Legislation in respect of that construction project;
 - (2) the Lessee appoints that person as Principal Contractor in respect of that construction project; and

- (3) the Lessee authorises that person to manage or control the Land, or part thereof, to the extent necessary to discharge the duties of a Principal Contractor under OHS Legislation in respect of that construction project.
- (c) In respect of any Principal Contractor appointment under clause 4.10(b)(1) the Lessee, must ensure that the appointed Principal Contractor:
 - (1) accepts the appointment as, and complies with the obligations of, a Principal Contractor under the OHS Legislation;
 - (2) accepts any revised appointment as Principal Contractor that may be necessary as a result of a change in the OHS Legislation which occurs after the date of this Lease; and
 - (3) is able to discharge the obligations required of a Principal Contractor.

5 Rights of access, easements and licensed areas

The parties acknowledge that under the Station Land Management Agreement, the Lessor will:

- (a) grant access and to the extent necessary, procure access to;
- (b) grant and/or remove easements over; and
- (c) license,

certain areas surrounding the Land to the Lessee (or the Lessee's agents, employees or subcontractors) to enable the Land to be used for the purposes intended by the Lessee subject to clause 4.7 including inspecting, repairing, maintaining, replacing and/or upgrading facilities and areas as reasonably required by the Lessee from time to time.

6 Default and Termination

6.1 Events of Default

- (a) The following are Events of Default:
 - (1) if the Lessee fails to pay any amount due for payment under this Lease within 180 days after a written demand for payment is made which demand sets out reasonable details of the amount payable and how it is calculated; and
 - (2) if the Lessee fails to comply with any other essential term (as specified in clause 6.4) under this Lease and:
 - (A) the non-compliance can be remedied, but the Lessee fails to remedy within 210 days (or such other period as is reasonable in the circumstances having regard to the nature of the breach and its effect) after the Lessor gives a notice to remedy it to the Lessee which notice complies with clause 6.1(b);
 - (B) the non-compliance cannot be remedied but the Lessor can be compensated for the breach and the Lessee fails to pay

- reasonable compensation to the Lessor within 210 days (or such other period as is reasonable in the circumstances having regard to the nature of the breach and its effect) after the Lessor gives a notice to pay it to the Lessee which notice complies with clause 6.1(b); or
- (C) the non-compliance cannot be remedied or compensated for.
- (b) A notice given under clauses 6.1(a)(2)(A) and 6.1(a)(2)(B) must set out:
- (1) reasonable details of the breach of the essential term; and
 - (2) in the case of clause 6.1(a)(2)(A), reasonable details of the action that the Lessor proposes to be undertaken to rectify the breach of the essential term; or
 - (3) in the case of clause 6.1(a)(2)(B) reasonable details of the amount of compensation that the Lessor, acting reasonably, considers to be payable.

6.2 Events of Termination

- (a) The following are Events of Termination:
- (1) if an Event of Default as referred to in clause 6.1(a)(2)(A) occurs and the Lessor gives to the Lessee a further notice (**Further Default Notice**) requiring the Lessee to remedy the Event of Default within 210 days and the Lessee fails to remedy the Event of Default within that period; or
 - (2) if an Event of Default as referred to in clause 6.1(a)(2)(B) occurs and the Lessor gives to the Lessee a Further Default Notice requiring the Lessee to remedy the Event of Default within 210 days (or such longer period as is reasonable in the circumstances having regard to the nature of the Event of Default and its effect) and:
 - (A) the Lessee does not issue a notice disputing the Further Default Notice within the period of the Further Default Notice; or
 - (B) within the period of the Further Default Notice, the Lessee fails to remedy the Event of Default or, as appropriate, to diligently commence to remedy the Event of Default and to complete the remedy within a further period that the Lessor, acting reasonably, allows.
- (b) Any notice given by the Lessor to the Lessee under clause 6.1(b) or 6.2(a) must also be given simultaneously to the Lessee's financier (if any). Subject to compliance with this Lease, the Lessee's financier may remedy an Event of Default.

6.3 Contractual damages

For the avoidance of doubt, any breach or default in the observance and performance of any of the covenants, obligations and provisions of this Lease by the Lessee not provided for in clause 6.1 (**Damages Default**) will not:

- (a) entitle the Lessor to terminate this Lease; nor

- (b) constitute a repudiation of this Lease.

6.4 Essential terms

The following provisions are essential terms of this Lease:

- (a) clause 2.1(a) (*Rent*)
- (b) clause 2.2(a) (*Outgoings*)
- (c) clause 2.4 (*Services*)
- (d) clause 3.1(a) (*Obligation to Insure*)
- (e) clause 4.1 (*Maintenance*); and
- (f) clause 4.2 (*Requirements of Government Agencies*).

6.5 Forfeiture of Lease

If an Event of Termination occurs the Lessor may, subject to the requirements of any applicable Law:

- (a) re-enter and take possession of the Land and eject the Lessee; and
- (b) terminate this Lease by giving notice to the Lessee and clause 6.7 will apply.

6.6 Effect on Rights or Liabilities

The ending of the Lease does not affect the rights or liabilities of the parties in relation to any cause of action accruing prior to the ending of the Lease.

6.7 Removal of Property

- (a) If this Lease ends, the Lessee must:
 - (1) remove all Contaminants and pollution brought on to the Land by the Lessee or any person claiming through the Lessee to a standard and within a timeframe reasonably required by the Lessor; and
 - (2) subject to clause 6.7(f), yield up the Land to the Lessor in a clean condition, to the reasonable satisfaction of the Lessor and will make the Land safe following the removal of property and any improvements from the Land.
- (b) Any of the Lessee's property not removed within 30 days of the ending of the Lease becomes the property of and will vest in the Lessor, at no cost whatsoever to the Lessor.
- (c) Where the Lessee fails to meet any obligation under clause 6.7(a), the Lessor may carry out any works the Lessor considers necessary to comply with clause 6.7(a) and recover the reasonable costs or expenses the Lessor incurs in relation to such works from the Lessee immediately.
- (d) If the Lessee does not remove all Contaminants and pollution brought on to the Land by the Lessee or any person claiming through the Lessee to the standard reasonably required by the Lessor before the Expiry Date, the Lessee must pay the Lessor on demand an occupation fee for the Land from the Expiry Date until the date the remediation works are completed to the reasonable satisfaction of the Lessor.

- (e) The occupation fee payable by the Lessee under clause 6.7(d) will be equivalent to the Rent and outgoings payable under clause 2.2, plus [not disclosed] payable under this Lease immediately before the Expiry Date.
- (f) Despite any other provision in this Lease, the Lessee is not obliged to demolish any building (or any part of any building) on the Land at the end of the Term.

6.8 Ending of Holding over

Either the Lessor or the Lessee may end the monthly tenancy under clause 1.2 by giving the other one month's written notice, which may be given at any time.

7 Notices

7.1 Method of Service

Any notice to be given under this Lease must be in writing. The notice may be given by delivery or prepaid post (or such other method agreed between the parties) addressed to the receiving party.

7.2 Time of Service

Any notice given in accordance with this Lease will be deemed to have been duly served in the case of posting at the expiration of four Business Days after the date of posting.

7.3 Address for Notices

The party's addresses for receiving notices are set out as follows:

- (a) Lessor
 - Attention: [#]
 - Address: [#]
- (b) Lessee
 - Attention: [#]
 - Address: [#]

7.4 Change of Address

A party may at any time change its address or postal address or other service details by giving written notice to the other party.

8 Lessor's Covenants

8.1 Quiet Enjoyment

- (a) Subject to the terms of this Lease, the Lessor covenants that the Lessee may peaceably hold and enjoy the Land during the Term without any interruption by the Lessor or any person rightfully claiming through the Lessor.
- (b) The Lessor is entitled to access the Land:
 - (1) after giving the Lessee reasonable notice and after complying with any reasonable requirements of the Lessee in respect of security or safety; and
 - (2) during an emergency, without notice to the Lessee.

8.2 Dealings with the land by Lessor

- (a) The Lessor must not Deal with any part of the Land or its interest in this Lease other than in accordance with this clause 8.2.
- (b) The Lessor may transfer the Land to any other Government Agency representing the Crown without the consent of the Lessee.
- (c) Subject to clause 8.4, the Lessor may transfer or grant a concurrent lease in respect of its interest in the Land to a third party which is not a Government Agency (**Transferee**) if the Lessor first procures:
 - (1) a covenant from the Transferee in favour of the Lessee in which the Transferee agrees to be bound by all of the obligations of the Lessor under this Lease, whether or not they touch and concern the Land, on and from the date that the transfer is effected or the concurrent lease is granted; and
 - (2) the Lessor to deliver a deed of indemnity in favour of the Lessee which provides that:
 - (A) the Lessor indemnifies the Lessee for the Term against the termination of this Lease by the exercise of a liquidator appointed to the Transferee of any rights under section 568(1) of the *Corporations Act 2001* (Cth) to disclaim this Lease for the loss and damage that the Lessee will suffer or incur from the disclaimer, which the Lessor and the Lessee acknowledge and agree will be in the amount of the Full Remaining Lease Value; and
 - (B) the deed of indemnity operates as a deed poll, the benefit of which is assignable by the Lessee to the Lessee's assignee or transferee of this Lease without requiring the consent of the Lessor.
- (d) The Lessor must not (without the Lessee's prior approval which may be withheld in the Lessee's absolute discretion or which approval may be given with such conditions as determined by the Lessee in the Lessee's absolute discretion) grant or register or permit to be granted or registered in respect of the Land any Real Property Dealing which negatively affects:
 - (1) any part of the Land;

- (2) the Lessee's access to or use of any of the Land or those parts of the adjoining land owned or controlled by the Lessor which the Lessee requires;
- (3) the Lessee's rights under this Lease; or
- (4) the ability of either party to perform its obligations under this Lease.

8.3 Lessor's mortgagee's consent

The Lessor must obtain the consent of any mortgagee of the Land to this Lease on terms to the absolute satisfaction of the Lessee.

8.4 Lessee's right of refusal

- (a) If at any time during the Term, the Lessor wishes to sell the Land or transfer or grant a concurrent lease in respect of its interest in the Land to a third party, the Lessor must first give to the Lessee a contract of sale setting out the price and terms upon which the Lessor desires to sell the Land or transfer or grant a concurrent lease in respect of its interest in the Land to a third party (**Contract**).
- (b) If the Lessee wishes to purchase the Land upon the terms set out in the Contract, the Lessee must execute the Contract and return it to the Lessor together with the deposit (being not more than [not disclosed] of the price) required under the Contract within 30 days after delivery of the Contract by the Lessor to the Lessee.
- (c) If the Lessee does not comply with clause 8.4(b) within the time specified in that clause, the Lessor will be free to sell the Land or transfer or grant a concurrent lease in respect of its interest in the Land to a third party to any other person upon terms and conditions not more favourable than those set out in the Contract failing which the Lessor must first give the Lessee a further right of first refusal to purchase the Land and this clause 8.4 will apply again.

9 Reinstatement

If the Slab is damaged or destroyed, the Lessor must, in accordance with the terms of the Station Land Management Agreement:

- (a) commence the reinstatement of the Slab;
- (b) use reasonable endeavours to commence the reinstatement of the Slab by the date which is 6 months after the date the Slab was damaged or destroyed; and
- (c) complete the reinstatement of the Slab; and
- (d) use reasonable endeavours to complete the reinstatement of the Slab by the date which is 12 months after the commencement of the reinstatement works under clause 9(a).

10 Implied Covenants and Powers

10.1 Costs on Default

The Lessee must pay all the Lessor's reasonable legal costs on a solicitor/client basis on or in connection with any default by the Lessee.

10.2 Inclusion of Implied Covenants

Any covenants and powers implied in the Lease by any law apply to the extent they are consistent with the terms of the Lease, and not excluded by the Lease.

10.3 Severance

Any provision of the Lease which is void, voidable, unenforceable or invalid because of any Law must to that extent be severed from the Lease, and the Lease must be read as though such provision did not form part of the Lease at that time.

11 Dealings by the Lessee

- (a) The Lessee may, at any time and from time to time, Deal with its interest in the Land, the Lease and/or any interest in them to a person or entity without the consent of the Lessor provided that in the case of an assignment or transfer, prior to that assignment or transfer the proposed assignee or transferee enters into an agreement with the Lessor (on terms satisfactory to the Lessor, acting reasonably) under which it agrees to be bound by the terms of this Lease and the Station Land Management Agreement.
- (b) The Lessee may sublease or licence its interest in the Land or this Lease to any person or entity without the consent of the Lessor.
- (c) At the request of the Lessee (acting reasonably), the Lessor must, within 20 business days, do all things necessary to assist the Lessee including:
 - (1) executing any agreements, deeds or other documents required by the Lessee;
 - (2) executing any land registration or forms required by any Relevant Authority;
 - (3) making the certificate of title for the Land or any other relevant document available for the registration of any dealings required by the Lessee; and
 - (4) granting any consents required by the Lessee.

12 Condition of the Land

- (a) From the earlier of the date that the Lessee first accesses, uses, occupies and/or possesses the Land and the Commencement Date, the Lessee:
 - (1) accepts the condition of the Land; and

- (2) will be responsible at its own expense for complying with all Laws, including without limitation, all directions and orders made and policies declared, under Laws, in relation to any Contaminant in, under or emanating from, or which may have emanated from, the Land, regardless of when the Contaminant may have come onto the Land or emanated from it.
- (b) The Lessee will not make any claims for compensation, set off, damages or otherwise in respect of the condition of the Land against the Lessor.
- (c) The Lessee releases the State in all of its capacities, the Lessor and its officers and agents and indemnifies them against any claims, costs, losses, damages, expenses, judgments, suits, awards and liabilities whatever (including any costs or expenses of defending or denying them and including the costs and expenses of preparing any necessary environmental assessment report or other report) arising out of or in respect of:
 - (1) any Contaminant caused, contributed to or exacerbated by the Lessee or its servants, agents, employees or contractors;
 - (2) any work performed by or for the Lessee to obtain a Statement of Environmental Audit or any failure of that work; and
 - (3) the Statement of Environmental Audit for the Land being defective or invalid or having been improperly obtained or provided.

13 Additional Lessee Covenants

13.1 Lessee's covenants

The Lessee agrees that any obligations imposed on it under this clause 13 take effect as a covenant which is annexed to and runs at law and in equity with the Land. These obligations bind the Lessee, its successors, assigns and transferees and the lessee for the time being of the whole or any part of the Land.

13.2 Oversight Development Agreements

- (a) The Lessee will:
 - (1) comply or procure compliance with the Developer's obligations under the Oversight Development Agreements in so far as they relate to the Land; and
 - (2) not sell, transfer, dispose of, assign or otherwise part its interest in this Lease or the Land unless and until the transferee has entered into an agreement with the Lessor on substantially the same terms and conditions as contained in the Development Agreement amended to the extent necessary to make them applicable to the interest transferred by the Lessee and any other arrangement necessary to give effect to the intent of the parties under the Development Agreement or otherwise as agreed by the parties.
- (b) The Lessee acknowledges receiving a copy of the Oversight Development Agreements from the Developer before entering into this Lease.
- (c) This clause 13.2 ceases to have any effect after the Final Completion Date.

14 Lessee limitation of liability

[Lessee's limitation of liability provision to be inserted as required.]

15 Tax

15.1 Lessor's Election

The Lessor elects that this lease will be a long-term lease to which s104-115 of the Income Tax Assessment Act 1997 applies.

15.2 Foreign resident capital gains withholding payments

If the Lessor serves a Clearance Certificate on the Lessee on or before the Commencement Date then the Lessee must not on or before Commencement Date withhold any amount of the Capital Sum for the purposes of Subdivision 14-D of Schedule 1 of the *Taxation Administration Act 1953* (Cth).

16 Survey plan

Once a survey plan of the Land has been procured under clause 26.2 of the Development Agreement, each party authorises the other to replace the draft plan in Schedule 1 with that survey plan procured under clause 26.2 of the Development Agreement.

17 Definitions And Interpretation

17.1 Defined Terms`

In this Lease:

"**Advertising Restrictions**" means the restrictions set out in Schedule 2.

"**Approvals**" means any licence, permit, authorisation, endorsement of plan, consent, assessment, approval, determination, certificate, accreditation, registration, clearance, permission or the like (as amended or substituted from time to time) which is issued by or obtained from or is required to be issued or obtained from any Authority or any other person or in accordance with any Law.

"**Associates**" means any officers, employees, agents, contractors, consultants or advisers.

"**Business Day**" means any day which is not a Saturday, Sunday or public holiday in Melbourne.

"**Capital Sum**" means the Development Fee payable under the Development Agreement.

"**Clearance Certificate**" means a certificate in respect of the Lessor and the Land given by the Commissioner under section 14-220 of Schedule 1 of the *Taxation Administration Act 1953* (Cth).

"**Contaminant**" means a solid, liquid or gas, odour, heat, sound, vibration or radiation, or a quality or property of any of them which is above the concentration at which it is naturally present at the same locality which makes or may make the Land harmful to the health, welfare, safety or property of human beings.

"**Deal**" means assign, transfer, mortgage, grant any security interest, create any superior interest, grant a concurrent lease to this Lease or otherwise deal with the legal and/or beneficial interest in the Land and/or this Lease.

"**Developer**" has the meaning given under the Development Agreement.

"**Development Fee**" has the meaning given under the Development Agreement.

"**Development Agreement**" means the deed entitled [#] between [#] as the developer and the Lessor dated [#] as otherwise amended from time to time.

"**Development Plan**" means Development Plan no [##] issued by the Minister for Planning as the responsible authority for the Land as amended from time to time.

"**Expiry Date**" means the date which is 99 years less one day after the Commencement Date, being the date specified in the front page of this Lease.

"**Fair Market Value**" means the fair market value of the Lessee's interest in this Lease as at the date this Lease is disclaimed as determined by an independent expert as between a willing but not anxious seller, on the basis that this Lease as existing immediately prior to the date this Lease is disclaimed continues for the remainder of the term of this Lease.

"**Final Completion Date**" has the meaning given under the Development Agreement being _____.

"**Full Remaining Lease Value**" means the Fair Market Value of the Lease plus adjustments for the costs incurred or to be incurred by the Lessee due to the disclaiming of this Lease and the consequential termination of subleases and agreements for subleases in respect of any part of the Land.

"**Government Agency**" means any government or any public, statutory, governmental, semi-governmental, local governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency, entity or authority and includes Minister of the Crown (in any right), the body responsible from time to time for the municipal governance of the Land and any person, body, entity or authority exercising a power pursuant to an Act of Parliament.

"**Incorporated Document**" means Metro Tunnel: Over Site Development – CBD South, Incorporated Document (October 2017) published on 5 December 2017 as amended from time to time.

"**Indirect or Consequential Loss**" means any:

- (a) loss of opportunity, profit, anticipated profit, business, business opportunities, revenue or any failure to realise anticipated savings; or
- (b) penalties payable by the Lessor or any of the Lessor's Associates under any agreements in connection with this Lease.

"**Land**" is the land as shown on the plan in Schedule 1.

"**Lessee**" means the Lessee described on the front page of the Lease and its successors and assignees. The expression 'Lessee' includes the Lessee's employee's agents and contractors.

"Lessor" means the Lessor described on the front page of the Lease and the Lessor's successors and assignees and owner for the time being of the Land and the person entitled to receive the Rent. The expression 'Lessor' includes the Lessor's employees, agents and contractors.

"Law" means any legislation, regulation, proclamation, ordinance or local law or bylaw of Commonwealth of Australia or the State. The expression includes all legislation, regulations, proclamations, ordinance, local laws or bylaws varying, consolidating or replacing them and all regulations, proclamations, ordinances, local laws and bylaws issued under that legislation.

"Oversite Development" has the same meaning given under the Development Agreement.

"Oversite Development Agreements" has the meaning given in the Development Agreement.

"Oversite Development Works" has the meaning given in the Development Agreement.

"OHS Legislation" means all safety-related:

- (a) Laws;
- (b) codes of practice;
- (c) other compliance codes;
- (d) directions on safety or notices issued by any relevant Government Agency; and
- (e) standards,

including, but not limited to, the *Occupational Health and Safety Act 2004* (Vic) and associated regulations.

"OHS Regulations" means the *Occupational Health and Safety Regulations 2017* (Vic).

"Planning and Environment Act" means the *Planning and Environment Act 1987* (Vic).

"Planning Scheme" means the planning scheme made under the Planning and Environment Act as applicable to the Land and the Lessee's proposed development of the Land and any Planning Scheme amendment approved and gazetted from time to time under the Planning and Environment Act.

"Principal Contractor" has the meaning given in the OHS Legislation.

"Prohibited Business" means a business involving:

- (f) the sale, provision or operation of:
 - (1) sexually explicit or pornographic goods;
 - (2) brothels;
 - (3) tattoo parlours; and
 - (4) guns, firearms, explosives or offensive weapons;
- (g) any other business or activity which the Lessor notifies the Lessee would be offensive to users of the Station; and
- (h) the provision of student accommodation.

"Real Property Dealing" means any of the following which affects the Land:

- (a) plan of consolidation;
- (b) plan of subdivision;

- (c) right of way;
- (d) easement;
- (e) restrictive covenant;
- (f) any agreement which is registrable on the title to Land (including any agreement made pursuant to section 173 of the *Planning and Environment Act 1987* (Vic);
- (g) any other deed, agreement or instrument which:
 - (1) is capable of being registered on title; or
 - (2) terms or covenants are capable of running with the Land; or
- (h) any removal or amendment to any of the above.

"**Relevant Authority**" means any government, municipal, statutory, public or other authority or body or Government Agency having authority or jurisdiction over or in relation to the Land.

"**Rent**" means the rent described on the front page of the Lease, as varied in accordance with the terms of this Lease.

"**Site Conditions**" means any condition affecting or potentially affecting the Land including, without limitation:

- (a) ground water, ground water hydrology and the effects of any de-watering;
- (b) physical conditions on above or below the surface of land;
- (c) the environmental condition of land, including the presence of any Contaminant(s) on land;
- (d) topography of land surface and sub-surface conditions and geology including rock or other materials encountered on land;
- (e) climatic and weather conditions, rain surface water run-off and drainage, water seepage, wind, wind-blown dust and sand in seasons;
- (f) all existing systems and services above or below the surface of the land and the location of all facilities with which such systems and services are connected; and
- (g) all other physical conditions and characteristics of land on, above or below the surface (including improvements) which may affect the development of the Land by the Purchaser,

whether relating to the Land or land outside the Land and also the availability and condition of roads and all utility services servicing, or required to service, the Land and the Lessee's proposed development of the Land.

"**Slab**" means the ground floor slab including vertical risers above ground floor required to support the structure of the improvements on the Land.

"**Statement of Environmental Audit**" has the same meaning as in the *Environment Protection Act 1970* (Vic).

"**Station**" means the buildings, equipment, plant and other infrastructure relation to the underground train station at CBD South.

"**Station Land Management Agreement**" means the agreement entered into between the Lessee and the Lessor in accordance with the terms of the Development Agreement, as amended from time to time.

"**Term**" means the Term described on the front page of the Lease.

17.2 Interpretation

In the Lease, unless the context otherwise requires:

- (a) headings and underlining are for convenience only and do not affect the interpretation of the Lease;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency;
- (e) a reference to any thing includes a part of that thing;
- (f) a reference to a part, clause, party, annexure, exhibit or schedule is a reference to a part and clause of and a party, annexure, exhibit and schedule to the Lease;
- (g) where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next succeeding day which is a Business Day;
- (h) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of the Lease or any part of it;
- (i) a covenant or agreement on the part of two or more persons binds them jointly and severally;
- (j) a reference to a statute includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and
- (k) a reference to the Lessor includes its successors and assigns.

Schedule 1

Plan of Land

Schedule 2

Advertising Restrictions

- (a) No external advertising shall be placed on the Site by the Developer which is visible from outside the Land unless the Lessor consents in writing. The Lessor will not unreasonably withhold its consent to any proposed external advertising which is associated with and incidental to an approved use or development of the site by the Lessee.
- (b) Despite paragraph (a) above, subject to obtaining all necessary approvals, external advertising may be placed on those locations specified in the Incorporated Document and the Development Plans (as amended from time to time) without the State's consent.



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Attachment 6

Draft Commercial Lease Plan

Attachment 6: Draft Commercial Lease Plan



*Notes

- The Building Envelope Plan illustrates the maximum building height with the exception of the parapet, non-habitable architectural features not more than 3.0 metres in height and building services setback at least 3.0 metres behind the facade, fronting Flinders and Swanston Streets.
- A 500mm articulation zone is presumed around the Swanston St and Flinders St sides of the Building Envelope to allow for architectural detailing and expression (non-habitable space), subject to further approval.
- Any future development in accordance with this Building Envelope Plan, including proposed projections of up to 500mm, non-habitable architectural features and building services must not increase the shadowing of Federation Square between 11am – 3pm from 22 April to 22 September.

| | | | |
|--|------------|----------------------------|---------------------------|
| Project Drawing Number TAS-CYP-OS-00-BRG-ARC-CBS-01 | | Designed By [Signature] | Drawn By [Signature] |
| PT PT PROJECT TEAM PT | | Checked By [Signature] | Checked By [Signature] |
| File Name | | Approved | Approved Date |
| NOT FOR CONSTRUCTION | | Drawing Number | Revision |
| Scale | Sheet Size | A1 | |

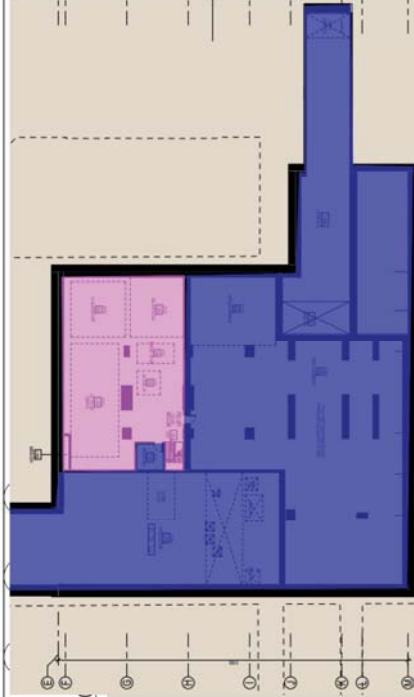
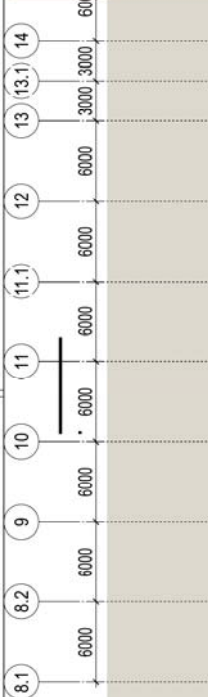
| | | |
|--|---------------|-------|
| ARCHITECTURAL OSD SOUTH BUILDING ENVELOPE PLAN | | Datum |
| U/L Location | Down Location | |
| East | East | |
| North | North | |
| SP | SP | |

| | | | | | |
|----------------------------|-------------|---------|---------|---------|--------|
| CROSS YARRA PARTNERSHIP | | Checked | Checked | 1st Rev | Apprn |
| CYP | Received By | 23 Sep | 20 Sep | 20 Sep | 20 Sep |
| MP | Received By | 20 Sep | 20 Sep | 20 Sep | 20 Sep |
| ISSUED FOR SUBMISSION | Description | | | | |

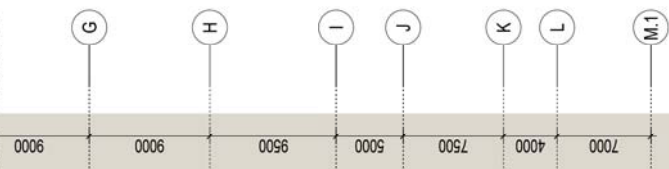


Legend

- Metro
- Metro with Shared Access for OSD South
- OSD South



Basement Level 3.5 Ventilation Transfer Plan



NICHOLAS BUILDING LEVEL
BT MEZZ

OSD South - Draft Commercial Lease Plan

Attachment 6
 Basement Level 1
 Revision 03
 15.12.2017



E.1 6000 F.1 9000 G 9000 H 9500 I 5000 J 7500 K 4000 L 7000 M.1



Legend

Metro

Metro with Shared Access for OSD South

OSD South

OSD South - Draft Commercial Lease Plan

Attachment 6

Ground Floor

Revision 03

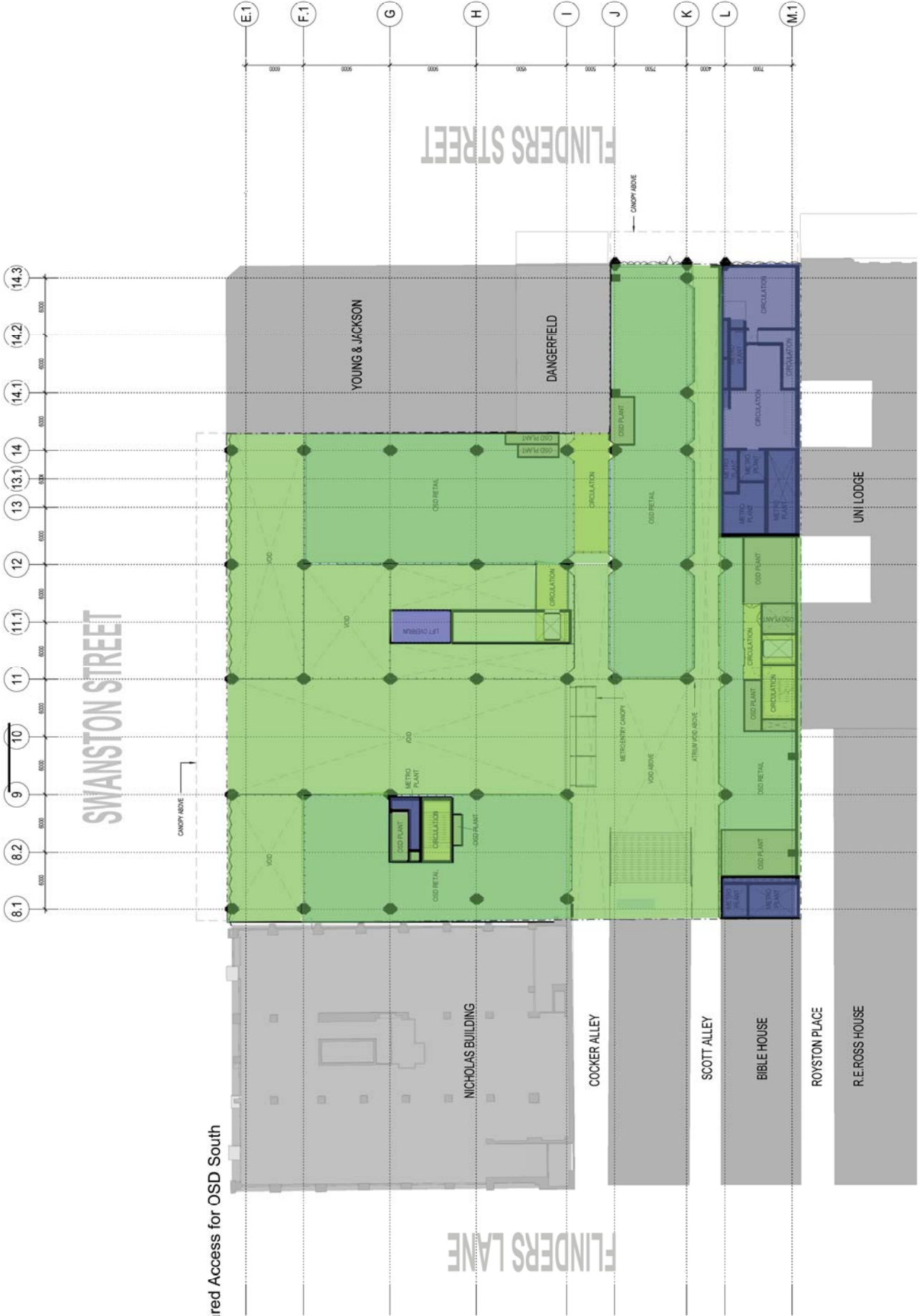
15.12.2017



Scale bar: 0, 10, 20, 30, 40, 50, 60, 70, 80, 90, 100 meters.

Legend

- Metro
- Metro with Shared Access for OSD South
- OSD South



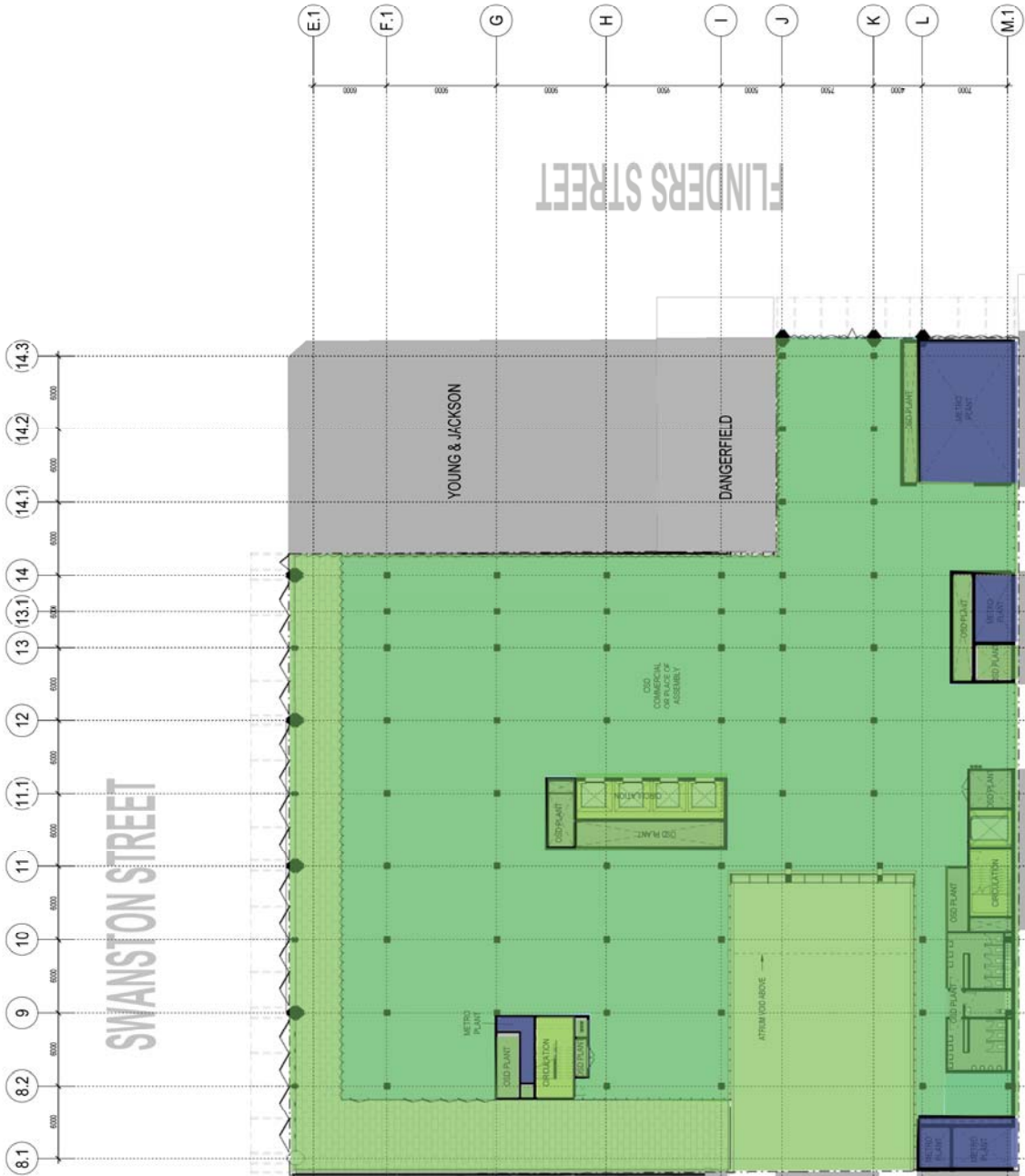
OSD South - Draft Commercial Lease Plan

Attachment 6

Ground Floor Mezzanine

Revision 03

15.12.2017



Legend

Metro

Metro with Shared Access for OSD South

OSD South

OSD South - Draft Commercial Lease Plan

Attachment 6

Level 1

Revision 03

15.12.2017

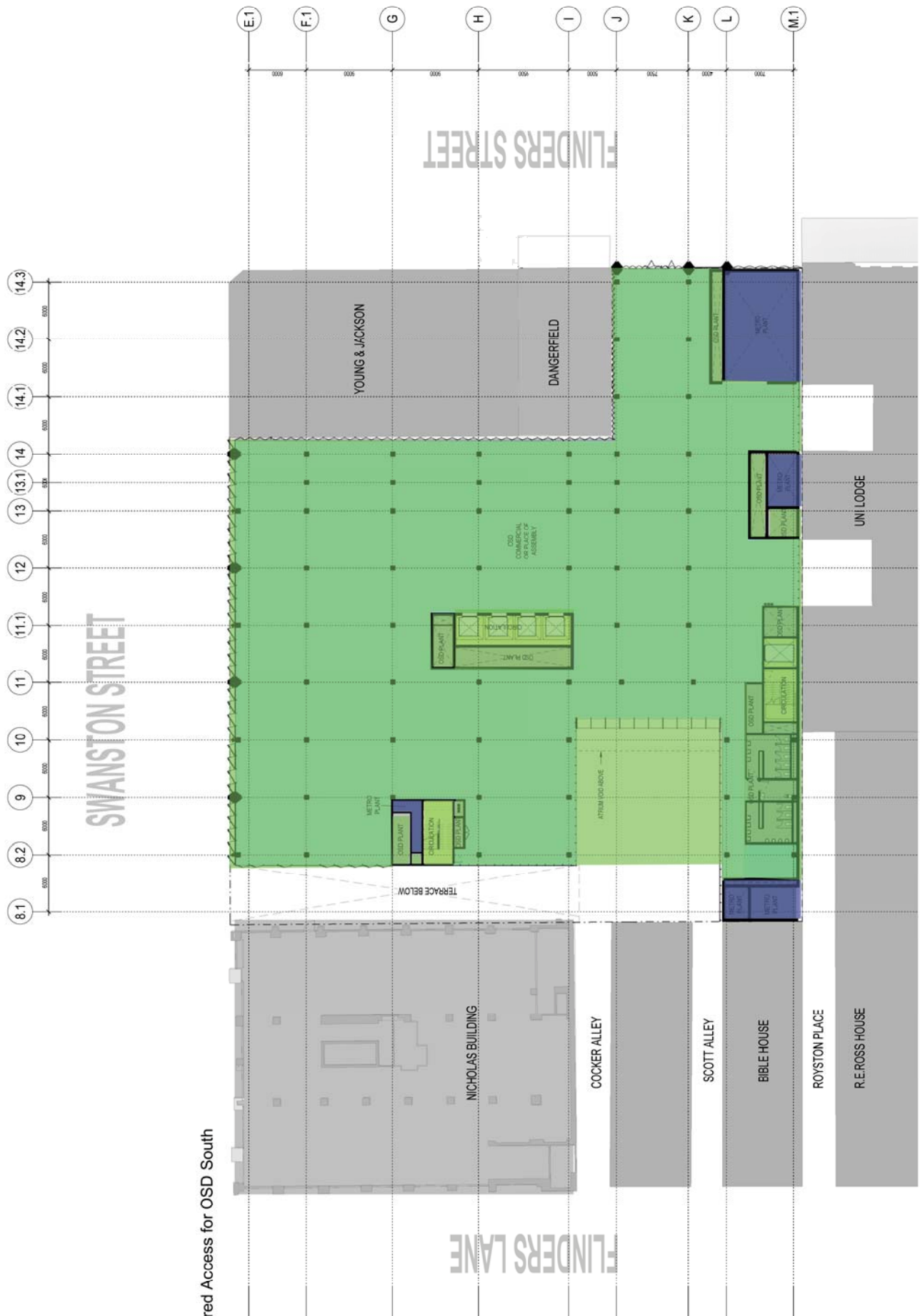


Legend

Metro

Metro with Shared Access for OSD South

OSD South



OSD South - Draft Commercial Lease Plan

Attachment 6

Level 2-5

Revision 03

15.12.2017



Legend

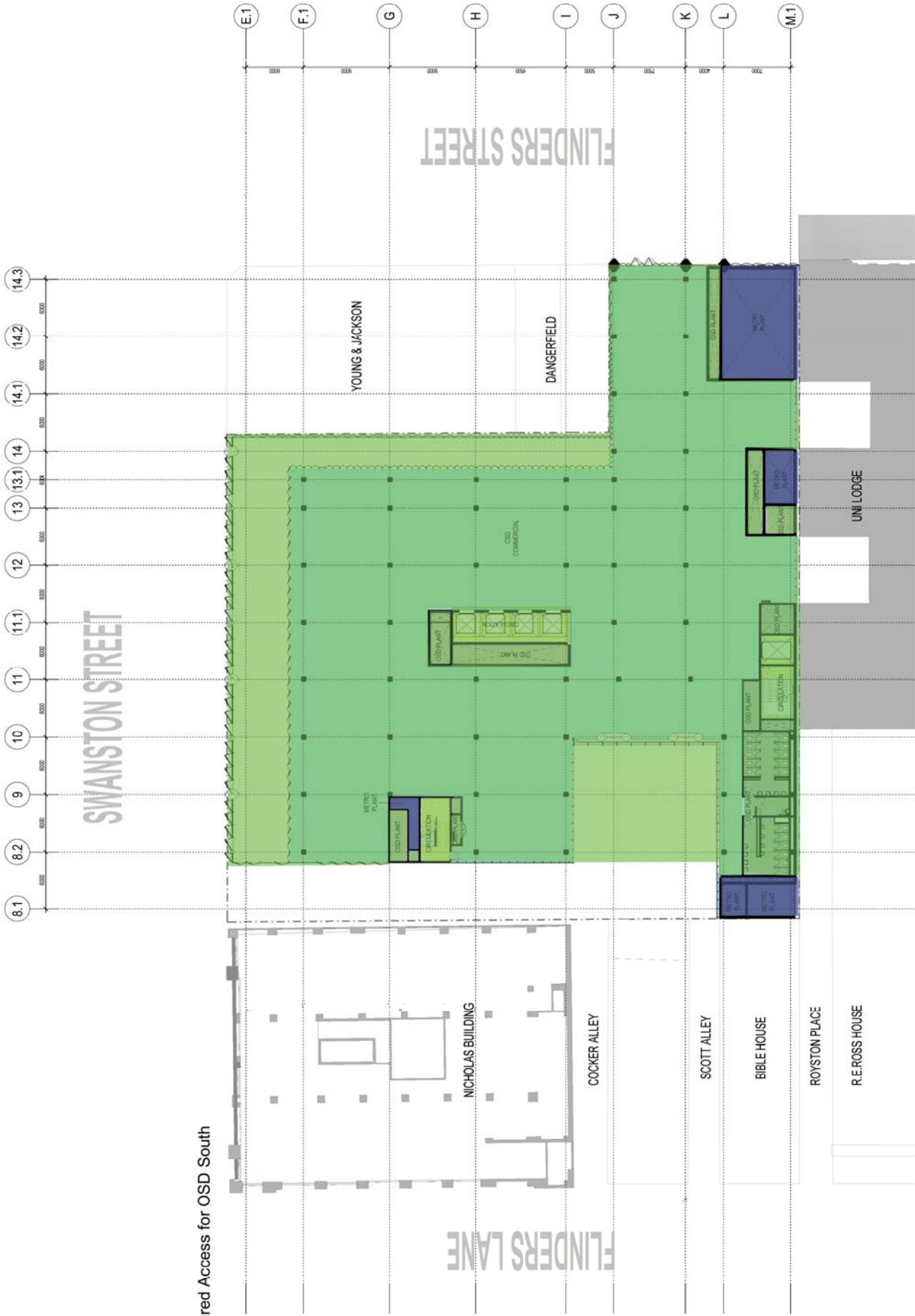
Metro



Metro with Shared Access for OSD South



OSD South



OSD South - Draft Commercial Lease Plan

Attachment 6

Level 6

Revision 03

15.12.2017



Legend



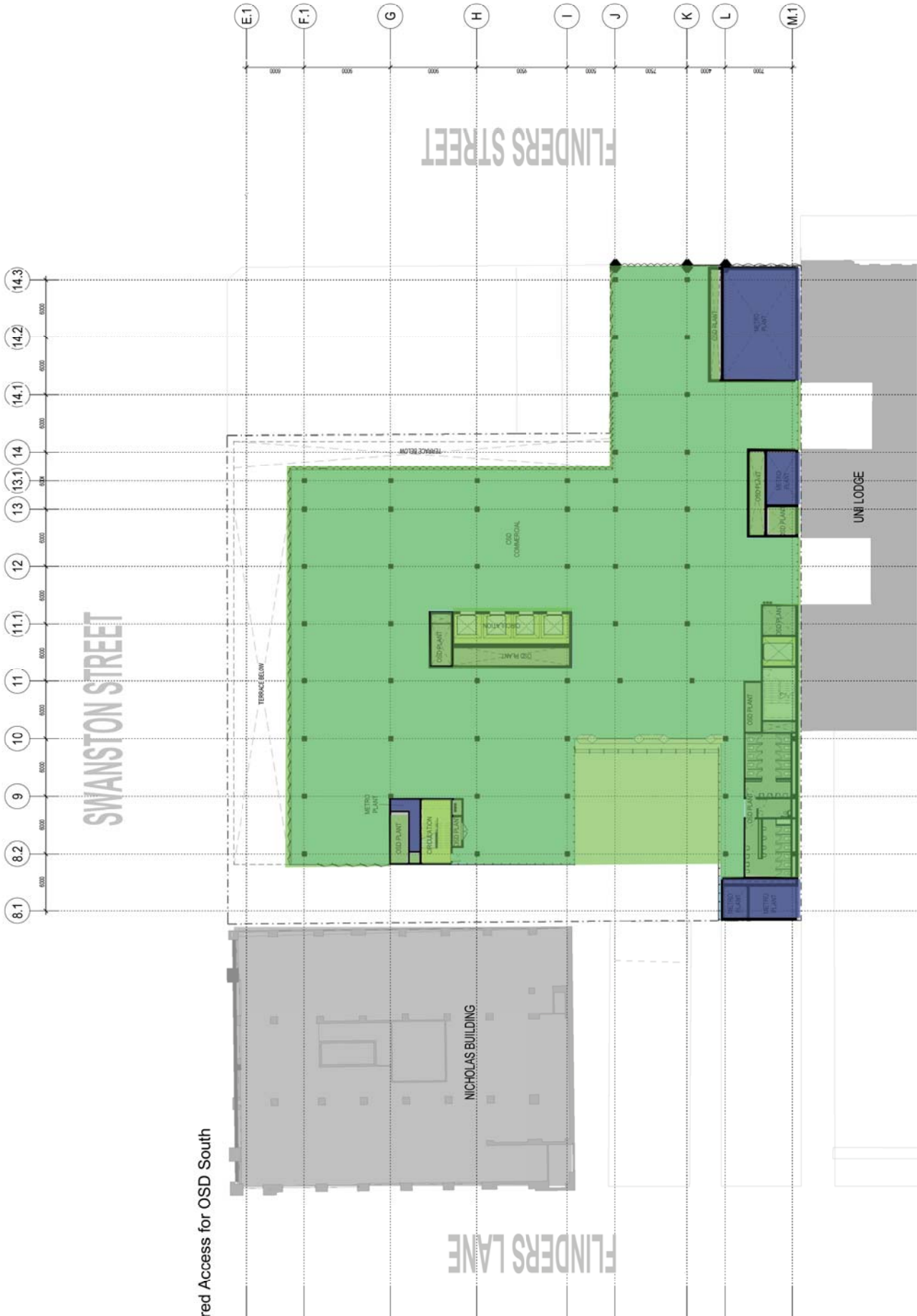
Metro



Metro with Shared Access for OSD South



OSD South



OSD South - Draft Commercial Lease Plan

Attachment 6

Level 7

Revision 03

15.12.2017

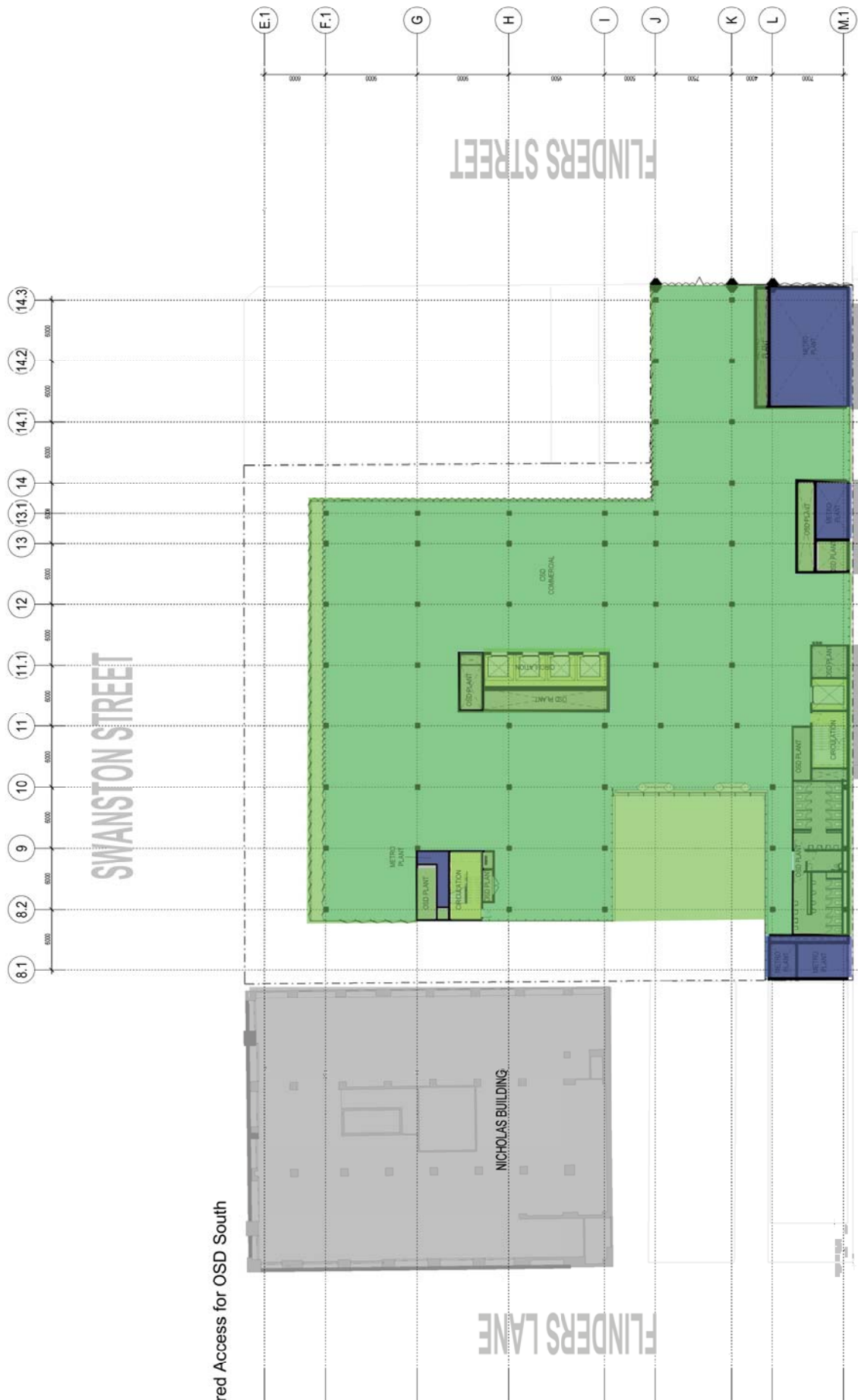


Legend

Metro

Metro with Shared Access for OSD South

OSD South



OSD South - Draft Commercial Lease Plan

Attachment 6

Level 8

Revision 03

15.12.2017

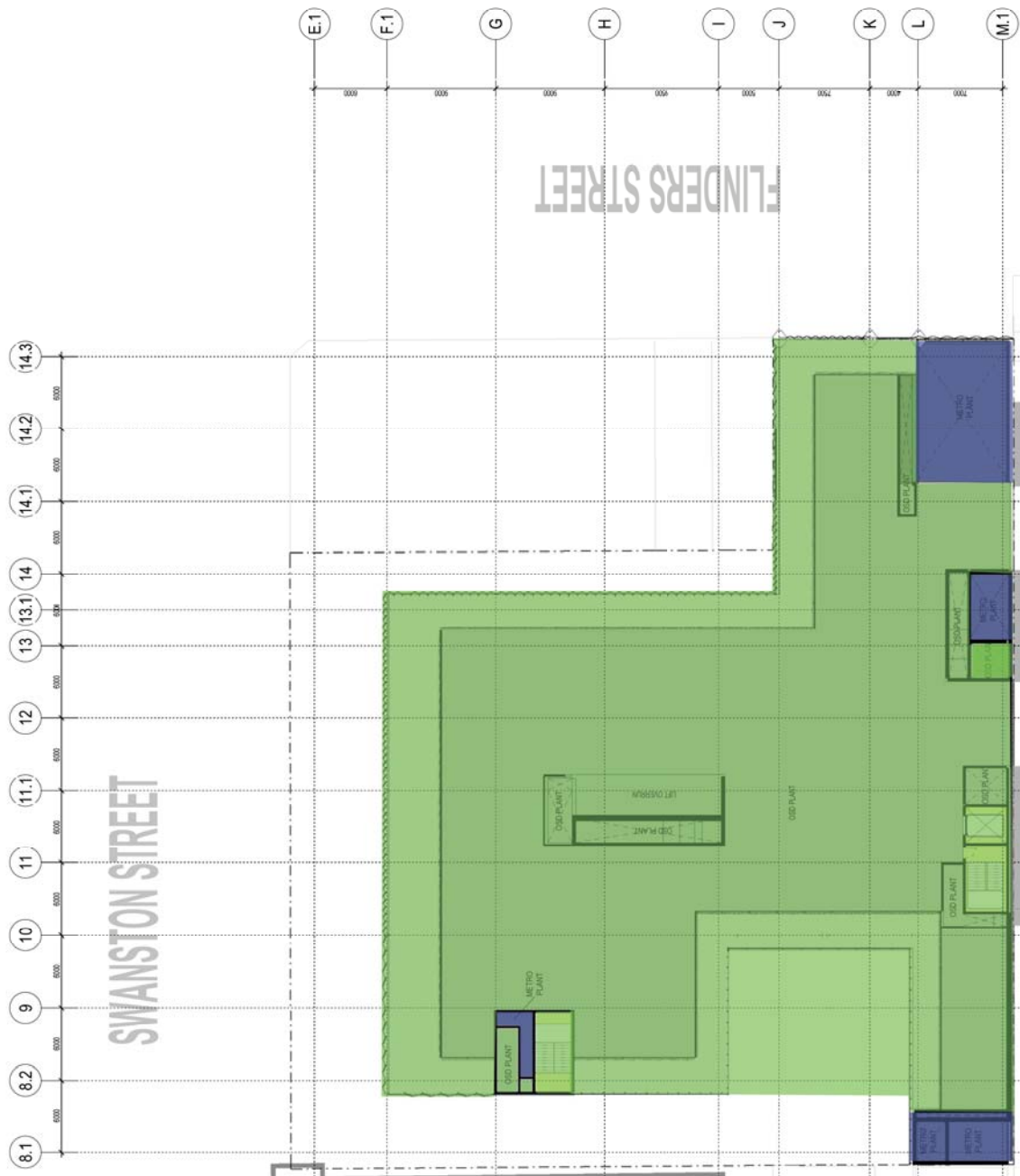


Legend

Metro

Metro with Shared Access for OSD South

OSD South



OSD South - Draft Commercial Lease Plan

Attachment 6

Roof

Revision 03

15.12.2017



Attachment 7

Advertising Restrictions

- (a) No external advertising shall be placed on the Site by the Developer which is visible from outside the Site unless the State consents in writing. The State will not unreasonably withhold its consent to any proposed external advertising which is associated with and incidental to an approved use or development of the site by the Developer.
- (b) Despite *paragraph (a)* above, subject to obtaining all necessary approvals, external advertising may be placed on those locations specified in the document described as *Metro Tunnel: Over Site Development – CBD South, Incorporated Document (October 2017) published on 5 December 2017* as amended from time to time, the Development Plans or the Endorsed Plans without the State's consent.



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Attachment 8

Concept Design Documents

[not disclosed]



Urban Design Principles

1 Purpose

A large body of design guidance is available for developments similar to the Oversight Development. The Metro Tunnel Urban Design Strategy has sought to consolidate and distil this advice into something that address the particular and site specific needs of the Project, while relevant to the integration elements of Oversight Development, specifically relate to transport infrastructure.

The *Metro Tunnel Project Urban Context Report, CBD South Oversight Development* (Jones and Whitehead) (16 October 2017) CBD provides the similarly consolidated and distilled urban design guidance for the Oversight Development.

The Oversight Development must comply with the *Metro Tunnel Project Urban Context Report, CBD South Oversight Development* (Jones and Whitehead) (16 October 2017).

The following statements are provided to articulate the architectural design principles and aspirations, specific to the Oversight Development.

2 Architectural principles

The Oversight Development's architectural design will set a new quality benchmark for urban renewal. The design must reinforce the character values of the precinct providing a high quality and defining architectural legacy, through contemporary built form and expression and an innovative program.

3 Precinct vision - CBD South

The Swanston Street and Flinders Street corner is framed by CBD South station precinct. It is one of Melbourne's most significant and well known corners with the station entrance hugging both sides of the famous Young and Jackson's hotel. This location is in the 'heart' of the CBD, in the vicinity of Flinders Street Station's clocks - a celebrated meeting place for generations of Melburnians - and at the nexus of access to the neighbouring arts, sports, entertainment, commercial and retail precincts.

The Oversight Development will be embedded into the local laneway network to the northwest of the intersection of Swanston and Flinders Streets, and will be flanked by the vibrant laneway culture of Degraeves Street and Centre Place.

Here, historically and architecturally significant buildings, such as the Manchester Unity Building, Federation Square, Flinders Street Station, St Paul's Cathedral, Melbourne Town Hall and the Capitol Theatre, meet Melbourne's famous, vibrant laneways lined with bars, cafes, restaurants, shops and street art.

The cultural and architectural significance of this location merits a thoughtful urban



response that successfully integrates the CBD South station entry and Oversight Development with its laneway setting and culture while being cognisant of the vistas and view lines to and from Melbourne's heritage buildings, landmarks and icons.

The Oversight Development's architectural design quality must:

- respond to and celebrate the significance of its location;
- work to maximise the legibility of the station entry and contribute to the quality of the public realm;
- support the diversity and vitality of the precinct and contribute to Melbourne as Victoria's foremost commercial centre; and
- recognise, respond to and positively influence the civic qualities and street culture, of this vital, heart of the city.

The Oversight Development's architecture must work to support the legibility of the station entries and the efficient workings of all aspects of the Station, and will consider how future renewal of the Oversight Development site may occur beyond the economic life of the Oversight Development without compromising vital station operations.

The design for the Oversight Development must enhance the experience of the public realm and the vitality of the city. In this sensitive, vibrant, central Melbourne location where space is limited and civic expectations and demand are high, a successful design response will be thoughtful, creative and holistic in its approach to the challenge of integrating high density, mixed-use development with significant public transport infrastructure.



Attachment 10

Industrial relations

1 Industrial Relations Objectives

- (a) The State's expectation for the Oversight Development Works is that they will be completed with no or minimal disruptions due to employment or industrial relations issues.
- (b) The State requires effective management of employment and industrial relations issues and risks to be a priority during both the planning and carrying out of the Oversight Development Works.
- (c) The State expects that the Developer's management of employment and industrial relations matters in connection with the Oversight Development Works:
 - (1) aims to achieve a stable working environment;
 - (2) promotes productive and efficient work practices to achieve the timely completion of the Oversight Development Works;
 - (3) provides flexible work practices that support minimising disruption to the transport network;
 - (4) minimises lost time and disruption;
 - (5) ensures ongoing compliance with all Industrial Relations Laws and administrative requirements; and
 - (6) does not compromise the successful completion of the Oversight Development Works on time and at an acceptable cost.

2 IR Management Plan

The Developer must:

- (a) ensure that the IR Management Plan complies with applicable Industrial Relations Laws, and this Attachment;
- (b) ensure that the IR Management Plan demonstrates how employment and industrial relations issues and risks related to the Oversight Development Works are managed;
- (c) prepare, submit and resubmit a IR Management Plan to the State for review in accordance with clause 9.2;
- (d) ensure that the IR Management Plan is a single document for the whole of the Oversight Development Works and, as a minimum, includes:
 - (1) the Developer's strategy for managing all persons in the Developer D&C Workforce who are performing the Oversight Development Works so as to meet the industrial relations objectives in accordance with clause 1 of this Attachment;

- (2) identification of the employment and industrial relations issues that are relevant to the Developer D&C Workforce or are likely to emerge in performance of the Agreement including, but not limited to, the following:
- (A) labour requirements (e.g. skills/numbers and unskilled labour required, and manner of supply, recruitment, engagement, termination and/or redundancy of labour to allow for changing demands across the life of the Oversight Development Works);
 - (B) engagement of the required labour including, but not limited to, mobilisation plans and selection procedures (e.g. reference checks and inductions);
 - (C) approach to developing and maintaining a productive workforce, ensuring the optimal use of labour requirements (e.g. flexible approach to managing inclement weather and calendar);
 - (D) sourcing, selection and training of suitably experienced construction supervisors;
 - (E) the negotiation and establishment of terms and conditions of directly-employed labour throughout the life of the Oversight Development Works (e.g. establishment of terms and conditions of employment, identification of likely employee representatives and method of engagement with representatives);
 - (F) approach to relationship management with employees and employee representatives including, but not limited to, the approach and processes for communicating and consulting with the workforce;
 - (G) general approach to the use and engagement of labour hire;
 - (H) managing rights of entry for the Oversight Development Works and/or to the Site;
 - (I) ensuring compliance with statutory workplace rights including, but not limited to, freedom of association, freedom from unlawful coercion and freedom from unlawful discrimination, for the Developer D&C Workforce performing the Oversight Development Works;
 - (J) the provision of training opportunities (e.g. apprenticeships and traineeships) in connection with the Oversight Development Works and issues arising in relation to such training (e.g. number of opportunities, external training, support mechanisms);
 - (K) performance and conduct management of the Developer D&C Workforce performing the Oversight Development Works (e.g. disciplinary processes to be applied);
 - (L) identification of proposed Site rules (e.g. induction, access) and approach to the provision of amenities;
- (3) identification of employment and industrial relations risks in relation to the Oversight Development Works and the details of the proposed approach to managing those risks, including, but not limited to, the following:

- (A) approach to fair treatment, dispute avoidance and settlement procedures;
 - (B) approach to dealing with demarcation disputes;
 - (C) response to Industrial Action (both threatened and actual) including in respect of Subcontractors;
 - (D) approach to management of disputes in relation to rights of entry;
 - (E) approach to achieving no lost time or limitations due to industrial relations disputes; and
 - (F) approach to dispute resolution in the event of incidents (i.e. grievance disputes, inclement weather and site issues);
- (4) procedures for the management of Subcontractors including, but not limited to, the following:
- (A) measures to select Subcontractors who have the skills, capacity and resources to comply with Industrial Relations Laws, employment obligations and the IR Management Plan (to the extent relevant to the Subcontractor);
 - (B) conditions regulating the engagement of Subcontractors to ensure they comply with Industrial Relations Laws, employment obligations and the IR Management Plan (to the extent relevant to the Subcontractor) across the life of the Oversight Development Works;
 - (C) processes for dealing with Subcontractors and other contractors including, but not limited to, identification of likely employee representatives and methods for engaging with those representatives; and
 - (D) monitoring of Subcontractor compliance with industrial relations requirements;
- (e) review, and if necessary amend or update, the IR Management Plan every 6 months and upon the occurrence of any one of the following:
- (1) Industrial Action; and
 - (2) a request by the State to do so;
- (f) resubmit the IR Management Plan to the State where it has been amended under clause 2(e) of this Schedule.

3 Monthly IR Report

- (a) The Developer must prepare and submit to the State a Monthly IR Report in the form set out in Attachment 11 (or otherwise in a form nominated by the State) identifying any issues that have arisen in the previous calendar month that have or could give rise to non-compliance or notification obligations under clause 9.



Monthly IR Report

| THIS FORM IS TO BE SENT TO MMRA BY THE 4 TH WORKING DAY OF EACH MONTH | | | |
|--|--|-------------------------|--|
| Project Manager: | | | |
| Work Package or Project: | | Reporting Month / Year: | |
| PERSONNEL | | | |
| Identify the subcontractors who have performed work on the project within the relevant reporting period. | | | |
| Identify any major changes to the workforce anticipated over the current/next reporting period - e.g. engagement of new subcontractors or cessation of existing subcontractors, changes to reporting lines or of key personnel. | | | |
| Confirm that special contractual or enterprise agreement obligations owed by subcontractors in relation to key industrial matters (e.g. in relation to RDOs, inclement weather, and public holidays), have been reviewed and factored into your industrial relations management. | | | |
| WORKPLACE HARMONY | | | |
| Identify any grievance or dispute resolution procedures that have been initiated within the relevant reporting period. | | | |
| Identify any relevant Court or Tribunal proceedings that have been initiated within the reporting period. | | | |
| Summarise the status of any pre-existing disputes or claims, including any relevant outcomes (to the extent that this information can be provided). | | | |
| Provide a general summary of interfacing issues with subcontractors and other stakeholders (e.g. unions). | | | |



| INDUSTRIAL ISSUES | |
|--|-------|
| Summarise the status of your enterprise bargaining negotiations (if any), and those of any subcontractors performing work in the forthcoming reporting period | |
| Provide information about actual or threatened industrial issues, including matters which were the subject of an Incident Report during the relevant reporting period. | |
| Summarise any significant union activity that occurred during the relevant reporting period, including in relation to right of entry, demarcation disputes, enterprise bargaining, and freedom of association | |
| Explain or project the impact of any industrial issues on relevant deliverables. | |
| GENERAL MATTERS | |
| Identify any significant interactions between employees / subcontractors and other relevant stakeholders such as local government, rail authorities or regulators. | |
| Identify any relevant accomplishments within the relevant period (e.g. achievements in relation to the Government's social procurement objectives such as those relating to apprenticeships, upskilling of target demographics and use of local labour). | |
| Identify any areas of non-compliance with either the IR Management Plan, or other relevant workplace laws, during the relevant reporting period. | |
| Provide an analysis how its progress is consistent with the industrial relations objectives | |
| Project Manager's Comments: (expand or use reverse of sheet if necessary) | |
| | |
| Signed: | Date: |



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Attachment 12

Health and Safety Requirements

1 Definitions

The meanings of the terms used in this Attachment are set out below.

| Term | Meaning |
|--|---|
| Emergency / Emergencies | means a potential or actual incident that: <ol style="list-style-type: none">1 poses significant harm to people, property, the environment or the local community; or2 requires assistance from external emergency services agencies. |
| Emergency Response and Incident Management Plan (ERIMP) | means the plan described in section 4.1 |
| Emergency Response and Incident Management Workshop | means the workshop described in section 4.3. |
| Emergency Service Organisations | means any one or more of Victoria Police, MFB, Ambulance Victoria or the State Emergency Service as the context requires. |
| Health and Safety Compliance Audits | means the audits described in section 5.3 |
| Health and Safety Management Plan Audit | means the audits described in section 5.2 |
| Health and Safety Performance Report | means the template provided by the State entitled 'Monthly Safety Report Form' upon which the Developer must base its Health and |



| Term | Meaning |
|---|--|
| Template | Safety Performance Report. |
| Health and Safety Risk Assessment | means the risk assessment described in section 2.3 |
| Heavy Vehicle National Law | means the <i>Heavy Vehicle National Law Application Act 2013 (Vic)</i> and related: 3 Regulations; 4 Codes of practise; 5 other compliance codes; 6 directions on safety or other notices issued by any relevant authority; and 7 standards relevant and applicable to any part of the Oversight Development Works. |
| High Risk Work | has the meaning given in the OHS Regulations. |
| Incident Management System | means the State's incident management system. |
| Independent Safety Auditor | means the suitably qualified and independent person described in section 5.1 |
| Integrated Crisis Framework | means the document entitled 'Integrated Crisis Framework - A Common Appendix for all MM Project Partners' provided by the State. |
| Safety Strategy and Culture Workshop | means the workshop described in section 2.1(b). |
| Safe Work Method Statement | means a document that sets out the high risk construction work activities to be carried out at a workplace, the hazards arising from these activities and the measures to be put in place to control the risks. |

2 General



2.1 State's objectives and overarching requirement

- (a) The Developer must consider the following principles throughout the performance of the Oversight Development Works:
- (1) an overriding commitment to preventing catastrophic incidents, fatalities and serious injuries;
 - (2) safety is not a priority that can be reordered, but is a value associated with every priority;
 - (3) development of a work environment based on employee involvement, accountability, team work, education, training and visible safety leadership;
 - (4) continuous improvement, innovation, knowledge sharing and learning from incidents;
 - (5) reinforcement of the need for employees to actively care about their co-workers; and
 - (6) recognition of group and individual achievement.
- (b) Prior to the preparation of the Health and Safety Management Plan and in addition to its obligations under clause 5.2 (f) of the Agreement, the Developer must conduct a Safety Strategy and Culture Workshop. The Developer must ensure that:
- (1) key Stakeholders and any personnel nominated by the State are invited to attend the Safety Strategy and Culture Workshop;
 - (2) the Safety Strategy and Culture Workshop covers, as a minimum, the following:
 - (A) how the Developer's safety culture will initially be fostered and maintained throughout the Oversight Development Works;
 - (B) proposed lead indicators which align with the Developer's safety culture and planned strategic activities; and
 - (C) identification of role specific safety accountabilities and deliverables for senior leaders, management and workforce; and
- (c) at least one full day is allocated for the Safety Strategy and Culture Workshop.

2.2 Safety Forums

The Developer must ensure the following personnel attend any Project related safety forums that are coordinated by the State and held throughout the Oversight Development Works:

- (a) key personnel employed or engaged by the Subcontractors responsible for project management of health and safety issues;
- (b) the Site health and safety professional(s);
- (c) safety and management representatives from any Subcontractors; and
- (d) any other relevant safety or management representatives from the Developer and Subcontractors, who are requested to attend by the State.

2.3 Health and Safety Risk Assessment



The Developer must maintain a current and thorough written risk assessment detailing all significant health and safety risks, and provide the assessment to the State when requested.

2.4 Notification and Reporting

For the purpose of facilitating the sharing of health and safety information across work packages, the Developer must:

- (a) promptly enter into the Incident Management System details of all Health and Safety Incidents, any associated reports and any updates to information in respect of a Health and Safety Incident; and
- (b) each month upload to the Incident Management System a report in the form of the Health and Safety Performance Report Template.

3 Health and Safety Management Plan

- (a) The Developer must prepare and update the Health and Safety Management Plan in accordance with the Agreement.
- (b) The Health and Safety Management Plan must:
 - (1) describe how workplace health and safety will be managed at the Site, for the duration of the Oversight Development Works;
 - (2) ensure that the Oversight Development Works are undertaken in accordance with the principles set out in this Schedule;
 - (3) be a single volume for the whole of the Oversight Development Works (including any Oversight Development Works performed by Subcontractors); and
 - (4) as a minimum, comply with the following requirements:
 - (A) all applicable OHS Legislation, without limitation, this includes general duty provisions applying to the Developer, Principal Contractor provisions and specific regulations regarding construction work; and
 - (B) BS6164: 2011 and AS4801:2001 or a comparative international standard.
- (c) The Health and Safety Management Plan must include, as a minimum:
 - (1) the Developer's health and safety policy and objectives;
 - (2) demonstration of how the outcomes of the Safety Strategy and Culture Workshop have been incorporated;
 - (3) the Health and Safety Risk Assessment;
 - (4) the details required to be included in a health and safety coordination plan under the OHS Regulations;
 - (5) details of the organisational structure of the Subcontractors including, but not limited to, identification of those roles with specific health and safety responsibilities, such as the roles and responsibilities of the health and safety professionals and description of the rationale for safety resourcing;

- (6) details of how the Developer will manage safety for the Oversight Development Works, including in relation to:
- (A) underground safety and supervision;
 - (B) any demolition activities;
 - (C) heavy lifting and safe crane operations;
 - (D) HV installation and management;
 - (E) working in confined spaces;
 - (F) traffic and vehicle interaction;
 - (G) management of heavy vehicle movements (giving consideration to the use of GPS tracking to manage heavy vehicle movements) and loading/ unloading;
 - (H) pedestrian and cyclist protection;
 - (I) mental health;
 - (J) occupational illnesses and disease;
 - (K) flood management;
 - (L) spoil management;
 - (M) compliance with the Heavy Vehicle National Law;
 - (N) hazardous materials;
 - (O) fatigue;
 - (P) identification of high risk activities and field verification of the effectiveness of critical controls in place to manage those activities; and
 - (Q) prevention of impacts to underground services;
- (7) procedures and responsibilities for:
- (A) preparation, implementation, review and updating of the Health and Safety Management Plan;
 - (B) identifying hazards and risks associated with the Oversight Development Works, including preparation, review and updating of the Health and Safety Risk Assessment and establishing appropriate controls which must be in accordance with the hierarchy of controls during the Oversight Development Works;
 - (C) providing such information, instruction and training as is necessary to ensure risks are appropriately eliminated or controlled;
 - (D) the management of Subcontractors;
 - (E) ensuring the preparation and implementation of Safe Work Method Statements for all High Risk Work;
 - (F) reviewing the effectiveness of the Health and Safety Management Plan, particular controls implemented under the Health and Safety Management Plan, and where necessary revising the Health and Safety Management Plan and the controls implemented thereunder;

- (G) monitoring and verification of the effectiveness of critical controls for high risk activities;
- (H) complying with the Heavy Vehicle National Law;
- (I) managing hazards and risks associated with fatigue;
- (J) managing hazards and risks associated with hazardous materials;
- (K) reporting and investigation of Health and Safety Incidents;
- (L) arrangements for ensuring appropriate Site-specific and task-specific induction and training is undertaken by all relevant Subcontractors and other persons who attend the Site to ensure they are aware of the requirements of the Health and Safety Management Plan and safety controls identified therein;
- (M) arrangements for ensuring induction and training;
- (N) arrangements for ensuring training addresses the risk profile and emergency procedures for that part of the Site;
- (O) performance monitoring and auditing arrangements including an audit schedule;
- (P) arrangements for facilitating the Health and Safety Management Plan Audit and the Health and Safety Compliance Audits, and for the prompt rectification of any non-conformances identified;
- (Q) arrangements for consulting with Subcontractors;
- (R) arrangements for consulting with and providing safety information to relevant stakeholders; and
- (S) managing public safety during the Oversight Development Works, including control measures and ongoing verification of the effectiveness of these control measures.

4 Emergency Response and Incident Management

4.1 Emergency Response and Incident Management Plan

- (a) The Developer must prepare and update the Emergency Response and Incident Management Plan (ERIMP).
- (b) The ERIMP must comply with OHS Legislation and must ensure reporting and investigation of Health and Safety Incidents by the Developer and all Subcontractors.
- (c) The ERIMP must, at a minimum, provide details of the following:
 - (1) roles and responsibilities in the event of an Emergency or crisis;
 - (2) procedures for managing and controlling Emergencies, incidents or crises;
 - (3) details of safe egress or evacuation of the Site following an Incident or Emergency;



- (4) emergency and crisis contacts list (including contacts for out of hours);
 - (5) details of first aid and emergency equipment kept on Site;
 - (6) procedures for locating and/or identifying all workers who may have been involved in or affected by the Emergency or Incident;
 - (7) procedures for training workers in relation to Emergencies and incidents;
 - (8) details of possible emergency or crisis scenarios that may occur during the Oversight Development Works and how those emergencies are proposed to be managed;
 - (9) details for contacting, notifying and interfacing with relevant government agencies, Emergency Service Organisations and other relevant stakeholders, such as Utility Providers and municipal councils;
 - (10) specific Emergency Service Organisations' information relating to their respective capabilities and functions. This information must be sourced directly from the relevant Emergency Service Organisations or from the State;
 - (11) procedures for the immediate notification to the State of incidents which may give rise to a public interest or be communicated to Victorians through the media;
 - (12) means for compliance with and coordination of any other emergency notification requirements under the Agreement; and
 - (13) procedures for testing and reviewing the ERIMP throughout the life of the Oversight Development Works.
- (d) The ERIMP must address and be consistent with the Integrated Crisis Framework.

4.2 Emergency Contacts

The Developer must advise the State of the names and telephone numbers of employees or representatives who can be contacted in an emergency and out of hours and keep this list current.

4.3 Emergency Response and Incident Management Workshop

- (a) The Developer must facilitate an Emergency Response and Incident Management Workshop with the State prior to finalising the Emergency Response and Incident Management Plan.
- (b) The Developer must:
 - (1) invite nominees of the State to attend the Emergency Response and Incident Management Workshop;
 - (2) ensure representatives from the Developer's Subcontractors attend the Emergency Response and Incident Management Workshop; and
 - (3) take into consideration the views expressed by attendees of the Emergency Response and Incident Management Workshop when finalising the Emergency Response and Incident Management Plan to be submitted to the State.



4.4 Emergency Service Organisations

- (a) The Developer must establish consultation arrangements with the Emergency Service Organisations within 20 Business Days of Financial Close. This consultation must, as a minimum:
 - (1) outline the Oversight Development Works and any potential disruptions to emergency services travel routes, road closures and the like;
 - (2) establish a notification process whereby the Emergency Service Organisations receive no less than 10 Business Days' notification of anticipated potential disruptions to emergency services travel routes (including but not limited to road closures);
 - (3) reach a joint understanding of the capability of the Developer, its Subcontractors and Emergency Service Organisations which must be included in the Emergency Response and Incident Management Plan and the risk assessment; and
 - (4) develop a process for ongoing consultation between the Developer, the Emergency Service Organisations and the State regarding Oversight Development Works throughout the Term.
- (b) The Developer must coordinate with the key institutional stakeholders that have an emergency management responsibility to ensure that their emergency response capabilities are not hindered.
- (c) The Developer must coordinate with relevant stakeholders to ensure that alternative arrangements for on street emergency assembly points are in place where existing emergency assembly points are impacted by the Oversight Development Works.

5 Health and Safety Audits

5.1 Independent Safety Auditor

The Independent Safety Auditor appointed by the Developer under the Agreement must:

- (a) be approved by the State (acting reasonably);
- (b) be a contractor independent of the Developer, and free of any other separate commitment or obligation to the Developer or its Subcontractors;
- (c) not have been involved in the development of the Health and Safety Management Plan or any associated sub-plan; and
- (d) have demonstrated competence, experience and training in workplace health and safety and audits in construction.

5.2 Health and Safety Management Plan Audit

- (a) The Independent Safety Auditor must perform Health and Safety Management Plan Audits that verify that the Health and Safety Management Plan:
 - (1) appropriately addresses the risks identified in the risk assessment; and
 - (2) is in accordance with the requirements specified in these Health and Safety Requirements and the Agreement.



- (b) The Developer must ensure that the Independent Safety Auditor provides it with the following:
 - (1) a report regarding the Health and Safety Management Plan Audit; and
 - (2) a declaration, which includes:
 - (A) details of the Independent Safety Auditor's skills, qualifications and expertise;
 - (B) a statement that the Health and Safety Management Plan complies with the requirements of the Agreement; and
 - (C) a statement that all non-conformances identified in the report described in item (1) have been rectified.
- (c) The declaration must be submitted to the State at the same time the Health and Safety Management Plan is submitted to the State.
- (d) Any amendment(s) to the Health and Safety Management Plan after submission of the declaration must be referred to the Independent Safety Auditor for review and written confirmation that the declaration remains valid.

5.3 Health and Safety Compliance Audits

- (a) The Independent Safety Auditor must perform Health and Safety Compliance Audits that verify that the Oversight Development Works are being performed in compliance with:
 - (1) OHS Legislation, the Health and Safety Requirements and the Agreement; and
 - (2) the Health and Safety Management Plan.
- (b) The Health and Safety Compliance Audits must, as a minimum, include:
 - (1) review of relevant documentation and records generated as a result of implementing the Health and Safety Management Plan;
 - (2) inspection of all parts of the Site where the Oversight Development Works, or part thereof, are being performed;
 - (3) a sample of observations of the Oversight Development Works being performed, including a sample of high risk work being performed;
 - (4) consultation with a sample of the workforce performing the Oversight Development Works in relation to the Health and Safety Management Plan and its implementation; and
 - (5) review of actions and close-out of previous non-conformances.
- (c) Following a Health and Safety Compliance Audit the Independent Safety Auditor must prepare a report that:
 - (1) provides evidence of or a detailed summary of the audit methodology;
 - (2) identifies any non-conformances or areas for improvement;
 - (3) provides recommendations as to appropriate control measures to address those non-conformances;
 - (4) nominates the timeframes for resolution of any non-conformances identified; and
 - (5) conform to the State's requirements for classification of non-conformances, and any other reasonable reporting requirements of



the State.

- (d) The Developer must provide evidence of the close out of any non-conformances identified as a result of the audit in the Health and Safety Performance Report.
- (e) The Developer must ensure a Health and Safety Compliance Audit is performed by an Independent Safety Auditor once within the first 3 months following commencement of the Oversight Development Works and at least every 6 months thereafter.
- (f) The Developer must submit an audit and compliance schedule within the Health and Safety Management Plan and Health and Safety Performance Report.

6 Road Safety

6.1 Safety equipment on vehicles

Without limiting the Developer's obligations under the Heavy Vehicle National Law, the Developer must ensure that all heavy vehicles used during the performance of Oversight Development Works have:

- (a) side under run guards fitted (unless the Developer can demonstrate to the satisfaction of the State that the vehicle will not perform the function for which it is intended if side under run guards are fitted);
- (b) front, rear and side blind spots completely eliminated or minimised as far as practical and possible, through the use of fully operational direct and indirect vision aids, sensors and audible or visual driver alerts;
- (c) equipment fitted with an audible means of warning other road users of a left manoeuvre; and
- (d) prominent signage on the vehicle to warn cyclists and other road users of the dangers of passing the vehicle on the inside or of getting too close to the vehicle.

6.2 Driver training

Throughout the performance of the Oversight Development Works, the Developer must ensure that all heavy vehicle drivers, including drivers employed by the Developer's subcontractors, undergo training (to include a mix of theoretical, e-learning, practical and on the job training) and continuous professional development covering the safety of vulnerable road users and on-road hazard awareness.

7 Hazardous Materials

- (a) Prior to the commencement of the Oversight Development Works, the Developer must engage an independent hazardous materials auditor to perform an audit of any structures at the Site in accordance with the requirements of the *Occupational Health and Safety Regulations 2017 (Vic)*.
- (b) The Developer must promptly provide a copy of the hazardous materials audit to the State.



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Attachment 13

Retail Plan

[not disclosed]



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Attachment 14

Station Land Management Principles

Station Land Management Agreement – Draft key principles

1. What is the Station Land Management Agreement?

1.1 Management of Station and the Oversight Development

The Station Land Management Agreement will contain a set of rules that regulate the management and operation of the Station and the OSD. The Station Land Management Agreement is intended to facilitate the efficient and cost effective management and operation of the Controlled Parts of the Station and the OSD and the use and payment of the Controlled Parts amongst the State and the OSD Sub-landlord.

1.2 Management Committee

The Station Land Management Agreement will require the parties (other than Project Co) to form a Management Committee. The Management Committee is responsible for overseeing the operation and management of the Controlled Parts of the Station and the OSD on behalf of the State and the OSD Sub-landlord.

1.3 Project Co

Except as otherwise expressly set out in this term sheet as an obligation of Project Co (and excluding all of the more general references to the parties in this term sheet), Project Co will be a party to the Station Land Management Agreement for the purpose only of deriving the benefit of the obligations imposed on the OSD Sub-landlord contemplated by the following paragraphs:

- (a) 2.2(e), which contemplates an obligation on the OSD Sub-landlord to provide Project Co and its subcontractors with access to the OSD and Public Realm Areas to:
 - (i) inspect, maintain and repair the Maintained Assets and to reattach and maintain Station lighting, sprinklers and the like which are attached to the OSD; and
 - (ii) undertake the Permitted Commercial Opportunities and carry out the Maintenance Services;
- (b) 6.1(c), which contemplates the State and the OSD Sub-landlord being required to prepare and agree with Project Co a protocol for the use and maintenance of any facilities shared by the Station and the OSD which each party must comply with;
- (c) 6.1(d), which contemplates an obligation on the OSD Sub-landlord not to damage the Maintained Assets or Commercial Opportunities Works, not to interfere with or disrupt the carrying out by Project Co of the Maintenance Services or the pursuit of the Permitted Commercial Opportunities;
- (d) 6.1(e), which contemplates an obligation on the OSD Sub-landlord to rectify any damage it causes to the Maintained Assets or Commercial Opportunities Works (and if not rectified by a time agreed by the parties (acting reasonably) to reimburse Project Co for the cost and loss of doing so itself);
- (e) 6.1(h), which contemplates an obligation on the OSD Sub-landlord to progressively contribute to the cost to Project Co of maintaining and repairing those areas and elements within the Station that constitute Shared Infrastructure; and
- (f) 6.1(j), which contemplates an obligation on the OSD Sub-landlord to maintain (and not alter) those components of the OSD that directly or indirectly performs a role in protecting the condition or functionality of the Station (unless otherwise agreed by Project Co),

and will not, by reason of the Station Land Management Agreement, assume any obligation or liability to the State, the Train Franchisee or the OSD Sub-landlord.

2. Shared Facilities which are the subject of the Station Land Management Agreement

2.1 Shared Facilities



- (a) Shared Facilities is defined under this clause 2.1.
- (b) Shared Facilities means a service, facility or an area on the Land or part of the Land that:
 - (i) is used by the OSD Sub-landlord and the Station Operator;
 - (ii) is located in the OSD and is used by the Station Operator; or
 - (iii) is located in the Station and is used by the OSD Sub-landlord,

will include the services and structures shared across the Station and OSD including structures, plant, services, infrastructure, egress and circulation, integrated waste management and access arrangements.

Specifically, the Shared Facilities will include:

- (iv) the Slab which is the [ground floor slab including foundation works and vertical risers above ground floor required to support the structure of the improvements on the Land];
 - (v) shared structure (including the vertical risers above ground floor);
 - (vi) shared infrastructure including without limitation the loading facility;
 - (vii) vehicular access;
 - (viii) plant and equipment;
 - (ix) lift wells;
 - (x) building risers;
 - (xi) station entrances and exits (including but not limited to ingress/egress, circulation and escalators, all public accessways on the ground floor and all land required for emergency access to or egress from the Station);
 - (xii) exhaust escapes;
 - (xiii) services; and
 - (xiv) integrated waste / waste disposal facilities / areas
- (c) Unanimous resolution by the parties to the Station Land Management Agreement (including Project Co) will be required to add to / remove from / change the Shared Facilities.
 - (d) Shared Facilities specifically excludes any services, facilities or areas which are exclusively used or benefit one of the Station Operator or the OSD Sub-landlord. For example, all areas leased by retail and office subtenants in the OSD will not be Shared Facilities.

2.2 Lease Access Plan

- (a) The Station Land Management Agreement will annex the Lease Access Plan.
- (b) Lease Access Plan to be able to be updated from time to time by agreement between the State, Project Co and OSD Sub-landlord.
- (c) The proposed pedestrian and cycle pathways, waste disposal and vehicle access facilities must remain accessible to all occupants of the development in perpetuity.
- (d) All motor vehicles entering and exiting the Land must do so in a forward direction only, except where reversing out of the Land in order to exit onto Flinders Land in a forward direction.

- (e) Subject to clause 2.2(g), to the extent the Shared Facilities and Public Realm Areas constitute part of the OSD, the OSD Sub-landlord will procure that the State, the Train Franchisee, Project Co and its subcontractors have access to the OSD and Public Realm Areas for the following purposes:
 - (i) to inspect, maintain and repair the Maintained Assets including risers, plant and other areas that directly interface with the OSD and to reattach and maintain Station lighting, sprinklers and the like which are attached to the OSD; and
 - (ii) otherwise for the purposes of undertaking the Permitted Commercial Opportunities and carrying out the Maintenance Services in the following manner:
 - (A) direct access to the areas shown in **[red]** on the Lease Access Plan; and
 - (B) access through the OSD site in the areas shown in **[blue]** in the Lease Access Plan; and
 - (C) managed access (with reasonable notice to the managing agent) to the goods lift shown in **[green]** on the Lease Access Plan in order to allow Project Co and its subcontractors to access their plant and equipment on the roof of the OSD.
- (f) To the extent the Shared Facilities constitute part of the Station, the State will procure that the OSD Sub-landlord (and its invitees, tenants and subcontractors) have access to the Shared Facilities for the following purposes:
 - (i) to inspect, maintain and repair the OSD including waste, services, drainage, electrical, risers, plant and other areas that directly interface with the Station; and
 - (ii) end of trip and other purposes associated with the OSD,

in the locations shown in the Lease Access Plan as coloured in **[orange]** subject to the Train Franchisee Rail Safety Requirements and reasonable security and access requirements of the State or the Train Franchisee.
- (g) Despite any provision in this document and the Station Land Management Agreement, no provision in this document (including clauses 1.3, 2.2 and 6.1) or the Station Land Management Agreement will entitle or enable Project Co to carry out any Permitted Commercial Opportunities on any part of the OSD or any part of the Public Realm Areas situated in the OSD.

2.3 Allocation of responsibilities of each party to the Station Land Management Agreement

- (a) Prior to execution of the Station Land Management Agreement, the parties must agree whether the Management Committee or the State or OSD Sub-landlord will be responsible for the operation, management, control, maintenance, repair and placement of a Shared Facility.
- (b) The Management Committee may by Special Resolution (and with the consent of the owner in whose lot the Shared Facility is located) amend the allocation of responsibility for the management, care, conduct, maintenance, repair, operation, cleaning and replacement of a Shared Facility.
- (c) The Public Realm Areas may not be developed or used for any use inconsistent with their function as Public Realm Areas.

2.4 Permitted uses

- (a) The OSD and the Station will be permitted for any use permitted under the relevant planning controls.

- (b) The use and any further development of the Land must comply with the advertising signage strategy approved under the Metro Tunnel: Over Site Development – CBD South, Incorporated Document (October 2017) as amended from time to time.

3. The Committee

3.1 Membership

The members of Committee will be:

- (a) the OSD Sub-landlord;
- (b) the Station Operator;
- (c) the State.

3.2 Structure of Committee

- (a) The OSD Sub-landlord will have one vote on the Committee.
- (b) The State and the Station Operator together will have one vote in total.
- (c) The committee will meet at least annually.

3.3 Powers and responsibilities

- (a) The Committee is responsible for operating and managing the Shared Facilities on behalf of the OSD Sub-landlord and Station Operator.
- (b) The Committee's powers and responsibilities (which may be delegated to an appointed Manager) will include:
 - (i) maintaining, repairing and operating the Shared Facilities to a high standard;
 - (ii) determining and levying from members of the Committee contributions to be made to the Administrative Fund and the Sinking Fund; and
 - (iii) making rules to facilitate the maintenance, management and operation of the Shared Facilities (which may not interfere with the OSD Sub-landlord's or Station Operator's reasonable use and enjoyment of the OSD and the Station).

3.4 Rules

- (a) The Committee may make rules by resolution.
- (b) The rules must only relate to the Shared Facilities and PPP/OSD Protocol.

3.5 Establishment costs

The establishment costs are to be agreed as part of the finalisation of the Land Management Agreement.

4. Financial management

4.1 Administrative Fund and Sinking Fund contributions

- (a) The Committee must establish an Administrative Fund and a Sinking Fund within one month of the date of the agreement.
- (b) The Committee will levy from Members contributions to the Administrative Fund and the Sinking Fund.

- (c) The money paid to the Administrative Fund will be used for the day to day expenses of the Shared Facilities in accordance with the PPP/OSD Protocol (including maintenance, repair, cleaning, insurance, security, WHS, pest control, inspection etc).
- (d) The money paid to the Sinking Fund will be used to pay for the renewal and replacement of Shared Facilities from time to time.
- (e) Each Member's contribution to each Fund in relation to Shared Facilities which exist at the date of the agreement will be determined with reference to a pre-agreed Shared Facilities Register which will contain an apportionment as between the Members.
- (f) If the Shared Facilities Register does not contain an apportionment, or Shared Facilities are constructed or varied after the date of the agreement, then Member's contributions will be determined in accordance with a Shared Facility Apportionment Report (to be prepared by an independent expert and which calculates apportionment based on estimated level of usage and benefit etc.).
- (g) The Committee will determine a budget for each financial year in respect of the allocation of the money in each Fund (to be approved by resolution of the Committee).
- (h) The parties agree to work together in order to keep the costs of maintenance, repair and outgoings of Shared Facilities down (for example, shared costs of cleaners, contractors etc.).
- (i) If a party fails to contribute to either the Administrative Fund or the Sinking Fund as required (**Non-contributing Party**):
 - (i) that amount which the Non-contributing Party has failed to contribute becomes a debt due and accrues interest calculated daily and capitalised monthly at the rate of [not disclosed]; and
 - (ii) one remaining parties (but not Project Co) (**Contributing Party**) may step in and make the required contribution(s).

4.2 Insurance

The OSD Sub-landlord must effect and maintain the following insurances in respect of the OSD and in respect of each Shared Facility which it owns and the Station Operator must effect and maintain the following insurances in respect of the Station and in respect of each Shared Facility which it owns:

- (a) Industrial Special Risks insurance; and
- (b) machinery breakdown insurance for Shared Facilities plant and equipment that is not covered under warranty for Shared Facilities within their part of the Land;
- (c) public liability insurance for a cover of an amount which is appropriate and which must not be less than [not disclosed]; and
- (d) workers compensation insurance if required by law; and
- (e) enough insurance cover to pay for increased costs during the period of insurance.

5. Rights of Access

5.1 Committee's right to access areas other than Shared Facilities

- (a) The Committee (and its employees, agents and contractors) will have the power to gain access to areas other than the Shared Facilities with reasonable notice for the purposes of operating, testing, using, maintaining or replacing Shared Facilities.
- (b) Each member must provide access to the Committee for these purposes.
- (c) To the extent reasonably practicable, the Committee must minimise disruption in exercising its right of access. The Committee must rectify any damage it causes promptly at its own sole cost.

(d) In an emergency, the Committee may enter these areas without notice.

5.2 OSD Sub-landlord, Station Operator and State rights of access

- (a) To the extent reasonably necessary, the State, the OSD Sub-landlord and the Station Operator must allow each other access to areas other than the Shared Facilities for the purposes of access to the Shared Facilities and to do anything reasonably required in respect of the Shared Facilities. These rights of access will be subject to any easements that will be granted.
- (b) To the extent reasonably practicable, a party exercising its right of access must minimise disruption and must rectify any damage it causes.

6. Rights and obligations of State / OSD Sub-landlord / Station Operator

6.1 Maintenance and repair

- (a) Each party agrees at its cost to:
- (i) maintain its part of the Land (excluding any Shared Facilities for which the Management Committee has responsibility for maintenance and repair or another party has been allocated responsibility for maintenance and repair) and keep it clean, in good repair and condition and accessible to the extent required in order to access to the Shared Facilities; and
 - (ii) maintain, clean and keep in good repair external fixtures or fittings in its part of the Land.
- (b) if the Management Committee itself or another party is allocated responsibility to operate, manage, control, maintain, repair and replace a Shared Facility, then that party or the Management Committee (whichever is applicable) must operate, manage, control, maintain, repair and replace the Shared Facility. Without limiting the above, the State agrees that if Project Co is no longer responsible for the Maintenance Services, the OSD Sub-landlord (or its nominated subcontractor) will be given the first right to be engaged to provide the facilities management services.
- (c) **(Maintenance Phase and remaining period of the Ground Lease):** The State must:
- (i) facilitate the preparation of a Maintenance Phase and remaining period of the Ground Lease protocol for CBD South Station to be agreed between all relevant entities (including the OSD Sub-landlord), the State and Project Co) which governs the interface between:
 - (A) on the one hand, the CBD South Station; and
 - (B) on the other hand, the corresponding completed Oversight Development Works;**(PPP/ OSD Protocol); and**
 - (ii) seek input from, and involve Project Co and the OSD Sub-landlord in the preparation of each of the PPP/ OSD Protocol (including as may be updated from time to time during the Maintenance Phase and remaining period of the Ground Lease).
- (d) The State and the OSD Sub-landlord must:
- (i) not damage the Maintained Assets or the Commercial Opportunities Works;
 - (ii) maintain the shared assets to an agreed standard and fitness for purpose;
 - (iii) not interfere with or disrupt the carrying out by Project Co of the Maintenance Services or the pursuit of the Permitted Commercial Opportunities or the State or their subcontractors during the remaining period of the Ground Lease; and
 - (iv) comply with the agreed PPP/ OSD Protocol.

- (e) If the OSD Sub-landlord:
 - (i) causes any damage to the Maintained Assets or Commercial Opportunities Works, the OSD Sub-landlord must promptly rectify the damage within the period of time agreed by the OSD Sub-landlord and Project Co (acting reasonably); and
 - (ii) fails to rectify the damage to the Maintained Assets or Commercial Opportunities Works within the period agreed under clause 6.1(e)(i), Project Co may rectify the damage itself in which case the OSD Sub-landlord must reimburse Project Co the costs incurred by Project Co in rectifying the damage.
- (f) If the State:
 - (i) causes any damage to the OSD Sub-landlord's property on the Land, the State must promptly rectify the damage within the period of time agreed by the OSD Sub-landlord and State(acting reasonably); and
 - (ii) fails to rectify the damage to the OSD Sub-landlord's property on the Land within the period agreed under clause 6.1(f)(i), the OSD Sub-landlord may rectify the damage itself in which case the State must reimburse OSD Sub-landlord the costs incurred by OSD Sub-landlord in rectifying the damage.
- (g) **(Built form of the Station):** To the extent that the built form of the Station is directly or indirectly performing a role in protecting the condition or functionality of the OSD (including by providing structural support, access routes, shared infrastructure, amenities for the retail, or as adjacent tenancies to access ways), the State must procure that Project Co and the State (and their tenants):
 - (i) maintain the relevant component of the completed Station and Shared Infrastructure so that at all times it remains fit for purpose; and
 - (ii) do not alter the relevant component of the completed Oversight Development Works without the OSD Sub-landlord prior written consent.
- (h) **(Shared cost of maintenance and repair):** The State will procure that the OSD Sub-landlord (during the remaining period of the Ground Lease) progressively contribute to the cost to Project Co and the State (during the remaining period of the Ground Lease) of maintaining and repairing those areas and elements within the CBD South Station that constitute Shared Infrastructure
- (i) If the State does not maintain the Shared Infrastructure in accordance with the PPP/ OSD Protocol, the OSD Sub-landlord will have the right to repair and maintain the relevant assets and will invoice the State for the cost of those works and the State agrees to pay those costs.
- (j) **(Built form of OSD):** To the extent that the built form of the OSD is directly or indirectly performing a role in protecting the condition or functionality of the Station (including by providing structural support, access routes, shared infrastructure, amenities for the retail, or as adjacent tenancies to access ways), the OSD Sub-landlord (and its tenants) must:
 - (i) maintain the relevant component of the completed OSD and Shared Facilities within the OSD so that at all times they remain capable of performing their role in protecting the condition or functionality of the Station; and
 - (ii) not alter the relevant component of the completed OSD without the State's and Project Co's prior written consent (acting reasonably).

For clarity, the State's consent is only required for redevelopment/refurbishment works in respect of the relevant component of the completed OSD referred to in this clause 6.1(j) and any other redevelopment/refurbishment works are addressed under clause 8.1 and 8.2.

- (k) Each party agrees that they will be liable for damage or loss they cause if they do or fail to do something under the Station Land Management Agreement. However, the liability of a

party does not include damage or loss to the extent caused or contributed to by the person suffering the damage or loss.

7. Fire safety and protection and essential safety measures

7.1 A party must:

- (a) immediately notify the Management Committee of any defect in or damage to a fire safety device which comes to its attention; and
- (b) comply with laws about fire control; and
- (c) notify the Management Committee if it changes the security system in its part of the Land.

7.2 Each party must not:

- (a) interfere with, obstruct or damage fire safety devices; or
- (b) do anything that will activate a fire safety device unless there is a fire or other emergency in the Station or OSD; or
- (c) keep flammable materials on a Shared Facility unless that material is necessary for the operation of the Shared Facility.

7.3 Each party must, at its cost:

- (a) cause annual safety measures reports (**ESM Reports**) to be prepared in respect of their part of the Land in accordance with the buildings regulations; and
- (b) provide a copy of each ESM Report to the Management Committee within 30 days after they are prepared.

7.4 For so long as the fire services to Controlled Parts or between parts of the Land are interdependent, each party must not do anything to adversely affect the fire services.

7.5 The parties must agree a co-ordinated site-wide safety management plan / protocol in respect of fire safety and essential safety measures and ensure that it is in place all times.

8. Further development

8.1 Upgrade works

The OSD Sub-landlord may refurbish the area leased under the Ground Lease provided it obtains the State's consent (such consent not to be unreasonably withheld) in respect of those areas which are relevant components of the OSD the subject of clause 6.1(j).

8.2 Redevelopment

- (a) Subject to clause 6.1(j), the OSD Sub-landlord and the Station Operator may redevelop their respective leased areas of the Land in their absolute discretion (and the other parties may not unreasonably withhold consent), so long as the proposed upgrade or redevelopment does not materially affect the Shared Facilities, Public Realm Areas or the other party's site.
- (b) If the redevelopment is of a substantial nature requiring structural demolition and which will materially impact the operation of the Shared Facilities or the other party's site, then consent of the Committee will need to be obtained.
- (c) If the redevelopment is of a nature which will materially adversely impact the Public Realm Areas, then the consent of the State will need to be obtained such consent not to be unreasonably withheld or delayed.
- (d) Parties to subsequently agree a schedule of key criteria in relation to redevelopment as part of the finalisation of the Station Land Management Agreement.

9. Dealings with interest

9.1 Assignment

- (a) If the OSD Sub-landlord assigns its interest in the Ground Lease, it must procure that its assignee executes a deed of covenant under which the assignee is bound by the terms of the Station Land Management Agreement.
- (b) If the Station Operator assigns its interest in **[insert]**, it must procure that its assignee executes a deed of covenant under which the assignee is bound by the terms of the Station Land Management Agreement.
- (c) A change in control (majority shareholding) of any party will be treated as an assignment for the purposes of this Agreement.

9.2 New Project Co

Before a new Project Co is appointed, that new Project Co must execute a deed of covenant under which it is bound by and has the benefit of the terms of the Station Land Management Agreement to the same extent as Project Co under this document.

10. Dispute Resolution

- (a) Parties to negotiate resolution failing which an independent expert to be appointed.
- (b) Independent expert's determination is final and binding.

11. Retail

- (a) Without limiting paragraph 6.1(d) or 8.2, the OSD Sub-landlord may, at its discretion:
 - (i) core hole (drill); and
 - (ii) carry out any other activitiesinto the and onto the underside of the Slab for the purposes of providing retail related service requirements to the OSD (eg sewerage and drainage facilities) to the OSD sub-tenants in its absolute discretion.
- (b) The OSD Sub-landlord must ensure that any works undertaken in accordance with paragraph 11(a):
 - (i) do not affect the structural integrity of the Slab and must repair and make good any damage caused to the Slab caused or contributed to by any works undertaken in accordance with paragraph 11(a);
 - (ii) are undertaken in a proper and workmanlike manner and complying with all laws;
 - (iii) are carried out by qualified contractors and employees approved by the Committee acting reasonably.
- (c) The Committee must provide access to the OSD Sub-landlord for the purposes of these works.

12. Reinstatement

- (a) In the event that the Shared Facilities are damaged or destroyed, the party in whose part of the Land the Shared Facility that has been destroyed must arrange for the reinstatement of the Shared Facility. However, if a Shared Facility is for the exclusive use of a party but located in another party's part of the Land, the party which has exclusive use of that Shared Facility has the obligation to reinstate the Shared Facility in the position it was prior to the damage or destruction.
- (b) The party's obligation to reinstate the Shared Facilities will not apply where there is a Unanimous Resolution reached by the Management Committee objecting to their reinstatement.

- (c) A party who receives proceeds from an insurance policy must pay a reasonable amount of the proceeds to cover the reinstatement of the Shared Facility or Facilities which have been destroyed or damaged. The Management Committee must open a bank account in an Australian bank for the purposes of depositing funds. The funds must be used for the purposes of rebuilding and reinstating the relevant Shared Facilities.
- (d) If there is a shortfall between the insurance proceeds for damage or destruction to the Shared Facilities and the cost of reinstatement or replacement, then to the extent that:
 - (i) the shortfall is a result of a party's negligence, default or breach of this deed, the relevant party must pay the shortfall (or if there is more than one relevant party, the relevant party's proportionate share of the shortfall) to the Management Committee in accordance with a payment program advised by the Management Committee (acting reasonably); and
 - (ii) the shortfall is not the result of a party's negligence, default or breach of this deed, each party must pay the amount of the shortfall to the Management Committee in proportions determined by the Management Committee and in accordance with a payment program advised by the Management Committee (acting reasonably).
- (e) Without limiting the above, if the Slab is damaged or destroyed, the State must (subject to clause 12(b)):
 - (i) reinstate the Slab (subject to reimbursement of the cost of reinstatement in accordance with the principles set out in this clause 12);
 - (ii) use reasonable endeavours to commence the reinstatement of the Slab by the date which is 6 months after the date the Slab was damaged or destroyed; and
 - (iii) use reasonable endeavours to complete the reinstatement of the Slab by the date which is 12 months after commencement of the reinstatement works.

13. Definitions and interpretation

- (a) The following terms are defined in this document:
 - (i) **Commercial Development Agreement** means the Commercial Development Agreement for the development of the OSD entered into between the State and Lendlease (OSD South) Pty Limited as trustee for the Lendlease (OSD South) Trust
 - (ii) **Commercial Opportunities Works** has the meaning given in the Project Agreement.
 - (iii) **Controlled Parts** means the:
 - (A) Public Realm Areas; and
 - (B) Shared Facilities.
 - (iv) **Ground Lease** means the lease of the OSD under which the State is the lessor and the OSD Sub-landlord is the lessee
 - (v) **Land** means the whole of the Land on which the OSD and Station are located.
 - (vi) **Maintained Assets** has the meaning given in the Project Agreement.
 - (vii) **Maintenance Services** has the meaning given in the Project Agreement.
 - (viii) **OSD** means the Oversight Development Site.
 - (ix) **OSD Sub-landlord** means the owner of the Oversight Development Works and the lessee under the Ground Lease

- (x) **Permitted Commercial Opportunities** has the meaning given in the Project Agreement.
 - (xi) **Public Accessways Plan** means a plan which shows the general arrangement of proposed public accessways including pedestrian and cycle walkways and including all land required for emergency access to or egress from the Station.
 - (xii) **Public Realm Areas** means the public accessways through the Station and the OSD and the surrounding roads, as shown on the Public Accessways Plan.
 - (xiii) **Project Agreement** means the document entitled 'Project Agreement – Tunnel and Stations PPP' in relation to the between the State and Project Co.
 - (xiv) **Project Co** has the meaning given under the Commercial Development Agreement and includes its permitted assignees.
 - (xv) **Shared Facility** has the meaning giving in clause 2.1.
 - (xvi) **Shared Facilities Register** means a register of the Shared Facilities as updated from time to time.
 - (xvii) **Shared Infrastructure** means infrastructure or building components which form part of the CBD North Station or the CBD South Station (as applicable) which the completed Oversight Development Works (as applicable) relies on or uses as part of the operation of the completed Oversight Development Works, in each case excluding the Foundation Works.

[To discuss the maintenance and repair of the ground floor public areas (including ground floor walls and ceilings) – OSD wants to control the maintenance and repair of these aspects with the parties jointly contributing to the maintenance and repair of the ground floor.]
 - (xviii) **State** means the Minister for Public Transport on behalf of the Crown in right of the State of Victoria.
 - (xix) **Station** means [has the meaning given under the Commercial Development Agreement]
 - (xx) **Station Operator** means [*insert*]
- (b) Capitalised terms which are undefined and are defined in the Commercial Development Agreement have the meaning given under the Commercial Development Agreement.
- (c) A reference to a party includes its successors and permitted assignees.



HERBERT
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Attachment 15

Builder's Side Deed



HERBERT
SMITH
FREEHILLS

Deed

Metro Tunnel
Tunnel and Stations PPP

Builder Direct Deed

The Minister for Public Transport on behalf of the
Crown in right of the State of Victoria

Lendlease (OSD South) Pty Ltd as trustee for the
Lendlease (OSD South) Trust

[Insert Builder]

[Note: This deed is subject to amendments due to, amongst other matters, the final version of the Building Contract, the financing arrangements including the rights and obligations of the Developer's Investor (if applicable) and the Developer's Investor's financier (if applicable) and any relevant intercreditor deeds entered into by the parties.]

[Note: As referred to in clause 5.2 of the Commercial Development Agreement, the State's step in rights are subject to any step in rights of the Developer's Investor and/or the Developer's Investor's financier.]

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Contents

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Builder Direct Deed

Date ►

Between the parties

State The Minister for Public Transport on behalf of the Crown in right of the State of Victoria.

Developer Lendlease (OSD South) Pty Ltd ACN 610 047 464as trustee for the Lendlease (OSD South) Trust
of Level 14, Tower Three, International Towers Sydney, Exchange Place, 300 Barangaroo Avenue, Barangaroo NSW 2000

Builder **[Insert]**
[Insert ABN] of **[insert address]**

Recitals 1 The background to the Oversight Development is set out in the Commercial Development Agreement.
2 The Developer and the Builder are or will become parties to the Building Contract.
3 The Builder has agreed to grant to the State certain rights in relation to the Building Contract.

This deed witnesses as follows:

1 Defined terms and interpretation

1.1 Commercial Development Agreement definitions

Unless otherwise expressly defined, expressions used in this Deed have the meanings given to them in or for the purposes of the Commercial Development Agreement.

1.2 Definitions

In this Deed, unless the context requires otherwise:

| Term | Meaning |
|--|--|
| Additional Obligor | means a company or other entity which is wholly owned by the State. |
| Additional Obligor Step-In Notice | has the meaning given in clause 5.8(a)(3). |
| Additional Obligor Step-Out Date | has the meaning given in clause 5.10(d). |
| Agreed Amount | has the meaning given in clause 11(b)(1). |
| Assumption Date | has the meaning given in clause 5.10(a). |
| Building Contract | means the document entitled ' [insert] ' dated on or about the date of this Deed between the Developer and the Builder. |
| Builder Associate | means any: <ol style="list-style-type: none"> 1 Builder Relevant Person in respect of the Builder only (excluding the Developer Representative); and 2 officer, agent, adviser, consultant, contractor or employee of the Builder. |
| Builder Relevant Person | means: <ol style="list-style-type: none"> 1 a director or secretary of the Builder; or 2 any officer or employee, consultant, contractor or agent of the |

| Term | Meaning |
|---|---|
| | <p>Builder who:</p> <ul style="list-style-type: none"> a has the ability to exercise influence or control in relation to the Builder, or in matters relating to the Oversight Development; b works in any role in connection with the Oversight Development Works, including undertaking any task for the purpose of the Building Contract or this Deed; or c has access to Confidential Information in connection with the Oversight Development. |
| Builder Statement | has the meaning given in clause 5.4. |
| Commercial Development Agreement | means the Commercial Development Agreement for the Project entered into by the State and the Developer on or about [insert], as amended from time to time. |
| Cost | has the meaning given in clause 11(g). |
| Deed | means this deed and includes all Schedules, Exhibits, Attachments and Annexures to it. |
| Default Event | <p>means any:</p> <ul style="list-style-type: none"> 1 material breach by the Developer of any of its obligations under the Building Contract; or 2 other event or circumstance, <p>which alone or with the giving of notice or passage of time or both, would entitle the Builder to terminate, rescind, accept the repudiation of, or suspend any or all of its obligations under, the Building Contract.</p> |
| Default Event Notice | has the meaning given in clause 5.2(a). |
| Disputing Parties | has the meaning given in clause 7.1(a). |
| Finance Direct Deed | means the document entitled "Finance Direct Deed" dated [#] between the Developer, the State, the Investor and the Investor's financier. |
| Insolvency Event | in relation to a party, the occurrence of any of the following |

| Term | Meaning |
|-----------------|---|
| | <p>events:</p> <ol style="list-style-type: none"> 1 if an application is made (other than for a frivolous or vexatious reason) for the winding up or deregistration of a party and, where an application has been made for the dismissal or withdrawal of the application for winding up within 10 Business Days, the application is not dismissed or withdrawn within 30 Business Days; 2 an order is made for the winding up of a party, except for the purpose of a reconstruction, amalgamation, merger or consolidation on terms approved by the State before that order is made where the reconstruction, amalgamation, merger or consolidation is implemented in accordance with the terms of the approval; 3 if a party passes a resolution for its winding up or deregistration, except for the purpose of a reconstruction, amalgamation, merger or consolidation on terms approved by the State before that resolution is passed where the reconstruction, amalgamation, merger or consolidation is implemented in accordance with the terms of that approval; 4 if a receiver, receiver and manager, liquidator provisional liquidator, compulsory manager trustee for creditors or in bankruptcy or analogous person is appointed to, or the holder of a Security Interest takes (or appoints an agent to take) possession of, any property of a party or otherwise enforces its Security Interest; 5 if a party or any other person appoints an administrator to the party, or takes any step to do so; 6 if a party: <ul style="list-style-type: none"> • suspends payment of its debts (other than as the result of a failure to pay a debt or claim which is the subject of a good faith dispute); • ceases or threatens to cease to carry on all or a material part of its business; • is or states that it is unable to pay its debts; or • is deemed insolvent by virtue of its failure to comply with a statutory demand; or 7 if a party enters into a readjustment or rescheduling of its indebtedness or makes a general assignment for the benefit of or a composition with its creditors, without the prior consent of the State, except for the purposes of a solvent reconstruction or amalgamation approved in writing by the State; or 8 any act is done or event occurs which has an analogous or similar effect to any of the events in paragraphs 1 to 8. |
| Investor | [insert name] |



| Term | Meaning |
|--------------------------------|--|
| Investor Side Deed | means the document entitled "Investor Side Deed" dated [#] between the Developer, the State and the Investor. |
| Material Adverse Effect | means a material adverse effect on: <ol style="list-style-type: none">1 the ability of each of the Developer or the Builder to perform and observe their respective obligations under any Oversight Development Agreement to which it is a party; or2 the rights of the State under any Oversight Development Agreement, or the ability or capacity of the State to exercise its rights or perform its obligations under a Oversight Development Agreement. |
| Novation Notice | has the meaning given in clause 6.1(a). |
| Novation Notice Date | means: <ol style="list-style-type: none">1 in relation to clause 6.3, the later of the date of the Novation Notice and the date each of the Builder consents or is deemed (in accordance with clause 6.3(d)) to have consented to the novation; and2 otherwise, the date of the Novation Notice. |
| Project Agreement | means the document entitled 'Project Agreement' between the State and Project Co dated [<i>insert</i>]. |
| Developer's Rights | has the meaning given in clause 5.10(b)(1)(A). |
| Recipient | has the meaning given in clause 11(b)(2). |
| Representative | has the meaning given in clause 7.2(a). |
| Revenue | has the meaning given in clause 11(f). |
| State Cure Notice | has the meaning given in clause 5.2(c). |
| Step-In Period | has the meaning given in clause 5.8(b). |
| Step-In Right | has the meaning given in clause 5.8(a). |

| Term | Meaning |
|-------------------------|---|
| Substitute Party | has the meaning given in clause 6.1(a). |
| Supplier | has the meaning given in clause 11(b). |

1.3 Interpretation

In this Deed:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;
- and unless the context otherwise requires:
- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa and a word indicating a gender includes every other gender;
 - (c) **(references)**: a reference to:
 - (1) a party, clause, Schedule, Exhibit, or Annexure is a reference to a party, clause, Schedule, Exhibit or Annexure of or to this Deed; and
 - (2) a section is a reference to a section of a Schedule;
 - (d) **(Deed as amended)**: a reference to this Deed or to any other deed, agreement, document or instrument includes a reference to this Deed or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
 - (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
 - (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
 - (g) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
 - (h) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
 - (i) **(‘includes’)**: ‘includes’ will be read as if followed by the phrase ‘(without limitation)’;
 - (j) **(‘or’)**: the meaning of ‘or’ will be that of the inclusive, being one, some or all of a number of possibilities;
 - (k) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
 - (l) **(‘\$’)**: a reference to ‘\$’, AUD or dollar is to Australian currency;

- (m) **(time)**: a reference to time is a reference to time in Melbourne, Australia;
- (n) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (o) **(obligations and liabilities)**: a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (p) **(‘may’)**: the term ‘may’, when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;
- (q) **(construction)**: where there is a reference to an Authority, institute or association or other body referred to in this Deed which:
 - (1) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or
 - (2) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (r) **(remedy)**: the use of the words ‘remedy’ or ‘cure’ or any form of such words in this Deed means that the event to be remedied or cured must be remedied or cured or its effects overcome; and
- (s) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

1.4 Priority of documents

To the extent of any inconsistency, ambiguity or discrepancy between this Deed and the Building Contract, this Deed prevails.

1.5 Oversight Development Agreements and Finance Direct Deed

The Builder acknowledges that it has received a copy of the Project Agreement, Investor Side Deed and the Finance Direct Deed.

1.6 Business Day

If the day on or by which anything is to be done in accordance with this Deed is not a Business Day, that thing must be done no later than the next Business Day.

1.7 Prior approval or consent

Where the Builder are required by this Deed to obtain the State's consent or approval to an action, document or thing, unless otherwise expressly stated, that consent or approval must be obtained prior to the actions, document or thing occurring or coming into effect.

1.8 Action without delay

Unless there is a provision in this Deed which specifies a period of time in which something must be done by the parties, all things must be done without undue delay.

1.9 Provisions limiting or excluding Liability, rights or obligations

- (a) **(No limit):** A right of the State or any obligation of the Builder or the Developer under this Deed will not limit or exclude any other right of the State or obligation of the Builder or the Developer under this Deed unless expressly stated.
- (b) **(Permitted by Law):** Any provision of this Deed which seeks, either expressly or by implication, to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.

1.10 Relationship of the parties

Unless otherwise expressly provided, this Deed does not:

- (a) **(no additional relationship):** create a partnership, joint venture, fiduciary, employment or agency relationship between the parties; or
- (b) **(no good faith):** impose any duty of good faith on the State.

1.11 Approvals, directions and notices in writing

Unless otherwise expressly provided in this Deed or agreed between the parties, all approvals, consents, directions, requirements, requests, claims, notices, agreements and demands given or required to be given under this Deed must be given in writing.

1.12 State's rights and obligations

- (a) **(Acknowledgement):** The parties acknowledge the substance, operation and potential effect and consequences of clause 1.9 of the Commercial Development Agreement in relation to this Deed.
- (b) **(No Claim):** Subject to clause 1.12(c), the Developer and the Builder will not be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its executive or statutory rights or duties.
- (c) **(Liability for breach):** Clauses 1.12(a) and 1.12(b) do not limit any Liability which the State would have had to the Developer or the Builder under any Oversight Development Agreement as a result of a breach by the State of a term of any Oversight Development Agreement but for these clauses.

1.13 Reasonable endeavours of State

Any statement in this Deed providing that the State will use or exercise 'reasonable endeavours' or 'act reasonably' in relation to an outcome, means that the State:

- (a) **(relevant steps):** will take steps to bring about the relevant outcome so far as it is reasonably able to do so, having regard to its resources and other responsibilities;
- (b) **(no guarantee):** cannot guarantee the relevant outcome; and
- (c) **(no obligation):** is not required to:
 - (1) exercise a right of any Government Party, or to influence, over-ride, interfere with or direct any other Government Party in the proper exercise and performance of its legal, executive or statutory rights and duties and functions;

- (2) exercise a power or discretion in a manner that the State regards as not in the public interest;
- (3) develop or implement new policy;
- (4) procure legislation; or
- (5) act in any way that the State regards as not in the public interest.

2 Acknowledgments

2.1 By the Developer

The Developer is bound by, and must cooperate in the implementation of, this Deed. It acknowledges that this Deed is intended to benefit only the Builder and the State, and does not in any way affect any obligation or right of the Developer under the Building Contract or under any Oversight Development Agreement except as expressly set out herein.

2.2 Information

The Developer and the Builder each acknowledge and agree that:

- (a) **(information purpose):** any information, data and documents provided by the State or a State Associate:
 - (1) are provided for information purposes only and all of the State's or a State Associates' Intellectual Property Rights therein remain the property of the State or the State Associate (as the case may be); and
 - (2) do not form part of this Deed or constitute an invitation, offer or recommendation by or on behalf of the State or a State Associate;
- (b) **(no Liability):** to the extent permitted by Law, none of the State or the State Associates will have any Liability to the Builder or any Builder Associate, nor will the Builder or any Builder Associate be entitled to make any Claim against the State, or seek, pursue or obtain an indemnity against or contribution to Liability from the State or a State Associate arising in connection with:
 - (1) the provision of, or purported reliance upon, or use of, any information, data and documents referred to in clause 2.2(a) by the Builder or any other person to whom such information is disclosed by the Builder, the Builder Associate, or any person on behalf of the Builder or any Builder Associate;
 - (2) any reference to the State in the Building Contract; or
 - (3) any review of, comments upon, acceptance, approval or certification of the form or substance of the Building Contract by the State.

2.3 Building Contract not to affect State rights

The Developer and the Builder each acknowledge and agree that:

- (a) **(rights not affected):** where the Builder is expressed in the Building Contract to have a right (or possible right) to compensation or relief which is dependent on or determined by reference to the Commercial Development Agreement or an equivalent or similar right of the Developer:

- (1) this does not of itself expand the Developer's rights, or the State's Liability, under the Commercial Development Agreement to include the compensation or relief to which the Builder is or may become entitled under the Building Contract; and
 - (2) the Developer's rights, and the State's Liability, under the Commercial Development Agreement will be determined solely in accordance with the terms of the Commercial Development Agreement;
- (b) **(risk of discrepancy)**: as between the State (on the one hand) and the Developer and the Builder (on the other hand), the Developer and the Builder accept and will bear the risk of any inconsistency, ambiguity or discrepancy between the terms of the Building Contract and the Commercial Development Agreement; and
- (c) **(dealing directly with State)**: notwithstanding anything to the contrary in the Building Contract, no Builder has any right to deal directly with the State or participate in any meeting, consultation or process (including negotiation or dispute resolution) unless:
- (1) expressly provided to the contrary in the Commercial Development Agreement or this Deed; or
 - (2) the State consents.

3 Representations and warranties by the Builder

The Builder represents and warrants for the benefit of the State that:

- (a) **(power to execute)**: it has the power to execute, deliver and carry out its obligations under this Deed, the Building Contract, and each other Oversight Development Agreement to which it is a party and all necessary action has been taken to authorise that execution, delivery and performance;
- (b) **(legality)**: the execution, delivery and performance of this Deed, the Building Contract, and each other Oversight Development Agreement to which it is a party does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;
- (c) **(validity)**: this Deed, the Building Contract, and each other Oversight Development Agreement to which it is a party constitutes a valid and legally binding obligation on it in accordance with its terms;
- (d) **(registration)**: it is duly registered, properly constituted and remains in existence;
- (e) **(no trust relationship)**: except as stated in this Deed, it is not the trustee or responsible entity of any trust nor does it hold any property subject to or impressed by any trust in relation to the Oversight Development Works;
- (f) **(information true and correct)**: all information provided by it to the State is true and correct to the best of its knowledge and belief (having undertaken enquiries reasonably expected of a skilled professional carrying out the obligations of the Builder under the Building Contract) as at the date on which it is provided and no Builder is aware of any material facts or circumstances that have not been disclosed to the State and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this Deed or to consent to the entry into the Building Contract;

- (g) **(litigation)**: no Claim against it is current or pending or (to its knowledge) is threatened, which will or is likely to have a material adverse effect upon it or its ability to perform its financial and other obligations under this Deed, the Building Contract, or any other Oversight Development Agreement to which it is a party;
- (h) **(Insolvency Event)**: no Insolvency Event has occurred in respect of it;
- (i) **(accounts)**: in respect of its accounts:
 - (1) its most recent consolidated audited (if the requirement for auditing is applicable) accounts give a true and fair view of its and its subsidiaries' state of affairs as at the date to which they relate and the results of its and its subsidiaries' operations for the accounting period ended on such date;
 - (2) there has been no material adverse change in its or its subsidiaries' state of affairs since such date; and
 - (3) such accounts have been prepared in accordance with the Corporations Act and accounting principles and practices generally accepted in Australia consistently applied, except to the extent of departures from such principles and practices disclosed in such accounts;
- (j) **(no default)**:
 - (1) no default has occurred under any document or agreement binding on it or its assets which relates to financial indebtedness; and
 - (2) nothing else has occurred,which, with the giving of notice or lapse of time, constitute an event of default, cancellation, prepayment event (pursuant to a bona fide right to exercise prepayment) or similar event (whatever called) under any such document or agreement, would have a Material Adverse Effect;
- (k) **(no immunity)**: neither it nor any of its assets enjoys any immunity from set off, suit or execution; and
- (l) **(own investigations)**: in entering into this Deed, the Building Contract to which it is a party, and any other Oversight Development Agreement to which it is a party it relied upon its own investigations and has not relied upon any representation or warranty about its subject matter by the State, the Developer or any other person unless in respect of the Developer or any other person, other than the State or any of its Associates, it is expressly permitted to do so in accordance with a Oversight Development Agreement to which it is a party.

4 Undertakings of the Builder

4.1 Undertakings

The Builder undertakes to the State as follows:

- (a) **(notification of Default Event)**: it will notify the State of any Default Event promptly after it gives notice of that Default Event in accordance with clause **[insert]** (**[Notice of Developer Event of Default]**) of the Building Contract;

- (b) **(documents in relation to Default Event):** it will promptly give the State a copy of all documents issued by the Builder to the Developer in relation to a Default Event;
- (c) **(deed of accession):** it will not novate, assign or substitute any of its rights, obligations or interest in the Building Contract without first procuring that the proposed novatee, assignee or substitute executes a deed in favour of the State (in form and substance approved by the State) pursuant to which the novatee, assignee or substitute agrees to accept and be bound by this Deed as if it were the Builder;
- (d) **(attend meetings and inspections):** it will (when reasonably requested by the State):
 - (1) attend meetings with the State or any of its Associates;
 - (2) provide the State, any of its Associates and other authorised personnel with:
 - (A) full access to the Site to the extent provided in the Commercial Development Agreement and to the extent that the Builder has access or is granted access under the Building Contract; and
 - (B) any other information, records or documents that the State, any of its Associates (acting reasonably) require in relation to the carrying out of the performance of the obligations under or compliance with the Building Contract or any information required by the State to comply with requests from the Victorian Auditor-General; and
- (e) **(access to records):** at the request of the State (acting reasonably), the Builder will:
 - (1) permit the State and any of its Associates to inspect all records, reports, plans, programs, specifications, and technical documents prepared or kept by the Builder in relation to the performance of its obligations under the Building Contract or otherwise relating to the Oversight Development; and
 - (2) supply the State and any of its Associates with a copy of any such report or document which they may require from time to time.

4.2 State access to Site

When entering the Site in accordance with clause 4.1(d)(2)(A), the State agrees to comply with, and ensure that its Associates and the authorised personnel comply with, clause [12.2(d)] of the Commercial Development Agreement.

5 Right to cure before termination of the Building Contract

5.1 State's cure rights

- (a) **(Provide State with notices):** The Builder must give the State:
 - (1) Default Event Notices; and
 - (2) State Cure Notices,

as required by clause 5.2.

- (b) **(State Cure Notice)**: On receiving a State Cure Notice, and subject to the Investor Side Deed, the State may (but is not obliged to) take steps to:
- (1) remedy, or procure the remedy of, that Default Event; or
 - (2) if the Default Event is not capable of remedy, commence and continue to perform the obligations of the Developer under the Building Contract.

5.2 Termination or suspension with cause

The Builder may only exercise a right under the Building Contract to terminate, rescind, accept the repudiation of, or (subject to clause 5.3) suspend the performance of any or all of its obligations under the Building Contract if:

- (a) **(prior notice)**: the Builder has given to the State prior notice setting out details of the Default Event giving rise to that proposed exercise in accordance with clause 5.4 **(Default Event Notice)**;
- (b) **(expiration of remedy period)** any remedy period available to the [Developer Investor or the Developer Investor's financiers] in respect of the Default Event under any relevant deed has expired without a remedy being achieved;
- (c) **(State cure notice)**: the Builder has given notice to the State **(State Cure Notice)** confirming that any remedy period available to the [Developer Investor or the Developer Investor's financiers] in respect of the Default Event under any relevant deed has expired without a remedy being achieved; and
- (d) **(Default Event remedy)**: where:
 - (1) the Default Event is capable of remedy within 20 Business Days after the date on which the State received the State Cure Notice, the Default Event has not been remedied within that 20 Business Day period;
 - (2) the Default Event is capable of remedy within a period longer than 20 Business Days after the date on which the State received the State Cure Notice, the State has not commenced remedying the Default Event within that 20 Business Day period or, having commenced remedying, has not continued to diligently pursue that remedy;
 - (3) the Default Event is not capable of remedy and the Default Event Notice contains a claim for reasonable compensation for the Default Event, the Developer or the State (or another person on behalf of either of them) has not paid or otherwise provided that compensation to the Builder:
 - (A) to the extent that the relevant amount of compensation has been referred to dispute resolution under clauses 7 to 8, within 20 Business Days after that dispute is resolved; or
 - (B) otherwise within 20 Business Days after the date on which the State received the State Cure Notice;
 - (4) the Default Event is not capable of remedy and the Default Event Notice does not contain a claim for reasonable compensation for the Default Event, the State does not commence and continue to perform the Developer's obligations under the Building Contract within 20 Business Days after the date on which the State received the State Cure Notice; or

- (5) the State notifies the Builder that it elects not to remedy, or procure the remedy of, the Default Event.

5.3 Early suspension of Builder's obligations

If:

- (a) **(right to suspend)**: the Builder, but for the operation of clause 5.2, would have a right to suspend the performance of its obligations under the Building Contract;
- (b) **(State Cure Notice)**: the Builder has issued a State Cure Notice to the State with respect to that Default Event;
- (c) **(dispute, non-payment or expired period)**: either:
- (1) the State has not undertaken to pay to the Builder the amounts payable under the Building Contract within 10 Business Days of:
- (A) subject to clause 5.3(c)(2), the date of receipt of the State Cure Notice; or
- (B) if the State refers the amounts in the Default Event Notice to dispute resolution under clauses 7 to 8, the dispute being determined; or
- (2) without limiting clause 5.2(d), the State has undertaken to pay the Builder amounts payable under the Building Contract for a stated period and that period has expired without the State paying such amounts or without that period being extended by the State (acting reasonably); and
- (d) **(not remedied)**: the Default Event has not otherwise been remedied, then the Builder may suspend performance of its obligations under the Building Contract.

5.4 Builder Statements

As part of any Default Event Notice, the Builder must include a statement of:

- (a) **(all amounts due and payable)**: all amounts due and payable to the Builder under the Building Contract on or before the date of the Default Event Notice but remaining unpaid at such date;
- (b) **(monetary claim)**: the nature and, to the best of the Builder's knowledge and belief, the amount of any monetary claim asserted by the Builder arising in connection with the Building Contract against the Developer; and
- (c) **(Intention to terminate)**: where the Builder intends to terminate the Building Contract due to a default or breach of condition of a non-financial nature or intends to claim damages or to seek some other form of relief:
- (1) the provisions of the Building Contract alleged to have been breached or not fulfilled;
- (2) sufficient information to enable the State to identify the material facts;
- (3) the steps reasonably required to remedy the Default Event (if reasonably capable of remedy);
- (4) the time within which the specified steps can reasonably be expected to be taken;

(5) if applicable, the amount of damages claimed and the manner in which they have been calculated; and

(6) if applicable, the other relief to be sought,

(being the **Builder Statement**).

5.5 Warranty of accuracy and waiver

The Builder warrants to the State that each Builder Statement will, subject to unintended error which the Builder agrees to rectify, be a true, complete and accurate statement of the amounts or other relief to which the Builder considers itself entitled.

5.6 Verification of Builder Statements

The State may appoint one or more independent chartered accountants, technical advisers or other appropriately qualified persons to verify (at the cost of the Developer) the Builder Statement, and the Builder must, subject to such persons executing an appropriate confidentiality agreement as the Builder may reasonably request, permit such persons to have access to and to make copies of all records, documents, data and accounting and other information not subject to legal (including, without limitation, solicitor and own client) and other professional privilege which is reasonably required with a view to confirming the accuracy and completeness of such Builder Statement.

5.7 Builder Statements to be conclusive evidence

- (a) **(Reliance)**: Each State is entitled to rely on the Builder Statement for the purpose of determining the extent of the matters occurring prior to a Default Event which are required to be remedied and the requirements to effect the remedy of that Default Event by a State.
- (b) **(Conclusive evidence)**: The Builder Statement will, to the extent provided for in clause 5.4 and 5.5, be conclusive evidence in favour of any State that the Builder has waived and abandoned all Claims then known or which ought reasonably to have been known to the Builder arising in connection with the Building Contract prior to the date of the Default Event Notice other than the Claims disclosed in the Builder Statement.
- (c) **(Claims against the Developer)**: Clauses 5.7(a) and 5.7(b) are without prejudice to the rights of the Builder to pursue any Claims against the Developer following the end of the Step-In Period or termination of the Building Contract.
- (d) **(Disputes)**: For the avoidance of doubt, the Builder Statement will not prevent any State from disputing the amount of any Claim or other relief sought by the Builder or the existence of any default by the Developer under the Building Contract. In the case of any such dispute:
- (1) the time periods set out in clause 5.2(d) will continue to apply to those amounts and obligations (if any) which are not in dispute;
 - (2) the dispute must be referred to dispute resolution under clauses 7 to 8; and
 - (3) during the period of dispute resolution, all parties must continue to perform their obligations under this Deed and the Oversight Development Agreements.

Step-In by the State

5.8 Step-In Right

- (a) **(Exercise):** Following receipt of a State Cure Notice or otherwise as permitted under any Oversight Development Agreement, the State may:
- (1) itself enter into possession of any or all of the assets of the Developer;
 - (2) take such other action as it is permitted to take under the terms of the Oversight Development Agreements; or
 - (3) by notice to the Builder (**Additional Obligor Step-In Notice**), procure that an Additional Obligor assumes jointly and severally with the Developer all of the Developer's rights and obligations under the Building Contract,

(each a **Step-In Right**).

(b) **(Step-In Period):** The period from the date on which the Builder receives notice of the exercise of any Step-In Right to the earliest of:

 - (1) the Additional Obligor Step-Out Date;
 - (2) the date on which the Builder terminates the Building Contract;
 - (3) the date of any transfer under clause 6;
 - (4) the date which the State has notified the Builder will be the date that the State ceases to exercise its Step-In Rights; and
 - (5) any other date on which the State ceases to continue to exercise its Step-In Rights,

is the **Step-In Period**.

(c) **(Acknowledgment):** The Builder acknowledges that the exercise by the State of a Step-In Right in the manner contemplated by this Deed will not of itself contravene the Building Contract, or constitute a Default Event under the Building Contract or entitle the Builder to exercise any right (including termination) under the Building Contract.

5.9 Step-In by the State

- (a) **(Rights):** Subject to the Finance Direct Deed, the State may at any time during a Step-In Period, exercise all or any of its rights and carry out all or any of the obligations of the Developer in connection with the Building Contract, as if it were the Developer to the exclusion of the Developer.
- (b) **(No Liability):** The Developer and the Builder each agree that, subject to clause 5.10(b):
- (1) none of the State or its Associates will have any Liability; and
 - (2) none of the Developer or the Builder will be entitled to make, continue or enforce any Claim against the State or any of its Associates,
- arising in connection with the Building Contract or this Deed by reason only of the State or any of its Associates exercising any of the Developer's rights, or performing any of the Developer's obligations under the Building Contract other than, and then only to the extent of, Liability for fraudulent, reckless, unlawful or malicious acts or omissions, or wilful misconduct of the State or any State Associate.

5.10 Step-In using Additional Obligor

- (a) **(Assumption Date):** If clause 5.8(a)(3) applies, the Additional Obligor will become a party to the Building Contract on the date on which the Additional Obligor Step-In Notice is given to the Builder or such later date as the Builder and the State may agree (**Assumption Date**).
- (b) **(Rights and obligations of Additional Obligor):** During a Step-In Period in respect of which the State has exercised a Step-In Right under clause 5.8(a)(3):
- (1) subject to clause 5.10(b)(2), the Additional Obligor will be:
 - (A) entitled to exercise the rights of the Developer under the Building Contract (excluding any accrued rights of the Developer in respect of any damage, loss, cost, charge, expense, outgoing or payment to the extent that the rights arose prior to the Assumption Date) (**Developer's Rights**); and
 - (B) liable for the performance or non-performance of all the Developer's obligations under the Building Contract arising on or after the Assumption Date except as released in accordance with clause 5.10(e);
 - (2) as between the Developer, the Builder and the Additional Obligor, only the Additional Obligor is authorised to deal with the Builder and to exercise the Developer's Rights;
 - (3) the Developer acknowledges that it will be legally bound by all the acts and omissions of the Additional Obligor in so dealing with the Builder and in exercising the Developer's Rights;
 - (4) the Additional Obligor will be bound by any earlier decision, directions, approvals, notices or consents given or made prior to the Assumption Date;
 - (5) clause 12 will apply to the Builder and the Additional Obligor as if the address and email address of the Additional Obligor (as notified to the Builder and the Developer) were set out in addition to those of the Developer; and
 - (6) the Builder will owe their respective obligations under the Building Contract to the Developer and the Additional Obligor jointly but the performance by the Builder in favour of either the Developer or the Additional Obligor will be a good discharge of the relevant obligations under the Building Contract.
- (c) **(No Liability):** Without prejudice to the Builder's rights under clauses 5.2 and 5.3, the Additional Obligor will have no obligation to, and no Liability in respect of, remedying any default or breach of the Developer under the Building Contract arising prior to the Assumption Date.
- (d) **(Additional Obligor Step-Out Date):** The Additional Obligor may at any time give the Builder notice terminating the Additional Obligor's rights and obligations under the Building Contract (without affecting the continuation of the Developer's obligations or liabilities towards the Builder under the Building Contract). Such notice must specify the date on which it takes effect, which must be:
- (1) at least 30 days after the date of the notice; or
 - (2) if a Novation Notice has been given, the Novation Notice Date,

(Additional Obligor Step-Out Date).

- (e) **(Release):** On and from the Additional Obligor Step-Out Date, as between the Builder and the Additional Obligor only, each of the Builder and the Additional Obligor will be released from all obligations under the Building Contract (except for those obligations owed to each other which have arisen during the relevant Step-In Period), whether or not a Claim has been made in respect of those obligations or they have not fallen due to be performed or have not been performed. For the avoidance of doubt, on and from the Additional Obligor Step-Out Date, the Builder will continue to owe their obligations under the Building Contract to:
- (1) the Developer; or
 - (2) if a Novation Notice has been given, to the Substitute Party.

5.11 Indemnity

The Developer must indemnify the State, its Associates and any Additional Obligor against any Claim or Liability (including any Claim made by, or Liability to, a third party) the State, any of its Associates or any Additional Obligor suffers or incurs arising in connection with taking any action under clause 5.9 or clause 5.10.

6 State's option to novate to the State or third party

6.1 Option

- (a) **(Novation Notice):** The State may require a novation of the Building Contract upon the termination of the Commercial Development Agreement by giving a notice (**Novation Notice**) to the Builder. The Novation Notice must specify the person to whom the State intends to novate the Building Contract whether this be the State or another person (**Substitute Party**).
- (b) **(Builder's obligations to continue):** If the State issues a Novation Notice then (without prejudice to the Builder's rights under clauses 5.2 and 5.3) the Builder, until the Novation Notice Date, must continue to perform their respective obligations under the Building Contract.
- (c) **(Novation Notice not a Default Event):** The Builder each acknowledge that the giving of a Novation Notice by the State will not of itself contravene, or constitute a Default Event under, the Building Contract, or entitle the Builder to exercise any power (including termination) under it.

6.2 Novation to Substitute Party

- (a) **(Effect of novation):** Subject to clause 6.3, with effect from the Novation Notice Date:
- (1) the Substitute Party will assume (and if the Substitute Party is not the State, the State will procure that the Substitute Party assumes):
 - (A) any obligation of the Developer under the Building Contract arising before the Novation Notice Date insofar as it relates to the payment of an amount of money that:

- 1) is due and payable under the terms of the Building Contract; and
 - 2) is not the subject of a dispute under the Building Contract (or is the subject of a dispute under the Building Contract in which case the Substitute Party will, on the determination of such dispute, assume such obligations in accordance with that determination); and
- (B) the obligations of the Developer under the Building Contract arising on and from the Novation Notice Date (including obligations in relation to the payment of amounts which become due and payable in respect of work performed before the Novation Notice Date) subject to any amendments to the Building Contract agreed in accordance with clause 6.2(a)(6);
- (2) without prejudice to any then accrued rights against the Developer (other than termination), any Builder's right to suspend under the Building Contract which exists at the Novation Notice Date will be of no further effect;
- (3) subject to any amendments agreed to the Building Contract in accordance with clause 6.2(a)(6), the Substitute Party will have all the rights of the Developer under the Building Contract (excluding any accrued rights of the Developer in respect of any damage, loss, cost, charge, expense, outgoing or payment to the extent that those rights arose prior to the Novation Notice Date and are the subject of any unresolved dispute referred to in clause 6.2(a)(1)(A)2));
- (4) subject to clause 6.2(a)(3) and any amendments agreed to the Building Contract in accordance with clause 6.2(a)(6), the Builder will:
 - (A) be bound by and must comply with the provisions of the Building Contract as if the Substitute Party were the Developer; and
 - (B) be entitled to any extensions of time and other entitlements which accrued to the Builder prior to the Novation Notice Date;
- (5) the Developer is released from all of its obligations and Liabilities under the Building Contract, excluding any accrued obligations or Liabilities of the Developer to the extent that those accrued obligations or Liabilities:
 - (A) arose in connection with events occurring prior to the Novation Notice Date; and
 - (B) are not obligations and Liabilities assumed by the Substitute Party under clause 6.2(a)(1);
- (6) the Builder and the Substitute Party will promptly negotiate in good faith, any amendments to the Building Contract that are necessary to reflect the termination of the Commercial Development Agreement; and
- (7) for the avoidance of doubt, any caps on Liability in the Building Contract will continue to apply, but so that any Liability of the Builder incurred to the Developer prior to the Novation Notice Date is taken

into account in respect of any ongoing Liability of the Builder to the Substitute Party.

- (b) **(No set off):** The Builder is not entitled to exercise any right of set off, deduction, abatement or counterclaim against the Substitute Party if, and to the extent that, such right arose prior to the Novation Notice Date.
- (c) **(Novation Deed):** Subject to clause 6.3(b), the Developer, the Builder and the Substitute Party must enter into an agreement in form and substance reasonably requested by the Substitute Party reflecting the novation of the Building Contract as contemplated in clause 6.2(a) and take such other action as is required to vest in the Substitute Party full legal and equitable title to any retention account, bank guarantee, performance bond, letter of credit or other security held by the Developer to secure the obligations of the Builder under the Building Contract.
- (d) **(Attorney):** For valuable consideration, the Developer and the Builder each irrevocably appoint the State, on its behalf and in its name or otherwise, as its attorney to do anything which the Developer or the Builder is obliged to do (but has not done within 5 Business Days of request) under clause 6.2(c). Each of the Developer and the Builder ratifies and confirms and agrees to ratify and confirm whatever any such attorney lawfully does in the exercise of the power of attorney in this clause 6.2(d).

6.3 Novation to a Substitute Party other than the State

- (a) **(Information to be provided by the State):** If the State gives a Novation Notice that states that the Developer must novate the Building Contract Documents to a Substitute Party other than the State or a State Associate, the State must, at the time it gives the Novation Notice, provide to the Builder the following particulars of the Substitute Party:
 - (1) its name, place of incorporation and identity of shareholder(s) (including, unless a shareholder is listed on a securities exchange, the ultimate shareholders);
 - (2) if available, its most recent published audited accounts; and
 - (3) sufficient particulars of the finance available to the Substitute Party to enable each Builder to decide whether to grant its consent to the Substitute Party.
- (b) **(Consent by the Builder):** A novation to, and the giving of a Novation Notice with respect to, a Substitute Party other than the State or a State Associate in accordance with this clause 6 will only be effective, and the Builder will only be required to enter into a novation agreement under clause 6.2(c), if the Builder each consent to that novation (such consent not to be unreasonably withheld or delayed) or are deemed to have consented in accordance with clause 6.3(d).
- (c) **(Further information):** The State must as soon as practicable supply the Builder with such additional information to that provided under clause 6.3(a) as the Builder each reasonably require to enable it to decide whether to grant consent under clause 6.3(b), and the Builder must each consider such information expeditiously and inform the State promptly if it reasonably requires further information.
- (d) **(Deemed consent):** The Builder' consent to the novation will be deemed to be given if the Builder have not notified the State under clause 6.3(e)(2) within 15 Business Days of the later of:

- (1) the receipt of the Novation Notice; and
 - (2) the receipt of the State's response to the Builder' request for information under clause 6.3(c).
- (e) **(Unreasonably withholding consent):** The Builder is not entitled to refuse consent to the novation unless:
- (1) the grounds for refusal are reasonable and are based on:
 - (A) the proposed novation deed referred to in clause 6.2(c) for the Substitute Party to assume the rights and obligations of the Developer under the Building Contract not being effective to substitute the Substitute Party for the Developer;
 - (B) the Substitute Party not having the legal capacity, power and authorisation to become a party to and perform the obligations of the Developer in accordance with the Building Contract including any necessary authorisations and consents;
 - (C) the technical competence or financial standing of the Substitute Party being insufficient for it to meet the obligations of the Developer in accordance with the Building Contract; or
 - (D) the Builder being placed in breach of any Laws by the proposed novation; and
 - (2) it has notified the State of such reasons.
- (f) **(If the Builder withholds consent):** If either Builder withholds its consent to a Novation Notice under this clause 6.3, this will not prejudice the ability of the State to give one or more subsequent Novation Notices, and information under clause 6.3(a), containing changed particulars relating to the same Substitute Party or particulars relating to another Substitute Party.

6.4 Accrued obligations and liabilities

Clause 6.2 does not operate to:

- (a) **(State not to assume):** require the State to assume any obligations or Liabilities arising from, or which are required to be performed in connection with the Building Contract prior to the Novation Notice Date unless expressly required to do so in clause 6.2; or
- (b) **(Release the Developer):** release the Developer from such obligations or Liabilities unless expressly provided for in clause 6.2.

7 Dispute Resolution

7.1 Procedure for resolving disputes

- (a) **(Disputes to be resolved):** Any dispute arising under this Deed must be resolved by the parties to that dispute (**Disputing Parties**) in accordance with clause 7 and clause 8.
- (b) **(Procedure):** The procedure that is to be followed to resolve a dispute is as follows:

- (1) firstly, the dispute must be the subject of negotiation as required by clause 7.2;
- (2) secondly, if the dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 7.2(c)(1) the Disputing Parties may agree that the dispute will be referred to an expert for determination in accordance with clauses 7.4 to 7.9 or to arbitration under clause 8; and
- (3) thirdly, if:
 - (A) the dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 7.2(c)(1) and irrespective of whether the Disputing Parties failed to meet as required by that clause or whether having so met the Disputing Parties failed to agree whether the Dispute should be referred to an expert or to arbitration within 20 Business Days after the expiration of the period for negotiation referred to in clause 7.2(c)(1);
 - (B) the dispute has been referred to expert determination and a determination is not made by the expert within 30 days after the expert's acceptance of appointment; or
 - (C) the dispute is referred to expert determination and a notice of dissatisfaction is given in accordance with clause 7.6(a),
- (4) then the dispute must be referred to arbitration in accordance with clause 8.

7.2 Negotiation

- (a) (**Notification**): If a dispute arises then a party may give notice to each other Disputing Party requesting that the dispute be referred for resolution by negotiation between the Chief Executive Officers (or equivalent) of the Disputing Parties (**Representatives**).
- (b) (**Contents of Notice**): A notice under clause 7.2(a) must:
 - (1) state that it is a notice under this clause 7; and
 - (2) include or be accompanied by particulars of the matters which are the subject of the dispute.
- (c) (**Attempt to resolve Dispute**): If a dispute is referred for resolution by negotiation under clause 7.2(a), then:
 - (1) the Representatives must meet and attempt in good faith to resolve the dispute (in whole or in part) within 10 Business Days of the date on which the notice under clause 7.2(a) is received (or such later date as the Disputing Parties may agree); and
 - (2) any agreement reached between the Representatives will be reduced to writing, signed by or on behalf of each Disputing Party and will be contractually binding on the Disputing Parties.

7.3 Expert determination

If:

- (a) (**dispute unresolved by Representatives**): a dispute which has been referred to the Representatives for negotiation in accordance with clause 7.2(a) remains

unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 7.2(c)(1); and

- (b) **(referral to expert)**: the Disputing Parties agree within 20 Business Days after the expiration of the period for negotiation referred to in clause 7.2(c)(1), that the dispute be referred to an expert for determination,

then those parts of the dispute which remain unresolved will be referred to an expert for determination under clauses 7.4 to 7.9. For the avoidance of doubt, a dispute may only be referred to an expert for determination by agreement of the Disputing Parties.

7.4 Selection of expert

- (a) **(Exchange of lists of 3 preferred experts)**: Within 7 Business Days after the date on which the Disputing Parties agree to refer a dispute to an expert for determination under clause 7.3, the Disputing Parties must exchange lists of 3 persons (in order of preference) who, if appointed, would satisfy the requirements of clause 7.4(d), from whom the expert is to be chosen.
- (b) **(Appointment of person who appears on both lists)**: Any person who appears on the list of all Disputing Parties exchanged under clause 7.4(a) will be appointed as the expert to determine a dispute and if more than one person appears on the list of all Disputing Parties, the person given the highest order of priority by the party who gave the notice under clause 7.2(a) will be appointed.
- (c) **(Appointment if no person appears on both lists)**: If no person appears on the list of all the Disputing Parties, the party which gave the notice under clause 7.2(a) must procure:
- (1) the president (or the senior non-executive officer, howsoever described) of the institute or governing body for the technical or professional discipline the subject of the relevant dispute to nominate the expert, having regard to, but not being bound by, those persons proposed by the Disputing Parties under clause 7.4(a); or
 - (2) if there is no governing body for the technical or professional discipline the subject of the relevant dispute or the Disputing Parties cannot agree the technical or professional discipline relevant to the dispute or such governing body advises that it will not nominate an expert, the Australian Centre for International Commercial Arbitration to nominate a person to act as the expert, having regard to, but not being bound by, those persons proposed by the Disputing Parties under clause 7.4(a),
- within 7 Business Days of the exchange of notices under clause 7.4(a).
- (d) **(Appropriate skills)**: It is the intention of the parties that the expert appointed to determine a dispute will be an independent person with appropriate skills having regard to the nature of the matters in dispute.
- (e) **(No entitlement to challenge appointment)**: No Disputing Party will be entitled to challenge the appointment of an expert under this clause 7.4 on the basis that the expert does not satisfy the requirements of clause 7.4(d).
- (f) **(Not an arbitration agreement)**: Any agreement for expert determination under this Deed will not constitute an arbitration agreement for the purposes of the *Commercial Arbitration Act 2011* (Vic).
- (g) **(Agreement)**: Once an expert is appointed, the Disputing Parties must enter into an agreement with the expert on the terms of the Expert Determination Agreement or such other reasonable terms as the expert may require.

7.5 Rules of expert determination

The expert determination process will be administered, and the expert will be required to act, under the terms of the Expert Determination Agreement.

7.6 Expert finding

- (a) **(Notification):** The determination of the expert must be in writing and will be final and binding on the Disputing Parties unless, within 10 Business Days of receipt of the determination, a Disputing Party gives notice to each other Disputing Party of its dissatisfaction and intention to refer the matter to arbitration in accordance with clause 8.
- (b) **(Amendment to determination):** Upon submission by any Disputing Party, the expert may amend the determination to correct:
 - (1) a clerical mistake;
 - (2) an error from an accidental slip or omission;
 - (3) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
 - (4) a defect in form.

7.7 Liability of expert

- (a) **(Liability of expert):** The Disputing Parties agree:
 - (1) that the expert will not be Liable in connection with the expert determination, except in the case of fraud on the part of the expert; and
 - (2) to indemnify the expert against any Claim or Liability in connection with the expert determination, except in the case of fraud on the part of the expert, in which case a Claim may be made against him or her by any person who is a party to the dispute.
- (b) **(Engagement):** The Disputing Parties will jointly engage the expert services in connection with the expert determination proceedings and each Disputing Party will seek a separate Tax Invoice equal to its share of the cost of the expert.

7.8 Costs

The Disputing Parties must:

- (a) **(own costs):** bear their own costs in connection with the expert determination proceedings; and
- (b) **(engagement):** pay an equal portion of the costs of the expert.

7.9 Proportionate Liability

To the extent permitted by Law, the Expert will have no power to apply or to have regard to the provisions of any proportionate liability legislation which might in the absence of this clause 7.9, have applied to any dispute referred to the Expert in accordance with this clause 7.

8 Arbitration

8.1 Reference to Arbitration

- (a) **(Dispute):** If:
- (1) a dispute:
 - (A) which has been referred to the Disputing Parties' Representatives for negotiation in accordance with clause 7.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 7.2(c)(1); and
 - (B) the Disputing Parties do not agree to refer the dispute to an expert for determination; or
 - (2) in the case of a dispute which the Disputing Parties agree to refer to expert determination under clause 7.3:
 - (A) a determination is not made within 30 days of the expert's acceptance of the appointment; or
 - (B) a notice of dissatisfaction is given in accordance with clause 7.6(a),
- then any Disputing Party may notify the other Disputing Parties that it requires the dispute to be referred to arbitration.
- (b) **(Referral):** Upon receipt by a Disputing Party of a notice under clause 8.1(a), the dispute will be referred to arbitration.

8.2 Arbitration

- (a) **(ACICA Rules):** Arbitration in accordance with this clause 8 will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Rules) as current at the date the Dispute is referred to arbitration and as otherwise set out in this clause 8 with this clause 8 having priority to the extent of any inconsistency.
- (b) **(Seat):** The seat of the arbitration will be Melbourne, Victoria.
- (c) **(Language):** The language of the arbitration will be English.

8.3 Appointment of arbitrator

The parties will endeavour to agree on the arbitrator or arbitrators (if the parties agree to appoint three arbitrators), but if no such agreement is reached within 14 Business Days of the dispute being referred to arbitration in accordance with clause 8.1(b), the arbitrator or arbitrators will be appointed in accordance with the ACICA Rules.

8.4 General Principles for conduct of arbitration

- (a) **(Conduct of arbitration):** The Disputing Parties agree that:
- (1) they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any dispute;
 - (2) any arbitration conducted in accordance with this clause 8 will not necessarily mimic court proceedings of the seat of the arbitration or

the place where hearings take place (if different), and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and

- (3) in conducting the arbitration, the arbitrator must take into account the matters set out in clauses 8.4(a)(1) and 8.4(a)(2).
- (b) **(Evidence in writing):** All evidence in chief must be in writing unless otherwise ordered by the arbitrator.
- (c) **(Evidence and discovery):** The rules for evidence and discovery will be the IBA Rules on the Taking of Evidence in International Arbitration current at the date of arbitration (or if there are no current rules, the most recent version of those rules).
- (d) **(Oral hearing):** The oral hearing must be conducted as follows:
- (1) any oral hearing must take place in Melbourne, Victoria and all outstanding issues must be addressed at the oral hearing;
 - (2) the date and duration of the oral hearing must be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in clause 8.4(a) when determining the duration of the oral hearing;
 - (3) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
 - (4) the oral hearing must be conducted on a stop clock basis with the effect that the time available to the Disputing Parties must be split equally between the Disputing Parties so that each party has the same time to conduct its case unless, in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the Disputing Parties;
 - (5) not less than 28 days prior to the date fixed for oral hearing each of the Disputing Parties must give notice of those witnesses (both factual and expert) of each other Disputing Party that it wishes to attend the hearing for cross examination;
 - (6) in exceptional circumstances the arbitrator may amend the date of hearing and extend the time for the oral hearing set in accordance with clause 8.4(d)(2);
 - (7) a Disputing Party will not be bound to accept the written evidence of a witness submitted on behalf of an opposing Disputing Party which is not challenged in cross examination; and
 - (8) each Disputing Party is expected to put its case on significant issues in cross examination of a relevant witness called by the other Disputing Party or, where it seeks to challenge the evidence of a witness not called for cross-examination by reference to other evidence, to identify that evidence in its written opening submissions so that the other Disputing Party may know the nature of and basis for the challenge to the witness' written evidence.
- (e) **(Experts):** Unless otherwise ordered each Disputing Party may only rely upon one expert witness in connection with any recognised area of specialisation.

8.5 Proportional liability

To the extent permitted by Law, the arbitrator will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this clause 8.5, have applied to any dispute referred to arbitration in accordance with this clause 8.

8.6 Extension of ambit of arbitration proceedings

- (a) **(Extending Disputes):** Where:
- (1) a dispute between the Disputing Parties to this Deed is referred to arbitration in accordance with this clause 8; and
 - (2) there is some other dispute also between the Disputing Parties to and in accordance with this Deed (whenever occurring),
- the arbitrator may, upon application being made to the arbitrator by one or more of the Disputing Parties at any time before a final award is made in relation to the first-mentioned dispute, make an order directing that the arbitration be extended so as to include the other dispute.
- (b) **(Arbitrator's order):** An arbitrator may make an order in accordance with clause 8.6(a) on such terms and conditions (if any) as the arbitrator thinks fit.

8.7 Award final and binding

- (a) **(Final and binding):** Subject to clause 8.7(b), any award will be final and binding on the Disputing Parties.
- (b) **(Appeal):** Each Disputing Party consents to any appeal to a court where that appeal is made under the *Commercial Arbitration Act 2011* (Vic) on a question of law arising in connection with an arbitral award made in accordance with this clause 8.

8.8 Continue to perform

Notwithstanding the existence of a dispute, each Disputing Party must continue to carry out its obligations in accordance with this Deed.

8.9 Governing law of arbitration agreement

The Law governing this arbitration agreement is the law of Victoria, Australia.

8.10 Interlocutory relief

Clause 7 and clause 8 do not prevent a Disputing Party from seeking urgent interlocutory relief from a court of competent jurisdiction where, in that Disputing Party's reasonable opinion, that action is necessary to protect that Disputing Party's rights.

9 Termination of this Deed

- (a) **(Satisfaction of obligations under the Building Contract):** This Deed will terminate upon the performance and satisfaction of all of the obligations under the Building Contract.
- (b) **(Does not affect rights of parties):** The termination of this Deed does not affect the rights of any party which have accrued to that party before the date of termination.

10 Insurances

- (a) **(Insurances):** Notwithstanding anything else contained in the Building Contract or this Deed, the Builder will:
 - (1) take out all insurances as are required to be taken out by it under the Building Contract; and
 - (2) otherwise comply with all of its obligations in relation to insurance in the Building Contract.
- (b) **(Not to prejudice):** The Developer and the Builder must each ensure that it does not do or omit to do anything or does not permit anything to be done or omitted to be done whereby any insurance policy required under the Building Contract may be prejudiced.
- (c) **(Void or Voidable):** If any default occurs by the Builder in effecting or maintaining such insurance policy or if any such insurance policy becomes void or voidable, the State may (but is not obliged to) effect or maintain that Insurance policy at the cost of the Builder or, failing it, the Developer.
- (d) **(State to be covered):** If required by the Commercial Development Agreement, in respect of any insurance contract entered into by the Builder as contemplated by clause 10(a), the Builder must ensure that the State and the State's Associates are specified as a person to whom the insurance cover provided by that contract extends.
- (e) **(All documents, evidence and information):** The Developer and the Builder must each do all things necessary and provide all documents, evidence and information necessary to enable the State to collect or recover any moneys due or to become due to the State in respect of any insurance policy required under the Building Contract at the cost of the Builder or, failing it, the Developer.
- (f) **(Cancellation, lapse or material change):** Without prejudice to clauses 10(a) to 10(e), neither the Developer nor the Builder will cause or take any steps to bring about the cancellation, lapse, material change, reduction or any rescinding of any such insurance policy unless it has first obtained the consent of the State.
- (g) **(Notify the State):** The Developer and the Builder must each immediately notify the State of any cancellation, lapse, material change, reduction, or any rescinding of any such insurance policy, and of the occurrence of any event giving rise to any claim under any such insurance policy in respect of the Oversight Development.
- (h) **(Several obligations):** Notwithstanding clause 1.3(o), but subject to the obligations of the Developer under the terms of the Commercial Development

Agreement, the obligations of the Developer and the Builder in this clause 10 are several.

11 Goods and Services Tax (GST)

- (a) **(GST exclusive amounts):** Unless otherwise expressly stated, all amounts referred to in this Deed, the Building Contract, or any Oversight Development Agreement are exclusive of GST.
- (b) **(GST payable by Supplier):** If GST becomes payable on any Taxable Supply made by a party (**Supplier**) under or in connection with this Deed:
- (1) any amount payable or consideration to be provided in accordance with any other provision of this Deed for that supply (**Agreed Amount**) is exclusive of GST;
 - (2) an additional amount will be payable by the party which is the recipient of the Taxable Supply (**Recipient**), equal to the amount of GST payable on that Taxable Supply as calculated by the Supplier in accordance with the GST Law, payable at the same time and in the same manner as for the Agreed Amount; and
 - (3) the Supplier will provide a Tax Invoice to the Recipient in connection with that supply, either at the time expressly set out in any other provision of this Deed or no later than the time at which the Agreed Amount for that Taxable Supply is to be provided in accordance with this Deed. The Recipient is not obliged to pay any amount in accordance with this clause 11(b) unless and until a Tax Invoice is received by the Recipient in connection with the Taxable Supply except where the Recipient is required to issue the Tax Invoice.
- (c) **(Variation in GST payable):** If for any reason, the GST payable by the Supplier in connection with a supply it makes under or in connection with this Deed (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it received from the Recipient under clause 11(b) in connection with that supply, the Supplier will provide a refund or credit to, or will be entitled to receive from, the Recipient (as appropriate) the amount of this variation. Where an adjustment event occurs in relation to a supply and except where the Recipient is required to issue the Adjustment Note:
- (1) the Supplier will issue an Adjustment Note to the Recipient in connection with that supply within 14 days after becoming aware of that adjustment event occurring; and
 - (2) no additional amount will be payable by the Recipient unless and until an Adjustment Note is received by the Recipient.
- (d) **(GST ceasing to be payable):** No amount is payable by a party in accordance with clause 11(b) or 11(c) to the extent that the GST to which the amount relates has ceased to be payable by or refundable to the Supplier by the Commissioner of Taxation under the GST Law.
- (e) **(Expert determination):** If the Recipient is dissatisfied with any calculation to be made by the Supplier in accordance with this clause 11 the Recipient may, at its own expense and after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the President of the Institute of Chartered Accountants for expert determination, which will be final and binding

on all parties (except in the case of manifest error on the face of the expert determination). The expert will act as an expert and not as an arbitrator and must take into account the terms of this Deed, the matters required to be taken into account by the Supplier in accordance with this clause 11 and any other matter considered by the expert to be relevant to the determination. The parties release the expert from any liability in acting as an expert, except in the case of fraud on the part of the expert.

- (f) **(Revenue net of GST):** Any reference in this Deed to price, value, sales, revenue, profit or a similar amount (**Revenue**) is a reference to the GST exclusive component of that Revenue, unless the contrary intention is expressed.
- (g) **(Cost net of GST):** Any reference in this Deed to cost, expense, liability or other similar amount (**Cost**) of a party is a reference to that Cost reduced by the Input Tax Credits to which the party is entitled in respect of such Cost, unless the contrary intention is expressed.
- (h) **(General obligation):** Each party agrees to do all things, including providing Tax Invoices and other documentation, that may be necessary or desirable to enable or assist the other party in determining its GST payable on any supply made by that other party in connection with this Deed, or any input tax credits, adjustments or refunds in relation to any amount of GST paid or payable in connection with any supply made in connection with this Deed.
- (i) **(GST Groups):** For the purposes of this Deed, a reference to GST payable on a Taxable Supply made by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member and a reference to an input tax credit entitlement of a party includes any corresponding input tax credit entitlement of the representative member of any GST group of which that party is a member.
- (j) **(Definitions):** In this clause 11 unless otherwise defined in this Deed, terms used have the meanings given to them in the GST Law.

12 Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Deed:

- (a) **(in writing):** must be in writing;
- (b) **(addressed):** must be addressed as set out below (or as otherwise notified by that party to each other party from time to time);

State:

Attention: Package Director, Tunnel and Stations PPP

Address: Level 35, Nauru House, 80 Collins Street,
Melbourne VIC 3000

Developer:

Attention: Company Secretary

Address: Level 14, Tower Three, International Towers
Sydney, Exchange Place, 300 Barangaroo
Avenue, Barangaroo NSW 2000

Builder:

Attention: **[Insert]**

Address: **[Insert]**

Email: **[Insert]**

- (c) **(signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(form of delivery)**: must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by the parties) to the email address of the addressee set out in clause 12(b); and
- (e) **(taken to be received)**: are taken to be received by the addressee at the address set out in clause 12(b):
 - (1) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00am on the next Business Day;
 - (2) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and
 - (3) in the case of email, the first to occur of:
 - (A) receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - (B) the time that the communication enters an information system which is under the control of the addressee; or
 - (C) the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00am on the next Business Day.

13 Confidential Information and disclosure

13.1 Confidential Information and disclosure by the State

The Builder acknowledge and agree that:

- (a) **(Public Disclosure Obligations)**: the State or any Authority may disclose any information in connection with the Oversight Development (including any Confidential Information) in accordance with its Public Disclosure Obligations

and the Builder must use all reasonable endeavours to assist the State or an Authority in meeting its Public Disclosure Obligations;

- (b) (**Other purposes**): the State or any Authority may disclose any information in connection with the Oversight Development (including any Confidential Information) in connection with:
 - (1) any Re-franchising; and
 - (2) the requirements of the Oversight Development Agreements;
- (c) (**State's rights**): in meeting its Public Disclosure Obligations or as otherwise considered necessary by the State, the State may publish, disclose or make generally available each Oversight Development Agreement on a Victorian Government website;
- (d) (**Exercise of licence**): nothing in this Deed prevents the State and any sublicensees using or disclosing any information (including Confidential Information) to the extent necessary or desirable for, or in connection with, the exercise of any licence granted under clause 29 (*Intellectual Property Rights*) of the Commercial Development Agreement.

13.2 Confidential Information and disclosure by the Developer and the Builder

- (a) (**Confidentiality obligation**): Subject to clause 13.2(b), the Developer and the Builder must treat as secret and confidential all Confidential Information in connection with this Deed and any other Oversight Development Agreement.
- (b) (**Disclosure of Confidential Information**): Without limiting the Developer's and the Builder's obligations under clause 13.2(a) and subject to clause 13.2(c), the Developer and the Builder may each disclose Confidential Information to:
 - (1) its Associates to the extent necessary for the purpose of undertaking the Oversight Development; or
 - (2) any Financier, prospective financier or equity investor of the Oversight Development, subject to the State having been provided necessary information in respect of the proposed parties and having carried out any Probity Investigation that the State considers necessary.
- (c) (**Confidentiality deed**): Before disclosing any Confidential Information, the Developer or the Builder (whichever is disclosing the Confidential Information) must ensure that the person to whom the information is disclosed enters into a confidentiality deed with the Developer or the Builder (whichever is disclosing the Confidential Information) on terms reasonably acceptable to the State.

13.3 Disclosure by the Builder

- (a) (**The Builder's disclosure obligations**): Subject to clause 13.3(b), the Builder must:
 - (1) not make any public disclosures, announcements or statements in relation to the Oversight Development or the State's or any of the State's Associates' involvement in the Oversight Development without the State's prior consent;
 - (2) comply with any terms and conditions the State imposes and must use all reasonable endeavours to agree with the State the wording and timing of all public disclosures, announcements or statements by

- it or any of its Associates relating to the Oversight Development or the State's or any of the State's Associates' involvement in the Oversight Development before the relevant disclosure, announcement or statement is made; and
- (3) as soon as practicable, give to the State a copy of any public disclosure, announcement or statement agreed to or approved by the State in accordance with this clause 13.3(a) or for which the State's consent or approval was not required in accordance with clause 13.3(b).
- (b) **(Permitted disclosure):** For the purposes of clause 13.3(a), the Builder will not be required to obtain the State's consent or approval to the extent that any disclosure, announcement or statement is:
- (1) required by Law, provided that it:
- (A) notifies the State of the requirement to make that disclosure; and
- (B) takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;
- (2) required to obtain legal or other advice from its advisers;
- (3) required to be made to a court in the course of proceedings to which any Builder is a party; or
- (4) required by a relevant stock exchange, subject to:
- (A) such disclosure, announcement or statement not referring to the State's or any of its Associates' involvement in the Oversight Development; and
- (B) the Builder having used all reasonable endeavours to obtain the State's consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant stock exchange.

14 Miscellaneous

14.1 Governing Law and jurisdiction

- (a) **(Governing Law):** This Deed is governed by, and must be construed according to, the Laws of Victoria, Australia.
- (b) **(Jurisdiction):** Without limiting clauses 7 to 8, each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Deed.

14.2 Entire agreement

To the extent permitted by Law and in relation to its subject matter, this Deed:

- (a) **(entire understanding):** embodies the entire understanding of the parties and constitutes the entire terms agreed by the parties; and

- (b) **(prior agreements)**: supersedes any prior agreement of the parties.

14.3 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to the parties) required by Law or reasonably requested by another party to give effect to this Deed.

14.4 Survival of certain provisions

- (a) **(Surviving clauses)**: All provisions of this Deed which, expressly or by implication from their nature, are intended to survive the rescission, termination or expiration of this Deed will survive the rescission, termination or expiration of this Deed, including any provisions in connection with:
- (1) the State's rights to set-off and recover money;
 - (2) confidentiality or privacy;
 - (3) Intellectual Property Rights;
 - (4) any obligation to make any information and records available to the State;
 - (5) any indemnity or financial security given in accordance with this Deed;
 - (6) any right or obligation arising on termination of this Deed; or
 - (7) any limitation of liability.
- (b) **(Interpretation)**: No provision of this Deed which is expressed to survive the rescission, termination or expiration of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the rescission, termination or expiration of this Deed.
- (c) **(Survival of rights and obligations)**: No right or obligation of any party will merge on completion of any transaction under this Deed. All rights and obligations in accordance with this Deed survive the execution and delivery of any transfer or other document which implements any transaction in accordance with this Deed.

14.5 Waiver

- (a) **(Writing)**: A waiver given by a party in accordance with this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver)**: A failure to, a delay in or the partial exercise or enforcement of a right provided by Law or in accordance with this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or in accordance with this Deed.
- (c) **(No waiver of another breach)**: No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

14.6 Consents, approvals and directions

- (a) **(State)**: A consent or approval required in accordance with this Deed from the State may be given or withheld, or may be given subject to any conditions, as the State thinks fit, unless this Deed expressly provides otherwise.
- (b) **(Developer or Builder)**: A consent or approval required in accordance with this Deed from the Developer or the Builder may not be unreasonably withheld or delayed, unless this Deed expressly provides otherwise.

14.7 Amendments

Except as otherwise expressly provided in this Deed, this Deed may only be varied by a deed executed by or on behalf of each party.

14.8 Expenses

Except as otherwise expressly provided in this Deed (or as between the State and the Developer in the Commercial Development Agreement), each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

14.9 Severance

If, at any time, a provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) **(under this Deed)**: any other provision of this Deed; or
- (b) **(under another jurisdiction)**: that provision under the Law of any other jurisdiction.

14.10 Counterparts

This Deed may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same deed.

14.11 Moratorium legislation

To the fullest extent permitted by Law, the provisions of all Laws which operate to lessen or affect in favour of a party other than the State any obligation under this Deed, or to prejudicially affect the exercise by the State of any right, power or remedy under this Deed or otherwise, are expressly waived.

14.12 Proportionate liability

- (a) **(Excluded operation of Wrongs Act)**: The operation of Part IVAA of the *Wrongs Act 1958* (Vic) is excluded in relation to all and any rights, obligations or liabilities of any party under this Deed whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) **(Rights, obligations and liabilities)**: Without limiting clause 14.12(a), the rights, obligations and liabilities of the parties (including those relating to

proportionate liability) are as specified in this Deed and not otherwise, whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

14.13 Indemnity held on trust

- (a) **(Benefit of indemnities)**: The State holds on trust for its Associates the benefit of:
- (1) each indemnity and release given by the Developer or the Builder under this Deed in favour of the State's Associates; and
 - (2) each right in this Deed to the extent that such right is expressly provided to be for the benefit of the State or State's Associates.
- (b) **(Developer and Builder acknowledgement)**: Each of the Developer and the Builder acknowledge the existence of such trusts and consent to:
- (1) the State exercising rights in relation to, or otherwise enforcing such indemnities, releases and rights on behalf of its Associates; and
 - (2) the State's Associates exercising rights in relation to, or otherwise enforcing the indemnities, releases and those rights as if they were a party to this Deed.
- (c) **(Consent not required)**: The parties agree that the State does not require the consent of its Associates to amend or waive any provision of any Oversight Development Agreement.

14.14 Assignment

Except as expressly contemplated by this Deed, none of the Developer or the Builder may assign or transfer any of its rights or obligations under this Deed or the Building Contract.

14.15 Limitation of Liability – Builder

The Builder's maximum aggregate Liability to the Developer, the State, and any person to whom the Building Contract is novated or assigned in accordance with the terms of this Deed, will not exceed the Builder's maximum aggregate Liability under the Building Contract.



Signing page

Executed as a deed

State

Signed by
**The Minister for Public
Transport on behalf of the
Crown in right of the State of
Victoria**

in the presence of

sign here ► _____
Minister

sign here ► _____
Witness

print name _____

print name _____

**Executed by Lendlease (OSD South) Pty
Limited as trustee for the Lendlease (OSD
South) Trust** by being signed, sealed and
delivered by its attorneys under power of attorney
dated

who declare that they have no notice of revocation
of the power of attorney, in the presence of

Signature of witness

Signature of attorney

Name of witness (print)

Name of attorney

Signature of attorney

Name of attorney

[Execution block of Builder to be inserted.]



Attachment 16

Developer's Investor Side Deed



Investor Side Deed

—

Minister for Public Transport on behalf of the Crown in right of the State of Victoria (**State**)

Lendlease (OSD South) Pty Limited as trustee for the Lendlease (OSD South) Trust (**Developer**)

[Insert – Investor Co] (**Investor**)

—

Investor Side Deed

Metro Tunnel – Oversight Development – CBD South

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Details

Date _____

Parties

Name Lendlease (OSD South) Pty Limited ACN 610 047 464 as trustee for the Lendlease (OSD South) Trust

Short form name **Developer**

Notice details Level 14, Tower Three, International Towers Sydney, Exchange Place
300 Barangaroo Avenue, Barangaroo NSW 2000
Email: **[insert]**
Attention: **[insert]**

Name The Minister for Public Transport on behalf of the Crown in right of the State of Victoria

Short form name **State**

Notice details **[insert]**
Attention: **[insert]**

Name **[insert]** ABN **[insert]**

Short form name **Investor**

Notice details **[insert]**
Email: **[insert]**
Attention: **[insert]**

Background

- A The Developer has entered into the Commercial Development Agreement with the State for the funding, planning, construction and operation of the Oversight Development.
- B The State, the Developer and the Investor have agreed to grant each other certain rights in respect of the Oversight Development Works to enable Final Completion to occur if the Developer commits a Developer Default under the Commercial Development Agreement.
- C If the Developer nominates the Investor to take the Commercial Lease pursuant to the Commercial Development Agreement, the Investor agrees to take, and the State agrees to grant the Investor the Commercial Lease.

1. Defined terms

In this Deed:

Approval means any consent, authorisation, registration, filing, lodgement, agreement, notarisation, certificate, permission, approval, licence, permit, authority or exemption from, by or with an Authority, in relation to the Property or any matter connected with the Property (including the use of the Property).

Authority means any governmental, semi-governmental, quasi-governmental, fiscal or judicial body, department, commission, tribunal, public or statutory instrumentality, administrative agency, authority, Minister, body or other similar entity having jurisdiction in relation to the Property, including a local government.

Builder has the same meaning as that term in the Commercial Development Agreement.

Building Contract has the same meaning as that term in the Commercial Development Agreement.

Business Day means any day other than:

- (a) a Saturday or Sunday;
- (b) the 27th, 28th, 29th, 30th, or 31st day of December; or
- (c) a gazetted public holiday in Sydney or Melbourne.

Approved Final Completion Plan means a Final Completion Plan, approved by the State or determined in accordance with clause 13, stating that the Final Completion Plan:

- (a) nominates milestones and milestone dates (including a 'Date for Final Completion') which are reasonable having regard to:
 - (i) the objective of achieving Final Completion of the relevant Oversight Development Works within a reasonable period and by no later than the Oversight Development Works Sunset Date;
 - (ii) the state of completion of the Oversight Development Works as at the date of the Default Event and then current market conditions;
 - (iii) the objectives and matters set out in above paragraphs (a)(i) and (a)(ii) above and a reasonable period to achieve Final Completion, which must be no later than the Oversight Development Works Sunset Date; and
- (b) includes milestones (and a milestone date for each milestone) to allow for the continued performance of the Oversight Development Works;
- (c) sets out a reasonable Cure Period for each milestone if that milestone has not been achieved by the relevant milestone date; and
- (d) provides for Final Completion of the relevant Oversight Development Works to occur within a reasonable period having regard to:
 - (i) the objective of achieving Final Completion of the Oversight Development Works within a reasonable period and by no later than the Oversight Development Works Sunset Date;
 - (ii) the state of completion of the Oversight Development Works as at the date of the Default Event and then current market conditions; and
 - (iii) the objectives and matters in above paragraphs (d)(i) and (d)(ii) above and a reasonable period to achieve Final Completion which must be by no later than the Oversight Development Works Sunset Date.

Cure Period means the period allocated in the Final Completion Plan for the achieving of a milestone if it has not been met by its relevant milestone date.

Claim includes a claim, cause of action, notice, demand, action, proceeding, litigation, investigation, judgment, damage or Liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort (including negligence), statute or otherwise and whether involving a third party or a Party.

Commercial Development Agreement means the Commercial Development Agreement for the Project entered into by the State and the Developer on or about **[insert]**, as amended from time to time.

Commercial Lease has the meaning given to that term in the Commercial Development Agreement.

Completion means completion of the grant of the Commercial Lease to the Investor (as the Developer's nominee) in accordance with the Commercial Development Agreement.

Critical Construction Programme Milestone means construction milestones which must occur at least every 3 months and which are identified on the Approved Final Completion Plan.

Date for Final Completion means the date specified as such in the Approved Final Completion Plan.

Deed means this deed together with all attachments and exhibits to it.

Default Notice has the same meaning as that term in the Commercial Development Agreement.

Developer Default means a Default (as defined under the Commercial Development Agreement) due to the occurrence of an Insolvency Event in respect of the Developer.

Development Works Sunset Date has the same meaning as that term in the Commercial Development Agreement.

Disputing Parties means has the meaning given in clause 13.1(a).

FATA means the *Foreign Acquisitions and Takeovers Act 1975* (Cth).

Final Completion has the meaning given to that term in the Commercial Development Agreement.

Final Completion Plan means a plan prepared by the Investor which:

- (a) has the objective of achieving Final Completion of the Oversight Development Works within a reasonable period and by the Oversight Development Sunset Date; and
- (b) has regard to the state of completion of the Oversight Development Works as at the date of the Developer Default and then current market conditions;
- (c) after regard is had to the objective and the matters in above paragraphs (a) and (b),
- (d) provides for a reasonable period for Final Completion which must be by no later than the Oversight Development Works Sunset Date; and

specifies:

- (e) a Date for Final Completion of the Oversight Development Works; and
- (f) the Critical Construction Programme Milestones and corresponding dates (as required) by which each such milestone must be completed (milestone dates); and
- (g) the cure periods required by the Investor to achieve a milestone where the corresponding milestone date is not met. Each cure period must be for a reasonable period having regard to the relevant milestone and the relevant market conditions (but not exceed 6 months for each cure period); and
- (h) critical milestone events, and their corresponding dates for achievement, including:
 - (i) securing tenants for premises;
 - (ii) securing funding commitments (being both debt and/or equity) for the Oversight Development Works;
 - (iii) securing construction commitments for the Oversight Development Works; and
 - (iv) securing Approvals to any redesign of the Oversight Development Works.

Financial Matters means:

- (a) the past, present or future value of the Property;

- (b) any financial return, income or profit that has been or may in the future be derived from the Property;
- (c) any future expenses that may be incurred in connection with the Property; and
- (d) any entitlement to claim income tax deductions in connection with any items included in the Property which are depreciating assets, or in connection with capital works which form part of the Property.

FIRB Approval means that the Treasurer of the Commonwealth of Australia (or his delegate).

- (a) provides written notice that there are no objections under the FATA to the acquisition of the Final Tenure, and that notice is:
 - (i) unconditional; or
 - (ii) subject only to conditions which are reasonably acceptable to the Investor; or
- (b) becomes precluded by passage of time from making any order or decision under Division 2 of Part 3 of the FATA in respect of the acquisition by the Investor of the Final Tenure,

whichever first occurs.

Government Authority means:

- (a) any governmental or semi governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality; and
- (b) any other person having a Right to impose a requirement, or whose consent is required, under law with respect to the exercise of Rights or the performance of Obligations under this Deed.

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth), or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

Initial Status Report means a report setting out the current status of the Oversight Development Works and the actions, including in relation to funding, being taken by the Investor in relation the Oversight Development Works following the Developer Default to bring the Oversight Development Works to Final Completion, having regard to the time that has elapsed since the Developer Default.

Insolvency Event means, in relation to a party, the occurrence of any of the following events:

- (a) if an application is made (other than for a frivolous or vexatious reason) for the winding up or deregistration of a party and, where an application has been made for the dismissal or withdrawal of the application for winding up within 10 Business Days, the application is not dismissed or withdrawn within 30 Business Days;
- (b) an order is made for the winding up of a party, except for the purpose of a reconstruction, amalgamation, merger or consolidation on terms approved by the State before that order is made where the reconstruction, amalgamation, merger or consolidation is implemented in accordance with the terms of the approval;
- (c) if a party passes a resolution for its winding up or deregistration, except for the purpose of a reconstruction, amalgamation, merger or consolidation on terms approved by the State before that resolution is passed where the reconstruction, amalgamation, merger or consolidation is implemented in accordance with the terms of that approval;
- (d) if a receiver, receiver and manager, liquidator provisional liquidator, compulsory manager trustee for creditors or in bankruptcy or analogous person is appointed to, or the holder of a Security Interest takes (or appoints an agent to take) possession of, any property of a party or otherwise enforces its Security Interest;
- (e) if a party or any other person appoints an administrator to the party, or takes any step to do so;

- (f) if a party:
 - (i) suspends payment of its debts (other than as the result of a failure to pay a debt or claim which is the subject of a good faith dispute);
 - (ii) ceases or threatens to cease to carry on all or a material part of its business;
 - (iii) is or states that it is unable to pay its debts; or
 - (iv) is deemed insolvent by virtue of its failure to comply with a statutory demand; or
- (g) if a party enters into a readjustment or rescheduling of its indebtedness or makes a general assignment for the benefit of or a composition with its creditors, without the prior consent of the State, except for the purposes of a solvent reconstruction or amalgamation approved in writing by the State; or
- (h) any act is done or event occurs which has an analogous or similar effect to any of the events in paragraphs (a) to (h).

Land has the meaning given to that term in the Commercial Development Agreement.

Law includes:

- (a) any Act, regulation, subordinate legislation, by-law, local law, ordinance, order, award or proclamation of the Commonwealth of Australia, the State of Victoria, or an Authority in the State of Victoria; and
- (b) the common law and principles of equity as applied from time to time in the State of Victoria.

Lease Commencement Date has the same meaning as that term in the Commercial Development Agreement.

Lease Land has the meaning given to that term in the Commercial Development Agreement.

Liability includes all liabilities, damages and Costs, however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort (including negligence), statute or otherwise and including those arising under any Claim.

Milestone Dates means the dates for achieving the milestones set out in the Approved Final Completion Plan.

Milestones means the milestones set out in the Approved Final Completion Plan.

Obligation means any legal, equitable, contractual, statutory or other obligation, commitment, duty, undertaking or liability.

Oversite Development has the same meaning as that term in the Commercial Development Agreement.

Oversite Development Works has the meaning given to that term in the Commercial Development Agreement.

Party means a party to this Deed (as assigned or novated from time to time).

Property means the Commercial Lease, the buildings and other structures within or on, and all plant, equipment and other assets on, the Lease Land on the Lease Commencement Date in their state and condition on the Lease Commencement Date.

Right includes any legal, equitable, contractual, statutory or other right, power, proprietary interest, authority, benefit, privilege, immunity, remedy, discretion or cause of action.

Security Interest means an interest or power:

- (a) reserved in or over an interest in any asset, including any retention of title; or
- (b) created or otherwise arising in or over any interest in any asset under a security agreement, bill of sale, mortgage, charge, lien, pledge, trust or power or any other agreement having similar effect,

by way of, or having similar commercial effect to, security for the payment of a debt, any other monetary obligation or the performance of any other obligation, and includes any agreement to

grant or create any of the above and includes a security interest within the meaning of section 12(1) of the *Personal Property Securities Act 2009* (Cth).

Specified Encumbrances means encumbrances that the State is permitted to grant under the Commercial Development Agreement or the Station Land Management Agreement.

Station Land Management Agreement has the meaning given to that term in the Commercial Development Agreement.

Statutory Encumbrances means any encumbrances in relation to the Property that arise from an Act, regulation or subordinate legislation, whether created before, on or after the date of this Deed, provided the encumbrance is not required to be removed from the title at the Lease Commencement Date under the Commercial Development Agreement.

Step-in Date means the date the State receives a Step-in Notice.

Step-in Notice means a notice given to the State by the Investor in accordance with clause 5.4 including the Approved Final Completion Plan as required under that clause.

Updated Status Report means a further report setting out all continuing and additional steps being taken or to be undertaken by the Investor in relation to the Oversight Development Works following the Developer Default including in relation to funding and/or equity that may be required to bring the Oversight Development Works to Final Completion and a summary of the status of all material contractual relationships with third parties, including the Builder, in relation to the Oversight Development Works, as that information is within the knowledge of the Investor.

2. Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (e) A reference to a clause, schedule or annexure is a reference to a clause of, or schedule or annexure to, this Deed.
- (f) A reference to an agreement or document (including a reference to this Deed) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Deed or that other agreement or document.
- (g) A reference to writing includes a facsimile transmission and any means (other than electronic mail) of reproducing words, figures, drawings or symbols in a visible and tangible form.
- (h) A reference to a party to this Deed or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (i) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (j) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (k) A reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (l) A reference to dollars and \$ is to Australian currency.

- (m) A reference to a Right or Obligation of any two or more people comprising a single party confers that Right, or imposes that Obligation, as the case may be, on each of them severally and each two or more of them jointly. A reference to that party is a reference to each of those people separately (so that, for example, a representation or warranty by that party is given by each of them separately).
- (n) All references to time are to Melbourne, Victoria time.
- (o) Mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included.
- (p) Nothing in this Deed is to be interpreted against a party solely on the ground that the party put forward this Deed or a relevant part of it.
- (q) A reference to an item or thing includes the whole and any part of it.

3. Nomination

3.1 Nomination of the investor

The Developer has nominated the Investor to receive the grant of the Commercial Lease under the Commercial Development Agreement.

3.2 Acceptance of nomination by the State

The State accepts the nomination and covenants to grant the Commercial Lease to the Investor in accordance with the terms of the Commercial Development Agreement.

3.3 Acceptance of nomination by the investor

- (a) The Investor accepts the nomination and covenants to accept the Commercial Lease.
- (b) The Investor warrants that, if required under the FATA, it has obtained a FIRB Approval, or does not require any approval under the FATA, to accept the Commercial Lease.

4. Grant of Commercial Lease

- (a) The parties acknowledge that the State will grant, and the Investor will accept the grant of the Commercial Lease in accordance with the Commercial Development Agreement.
- (b) On the Lease Commencement Date, the Developer must give the Investor:
 - (i) a copy of a written release of the Property from any Security Interest or charge by the relevant beneficiary of the Security Interest in the form determined by that beneficiary;
 - (ii) electronic or physical copies of all documents in the Developer's possession or control which the Investor would reasonably require to enable the Investor to prepare returns under the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth); and
 - (iii) a duly executed and stamped release of any encumbrance in respect of the Lease Land, except for any Specified Encumbrance or Statutory Encumbrance.

5. Investor may step-in after a Developer Default

5.1 Default Notice

The State agrees to give the Investor a copy of each Default Notice at or about the same time that the State gives each such notice to the Developer under clause 35.1 of Commercial Development Agreement.

5.2 Default under the Commercial Development Agreement

- (a) The Developer authorises the Investor to make such enquiries, acting reasonably, in relation to the relevant default under the Commercial Development Agreement as the Investor deems are appropriate.
- (b) The Developer must provide such information in relation to the default under the Commercial Development Agreement and the proposals to remedy the default under the Commercial Development Agreement as the Investor may reasonably require.

5.3 If a Developer Default occurs

If a Developer Default occurs and the Investor intends to exercise its step-in rights under this Deed, the Investor must:

- (a) within 20 Business Days after the Investor has become aware of the Developer Default, provide to the State an Initial Status Report;
- (b) regularly consult and liaise with the State to discuss both the form and content of the Investor's draft Final Completion Plan;
- (c) within 40 Business Days after the Investor has become aware of the Developer Default, provide to the State an Updated Status Report;
- (d) on and from the date the Investor has become aware of the Developer Default, respond in writing, as soon as reasonably practicable, to all reasonable requests received from the State in relation to the proposed Final Completion Plan and any other actions it is taking in relation to the Oversight Development Works; and
- (e) use reasonable endeavours to agree the form and content of the Investor's draft Final Completion Plan with the intention of agreeing the form of Final Completion Plan with the State. If the Investor and the Developer fail to agree on a Final Completion Plan, then either party may refer the matter for resolution in accordance with clause 13.

5.4 Step-in Notice

On or before the expiry of 60 Business Days after the Investor has become aware of the Developer Default, the Investor may give a Step-in Notice which must have attached to it an Approved Final Completion Plan in respect of the Oversight Development Works that have not been completed as at the date of the Developer Default to the State and the Developer.

5.5 Information regarding Approved Final Completion Plan

- (a) **(Obligations of Investor):** After the Investor has given the State a Step-in-Notice, the Investor must:
 - (i) in accordance with the Approved Final Completion Plan and whenever reasonably requested by the State; and
 - (ii) in any event, at least every month, update and advise the State of the progress being made in the implementation of the Approved Final Completion Plan and must expand upon any such details when reasonably requested by the State.
- (b) **(Provision of details):** Details of the plans of the Investor must, when time and circumstances make it appropriate to do so, or when the State so requests, be provided by the Investor in writing.

5.6 State's right to terminate Commercial Development Agreement

- (a) For the avoidance of doubt, the State cannot terminate this Deed or the Commercial Development Agreement with respect to the Oversight Development Works because of a Developer Default prior to the expiry of the 60 Business Days specified in clause 5.4 unless the Investor has given written notice to the State that it does not intend to issue a Step-in Notice under this Deed.
- (b) If, after the expiry of the 60 Business Days after the Investor has become aware of a Developer Default, the State has not received a Step-in Notice and an Approved Final

Completion Plan, the State may terminate the Commercial Development Agreement pursuant to clause [37.4] of the Commercial Development Agreement.

- (c) The parties agree that where the State has exercised its right to terminate the Commercial Development Agreement and this Deed in accordance with clause 5.6(b), termination of the Commercial Development Agreement and this Deed will occur in accordance with clause [37] of the Commercial Development Agreement as if a Termination Event had occurred.
- (d) If the Commercial Development Agreement is terminated as contemplated by clause 5.6(b), then this Deed is automatically terminated.

5.7 Effect of a Step-in Notice

If the Investor gives a Step-in Notice to the State:

- (a) the Investor must:
 - (i) meet all of its obligations set out under this Deed;
 - (ii) observe all obligations of the Developer under Commercial Development Agreement; and
- (b) the Investor is entitled to all rights of the Developer under the Commercial Development Agreement.

5.8 Termination for failure to meet Oversight Development Works Sunset Date

The State may terminate this Deed and the Commercial Development Agreement if the Oversight Development Works have not reached Final Completion by the Oversight Development Works Sunset Date.

6. Milestones, Cure Notices and termination

6.1 Milestones and Cure Notices

- (a) If the Investor does not achieve any Milestone by the relevant Milestone Date the State may issue a notice notifying the Investor that if the Milestone is not achieved by the end of the Cure Period applicable to that Milestone then the State shall be entitled to terminate this Deed and the Commercial Development Agreement (**Cure Notice**).
- (b) If the State serves a Cure Notice on the Investor in accordance with this clause, the Cure Notice must:
 - (i) state that it is a Cure Notice under this clause; and
 - (ii) specify the Milestone which was not achieved by its corresponding Milestone Date.

6.2 Extensions to Milestones

The parties agree that the Critical Construction Programme Milestones may be extended by the Investor on the same basis as the Developer is entitled to seek extensions under clause 21 of the Commercial Development Agreement.

6.3 Termination

- (a) Subject to clause 6.3(b), where a Step-in Notice has been given and where the Milestone has not been achieved by the end of the Cure Period applicable to that Milestone, the State may terminate this Deed and the Commercial Development Agreement in so far as it relates to the Oversight Development Works.
- (b) The State may not terminate this Deed (or the Commercial Development Agreement in so far as it relates to the Oversight Development Works) if the Milestone not achieved is not a Critical Construction Programme Milestone and the most recent Critical Construction Programme Milestone identified in the Approved Final Completion Plan has been achieved.

7. Effect of Step-in

7.1 Step-in Notice

- (a) Once the Investor serves a Step-in Notice and notwithstanding the termination of this Deed the Investor remains liable to the State for any breach of its obligations under this Deed and all rights and obligations of the Developer under the Commercial Development Agreement.
- (b) Without derogating from any other rights the Investor may have under this Deed, the State agrees that the giving of a Step-in Notice by the Investor in accordance with this Deed will not by itself entitle the State to terminate the Commercial Development Agreement.

7.2 State's dealings with Investor

- (a) If the Investor gives a Step-in Notice then the State must (and the Developer irrevocably directs the State to) deal only with the Investor in respect of the relevant Oversight Development Works.
- (b) Despite anything in this Deed:
 - (i) until the Investor gives a Step-in Notice the State must deal with the Developer in respect of the Commercial Development Agreement; and
 - (ii) the Investor may only serve a Step-in Notice for all of the Oversight Development Works which are not completed as at the date of the Step-in Notice.

7.3 No caveats

The Investor must not lodge a caveat on the Land except in the circumstances permitted by the Commercial Development Agreement.

7.4 Balance of the Oversight Development

If the Investor gives a Step-in Notice, then the Investor must not take any steps which prevent or otherwise interfere with the State, the Developer, and any new developer of the uncompleted Oversight Development Works in the Project, to attempt to achieve comparable outcomes for the precinct as if all of the Oversight Development Works had been completed by the Developer.

7.5 Appointment of Builder

The Investor must not appoint any person as a Builder without the prior written approval of the State (which approval must not be unreasonably withheld or delayed).

8. Novation of Building Contract

If the Investor exercises its step-in rights pursuant to this Deed and the Developer novates the Building Contract to the Investor, the State consents to the novation.

9. Financier side deed

At the request of the Investor, the Developer and the State must enter into a deed with the Investor and the Investor's financier (**Financier**) on terms acceptable to the Developer, the State, the Investor and the Financier which contains the following covenants:

- (a) if the Investor has exercised its step-in rights under this Deed the State must give notices of the Investor's breaches of the Commercial Development Agreement to the Financier;
- (b) the Financier can remedy the Investor's breaches of the Commercial Development Agreement;
- (c) the Financier (or its nominee) can exercise a step-in right in respect of the Commercial Development Agreement; and
- (d) such other covenants as reasonably required by the Financier.

10. No extension of rights

Nothing in this Deed:

- (a) authorises the Investor to do anything that the Developer may not do under the Commercial Development Agreement;
- (b) operates to grant the Investor rights greater than the rights of the Developer under the Commercial Development Agreement; or
- (c) restricts in any way the rights of the State under the Oversight Development Agreements, including the right to grant easements or other encumbrances in relation to the Lease Land.

11. Representations and Warranties

11.1 By the Developer

The Developer represents and warrants that, as at the date of this Deed, no party to the Commercial Development Agreement has a right, which is now exercisable or which with the giving of notice or lapse of time will or may become exercisable, to:

- (a) terminate, rescind, repudiate or vary the Commercial Development Agreement; or
- (b) refuse to perform or observe any of its obligations under the Commercial Development Agreement.

11.2 General Representations and warranties

Each Party represents and warrants that:

- (a) it has full power and authority to enter into and perform its obligations under this Deed;
- (b) it has taken all necessary action to authorise the execution, delivery and performance of this Deed in accordance with its terms;
- (c) this Deed constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms subject to laws generally affecting creditors' rights and to principles of equity; and
- (d) the execution, delivery and performance by it of this Deed does not and will not violate, breach, or result in a contravention of any law, regulation or authorisation.

12. Dealings – Investor

- (a) The Investor must not assign its interest in this Deed or grant a Security Interest over this Deed without the consent of the State and the Developer.
- (b) Without limiting clause 12(a), the State acknowledges that the Investor may be required by its financiers to grant a Security Interest over the Investor's interest in this Deed. If required by the Investor's financiers the State (at the Cost of the Investor) will enter any side deed reasonably required by the Investor's financier for the grant of that Security Interest subject to the terms of the side deed being acceptable to the State, acting reasonably.
- (c) It is reasonable for the State to withhold its consent to an assignment of the Investor's interest in this Deed if the Investor does not provide reasonable evidence to the satisfaction of the State (acting reasonably) that:
 - (i) the assignee has obtained a FIRB Approval (as if a reference to 'Investor' was a reference to 'assignee'), or does not require any approval under the FATA, to accept the Commercial Lease; and
 - (ii) the assignee satisfies the requirements of the Commercial Development Agreement relating to nominees of the Developer to be granted the Commercial Lease.

13. Dispute Resolution

13.1 Procedure for resolving disputes

- (a) **(Disputes to be resolved):** Any dispute arising under this Deed must be resolved by the parties to that dispute (**Disputing Parties**) in accordance with this clause 13.
- (b) **(Procedure):** The procedure that is to be followed to resolve a dispute is as follows:
 - (i) firstly, the dispute must be the subject of negotiation as required by clause 13.2;
 - (ii) secondly, if the dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 13.2(c)(i) the Disputing Parties may agree that the dispute will be referred to an expert for determination in accordance with clauses 13.4 to 13.8 (inclusive) or to arbitration under clause 14; and
 - (iii) thirdly, if:
 - (A) the dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 13.2(c)(i) and irrespective of whether the Disputing Parties failed to meet as required by that clause or whether having so met the parties failed to agree whether the Dispute should be referred to an expert or to arbitration within 20 Business Days after the expiration of the period for negotiation referred to in clause 13.2(c)(i);
 - (B) the dispute has been referred to expert determination and a determination is not made by the expert within 30 days after the expert's acceptance of appointment; or
 - (C) the dispute is referred to expert determination and a notice of dissatisfaction is given in accordance with clause 13.6(a),

then the dispute must be referred to arbitration in accordance with clause 14.

13.2 Negotiation

- (a) **(Notification):** If a dispute arises then a party may give notice to each other Disputing Party requesting that the dispute be referred for resolution by negotiation between the Chief Executive Officers (or equivalent) of the Disputing Parties (**Representatives**).
- (b) **(Contents of Notice):** A notice under clause 13.2(a) must:
 - (i) state that it is a notice under this clause 13; and
 - (ii) include or be accompanied by particulars of the matters which are the subject of the dispute.
- (c) **(Attempt to resolve Dispute):** If a dispute is referred for resolution by negotiation under clause 13.2(a), then:
 - (i) the Representatives must meet and attempt in good faith to resolve the dispute (in whole or in part) within 10 Business Days of the date on which the notice under clause 13.2(a) is received (or such later date as the Disputing Parties may agree); and
 - (ii) any agreement reached between the Representatives will be reduced to writing, signed by or on behalf of each Disputing Party and will be contractually binding on the Disputing Parties.

13.3 Expert determination

- (a) Where this Deed requires a matter to be referred to or resolved by an expert or if:
 - (i) **(dispute unresolved):** a dispute which has been referred to the Representatives for negotiation in accordance with clause 13.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 13.2(c)(i); and

- (ii) **(Disputing Parties agree):** the Disputing Parties agree within 20 Business Days after the expiration of the period for negotiation referred to in clause 13.2(c)(i), that the dispute be referred to an expert for determination,

then those parts of the dispute which remain unresolved will be referred to an expert for determination under clauses 13.4 to 13.8.

- (b) For the avoidance of doubt:
 - (i) a dispute may only be referred to an expert for determination by agreement of the Disputing Parties; and
 - (ii) where this Deed requires a matter to be referred directly to an expert, the dispute resolution procedures in clause 13.1(b)(i) will not apply.

13.4 Selection of expert

- (a) **(Exchange of lists of 3 preferred experts):** Within 7 Business Days after the date on which the Disputing Parties agree to refer a dispute to an expert for determination under clause 13.3, the Disputing Parties must exchange lists of 3 persons (in order of preference) who, if appointed, would satisfy the requirements of clause 13.4(d), from whom the expert is to be chosen.
- (b) **(Appointment of person who appears on both lists):** Any person who appears on the list of all of the Disputing Parties exchanged under clause 13.4(a) will be appointed as the expert to determine a dispute and if more than one person appears on the list of all of the Disputing Parties, the person given the highest order of priority by the party who gave the notice under clause 13.2(a) will be appointed.
- (c) **(Appointment if no person appears on both lists):** If no person appears on the list of all of the Disputing Parties and the Disputing Parties cannot otherwise agree an expert, the party which gave the notice under clause 13.2(a) must procure:
 - (i) the president (or the senior non-executive officer, howsoever described) of the institute or governing body for the technical or professional discipline the subject of the relevant dispute to nominate the expert, having regard to, but not being bound by, those persons proposed by the Disputing Parties under clause 13.4(a); or
 - (ii) if there is no governing body for the technical or professional discipline the subject of the relevant dispute or such governing body advises that it will not nominate an expert, the President of the Australian Centre for International Commercial Arbitration to nominate a person to act as the expert, having regard to, but not being bound by, those persons proposed by the Disputing Parties under clause 13.4(a),within 7 Business Days of the exchange of notices under clause 13.4(a).
- (d) **(Appropriate skills):** It is the intention of the Disputing Parties that the expert appointed to determine a dispute will be an independent person with appropriate skills having regard to the nature of the matters in dispute.
- (e) **(No entitlement to challenge appointment):** No Disputing Party will be entitled to challenge the appointment of an expert under this clause 13.4 on the basis that the expert does not satisfy the requirements of clause 13.4(d).
- (f) **(Not an arbitration agreement):** Any agreement for expert determination under this Deed will not constitute an arbitration agreement for the purposes of the *Commercial Arbitration Act 2011* (Vic).
- (g) **(Agreement):** Once an expert is appointed, the Disputing Parties must enter into an agreement with the expert on the terms of the Expert Determination Agreement or such other reasonable terms as the expert may require.

13.5 Rules of expert determination

The expert determination process will be administered, and the expert will be required to act, under the terms of the Expert Determination Agreement.

13.6 Expert finding

- (a) (**Notification**): The determination of the expert must be in writing and will be final and binding on the Disputing Parties unless, within 10 Business Days of receipt of the determination, a Disputing Party gives notice to each other Disputing Party of its dissatisfaction and intention to refer the matter to arbitration in accordance with clause 14.
- (b) (**Amendment to determination**): Upon submission by any Disputing Party, the expert may amend the determination to correct:
 - (i) a clerical mistake;
 - (ii) an error from an accidental slip or omission;
 - (iii) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
 - (iv) a defect in form.

13.7 Liability of expert

- (a) (**Liability of expert**): The Disputing Parties agree:
 - (i) that the expert will not be liable in connection with the expert determination, except in the case of fraud on the part of the expert; and
 - (ii) to indemnify the expert against any Claim or Liability in connection with the expert determination, except in the case of fraud on the part of the expert, in which case a Claim may be made against him or her by any person who is party to the dispute.
- (b) (**Engagement**): The Disputing Parties will jointly engage the expert services in connection with the expert determination proceedings and each Disputing Party will seek a separate Tax Invoice equal to its share of the costs of the expert.

13.8 Costs

The Disputing Parties must:

- (a) bear their own costs in connection with the expert determination proceedings; and
- (b) pay an equal portion of the costs of the expert.

13.9 Proportionate Liability

To the extent permitted by Law, the expert will have no power to apply or to have regard to the provisions of any proportionate liability legislation which might in the absence of this clause 13.9, have applied to any dispute referred to the expert in accordance with this clause 13.

14. Arbitration

14.1 Reference to Arbitration

- (a) (**Dispute**): If:
 - (i) a dispute:
 - (A) which has been referred to the parties' Representatives for negotiation in accordance with clause 13.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 13.2(c)(i); and
 - (B) the Disputing Parties do not agree to refer the dispute to an expert for determination; or
 - (ii) in the case of a dispute which the Disputing Parties agree to refer to expert determination under clause 13.3:
 - (A) a determination is not made within 30 days of the expert's acceptance of the appointment; or

(B) a notice of dissatisfaction is given in accordance with clause 13.6, then any Disputing Party may notify the other Disputing Parties that it requires the dispute to be referred to arbitration.

- (b) (**Referral**): Upon receipt by a Disputing Party of a notice under clause 14.1(a), the dispute will be referred to arbitration.

14.2 Arbitration

- (a) (**ACICA Rules**): Arbitration in accordance with this clause 14 will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the **ACICA Rules**) as current at the date the Dispute is referred to arbitration and as otherwise set out in this clause 14 having priority to the extent of any inconsistency.
- (b) (**Seat**): The seat of the arbitration will be Melbourne, Victoria.
- (c) (**Language**): The language of the arbitration will be English.

14.3 Appointment of arbitrator

The Disputing Parties will endeavour to agree on the arbitrator or arbitrators (if the parties agree to appoint three arbitrators), but if no such agreement is reached within 14 Business Days of the dispute being referred to arbitration in accordance with clause 14.1(b), the arbitrator or arbitrators will be appointed in accordance with the ACICA Rules.

14.4 General Principles for conduct of arbitration

- (a) (**Conduct of arbitration**): The Disputing Parties agree that:
- (i) they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any dispute;
 - (ii) any arbitration conducted in accordance with this clause 14 will not necessarily mimic court proceedings of the seat of the arbitration or the place where hearings take place (if different), and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and
 - (iii) in conducting the arbitration, the arbitrator must take into account the matters set out in clauses 14.4(a)(i) and 14.4(a)(ii).
- (b) (**Evidence in writing**): All evidence in chief must be in writing unless otherwise ordered by the arbitrator.
- (c) (**Evidence and discovery**): The rules for evidence and discovery will be the IBA Rules on the Taking of Evidence in International Arbitration current at the date of arbitration (or if there are no current rules, the most recent version of those rules).
- (d) (**Oral hearing**): The oral hearing must be conducted as follows:
- (i) any oral hearing must take place in Melbourne, Victoria and all outstanding issues must be addressed at the oral hearing;
 - (ii) the date and duration of the oral hearing must be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in clause 14.4(a) when determining the duration of the oral hearing;
 - (iii) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
 - (iv) the oral hearing must be conducted on a stop clock basis with the effect that the time available to the parties must be split equally between the parties so that each party has the same time to conduct its case unless in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the parties;
 - (v) not less than 28 days prior to the date fixed for oral hearing each of the Disputing Parties must give notice of those witnesses (both factual and expert) of each other Disputing Party that it wishes to attend the hearing for cross examination;

- (vi) in exceptional circumstances the arbitrator may amend the date of hearing and extend the time for the oral hearing set in accordance with clause 14.4(d)(ii);
 - (vii) a Disputing Party will not be bound to accept the written evidence of a witness submitted on behalf of the opposing party which is not challenged in cross examination; and
 - (viii) each Disputing Party is expected to put its case on significant issues in cross examination of a relevant witness called by the other Disputing Party or, where it seeks to challenge the evidence of a witness not called for cross-examination by reference to other evidence, to identify that evidence in its written opening submissions so that the other Disputing Party may know the nature of and basis for the challenge to the witness' written evidence.
- (e) (**Experts**): Unless otherwise ordered each Disputing Party may only rely upon one expert witness in connection with any recognised area of specialisation.

14.5 Proportional liability

To the extent permitted by Law, the arbitrator will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this clause 14.5, have applied to any dispute referred to arbitration in accordance with this clause 14.

14.6 Extension of ambit of arbitration proceedings

- (a) (**Extending Disputes**): Where:
- (i) a dispute between the Disputing Parties to this Deed is referred to arbitration in accordance with this clause 14; and
 - (ii) there is some other dispute also between the Disputing Parties to and in accordance with this Deed (whenever occurring),
- (b) the arbitrator may, upon application being made to the arbitrator by one or more of the Disputing Parties at any time before a final award is made in relation to the first-mentioned dispute, make an order directing that the arbitration be extended so as to include the other dispute.
- (c) (**Arbitrator's order**): An arbitrator may make an order in accordance with clause 14.6(a) on such terms and conditions (if any) as the arbitrator thinks fit.

14.7 Award final and binding

- (a) (**Final and binding**): Subject to clause 14.7(b), any award will be final and binding on the Disputing Parties.
- (b) (**Appeal**): Each Disputing Party consents to any appeal to a court where that appeal is made under the *Commercial Arbitration Act 2011* (Vic) on a question of law arising in connection with an arbitral award made in accordance with this clause 14.

14.8 Continue to perform

Notwithstanding the existence of a dispute, each Disputing Party must continue to carry out its obligations in accordance with this Deed.

14.9 Governing law of arbitration agreement

The Law governing this arbitration agreement is the law of Victoria, Australia.

15. Developer's limitation of liability

[Lendlease Note: clause TBC]

16. Notices

- (a) Notices may not be given by facsimile.

- (b) The addresses for delivery of notices by mail or email for the purposes of this Deed are those provided in the description of the Parties (as they may be updated by a Party by notice to all other Parties, from time to time).
- (c) The following provisions apply in relation to service by post:
 - (i) any notice sent by post must be sent by security post or registered mail; and
 - (ii) any notice sent by post is conclusively deemed to have been given on the second Business Day after the date of posting.
- (d) The following provisions apply in relation to service by email:
 - (i) any notice must be sent to each of the email addresses in this Deed (or as later notified by the Party);
 - (ii) email notices will be conclusively taken to be duly given or made on the earlier of:
 - (A) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;
 - (B) the time that the email is first opened or read by the intended recipient, or an employee or officer of the intended recipient; and
 - (C) two hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that two hour period, an automated message that the email has not been delivered; and
 - (iii) any email sent after 5.00pm on a Business Day is deemed to have been sent on the following Business Day.
- (e) Any notice by a Party will be valid if it is signed on behalf of the Party or by any director, secretary, attorney, authorised officer or by the Party's solicitors or delivered from the email address for notices by a Party in this Deed (or as later updated by notice from one Party to the other).

17. Confidentiality

- (a) The Provisions of clause [48] of the Commercial Development Agreement apply to this Deed as if set out in full.
- (b) The Investor agrees to be bound by clause [48] of the Commercial Development Agreement as if the Investor were the Developer in that document.

18. Relationship between the parties

- (a) Nothing in this Deed will be considered or interpreted as constituting:
 - (i) the relation of the Parties as a partnership, association or other relationship in which any one or more of the Parties may be liable generally for the acts or omissions of another party; or
 - (ii) any Party as the general agent or any representative of any other Party.
- (b) No Party has the authority to pledge the credit of any other Party.

19. GST

19.1 Interpretation

- (a) Expressions which are not defined in this clause but which have a defined meaning in the GST Law have the same meaning in this Deed unless there is a contrary indication.
- (b) If a person is a member of a GST group, references to GST for which the person is liable and to input tax credits to which the person is entitled include GST for which the

representative member of the GST group is liable and input tax credits to which the representative member is entitled.

- (c) GST, input tax credit or adjustment includes notional equivalents applying to the Commonwealth, a State, Territory, local government and any other relevant government body, body corporate or other entity.
- (d) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 19.
- (e) A reference to something done (including a supply made) by a Party includes a reference to something done by any entity through which that Party acts.
- (f) **GST Amount** means an amount equal to the GST payable on a supply;
- (g) **Payment** means any monetary amount payable under or in connection with this Deed including any amount payable by way of indemnity, reimbursement or otherwise and includes the provision of any non-monetary consideration.

19.2 Payment of GST

The Parties agree that:

- (a) unless otherwise expressly stated and except to the extent that clause 19.4 applies to the non-monetary consideration for a supply, all Payments have been calculated without regard to GST;
- (b) if the whole or any part of any Payment is the consideration for a taxable supply for which the payee (**Supplier**) is liable to GST, the payer (**Recipient**) must pay to the Supplier an additional amount equal to the GST Amount. Any GST Amount is payable concurrently with the Payment, subject to the Supplier issuing a tax invoice;
- (c) any reference to a cost or expense in this Deed excludes any amount in respect of GST forming part of the relevant cost or expense when incurred by the relevant Party for which that Party can claim an input tax credit.

19.3 Variation

- (a) If the GST Amount properly payable in relation to a supply varies from the additional amount paid by the Recipient under clause 19.2, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 19.3 is deemed to be a payment, credit or refund of the GST Amount payable under clause 19.2.
- (b) The Supplier must issue an adjustment note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.

19.4 Exchange of non-monetary consideration

- (a) To the extent that the consideration provided for the Supplier's taxable supply to which clause 19.2 applies is a taxable supply made by the Recipient attributed to the same tax period (**Recipient Supply**), the GST Amount payable by the Recipient to the Supplier in accordance with clause 19.2 shall be set off against the amount of GST Amount payable by the Supplier in respect of the Recipient Supply.
- (b) The Recipient must issue to the Supplier a tax invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 19.2.

19.5 Reimbursements

Any payment or reimbursement required to be made under this Deed that is calculated by reference to a cost or other amount paid or incurred will be limited to the total cost or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost or amount relates.

19.6 The margin scheme

- (a) The Parties agree that unless a notice is served by the Investor to the State under clause 19.6(b), the margin scheme, as set out in Division 75 of the GST Act, will not be applied to work out the GST payable on the supply of real property under or in connection with this Deed.
- (b) If no later than 30 business days prior to the Lease Commencement Date, and providing that the Investor has satisfied all of the conditions imposed on the Developer under clause 26.4 of the Commercial Development Agreement, the Investor provides written notice to the State that the Investor requires that the margin scheme be used in calculating the State' GST liability in relation to a supply of the Property under or in connection with this Deed, the State will apply the margin scheme to that supply.
- (c) If and to the extent that the State is required to obtain an Approved Valuation for the purposes of applying the margin scheme, the Investor agrees to obtain or procure, at its own cost, the Approved Valuation. The Investor will provide the State with a copy of any Approved Valuation no later than 20 Business Days prior to the day that the GST payable under the margin scheme is required to be calculated.

19.7 No merger

This clause 19 will not merge on completion, rescission or termination of this Deed.

20. Costs and Stamp Duty

20.1 Costs

Each Party must bear its own costs arising out of the negotiation, preparation and execution of this Deed.

20.2 Registration fees

The Investor must pay all registration fees on the Commercial Lease and on any dealing produced at Completion to secure such registration.

20.3 Duty

Without in any way limiting the State's Rights and Obligations under the Commercial Development Agreement, any duty or stamp duty (including fines, penalties and interest) payable on or in connection with this Deed must:

- (a) if the State is responsible for that duty or stamp duty in accordance with terms of the Commercial Development Agreement, be borne by the State; or
- (b) if clause 20.3(a) does not apply, be borne by the Investor.

21. General

21.1 Amendment

This Deed may only be amended by another written agreement executed by all the Parties.

21.2 No Waiver

A failure to exercise or a delay in exercising any right, power or remedy under this Deed does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

21.3 Further actions

Each Party must, at its own expense, do all things reasonably necessary to give full effect to this Deed and the transactions contemplated by this Deed.

21.4 Remedies cumulative

The rights, powers and remedies provided in this Deed are in addition to other rights, powers and remedies given by a Law independently of this Deed.

21.5 No Merger

- (a) The rights and obligations of the Parties will not merge on the completion of any transaction contemplated by this Deed.
- (b) Any Right or Obligation under this Deed which is capable of taking effect after termination of this Deed takes effect on termination of the Deed.

21.6 Jurisdiction

This Deed is governed by the laws of Victoria. Each Party submits to the jurisdiction of courts exercising jurisdiction there, and waives any right to claim that those courts are an inconvenient forum.

21.7 Counterparts

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

21.8 Provisions can be severed

- (a) If a provision of this Deed is illegal or unenforceable then that provision must be severed from this Deed and the remaining provisions of this Deed continue in force, unless this would materially change the intended effect of this Deed.
- (b) If only part of a provision is illegal or unenforceable then this clause applies to that part.

21.9 Provisions limiting or excluding Liability, rights or obligations

- (a) A right of the State or an obligation of a party other than the State under this Deed will not limit or exclude any other right of the State or obligation of a party other than the State under this Deed unless expressly stated.
- (b) Any provision of this Deed which seeks, either expressly or by implication, to limit or exclude any liability of a party is to be construed as doing so only to the extent permitted by Law.

21.10 Approvals, directions and notices in writing

Unless otherwise expressly provided in this Deed or agreed between the parties, all approvals, consents, directions, requirements, requests, claims, notices, agreements and demands must be given in writing.

21.11 Prior approval or consent

Where the Investor is required by this Deed to obtain the State's consent or approval to an action, document or thing, unless otherwise expressly stated, that consent or approval must be obtained prior to the actions, document or thing occurring or coming into effect.

21.12 Action without delay

Unless there is a provision in this Deed which specifies a period of time in which something must be done by the parties, all things must be done without undue delay.

21.13 Inconsistency between Oversight Development Agreements

Where there is an inconsistency, ambiguity or discrepancy between this Deed and any other Oversight Development Agreement, or within or between any of the Oversight Development Agreements (excluding the Commercial Development Agreement), then the following order of precedence applies:

- (a) the Commercial Development Agreement;
- (b) this Deed; and

- (c) the remaining Oversight Development Agreements.

21.14 Oversight Development Agreements

The Investor acknowledges that it has received a copy of the Oversight Development Agreements.

21.15 State's rights and obligations

- (a) **(Acknowledgement):** The parties acknowledge the substance, operation and potential effect and consequences of clause 1.9 of the Commercial Development Agreement in relation to this Deed.
- (b) **(Liability for breach):** Clause 21.15(a) does not limit any Liability which the State would have had to the Developer or the Investor under any Oversight Development Agreement as a result of a breach by the State of a term of any Oversight Development Agreement to which it is a party but for clause 21.15(a).

Signing page

EXECUTED as a deed.

State

Signed by
**The Minister for Public
Transport on behalf of the
Crown in right of the State of
Victoria**

in the presence of

sign here ► _____
Minister

sign here ► _____
Witness

print name _____

print name _____

**Executed by Lendlease (OSD South) Pty
Limited as trustee for the Lendlease (OSD
South) Trust** by being signed, sealed and
delivered by its attorneys under power of attorney
dated

who declare that they have no notice of revocation
of the power of attorney, in the presence of

Signature of witness

Signature of attorney

Name of witness (print)

Name of attorney

Signature of attorney

Name of attorney

[insert Investor execution block]



HERBERT
SMITH
FREEHILLS



Attachment 17

Independent certifier deed



Independent certifier deed

CBD South Oversight Development

—
[Insert] (State)

Lendlease (OSD South) Pty Ltd as trustee for the
Lendlease (OSD South) Trust (**Developer**)

[Insert] (Independent Certifier)
—

draft

Independent certifier deed

CBD South Oversight Development

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Details

Date

Parties

Name **[Insert]**
ABN 85 031 302 516
Short form name **State**
Notice details **[Insert]**

Name **Lendlease (OSD South) Pty Ltd ACN 610 047 464 as trustee for the Lendlease (OSD South) Trust**
Short form name **Developer**
Notice details Level 14, Tower Three, International Towers Sydney, Exchange Place, 300 Barangaroo Avenue, Barangaroo NSW 2000
Attention: Company Secretary

Name **[Insert]**
ABN **[Insert]**
Short form name **Independent Certifier**
Notice details **[Insert]**
Attention: **[Insert]**

Background

- A The parties have entered into this deed to appoint the Independent Certifier as the independent certifier for the purposes of the Oversight Development.
- B By entering into this deed the Independent Certifier accepts its appointment under this deed and agrees to carry out its obligations and fulfil its functions under this deed and under the Commercial Development Agreement.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this deed:

Change in Control means in relation to a company which is neither listed nor wholly owned by a company listed on the Australian Stock Exchange, a proposed change in the shareholding of that company so that a different person or group of persons to that as at the date of this deed will control the composition of the board of directors or more than 50% of the shares giving a right to vote at general meetings.

Commercial Development Agreement means the Commercial Development Agreement between the State and the Developer and others in relation to the Oversight Development dated **[insert]**.

Commercially Sensitive Information means any information described in any Oversight Development Agreement, design documentation in relation to the Oversight Development or any aspect of the RFP which discloses (whether alone or in combination with other publicly available information):

- (a) the financing arrangements, costs structures or profit margins of the Developer or a Developer Related Entity;
- (b) the full base case financial modelling of the Developer and Lendlease Development Pty Limited (ACN 000 311 277);
- (c) any intellectual property in which the Developer or a Developer Related Entity has an interest, including any information relating to the Developer's Proprietary Material;
- (d) any matter the disclosure of which would place the Developer or a Developer Related Entity at a substantial commercial disadvantage in relation to others who have contracted, or may contract, with a government agency (whether at present or in the future);
- (e) any matter the disclosure of which could reasonably be expected to diminish the competitive commercial value of any information to the Developer, a Developer Related Entity or any other person, including without limitation information that the Developer or the relevant Developer Related Entity considers provides it with a competitive advantage or has a unique characteristic to the Developer or any Developer Related Entities, or any of their shareholders, financiers or sub- contractors;
- (f) any matter the disclosure of which could reasonably be expected to prejudice the legitimate business, commercial, professional or financial interests of the Developer or a Developer Related Entity; or
- (g) any other information that is capable of being treated as received in confidence, or is otherwise subject to privacy obligations, at law,

including, without limitation, all of the information identified in Schedule 3.

Dispute Representatives has the meaning given to that term in clause 16.2.

Fee means the fee as set out in the Payment Schedule.

Key Personnel means in relation to the positions nominated in Schedule 4, the personnel specified in Schedule 4, adjusted in accordance with this deed.

GST Amount has the meaning given to that term in clause 15.3.

Insolvency Event means the occurrence of any of the following events:

- (a) if an application is made (other than for a frivolous or vexatious reason) for the winding up or deregistration of a party and, where an application has been made for the dismissal or withdrawal of the application for winding up within 10 Business Days, the application is not dismissed or withdrawn within 30 Business Days;

- (b) an order is made for the winding up of a party, except for the purpose of a reconstruction, amalgamation, merger or consolidation on terms approved by the State before that order is made where the reconstruction, amalgamation, merger or consolidation is implemented in accordance with the terms of the approval;
- (c) if a party passes a resolution for its winding up or deregistration, except for the purpose of a reconstruction, amalgamation, merger or consolidation on terms approved by the State before that resolution is passed where the reconstruction, amalgamation, merger or consolidation is implemented in accordance with the terms of that approval;
- (d) if a receiver, receiver and manager, liquidator provisional liquidator, compulsory manager trustee for creditors or in bankruptcy or analogous person is appointed to, or the holder of a Security Interest takes (or appoints an agent to take) possession of, any property of a party or otherwise enforces its security interest;
- (e) if a party or any other person appoints an administrator to the party or takes any step to do so;
- (f) if a party:
 - (i) suspends payment of its debts (other than as the result of a failure to pay a debt or claim which is the subject of a good faith dispute);
 - (ii) ceases or threatens to cease to carry on all or a material part of its business;
 - (iii) is or states that it is unable to pay its debts;
 - (iv) is deemed insolvent by virtue of its failure to comply with a statutory demand; or
- (g) if a party enters into a readjustment or rescheduling of its indebtedness or makes a general assignment for the benefit of or a composition with its creditors, without the prior consent of the State, except for the purposes of a solvent reconstruction or amalgamation approved in writing by the State; or
- (h) any act is done or event occurs which has an analogous or similar effect to any of the events in paragraphs (a) to (g).

Obligations means each obligation, function, task, duty or service contemplated to be performed by the Independent Certifier under this deed and under the Commercial Development Agreement, including the obligation to perform each of the Services.

Payment Schedule means Schedule 2 of this deed.

Recipient has the meaning given to that term in clause 15.3.

Representative means an officer, employee, agent or Key Personnel of the Independent Certifier, who are appointed by the Independent Certifier to perform any of the Obligations.

Security Interest means any mortgage, pledge, lien or charge or any security or preferential interest or arrangement of any kind and includes:

- (a) a "security interest" as defined in clause section 12 of the *Personal Property Securities Act 2009* (Cth);
- (b) anything which gives a creditor priority to other creditors with respect to any asset; and
- (c) retention of title (other than in the ordinary course of day-to-day trading) and a deposit of money by way of security.

Services means those services listed in Schedule 1.

Substitute Certifier has the meaning given to that term in clause 9.

Supplier has the meaning given to that term in clause 15.3.

Surviving Clauses has the meaning given to that term in clause 18.9.

1.2 Definitions in Commercial Development Agreement

Subject to clause 1.1, terms used in this deed that are defined in the Commercial Development Agreement have the same meanings in this deed.

1.3 Interpretation

- (a) The parties agree to be bound by clause 1.2 of the Commercial Development Agreement as if set out in its entirety in this clause 1.3, except that for the purposes of this deed:
 - (i) references in clause 1.2 of the Commercial Development Agreement to 'this Agreement' or 'the Commercial Development Agreement' shall be read as references to 'this deed'; and
- (b) references in clause 1.2 of the Commercial Development Agreement to 'the Developer' shall be read as references to 'the Developer and the Independent Certifier'.

1.4 Multiple parties

If a party to this deed is made up of more than one person, or a term is used in this deed to refer to more than one party:

- (a) an obligation of those persons is joint and several;
- (b) a right of those persons is held by each of them severally; and
- (c) any other reference to that party or term is a reference to each of those persons separately, so that (for example) a representation, warranty or undertaking is given by each of them separately.

1.5 No liability

Subject only to the terms of the Commercial Development Agreement in respect of the Developer, notwithstanding the terms of this deed, the State shall not be liable to the Developer or the Independent Certifier under this deed or otherwise and neither the Developer or the Independent Certifier shall have any entitlement under this deed or otherwise for an act or omission of the State or any State Related Party to the extent that the State's act or omission is caused by an act or omission of the Developer, a Developer Related Party or the Independent Certifier.

1.6 Approvals and consents

For the avoidance of doubt, all approvals, consents, decisions or exercises of discretion required to be given or made by the State or the Developer:

- (a) relating to, or arising under or in connection with this deed;
- (b) relating to the satisfaction of a condition precedent pursuant to the terms of this deed; or
- (c) sought in relation to or in connection with, or referable to, or determinative of, the occurrence of any breach by the Developer of any of its obligations under the Commercial Development Agreement,

and regardless of whether the requirement of the approval, consent, decision or exercise of discretion is express or implied, the State or the Developer (as the case may be), has or have the right to give or make its approval, consent or decision or exercise its discretion conditionally or unconditionally or to withhold its approval, consent, decision or exercise of discretion but in giving or withholding its approval, consent, decision or exercise of discretion, or in imposing any conditions, the State or the Developer (as the case may be) must act reasonably.

2. Appointment of Independent Certifier

2.1 Appointment of Independent Certifier

- (a) The Developer and the State appoint the Independent Certifier under this deed to perform the Obligations.
- (b) The Independent Certifier confirms its acceptance of the appointment referred to in clause 2.1(a).

2.2 Payment

The Developer must pay to the Independent Certifier [not disclosed] of the Fee in accordance with the Payment Schedule.

3. Term of appointment

The State's and the Developer's rights under this deed to require the Independent Certifier to perform the Obligations remain in effect until the expiry of the Defects Liability Period, unless that appointment is terminated at an earlier date in accordance with clause 14.

4. Independent Certifier's Obligations

4.1 Acknowledgments by Independent Certifier

The Independent Certifier acknowledges and agrees that:

- (a) it has received a copy of the Commercial Development Agreement and that it has read, and is familiar with the terms of that document;
- (b) it must perform the Obligations with respect to Oversight Development Works; and
- (c) the Obligations extend to and include the obligations, functions, duties and services of the 'Independent Certifier' as described in the Commercial Development Agreement.

4.2 Key personnel

- (a) The Independent Certifier must employ the Key Personnel specified in Schedule 4 in the positions specified in that Schedule.
- (b) The Independent Certifier must provide experienced and skilled personnel to perform the Obligations and must within 10 Business Days of the date of this deed give written notice to the Developer of the identity and contact details of such personnel.
- (c) The Independent Certifier must ensure that any of its Representatives:
 - (i) perform the services required of their respective positions;
 - (ii) are not removed without the prior written consent of the Developer (which consent must not be unreasonably withheld or delayed), and if any such Representative is removed, they must be replaced by a person of at least equivalent skill and experience; and
 - (iii) are available for consultation as the Developer may reasonably require from time to time.

4.3 Subcontracting

The Independent Certifier:

- (a) may not subcontract the performance of any of the Obligations without the prior written consent of the Developer (which consent must not be unreasonably withheld or delayed); and
- (b) remains responsible for the performance of the Obligations in accordance with this deed, notwithstanding any such subcontracting.

4.4 Quality assurance

- (a) The Independent Certifier must implement a quality system in accordance with ISO9000, and otherwise in a form reasonably acceptable to the Developer to ensure compliance of the Obligations with the requirements of this deed.
- (b) The Independent Certifier will not be relieved of any requirement to perform any Obligations as a result of:
 - (i) compliance with the quality assurance requirements of this deed; or
 - (ii) any acts or omissions of the other parties with respect to the quality assurance requirements of this deed, including any audit under clause 4.5 of this deed.

4.5 Audit

- (a) The Independent Certifier must:

- (i) allow any audit of its quality assurance system under this deed by a third party, at the request of the Developer; and
 - (ii) fully co-operate with that third party in respect of the carrying out of the quality assurance audit.
- (b) Without limiting the foregoing, the Independent Certifier must, at all times:
- (i) give to the third party access to premises occupied by the Independent Certifier where the Obligations are being undertaken; and
 - (ii) permit the third party to inspect applicable information relevant to the quality assurance audit.
- (c)

5. Notifications

The Independent Certifier agrees to promptly notify the State and the Developer if it becomes aware in the course of performing the Obligations:

- (a) that any matter stated or certified by the State, the Developer or the Builder or certificate provided under any Oversight Development Agreement is not correct as at the date stated or certified; and
- (b) of any matter or circumstance which in its reasonable opinion:
 - (i) may materially or adversely affect the Builder's or Developer's ability to achieve Final Completion by the Final Completion Date;
 - (ii) it considers to be, in the context of the Oversight Development, of material interest to the State and/or the Developer;
 - (iii) may involve a material breach of any relevant Oversight Development Agreement; or
 - (iv) may involve a material dispute between any party to any relevant Oversight Development Agreement or any other person in relation to a relevant Oversight Development Agreement or the Project.

6. Benefit of Independent Certifier's Obligations

The Independent Certifier:

- (a) acknowledges and agrees that:
 - (i) each of the State and the Developer:
 - (A) is relying upon its skill and experience in the performance of the Obligations; and
 - (B) may suffer Loss if it does not perform the Obligations in accordance with the requirements of this deed; and
 - (ii) it has no authority to:
 - (A) give directions to the State or the Developer other than may (if at all) be expressly set out in this deed or any of the documents referred to in Schedule 1;
 - (B) waive or alter any terms of the Oversight Development Agreements; or
 - (C) discharge or release a party from any of its obligations pursuant to the Oversight Development Agreements;
- (b) warrants to the State and the Developer that, in performing the Obligations, it will comply with all Laws;
- (c) warrants to the State and the Developer that, at all times, it will act within the time requirements for the performance of the Obligations;

- (d) warrants to the State and the Developer that, in performing the Obligations it will attend the Site and conduct all physical inspections of the Oversight Development Works and the Improvements necessary or appropriate to the performance of the Obligations; and
- (e) in carrying out the Obligations, it must do so in a manner which will not prevent, hinder, disrupt, delay or otherwise interfere with any work or services performed by any person (including the Developer and the Builder), except where it is the unavoidable consequence of performing the Obligations.

7. Independent Certifier to be Independent

The Independent Certifier warrants to each of the State and the Developer that in the performance of the Obligations and that in respect of any obligation which requires the Independent Certifier to independently certify or determine (as applicable) any matter, it will:

- (a) act independently of each of the State and the Developer;
- (b) owe a duty of care and professional responsibility to each of the State and the Developer in connection with the performance of the Obligations;
- (c) act honestly, reasonably and with the degree of professional care, knowledge, experience, skill and diligence which may reasonably be expected of a firm of engineers experienced in the performance of the same or similar services to the Obligations;
- (d) act within the time prescribed under each of the Commercial Development Agreement, and this deed, or, where no time is prescribed, within a reasonable time;
- (e) arrive at a reasonable measure or value of work, quantities or time (if applicable); and
- (f) immediately notify the State and the Developer in writing upon becoming aware of the existence or possibility of a conflict of interest and immediately take action to avoid or mitigate the conflict of interest to the reasonable satisfaction of the State and the Developer.

8. State and Developer to have no Liability

Each of the State, the Developer and the Independent Certifier acknowledges and agrees that neither the State nor the Developer is, nor will they be taken to have a liability, or to have assumed or become (on enforcement of any of its powers or otherwise), liable:

- (a) to any party to this deed by reason alone of that party being a party to this deed; or
- (b) for the performance of any obligation of any other party under this deed or the Commercial Development Agreement.

This clause 8 does not apply to relieve any party from any obligation under this deed.

9. Change to Obligations, Suspension of Obligations and Appointment of Substitute Certifier

- (a) The State and the Developer may, by written notice to the Independent Certifier jointly signed by them, direct the Independent Certifier to carry out a change to the Obligations (including an addition or omission) which is within the general scope of this deed, and the Independent Certifier must comply with that direction.
- (b) The Fee to be paid to the Independent Certifier in relation to a change to the Obligations referred to in clause 9(a) will be determined in accordance with the schedule of rates set out in the Payment Schedule. If an amount for the change to the Obligations cannot be determined by reference to the schedule of rates, the amount will be a reasonable amount determined by the Developer and the State.
- (c) The State and the Developer may, by written notice to the Independent Certifier jointly signed by them, direct the Independent Certifier to suspend any or all of the Obligations for the period of time specified in that notice.

- (d) The Independent Certifier acknowledges and agrees that the parties may appoint another certifier (**Substitute Certifier**) to carry out those Obligations which are omitted as a result of a change to the Obligations as directed under clause 9(a), and any decision of a Substitute Certifier appointed shall be treated (between the State and the Developer but not as between the State, the Developer and the Independent Certifier) as if it is a decision of the Independent Certifier, and the Substitute Certifier shall have all of the rights and powers of the Independent Certifier under the Commercial Development Agreement in connection with those Obligations.
- (e) Notwithstanding a change to the Obligations or the appointment of a Substitute Certifier, the Independent Certifier must continue to perform the Obligations, as varied in accordance with this clause 9, in accordance with this deed. Without prejudice to any claim in respect of the performance of the Independent Certifier, the Independent Certifier is not responsible for the performance of the Substitute Certifier.

10. Obligations of the State and the Developer

10.1 No interference or influence

- (a) Subject to clause 10.1(b), the State and the Developer must not interfere or attempt to influence the Independent Certifier in the performance of the Obligations.
- (b) Clause 10.1(a) will not prevent either the State or the Developer from providing information or written submissions to the Independent Certifier setting out that party's opinion on a particular matter relating to this deed or the Obligations, provided that nothing in this clause 10.1(b) itself will require the Independent Certifier to act in accordance with that information or written submission. If a party provides any information or written submissions to the Independent Certifier then that party must, at the same time, provide a copy of such information and submissions to each other party.

10.2 Co-operation

Without limiting their obligations under clause 10.1, each of the State and the Developer must:

- (a) co-operate with the Independent Certifier;
- (b) provide all necessary information and documents within its possession, custody or control to the Independent Certifier; and
- (c) procure for the Independent Certifier access to such premises owned, leased or licensed to it as may be reasonably necessary,

to enable the Independent Certifier to perform the Obligations.

11. General Representations and Warranties of Independent Certifier

- (a) The Independent Certifier represents and warrants that:
 - (i) it is a company, duly incorporated and existing under Australian Law and has the power to execute, deliver and perform the Obligations and that all necessary corporate and other action has been taken to authorise that execution, delivery and performance;
 - (ii) the information provided by it in connection with this deed is true, accurate and complete in all material respects and not misleading in any material respect (including by omission);
 - (iii) the Obligations are valid, legal and binding obligations enforceable against it in accordance with its terms, subject to equitable remedies and Laws in respect of the enforcement of creditors' rights;
 - (iv) the execution, delivery and performance of this deed by it will not contravene any Law to which it is subject or any deed or arrangement binding on it;

- (v) it does not (in any capacity) have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise); and
 - (vi) no litigation, arbitration, tax claim, dispute or administrative or other proceeding has been commenced or threatened against it which is likely to have a material adverse effect upon its ability to perform its Obligations.
- (b) Except as otherwise provided, each representation and warranty contained in this deed:
- (i) is made on the date of this deed; and
 - (ii) will be deemed to be repeated immediately before each notice or certificate is issued by the Independent Certifier under this deed or the Commercial Development Agreement,
- with reference to the facts and circumstances then subsisting.

12. Assignment

12.1 Assignment by the Independent Certifier

- (a) Except as set out in this deed the Independent Certifier may not assign or transfer its rights or obligations under this deed without the prior written consent of the State and the Developer (which may be given or withheld in their absolute discretion and with or without conditions).
- (b) The Independent Certifier must not create or allow to exist any Security Interest over its rights under this deed.

12.2 Assignment by State

The State may at any time assign (in whole or part) its rights and obligations under this deed at any time to any entity which succeeds to the rights of the State under the Commercial Development Agreement and must promptly give the Independent Certifier written notice of any such assignment.

12.3 Assignment by Developer

- (a) Without limiting clause 38 of the Commercial Development Agreement, the Developer may at any time assign (in whole or part) its rights and obligations under this deed at any time to any entity to which it assigns its rights under and in accordance with the Commercial Development Agreement and must promptly give the Independent Certifier written notice of any such assignment.
- (b) The Independent Certifier consents to the grant by the Developer of any Security Interest contemplated by the Oversight Development Agreements over its assets (including its rights and interests under this deed).

13. Insurance and Indemnity

13.1 Insurances

- (a) The Independent Certifier must hold and maintain:
 - (i) professional indemnity insurance with:
 - (A) a limit of indemnity of not less than \$[#] million for any single claim and \$[#] million in the aggregate for any period of insurance in respect of legal liability arising from a breach of professional duty, whether owed in contract or otherwise, by reason of any negligent act, error or omission by the Independent Certifier or its employees, agents or consultants; and
 - (B) a deductible of not more than \$[#];

- (ii) workers compensation insurance in accordance with all applicable statutory requirements;
 - (iii) public liability insurance:
 - (A) endorsed to include the State and the Developer as named insureds;
 - (B) covering, without limitation, the Independent Certifier's liability under clauses 13.2 and 13.3;
 - (C) with a limit of indemnity of not less than \$[#] million for any single claim; and
 - (iv) such other insurance as may be reasonably required by the State and the Developer.
- (b) The Independent Certifier must notify the Developer of any event which could affect its insurance cover and immediately notify them if any policy is cancelled, avoided or allowed to lapse.
 - (c) The Independent Certifier must provide to the Developer certified copies of the insurance policies apart from the professional indemnity insurance and certificates of currency of the insurances effected and maintained by the Independent Certifier for the purposes of this clause 13, at any time and from time to time on request and on renewal of each policy.
 - (d) The Independent Certifier must keep the:
 - (i) professional indemnity insurance current for a period commencing on the date of this deed until six years from the issue of the Certificate of Final Completion;
 - (ii) the workers compensation insurance current until the issue of the Certificate of Final Completion;
 - (iii) the public liability insurance current until the issue of the Certificate of Final Completion; and
 - (iv) any other insurances current for such time as may reasonably be required by the Developer.
 - (e) The requirement to effect and maintain insurance in this clause 13 does not limit the liability or Obligations of the Independent Certifier under this deed.

13.2 Indemnity in relation to property/persons

The Independent Certifier is liable for and indemnifies each of the State and the Developer against any Claim or Loss which they or their respective related parties may pay, suffer or incur in respect of:

- (a) any damage to or loss of, or loss of use of, real or personal property;
- (b) death or illness of, or injury to, any person; or
- (c) any third party Claim brought against the State or the Developer (including any Claim brought by one of the State or the Developer against the other arising out of such third party Claim),

insofar as the Claim or Loss arises out of, or is connected with, the wrongful act, error or omission of the Independent Certifier, its employees, agents or consultants.

13.3 Indemnity in relation to breach and negligence

The Independent Certifier is liable for and must indemnify each of the State and the Developer against any Claim or Loss which they or their respective related parties may pay, suffer or incur in respect of any:

- (a) breach of this deed by the Independent Certifier (including any Claim or Loss the State or the Developer may have to another party arising from such breach); and
- (b) any negligent act or omission of the Independent Certifier, its employees, agents or consultants.

14. Termination of Appointment and Novation

14.1 Termination by the other parties

- (a) Each of the State and the Developer may terminate the appointment of the Independent Certifier by notice in writing served on the Independent Certifier and the other party:
 - (i) if the Independent Certifier is in breach of this deed and the breach is not remediable in the reasonable opinion of the Developer;
 - (ii) if the Independent Certifier is in breach of this deed and the breach, being remediable in the reasonable opinion of the Developer has not been remedied within 10 Business Days of the service by the Developer of a notice requiring the breach to be remedied;
 - (iii) if an Insolvency Event occurs in relation to the Independent Certifier;
 - (iv) for the convenience of the State and the Developer at any time and for any reason, upon 10 Business Days' written notice to the Independent Certifier by the Developer; or
 - (v) if there is a Change in Control of the Independent Certifier.
- (b) Notwithstanding clause 14.1(a) and unless the State and the Developer otherwise agree, the State or the Developer may only terminate the appointment of the Independent Certifier if the State and the Developer first agree to the appointment of another person to perform the Obligations on such terms and conditions as the State and the Developer reasonably propose, including, as to payment of the appointee's remuneration.

14.2 Termination of the Commercial Development Agreement

The parties acknowledge and agree that if the Commercial Development Agreement is terminated, this deed is terminated with effect from the date of termination of the Commercial Development Agreement and without necessity of notice, but without prejudice to any rights or liabilities which may have accrued prior to that date.

14.3 Time of termination

Unless the State and the Developer otherwise agree, the termination of appointment of the Independent Certifier under clause 14.1 shall take effect upon receipt of notice from the Developer confirming the appointment of a replacement to the Independent Certifier under clause 14.1(b).

14.4 Obligations following termination

- (a) Upon the date of termination of its appointment, the Independent Certifier:
 - (i) must deliver up to the Developer all books, records, drawings, specifications and other documents in the possession, custody or control of the Independent Certifier relating to the Obligations; and
 - (ii) acknowledges and agrees that the State and the Developer have the right to use the documents referred to in clause 14.4(a)(i) for the purposes of the Oversight Development and any other related project.
- (b) Where a notice is given under clause 14.1 of the termination of the appointment of the Independent Certifier, or this deed is terminated under clause 14.2, the Independent Certifier must provide full assistance to the Developer, and any successor to the Independent Certifier appointed in order to enable such successor to be in a position to perform the Obligations under this deed with effect from the appointment of such successor.
- (c) Nothing in this clause 14.4 will prevent the Independent Certifier from retaining for its records one copy of the books, records, drawings, specifications and other documents referred to in clause 14.4(a)(i), provided however that nothing contained in this clause 14.4 will relieve the Independent Certifier of its Obligations under this deed.

14.5 Compensation

Where the appointment of the Independent Certifier is terminated under clause 14.1 or this deed is terminated under clause 14.2, the Independent Certifier is only entitled to be paid by the Developer the Fee for Obligations performed up to the date of the termination and the Independent Certifier agrees that its only right against the Developer arising from such a termination is to claim for payment from the Developer under this clause 14.5.

14.6 Termination without prejudice

Termination of the appointment of the Independent Certifier will be without prejudice to any Claim which the State or the Developer may have in respect of any breach of the terms of this deed which occurred prior to the date of termination.

15. Expenses, Stamp Duties and GST

15.1 Expenses

Each party must pay its own costs and expenses in connection with the negotiation, preparation, execution and performance of this deed.

15.2 Stamp duties

The Developer must pay all stamp duty (apart from financial institutions duties or bank account debit taxes which will lie between the parties as they fall) and any related fines and penalties in respect of this deed, the performance of this deed and each transaction effected by or made under or pursuant to this deed.

15.3 GST

(a) (Interpretation):

- (i) Except where the context suggests otherwise, terms used in this clause 15.3 have the meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).
- (ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 15.3.
- (iii) Unless otherwise expressly stated, all consideration to be provided under this deed (other than under this clause 15.3) is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 15.3.
- (iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

(b) **(Reimbursements):** Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

(c) **(Additional amount of GST payable):** If GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this deed:

- (i) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and
- (ii) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 15.3(c)(i).

(d) **(Variation of GST):**

- (i) If the GST Amount recovered by the Supplier from the Recipient under clause 15.3(c) for a supply varies from the amount of GST paid or payable by the Supplier on that supply, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient.
 - (ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this deed within five Business Days after the Supplier becomes aware of the adjustment event.
- (e) **(No merger):** This clause will not merge on completion or termination of this deed.

16. Dispute Resolution

16.1 Procedure for resolving disputes

- (a) The parties agree that they will attempt to resolve all disputes in accordance with the procedures set out in this clause 16.
- (b) It is a condition precedent to the referral of a dispute to litigation that a party first exhausts the procedures referred to in clause 16.2.

16.2 Negotiation

- (a) If a dispute arises, then a party may give notice to the other parties to the dispute, requesting that the dispute be referred for resolution to the respective [chief executive officers] of those parties.
- (b) A notice under clause 16.2(a) must:
 - (i) be in writing;
 - (ii) state that it is a notice under this clause 16.2; and
 - (iii) include, or be accompanied by, reasonable particulars of the matters in dispute.
- (c) If a dispute is referred to the persons referred to in clause 16.2(a) (**Dispute Representatives**), then the Dispute Representatives (or the persons for the time being acting in those positions) must meet and use reasonable endeavours acting in good faith to resolve the dispute (in whole or in part) within 10 Business Days of the date on which the notice under clause 16.2(a) is received. The joint decisions (if any) of the Dispute Representatives must be reduced to writing within the 10 Business Days referred to in this clause 16.2(c) and will be contractually binding on the parties to the dispute.
- (d) The 10 Business Days referred to in clause 16.2(c) may be extended by agreement of the parties in writing.

16.3 Continue to perform

Notwithstanding the existence of a dispute, the Independent Certifier must continue to perform the Obligations.

16.4 Final and binding

The State and the Developer agree that, in the absence of manifest error or fraud, the State and the Developer cannot overturn any decision of the Independent Certifier in respect of any of the Obligations referred to in Schedule 1 which are expressed to be final and binding in nature.

17. Information and Confidentiality

17.1 Keep confidential

- (a) Subject to clause 17.2, the parties must keep confidential all information provided under or in relation to the Oversight Development, the Oversight Development Agreements, the RFP

and must use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of that information.

- (b) The parties acknowledge and agree that at the date of this deed the Commercially Sensitive Information is of a confidential nature and must be received, supplied and communicated in circumstances of confidence and on a commercial-in-confidence basis.

17.2 Permitted Disclosure

- (a) Subject to clause 17.3, clause 17.1 will not apply to:
- (i) any disclosure of information to a party to this document that is reasonably required by those persons for the discharge of those obligations;
 - (ii) any matter a party can demonstrate is already generally available and in the public domain otherwise than as a result of breach of clause 17.1;
 - (iii) any disclosure which is required by any Law (including any order of a court of competent jurisdiction);
 - (iv) any disclosure of information which is already lawfully in the possession of the recipient of the information, prior to its disclosure by a party;
 - (v) any disclosure of information to any prospective permitted assigns, prospective investors in, shareholders of or prospective debt financiers of the Developer, in each case only to the extent reasonably necessary to enable a decision to be taken on the relevant proposal;
 - (vi) any reasonably necessary disclosure of information by the Developer to any department, office, agency or Minister of the Victorian Government which has a proper interest in the Project;
 - (vii) any disclosure by any party of any document relating to this deed and which the Developer or any relevant Subcontractor, as the case may be, (acting reasonably) has agreed may be disclosed;
 - (viii) any disclosure of information required by a stock exchange or a Victorian or Commonwealth regulator;
 - (ix) any disclosure of information, other than Commercially Sensitive Information, to any Developer's Investor or sub-tenant with respect to a proposal with respect to the Lease Land, only to the extent reasonably necessary to enable a decision to be made on the proposal;
 - (x) any disclosure to a court of competent jurisdiction in connection with legal proceedings relating to the Oversight Development but only to the extent reasonably necessary to preserve the legal rights of the party; or
 - (xi) any disclosure by a party to its financial and professional advisors, but only to the extent reasonably necessary to obtain professional or financial advice in connection with the Oversight Development,

(Permitted Disclosures).

- (b) If a party (**Disclosing Party**) receives a request or direction from any third party to make a Permitted Disclosure, then the Disclosing Party must:
- (i) promptly give a copy of the request to the other parties (**Non-disclosing Parties**);
 - (ii) use reasonable endeavours to provide not less than five Business Days' written notice to the Non-disclosing Parties that it intends to make the Permitted Disclosure; and
 - (iii) take into account any reasonable objections of the Non-disclosing Parties with respect to the Permitted Disclosure. The parties acknowledge and agree that:
 - (A) a Disclosing Party will be under no obligation to accept or otherwise agree to the objections; and
 - (B) a Non-disclosing Party may have rights to seek a review of a Disclosing Party's decision to make a Permitted Disclosure.

17.3 Obligations Preserved

Where disclosure is permitted under clause 17.2, other than clauses 17.2(a)(ii), 17.2(a)(iii) and 17.2(a)(vi), the Disclosing Party must ensure that the recipient of the information will be subject to the same obligation of confidentiality as that contained in this clause.

18. General

18.1 Notices

Any notice or other communication including, but not limited to, any request, demand, consent or approval to or by a party under this deed:

- (a) **(in writing)**: must be in writing;
- (b) **(addressed)**: must be addressed to the address specified in clause 18.2 (or as otherwise notified by that party to each other party from time to time);
- (c) **(form of delivery)**: must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by both parties) to the email address of the addressee set out in clause 18.2; and
- (d) **(taken to be received)**: are taken to be received by the addressee at the address set out in clause 18.2:
 - (i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
 - (ii) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and
 - (iii) in the case of email, the first to occur of:
 - (A) receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - (B) the time that the communication enters an information system which is under the control of the addressee; or
 - (C) the time that the communication is first opened or read by the addressee, unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day.

18.2 Address for notices

For the purposes of this clause, a person (**sender**) may (and must, in the case of a Notice given to the Beneficiary or Beneficiary Representative) take the address of another person (**recipient**) to be:

- (a) the address set out below; or
- (b) where the recipient notifies the sender of another address, the last address so notified to it.

The State and State Representative (as applicable)

Attention: **[Insert]**

Address: **[Insert]**

The Developer

Name: **[Insert]**

Address: [Insert]

Attention: [Insert]

The Developer's Representative

Name: [Insert]

Address: [Insert]

Attention: [Insert]

The Independent Certifier

Name: [Insert]

Address: [Insert]

Fax No: [Insert]

Attention: [Insert]

18.3 Developer's Representative

- (a) A Notice given by the Developer's Representative is deemed to be a Notice given by the Developer.
- (b) The Developer may nominate a substitute Developer's Representative by giving notice to the other parties.
- (c) A copy of all Notices given to the Developer must be given to the Developer's Representative (if applicable).

18.4 Certification

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

18.5 Cost of performing obligations

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

18.6 Governing Law

This deed is governed by and must be construed according to the Law applying in Victoria and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of Victoria and the courts competent to determine appeals from those courts.

18.7 Amendments

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

18.8 Waiver

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

18.9 Survival of certain provisions; no merger

- (a) Without limiting clause 18.18:
 - (i) clauses 6, 8, **Error! Reference source not found.**, 13.2, 16, 17, 18.1, 18.6 and REF_Ref500233609 \w \h 18.18, any indemnities given under this deed and any other provisions which are expressed to survive termination (together, the **Surviving Clauses**) will survive rescission, termination or expiration of this deed; and
 - (ii) if this deed is rescinded or terminated, no party will be liable to any other party except:
 - (A) under the Surviving Clauses; or
 - (B) in respect of any breach of this deed occurring before such rescission or termination.
- (b) No right or obligation of any party will merge on completion of any transaction under this deed. All rights and obligations under this deed survive the execution and delivery of any transfer or other document which implements any transaction under this deed.

18.10 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by Law or reasonably requested by another party to give effect to this deed.

18.11 Consents

A consent required under this deed from the State or the Developer may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless this deed expressly provides otherwise.

18.12 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this deed.

18.13 Reading down

If a word, phrase, sentence, clause or other provision of this deed would otherwise be unenforceable, illegal or invalid the effect of that provision will so far as possible be limited and read down so that it is not unenforceable, illegal or invalid.

18.14 Severance

Any provision of this deed which is illegal or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this deed or affecting the validity or unenforceability of such provision in any other jurisdiction.

18.15 Remedies cumulative

The rights and remedies provided in this deed are cumulative and are not exclusive of any rights or remedies provided by Law or any other agreement, except to the extent expressly provided in this deed.

18.16 Moratorium legislation

Unless application is mandatory by Law, any present or future Law will not apply to this deed so as to abrogate or otherwise prejudicially affect any rights, powers, remedies or discretions given or accruing to the State.

18.17 Entire agreement

This deed contains the entire agreement of the parties with respect to the transactions contemplated by it. There are no understanding, agreements, warranties or representations (express or implied) with respect to the transactions contemplated by this deed except for those referred to in it.

18.18 Indemnities

- (a) Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this deed.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this deed.
- (c) A party must pay on demand any amount it must pay under an indemnity in this deed.
- (d) Where a party gives any indemnity or release to the State under this deed, it gives an equivalent indemnity and release to the Victorian Government. The State holds for itself and on trust for the Victorian Government the benefit of each such indemnity and release in this deed.

18.19 Counterparts

This deed may be executed in any number of counterparts and by the parties on separate counterparts. All such counterparts taken together will be deemed to constitute one and the same instrument.

18.20 Attorneys

Each person who executes this deed on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney and that he or she has, at the time of executing this deed, no notice of the revocation of the power of attorney under which he or she executes this deed.

18.21 Order of precedence

To the extent of any inconsistency between this deed and the Commercial Development Agreement, the Commercial Development Agreement will prevail.

Schedule 1 – Services

The Independent Certifier must perform and provide the specific services and any services necessarily incidental to the performance or provisions of those services (including independent certification) as set out in this Schedule.

The scope includes works within the boundary of the Oversight Development.

Generally the scope of works includes but is not limited to the following services:

- Understand the objectives and structure of the Oversight Development;
- Undertaking the role of Independent Certifier as detailed in the Commercial Development Agreement;
- Coordination and meetings with all related professionals and stakeholders as required enabling the relevant certification;
- Attend project coordination meetings and other stakeholder meetings as required;
- Work within Oversight Development programmes to ensure the Oversight Development objectives are met, targeting improvements to these programmes where possible and generally performing better than the timeframes defined in the Commercial Development Agreement;
- Be aware and work within the Lend Lease Global Minimum Requirements for EH&S (attached);
- Work within the definitions, terms and processes of the Commercial Development Agreement;
- Quality assurance in accordance with IS9000; and
- Acting independently.

Specifically this scope of works includes all services specified in the Commercial Development Agreement as being performed by the Independent Certifier including but not limited to the following services (if required):

- (a) **(resolution of Developer Unacceptable Conditions)** certifying:
 - (i) the incremental cost to the Oversight Development as a result of a Developer Unacceptable Condition; or
 - (ii) the amount of adjustment to the Development Fee,
in relation to a Developer Unacceptable Condition (clauses 6.4(e) and (f));
- (b) **(costs to Developer for delays in Date for Completion (PPP))** certifying the quantum of costs or liabilities (either under or in connection with a sublease or agreement for sublease with a sub-tenant in relation to any part of the Oversight Development or additional building or development costs incurred in relation to the Oversight Development) caused by a delay incurred by the Developer due to an extension of time under the Project Agreement other than due to the default of the Project D&C Subcontractor (clause 11.3);
- (c) **(pricing an OSD Modification)** certifying the lump sum cost of an OSD Modification in respect of a State Initiated Modification for the purposes of assessing the State's liability to pay the Developer for undertaking an OSD Modification on the terms set out in an OSD Modification Order (clause 17);
- (d) **(determining delays and/or costs caused by Extension Events)** determining:
 - (i) extensions to the:
 - (A) Construction Commencement Deadline; and/or
 - (B) the Oversight Development Sunset Date,
required as a result of an Extension Event, to be afforded to the Developer; or
 - (ii) the quantum of costs caused by a delay incurred by the Developer due to a State Extension Event to be paid by the State to the Developer;
(clause 21)

- (e) **(Defects of State Concern)**
 - (i) identifying any Defects of State Concern to be rectified by the Developer during the Defects Liability Period; and
 - (ii) if the Defects of State Concern are not rectified by the Developer, determining the cost incurred by the State in connection with rectification, to be paid by the Developer to the State,
(clauses 22);
- (f) **(Practical Completion and Remaining Matters of Final Completion)**
 - (i) certifying that the Oversight Development Works have achieved Practical Completion (provide a Certificate of Practical Completion);
 - (ii) providing notice to the State and Developer detailing reasons by Practical Completion has not been reached; and/or
 - (iii) determining that any Remaining Matters of Final Completion have or have not been achieved
(clause 25);
- (g) **(State Upside Return)** determining amounts in the Adjustment Items detailed in the table in clause 27.2(e) for the purposes of calculating State Upside Return which will determine any increase in the Development Fee to be payable by the Developer to the State (clause 27.2);
- (h) **(Maximum Developer Liability)** certifying the remaining construction costs of the Oversight Development Works for the purposes of calculating the Maximum Developer Liability (clause 50).

Schedule 2 - Payment Schedule

1. Payment claim

The Independent Certifier must submit to the Developer an account for payment on account of the Fee:

- (a) for the Obligations performed in accordance with this deed during a month at the end of that month; and
- (b) calculated in accordance with this Payment Schedule.

2. Payment and notification of disputed amounts

Within 30 Business Days after receipt of the Independent Certifier's account for the month, the Developer must pay the Independent Certifier any amount included in the account which is not disputed and must notify the Independent Certifier in writing of the reasons for any amount which is disputed.

3. The Fee

The Fee will be as follows:

A Schedule of Rates

| Claims | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] | |
|--------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|----------------|
| Up to 5 | [\$TBC] | [\$TBC] | [\$TBC] | [\$TBC] | [\$TBC] | [\$TBC] | Cost per claim |
| 5 to 10 | [\$TBC] | [\$TBC] | [\$TBC] | [\$TBC] | [\$TBC] | [\$TBC] | Cost per claim |
| 11 to 20 | [\$TBC] | [\$TBC] | [\$TBC] | [\$TBC] | [\$TBC] | [\$TBC] | Cost per claim |
| 21 and above | [\$TBC] | [\$TBC] | [\$TBC] | [\$TBC] | [\$TBC] | [\$TBC] | Cost per claim |

B Schedule of Rates for Certification of Claims made to the State for Shared Costs

| Claims | [not disclosed] | [not disclosed] | | | | | |
|-----------------|-----------------|-----------------|-----------------|-----------------|---------|---------|----------------|
| [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] | | | |
| Up to 5 | [\$TBC] | [\$TBC] | [\$TBC] | [\$TBC] | [\$TBC] | [\$TBC] | Cost per claim |
| 5 to 10 | [\$TBC] | [\$TBC] | [\$TBC] | [\$TBC] | [\$TBC] | [\$TBC] | Cost per claim |
| 11 to 20 | [\$TBC] | [\$TBC] | [\$TBC] | [\$TBC] | [\$TBC] | [\$TBC] | Cost per claim |
| 21 and above | [\$TBC] | [\$TBC] | [\$TBC] | [\$TBC] | [\$TBC] | [\$TBC] | Cost per claim |

C Issue of Certification

| Description | Unit | Rate per certificate |
|-------------|-----------------|----------------------|
| [\$TBC] | Per Certificate | [\$TBC] |
| [\$TBC] | [\$TBC] | [\$TBC] |

| Description | Unit | Rate per certificate |
|-------------|-------|----------------------|
| [TBC] | [TBC] | \$(TBC) |
| [TBC] | [TBC] | \$(TBC) |
| [TBC] | [TBC] | \$(TBC) |

D General Services (Hourly Rates)

| Description | Unit | Rate |
|---------------------------------|--------|------------|
| Managing Director | Per hr | Not quoted |
| Director | Per hr | \$(TBC) |
| Associate | Per hr | \$(TBC) |
| Senior Quantity Surveyor | Per hr | \$(TBC) |
| Quantity Surveyor/Cost Engineer | Per hr | \$(TBC) |
| Independent Certifier | Per hr | \$(TBC) |
| Assistant Quantity Surveyor | Per hr | \$(TBC) |
| Assistant/ Support | Per hr | \$(TBC) |

4. Disbursements

The Independent Certifier will:

- (a) only be entitled to reimbursement of disbursements incurred in the course of carrying out the Obligations for which the Independent Certifier is to be paid on a schedule of rates basis under this deed if those disbursements:
 - (i) have been reasonably and properly incurred for the sole purpose of performing the part of the Obligations for which the Independent Certifier is to be paid on a schedule of rates basis in accordance with this deed;
 - (ii) where they exceed or are likely to exceed \$[#], have the prior written approval of the Developer; and
 - (iii) are supported by documentation provided to the Developer which is satisfactory to the Developer; and
- (b) not be entitled to make any Claim against the Developer arising out of or in connection with disbursements or other costs incurred in connection with the performance of the Obligations other than in accordance with paragraph (a).

5. GST

All lump sums, rates and amounts in this Payment Schedule do not include GST.

Schedule 3 - Commercially Sensitive Information

1. All dollar values.
2. All financial models.
3. All feasibility studies.
4. All percentages.
5. All details of payments and payment structures (including the time for making payments).
6. All details of bank guarantees and parent company guarantees.
7. All details of liquidated damages regimes.
8. All plans and specifications and other design documents.
9. All details of any Caps and limitations on liability.
10. All remediation strategies.
11. The identity of any investors or partners.
12. All Milestones, program dates and sunset dates.
13. Any names of individuals.
14. All details of conditions precedent.
15. All formulae.

draft

Schedule 4 – Key Personnel

Responsible Person

[Insert]

Independent Certifier

[Insert]

Support Personnel

[Insert]

draft

Signing page

EXECUTED as a deed.

State

Signed by
**The Minister for Public
Transport on behalf of the
Crown in right of the State of
Victoria**

in the presence of

sign here ► _____
Minister

sign here ► _____
Witness

print name _____

print name _____

**Executed by Lendlease (OSD South) Pty
Limited as trustee for the Lendlease (OSD
South) Trust ABN [insert] by being signed,
sealed and delivered by its attorneys under power
of attorney dated**

who declare that they have no notice of revocation
of the power of attorney, in the presence of

Signature of witness

Signature of attorney

Name of witness (print)

Name of attorney

Signature of attorney

Name of attorney

[Insert Independent Certifier execution block]



Attachment 18

COM Conditions

[not disclosed]



Attachment 19

COM Alternative Conditions

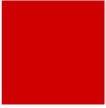
[not disclosed]



Attachment 20

COM and Government Party Tenant Upside

[not disclosed]



Execution version

Melbourne Metro

PPP and OSD Interface Agreement (CBD South)

[not disclosed];

[not disclosed];

[not disclosed]; and

[not disclosed],

(together, Cross Yarra Partnership) (ABN 57 956 065 885) (**Project Co**)

Lendlease (OSD South) Pty Limited as trustee for the Lendlease (OSD South) Trust (ACN 610 047 464) (**OSD Developer**)

The unincorporated joint venture comprising Lendlease Engineering Pty Ltd (ACN 000 201 516), John Holland Pty Ltd (ABN 11 004 282 268) and Bouygues Construction Australia Pty Ltd (ABN 37 144 013 801) (**PPP D&C Subcontractor**)

The Minister for Public Transport on behalf of the Crown in right of the State of Victoria

[not disclosed]



HERBERT
SMITH
FREEHILLS

Execution Version

Metro Tunnel
Tunnel and Stations PPP

FCA (Train) Direct Deed

The Minister for Public Transport on behalf of the
Crown in right of the State of Victoria

Cross Yarra Partnership

Metro Trains Melbourne Pty Ltd



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FCA (Train) Direct Deed

Date ►

Between the parties

State **The Minister for Public Transport on behalf of the Crown in right of the State of Victoria**

Project Co

- 1 [not disclosed];
- 2 [not disclosed];
- 3 [not disclosed]; and
- 4 [not disclosed],

(together, **Cross Yarra Partnership**) (ABN 57 956 065 885) of Level 8, 136 Exhibition Street, Melbourne, VIC 3000, Australia.

Franchisee **Metro Trains Melbourne Pty Ltd**
ACN 136 429 948 of Level 17, 700 Collins Street, Melbourne, Victoria 3008

Recitals

- 1 The background to the Project is set out in the Project Agreement.
- 2 Project Co and the Franchisee are or will become parties to the Franchisee Cooperation Agreement.
- 3 The Franchisee has agreed to grant to the State certain rights in relation to the Franchisee Cooperation Agreement.

This deed witnesses as follows:



1 Definitions and interpretation

1.1 Project Agreement definitions

Unless otherwise expressly defined, expressions used in this Deed have the meanings given to them in or for the purposes of the Project Agreement.

1.2 Definitions

In this Deed, unless the context otherwise requires:

| Term | Meaning |
|--|--|
| Additional Obligor | means a company or other entity which is wholly owned by the State. |
| Additional Obligor Step-In Notice | has the meaning given in clause 6.1(a)(4). |
| Additional Obligor Step-Out Date | has the meaning given in clause 6.3(d). |
| Agreed Amount | has the meaning given in clause 11(b)(1). |
| Associate | in the case of the Franchisee, has the meaning given in the Franchisee Cooperation Agreement. |
| Assumption Date | has the meaning given in clause 6.3(a). |
| Cost | has the meaning given in clause 11(g). |
| Deed | means this deed and includes all Schedules, Exhibits, Attachments and Annexures to it. |
| Default Event | means any breach by Project Co of any of its obligations under the Franchisee Cooperation Agreement. |
| Disputing Parties | has the meaning given in clause 8.1(a). |



| Term | Meaning |
|--|--|
| FCA Project Document | has the meaning given in the Franchisee Cooperation Agreement. |
| Financiers Securities | each of: <ol style="list-style-type: none">1 the deed entitled 'General Security Deed - Borrower' between Finance Co and the Security Trustee;2 the deed entitled 'General Security Deed – Borrower HoldCo' between Stella CYP Holdings Pty Limited and the Security Trustee;3 the deed entitled 'General Security Deed – CY Trusts, CY Trustees and the Cross Yarra Partnership' between Project Co, CY Trustee 1, CY Trustee 2, CY Trustee 3 and CY Trustee 4 each in both its personal capacity and as trustee for CY Trust 1, CY Trust 2, CY Trust 3 or CY Trust 4 respectively, and the Security Trustee;4 the deed entitled 'General Security Deed – CY HoldCos and CY Holding Trusts' between CY HoldCo 1, CY HoldCo 2, CY HoldCo 3 and CY HoldCo 4, each in both its personal capacity and as trustee for CY Holding Trust 1, CY Holding Trust 2, CY Holding Trust 3 or CY Holding Trust 4 respectively, and the Security Trustee;5 each other Security (as defined in the Facility Agreement); and6 any other Security Interest which is at any time collateral to any of the foregoing. |
| Franchise Business | has the meaning given in the Franchisee Cooperation Agreement. |
| Franchisee Cooperation Agreement | means the document entitled 'Franchisee Cooperation Agreement (Train)' between Project Co and the Franchisee dated on or about the date of this Deed. |
| Franchisee Intellectual Property Rights | has the meaning given in Schedule 4 of the Franchisee Cooperation Agreement. |
| Franchisee Material | has the meaning given in the Franchisee Cooperation Agreement. |
| Franchisee Subcontractor | has the meaning given in the Franchisee Cooperation Agreement. |
| Franchisee Land | has the meaning given in the Franchisee Cooperation Agreement. |



| Term | Meaning |
|-----------------------------------|---|
| Franchisee's Access Rules | has the meaning given in the Franchisee Cooperation Agreement. |
| Indemnified Persons (IP) | has the meaning given to that term in clause 15.5(e). |
| Interface Management Plans | has the meaning given in the Franchisee Cooperation Agreement. |
| Material | has the meaning given in clause 15. |
| Model Litigant Guidelines | has the meaning given in the Franchisee Cooperation Agreement. |
| Moral Rights | has the meaning given to it in the <i>Copyright Act 1968</i> (Cth) and any corresponding or similar rights granted under any other laws anywhere in the world. |
| Novation Notice | has the meaning given in clause 7.1(a). |
| Novation Notice Date | means: <ol style="list-style-type: none">1 in relation to clause 7.3, the later of the date of the Novation Notice and the date the Franchisee consents or is deemed (in accordance with clause 7.3(d)) to have consented to the novation; and2 otherwise, the date of the Novation Notice. |
| Operative Agreement | has the meaning given in the Franchisee Cooperation Agreement. |
| Project Agreement | means the document entitled 'Project Agreement' between the State and Project Co dated on or about the date of this Deed. |
| Project Co's Rights | has the meaning given in clause 6.3(b)(1)(A). |
| Receiver | means a receiver or receiver and manager appointed by the State under the State Security. |



| Term | Meaning |
|---|--|
| Recipient | has the meaning given in clause 11(b)(2). |
| Regulator | has the meaning given in the Franchisee Cooperation Agreement. |
| Representatives | has the meaning given in clause 8.2(a). |
| Revenue | has the meaning given in clause 11(f). |
| Safety Management System | has the meaning given in the Franchisee Cooperation Agreement. |
| Step-In Period | has the meaning given in clause 6.1(b). |
| Step-In Right | has the meaning given in clause 6.1(a). |
| Substitute Party | has the meaning given in clause 7.1(a). |
| Successor Operator | has the meaning given in the Franchisee Cooperation Agreement. |
| Supplier | has the meaning given in clause 11(b). |
| Third Party Intellectual Property Rights | has the meaning given in Schedule 4 of the Franchisee Cooperation Agreement. |

1.3 Interpretation

In this Deed:

- (a) **(headings):** headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) **(count and gender):** a word importing the singular includes the plural and vice versa and a word indicating a gender includes every other gender;
- (c) **(references):** a reference to:
- (1) a party, clause, Schedule, Exhibit or Annexure is a reference to a party, clause, Schedule, Exhibit or Annexure of or to this Deed; and



- (2) a section is a reference to a section of a Schedule;
- (d) **(Deed as amended)**: a reference to this Deed or to any other deed, agreement, document or instrument includes a reference to this Deed or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re enactments and replacements;
- (h) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **(“includes”)**: ‘includes’ will be read as if followed by the phrase ‘(without limitation)’;
- (j) **(“or”)**: the meaning of ‘or’ will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) **(“\$”)**: a reference to ‘\$’, AUD or dollar is to Australian currency;
- (m) **(time)**: a reference to time is a reference to time in Melbourne, Australia;
- (n) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (o) **(obligations and liabilities)**: a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (p) **(“may”)**: the term ‘may’, when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;
- (q) **(construction)**: where there is a reference to an Authority, institute or association or other body referred to in this Deed which:
- (1) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or
 - (2) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity; and
- (r) **(“remedy”)**: the use of the word ‘remedy’ or any form of it in this Deed means that the event to be remedied must be remedied or its effects overcome; and



- (s) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

1.4 Priority of documents

To the extent of any inconsistency, ambiguity or discrepancy between this Deed and the Franchisee Cooperation Agreement, this Deed prevails.

1.5 Inconsistency

- (a) **(State Project Documents)**: Where there is an inconsistency, ambiguity or discrepancy between this Deed and any other State Project Documents, then the order of precedence in clause 2.3 (Inconsistency between State Project Documents) of the Project Agreement applies.
- (b) **(FCA Project Documents)**: Where there is an inconsistency, ambiguity or discrepancy between this Deed and any other FCA Project Document, then the order of precedence in clause 1.9 of the Franchisee Cooperation Agreement applies.

1.6 State Project Documents

The Franchisee acknowledges that it has received a copy of the Project Agreement and the Schedules and Exhibits of the Project Agreement listed in clause 4.4(a)(1) of the Franchisee Cooperation Agreement.

1.7 Business Day

If the day on or by which anything is to be done in accordance with this Deed is not a Business Day, that thing must be done no later than the next Business Day.

1.8 Relationship of the parties

Unless otherwise expressly provided, nothing in this Deed:

- (a) **(no additional relationship)**: creates a partnership, joint venture, fiduciary, employment or agency relationship between the parties; or
- (b) **(no good faith)**: imposes any duty of good faith on the State.

1.9 Approvals, directions and notices in writing

Unless otherwise expressly provided in this Deed or agreed between the parties, all approvals, consents, directions, requirements, requests, claims, notices, agreements and demands given or required to be given under this Deed must be given in writing.

1.10 State's rights and obligations

- (a) **(Acknowledgment)**: The parties acknowledge the substance, operation and potential effect and consequences of clause 2.13 (State's executive rights and duties) of the Project Agreement in relation to this Deed.
- (b) **(No Claim)**: Subject to clause 1.10(c), Project Co and the Franchisee will not be entitled to make any Claim against the State for any Liability relating to any



exercise or failure of the State to exercise its executive or statutory rights or duties.

- (c) **(Liability for breach):** Clauses 1.10(a) and 1.10(b) do not limit any Liability which the State would have had to Project Co or the Franchisee under any State Project Document as a result of a breach by the State of a term of any State Project Document but for these clauses.

1.11 Provisions limiting or excluding Liability, rights or obligations

- (a) **(No limit):** A right of the State or any obligation of the Franchisee or Project Co under this Deed will not limit or exclude any other right of the State or obligation of the Franchisee or Project Co under this Deed unless expressly stated.
- (b) **(Permitted by Law):** Any provision of this Deed which seeks, either expressly or by implication, to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.

1.12 Prior approval or consent

Where the Franchisee is required by this Deed to obtain the State's consent or approval to an action, document or thing, unless otherwise expressly stated, that consent or approval must be obtained prior to the actions, document or thing occurring or coming into effect.

1.13 Action without delay

Unless there is a provision in this Deed which specifies a period of time in which something must be done by the parties, all things must be done without undue delay.

1.14 Cost of carrying out obligations

Each party must carry out its obligations under this Deed at its own cost, unless expressly provided otherwise.

1.15 Reasonable endeavours of State

Any statement in this Deed providing that the State will use or exercise 'reasonable endeavours' or 'act reasonably' in relation to an outcome, means that the State:

- (a) **(relevant steps):** will take steps to bring about the relevant outcome so far as it is reasonably able to do so, having regard to its resources and other responsibilities;
- (b) **(no guarantee):** cannot guarantee the relevant outcome; and
- (c) **(no obligation):** is not required to:
- (1) exercise a right of any Government Party, or to influence, over-ride, interfere with or direct any other Government Party in the proper exercise and performance of its legal, executive or statutory rights and duties and functions;
 - (2) exercise a power or discretion in a manner that the State regards as not in the public interest;
 - (3) develop or implement new policy;
 - (4) procure legislation; or



- (5) act in any way that the State regards as not in the public interest.

1.16 The Cross Yarra Partnership

- (a) **(Jointly and severally)**: The obligations, undertakings, representations, warranties, indemnities and Liabilities of Project Co under this Deed bind all the CY Partners jointly and severally as partners.
- (b) **(Change in membership)**: Without prejudice to anything else contained in this Deed or any other FCA Project Document, if the membership of the Cross Yarra Partnership changes from the CY Partners for any reason whatsoever this Deed will continue to bind each former partner and each current partner of the Cross Yarra Partnership in respect of any accrued Liabilities that were incurred by Project Co during the period that the former partner was a member of the Cross Yarra Partnership.
- (c) **(Ceases business)**: Without prejudice to anything else contained in this Deed or any other FCA Project Document, if Project Co for any reason at any time ceases business, each FCA Project Document continues to bind:
- (1) the CY Partners; and
 - (2) any former partners of the Cross Yarra Partnership in respect of any accrued Liabilities that were incurred by Project Co during the period that the former partner was a member of the Cross Yarra Partnership.

1.17 CY Trustee's limitation of liability

- (a) **(Capacity)**: The parties acknowledge that the obligations of each CY Trustee under this Deed are incurred by it solely in its capacity as trustee of the relevant CY Trust other than where expressly provided otherwise, including as contemplated by clause 1.17(c)(1) below.
- (b) **(Limited liability)**: Subject to clause 1.17(c), each CY Trustee will:
- (1) not be liable to pay or satisfy any of its obligations or liabilities under the FCA Project Documents in relation to the relevant CY Trust out of any assets held by it personally;
 - (2) only be liable to pay or satisfy any of its obligations or liabilities under the FCA Project Documents in relation to the relevant CY Trust out of the assets of that CY Trust out of which it is actually indemnified;
 - (3) not be liable to pay or satisfy any of its obligations or liabilities under the FCA Project Documents in its personal capacity out of any asset held by it personally (other than out of the property the subject of the State Securities); and
 - (4) only be liable to pay or satisfy any of its obligations or liabilities under the FCA Project Documents in its personal capacity out of the property the subject of the State Securities held by it personally.
- (c) **(Circumstances where a CY Trustee is personally liable)**:
- (1) Each CY Trustee will be personally liable under the FCA Project Documents for any loss or damage which the Franchisee or the State may suffer as a result of a breach of that FCA Project Document by that CY Trustee where such breach is caused by:
 - (A) fraud of that CY Trustee;
 - (B) wilful default of that CY Trustee;



- (C) that CY Trustee having committed a breach of trust;
 - (D) that CY Trustee having been negligent in the performance of its duties as trustee of the relevant CY Trust;
 - (E) a representation or warranty given by that CY Trustee under a FCA Project Document in respect of itself (in any capacity) or the relevant CY Trust being untrue, incorrect or misleading when made or repeated; or
 - (F) a breach of any undertaking (other than an undertaking to pay) of that CY Trustee given under a FCA Project Document.
- (2) The Franchisee or the State (as applicable) may:
- (A) do anything necessary to enforce its rights in connection with any representation or warranty (with respect to the relevant CY Trustee or the relevant CY Trust) or undertaking (other than an undertaking to pay) given by any CY Trustee under the FCA Project Documents;
 - (B) do anything necessary to enforce its rights under each State Security;
 - (C) take proceedings to obtain an injunction or other order to restrain any breach of the FCA Project Documents by any CY Trustee or declaratory relief or other similar judgment or order as to the obligations of any CY Trustee under the FCA Project Documents; and
 - (D) prove in any insolvency proceedings in respect of any CY Trustee only in order to protect and enforce its rights in respect of the property of the relevant CY Trust and the Trustee's Indemnity.
- (3) Nothing in this clause 1.17 prevents the Franchisee or the State obtaining any injunctive relief, order for specific performance, declaration or similar relief against any CY Trustee.
- (d) **(Limited recourse):** The Franchisee and the State must not, except to the extent a CY Trustee is personally liable under clause 1.17(c)(1) and subject to clauses 1.17(c)(2) and 1.17(e):
- (1) bring any proceeding for the winding up or liquidation of a CY Trustee;
 - (2) appoint, or seek the appointment of, a receiver or receiver and manager or other controller (as defined in the Corporations Act) to a CY Trustee or its assets or the assets of a CY Trust other than one appointed over any property secured by the State Securities;
 - (3) incur, or permit any receiver, receiver and manager appointed under a State Security, attorney appointed under a State Security or any other person to incur, any obligation binding on a CY Trustee unless the obligation is limited in accordance with this clause 1.17;
 - (4) take any action to obtain a judgment against a CY Trustee or to enforce a judgment against a CY Trustee other than:
 - (A) a judgment required to prove the amount of any Secured Moneys (as defined in the State Security);
 - (B) a counterclaim in any proceedings commenced by a CY Trustee; or



- (C) as permitted by clause 1.17(c)(3); or
- (5) levy or enforce a levy or distress or other execution upon or against any assets of a CY Trustee other than any property secured by the State Securities or the assets of the relevant CY Trustee or CY Trust.
- (e) **(No limitation on enforcement of security provided under the State Securities):** This clause 1.17 does not limit or affect in any way the enforcement of the State Securities and, for the avoidance of doubt, it is acknowledged and agreed by each CY Trustee (in its personal capacity and as trustee for the relevant CY Trust) that the security granted under the State Securities by it constitutes a Security Interest over all of the Trust Property and all of its Trustee's Indemnity.
- (f) **(CY Trustee as Partner):** A reference to a CY Trustee includes a reference to the relevant CY Partner as a partner in the Cross Yarra Partnership.

2 Conditions precedent

The satisfaction or waiver of the Conditions Precedent in accordance with clause 3 (Conditions Precedent) of the Project Agreement is a condition precedent to the coming into operation of this Deed (other than this clause 2 and clauses 1.1 to 1.3, 1.7, 1.8, 1.9, 1.10, 1.15 to 1.17, 8, 9, 12, 13 and 15, which will commence on the date of this Deed).

3 Acknowledgments

3.1 By the Franchisee concerning the State Security

The Franchisee acknowledges and agrees:

- (a) **(grant of security - State):** that Project Co may give a security interest in the form of the State Security in favour of the State over all assets and undertakings of Project Co including Project Co's right, title and interest under the Franchisee Cooperation Agreement or assign Project Co's right, title and interest under the Franchisee Cooperation Agreement to the State by way of security, and the Franchisee consents to the State Security and any such assignment;
- (aa) **(grant of security – financiers):** that Project Co may give a security interest in the form of the Financiers Securities in favour of the Financiers over all assets and undertakings of Project Co including Project Co's right, title and interest under the Franchisee Cooperation Agreement or assign Project Co's right, title and interest under the Franchisee Cooperation Agreement to the Financiers by way of security, and the Franchisee consents to the Financiers Securities and any such assignment;
- (b) **(exercise of rights):** to the State's rights under the State Security including the appointment by Project Co of the State as attorney of Project Co to do, perform and exercise all things, acts and rights under the Franchisee Cooperation Agreement on behalf of and for the account of Project Co;
- (c) **(no Default Event):** that the grant of, or exercise by the State of its rights under, the State Security will not itself contravene, or constitute a Default Event under, the Franchisee Cooperation Agreement or entitle the Franchisee to exercise any right under it; and



- (d) **(liabilities and obligations)**: that nothing in the State Security will cause the State or a State Associate to assume any Liabilities or obligations under the Franchisee Cooperation Agreement except as may result from its own acts or omissions in exercising rights or in performing or failing to perform obligations under the Franchisee Cooperation Agreement as envisaged by this Deed.

3.2 By the Franchisee concerning the State's rights

- (a) **(State's rights)**: The Franchisee acknowledges the State's rights under clauses 16.3 (State's right to enter, inspect and test), 25 (Defects), 28.5 (Incidents), 41 (Step-in by the State), 44 (Events of Default) and 45 (Termination) of the Project Agreement.
- (b) **(Facilitation of rights)**: The Franchisee must exercise its rights under the Franchisee Cooperation Agreement in a way that facilitates the effective exercise by the State of the rights referred to in clause 3.2(a) and will on reasonable notice permit the State or a State Associate to have access to, and take copies of, the records, reports, documents and other papers to which the State is entitled to have access in accordance with the State's rights referred to in clause 3.2(a).
- (c) **(Continued performance)**: During the period in which the State is exercising a right referred to in clause 3.2(a), the State may, in accordance with the Project Agreement and the Franchisee Cooperation Agreement, require the suspension or the continuation of performance by the Franchisee of its obligations under the Franchisee Cooperation Agreement, and if it does so, the Franchisee will comply with this requirement and with all reasonable directions of the State in relation to the performance of the Franchisee Cooperation Agreement by the Franchisee during such period, provided that the State may not require the Franchisee to do, or omit to do, anything which may cause:
- (1) the Franchisee to be in breach of its obligations under its Operative Agreements;
 - (2) the Regulator to provide the Franchisee with a notice of non-conformance in relation to its Accreditation;
 - (3) the Regulator to provide the Franchisee with a statutory notice, infringement notice, notice imposing conditions on the Franchisee's accreditation or a notice requiring amendments to the Franchisee's Safety Management System;
 - (4) the Accreditation of the Franchisee to be suspended or cancelled; or
 - (5) the Franchisee to breach a term or condition of its Accreditation or the Rail Safety National Law.
- (d) **(State not liable)**: The requirement of the State that the Franchisee suspend or continue to perform its obligations under the Franchisee Cooperation Agreement and the giving of any direction under clause 3.2(c) by the State will not be construed as an assumption by the State of any obligations of the Franchisee under the Franchisee Cooperation Agreement.

3.3 By Project Co

Project Co is bound by, and must cooperate in the implementation of, this Deed. It acknowledges that this Deed is intended to benefit only the Franchisee and the State and does not in any way affect any obligation of Project Co under the Franchisee Cooperation Agreement or under any Project Document except as expressly set out herein.



3.4 Information

Project Co and the Franchisee each acknowledge and agree that:

- (a) **(information purpose):** any information, data and documents provided by the State or a State Associate in connection with this Deed:
 - (1) are provided for information purposes only and the State or a State Associates' Intellectual Property Rights therein remain the property of the State or the State Associates (as the case may be); and
 - (2) do not form part of this Deed or constitute an invitation, offer or recommendation by or on behalf of the State or a State Associate;
- (b) **(no Liability):** to the extent permitted by Law, none of the State or the State Associates will have any Liability to the Franchisee or any Franchisee Associate, nor will the Franchisee or any Franchisee Associate be entitled to make any Claim against the State, or seek, pursue or obtain an indemnity against or contribution to Liability from the State or a State Associate arising in connection with:
 - (1) the provision of, or purported reliance upon, or use of any information, data and documents referred to in clause 3.4(a) by the Franchisee, or any other person to whom such information is disclosed by the Franchisee, a Franchisee Associate or any person on behalf of the Franchisee or any Franchisee Associate;
 - (2) any reference to the State in the Franchisee Cooperation Agreement; or
 - (3) any review of, comments upon, acceptance, approval or certification of the form or substance of the Franchisee Cooperation Agreement by the State.

3.5 Franchisee Cooperation Agreement not to affect State rights

Project Co and the Franchisee each acknowledge and agree that:

- (a) **(risk of discrepancy):** as between the State (on the one hand) and Project Co (on the other hand), Project Co accepts and will bear the risk of any inconsistency, ambiguity or discrepancy between the terms of the Franchisee Cooperation Agreement and the Project Agreement; and
- (b) **(dealing directly with State):** the Franchisee does not have any right to deal directly with the State or participate in any meeting, consultation or process (including negotiation or dispute resolution) in relation to the Project unless:
 - (1) expressly provided to the contrary in the Franchisee's Operative Agreements, the Project Agreement, the Franchisee Cooperation Agreement or this Deed; or
 - (2) the State consents.

4 Undertakings of the Franchisee

The Franchisee undertakes to the State as follows:

- (a) **(no amendment without consent):** it will not, without first obtaining the consent of the State:



- (1) make or permit any amendment or replacement of or addition to;
 - (2) terminate, surrender, rescind or accept repudiation of;
 - (3) except in accordance with this Deed, permit the novation, assignment or substitution of any party's rights, obligations or interest in; or
 - (4) allow any express waiver of its material rights and obligations under, the Franchisee Cooperation Agreement, provided that the State will not withhold its consent to an amendment which is, corresponds to, or is equivalent to, an amendment to which the State has consented in accordance with the Project Agreement or is, corresponds to, or is equivalent to, an amendment which Project Co must, in accordance with an express requirement of the Project Agreement, consent to;
- (b) **(deed of accession):** it will not novate, assign or substitute any of its rights, obligations or interest in the Franchisee Cooperation Agreement other than where the Franchise Agreement is terminated or rescinded or comes to an end for any reason and the Franchisee is required to novate, assign or substitute any of its rights, obligations or interest in the Franchisee Cooperation Agreement to PTV or a Successor Operator.
- (c) **(inspections):** it will (when reasonably requested by the State):
- (1) provide the State, any of its Associates and other authorised personnel (including the Independent Reviewer) with:
 - (A) full access to the Franchisee Land as is necessary to enable the State to exercise its rights under clause 16.3(a) of the Project Agreement. In accessing the Franchisee Land under this clause 4(c)(1)(A), the State must, and must ensure its Associates and any authorised personnel must:
 - (I) comply with the Franchisee's Access Rules and any generally applicable safety and security requirements of the Franchisee;
 - (II) not unnecessarily interfere with the carrying out of the Project Activities; and
 - (III) not damage the Relevant Infrastructure or the Franchisee Land; and
 - (B) any other information, records or documents that the State or any of its Associates (acting reasonably) or the Independent Reviewer require in relation to the performance of the obligations under or compliance with the Franchisee Cooperation Agreement or any information required by the State to comply with requests from the Victorian Auditor-General; and
 - (2) to the extent provided in the Project Agreement, permit the State and any of its Associates to attend all tests and inspections to be carried out by the Franchisee in connection with the Project; and
- (d) **(Access to records):** at the request of the State (acting reasonably), the Franchisee will:
- (1) permit the State and any of its Associates to inspect all records, reports, plans, programs, specifications and technical documents prepared or kept by the Franchisee in relation to the performance of its obligations under the Franchisee Cooperation Agreement; and



- (2) supply the State and any of its Associates with a copy of any such report or document which they may require from time to time.

4A Obligations of the State

The State must:

- (a) procure that the Franchisee or any Successor Operator perform the security services under the Franchisee Cooperation Agreement so as to mitigate the likelihood of vandalism and graffiti of the Maintained Assets occurring;
- (b) procure that the Franchisee or any Successor Operator monitors CCTV systems including for the purpose of monitoring the security of the Maintained Assets; and
- (c) ensure that the Franchise Arrangements do not preclude the provision of CCTV footage to Project Co.

5 Review of and amendments to Interface Management Plans

- (a) **(State review of Interface Management Plans)**: The parties acknowledge that the Interface Management Plans developed under clause 12 of the Franchisee Cooperation Agreement, and any amendments or updates to the Interface Management Plans, must be submitted by Project Co to the State for review in accordance with the Review Procedures.
- (b) **(Current version to apply)**: Project Co and the Franchisee each acknowledge and agree that until such time as an update of an Interface Management Plan has been reviewed and approved (if applicable) in accordance with section 4.2 and 6.2 of the Review Procedures, the then current version of the Interface Management Plan will continue to apply.

6 Step-In by the State

6.1 Step-In Right

- (a) **(Exercise)**: If the State is entitled to exercise any of the rights referred to in clause 3.2 or otherwise as permitted under any Project Document, the State may:
 - (1) if permitted under the State Security and the Finance Direct Deed, appoint a Receiver over Project Co or any or all of its assets (including the Franchisee Cooperation Agreement);
 - (2) itself enter into possession of any or all of the assets of Project Co;
 - (3) take such other action as it is permitted to take under the terms of the Project Documents; or
 - (4) by notice to the Franchisee **(Additional Obligor Step-In Notice)**, procure that an Additional Obligor assumes jointly and severally with Project Co all of Project Co's rights and obligations under the Franchisee Cooperation Agreement,



(each a **Step-In Right**).

- (b) (**Step-In Period**): The period from the date on which the Franchisee receives notice of the exercise of any Step-In Right to the earliest of:
- (1) the Additional Obligor Step-Out Date;
 - (2) the date of any transfer under clause 7;
 - (3) the date which the State has notified the Franchisee will be the date that the State ceases to exercise its Step-In Rights; and
 - (4) any other date on which the State ceases to exercise its Step-In Rights,
- is the **Step-In Period**.
- (c) (**Acknowledgment**): The Franchisee acknowledges that the exercise by the State of a Step-In Right in the manner contemplated by this Deed will not of itself contravene the Franchisee Cooperation Agreement, or constitute a Default Event or entitle the Franchisee any right under the Franchisee Cooperation Agreement.

6.2 Step-In by the State

- (a) (**Rights**): Subject to the Finance Direct Deed, the State may at any time during a Step-In Period, exercise all or any of its rights and carry out all or any of the obligations of Project Co in connection with the Franchisee Cooperation Agreement, as if it were Project Co to the exclusion of Project Co.
- (b) (**No Liability**): Project Co and the Franchisee each agree that, subject to clause 6.3(b) and clause 6.2(c), neither the State nor any of its Associates will have any Liability, and neither Project Co nor the Franchisee will be entitled to make, continue or enforce any Claim against the State or any of its Associates arising in connection with the Franchisee Cooperation Agreement or this Deed by reason only of the State or any of its Associates exercising any of Project Co's rights, or performing any of Project Co's obligations under the Franchisee Cooperation Agreement other than, and then only to the extent of, Liability for fraudulent, reckless, unlawful or malicious acts or omissions, or wilful misconduct, of the State or any of its Associates.
- (c) (**Payment to Franchisee**): Where the State has exercised any Step-In Right as a consequence of any of the Step In Events:
- (1) contemplated by clauses 41.1(a)(1), 41.1(a)(2), 41.1(a)(3) or 41.1(a)(4) of the Project Agreement; or
 - (2) contemplated by clauses 41.1(a)(5), 41.1(a)(6), or 41.1(a)(7) of the Project Agreement to the extent that the Step-In Event was caused by a failure by Project Co to carry out the Project Activities in accordance with and to the standard specified in the PS&TR or by any other breach by Project Co of the Project Agreement or any fraudulent, reckless, unlawful, negligent or malicious act or omission of Project Co or any of its Associates,

the State will reimburse, or procure that PTV reimburses, the Franchisee for all costs reasonably incurred by the Franchisee in complying with its obligations under clause 3.2 and clause 22(b) of the Franchisee Cooperation Agreement, except where the Step-In Right is exercised by the State as a direct consequence of a breach by the Franchisee of its obligations under the Franchisee Cooperation Agreement.



6.3 Step-In using Additional Obligor

- (a) **(Assumption Date):** If clause 6.1(a)(4) applies, the Additional Obligor will become a party to the Franchisee Cooperation Agreement on the date on which the Additional Obligor Step-In Notice is given to the Franchisee or such later date as the Franchisee and the State may agree (**Assumption Date**).
- (b) **(Rights and obligations of Additional Obligor):** During a Step-In Period in respect of which the State has exercised a Step-In Right under clause 6.1(a)(4):
- (1) subject to clause 6.1(b)(2), the Additional Obligor will be jointly and severally:
 - (A) entitled with Project Co to exercise the rights of Project Co under the Franchisee Cooperation Agreement (excluding any accrued rights of Project Co in respect of any damage, loss, cost, charge, expense, outgoing or payment to the extent that the rights arose prior to the Assumption Date) (**Project Co's Rights**); and
 - (B) liable with Project Co for the performance or non-performance of all Project Co's obligations under the Franchisee Cooperation Agreement arising on or after the Assumption Date except as released in accordance with clause 6.3(e);
 - (2) as between Project Co, the Franchisee and the Additional Obligor, only the Additional Obligor is authorised to deal with the Franchisee and to exercise Project Co's Rights;
 - (3) Project Co acknowledges that it will be legally bound by all the acts and omissions of the Additional Obligor in so dealing with the Franchisee and in exercising Project Co's Rights;
 - (4) the Additional Obligor will be bound by any earlier decision, directions, approvals, notices or consents given or made prior to the Assumption Date;
 - (5) clause 12 will apply to the Franchisee and the Additional Obligor as if the address and email address of the Additional Obligor (as notified to the Franchisee and Project Co) were set out in addition to those of Project Co; and
 - (6) the Franchisee will owe its obligations under the Franchisee Cooperation Agreement to Project Co and the Additional Obligor jointly but the performance by the Franchisee in favour of either Project Co or the Additional Obligor will be a good discharge of the relevant obligations under the Franchisee Cooperation Agreement.
- (c) **(No Liability):** The Additional Obligor will have no obligation to, and no Liability in respect of, remedying any default or breach of Project Co under the Franchisee Cooperation Agreement arising prior to the Assumption Date.
- (d) **(Additional Obligor Step-Out Date):** The Additional Obligor may at any time give the Franchisee not less than 30 days' notice terminating the Additional Obligor's rights or obligations under the Franchisee Cooperation Agreement (without affecting the continuation of Project Co's obligations or liabilities towards the Franchisee under the Franchisee Cooperation Agreement). Such notice must specify the date on which it takes effect, which must be:
- (1) at least 30 days after the date of the notice; or



- (2) if a Novation Notice has been given, the Novation Notice Date,
(Additional Obligor Step-Out Date).
- (e) **(Release):** On and from the Additional Obligor Step-Out Date, as between the Franchisee and the Additional Obligor only, the Franchisee and the Additional Obligor will be released from all obligations under the Franchisee Cooperation Agreement (except for those obligations owed to each other which have arisen during the relevant Step-In Period), whether or not a Claim has been made in respect of those obligations or they have not fallen due to be performed or have not been performed. For the avoidance of doubt, on and from the Additional Obligor Step-Out Date, the Franchisee will continue to owe its obligations under the Franchisee Cooperation Agreement to:
 - (1) Project Co; or
 - (2) if a Novation Notice has been given, the Substitute Party.

6.4 Indemnity

Project Co must indemnify the State, its Associates and any Additional Obligor against any Claim or Liability (including any Claim made by, or Liability to, a third party) the State, any of its Associates or any Additional Obligor suffers or incurs arising in connection with taking any action under clause 6.2 or clause 6.3, except to the extent that such Claim or Liability is caused or contributed to by any of the events set out in clause 42.11 (Limits on Project Co liability to indemnify and release) of the Project Agreement.

7 State's option to novate to the State or third party

7.1 Option

- (a) **(Novation Notice):** The State may require a novation of the Franchisee Cooperation Agreement upon the termination of the Project Agreement, by giving a notice (**Novation Notice**) to the Franchisee. The Novation Notice must specify the person to whom the State intends to novate the Franchisee Cooperation Agreement whether this be the State or another person (**Substitute Party**).
- (b) **(Effect of Novation Notice):** If the State issues a Novation Notice then, until the Novation Notice Date, the Franchisee must continue to perform its obligations under the Franchisee Cooperation Agreement.
- (c) **(Acknowledgement):** The Franchisee acknowledges that the giving of a Novation Notice by the State will not of itself contravene, or constitute a Default Event under, the Franchisee Cooperation Agreement or entitle the Franchisee to exercise any power under it.

7.2 Novation to Substitute Party

- (a) **(Effect of novation):** Subject to clause 7.3, with effect from the Novation Notice Date:
 - (1) the Substitute Party will (and if the Substitute Party is not the State, the State will procure that the Substitute Party does) assume:
 - (A) any obligation of Project Co under the Franchisee Cooperation Agreement arising before the Novation Notice



Date insofar as it relates to the payment of an amount of money that:

- (I) is due and payable under the terms of the Franchisee Cooperation Agreement; and
 - (II) is not the subject of a dispute under the Franchisee Cooperation Agreement (or is the subject of a dispute under the Franchisee Cooperation Agreement in which case the Substitute Party will, on the determination of such dispute, assume such obligations in accordance with that determination); and
- (B) the obligations of Project Co under the Franchisee Cooperation Agreement arising on and from the Novation Notice Date (including in relation to payment of amounts for any obligations under the Franchisee Cooperation Agreement performed before the Novation Notice Date that become due and payable on or after the Novation Date notwithstanding that such amounts relate to work performed before the Novation Notice Date) subject to any amendments to the Franchisee Cooperation Agreement agreed in accordance with clause 7.2(a)(5);
- (2) subject to any amendments agreed to the Franchisee Cooperation Agreement in accordance with clause 7.2(a)(5), the Substitute Party will have all the rights of Project Co under the Franchisee Cooperation Agreement (excluding any accrued rights of Project Co in respect of any damage, loss, cost, charge, expense, outgoing or payment to the extent that those rights arose prior to the Novation Notice Date or are the subject of any unresolved dispute referred to in clause 7.2(a)(1)(A)(II));
- (3) subject to clause 7.2(a)(2) and any amendments agreed to the Franchisee Cooperation Agreement in accordance with clause 7.2(a)(5), the Franchisee will be:
- (A) bound by and must comply with the provisions of the Franchisee Cooperation Agreement binding on it for the benefit of the Substitute Party as if the Substitute Party were Project Co; and
 - (B) entitled to any extensions of time and other entitlements which accrued to the Franchisee prior to the Novation Notice Date;
- (4) Project Co is released from all of its obligations and Liabilities under the Franchisee Cooperation Agreement, excluding any accrued obligations or Liabilities of Project Co to the extent that those accrued obligations or Liabilities:
- (A) arose in connection with events occurring prior to the Novation Notice Date; and
 - (B) are not obligations and Liabilities assumed by the Substitute Party under clause 7.2(a)(1); and
- (5) the Franchisee and the Substitute Party will promptly negotiate in good faith any amendments to the Franchisee Cooperation Agreement that are necessary to reflect the termination of the Project Agreement.



- (b) **(No set off):** The Franchisee is not entitled to exercise any right of set off, deduction, abatement or counterclaim against the Substitute Party if, and to the extent that, such right arose prior to the Novation Notice Date.
- (c) **(Novation Deed):** Subject to clause 7.3(c), Project Co, the Franchisee and the Substitute Party must enter into an agreement, in form and substance reasonably requested by the Substitute Party, reflecting the novation of the Franchisee Cooperation Agreement as contemplated in clause 7.2(a).
- (d) **(Attorney):** For valuable consideration, Project Co and the Franchisee each irrevocably appoint the State, on its behalf and in its name or otherwise, as its attorney to do anything which Project Co or the Franchisee is obliged to do (but has not done within 5 Business Days of request) under clause 7.2(c). Each of Project Co and the Franchisee ratifies and confirms and agrees to ratify and confirm whatever any such attorney lawfully does in the exercise of the power of attorney in this clause 7.2(d).

7.3 Additional requirements where Substitute Party is not the State

- (a) **(Information to be provided by the State):** If the Novation Notice specifies that the Substitute Party is a person other than the State or a State Associate, the State must, at the time it gives the Novation Notice, provide to the Franchisee the following particulars of the Substitute Party:
 - (1) its name, place of incorporation and identity of shareholder(s) including, unless a shareholder is listed on a securities exchange, the ultimate shareholders; and
 - (2) if available, its most recent published audited accounts.
- (b) **(Consent by Franchisee):** A novation to, and the giving of a Novation Notice with respect to, a Substitute Party other than the State or a State Associate under this clause 7 will only be effective, and the Franchisee will only be required to enter into a novation agreement under clause 7.2(c), if the Franchisee consents to that novation (such consent not to be unreasonably withheld or delayed) or is deemed to have consented in accordance with clause 7.3(d).
- (c) **(Additional information):** The State must as soon as practicable supply the Franchisee with such additional information to that provided under clause 7.3(a) as the Franchisee reasonably requires to enable it to decide whether to grant consent under clause 7.3(b), and the Franchisee must consider such information expeditiously and inform the State promptly if it requires further information.
- (d) **(Deemed consent):** Unless the Franchisee notifies the State of its earlier consent or refusal to a novation, the Franchisee will be deemed to have consented to a novation to a Substitute Party other than the State or a State Associate if it has not notified the State under clause 7.3(e)(2) within 10 Business Days of the later of the receipt of the Novation Notice and the information required under clause 7.3(a) and clause 7.3(c).
- (e) **(Unreasonably withholding consent):** The Franchisee is not entitled to refuse consent to a novation to a Substitute Party other than the State or a State Associate unless:
 - (1) the grounds for refusal are reasonable and are based on:
 - (A) the proposed novation deed referred to in clause 7.2(c) for the Substitute Party to assume the rights and obligations of Project Co under the Franchisee Cooperation Agreement



- not being effective to substitute the Substitute Party for Project Co;
 - (B) the Substitute Party not having the legal capacity, power and authorisation to become a party to and perform the obligations of Project Co in accordance with the Franchisee Cooperation Agreement including any necessary authorisations and consents; or
 - (C) the Franchisee being placed in breach of any Laws by the proposed novation; and
- (2) it has notified the State of such reasons.
- (f) **(If the Franchisee withholds consent):** If the Franchisee withholds its consent to a Novation Notice under this clause 7.3, this will not prejudice the ability of the State to give one or more subsequent Novation Notices, and information under clause 7.3(a), containing changed particulars relating to the same Substitute Party or particulars relating to another Substitute Party.

7.4 Accrued obligations and liabilities

Clause 7.2 does not operate to:

- (a) **(State to assume obligations or Liabilities):** require the State to assume any obligations or Liabilities arising from, or which are required to be performed in connection with, the Franchisee Cooperation Agreement prior to the Novation Notice Date unless expressly required to do so in clause 7.2; or
- (b) **(release):** release Project Co from such obligations or Liabilities unless expressly provided for in clause 7.2.

8 Dispute Resolution

8.1 Procedure for resolving disputes

- (a) **(Procedure):** Any dispute arising under this Deed must be resolved by the parties to that dispute (**Disputing Parties**) in accordance with this clause 8 and clause 9.
- (b) **(Dispute resolution procedure):** The procedure that is to be followed to resolve a dispute is as follows:
 - (1) firstly, the dispute must be the subject of negotiation as required by clause 8.2;
 - (2) secondly, if the dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 8.2(c)(1) the Disputing Parties may agree that the dispute will be referred to an expert for determination under clauses 8.4 to 8.9 or to arbitration under clause 9; and
 - (3) thirdly, if:
 - (A) the Dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 8.2(c)(1) and irrespective of whether the Disputing Parties failed to meet as required by that clause or whether having so met the Disputing Parties failed to agree whether the



Dispute should be referred to an expert or to arbitration within 20 Business Days after the expiration of the period for negotiation referred to in clause 8.2(c)(1);

- (B) the dispute has been referred to expert determination and a determination is not made by the expert within 30 days after the expert's acceptance of appointment; or
- (C) the dispute is referred to expert determination and a notice of dissatisfaction is given under clause 8.6(a),

then the dispute must be referred to arbitration under clause 9.

(c) **(Rail Safety Directions):** The parties agree that where:

- (1) the Franchisee issues a direction under clause 11.8 of the Franchisee Cooperation Agreement, which requires the consent of the State under the Project Agreement in order for Project Co to implement the direction and such consent is not received within the timeframe specified in the Project Agreement; and
- (2) the Franchisee and Project Co cannot agree an appropriate course of action under clause 11.10(b)(3) of the Franchisee Cooperation Agreement and the State has not issued a Modification Order in response to notification from Project Co in accordance with clause 11.9(b) of the Franchisee Cooperation Agreement,

the matter will be a dispute to be resolved by the Franchisee, Project Co and the State under clause 8 and clause 9 of this Deed which matter may include resolution of whether the Franchisee was entitled to issue the relevant direction and whether the direction gives rise to a Modification under the Project Agreement.

To the extent it is determined under clause 8 and clause 9 of this Deed that:

- (3) the Franchisee was entitled to issue the relevant direction; and
- (4) the direction will give rise to a Modification under the Project Agreement,

the State must issue a Modification Order (which will reflect the restrictions on Project Co's entitlements set out in clause 38.9(k) of the Project Agreement).

8.2 Negotiation

- (a) **(Notification):** If a dispute arises then a party may give notice to each other party requesting that the dispute be referred for resolution by negotiation between the Chief Executive Officers (or equivalent) of the Disputing Parties (Representatives).
- (b) **(Contents of Notice):** A notice under clause 8.2(a) must:
 - (1) state that it is a notice under this clause 8; and
 - (2) include or be accompanied by particulars of the matters which are the subject of the dispute.
- (c) **(Attempt to resolve Dispute):** If a dispute is referred for resolution by negotiation under clause 8.2(a), then:
 - (1) the Representatives must meet and attempt in good faith to resolve the dispute (in whole or in part) within 10 Business Days of the date on which the notice under clause 8.2(a) is received (or such later date as the Disputing Parties may agree); and



- (2) any agreement reached between the Representatives will be reduced to writing, signed by or on behalf of each Disputing Party and will be contractually binding on the Disputing Parties.

8.3 Expert determination

If:

- (a) **(dispute unresolved by Representatives)**: a dispute which has been referred to the Representatives for negotiation in accordance with clause 8.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 8.2(c)(1); and
- (b) **(referral to expert)**: the Disputing Parties agree within 20 Business Days after the expiration of the period for negotiation referred to in clause 8.2(c)(1), that the dispute be referred to an expert for determination,

then those parts of the dispute which remain unresolved will be referred to an expert for determination under clauses 8.4 to 8.9. For the avoidance of doubt, a dispute may only be referred to an expert for determination by agreement of the Disputing Parties.

8.4 Selection of expert

- (a) **(Exchange of lists of 3 preferred experts)**: Within 7 Business Days after the date on which the Disputing Parties agree to refer a dispute to an expert for determination under clause 8.3, the Disputing Parties must exchange lists of 3 persons (in order of preference) who, if appointed, would satisfy the requirements of clause 8.4(d), from whom the expert is to be chosen.
- (b) **(Appointment of person who appears on both lists)**: Any person who appears on all lists exchanged under clause 8.4(a) will be appointed as the expert to determine a dispute and if more than one person appears on all lists, the person given the highest order of priority by the party who gave the notice under clause 8.2(a) will be appointed.
- (c) **(Appointment if no person appears on both lists)**: If no person appears on all lists, the party which gave the notice under clause 8.2(a) must procure:
 - (1) the president (or the senior non-executive officer, howsoever described) of the institute or governing body for the technical or professional discipline the subject of the relevant dispute to nominate the expert, having regard to, but not being bound by, those persons proposed by the Disputing Parties under clause 8.4(a); or
 - (2) if there is no governing body for the technical or professional discipline the subject of the relevant dispute or the Disputing Parties do not agree the technical or professional discipline relevant to the dispute or such governing body advises that it will not nominate an expert, the Australian Centre for International Commercial Arbitration to nominate a person to act as the expert, having regard to, but not being bound by, those persons proposed by the Disputing Parties under clause 8.4(a),within 7 Business Days of exchange of notices under clause 8.4(a).
- (d) **(Appropriate skills)**: It is the intention of the parties that the expert appointed to determine a dispute will be an independent person with appropriate skills having regard to the nature of the matters in dispute.



- (e) **(No entitlement to challenge appointment):** No Disputing Party will be entitled to challenge the appointment of an expert under this clause 8.4 on the basis that the expert does not satisfy the requirements of clause 8.4(d).
- (f) **(Not an arbitration agreement):** Any agreement for expert determination under this Deed will not constitute an arbitration agreement for the purposes of the *Commercial Arbitration Act 2011* (Vic).
- (g) **(Agreement):** Once an expert is appointed, the Disputing Parties must enter into an agreement with the expert on the terms of the Expert Determination Agreement or such other reasonable terms as the expert may require.

8.5 Rules of expert determination

The expert determination process will be administered, and the expert will be required to act, under the terms of the Expert Determination Agreement.

8.6 Expert finding

- (a) **(Notification):** The determination of the expert must be in writing and will be final and binding on the Disputing Parties unless, within 10 Business Days of receipt of the determination, a Disputing Party gives notice to each other Disputing Party of its dissatisfaction and intention to refer the matter to arbitration in accordance with clause 9.
- (b) **(Amendment to determination):** Upon submission by any Disputing Party, the expert may amend the determination to correct:
 - (1) a clerical mistake;
 - (2) an error from an accidental slip or omission;
 - (3) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
 - (4) a defect in form.

8.7 Liability of expert

- (a) **(Liability of expert):** The Disputing Parties agree:
 - (1) that the expert will not be Liable in connection with the expert determination, except in the case of fraud on the part of the expert; and
 - (2) to indemnify the expert against any Claim or Liability in connection with the expert determination, except in the case of fraud on the part of the expert, in which case a Claim may be made against him or her by any person who is party to the dispute.
- (b) **(Engagement):** The Disputing Parties will jointly engage the expert services in connection with the expert determination proceedings and each Disputing Party will seek a separate Tax Invoice equal to its share of the cost of the expert.

8.8 Costs

The Disputing Parties must:

- (a) **(own costs):** bear their own costs in connection with the expert determination proceedings; and



- (b) **(expert costs):** pay an equal portion of the costs of the expert.

8.9 Proportionate Liability

To the extent permitted by Law, the Expert will have no power to apply or to have regard to the provisions of any proportionate liability legislation which might in the absence of this clause 8.9, have applied to any dispute referred to the Expert in accordance with this clause 8.

9 Arbitration

9.1 Reference to Arbitration

- (a) **(Dispute):** If:
- (1) a dispute:
 - (A) which has been referred to the Disputing Parties' Representatives for negotiation in accordance with clause 8.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 8.2(c)(1); and
 - (B) the Disputing Parties do not agree to refer the dispute to an expert for determination; or
 - (2) in the case of a dispute which the Disputing Parties agree to refer to expert determination under clause 8.3:
 - (A) a determination is not made within 30 days of the expert's acceptance of the appointment; or
 - (B) a notice of dissatisfaction is given in accordance with clause 8.6,
- then any Disputing Party may notify the other Disputing Parties that it requires the dispute to be referred to arbitration.
- (b) **(Referral):** Upon receipt by a Disputing Party of a notice under clause 9.1(a), the dispute will be referred to arbitration.

9.2 Arbitration

- (a) **(ACICA Rules):** Arbitration in accordance with this clause 9 will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Rules) as current at the date the dispute is referred to arbitration and as otherwise set out in this clause 9, with this clause 9 having priority to the extent of any inconsistency.
- (b) **(Seat):** The seat of the arbitration will be Melbourne, Victoria.
- (c) **(Language):** The language of the arbitration will be English.

9.3 Appointment of arbitrator

The Disputing Parties will endeavour to agree on the arbitrator or arbitrators (if the parties agree to appoint three arbitrators), but if no such agreement is reached within 14



Business Days of the dispute being referred to arbitration in accordance with clause 9.1(b), the arbitrator or arbitrators will be appointed in accordance with the ACICA Rules.

9.4 General Principles for conduct of arbitration

- (a) **(Conduct of arbitration):** The Disputing Parties agree that:
- (1) they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any dispute;
 - (2) any arbitration conducted in accordance with this clause 9 will not necessarily mimic court proceedings of the seat of the arbitration or the place where hearings take place (if different), and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and
 - (3) in conducting the arbitration, the arbitrator must take into account the matters set out in clauses 9.4(a)(1) and 9.4(a)(2).
- (b) **(Evidence in writing):** All evidence in chief must be in writing unless otherwise ordered by the arbitrator.
- (c) **(Evidence and discovery):** The rules for evidence and discovery will be the IBA Rules on the Taking of Evidence in International Arbitration current at the date of arbitration (or if there are no current rules, the most recent version of those rules).
- (d) **(Oral hearing):** The oral hearing must be conducted as follows:
- (1) any oral hearing must take place in Melbourne, Victoria and all outstanding issues must be addressed at the oral hearing;
 - (2) the date and duration of the oral hearing must be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in clause 9.4(a) when determining the duration of the oral hearing;
 - (3) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
 - (4) the oral hearing must be conducted on a stop clock basis with the effect that the time available to the Disputing Parties must be split equally between the Disputing Parties so that each party has the same time to conduct its case unless, in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the Disputing Parties;
 - (5) not less than 28 days prior to the date fixed for oral hearing each of the Disputing Parties must give notice of those witnesses (both factual and expert) of each other Disputing Party that it wishes to attend the hearing for cross examination;
 - (6) in exceptional circumstances the arbitrator may amend the date of hearing and extend the time for the oral hearing set in accordance with clause 9.4(d)(2);
 - (7) a Disputing Party will not be bound to accept the written evidence of a witness submitted on behalf of an opposing Disputing Party which is not challenged in cross examination; and
 - (8) each Disputing Party is expected to put its case on significant issues in cross examination of a relevant witness called by the other Disputing Party or, where it seeks to challenge the evidence of a



witness not called for cross-examination by reference to other evidence, to identify that evidence in its written opening submissions so that the other Disputing Party may know the nature of and basis for the challenge to the witness' written evidence.

- (e) **(Experts):** Unless otherwise ordered each Disputing Party may only rely upon one expert witness in connection with any recognised area of specialisation.

9.5 Proportionate liability

To the extent permitted by Law, the arbitrator will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this clause 9.5, have applied to any dispute referred to arbitration in accordance with this clause 9.

9.6 Extension of ambit of arbitration proceedings

- (a) **(Extending Disputes):** Where:
- (1) a dispute between the Disputing Parties to this Deed is referred to arbitration in accordance with this clause 9; and
 - (2) there is some other dispute also between the Disputing Parties to and in accordance with this Deed (whenever occurring),
- the arbitrator may, upon application being made to the arbitrator by one or more of the Disputing Parties at any time before a final award is made in relation to the first-mentioned dispute, make an order directing that the arbitration be extended so as to include the other dispute.
- (b) **(Arbitrator's order):** An arbitrator may make an order in accordance with clause 9.6(a) on such terms and conditions (if any) as the arbitrator thinks fit.

9.7 Award final and binding

- (a) **(Final and binding):** Subject to clause 9.7(b), any award will be final and binding on the Disputing Parties.
- (b) **(Appeal):** Each Disputing Party consents to any appeal to a court where that appeal is made under the *Commercial Arbitration Act 2011* (Vic) on a question of law arising in connection with an arbitral award made in accordance with this clause 9.

9.8 Continue to perform

Notwithstanding the existence of a dispute, each Disputing Party must continue to carry out its obligations in accordance with this Deed.

9.9 Governing law of arbitration agreement

The Law governing this arbitration agreement is the law of Victoria, Australia.

9.10 Interlocutory relief

This clause 9 does not prevent a Disputing Party from seeking urgent interlocutory relief from a court of competent jurisdiction where, in that Disputing Party's reasonable opinion, that action is necessary to protect that Disputing Party's rights.



10 Termination of this Deed

- (a) **(Satisfaction of obligations under the Franchisee Cooperation Agreement):** This Deed will terminate upon the performance and satisfaction of all of the obligations under the Franchisee Cooperation Agreement.
- (b) **(Does not affect rights of parties):** The termination of this Deed does not affect the rights of any party which have accrued to that party before the date of termination.

11 Goods and Services Tax (GST)

- (a) **(GST exclusive amounts):** Unless otherwise expressly stated, all amounts referred to in this Deed or any Project Document are exclusive of GST.
- (b) **(GST payable by Supplier):** If GST becomes payable on any Taxable Supply made by a party (**Supplier**) under or in connection with this Deed:
 - (1) any amount payable or consideration to be provided in accordance with any other provision of this Deed for that supply (**Agreed Amount**) is exclusive of GST;
 - (2) an additional amount will be payable by the party which is the recipient of the Taxable Supply (**Recipient**), equal to the amount of GST payable on that Taxable Supply as calculated by the Supplier in accordance with the GST Law, which will be payable at the same time and in the same manner as for the Agreed Amount; and
 - (3) the Supplier will provide a Tax Invoice to the Recipient in connection with that supply, either at the time expressly set out in any other provision of this Deed or no later than the time at which the Agreed Amount for that Taxable Supply is to be provided in accordance with this Deed. The Recipient is not obliged to pay any amount in accordance with this clause 11(b) unless and until a Tax Invoice is received by the Recipient in connection with the Taxable Supply except where the Recipient is required to issue the Tax Invoice.
- (c) **(Variation in GST payable):** If for any reason, the GST payable by the Supplier in connection with a supply it makes under or in connection with this Deed (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it received from the Recipient under clause 11(b) in connection with that supply, the Supplier will provide a refund or credit to, or will be entitled to receive from, the Recipient (as appropriate) the amount of this variation. Where an adjustment event occurs in relation to a supply and except where the Recipient is required to issue the Adjustment Note:
 - (1) the Supplier will issue an Adjustment Note to the Recipient in connection with that supply within 14 days after becoming aware of that adjustment event occurring; and
 - (2) no additional amount will be payable by the Recipient unless and until an Adjustment Note is received by the Recipient.
- (d) **(GST ceasing to be payable):** No amount is payable by a party in accordance with clause 11(b) or 11(c) to the extent that the GST to which the amount



relates has ceased to be payable by or refundable to the Supplier by the Commissioner of Taxation under the GST Law.

- (e) **(GST ceasing to be payable):** If the Recipient is dissatisfied with any calculation to be made by the Supplier in accordance with this clause 11 the Recipient may, at its own expense and after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the President of the Institute of Chartered Accountants for expert determination, which will be final and binding on all parties (except in the case of manifest error on the face of the expert determination). The expert will act as an expert and not as an arbitrator and must take into account the terms of this Deed, the matters required to be taken into account by the Supplier in accordance with this clause 11 and any other matter considered by the expert to be relevant to the determination. The parties release the expert from any liability in acting as an expert, except in the case of fraud on the part of the expert.
- (f) **(Revenue net of GST):** Any reference in this Deed to price, value, sales, revenue, profit or a similar amount (**Revenue**), is a reference to the GST exclusive component of that Revenue, unless the contrary intention is expressed.
- (g) **(Cost net of GST):** Any reference in this Deed to cost, expense, liability or other similar amount (**Cost**) of a party, is a reference to that Cost reduced by the Input Tax Credits to which the party is entitled in respect of such Cost, unless the contrary intention is expressed.
- (h) **(General obligation):** Each party agrees to do all things, including providing Tax Invoices and other documentation, that may be necessary or desirable to enable or assist the other party in determining its GST payable on any supply made by that other party in connection with this Deed, or any input tax credits, adjustments or refunds in relation to any amount of GST paid or payable in connection with any supply made in connection with this Deed.
- (i) **(GST Groups):** For the purposes of this Deed, a reference to GST payable on a Taxable Supply made by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member and a reference to an input tax credit entitlement of a party includes any corresponding input tax credit entitlement of the representative member of any GST group of which that party is a member.
- (j) **(Project Agreement to prevail):** If clause 59 (Taxes) of the Project Agreement would apply in respect of a Taxable Supply to which this clause 11 also applies then clause 59 (Taxes) of the Project Agreement will apply in respect of that supply and the provisions of this clause 11 (but for this clause 11(j)) will not apply.
- (k) **(Definitions):** In this clause 11 unless otherwise defined in this Deed, terms used have the meanings given to them in the GST Law.

12 Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Deed:

- (a) **(In writing):** must be in writing;
- (b) **(Addressed):** must be addressed as set out below (or as otherwise notified by that party to each other party from time to time);



State:

Attention: [not disclosed]

[not disclosed]

Address: [not disclosed]

Email: [\[not disclosed\]](#)

Project Co:

Attention: [not disclosed]

Address: [not disclosed]

Email: [not disclosed]

Franchisee:

Attention: [not disclosed]

Address: [not disclosed]

Email: [not disclosed]

- (c) **(Signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(Form of delivery)**: must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by the parties) to the email address of the addressee set out in clause 12(b); and
- (e) **(Taken to be received)**: are taken to be received by the addressee at the address set out in clause 12(b):
- (1) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
 - (2) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and
 - (3) in the case of email, the first to occur of:
 - (A) receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - (B) the time that the communication enters an information system which is under the control of the addressee; or
 - (C) the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day.



13 Confidential Information and disclosure

13.1 Confidential Information and disclosure by the State

The Franchisee acknowledges and agrees that:

- (a) **(Public Disclosure Obligations):** the State or any Authority may disclose any information in connection with the Project (including any Confidential Information) in accordance with its Public Disclosure Obligations and the Franchisee must use all reasonable endeavours to assist the State or an Authority in meeting its Public Disclosure Obligations;
- (b) **(Other purposes):** the State or any Authority may disclose any information in connection with the Project (including any Confidential Information) in connection with:
 - (1) any Re-franchising; and
 - (2) the requirements of the State Project Documents (including any tender process required to be conducted under the Termination Payments Schedule, or Change Compensation Principles);
- (c) **(State's rights):** subject to clause 13.1(d), in meeting its Public Disclosure Obligations or as otherwise considered necessary by the State, the State may publish, disclose or make generally available each Project Document on a Victorian Government website; and
- (d) **(Commercially sensitive information):** the State will not publish, disclose or otherwise make generally available the information which is specified in the Confidential Information Schedule (including the Financial Model), except if required to do so to comply with the Public Disclosure Obligations or as required under clause 13.1(b); and
- (e) **(Exercise of licence):** nothing in this Deed prevents the State and any sublicensees using or disclosing any information (including Confidential Information) to the extent necessary or desirable for, or in connection with, the exercise of any licence granted under clause 56 (Intellectual Property Rights) of the Project Agreement.

13.2 Confidential Information and disclosure by Project Co and the Franchisee

- (a) **(Confidentiality obligation):** Subject to clause 13.2(b), Project Co and the Franchisee must treat as secret and confidential all Confidential Information in connection with this Deed and any other Project Document.
- (b) **(Disclosure of Confidential Information):** Without limiting Project Co's and the Franchisee's obligations under clause 13.2(a) and subject to clause 13.2(c), Project Co and the Franchisee may disclose Confidential Information to:
 - (1) in the case of Project Co, in accordance with and subject to clause 57 of the Project Agreement; and
 - (2) in the case of the Franchisee, its Associates and to the counterparties to its Operative Agreements to the extent necessary for the purpose of performing its obligations under this Deed and under its Operative Agreements.
- (c) **(Confidentiality deed):** Before disclosing any Confidential Information, Project Co or the Franchisee (whichever is disclosing the Confidential Information) must



ensure that the person to whom the information is disclosed enters into a confidentiality deed with Project Co or the Franchisee (whichever is disclosing the Confidential Information) on terms reasonably acceptable to the State.

13.3 Disclosure by the Franchisee

- (a) **(Franchisee's disclosure obligations):** Subject to clause 13.3(b), the Franchisee must:
- (1) not make any public disclosures, announcements or statements in relation to the Project or the State's or any of the State's Associates' or the Franchisee's involvement in the Project without the State's prior consent;
 - (2) comply with any terms and conditions the State imposes and must use all reasonable endeavours to agree with the State the wording and timing of all public disclosures, announcements or statements by it or any of its Associates relating to the Project or the State's or any of the State's Associates' or the Franchisee's involvement in the Project before the relevant disclosure, announcement or statement is made; and
 - (3) as soon as practicable, give to the State a copy of any public disclosure, announcement or statement agreed to or approved by the State in accordance with this clause 13.3(a) or for which the State's consent or approval was not required in accordance with clause 13.3(b).
- (b) **(Permitted disclosure):** For the purposes of clause 13.3(a), the Franchisee will not be required to obtain the State's consent or approval to the extent that any disclosure, announcement or statement is:
- (1) made in the ordinary course of the Franchisee performing its obligations under its Operative Agreements;
 - (2) required by Law, provided that it:
 - (A) notifies the State of the requirement to make that disclosure; and
 - (B) takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;
 - (3) required to obtain legal or other advice from its advisers;
 - (4) required to be made to a court in the course of proceedings to which the Franchisee is a party;
 - (5) required by a relevant stock exchange, subject to:
 - (A) such disclosure, announcement or statement not referring to the State's or any of its Associates' or the Franchisee's involvement in the Project; and
 - (B) the Franchisee having used all reasonable endeavours to obtain the State's consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant stock exchange; or
 - (6) made in accordance with clause 21.3(c) of the Franchisee Cooperation Agreement.



14 Return of documents

The Franchisee must return to the State copies of all plans, drawings, specifications and other like documents which come into its possession for the purpose of the Franchisee Cooperation Agreement or this Deed at the expiration of the Franchisee Cooperation Agreement, other than any documents which the Franchisee requires for the purposes of:

- (a) maintaining and complying with its Accreditation;
- (b) complying with all conditions of its Accreditation and all obligations of accredited persons under the Rail Safety National Law;
- (c) complying with its obligations under its Operative Agreements; and
- (d) operating the Franchise Business.

15 Intellectual Property

15.1 Grant of licence

The Franchisee:

- (a) **(grant of licence)**: grants to the State;
- (b) **(grant of licence)**: without limiting the Franchisee's obligations under clause 15.3, must procure that each of its Associates legally entitled to do so grants to the State (with effect from the date the relevant Franchisee Intellectual Property Rights come into existence); and
- (c) **(all things necessary)**: must do all things necessary to give effect to the grant to the State of,

a world-wide, perpetual, irrevocable, non-exclusive, transferable, royalty-free licence (including the right to sub-license) to use, reproduce, modify, adapt, develop, communicate to the public or otherwise exploit the Franchisee Material, and to exercise all or any of the Franchisee Intellectual Property Rights, for the purposes of:

- (d) **(Project)**: the Project (including, where the Project Agreement is terminated for any reason other than for convenience under clause 45.2 of the Project Agreement), to complete any Project Activities which have not been:
 - (1) carried out; or
 - (2) carried out in accordance with the applicable State Project Documents,as at the date of termination of the Project Agreement);
- (e) **(Project Documents)**: the exercise of the rights of the State or its Associates in accordance with the Project Documents (including its step-in rights in accordance with clause 41 of the Project Agreement);
- (f) **(Franchisee Material)**: the procurement, design, supply, construction, installation, production, commissioning, completion, operation, maintenance, repair and alteration of:
 - (1) the Franchisee Material (to the extent that it relates to the Returned Train Works) on and from Handback; and



- (2) the Franchisee Material or the Relevant Infrastructure on and from the Expiry Date; and
- (g) **(interfaces)**: the procurement, design, supply, construction, installation, production, commissioning, completion, operation, maintenance, repair and alteration of any thing (including infrastructure, equipment, computer hardware, computer software and computer or telecommunications systems) which interfaces or interoperates with, or is located (in whole or in part) under, on or above the Franchisee Materials, the Relevant Infrastructure or the Returned Train Works during and after the Term, but only to the extent the use or exercise of the Franchisee Intellectual Property Rights is required to enable the proper procurement, design, supply, construction, installation, production, commissioning, completion, operation, maintenance, repair or alteration of that thing.

15.2 Franchisee Material, Relevant Infrastructure and Returned Assets

Without limiting the Franchisee's other obligations under this Deed with respect to the delivery of any Franchisee Material, the Franchisee will provide, and procure that its Associates provide, all documentation, information and assistance and materials as the State may reasonably require for the State's:

- (a) use and enjoyment of the Franchisee Material; or
 - (b) use and exercise of the Franchisee Intellectual Property Rights,
- in connection with the Project Agreement.

15.3 Moral rights

If the Franchisee, in the course of carrying out its obligations under this Deed or under the Franchisee Cooperation Agreement, makes use of any work or other subject matter in which copyright subsists (**Material**), the Franchisee must procure from every person (including any officer, employee, agent, consultant or a Franchisee Subcontractor or any of its Associates) who is an author of that Material a consent which is valid and effective under the *Copyright Act 1968* (Cth) and signed by that person by which (to the maximum extent permitted by Law) that person irrevocably and unconditionally consents to the State, any of its Associates and any person nominated or authorised by the State (including sub-licensees), Project Co and its Associates, the Franchisee and its Associates and any person authorised to do acts comprised in the copyright (**Beneficiaries**):

- (a) **(exercise of rights)**: using, disclosing, reproducing, transmitting, exhibiting, communicating, adapting, publishing or otherwise exercising its rights in relation to the Material anywhere in the world in whatever form any of the Beneficiaries thinks fit (including the making of any distortions, additions or alterations to the Material or any adaptation thereof, or to any part of the Material or of any adaptation of the Material in a manner which, but for the consent, infringes or may infringe that person's Moral Rights in the Material); and
- (b) **(no identification)**: using, disclosing, reproducing, transmitting, exhibiting, communicating, adapting, publishing or otherwise exercising its rights in relation to the Material or any adaptation thereof (or any part of the Material or of any such adaptation) anywhere in the world without making any identification of that person in relation to the Material.



15.4 Third Party Materials

- (a) **(Application of Third Party Intellectual Property Rights):** Clauses 15.1 and 15.3 of this Deed will not apply to any Intellectual Property Rights that are Third Party Intellectual Property Rights if, and only to the extent that:
- (1) the material the subject of the relevant Intellectual Property Rights (the **Third Party Material**) is generally commercially available on reasonable commercial terms;
 - (2) the Franchisee and its Associates have been unable (despite their reasonable endeavours) to procure from the relevant third party the right to grant the licences in clauses 15.1 and 15.3 of this Deed in respect of that Third Party Material;
 - (3) the Franchisee has notified the State that it has been unable to procure the necessary licence rights for that Third Party Material;
 - (4) the Franchisee has used reasonable endeavours to procure a licence for the State and Project Co in respect of that Third Party Material (whether from the Franchisee or the relevant third party) on terms as close as possible to the terms of clauses 15.1 and 15.3 of this Deed, and has notified the State and Project Co of those terms; and
 - (5) the State has given its approval to the Third Party Material being excluded from the subject matter of the licenses granted in clauses 15.1 and 15.3 of this Deed. This approval may be given at the State's sole discretion, and is subject to such conditions as the State sees fit.
- (b) **(No State approval):** The State not giving its approval in accordance with clause 15.4(a)(5) will not relieve the Franchisee from any of its obligations under this Deed or the Franchisee Cooperation Agreement.
- (c) **(State withdraws approval):** If the State has reasonable grounds to withdraw, and the State or Project Co notifies the Franchisee that the State has withdrawn, its approval under this clause 15.4 in respect of any Third Party Material, the Franchisee must use its reasonable endeavours to immediately procure for the State and Project Co from the relevant third party (or parties), at the Franchisee's sole cost and expense, all licences necessary under the terms of this Deed in respect of that Third Party Material.
- (d) **(Procurement of licences to Third Party Material):** If the State approves certain Third Party Material being excluded from the subject matter of the licenses granted in clauses 15.1 and 15.3 of this Deed and instead being licensed to the State and Project Co on certain terms notified under clause 15.4(a)(5), the Franchisee must immediately grant to the State and Project Co or procure from the relevant third party a licence for the State and Project Co (as the case may be) on those terms.

15.5 Indemnities

- (a) **(Intellectual Property Rights, Moral Rights or other rights):** The Franchisee must indemnify the Indemnified Persons (IP) against any Claim or Liability brought against, suffered or incurred by the Indemnified Persons (IP) arising in connection with any infringement, violation, alleged infringement or alleged violation by the Franchisee or any of its Associates or any Indemnified Person (IP) of any Franchisee Intellectual Property Rights, Moral Rights or other rights of any person or any Liability which any one or more of the Indemnified Persons (IP) may have to pay compensation (including any royalty) to a third party or make any attribution or acknowledgement or rectification in relation to any



Franchisee Intellectual Property Rights or any Franchisee Material in connection with:

- (1) the Project; and
 - (2) in the case of the Indemnified Persons (IP):
 - (A) using or enjoying the Franchisee Material in connection with the Project Agreement or this Deed; or
 - (B) using or exercising the Franchisee Intellectual Property Rights in the manner authorised by the Project Agreement and this Deed.
- (b) **(Indemnities under this clause 15.5):** In relation to any Claim or Liability for which an Indemnified Person (IP) seeks to be indemnified under clause 15.5(a):
- (1) the Franchisee may (subject to the Franchisee confirming to the State that the Claim or Liability is the subject of the indemnity in clause 15.5(a)) conduct any defence or settlement in any such Claim or in relation to any such Liability, provided that the Franchisee:
 - (A) keeps the State informed of all material steps in relation to the conduct of any defence or settlement;
 - (B) consults with, and complies with all reasonable requirements of, the State in relation to such defence or settlement including complying with the Model Litigant Guidelines; and
 - (C) ensures that no settlement is made on terms which involve any admission of liability on the part of any Indemnified Person (IP) without the prior consent of that Indemnified Person (IP);
 - (2) the State must use reasonable endeavours to ensure Indemnified Persons (IP) provide all cooperation reasonably required by the Franchisee in relation to such defence; and
 - (3) to the extent that the Claim or enjoyment or Liability under clause 15.5(a) comes to the attention of the State before it comes to the attention of the Franchisee and the State notifies Project Co under the Project Agreement, Project Co must also notify the Franchisee of the Claim or enjoyment or Liability.
- (c) **(Interference with use or enjoyment of Franchisee Material):** If a Claim or Liability referred to in clause 15.5(a) substantially interferes with the use or enjoyment by an Indemnified Person (IP) of any Franchisee Material or the use or exercise of the Franchisee Intellectual Property Rights, or the State reasonably believes, in consultation with the Project Co and the Franchisee, that such Claim or Liability may substantially interfere with such use or enjoyment, the Franchisee will (at the State's option, as notified by Project Co to the Franchisee, and without limiting any of the State's other rights under any Project Document):
- (1) replace the Franchisee Material or the subject matter of the relevant Franchisee Intellectual Property Right, without additional charge, with a non-infringing product or service of at least equivalent functionality and performance and which otherwise meets all relevant requirements for that Franchisee Material in accordance with this Deed;
 - (2) modify the Franchisee Material or the subject matter of the relevant Franchisee Intellectual Property Right to overcome the infringement without additional charge and without materially impeding functionality



or performance or rendering it non-compliant with any relevant requirements for that Franchisee Material in accordance with this Deed; or

- (3) obtain a licence for the Indemnified Persons (IP) to continue use and enjoyment of the Franchisee Material or the subject matter of the relevant Franchisee Intellectual Property Right in accordance with the licence granted under clause 15.1 and pay any additional fee required for such licence.
- (d) **(Intellectual Property Rights):** Neither:
 - (1) the State's rights, whether under the Project Agreement or otherwise according to Law; nor
 - (2) the Franchisee's liabilities or obligations, whether under this Deed or otherwise according to Law,in connection with Intellectual Property Rights, will be limited by the terms of this clause 15.5.
- (e) **(Indemnified Persons (IP)):** For the purposes of this clause 15.5, the Indemnified Persons (IP) are each of:
 - (1) the State;
 - (2) the State's Associates; and
 - (3) any person nominated or authorised by the State (including the respective sub-licensees of the State and its Associates) to use any Intellectual Property Rights.

15.6 Release

Without limiting Project Co's rights and the Franchisee's obligations and Liabilities under the Franchisee Cooperation Agreement, neither Project Co nor its Associates is entitled to make any Claim against the Franchisee and Project Co releases and must procure that each of its Associates release, the Franchisee from any Liability or Claim arising out of a breach by the Franchisee of clause 15.3 or clause 15.4 of this Deed.

16 Miscellaneous

16.1 Governing Law and jurisdiction

- (a) **(Governing Law):** This Deed is governed by, and must be construed according to, the Laws of Victoria, Australia.
- (b) **(Jurisdiction):** Without limiting clauses 8 to 9, each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Deed.

16.2 Entire agreement

To the extent permitted by Law and in relation to its subject matter, this Deed:

- (a) **(Entire understanding):** embodies the entire understanding of the parties and constitutes the entire terms agreed by the parties; and



- (b) **(Prior agreements):** supersedes any prior agreement of the parties.

16.3 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to the parties) required by Law or reasonably requested by another party to give effect to this Deed.

16.4 Survival of certain provisions

- (a) **(Surviving clauses):** All provisions of this Deed which, expressly or by implication from their nature, are intended to survive the rescission, termination or expiration of this Deed will survive the rescission, termination or expiration of this Deed, including any provisions in connection with:
- (1) the State's rights to set-off and recover money;
 - (2) confidentiality or privacy;
 - (3) Intellectual Property Rights;
 - (4) any obligation to make any information and records available to the State;
 - (5) any indemnity or financial security given in accordance with this Deed;
or
 - (6) any right or obligation arising on termination of this Deed.
- (b) **(Interpretation):** No provision of this Deed which is expressed to survive the rescission, termination or expiration of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the rescission, termination or expiration of this Deed.
- (c) **(Survival of rights and obligations):** No right or obligation of any party will merge on completion of any transaction under this Deed. All rights and obligations in accordance with this Deed survive the execution and delivery of any transfer or other document which implements any transaction in accordance with this Deed.

16.5 Waiver

- (a) **(Writing):** A waiver given by a party in accordance with this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver):** A failure to, a delay in or the partial exercise or enforcement of a right provided by Law or in accordance with this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or in accordance with this Deed.
- (c) **(No waiver of another breach):** No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.



16.6 Consents, approvals and directions

- (a) **(State):** A consent or approval required in accordance with this Deed from the State may be given or withheld, or may be given subject to any conditions, as the State thinks fit, unless this Deed expressly provides otherwise.
- (b) **(Project Co or Franchisee):** A consent or approval required in accordance with this Deed from Project Co or the Franchisee may not be unreasonably withheld or delayed, unless this Deed expressly provides otherwise.

16.7 Amendments

Except as otherwise expressly provided in this Deed, this Deed may only be varied by a deed executed by or on behalf of each party.

16.8 Expenses

Except as otherwise expressly provided in this Deed (or as between the State and Project Co in the Project Agreement) each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

16.9 Severance

If, at any time, a provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this Deed; or
- (b) that provision under the Law of any other jurisdiction.

16.10 Counterparts

This Deed may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same agreement.

16.11 Moratorium legislation

To the fullest extent permitted by Law, the provisions of all Laws which operate to lessen or affect in favour of a party other than the State any obligation under this Deed, or to prejudicially affect the exercise by the State of any right, power or remedy under this Deed or otherwise, are expressly waived.

16.12 Proportionate liability

- (a) **(Excluded operation of Wrongs Act):** The operation of Part IVAA of the *Wrongs Act 1958* (Vic) is excluded in relation to all and any rights, obligations or liabilities of either party under this Deed whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) **(Rights, obligations and liabilities):** Without limiting clause 16.12(a), the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Deed and not otherwise, whether



such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

16.13 Indemnity held on trust

- (a) **(Benefit of indemnities):** The State holds on trust for its Associates the benefit of:
 - (1) each indemnity, promise and release given by Project Co or the Franchisee under this Deed in favour of the State's Associates; and
 - (2) each right in this Deed to the extent that such right is expressly provided to be for the benefit of the State's Associates.
- (b) **(Project Co and Franchisee acknowledgement):** Project Co and the Franchisee acknowledge the existence of such trusts and consent to:
 - (1) the State exercising rights in relation to, or otherwise enforcing such indemnities, releases and rights on behalf of its Associates; and
 - (2) the State's Associates exercising rights in relation to, or otherwise enforcing the indemnities, releases and those rights as if they were a party to this Deed.
- (c) **(Consent not required):** The parties agree that the State does not require the consent of its Associates to amend or waive any provision of any Project Document.

16.14 Assignment

Except as expressly contemplated by this Deed, neither Project Co nor the Franchisee may assign or transfer any of its rights or obligations under this Deed or the Franchisee Cooperation Agreement.

16.15 Set off

Without limiting the State's rights under the Project Agreement, all moneys which the State may pay or incur and for which Project Co is liable under the terms of the Project Agreement or in respect of which it is under this Deed liable to make reimbursement to or indemnify the State, may be deducted by the State from all moneys due, becoming due or to become due from it to Project Co under the Project Agreement or may be recovered from Project Co by action at Law or otherwise.



Signing page

Executed as a deed

State

Signed sealed and delivered by
**the Honourable Jacinta Allan
MP, in her capacity as the
Minister for Public Transport,
on behalf of the Crown in right
of the State of Victoria** in the
presence of

sign here ► [not disclosed] _____
Witness

[not disclosed] _____
Signature of Minister

print name [not disclosed] _____

CY Partner 1

Signed sealed and delivered for
[not disclosed]
by its attorneys

sign here ► [not disclosed] _____
Attorney

[not disclosed] _____
Attorney

print name [not disclosed] _____

[not disclosed] _____

in the presence of

sign here ► [not disclosed] _____
Witness

[not disclosed] _____
Witness

print name [not disclosed] _____

[not disclosed] _____



CY Partner 2

Signed sealed and delivered for
[not disclosed]
by its attorney

in the presence of

sign here ► [not disclosed]
Attorney

sign here ► [not disclosed]
Witness

print name [not disclosed]

print name [not disclosed]

CY Partner 3

Signed sealed and delivered for
[not disclosed]
by its attorney

in the presence of

sign here ► [not disclosed]
Attorney

sign here ► [not disclosed]
Witness

print name [not disclosed]

print name [not disclosed]

CY Partner 4

Signed sealed and delivered for
[not disclosed]
by its attorney

in the presence of

sign here ► [not disclosed]
Attorney

sign here ► [not disclosed]
Witness

print name [not disclosed]

print name [not disclosed]

**Signed sealed and delivered for Metro Trains
Melbourne Pty Ltd ACN 136 429 948 under a
Power of Attorney dated
[not disclosed]**

[not disclosed]

Signature of Witness

Signature of Attorney who declares that the Attorney
has not received any notice of the revocation of the
Power of Attorney
[not disclosed]

[not disclosed]

Full name of Witness

Full name of Attorney



HERBERT
SMITH
FREEHILLS



HERBERT
SMITH
FREEHILLS

Execution Version

Metro Tunnel
Tunnel and Stations PPP

FCA (Tram) Direct Deed

The Minister for Public Transport on behalf of the
Crown in right of the State of Victoria

Cross Yarra Partnership

KDR Victoria Pty Ltd



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HERBERT
SMITH
FREEHILLS

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Signing page

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FCA (Tram) Direct Deed

Date ►

Between the parties

State **The Minister for Public Transport on behalf of the Crown in right of the State of Victoria**

Project Co

- 1 [not disclosed];
- 2 [not disclosed];
- 3 [not disclosed]; and
- 4 [not disclosed],

(together, **Cross Yarra Partnership**) (ABN 57 956 065 885) of Level 8, 136 Exhibition Street, Melbourne, VIC 3000, Australia.

Franchisee **KDR Victoria Pty Ltd**
ACN 138 066 074 of Level 3, 555 Bourke Street, Melbourne, Victoria 3000

Recitals

- 1 The background to the Project is set out in the Project Agreement.
- 2 Project Co and the Franchisee are or will become parties to the Franchisee Cooperation Agreement.
- 3 The Franchisee has agreed to grant to the State certain rights in relation to the Franchisee Cooperation Agreement.

This deed witnesses as follows:



1 Definitions and interpretation

1.1 Project Agreement definitions

Unless otherwise expressly defined, expressions used in this Deed have the meanings given to them in or for the purposes of the Project Agreement.

1.2 Definitions

In this Deed, unless the context otherwise requires:

| Term | Meaning |
|--|--|
| Additional Obligor | means a company or other entity which is wholly owned by the State. |
| Additional Obligor Step-In Notice | has the meaning given in clause 6.1(a)(4). |
| Additional Obligor Step-Out Date | has the meaning given in clause 6.3(d). |
| Agreed Amount | has the meaning given in clause 11(b)(1). |
| Associate | in the case of the Franchisee, has the meaning given in the Franchisee Cooperation Agreement. |
| Assumption Date | has the meaning given in clause 6.3(a). |
| Cost | has the meaning given in clause 11(g). |
| Deed | means this deed and includes all Schedules, Exhibits, Attachments and Annexures to it. |
| Default Event | means any breach by Project Co of any of its obligations under the Franchisee Cooperation Agreement. |
| Disputing Parties | has the meaning given in clause 8.1(a). |



| Term | Meaning |
|--|--|
| FCA Project Document | has the meaning given in the Franchisee Cooperation Agreement. |
| Franchise Business | has the meaning given in the Franchisee Cooperation Agreement. |
| Franchisee Cooperation Agreement | means the document entitled 'Franchisee Cooperation Agreement (Tram)' between Project Co and the Franchisee dated on or about the date of this Deed. |
| Franchisee Intellectual Property Rights | has the meaning given in Schedule 4 of the Franchisee Cooperation Agreement. |
| Franchisee Land | has the meaning given in the Franchisee Cooperation Agreement. |
| Franchisee Material | has the meaning given in the Franchisee Cooperation Agreement. |
| Franchisee Subcontractor | has the meaning given in the Franchisee Cooperation Agreement. |
| Franchisee's Access Rules | has the meaning given in the Franchisee Cooperation Agreement. |
| Interface Management Plans | has the meaning given in the Franchisee Cooperation Agreement. |
| Moral Rights | has the meaning given to it in the <i>Copyright Act 1968</i> (Cth) and any corresponding or similar rights granted under any other laws anywhere in the world. |
| Novation Notice | has the meaning given in clause 7.1(a). |
| Novation Notice Date | means: <ol style="list-style-type: none">1 in relation to clause 7.3, the later of the date of the Novation Notice and the date the Franchisee consents or is deemed (in accordance with clause 7.3(d)) to have consented to the novation; and2 otherwise, the date of the Novation Notice. |



| Term | Meaning |
|---|---|
| Operative Agreement | has the meaning given in the Franchisee Cooperation Agreement. |
| Project Agreement | means the document entitled 'Project Agreement' between the State and Project Co dated on or about the date of this Deed. |
| Project Co's Rights | has the meaning given in clause 6.3(b)(1)(A). |
| Receiver | means a receiver or receiver and manager appointed by the State under the State Security. |
| Recipient | has the meaning given in clause 11(b)(2). |
| Representatives | has the meaning given in clause 8.2(a). |
| Revenue | has the meaning given in clause 11(f). |
| Step-In Period | has the meaning given in clause 6.1(b). |
| Step-In Right | has the meaning given in clause 6.1(a). |
| Substitute Party | has the meaning given in clause 7.1(a). |
| Successor Operator | has the meaning given in the Franchisee Cooperation Agreement. |
| Supplier | has the meaning given in clause 11(b). |
| Third Party Intellectual Property Rights | has the meaning given in Schedule 4 of the Franchisee Cooperation Agreement. |

1.3 Interpretation

In this Deed:

- (a) **(headings):** headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:



- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa and a word indicating a gender includes every other gender;
- (c) **(references)**: a reference to:
 - (1) a party, clause, Schedule, Exhibit or Annexure is a reference to a party, clause, Schedule, Exhibit or Annexure of or to this Deed; and
 - (2) a section is a reference to a section of a Schedule;
- (d) **(Deed as amended)**: a reference to this Deed or to any other deed, agreement, document or instrument includes a reference to this Deed or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re enactments and replacements;
- (h) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **(“includes”)**: ‘includes’ will be read as if followed by the phrase ‘(without limitation)’;
- (j) **(“or”)**: the meaning of ‘or’ will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) **(“\$”)**: a reference to ‘\$’, AUD or dollar is to Australian currency;
- (m) **(time)**: a reference to time is a reference to time in Melbourne, Australia;
- (n) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (o) **(obligations and liabilities)**: a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (p) **(“may”)**: the term ‘may’, when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;
- (q) **(construction)**: where there is a reference to an Authority, institute or association or other body referred to in this Deed which:
 - (1) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or



- (2) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity; and
- (r) ("**remedy**"): the use of the word 'remedy' or any form of it in this Deed means that the event to be remedied must be remedied or its effects overcome; and
- (s) ("**contra proferentem rule not to apply**"): each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

1.4 Priority of documents

To the extent of any inconsistency, ambiguity or discrepancy between this Deed and the Franchisee Cooperation Agreement, this Deed prevails.

1.5 Inconsistency

- (a) ("**State Project Documents**"): Where there is an inconsistency, ambiguity or discrepancy between this Deed and any other State Project Documents, then the order of precedence in clause 2.3 (Inconsistency between State Project Documents) of the Project Agreement applies.
- (b) ("**FCA Project Documents**"): Where there is an inconsistency, ambiguity or discrepancy between this Deed and any other FCA Project Document, then the order of precedence in clause 1.9 of the Franchisee Cooperation Agreement applies.

1.6 State Project Documents

The Franchisee acknowledges that it has received a copy of the Project Agreement and the Schedules and Exhibits of the Project Agreement listed in clause 4.4(a)(1) of the Franchisee Cooperation Agreement.

1.7 Business Day

If the day on or by which anything is to be done in accordance with this Deed is not a Business Day, that thing must be done no later than the next Business Day.

1.8 Relationship of the parties

Unless otherwise expressly provided, nothing in this Deed:

- (a) ("**no additional relationship**"): creates a partnership, joint venture, fiduciary, employment or agency relationship between the parties; or
- (b) ("**no good faith**"): imposes any duty of good faith on the State.

1.9 Approvals, directions and notices in writing

Unless otherwise expressly provided in this Deed or agreed between the parties, all approvals, consents, directions, requirements, requests, claims, notices, agreements and demands given or required to be given under this Deed must be given in writing.



1.10 State's rights and obligations

- (a) **(Acknowledgment):** The parties acknowledge the substance, operation and potential effect and consequences of clause 2.13 (State's executive rights and duties) of the Project Agreement in relation to this Deed.
- (b) **(No Claim):** Subject to clause 1.10(c), Project Co and the Franchisee will not be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its executive or statutory rights or duties.
- (c) **(Liability for breach):** Clauses 1.10(a) and 1.10(b) do not limit any Liability which the State would have had to Project Co or the Franchisee under any State Project Document as a result of a breach by the State of a term of any State Project Document but for these clauses.

1.11 Provisions limiting or excluding Liability, rights or obligations

- (a) **(No limit):** A right of the State or any obligation of the Franchisee or Project Co under this Deed will not limit or exclude any other right of the State or obligation of the Franchisee or Project Co under this Deed unless expressly stated.
- (b) **(Permitted by Law):** Any provision of this Deed which seeks, either expressly or by implication, to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.

1.12 Prior approval or consent

Where the Franchisee is required by this Deed to obtain the State's consent or approval to an action, document or thing, unless otherwise expressly stated, that consent or approval must be obtained prior to the actions, document or thing occurring or coming into effect.

1.13 Action without delay

Unless there is a provision in this Deed which specifies a period of time in which something must be done by the parties, all things must be done without undue delay.

1.14 Cost of carrying out obligations

Each party must carry out its obligations under this Deed at its own cost, unless expressly provided otherwise.

1.15 Reasonable endeavours of State

Any statement in this Deed providing that the State will use or exercise 'reasonable endeavours' or 'act reasonably' in relation to an outcome, means that the State:

- (a) **(relevant steps):** will take steps to bring about the relevant outcome so far as it is reasonably able to do so, having regard to its resources and other responsibilities;
- (b) **(no guarantee):** cannot guarantee the relevant outcome; and
- (c) **(no obligation):** is not required to:
 - (1) exercise a right of any Government Party, or to influence, over-ride, interfere with or direct any other Government Party in the proper



exercise and performance of its legal, executive or statutory rights and duties and functions;

- (2) exercise a power or discretion in a manner that the State regards as not in the public interest;
- (3) develop or implement new policy;
- (4) procure legislation; or
- (5) act in any way that the State regards as not in the public interest.

1.16 The Cross Yarra Partnership

- (a) **(Jointly and severally)**: The obligations, undertakings, representations, warranties, indemnities and Liabilities of Project Co under this Deed bind all the CY Partners jointly and severally as partners.
- (b) **(Change in membership)**: Without prejudice to anything else contained in this Deed or any other FCA Project Document, if the membership of the Cross Yarra Partnership changes from the CY Partners for any reason whatsoever this Deed will continue to bind each former partner and each current partner of the Cross Yarra Partnership in respect of any accrued Liabilities that were incurred by Project Co during the period that the former partner was a member of the Cross Yarra Partnership.
- (c) **(Ceases business)**: Without prejudice to anything else contained in this Deed or any other FCA Project Document, if Project Co for any reason at any time ceases business, each FCA Project Document continues to bind:
 - (1) the CY Partners; and
 - (2) any former partners of the Cross Yarra Partnership in respect of any accrued Liabilities that were incurred by Project Co during the period that the former partner was a member of the Cross Yarra Partnership.

1.17 CY Trustee's limitation of liability

- (a) **(Capacity)**: The parties acknowledge that the obligations of each CY Trustee under this Deed are incurred by it solely in its capacity as trustee of the relevant CY Trust other than where expressly provided otherwise, including as contemplated by clause 1.17(c)(1) below.
- (b) **(Limited liability)**: Subject to clause 1.17(c), each CY Trustee will:
 - (1) not be liable to pay or satisfy any of its obligations or liabilities under the FCA Project Documents in relation to the relevant CY Trust out of any assets held by it personally;
 - (2) only be liable to pay or satisfy any of its obligations or liabilities under the FCA Project Documents in relation to the relevant CY Trust out of the assets of that CY Trust out of which it is actually indemnified;
 - (3) not be liable to pay or satisfy any of its obligations or liabilities under the FCA Project Documents in its personal capacity out of any asset held by it personally (other than out of the property the subject of the State Securities); and
 - (4) only be liable to pay or satisfy any of its obligations or liabilities under the FCA Project Documents in its personal capacity out of the property the subject of the State Securities held by it personally.
- (c) **(Circumstances where a CY Trustee is personally liable)**:



- (1) Each CY Trustee will be personally liable under the FCA Project Documents for any loss or damage which the Franchisee or the State may suffer as a result of a breach of that FCA Project Document by that CY Trustee where such breach is caused by:
 - (A) fraud of that CY Trustee;
 - (B) wilful default of that CY Trustee;
 - (C) that CY Trustee having committed a breach of trust;
 - (D) that CY Trustee having been negligent in the performance of its duties as trustee of the relevant CY Trust;
 - (E) a representation or warranty given by that CY Trustee under a FCA Project Document in respect of itself (in any capacity) or the relevant CY Trust being untrue, incorrect or misleading when made or repeated; or
 - (F) a breach of any undertaking (other than an undertaking to pay) of that CY Trustee given under a FCA Project Document.
 - (2) The Franchisee or the State (as applicable) may:
 - (A) do anything necessary to enforce its rights in connection with any representation or warranty (with respect to the relevant CY Trustee or the relevant CY Trust) or undertaking (other than an undertaking to pay) given by any CY Trustee under the FCA Project Documents;
 - (B) do anything necessary to enforce its rights under each State Security;
 - (C) take proceedings to obtain an injunction or other order to restrain any breach of the FCA Project Documents by any CY Trustee or declaratory relief or other similar judgment or order as to the obligations of any CY Trustee under the FCA Project Documents; and
 - (D) prove in any insolvency proceedings in respect of any CY Trustee only in order to protect and enforce its rights in respect of the property of the relevant CY Trust and the Trustee's Indemnity.
 - (3) Nothing in this clause 1.17 prevents the Franchisee or the State obtaining any injunctive relief, order for specific performance, declaration or similar relief against any CY Trustee.
- (d) **(Limited recourse):** The Franchisee and the State must not, except to the extent a CY Trustee is personally liable under clause 1.17(c)(1) and subject to clauses 1.17(c)(2) and 1.17(e):
- (1) bring any proceeding for the winding up or liquidation of a CY Trustee;
 - (2) appoint, or seek the appointment of, a receiver or receiver and manager or other controller (as defined in the Corporations Act) to a CY Trustee or its assets or the assets of a CY Trust other than one appointed over any property secured by the State Securities;
 - (3) incur, or permit any receiver, receiver and manager appointed under a State Security, attorney appointed under a State Security or any other person to incur, any obligation binding on a CY Trustee unless the obligation is limited in accordance with this clause 1.17;



- (4) take any action to obtain a judgment against a CY Trustee or to enforce a judgment against a CY Trustee other than:
 - (A) a judgment required to prove the amount of any Secured Moneys (as defined in the State Security);
 - (B) a counterclaim in any proceedings commenced by a CY Trustee; or
 - (C) as permitted by clause 1.17(c)(3); or
- (5) levy or enforce a levy or distress or other execution upon or against any assets of a CY Trustee other than any property secured by the State Securities or the assets of the relevant CY Trustee or CY Trust.
- (e) **(No limitation on enforcement of security provided under the State Securities):** This clause 1.17 does not limit or affect in any way the enforcement of the State Securities and, for the avoidance of doubt, it is acknowledged and agreed by each CY Trustee (in its personal capacity and as trustee for the relevant CY Trust) that the security granted under the State Securities by it constitutes a Security Interest over all of the Trust Property and all of its Trustee's Indemnity.
- (f) **(CY Trustee as Partner):** A reference to a CY Trustee includes a reference to the relevant CY Partner as a partner in the Cross Yarra Partnership.

2 Conditions precedent

The satisfaction or waiver of the Conditions Precedent in accordance with clause 3 (Conditions Precedent) of the Project Agreement is a condition precedent to the coming into operation of this Deed (other than this clause 2 and clauses 1.1 to 1.3, 1.7, 1.8, 1.9, 1.10, 1.15 to 1.17, 8, 9, 12, 13 and 15, which will commence on the date of this Deed).

3 Acknowledgments

3.1 By the Franchisee concerning the State Security

The Franchisee acknowledges and agrees:

- (a) **(grant of security):** that Project Co may give a security interest in the form of the State Security in favour of the State over all assets and undertakings of Project Co including Project Co's right, title and interest under the Franchisee Cooperation Agreement or assign Project Co's right, title and interest under the Franchisee Cooperation Agreement to the State by way of security, and the Franchisee consents to the State Security and any such assignment;
- (b) **(exercise of rights):** to the State's rights under the State Security including the appointment by Project Co of the State as attorney of Project Co to do, perform and exercise all things, acts and rights under the Franchisee Cooperation Agreement on behalf of and for the account of Project Co;
- (c) **(no Default Event):** that the grant of, or exercise by the State of its rights under, the State Security will not itself contravene, or constitute a Default Event



under, the Franchisee Cooperation Agreement or entitle the Franchisee to exercise any right under it; and

- (d) **(liabilities and obligations)**: that nothing in the State Security will cause the State or a State Associate to assume any Liabilities or obligations under the Franchisee Cooperation Agreement except as may result from its own acts or omissions in exercising rights or in performing or failing to perform obligations under the Franchisee Cooperation Agreement as envisaged by this Deed.

3.2 By the Franchisee concerning the State's rights

- (a) **(State's rights)**: The Franchisee acknowledges the State's rights under clauses 16.3 (State's right to enter, inspect and test), 25 (Defects), 28.5 (Incidents), 41 (Step-in by the State), 44 (Events of Default) and 45 (Termination) of the Project Agreement.
- (b) **(Facilitation of rights)**: The Franchisee must exercise its rights under the Franchisee Cooperation Agreement in a way that facilitates the effective exercise by the State of the rights referred to in clause 3.2(a) and will on reasonable notice permit the State or a State Associate to have access to, and take copies of, the records, reports, documents and other papers to which the State is entitled to have access in accordance with the State's rights referred to in clause 3.2(a).
- (c) **(Continued performance)**: During the period in which the State is exercising a right referred to in clause 3.2(a), the State may, in accordance with the Project Agreement and the Franchisee Cooperation Agreement, require the suspension or the continuation of performance by the Franchisee of its obligations under the Franchisee Cooperation Agreement, and if it does so, the Franchisee will comply with this requirement and with all reasonable directions of the State in relation to the performance of the Franchisee Cooperation Agreement by the Franchisee during such period, provided that the State may not require the Franchisee to do, or omit to do, anything which may cause:
- (1) the Franchisee to be in breach of its obligations under its Operative Agreements;
 - (2) the Accreditation of the Franchisee to be suspended or cancelled; or
 - (3) the Franchisee to breach a term or condition of its Accreditation or the Rail Safety Act.
- (d) **(State not liable)**: The requirement of the State that the Franchisee suspend or continue to perform its obligations under the Franchisee Cooperation Agreement and the giving of any direction under clause 3.2(c) by the State will not be construed as an assumption by the State of any obligations of the Franchisee under the Franchisee Cooperation Agreement.

3.3 By Project Co

Project Co is bound by, and must cooperate in the implementation of, this Deed. It acknowledges that this Deed is intended to benefit only the Franchisee and the State and does not in any way affect any obligation of Project Co under the Franchisee Cooperation Agreement or under any Project Document except as expressly set out herein.



3.4 Information

Project Co and the Franchisee each acknowledge and agree that:

- (a) **(information purpose):** any information, data and documents provided by the State or a State Associate in connection with this Deed:
 - (1) are provided for information purposes only and the State or a State Associates' Intellectual Property Rights therein remain the property of the State or the State Associates (as the case may be); and
 - (2) do not form part of this Deed or constitute an invitation, offer or recommendation by or on behalf of the State or a State Associate;
- (b) **(no Liability):** to the extent permitted by Law, none of the State or the State Associates will have any Liability to the Franchisee or any Franchisee Associate, nor will the Franchisee or any Franchisee Associate be entitled to make any Claim against the State, or seek, pursue or obtain an indemnity against or contribution to Liability from the State or a State Associate arising in connection with:
 - (1) the provision of, or purported reliance upon, or use of any information, data and documents referred to in clause 3.4(a) by the Franchisee, or any other person to whom such information is disclosed by the Franchisee, a Franchisee Associate or any person on behalf of the Franchisee or any Franchisee Associate;
 - (2) any reference to the State in the Franchisee Cooperation Agreement; or
 - (3) any review of, comments upon, acceptance, approval or certification of the form or substance of the Franchisee Cooperation Agreement by the State.

3.5 Franchisee Cooperation Agreement not to affect State rights

Project Co and the Franchisee each acknowledge and agree that:

- (a) **(risk of discrepancy):** as between the State (on the one hand) and Project Co (on the other hand), Project Co accepts and will bear the risk of any inconsistency, ambiguity or discrepancy between the terms of the Franchisee Cooperation Agreement and the Project Agreement; and
- (b) **(dealing directly with State):** the Franchisee does not have any right to deal directly with the State or participate in any meeting, consultation or process (including negotiation or dispute resolution) in relation to the Project unless:
 - (1) expressly provided to the contrary in the Franchisee's Operative Agreements, the Project Agreement, the Franchisee Cooperation Agreement or this Deed; or
 - (2) the State consents.

4 Undertakings of the Franchisee

The Franchisee undertakes to the State as follows:

- (a) **(no amendment without consent):** it will not, without first obtaining the consent of the State:



- (1) make or permit any amendment or replacement of or addition to;
 - (2) terminate, surrender, rescind or accept repudiation of;
 - (3) except in accordance with this Deed, permit the novation, assignment or substitution of any party's rights, obligations or interest in; or
 - (4) allow any express waiver of its material rights and obligations under, the Franchisee Cooperation Agreement, provided that the State will not withhold its consent to an amendment which is, corresponds to, or is equivalent to, an amendment to which the State has consented in accordance with the Project Agreement or is, corresponds to, or is equivalent to, an amendment which Project Co must, in accordance with an express requirement of the Project Agreement, consent to;
- (b) **(deed of accession):** it will not novate, assign or substitute any of its rights, obligations or interest in the Franchisee Cooperation Agreement other than where the Franchise Agreement is terminated or rescinded or comes to an end for any reason and the Franchisee is required to novate, assign or substitute any of its rights, obligations or interest in the Franchisee Cooperation Agreement to PTV or a Successor Operator.
- (c) **(inspections):** it will (when reasonably requested by the State):
- (1) provide the State, any of its Associates and other authorised personnel (including the Independent Reviewer) with:
 - (A) full access to the Franchisee Land as is necessary to enable the State to exercise its rights under clause 16.3(a) of the Project Agreement. In accessing the Franchisee Land under this clause 4(c)(1)(A), the State must, and must ensure its Associates and any authorised personnel must:
 - (I) comply with the Franchisee's Access Rules and any generally applicable safety and security requirements of the Franchisee;
 - (II) not unnecessarily interfere with the carrying out of the Project Activities; and
 - (III) not damage the Relevant Infrastructure or the Franchisee Land; and
 - (B) any other information, records or documents that the State or any of its Associates (acting reasonably) or the Independent Reviewer require in relation to the performance of the obligations under or compliance with the Franchisee Cooperation Agreement or any information required by the State to comply with requests from the Victorian Auditor-General; and
 - (2) to the extent provided in the Project Agreement, permit the State and any of its Associates to attend all tests and inspections to be carried out by the Franchisee in connection with the Project; and
- (d) **(Access to records):** at the request of the State (acting reasonably), the Franchisee will:
- (1) permit the State and any of its Associates to inspect all records, reports, plans, programs, specifications and technical documents prepared or kept by the Franchisee in relation to the performance of its obligations under the Franchisee Cooperation Agreement; and



- (2) supply the State and any of its Associates with a copy of any such report or document which they may require from time to time.

4A State obligations

- (a) **(State must reimburse):** The State must reimburse the Franchisee, in accordance with the Projects Agreement – Tram, for its Direct Costs plus Franchisee's Margin incurred:
 - (1) in training any staff in the use of the electronic document management system or in undertaking any upgrades to its IT system in order to use the electronic document management system referred to in clause 6.7(a) of the Franchisee Cooperation Agreement;
 - (2) in providing Project Co with the number, type and durations of Track Occupations specified in the Base Track Occupation Schedule;
 - (3) as a result of a failure to hand back an Agreed Occupation by the Agreed Hand Back Time where the Agreed Occupation is a Track Occupation which was specified in the Base Track Occupation Schedule;
 - (4) in providing Additional Support referred to in clause 12.3(f) of the Franchisee Cooperation Agreement.
- (b) **(No restriction):** The State and the Franchisee acknowledge and agree that any reimbursement of the Franchisee by the State under this clause does not restrict or limit the Franchisee's entitlements under the Projects Agreement – Tram to the extent it has any additional entitlement arising out of or in relation to the Project

5 Review of and amendments to Interface Management Plans

- (a) **(State review of Interface Management Plans):** The parties acknowledge that the Interface Management Plans developed under clause 10 of the Franchisee Cooperation Agreement, and any amendments or updates to the Interface Management Plans, must be submitted by Project Co to the State for review in accordance with the Review Procedures.
- (b) **(Current version to apply):** Project Co and the Franchisee each acknowledge and agree that until such time as an update of an Interface Management Plan has been reviewed and approved (if applicable) in accordance with section 4.2 and 6.2 of the Review Procedures, the then current version of the Interface Management Plan will continue to apply.

6 Step-In by the State

6.1 Step-In Right

- (a) **(Exercise):** If the State is entitled to exercise any of the rights referred to in clause 3.2 or otherwise as permitted under any Project Document, the State may:



- (1) if permitted under the State Security and the Finance Direct Deed, appoint a Receiver over Project Co or any or all of its assets (including the Franchisee Cooperation Agreement);
 - (2) itself enter into possession of any or all of the assets of Project Co;
 - (3) take such other action as it is permitted to take under the terms of the Project Documents; or
 - (4) by notice to the Franchisee (**Additional Obligor Step-In Notice**), procure that an Additional Obligor assumes jointly and severally with Project Co all of Project Co's rights and obligations under the Franchisee Cooperation Agreement,
- (each a **Step-In Right**).
- (b) (**Step-In Period**): The period from the date on which the Franchisee receives notice of the exercise of any Step-In Right to the earliest of:
- (1) the Additional Obligor Step-Out Date;
 - (2) the date of any transfer under clause 7;
 - (3) the date which the State has notified the Franchisee will be the date that the State ceases to exercise its Step-In Rights; and
 - (4) any other date on which the State ceases to exercise its Step-In Rights,
- is the **Step-In Period**.
- (c) (**Acknowledgment**): The Franchisee acknowledges that the exercise by the State of a Step-In Right in the manner contemplated by this Deed will not of itself contravene the Franchisee Cooperation Agreement, or constitute a Default Event or entitle the Franchisee to exercise any right under the Franchisee Cooperation Agreement.

6.2 Step-In by the State

- (a) (**Rights**): Subject to the Finance Direct Deed, the State may at any time during a Step-In Period, exercise all or any of its rights and carry out all or any of the obligations of Project Co in connection with the Franchisee Cooperation Agreement, as if it were Project Co to the exclusion of Project Co.
- (b) (**No Liability**): Project Co and the Franchisee each agree that, subject to clause 6.3(b) and clause 6.2(c), neither the State nor any of its Associates will have any Liability, and neither Project Co nor the Franchisee will be entitled to make, continue or enforce any Claim against the State or any of its Associates arising in connection with the Franchisee Cooperation Agreement or this Deed by reason only of the State or any of its Associates exercising any of Project Co's rights, or performing any of Project Co's obligations under the Franchisee Cooperation Agreement other than, and then only to the extent of, Liability for fraudulent, reckless, unlawful or malicious acts or omissions, or wilful misconduct, of the State or any of its Associates.
- (c) (**Payment to Franchisee**): Where the State has exercised any Step-In Right as a consequence of any of the Step In Events:
 - (1) contemplated by clauses 41.1(a)(1), 41.1(a)(2), 41.1(a)(3) or 41.1(a)(4) of the Project Agreement; or
 - (2) contemplated by clauses 41.1(a)(5), 41.1(a)(6), or 41.1(a)(7) of the Project Agreement to the extent that the Step-In Event was caused by



a failure by Project Co to carry out the Project Activities in accordance with and to the standard specified in the PS&TR or by any other breach by Project Co of the Project Agreement or any fraudulent, reckless, unlawful, negligent or malicious act or omission of Project Co or any of its Associates,

the State will reimburse, or procure that PTV reimburses, the Franchisee for all costs reasonably incurred by the Franchisee in complying with its obligations under clause 3.2 and clause 17(b) of the Franchisee Cooperation Agreement, except where the Step-In Right is exercised by the State as a direct consequence of a breach by the Franchisee of its obligations under the Franchisee Cooperation Agreement.

6.3 Step-In using Additional Obligor

- (a) **(Assumption Date):** If clause 6.1(a)(4) applies, the Additional Obligor will become a party to the Franchisee Cooperation Agreement on the date on which the Additional Obligor Step-In Notice is given to the Franchisee or such later date as the Franchisee and the State may agree (**Assumption Date**).
- (b) **(Rights and obligations of Additional Obligor):** During a Step-In Period in respect of which the State has exercised a Step-In Right under clause 6.1(a)(4):
 - (1) subject to clause 6.1(b)(2), the Additional Obligor will be jointly and severally:
 - (A) entitled with Project Co to exercise the rights of Project Co under the Franchisee Cooperation Agreement (excluding any accrued rights of Project Co in respect of any damage, loss, cost, charge, expense, outgoing or payment to the extent that the rights arose prior to the Assumption Date) (**Project Co's Rights**); and
 - (B) liable with Project Co for the performance or non-performance of all Project Co's obligations under the Franchisee Cooperation Agreement arising on or after the Assumption Date except as released in accordance with clause 6.3(e);
 - (2) as between Project Co, the Franchisee and the Additional Obligor, only the Additional Obligor is authorised to deal with the Franchisee and to exercise Project Co's Rights;
 - (3) Project Co acknowledges that it will be legally bound by all the acts and omissions of the Additional Obligor in so dealing with the Franchisee and in exercising Project Co's Rights;
 - (4) the Additional Obligor will be bound by any earlier decision, directions, approvals, notices or consents given or made prior to the Assumption Date;
 - (5) clause 12 will apply to the Franchisee and the Additional Obligor as if the address and email address of the Additional Obligor (as notified to the Franchisee and Project Co) were set out in addition to those of Project Co; and
 - (6) the Franchisee will owe its obligations under the Franchisee Cooperation Agreement to Project Co and the Additional Obligor jointly but the performance by the Franchisee in favour of either Project Co or the Additional Obligor will be a good discharge of the relevant obligations under the Franchisee Cooperation Agreement.



- (c) **(No Liability)**: The Additional Obligor will have no obligation to, and no Liability in respect of, remedying any default or breach of Project Co under the Franchisee Cooperation Agreement arising prior to the Assumption Date.
- (d) **(Additional Obligor Step-Out Date)**: The Additional Obligor may at any time give the Franchisee not less than 30 days' notice terminating the Additional Obligor's rights or obligations under the Franchisee Cooperation Agreement (without affecting the continuation of Project Co's obligations or liabilities towards the Franchisee under the Franchisee Cooperation Agreement). Such notice must specify the date on which it takes effect, which must be:
 - (1) at least 30 days after the date of the notice; or
 - (2) if a Novation Notice has been given, the Novation Notice Date,**(Additional Obligor Step-Out Date)**.
- (e) **(Release)**: On and from the Additional Obligor Step-Out Date, as between the Franchisee and the Additional Obligor only, the Franchisee and the Additional Obligor will be released from all obligations under the Franchisee Cooperation Agreement (except for those obligations owed to each other which have arisen during the relevant Step-In Period), whether or not a Claim has been made in respect of those obligations or they have not fallen due to be performed or have not been performed. For the avoidance of doubt, on and from the Additional Obligor Step-Out Date, the Franchisee will continue to owe its obligations under the Franchisee Cooperation Agreement to:
 - (1) Project Co; or
 - (2) if a Novation Notice has been given, the Substitute Party.

6.4 Indemnity

Project Co must indemnify the State, its Associates and any Additional Obligor against any Claim or Liability (including any Claim made by, or Liability to, a third party) the State, any of its Associates or any Additional Obligor suffers or incurs arising in connection with taking any action under clause 6.2 or clause 6.3, except to the extent that such Claim or Liability is caused or contributed to by any of the events set out in clause 4.11 (Limits on Project Co liability to indemnify and release) of the Project Agreement.

7 State's option to novate to the State or third party

7.1 Option

- (a) **(Novation Notice)**: The State may require a novation of the Franchisee Cooperation Agreement upon the termination of the Project Agreement, by giving a notice (**Novation Notice**) to the Franchisee. The Novation Notice must specify the person to whom the State intends to novate the Franchisee Cooperation Agreement whether this be the State or another person (**Substitute Party**).
- (b) **(Effect of Novation Notice)**: If the State issues a Novation Notice then, until the Novation Notice Date, the Franchisee must continue to perform its obligations under the Franchisee Cooperation Agreement.
- (c) **(Acknowledgement)**: The Franchisee acknowledges that the giving of a Novation Notice by the State will not of itself contravene, or constitute a Default



Event under, the Franchisee Cooperation Agreement or entitle the Franchisee to exercise any power under it.

7.2 Novation to Substitute Party

- (a) **(Effect of novation):** Subject to clause 7.3, with effect from the Novation Notice Date:
- (1) the Substitute Party will (and if the Substitute Party is not the State, the State will procure that the Substitute Party does) assume:
 - (A) any obligation of Project Co under the Franchisee Cooperation Agreement arising before the Novation Notice Date insofar as it relates to the payment of an amount of money that:
 - (I) is due and payable under the terms of the Franchisee Cooperation Agreement; and
 - (II) is not the subject of a dispute under the Franchisee Cooperation Agreement (or is the subject of a dispute under the Franchisee Cooperation Agreement in which case the Substitute Party will, on the determination of such dispute, assume such obligations in accordance with that determination); and
 - (B) the obligations of Project Co under the Franchisee Cooperation Agreement arising on and from the Novation Notice Date (including in relation to payment of amounts for any obligations under the Franchisee Cooperation Agreement performed before the Novation Notice Date that become due and payable on or after the Novation Date notwithstanding that such amounts relate to work performed before the Novation Notice Date) subject to any amendments to the Franchisee Cooperation Agreement agreed in accordance with clause 7.2(a)(5);
 - (2) subject to any amendments agreed to the Franchisee Cooperation Agreement in accordance with clause 7.2(a)(5), the Substitute Party will have all the rights of Project Co under the Franchisee Cooperation Agreement (excluding any accrued rights of Project Co in respect of any damage, loss, cost, charge, expense, outgoing or payment to the extent that those rights arose prior to the Novation Notice Date or are the subject of any unresolved dispute referred to in clause 7.2(a)(1)(A)(II));
 - (3) subject to clause 7.2(a)(2) and any amendments agreed to the Franchisee Cooperation Agreement in accordance with clause 7.2(a)(5), the Franchisee will be:
 - (A) bound by and must comply with the provisions of the Franchisee Cooperation Agreement binding on it for the benefit of the Substitute Party as if the Substitute Party were Project Co; and
 - (B) entitled to any extensions of time and other entitlements which accrued to the Franchisee prior to the Novation Notice Date;



- (4) Project Co is released from all of its obligations and Liabilities under the Franchisee Cooperation Agreement, excluding any accrued obligations or Liabilities of Project Co to the extent that those accrued obligations or Liabilities:
 - (A) arose in connection with events occurring prior to the Novation Notice Date; and
 - (B) are not obligations and Liabilities assumed by the Substitute Party under clause 7.2(a)(1); and
- (5) the Franchisee and the Substitute Party will promptly negotiate in good faith any amendments to the Franchisee Cooperation Agreement that are necessary to reflect the termination of the Project Agreement.
- (b) **(No set off)**: The Franchisee is not entitled to exercise any right of set off, deduction, abatement or counterclaim against the Substitute Party if, and to the extent that, such right arose prior to the Novation Notice Date.
- (c) **(Novation Deed)**: Subject to clause 7.3(c), Project Co, the Franchisee and the Substitute Party must enter into an agreement, in form and substance reasonably requested by the Substitute Party, reflecting the novation of the Franchisee Cooperation Agreement as contemplated in clause 7.2(a).
- (d) **(Attorney)**: For valuable consideration, Project Co and the Franchisee each irrevocably appoint the State, on its behalf and in its name or otherwise, as its attorney to do anything which Project Co or the Franchisee is obliged to do (but has not done within 5 Business Days of request) under clause 7.2(c). Each of Project Co and the Franchisee ratifies and confirms and agrees to ratify and confirm whatever any such attorney lawfully does in the exercise of the power of attorney in this clause 7.2(d).

7.3 Additional requirements where Substitute Party is not the State

- (a) **(Information to be provided by the State)**: If the Novation Notice specifies that the Substitute Party is a person other than the State or a State Associate, the State must, at the time it gives the Novation Notice, provide to the Franchisee the following particulars of the Substitute Party:
 - (1) its name, place of incorporation and identity of shareholder(s) including, unless a shareholder is listed on a securities exchange, the ultimate shareholders; and
 - (2) if available, its most recent published audited accounts.
- (b) **(Consent by Franchisee)**: A novation to, and the giving of a Novation Notice with respect to, a Substitute Party other than the State or a State Associate under this clause 7 will only be effective, and the Franchisee will only be required to enter into a novation agreement under clause 7.2(c), if the Franchisee consents to that novation (such consent not to be unreasonably withheld or delayed) or is deemed to have consented in accordance with clause 7.3(d).
- (c) **(Additional information)**: The State must as soon as practicable supply the Franchisee with such additional information to that provided under clause 7.3(a) as the Franchisee reasonably requires to enable it to decide whether to grant consent under clause 7.3(b), and the Franchisee must consider such information expeditiously and inform the State promptly if it requires further information.



- (d) **(Deemed consent):** Unless the Franchisee notifies the State of its earlier consent or refusal to a novation, the Franchisee will be deemed to have consented to a novation to a Substitute Party other than the State or a State Associate if it has not notified the State under clause 7.3(e)(2) within 10 Business Days of the later of the receipt of the Novation Notice and the information required under clause 7.3(a) and clause 7.3(c).
- (e) **(Unreasonably withholding consent):** The Franchisee is not entitled to refuse consent to a novation to a Substitute Party other than the State or a State Associate unless:
 - (1) the grounds for refusal are reasonable and are based on:
 - (A) the proposed novation deed referred to in clause 7.2(c) for the Substitute Party to assume the rights and obligations of Project Co under the Franchisee Cooperation Agreement not being effective to substitute the Substitute Party for Project Co;
 - (B) the Substitute Party not having the legal capacity, power and authorisation to become a party to and perform the obligations of Project Co in accordance with the Franchisee Cooperation Agreement including any necessary authorisations and consents; or
 - (C) the Franchisee being placed in breach of any Laws by the proposed novation; and
 - (2) it has notified the State of such reasons.
- (f) **(If the Franchisee withholds consent):** If the Franchisee withholds its consent to a Novation Notice under this clause 7.3, this will not prejudice the ability of the State to give one or more subsequent Novation Notices, and information under clause 7.3(a), containing changed particulars relating to the same Substitute Party or particulars relating to another Substitute Party.

7.4 Accrued obligations and liabilities

Clause 7.2 does not operate to:

- (a) **(State to assume obligations or Liabilities):** require the State to assume any obligations or Liabilities arising from, or which are required to be performed in connection with, the Franchisee Cooperation Agreement prior to the Novation Notice Date unless expressly required to do so in clause 7.2; or
- (b) **(release):** release Project Co from such obligations or Liabilities unless expressly provided for in clause 7.2.

8 Dispute Resolution

8.1 Procedure for resolving disputes

- (a) **(Procedure):** Any dispute arising under this Deed must be resolved by the parties to that dispute (**Disputing Parties**) in accordance with this clause 8 and clause 9.
- (b) **(Dispute resolution procedure):** The procedure that is to be followed to resolve a dispute is as follows:



- (1) firstly, the dispute must be the subject of negotiation as required by clause 8.2;
- (2) secondly, if the dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 8.2(c)(1) the Disputing Parties may agree that the dispute will be referred to an expert for determination under clauses 8.4 to 8.9 or to arbitration under clause 9; and
- (3) thirdly, if:
 - (A) the Dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 8.2(c)(1) and irrespective of whether the Disputing Parties failed to meet as required by that clause or whether having so met the Disputing Parties failed to agree whether the Dispute should be referred to an expert or to arbitration within 20 Business Days after the expiration of the period for negotiation referred to in clause 8.2(c)(1);
 - (B) the dispute has been referred to expert determination and a determination is not made by the expert within 30 days after the expert's acceptance of appointment; or
 - (C) the dispute is referred to expert determination and a notice of dissatisfaction is given under clause 8.6(a),

then the dispute must be referred to arbitration under clause 9.

(c) **(Rail Safety Directions):** The parties agree that where:

- (1) the Franchisee issues a direction under clause 9.8 of the Franchisee Cooperation Agreement, which requires the consent of the State under the Project Agreement in order for Project Co to implement the direction and such consent is not received within the timeframe specified in the Project Agreement; and
- (2) the Franchisee and Project Co cannot agree an appropriate course of action under clause 9.10(b)(3) of the Franchisee Cooperation Agreement and the State has not issued a Modification Order in response to notification from Project Co in accordance with clause 9.9(b) of the Franchisee Cooperation Agreement,

the matter will be a dispute to be resolved by the Franchisee, Project Co and the State under clause 8 and clause 9 of this Deed which matter may include resolution of whether the Franchisee was entitled to issue the relevant direction and whether the direction gives rise to a Modification under the Project Agreement.

To the extent it is determined under clause 8 and clause 9 of this Deed that:

- (3) the Franchisee was entitled to issue the relevant direction; and
- (4) the direction will give rise to a Modification under the Project Agreement,

the State must issue a Modification Order (which will reflect the restrictions on Project Co's entitlements set out in clause 38.9(k) of the Project Agreement).

8.2 Negotiation

- (a) **(Notification):** If a dispute arises then a party may give notice to each other party requesting that the dispute be referred for resolution by negotiation



between the Chief Executive Officers (or equivalent) of the Disputing Parties (Representatives).

- (b) **(Contents of Notice)**: A notice under clause 8.2(a) must:
 - (1) state that it is a notice under this clause 8; and
 - (2) include or be accompanied by particulars of the matters which are the subject of the dispute.
- (c) **(Attempt to resolve Dispute)**: If a dispute is referred for resolution by negotiation under clause 8.2(a), then:
 - (1) the Representatives must meet and attempt in good faith to resolve the dispute (in whole or in part) within 10 Business Days of the date on which the notice under clause 8.2(a) is received (or such later date as the Disputing Parties may agree); and
 - (2) any agreement reached between the Representatives will be reduced to writing, signed by or on behalf of each Disputing Party and will be contractually binding on the Disputing Parties.

8.3 Expert determination

If:

- (a) **(dispute unresolved by Representatives)**: a dispute which has been referred to the Representatives for negotiation in accordance with clause 8.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 8.2(c)(1); and
- (b) **(referral to expert)**: the Disputing Parties agree within 20 Business Days after the expiration of the period for negotiation referred to in clause 8.2(c)(1), that the dispute be referred to an expert for determination,

then those parts of the dispute which remain unresolved will be referred to an expert for determination under clauses 8.4 to 8.9. For the avoidance of doubt, a dispute may only be referred to an expert for determination by agreement of the Disputing Parties.

8.4 Selection of expert

- (a) **(Exchange of lists of 3 preferred experts)**: Within 7 Business Days after the date on which the Disputing Parties agree to refer a dispute to an expert for determination under clause 8.3, the Disputing Parties must exchange lists of 3 persons (in order of preference) who, if appointed, would satisfy the requirements of clause 8.4(d), from whom the expert is to be chosen.
- (b) **(Appointment of person who appears on both lists)**: Any person who appears on all lists exchanged under clause 8.4(a) will be appointed as the expert to determine a dispute and if more than one person appears on all lists, the person given the highest order of priority by the party who gave the notice under clause 8.2(a) will be appointed.
- (c) **(Appointment if no person appears on both lists)**: If no person appears on all lists, the party which gave the notice under clause 8.2(a) must procure:
 - (1) the president (or the senior non-executive officer, howsoever described) of the institute or governing body for the technical or professional discipline the subject of the relevant dispute to nominate the expert, having regard to, but not being bound by, those persons proposed by the Disputing Parties under clause 8.4(a); or



- (2) if there is no governing body for the technical or professional discipline the subject of the relevant dispute or the Disputing Parties do not agree the technical or professional discipline relevant to the dispute or such governing body advises that it will not nominate an expert, the Australian Centre for International Commercial Arbitration to nominate a person to act as the expert, having regard to, but not being bound by, those persons proposed by the Disputing Parties under clause 8.4(a),

within 7 Business Days of exchange of notices under clause 8.4(a).

- (d) **(Appropriate skills):** It is the intention of the parties that the expert appointed to determine a dispute will be an independent person with appropriate skills having regard to the nature of the matters in dispute.
- (e) **(No entitlement to challenge appointment):** No Disputing Party will be entitled to challenge the appointment of an expert under this clause 8.4 on the basis that the expert does not satisfy the requirements of clause 8.4(d).
- (f) **(Not an arbitration agreement):** Any agreement for expert determination under this Deed will not constitute an arbitration agreement for the purposes of the *Commercial Arbitration Act 2011* (Vic).
- (g) **(Agreement):** Once an expert is appointed, the Disputing Parties must enter into an agreement with the expert on the terms of the Expert Determination Agreement or such other reasonable terms as the expert may require.

8.5 Rules of expert determination

The expert determination process will be administered, and the expert will be required to act, under the terms of the Expert Determination Agreement.

8.6 Expert finding

- (a) **(Notification):** The determination of the expert must be in writing and will be final and binding on the Disputing Parties unless, within 10 Business Days of receipt of the determination, a Disputing Party gives notice to each other Disputing Party of its dissatisfaction and intention to refer the matter to arbitration in accordance with clause 9.
- (b) **(Amendment to determination):** Upon submission by any Disputing Party, the expert may amend the determination to correct:
- (1) a clerical mistake;
 - (2) an error from an accidental slip or omission;
 - (3) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
 - (4) a defect in form.

8.7 Liability of expert

- (a) **(Liability of expert):** The Disputing Parties agree:
- (1) that the expert will not be Liable in connection with the expert determination, except in the case of fraud on the part of the expert; and



- (2) to indemnify the expert against any Claim or Liability in connection with the expert determination, except in the case of fraud on the part of the expert, in which case a Claim may be made against him or her by any person who is party to the dispute.
- (b) **(Engagement)**: The Disputing Parties will jointly engage the expert services in connection with the expert determination proceedings and each Disputing Party will seek a separate Tax Invoice equal to its share of the cost of the expert.

8.8 Costs

The Disputing Parties must:

- (a) **(own costs)**: bear their own costs in connection with the expert determination proceedings; and
- (b) **(expert costs)**: pay an equal portion of the costs of the expert.

8.9 Proportionate Liability

To the extent permitted by Law, the Expert will have no power to apply or to have regard to the provisions of any proportionate liability legislation which might in the absence of this clause 8.9, have applied to any dispute referred to the Expert in accordance with this clause 8.

9 Arbitration

9.1 Reference to Arbitration

- (a) **(Dispute)**: If:
 - (1) a dispute:
 - (A) which has been referred to the Disputing Parties' Representatives for negotiation in accordance with clause 8.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 8.2(c)(1); and
 - (B) the Disputing Parties do not agree to refer the dispute to an expert for determination; or
 - (2) in the case of a dispute which the Disputing Parties agree to refer to expert determination under clause 8.3:
 - (A) a determination is not made within 30 days of the expert's acceptance of the appointment; or
 - (B) a notice of dissatisfaction is given in accordance with clause 8.6,

then any Disputing Party may notify the other Disputing Parties that it requires the dispute to be referred to arbitration.
- (b) **(Referral)**: Upon receipt by a Disputing Party of a notice under clause 9.1(a), the dispute will be referred to arbitration.



9.2 Arbitration

- (a) **(ACICA Rules):** Arbitration in accordance with this clause 9 will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Rules) as current at the date the dispute is referred to arbitration and as otherwise set out in this clause 9, with this clause 9 having priority to the extent of any inconsistency.
- (b) **(Seat):** The seat of the arbitration will be Melbourne, Victoria.
- (c) **(Language):** The language of the arbitration will be English.

9.3 Appointment of arbitrator

The Disputing Parties will endeavour to agree on the arbitrator or arbitrators (if the parties agree to appoint three arbitrators), but if no such agreement is reached within 14 Business Days of the dispute being referred to arbitration in accordance with clause 9.1(b), the arbitrator or arbitrators will be appointed in accordance with the ACICA Rules.

9.4 General Principles for conduct of arbitration

- (a) **(Conduct of arbitration):** The Disputing Parties agree that:
 - (1) they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any dispute;
 - (2) any arbitration conducted in accordance with this clause 9 will not necessarily mimic court proceedings of the seat of the arbitration or the place where hearings take place (if different), and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and
 - (3) in conducting the arbitration, the arbitrator must take into account the matters set out in clauses 9.4(a)(1) and 9.4(a)(2).
- (b) **(Evidence in writing):** All evidence in chief must be in writing unless otherwise ordered by the arbitrator.
- (c) **(Evidence and discovery):** The rules for evidence and discovery will be the IBA Rules on the Taking of Evidence in International Arbitration current at the date of arbitration (or if there are no current rules, the most recent version of those rules).
- (d) **(Oral hearing):** The oral hearing must be conducted as follows:
 - (1) any oral hearing must take place in Melbourne, Victoria and all outstanding issues must be addressed at the oral hearing;
 - (2) the date and duration of the oral hearing must be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in clause 9.4(a) when determining the duration of the oral hearing;
 - (3) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
 - (4) the oral hearing must be conducted on a stop clock basis with the effect that the time available to the Disputing Parties must be split equally between the Disputing Parties so that each party has the same time to conduct its case unless, in the opinion of the arbitrator,



such a split would breach the rules of natural justice or is otherwise unfair to one of the Disputing Parties;

- (5) not less than 28 days prior to the date fixed for oral hearing each of the Disputing Parties must give notice of those witnesses (both factual and expert) of each other Disputing Party that it wishes to attend the hearing for cross examination;
 - (6) in exceptional circumstances the arbitrator may amend the date of hearing and extend the time for the oral hearing set in accordance with clause 9.4(d)(2);
 - (7) a Disputing Party will not be bound to accept the written evidence of a witness submitted on behalf of an opposing Disputing Party which is not challenged in cross examination; and
 - (8) each Disputing Party is expected to put its case on significant issues in cross examination of a relevant witness called by the other Disputing Party or, where it seeks to challenge the evidence of a witness not called for cross-examination by reference to other evidence, to identify that evidence in its written opening submissions so that the other Disputing Party may know the nature of and basis for the challenge to the witness' written evidence.
- (e) **(Experts):** Unless otherwise ordered each Disputing Party may only rely upon one expert witness in connection with any recognised area of specialisation.

9.5 Proportionate liability

To the extent permitted by Law, the arbitrator will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this clause 9.5, have applied to any dispute referred to arbitration in accordance with this clause 9.

9.6 Extension of ambit of arbitration proceedings

- (a) **(Extending Disputes):** Where:
- (1) a dispute between the Disputing Parties to this Deed is referred to arbitration in accordance with this clause 9; and
 - (2) there is some other dispute also between the Disputing Parties to and in accordance with this Deed (whenever occurring),
- the arbitrator may, upon application being made to the arbitrator by one or more of the Disputing Parties at any time before a final award is made in relation to the first-mentioned dispute, make an order directing that the arbitration be extended so as to include the other dispute.
- (b) **(Arbitrator's order):** An arbitrator may make an order in accordance with clause 9.6(a) on such terms and conditions (if any) as the arbitrator thinks fit.

9.7 Award final and binding

- (a) **(Final and binding):** Subject to clause 9.7(b), any award will be final and binding on the Disputing Parties.
- (b) **(Appeal):** Each Disputing Party consents to any appeal to a court where that appeal is made under the *Commercial Arbitration Act 2011* (Vic) on a question



of law arising in connection with an arbitral award made in accordance with this clause 9.

9.8 Continue to perform

Notwithstanding the existence of a dispute, each Disputing Party must continue to carry out its obligations in accordance with this Deed.

9.9 Governing law of arbitration agreement

The Law governing this arbitration agreement is the law of Victoria, Australia.

9.10 Interlocutory relief

This clause 9 does not prevent a Disputing Party from seeking urgent interlocutory relief from a court of competent jurisdiction where, in that Disputing Party's reasonable opinion, that action is necessary to protect that Disputing Party's rights.

10 Termination of this Deed

- (a) **(Satisfaction of obligations under the Franchisee Cooperation Agreement):** This Deed will terminate upon the performance and satisfaction of all of the obligations under the Franchisee Cooperation Agreement.
- (b) **(Does not affect rights of parties):** The termination of this Deed does not affect the rights of any party which have accrued to that party before the date of termination.

11 Goods and Services Tax (GST)

- (a) **(GST exclusive amounts):** Unless otherwise expressly stated, all amounts referred to in this Deed or any Project Document are exclusive of GST.
- (b) **(GST payable by Supplier):** If GST becomes payable on any Taxable Supply made by a party (**Supplier**) under or in connection with this Deed:
 - (1) any amount payable or consideration to be provided in accordance with any other provision of this Deed for that supply (**Agreed Amount**) is exclusive of GST;
 - (2) an additional amount will be payable by the party which is the recipient of the Taxable Supply (**Recipient**), equal to the amount of GST payable on that Taxable Supply as calculated by the Supplier in accordance with the GST Law, which will be payable at the same time and in the same manner as for the Agreed Amount; and
 - (3) the Supplier will provide a Tax Invoice to the Recipient in connection with that supply, either at the time expressly set out in any other provision of this Deed or no later than the time at which the Agreed Amount for that Taxable Supply is to be provided in accordance with this Deed. The Recipient is not obliged to pay any amount in accordance with this clause 11(b) unless and until a Tax Invoice is



received by the Recipient in connection with the Taxable Supply except where the Recipient is required to issue the Tax Invoice.

- (c) **(Variation in GST payable):** If for any reason, the GST payable by the Supplier in connection with a supply it makes under or in connection with this Deed (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it received from the Recipient under clause 11(b) in connection with that supply, the Supplier will provide a refund or credit to, or will be entitled to receive from, the Recipient (as appropriate) the amount of this variation. Where an adjustment event occurs in relation to a supply and except where the Recipient is required to issue the Adjustment Note:
- (1) the Supplier will issue an Adjustment Note to the Recipient in connection with that supply within 14 days after becoming aware of that adjustment event occurring; and
 - (2) no additional amount will be payable by the Recipient unless and until an Adjustment Note is received by the Recipient.
- (d) **(GST ceasing to be payable):** No amount is payable by a party in accordance with clause 11(b) or 11(c) to the extent that the GST to which the amount relates has ceased to be payable by or refundable to the Supplier by the Commissioner of Taxation under the GST Law.
- (e) **(GST ceasing to be payable):** If the Recipient is dissatisfied with any calculation to be made by the Supplier in accordance with this clause 11 the Recipient may, at its own expense and after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the President of the Institute of Chartered Accountants for expert determination, which will be final and binding on all parties (except in the case of manifest error on the face of the expert determination). The expert will act as an expert and not as an arbitrator and must take into account the terms of this Deed, the matters required to be taken into account by the Supplier in accordance with this clause 11 and any other matter considered by the expert to be relevant to the determination. The parties release the expert from any liability in acting as an expert, except in the case of fraud on the part of the expert.
- (f) **(Revenue net of GST):** Any reference in this Deed to price, value, sales, revenue, profit or a similar amount (**Revenue**), is a reference to the GST exclusive component of that Revenue, unless the contrary intention is expressed.
- (g) **(Cost net of GST):** Any reference in this Deed to cost, expense, liability or other similar amount (**Cost**) of a party, is a reference to that Cost reduced by the Input Tax Credits to which the party is entitled in respect of such Cost, unless the contrary intention is expressed.
- (h) **(General obligation):** Each party agrees to do all things, including providing Tax Invoices and other documentation, that may be necessary or desirable to enable or assist the other party in determining its GST payable on any supply made by that other party in connection with this Deed, or any input tax credits, adjustments or refunds in relation to any amount of GST paid or payable in connection with any supply made in connection with this Deed.
- (i) **(GST Groups):** For the purposes of this Deed, a reference to GST payable on a Taxable Supply made by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member and a reference to an input tax credit entitlement of a party includes any corresponding input tax credit entitlement of the representative member of any GST group of which that party is a member.



- (j) **(Project Agreement to prevail):** If clause 59 (Taxes) of the Project Agreement would apply in respect of a Taxable Supply to which this clause 11 also applies then clause 59 (Taxes) of the Project Agreement will apply in respect of that supply and the provisions of this clause 11 (but for this clause 11(j)) will not apply.
- (k) **(Definitions):** In this clause 11 unless otherwise defined in this Deed, terms used have the meanings given to them in the GST Law.

12 Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Deed:

- (a) **(In writing):** must be in writing;
- (b) **(Addressed):** must be addressed as set out below (or as otherwise notified by that party to each other party from time to time);

State:

Attention: [not disclosed]
[not disclosed]

Address: [not disclosed]

Email: [not disclosed]

Project Co:

Attention: [not disclosed]

Address: [not disclosed]

Email: [not disclosed]

Franchisee:

Attention: [not disclosed]

Address: [not disclosed]

Email: [not disclosed]

- (c) **(Signed):** must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(Form of delivery):** must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by the parties) to the email address of the addressee set out in clause 12(b); and
- (e) **(Taken to be received):** are taken to be received by the addressee at the address set out in clause 12(b):
 - (1) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
 - (2) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day



after the date of posting by airmail to an address outside Australia;
and

- (3) in the case of email, the first to occur of:
- (A) receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - (B) the time that the communication enters an information system which is under the control of the addressee; or
 - (C) the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day.

13 Confidential Information and disclosure

13.1 Confidential Information and disclosure by the State

The Franchisee acknowledges and agrees that:

- (a) **(Public Disclosure Obligations):** the State or any Authority may disclose any information in connection with the Project (including any Confidential Information) in accordance with its Public Disclosure Obligations and the Franchisee must use all reasonable endeavours to assist the State or an Authority in meeting its Public Disclosure Obligations;
- (b) **(Other purposes):** the State or any Authority may disclose any information in connection with the Project (including any Confidential Information) in connection with:
 - (1) any Re-franchising; and
 - (2) the requirements of the State Project Documents (including any tender process required to be conducted under the Termination Payments Schedule, or Change Compensation Principles);
- (c) **(State's rights):** subject to clause 13.1(d), in meeting its Public Disclosure Obligations or as otherwise considered necessary by the State, the State may publish, disclose or make generally available each Project Document on a Victorian Government website; and
- (d) **(Commercially sensitive information):** the State will not publish, disclose or otherwise make generally available the information which is specified in the Confidential Information Schedule (including the Financial Model), except if required to do so to comply with the Public Disclosure Obligations or as required under clause 13.1(b); and
- (e) **(Exercise of licence):** nothing in this Deed prevents the State and any sublicensees using or disclosing any information (including Confidential Information) to the extent necessary or desirable for, or in connection with, the exercise of any licence granted under clause 56 (Intellectual Property Rights) of the Project Agreement.



13.2 Confidential Information and disclosure by Project Co and the Franchisee

- (a) **(Confidentiality obligation):** Subject to clause 13.2(b), Project Co and the Franchisee must treat as secret and confidential all Confidential Information in connection with this Deed and any other Project Document.
- (b) **(Disclosure of Confidential Information):** Without limiting Project Co's and the Franchisee's obligations under clause 13.2(a) and subject to clause 13.2(c), Project Co and the Franchisee may disclose Confidential Information to:
 - (1) in the case of Project Co, in accordance with and subject to clause 57 of the Project Agreement; and
 - (2) in the case of the Franchisee, its Associates and to the counterparties to its Operative Agreements to the extent necessary for the purpose of performing its obligations under this agreement and under its Operative Agreements.
- (c) **(Confidentiality deed):** Before disclosing any Confidential Information, Project Co or the Franchisee (whichever is disclosing the Confidential Information) must ensure that the person to whom the information is disclosed enters into a confidentiality deed with Project Co or the Franchisee (whichever is disclosing the Confidential Information) on terms reasonably acceptable to the State.

13.3 Disclosure by the Franchisee

- (a) **(Franchisee's disclosure obligations):** Subject to clause 13.3(b), the Franchisee must:
 - (1) not make any public disclosures, announcements or statements in relation to the Project or the State's or any of the State's Associates' or the Franchisee's involvement in the Project without the State's prior consent;
 - (2) comply with any terms and conditions the State imposes and must use all reasonable endeavours to agree with the State the wording and timing of all public disclosures, announcements or statements by it or any of its Associates relating to the Project or the State's or any of the State's Associates' or the Franchisee's involvement in the Project before the relevant disclosure, announcement or statement is made; and
 - (3) as soon as practicable, give to the State a copy of any public disclosure, announcement or statement agreed to or approved by the State in accordance with this clause 13.3(a) or for which the State's consent or approval was not required in accordance with clause 13.3(b).
- (b) **(Permitted disclosure):** For the purposes of clause 13.3(a), the Franchisee will not be required to obtain the State's consent or approval to the extent that any disclosure, announcement or statement is:
 - (1) made in the ordinary course of the Franchisee performing its obligations under its Operative Agreements;
 - (2) required by Law, provided that it:
 - (A) notifies the State of the requirement to make that disclosure; and



- (B) takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;
- (3) required to obtain legal or other advice from its advisers;
- (4) required to be made to a court in the course of proceedings to which the Franchisee is a party;
- (5) required by a relevant stock exchange, subject to:
 - (A) such disclosure, announcement or statement not referring to the State's or any of its Associates' or the Franchisee's involvement in the Project; and
 - (B) the Franchisee having used all reasonable endeavours to obtain the State's consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant stock exchange; or
- (6) made in accordance with clause 16.3(c) of the Franchisee Cooperation Agreement.

14 Return of documents

The Franchisee must return to the State copies of all plans, drawings, specifications and other like documents which come into its possession for the purpose of the Franchisee Cooperation Agreement or this Deed at the expiration of the Franchisee Cooperation Agreement, other than any documents which the Franchisee requires for the purposes of:

- (a) maintaining and complying with its Accreditation;
- (b) complying with all conditions of its Accreditation and all obligations of accredited persons under the Rail Safety Act;
- (c) complying with its obligations under its Operative Agreements; and
- (d) operating the Franchise Business.

15 Intellectual Property

15.1 Grant of licence

The Franchisee:

- (a) **(grant)**: grants to the State;
- (b) **(associates)**: without limiting the Franchisee's obligations under clause 15.3, must procure that each of its Associates legally entitled to do so grants to the State (with effect from the date the relevant Franchisee Intellectual Property Rights come into existence); and
- (c) **(all things necessary)**: must do all things necessary to give effect to the grant to the State of,

a world-wide, perpetual, irrevocable, non-exclusive, transferable, royalty-free licence (including the right to sub-license) to use, reproduce, modify, adapt, develop,



communicate to the public or otherwise exploit the Franchisee Material, and to exercise all or any of the Franchisee Intellectual Property Rights, for the purposes of:

- (d) **(Project)**: the Project (including, where the Project Agreement is terminated for any reason other than for convenience under clause 45.2 of the Project Agreement), to complete any Project Activities which have not been:
 - (1) carried out; or
 - (2) carried out in accordance with the applicable State Project Documents,
as at the date of termination of the Project Agreement);
- (e) **(Project Documents)**: the exercise of the rights of the State or its Associates in accordance with the Project Documents (including its step-in rights in accordance with clause 41 of the Project Agreement);
- (f) **(Franchisee Material)**: the procurement, design, supply, construction, installation, production, commissioning, completion, operation, maintenance, repair and alteration of the Franchisee Material (to the extent that it relates to the Returned Tram Works) on and from Handback; and
- (g) **(interfaces)**: the procurement, design, supply, construction, installation, production, commissioning, completion, operation, maintenance, repair and alteration of any thing (including infrastructure, equipment, computer hardware, computer software and computer or telecommunications systems) which interfaces or interoperates with, or is located (in whole or in part) under, on or above the Franchisee Materials or the Returned Tram Works during and after the Term, but only to the extent the use or exercise of the Franchisee Intellectual Property Rights is required to enable the proper procurement, design, supply, construction, installation, production, commissioning, completion, operation, maintenance, repair or alteration of that thing.

15.2 Franchisee Material, Relevant Infrastructure and Returned Assets

Without limiting the Franchisee's other obligations under this Deed with respect to the delivery of any Franchisee Material, the Franchisee will provide, and procure that its Associates provide, all documentation, information and assistance and materials as the State may reasonably require for the State's:

- (a) use and enjoyment of the Franchisee Material; or
- (b) use and exercise of the Franchisee Intellectual Property Rights,
in connection with the Project Agreement.

15.3 Moral rights

If the Franchisee, in the course of carrying out its obligations under this Deed, makes use of any work or other subject matter in which copyright subsists (**Material**), the Franchisee must procure from every person (including any officer, employee, agent, consultant or a Franchisee Subcontractor or any of its Associates) who is an author of that Material a consent which is valid and effective under the *Copyright Act 1968* (Cth) and signed by that person by which (to the maximum extent permitted by Law) that person irrevocably and unconditionally consents to the State, any of its Associates and any person nominated or authorised by the State (including sub-licensees), Project Co and its Associates, the Franchisee and its Associates and any person authorised to do acts comprised in the copyright (**Beneficiaries**):



- (a) **(exercise of rights)**: using, disclosing, reproducing, transmitting, exhibiting, communicating, adapting, publishing or otherwise exercising its rights in relation to the Material anywhere in the world in whatever form any of the Beneficiaries thinks fit (including the making of any distortions, additions or alterations to the Material or any adaptation thereof, or to any part of the Material or of any adaptation of the Material in a manner which, but for the consent, infringes or may infringe that person's Moral Rights in the Material); and
- (b) **(no identification)**: using, disclosing, reproducing, transmitting, exhibiting, communicating, adapting, publishing or otherwise exercising its rights in relation to the Material or any adaptation thereof (or any part of the Material or of any such adaptation) anywhere in the world without making any identification of that person in relation to the Material.

15.4 Third Party Materials

- (a) **(Application of Third Party Intellectual Property Rights)**: Clauses 15.1 and 15.3 of this Deed will not apply to any Intellectual Property Rights that are Third Party Intellectual Property Rights if, and only to the extent that:
 - (1) the material the subject of the relevant Intellectual Property Rights (the **Third Party Material**) is generally commercially available on reasonable commercial terms;
 - (2) the Franchisee and its Associates have been unable (despite their reasonable endeavours) to procure from the relevant third party the right to grant the licences in clauses 15.1 and 15.3 of this Deed in respect of that Third Party Material;
 - (3) the Franchisee has notified the State that it has been unable to procure the necessary licence rights for that Third Party Material;
 - (4) the Franchisee has used reasonable endeavours to procure a licence for the State and Project Co in respect of that Third Party Material (whether from the Franchisee or the relevant third party) on terms as close as possible to the terms of clauses 15.1 and 15.3 of this Deed, and has notified the State and Project Co of those terms; and
 - (5) the State has given its approval to the Third Party Material being excluded from the subject matter of the licenses granted in clauses 15.1 and 15.3 of this Deed. This approval may be given at the State's sole discretion, and is subject to such conditions as the State sees fit.
- (b) **(No State approval)**: The State not giving its approval in accordance with clause 15.4(a)(5) will not relieve the Franchisee from any of its obligations under this Deed or the Franchisee Cooperation Agreement.
- (c) **(State withdraws approval)**: If the State has reasonable grounds to withdraw, and the State or Project Co notifies the Franchisee that the State has withdrawn, its approval under this clause 15.4 in respect of any Third Party Material, the Franchisee must use its reasonable endeavours to immediately procure for the State and Project Co from the relevant third party (or parties), at the Franchisee's sole cost and expense, all licences necessary under the terms of this Deed in respect of that Third Party Material.
- (d) **(Procurement of licences to Third Party Material)**: If the State approves certain Third Party Material being excluded from the subject matter of the licenses granted in clauses 15.1 and 15.3 of this Deed and instead being licensed to the State and Project Co on certain terms notified under clause 15.4(a)(5), the Franchisee must immediately grant to the State and Project Co



or procure from the relevant third party a licence for the State and Project Co (as the case may be) on those terms.

16 Miscellaneous

16.1 Governing Law and jurisdiction

- (a) **(Governing Law):** This Deed is governed by, and must be construed according to, the Laws of Victoria, Australia.
- (b) **(Jurisdiction):** Without limiting clauses 8 to 9, each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Deed.

16.2 Entire agreement

To the extent permitted by Law and in relation to its subject matter, this Deed:

- (a) **(Entire understanding):** embodies the entire understanding of the parties and constitutes the entire terms agreed by the parties; and
- (b) **(Prior agreements):** supersedes any prior agreement of the parties.

16.3 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to the parties) required by Law or reasonably requested by another party to give effect to this Deed.

16.4 Survival of certain provisions

- (a) **(Surviving clauses):** All provisions of this Deed which, expressly or by implication from their nature, are intended to survive the rescission, termination or expiration of this Deed will survive the rescission, termination or expiration of this Deed, including any provisions in connection with:
 - (1) the State's rights to set-off and recover money;
 - (2) confidentiality or privacy;
 - (3) Intellectual Property Rights;
 - (4) any obligation to make any information and records available to the State;
 - (5) any indemnity or financial security given in accordance with this Deed; or
 - (6) any right or obligation arising on termination of this Deed.
- (b) **(Interpretation):** No provision of this Deed which is expressed to survive the rescission, termination or expiration of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the rescission, termination or expiration of this Deed.
- (c) **(Survival of rights and obligations):** No right or obligation of any party will merge on completion of any transaction under this Deed. All rights and



obligations in accordance with this Deed survive the execution and delivery of any transfer or other document which implements any transaction in accordance with this Deed.

16.5 Waiver

- (a) **(Writing):** A waiver given by a party in accordance with this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver):** A failure to, a delay in or the partial exercise or enforcement of a right provided by Law or in accordance with this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or in accordance with this Deed.
- (c) **(No waiver of another breach):** No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

16.6 Consents, approvals and directions

- (a) **(State):** A consent or approval required in accordance with this Deed from the State may be given or withheld, or may be given subject to any conditions, as the State thinks fit, unless this Deed expressly provides otherwise.
- (b) **(Project Co or Franchisee):** A consent or approval required in accordance with this Deed from Project Co or the Franchisee may not be unreasonably withheld or delayed, unless this Deed expressly provides otherwise.

16.7 Amendments

Except as otherwise expressly provided in this Deed, this Deed may only be varied by a deed executed by or on behalf of each party.

16.8 Expenses

Except as otherwise expressly provided in this Deed (or as between the State and Project Co in the Project Agreement) each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

16.9 Severance

If, at any time, a provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this Deed; or
- (b) that provision under the Law of any other jurisdiction.

16.10 Counterparts

This Deed may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same agreement.



16.11 Moratorium legislation

To the fullest extent permitted by Law, the provisions of all Laws which operate to lessen or affect in favour of a party other than the State any obligation under this Deed, or to prejudicially affect the exercise by the State of any right, power or remedy under this Deed or otherwise, are expressly waived.

16.12 Proportionate liability

- (a) **(Excluded operation of Wrongs Act):** The operation of Part IVAA of the *Wrongs Act 1958* (Vic) is excluded in relation to all and any rights, obligations or liabilities of either party under this Deed whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) **(Rights, obligations and liabilities):** Without limiting clause 16.12(a), the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Deed and not otherwise, whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

16.13 Indemnity held on trust

- (a) **(Benefit of indemnities):** The State holds on trust for its Associates the benefit of:
 - (1) each indemnity, promise and release given by Project Co or the Franchisee under this Deed in favour of the State's Associates; and
 - (2) each right in this Deed to the extent that such right is expressly provided to be for the benefit of the State's Associates.
- (b) **(Project Co and Franchisee acknowledgement):** Project Co and the Franchisee acknowledge the existence of such trusts and consent to:
 - (1) the State exercising rights in relation to, or otherwise enforcing such indemnities, releases and rights on behalf of its Associates; and
 - (2) the State's Associates exercising rights in relation to, or otherwise enforcing the indemnities, releases and those rights as if they were a party to this Deed.
- (c) **(Consent not required):** The parties agree that the State does not require the consent of its Associates to amend or waive any provision of any Project Document.

16.14 Assignment

Except as expressly contemplated by this Deed, neither Project Co nor the Franchisee may assign or transfer any of its rights or obligations under this Deed or the Franchisee Cooperation Agreement.

16.15 Set off

Without limiting the State's rights under the Project Agreement, all moneys which the State may pay or incur and for which Project Co is liable under the terms of the Project Agreement or in respect of which it is under this Deed liable to make reimbursement to or indemnify the State, may be deducted by the State from all moneys due, becoming due



HERBERT
SMITH
FREEHILLS

or to become due from it to Project Co under the Project Agreement or may be recovered from Project Co by action at Law or otherwise.



Signing page

Executed as a deed

State

Signed sealed and delivered by
**the Honourable Jacinta Allan
MP, in her capacity as the
Minister for Public Transport,
on behalf of the Crown in right
of the State of Victoria** in the
presence of

sign here ▶ [not disclosed]
Witness

[not disclosed]
Signature of Minister

print name [not disclosed]

CY Partner 1

Signed sealed and delivered for
[not disclosed]
by its attorneys

sign here ▶ [not disclosed]
Attorney

[not disclosed]
Attorney

print name [not disclosed]

[not disclosed]

in the presence of

sign here ▶ [not disclosed]
Witness

[not disclosed]
Witness

print name [not disclosed]

[not disclosed]



CY Partner 2

Signed sealed and delivered for
[not disclosed]
by its attorney

in the presence of

sign here ► [not disclosed]
Attorney

sign here ► [not disclosed]
Witness

print name [not disclosed]

print name [not disclosed]

CY Partner 3

Signed sealed and delivered for
[not disclosed]
by its attorney

in the presence of

sign here ► [not disclosed]
Attorney

sign here ► [not disclosed]
Witness

print name [not disclosed]

print name [not disclosed]

CY Partner 4

Signed sealed and delivered for
[not disclosed]
by its attorney

in the presence of

sign here ► [not disclosed]
Attorney

sign here ► [not disclosed]
Witness

print name [not disclosed]

print name [not disclosed]

Franchisee

Signed sealed and delivered by
**KDR Victoria Pty Ltd (ACN 138
066 074)**
by

sign here ► [not disclosed]
Company Secretary/Director

sign here ► [not disclosed]
Director

print name [not disclosed]

print name [not disclosed]



HERBERT
SMITH
FREEHILLS

Deed

Preferred bidder phase
CYP

Metro Tunnel
Tunnel and Stations PPP

Independent Reviewer Deed of Appointment (Advanced Works)

The State of Victoria through the Melbourne Metro
Rail Authority, an Administrative Office in relation to
the Department of Economic Development, Jobs,
Transport and Resources

D&C Subcontractor

AECOM Australia Pty Ltd

Metro Trains Melbourne Pty Ltd

KDR Victoria Pty Ltd



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tunnels,

and offers its expertise in those fields.

- 3 The Advanced Works Deed contemplates that the Independent Reviewer will discharge certain functions, including those set out in the Services Schedule.
- 4 The Independent Reviewer will perform its obligations in accordance with the terms and conditions of this Deed.

This deed witnesses as follows:



1 Definitions and interpretation

1.1 Advanced Works Deed definitions

Unless otherwise expressly defined, expressions used in this Deed have:

- (a) the meanings given to them in or for the purposes of the Advanced Works Deed; or
- (b) if not defined in or for the purposes of the Advanced Works Deed, the meanings given to them in or for the purposes of the Project Agreement.

1.2 Definitions

In this Deed, unless the context otherwise requires:

| Term | Meaning |
|-----------------------------|---|
| Accreditation | means accreditation under Part 3 of Division 4 of the Rail Safety National Law. |
| Advanced Works Deed | means the document entitled 'Advanced Works Deed' entered into between the State and the D&C Subcontractor on or about 21 September 2017. |
| Agreed Amount | has the meaning given in clause 14(b)(1). |
| Alliance Services | has the meaning given in the draft Independent Reviewer Deed of Appointment set out in Exhibit 1. |
| Capped Party | has the meaning given in clause 8.3(b). |
| Commencement Date | has the meaning given in clause 2. |
| Contract Particulars | means the particulars set out in Schedule 1. |
| Cost | has the meaning given in clause 14(g). |
| Deed | means this deed and includes all Schedules, Exhibits, Attachments and Annexures to it. |



| Term | Meaning |
|---|--|
| Disbursements Cap | has the meaning given in section 9 of Schedule 3. |
| Dispute | has the meaning given in clause 15.2. |
| Disputing Parties | has the meaning given in clause 15.2. |
| Fee | means amount payable to the Independent Reviewer for the performance of the Services, as adjusted from time to time in accordance with clause 10.1(b) and the Payment Schedule. |
| Hold Point | has the meaning given in the Draft PS&TR. |
| Independent Reviewer Deed of Appointment | means the document entitled 'Independent Reviewer Deed of Appointment' as executed by the State, Project Co, the Independent Reviewer, the Train Franchisee and the Tram Franchisee in respect of the Project. |
| Independent Reviewer Material | means all documentation, information (including databases and drafts), models and other material in which Intellectual Property Rights are capable of subsisting which is prepared, used or provided by or on behalf of the Independent Reviewer in carrying out the Services. |
| Independent Reviewer's Representative | means the person named in the Contract Particulars or any other person appointed by the Independent Reviewer with the approval of the Project Parties from time to time to replace that person. |
| Key People | means the people identified as such in the Contract Particulars. |
| Liability Cap | has the meaning given in clause 8.1. |
| Non-Capped Party | has the meaning given in clause 8.3(c). |
| Payment Schedule | means the schedule set out in Schedule 3. |
| Primary Policy | has the meaning given in clause 8.5(d)(2). |



| Term | Meaning |
|--|--|
| Project Agreement | has the meaning given to the term 'Draft Project Agreement' in the Advanced Works Deed. |
| Project Parties | means the State and the D&C Subcontractor. |
| Project Parties' Representatives | means, in respect of each of the State and the D&C Subcontractor, the person named in the Contract Particulars or any other person appointed by the relevant Project Party from time to time to replace that person. |
| Rail Franchisee Cooperation Agreement | means: <ol style="list-style-type: none">1 the Train Franchisee Cooperation Agreement; or2 the Tram Franchisee Cooperation Agreement, or both, as the context requires. |
| Rail Franchisee Input Document | has the meaning given to the term 'Franchisee Input Document' in a Rail Franchisee Cooperation Agreement. |
| Railway Operations | has the meaning given in the Rail Safety National Law. |
| Recipient | has the meaning given in clause 14(b)(2). |
| Re-profiled D&C Phase Fee | has the meaning given in clause 3.6(b). |
| Revenue | has the meaning given in clause 14(f). |
| Schedule of Rates and Disbursements | means the schedule of rates and prices, disbursements and caps set out in section 9 of the Payment Schedule as adjusted from time to time in accordance with clause 10.1 and the Payment Schedule. |
| Services | means: <ol style="list-style-type: none">1 all of the functions conferred on the Independent Reviewer under this Deed or the Advanced Works Deed, as varied in accordance with clause 10 or in accordance with terms of the Advanced Works Deed;2 all other things or tasks which the Independent Reviewer must do to comply with its obligations under this Deed or the |



| Term | Meaning |
|--|--|
| | Advanced Works Deed; and 3 without limiting paragraph 2, all other things and tasks not described in this Deed or the Advanced Works Deed if those things and tasks should have been reasonably anticipated by an experienced and expert professional provider of similar services as being necessary for the performance of those things or tasks or which are otherwise capable of inference from this Deed or the Advanced Works Deed. |
| Services Schedule | means the schedule set out in Schedule 2. |
| Substitute Reviewer | has the meaning given in clause 10.2(a). |
| Supplier | has the meaning given in clause 14(b). |
| Term | means the period from the Commencement Date until this Deed is terminated in accordance with its terms. |
| Train Franchisee Cooperation Agreement | means the draft version of the Train Franchisee Cooperation Agreement marked 'CYP Preferred Draft 01' issued by the State on or about 4 September 2017. |
| Train Franchisee Rail Safety Requirements | means the terms of the Train Franchisee's accredited Train Safety Management System, including the following requirements to the extent applicable to such Maintenance Services: <ol style="list-style-type: none">1 Safety and Environmental Requirements for contractors Working on Franchisee Premises – L0-SQE-PRO-014; and2 Contractor Safety Procedure – L1-SQE-PRO-011. |
| Train Franchisee Representative | means the person named in the Contract Particulars or any other person appointed by the Train Franchisee with the prior approval of the Project Parties from time to time to replace that person. |
| Tram Franchisee Cooperation Agreement | means the draft version of the Tram Franchisee Cooperation Agreement marked 'CYP Preferred Draft 01' issued by the State on 4 September 2017. |
| Tram Franchisee Rail Safety Requirements | means the rail safety requirements arising under the terms of the Tram Franchisee's accredited Tram Safety Management System. |



| Term | Meaning |
|---------------------------------------|--|
| Tram Franchisee Representative | means the person named in the Contract Particulars or any other person appointed by the Tram Franchisee with the prior approval of the Project Parties from time to time to replace that person. |
| Tram Works | has the meaning given in the Tram Franchisee Cooperation Agreement. |

1.3 Interpretation

In this Deed:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;
and unless the context otherwise requires:
- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa and a word indicating a gender includes every other gender;
- (c) **(Deed and Schedule references)**: a reference to:
 - (1) a party, clause or Schedule is a reference to a party, clause or Schedule of or to this Deed;
 - (2) a section is a reference to a section of a Schedule;
 - (3) the Train Franchisee includes PTV to the extent PTV exercises any step-in rights under the Train Franchisee Arrangements as contemplated by clause 23 of the Train Franchisee Cooperation Agreement; and
 - (4) the Tram Franchisee includes PTV to the extent and for the duration PTV exercises any step-in rights under the Tram Franchisee Arrangements as contemplated by clause 18 of the Tram Franchisee Cooperation Agreement;
- (d) **(deed as amended)**: a reference to this Deed or to any other deed, agreement, document or instrument includes a reference to this Deed or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;



- (i) ("**includes**"): "includes" will be read as if followed by the phrase "(without limitation)";
- (j) ("**or**"): the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) ("**information**"): a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) ("**\$**"): a reference to "\$", AUD or dollar is to Australian currency;
- (m) ("**time**"): a reference to time is a reference to time in Melbourne, Australia;
- (n) ("**rights**"): a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (o) ("**obligations and liabilities**"): without limiting clause 1.6 or 1.7, a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (p) ("**may**"): the term "may", when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;
- (q) ("**construction**"): where there is a reference to an Authority, institute or association or other body referred to in this Deed which:
 - (1) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or
 - (2) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (r) ("**remedy**"): the use of the words "remedy", "cure" or any form of such words in this Deed means that the event to be remedied or cured must be remedied or cured or its effects overcome; and
- (s) ("**contra proferentem rule not to apply**"): each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

1.4 Advanced Works Deed provisions

Clauses 2.2(a)(1) to 2.2(a)(9) (*Project Agreement provisions*) of the Advanced Works Deed *mutatis mutandis* forms part of this Deed as if incorporated in full.

1.5 Order of priority

Where there is an inconsistency, ambiguity or discrepancy between this Deed and the Advanced Works Deed then the following order of precedence applies:

- (a) this Deed; then
- (b) the Advanced Works Deed.

1.6 Joint and several Liability of Independent Reviewer

If the Independent Reviewer comprises more than one person:



- (a) **(joint and several)**: the obligations of those persons are joint and several; and
- (b) **(proceedings)**: each Project Party and each Rail Franchisee may proceed against any or all of them for any failure of the Independent Reviewer to comply with any obligation in accordance with this Deed or otherwise.

1.7 Joint and several Liability of the D&C Subcontractor

If the D&C Subcontractor comprises more than one person:

- (a) **(joint and several)**: the obligations of those persons are joint and several; and
- (b) **(proceedings)**: the State, the Independent Reviewer and each Rail Franchisee may proceed against any or all of them for any failure of the D&C Subcontractor to comply with any obligation in accordance with this Deed or otherwise.

1.8 Several Liability of Project Parties and Franchisees

- (a) **(Project Parties)**: If a provision of this Deed binds the Project Parties, that provision binds each of the Project Parties severally and not jointly and severally.
- (b) **(Project Parties and Rail Franchisees)**: If a provision of this Deed binds the Project Parties and one or both of the Rail Franchisees, that provision binds each of the Project Parties and the relevant Rail Franchisees severally and not jointly and severally.

1.9 Relationship of the parties

- (a) **(No partnership or joint venture)**: The relationship between and among the parties to this Deed will not be that of partners or joint venturers and nothing therein contained will be deemed to constitute a partnership or joint venture among them and no party will have authority or power to act unilaterally as agent for the other.
- (b) **(Independent contractor)**: The Independent Reviewer is acting as an independent contractor for the Project Parties and the Rail Franchisees and therefore the Independent Reviewer is not authorised to enter into any binding obligations on behalf of the Project Parties or the Rail Franchisees.
- (c) **(No relationship)**: Unless otherwise expressly provided, this Deed does not:
 - (1) create a partnership, joint venture or fiduciary relationship between the parties to this Deed; or
 - (2) impose any duty of good faith on the State.

1.10 Approvals, directions and notices in writing

Unless otherwise expressly provided in this Deed or agreed between the parties, all approvals, consents, directions, requirements, requests, claims, notices, agreements and demands must be given in writing.

1.11 Action without delay

Unless there is a provision in this Deed which specifies a period of time in which something must be done by the parties, all things must be done without undue delay.



1.12 Prior approval or consent

Where the D&C Subcontractor, a Rail Franchisee, or the Independent Reviewer or any of them are required by this Deed to obtain the State's consent or approval to an action, document or thing, unless otherwise expressly stated, that consent or approval must be obtained prior to the actions, document or thing occurring or coming into effect.

1.13 Provisions limiting or excluding Liability

- (a) **(No limit):** A right of the State or a Rail Franchisee, or any obligation of the D&C Subcontractor or the Independent Reviewer, under this Deed will not limit or exclude any other right of the State or a Rail Franchisee, or obligation of the D&C Subcontractor or the Independent Reviewer under this Deed unless expressly stated.
- (b) **(Permitted by Law):** Any provision of this Deed which seeks, either expressly or by implication, to limit or exclude a Liability of a party is to be construed as doing so only to the extent permitted by Law.

1.14 Reasonable endeavours

Any statement in this Deed providing that the State will use or exercise "reasonable endeavours" or "act reasonably" in relation to an outcome, means that the State:

- (a) **(Relevant steps):** will take steps to bring about the relevant outcome so far as it is reasonably able to do so, having regard to its resources and other responsibilities;
- (b) **(No guarantee):** cannot guarantee the relevant outcome; and
- (c) **(No obligation):** is not required to:
 - (1) exercise a right of any Government Party, or to influence, over-ride, interfere with or direct any other Government Party in the proper exercise and performance of its legal, statutory or executive duties and functions;
 - (2) exercise a power or discretion in a manner that the State regards as not in the public interest;
 - (3) develop or implement new policy;
 - (4) procure legislation; or
 - (5) act in any way that the State regards as not in the public interest.

1.15 Cost of carrying out obligations

Each party must carry out its obligations under this Deed at its own cost, unless expressly provided otherwise.

2 Commencement of this Deed

The rights and obligations of the parties under this Deed commence on 30 October 2017 (**Commencement Date**).



3 Interim arrangements between the parties

3.1 Acknowledgements

The parties acknowledge that, as at the Commencement Date:

- (a) the D&C Subcontractor and the Package Contractors will not have entered into the Coordination and Interface Deed Poll. Clause 3.2 applies until execution of the Coordination and Interface Deed Poll;
- (b) the Joint Coordination Committee and the JCC Systems Integration Team will not have been established. Clause 3.3 applies until the Joint Coordination Committee and the JCC Systems Integration Team have been established; and
- (c) Project Co and each of the Tram Franchisee Interface Party and the Train Franchisee Interface Party will not have entered into the Rail Franchisee Cooperation Agreements. Clause 3.4 applies until execution of the Rail Franchisee Cooperation Agreements.

3.2 Period prior to execution of the Coordination and Interface Deed Poll

Prior to execution of the Coordination and Interface Deed Poll:

- (a) the parties agree to work together collaboratively and proactively with the Package Contractors; and
- (b) the parties will attend and participate in technical working groups and meetings with the Package Contractors where requested and reasonably required and the D&C Subcontractor must procure such meetings when requested by the State.

3.3 Period prior to establishment of the Joint Coordination Committee

Prior to the establishment of the Joint Coordination Committee and the JCC Systems Integration Team:

- (a) the parties agree to work together collaboratively and proactively with the parties that are anticipated to be members of the Joint Coordination Committee, as notified by the State to the D&C Subcontractor; and
- (b) the parties will attend and participate in technical working groups and meetings with the parties that are anticipated to be members of the Joint Coordination Committee where requested and reasonably required.

3.4 Rail Franchisee Cooperation Agreements

The parties agree to take into account any reasonable comments of the Rail Franchisees as would be required under the latest agreed draft of the Rail Franchisee Cooperation Agreements and to address such comments to the reasonable satisfaction of the Rail Franchisees.

3.5 Independent Reviewer Deed of Appointment

- (a) **(The occurrence of Financial Close):** Upon the occurrence of Financial Close:
 - (1) the Services form part of the "Services" to be delivered by the Independent Reviewer under the Independent Reviewer Deed of

Appointment, on the terms set out in the Independent Reviewer Deed of Appointment;

- (2) the exercise of any functions or decisions made by the Independent Reviewer pursuant to this Deed will be regarded as being functions exercised or decisions made by the Independent Reviewer under the Independent Reviewer Deed of Appointment; and
- (3) the Independent Reviewer, the Project Parties and the Rail Franchisees will have no Claim against each other in relation to any matter arising under or in connection with this Deed,

and this clause 3.5(a) survives the termination of this Deed.

(b) **(Provisions to be included in the Independent Reviewer Deed of Appointment):** The parties acknowledge and agree that the Independent Reviewer Deed of Appointment will include the following clauses:

- (1) *The parties acknowledge and agree that:*
 - (A) *the Independent Reviewer Deed of Appointment (Advanced Works) has been terminated in accordance with its terms;*
 - (B) *the services delivered under the Independent Reviewer Deed of Appointment (Advanced Works) form part of the Services to be delivered by the Independent Reviewer under the Independent Reviewer Deed of Appointment; and*
 - (C) *the exercise of any functions or decisions made by the Independent Reviewer pursuant to the Independent Reviewer Deed of Appointment (Advanced Works) are regarded as being functions exercised or decisions made by the Independent Reviewer under the Independent Reviewer Deed of Appointment.*
- (2) *The Independent Reviewer:*
 - (A) *accepts all Liabilities of the Independent Reviewer accrued under or in connection with the Independent Reviewer Deed of Appointment (Advanced Works), as such Liabilities existed immediately prior to termination of the Independent Reviewer Deed of Appointment (Advanced Works), as if those Liabilities accrued under the Independent Reviewer Deed of Appointment;*
 - (B) *agrees that any obligation or Liability of the “Project Parties” (as defined in the Independent Reviewer Deed of Appointment (Advanced Works) immediately prior to termination) and the Rail Franchisees, including in respect of payment, arising under or in connection with the Independent Reviewer Deed of Appointment (Advanced Works) is satisfied and discharged at the time of Financial Close,*

and the Independent Reviewer, the “Project Parties” (as defined in the Independent Reviewer Deed of Appointment (Advanced Works) immediately prior to termination) and the Rail Franchisees have no Claim against each other in relation to any matter arising under or in connection with the Independent Reviewer Deed of Appointment (Advanced Works).



- (c) **(Independent Reviewer commitment):** On or before Contract Close, the Independent Reviewer commits to enter into the Independent Reviewer Deed of Appointment substantially in the draft form set out in Exhibit 1.
- (d) **(Sub-Independent Reviewer Deed):** On or before Contract Close, the Independent Reviewer commits to enter into the "Sub-Independent Reviewer Deed" (as defined in the draft Independent Reviewer Deed of Appointment set out in Exhibit 1) substantially in the draft form set out in Exhibit 2, subject to resolution of the following issues:
 - (1) the Fee set out in section 8(a) of Schedule 3;
 - (2) the insurance requirements in clause 9.3 and sections 5 and 6 of Schedule 1; and
 - (3) finalising the scope of Services in Schedule 2, based on the terms of the D&C Subcontract.

3.6 Re-profiled D&C Phase Fee prior to Contract Close

- (a) **(Revised D&C Program):** At least 10 Business Days prior to the then anticipated date of Contract Close, the Project Parties will provide the Independent Reviewer with the revised D&C Program.
- (b) **(Re-profiled D&C Phase Fee):** Subject to clause 3.6(c), at least 5 Business Days prior to the anticipated date of Contract Close, the Independent Reviewer will provide the Project Parties with revised monthly or quarterly fees and disbursements (as applicable) re-profiled in accordance with the revised D&C Program (**Re-profiled D&C Phase Fee**) for the purposes of inclusion in the Independent Reviewer Deed of Appointment.
- (c) **(Applicable Caps):** The amounts set out in the Re-profiled D&C Phase Fee must not:
 - (1) in respect of the Upstream Independent Reviewer Function (as defined in the draft Independent Reviewer Deed of Appointment set out in Exhibit 1 excluding the Alliance Services) and the period from:
 - (A) the date of this Deed until the Date of Final Acceptance, exceed [not disclosed];
 - (B) from the Date of Final Acceptance until the date of the Last DLP, exceed [not disclosed]; and
 - (2) in respect of disbursements during the period from the date of this Deed until the Last DLP, exceed [not disclosed]; and
 - (3) in respect of the Alliance Services, exceed [not disclosed].
- (d) For the avoidance of doubt, the Re-profiled D&C Phase Fee will take into account the Fees and disbursement paid or invoiced to be paid under this Deed.

3.7 Review of project-specific professional indemnity insurance markets prior to Contract Close

- (a) **(Review of insurance market):** During the term of this Deed, the Independent Reviewer must review and test the insurance market regularly and vigilantly, to ascertain whether there is capacity in the insurance market to place a project-specific professional indemnity insurance policy which meets the requirements



of the Independent Reviewer Deed of Appointment for professional indemnity insurance.

- (b) **(Procurement of project specific PI policy for D&C Phase):** If upon such review it is found that:
- (1) there is capacity in the insurance market to place a project-specific professional indemnity insurance policy which meets the requirements of the Independent Reviewer Deed of Appointment; and
 - (2) the cost of procuring such insurance will be no greater than [not disclosed],

then the Project Parties may direct the Independent Reviewer to procure such insurance.

- (c) **(Procurement if required insurance unavailable):** If clause 3.7(b) does not apply, the Project Parties may direct the Independent Reviewer to procure a project-specific insurance policy which:
- (1) with the exception of the sum insured, meets the requirements of the Independent Reviewer Deed of Appointment; and
 - (2) in respect of the sum insured, meets the requirements of the Independent Reviewer Deed of Appointment to the maximum extent possible,

subject to the requirement that the cost of procuring such insurance will be no greater than [not disclosed].

4 General obligations of the Independent Reviewer

4.1 Appointment

- (a) **(Appointment):** Each of the Project Parties appoints the Independent Reviewer under this Deed to perform the Services for the benefit of each of the Project Parties and, subject to clause 6.9, each of the Rail Franchisees.
- (b) **(Acceptance of appointment):** The Independent Reviewer confirms its acceptance of the appointment.

4.2 Services

The Independent Reviewer must carry out the Services in accordance with this Deed for the Term.

4.3 Effect of Services Schedule

The Project Parties, the Rail Franchisees, and the Independent Reviewer acknowledge that the Services Schedule:

- (a) is indicative only;
- (b) is not intended to be a complete description of the Services;
- (c) does not limit or otherwise affect the Services or the performance of the Services; and
- (d) cannot be used as an aid to interpretation of the Services.



4.4 Copies of documentation and materials

The Independent Reviewer must give a copy of any document or materials, including any Payment Certificate, to the State at the same time that it issues such document or materials to the D&C Subcontractor.

5 Performance by Independent Reviewer

5.1 Standard of care

The Independent Reviewer must exercise the standard of skill, care and diligence in the performance of the Services that would be expected of an expert professional provider of the Services experienced in providing services similar to the Services for projects similar to the Project.

5.2 Duty to act honestly, fairly and independently

The Independent Reviewer must, in performing the Services act honestly, professionally and independently of the Project Parties and the Rail Franchisees and their respective Associates.

5.3 Time requirements

The Independent Reviewer must perform the Services:

- (a) **(Time limit specified)**: within the time limits specified in this Deed and the Advanced Works Deed; and
- (b) **(No time limit specified)**: where no time limit is specified, within a reasonable time.

5.4 Conflict of interest

- (a) **(Warranty)**: The Independent Reviewer warrants that:
 - (1) as at the date of this Deed, no conflict of interest arises out of its engagement by the Project Parties under this Deed; and
 - (2) if, during the term of this Deed, it becomes aware of the existence or possibility of a conflict of interest, it will:
 - (A) immediately notify the Project Parties of that conflict of interest or possible conflict of interest; and
 - (B) take such steps to avoid or mitigate the conflict of interest or possible conflict of interest as the Project Parties may reasonably require.
- (b) **(Prior approval)**: The Independent Reviewer must not exercise any function nor enter into any arrangement arising out of in respect of or in connection with the Project other than in accordance with this Deed unless approved by the Project Parties and on such terms as are approved by the State.
- (c) **(Warranty to Rail Franchisees)**: The Independent Reviewer warrants that:



- (1) as at the date of this Deed, no conflict of interest arises out of its performance of the Services under this Deed in respect of each Rail Franchisee; and
- (2) if, during the term of this Deed, it becomes aware of the existence or possibility of a conflict of interest, it will:
 - (A) immediately notify the Project Parties and the relevant Rail Franchisee(s) of that conflict of interest or possible conflict of interest; and
 - (B) take such steps to avoid or mitigate the conflict of interest or possible conflict of interest as the relevant Rail Franchisee(s) may reasonably require.

5.5 Communications with Project Parties

The Independent Reviewer must ensure that a copy of each written communication between the Independent Reviewer and a Project Party or a Rail Franchisee which relates to the Project or this Deed, is promptly given to each other Project Party and Rail Franchisee.

5.6 No authority to give directions or waive requirements

The Independent Reviewer has no authority to:

- (a) **(Directions)**: give directions to the Project Parties or the Rail Franchisees, other than as may (if at all) be expressly set out in this Deed or the Advanced Works Deed;
- (b) **(Waive or vary)**: waive or vary any requirements of the Advanced Works Deed; or
- (c) **(Discharge or release)**: discharge or release a party from any of its obligations under the Advanced Works Deed.

5.7 Acknowledgement of reliance

- (a) **(Reliance)**: Subject to clause 5.7(b), the Independent Reviewer acknowledges that each Project Party and each Rail Franchisee:
 - (1) is entitled to, and will, rely on:
 - (A) the skill and expertise of the Independent Reviewer in the performance of the Services; and
 - (B) any certificate signed or given by the Independent Reviewer under the Advanced Works Deed; and
 - (2) may suffer Liability if the Independent Reviewer does not perform the Services in accordance with the requirements of this Deed.
- (b) **(No liability)**: Notwithstanding anything else in this clause 5.7, the Independent Reviewer is not responsible for, has no duty of care to, and has no Liability to a Rail Franchisee to review any Submitted Document in respect of:
 - (1) a Rail Franchisee's ability to comply with the relevant Rail Franchisee Arrangements;
 - (2) the Train Franchisee's ability to discharge its duties under the Rail Safety National Law;



- (3) the Tram Franchisee's ability to discharge its duties under the Tram Safety Act;
- (4) the Train Franchisee's ability to comply with the requirements of its Train Accreditation and the Train Franchisee Rail Safety Requirements, to the extent that a Submitted Document relates to any rail safety management arrangements in relation to any Maintenance Services comprising Railway Operations; or
- (5) the Tram Franchisee's ability to comply with the requirements of its Tram Accreditation and the Tram Franchisee Rail Safety Requirements, to the extent that a Submitted Document relates to any rail safety management arrangements in relation to the Tram Works, except to the extent:
 - (6) the relevant Rail Franchisee has provided comments in relation to these matters; or
 - (7) the Draft PS&TR requires the relevant Submitted Document to comply with or allow the relevant Rail Franchisee to discharge its duties in relation to such matters.

5.8 Knowledge of Project Parties' requirements

The Independent Reviewer warrants that:

- (a) **(Informed itself of documents relating to Services)**: it has informed itself of the requirements of the Advanced Works Deed in so far as they relate to the Services;
- (b) **(Informed itself of other requirements)**: without limiting clause 5.8(a), it has informed itself of all time limits and other requirements for any function which the Independent Reviewer must perform in accordance with the Advanced Works Deed;
- (c) **(Nature of work)**: it has informed itself of the nature of the work necessary for the performance of the Services and (to the maximum extent possible) the means of access to and facilities within the AW Site, including any restrictions on any such access; and
- (d) **(Sufficiency of the Fee)**: it has satisfied itself as to the sufficiency of the Fee having regard to the costs which it will incur in complying with its obligations in accordance with this Deed.

5.8A Finalisation of PS&TR

The parties acknowledge and agree that:

- (a) **(Proposed amendments to Draft PS&TR)**: the parties to the Advanced Works Deed have identified a number of proposed amendments to the Draft PS&TR, including Resolved Departures and Unresolved Items;
- (b) **(D&C Subcontractor to provide details)**: the D&C Subcontractor will provide the Independent Reviewer with details of the Resolved Departures and the Unresolved Items;
- (c) **(Entitlement to proceed at own risk)**: the D&C Subcontractor is entitled to proceed at its own risk, subject to clause 5.8A(d), with the AW Activities (including any design works), based on the Draft PS&TR as if amended by the Unresolved Items in the manner proposed by the D&C Subcontractor and the Resolved Departures, as the D&C Subcontractor considers appropriate,



pending incorporation in accordance with Exhibit 1 of the Advanced Works Deed;

- (d) **(Summary of incorporated Unresolved Items and Resolved Departures):** the D&C Subcontractor must include in any Design Documentation issued to the Independent Reviewer for review a summary of any Unresolved Items and Resolved Departures that have been incorporated into the Design Documentation; and
- (e) **(No non-compliance):** prior to finalisation of PS&TR Version 7 by the State and the D&C Subcontractor, the Independent Reviewer must not raise any actual or potential non-compliances in (or refuse to certify) AW Design Documentation or Design Documentation solely on the basis that it does not comply with the Draft PS&TR in respect of any Resolved Departure or Unresolved Item.

5.9 Co-ordination and co-operation

The Independent Reviewer must, in performing the Services:

- (a) **(Co-operation):** co-operate with the Project Parties and the Rail Franchisees and their respective Associates;
- (b) **(Co-ordinate):** co-ordinate the Services with the work to be performed by the Project Parties and the Rail Franchisees, and their respective Associates; and
- (c) **(Avoid unreasonable interference):** avoid any unreasonable interference, disruption or delay to the work to be performed by the Project Parties and the Rail Franchisees, and their respective Associates.

5.10 Personnel

- (a) **(Sufficiency of numbers and experience):** The Independent Reviewer must provide sufficient numbers of experienced and competent personnel to perform its obligations in accordance with this Deed within the timeframes specified in this Deed and the Advanced Works Deed.
- (b) **(Review prior to Financial Close):** Prior to the occurrence of Financial Close, the Project Parties:
 - (1) may review all personnel of the Independent Reviewer that are proposed to perform the "Services" pursuant to the Independent Reviewer Deed of Appointment;
 - (2) request additional information from the Independent Reviewer as to the expertise, experience and performance during the term of this Deed of any such personnel; and
 - (3) require the Independent Reviewer to replace any such personnel upon a written request by the Project Parties, such request not to be unreasonably refused,

and the Independent Reviewer will, at its cost, cooperate and provide all information necessary, and attend such meetings as required, and comply with such requests, in order to give effect to this clause 5.10.

5.11 Key People

Without limiting its obligations in accordance with clause 5.10, the Independent Reviewer must:



- (a) **(Key People perform functions)**: ensure that the Key People perform the functions specified in the Contract Particulars and, unless reasonably directed otherwise by the Project Parties, ensure that they are committed and available to the Project as required to fulfil the requirements of this Deed and the Advanced Works Deed;
- (b) **(Removal of Key People)**: subject to clause 5.11(c), not remove the Key People without the prior consent of the Project Parties (which must not be unreasonably withheld or delayed, and who must consult with the Rail Franchisees prior to providing or withhold such consent);
- (c) **(Best endeavours)**: use its best endeavours to ensure that none of the Key People resign or otherwise become unavailable to perform their functions as required by clause 5.11(a);
- (d) **(Unavailability of Key People)**: without limiting clause 5.11(f) and in relation to any Key People who resign or otherwise become or may become unavailable to perform their functions as required by clause 5.11(a) (whether temporarily or permanently), notify the Project Parties accordingly including advising the Project Parties of the way in which the Independent Reviewer proposes to address the unavailability of any such Key People;
- (e) **(Replacement of Key People)**: if any of the Key People are removed, die, become seriously ill or resign, subject to the approval of the Project Parties, replace them as soon as practicable with persons of at least equivalent skill and experience; and
- (f) **(Availability of Key People)**: ensure that the Key People are available for consultation as any Project Party may reasonably require from time to time.

5.12 Independent Reviewer's Representative

The Independent Reviewer:

- (a) **(Independent Reviewer's Representative)**: has nominated the Independent Reviewer's Representative as the person to act as its representative for the Services;
- (b) **(Nominate another person)**: may, from time to time nominate another person to act as the Independent Reviewer's Representative, subject to the Project Parties' approval (in their sole and absolute discretion and with no obligation to do so), in which case that person will be the relevant representative in lieu of the person named in the Contract Particulars; and
- (c) **(Authority to bind Independent Reviewer)**: confirms that the Independent Reviewer's Representative has the power and authority to bind the Independent Reviewer.

5.13 Subcontracting

The Independent Reviewer:

- (a) **(No subcontracting)**: may not subcontract the performance of any of its Services without the prior consent of each Project Party (which may be conditional) and the Rail Franchisees (which, in the case of the Rail Franchisees, must not be unreasonably withheld or delayed); and
- (b) **(Responsible for performance)**: remains responsible for the performance of the Services in accordance with this Deed, notwithstanding any such subcontracting.

6 Role of the Project Parties

6.1 No interference or influence

- (a) **(No interference or influence):** The Project Parties and the Rail Franchisees must not interfere with, or attempt to influence, the Independent Reviewer in the performance of any of the Services. A communication allowed by this Deed or the Advanced Works Deed will not, however, of itself constitute a breach of this clause 6.1(a).
- (b) **(Project Parties and Rail Franchisees may provide comments):** Clause 6.1(a) will not prevent a Project Party or a Rail Franchisee from providing written comments to the Independent Reviewer in respect of any aspect of the AW Activities or as contemplated by a Rail Franchisee Cooperation Agreement.

6.2 Provision of information

The D&C Subcontractor must, as soon as practicable, ensure that the Independent Reviewer is provided with all information, assistance, documentation, models and particulars as the Independent Reviewer reasonably requests:

- (a) **(Services):** relating to the Services;
- (b) **(Project Documents):** required under the Advanced Works Deed; and
- (c) **(Performance of Services):** to enable it to perform the Services effectively and otherwise in accordance with the Advanced Works Deed.

6.3 Access to records and systems

Without limiting the obligations of the D&C Subcontractor under the Advanced Works Deed, or clause 6.2, the D&C Subcontractor must provide the Independent Reviewer with such information and documentation (including all Design Documentation) and access to the D&C Subcontractor's books, records and systems as the Independent Reviewer may reasonably require to enable it to perform the Services effectively and otherwise in accordance with this Deed and the Advanced Works Deed. Nothing in this clause 6.3 will be construed as a waiver of legal professional privilege.

6.4 Access to premises

The D&C Subcontractor must ensure that the Independent Reviewer is given such access to any place where any part of the AW Activities are being carried out (including transport within the AW Site and where it is reasonably required access to the premises of their respective Associates) and all necessary assistance as is required to enable the Independent Reviewer to perform the Services effectively and in accordance with the requirements of this Deed and the Advanced Works Deed.

6.5 Right to enter, inspect and test

- (a) **(Right of entry):** Subject to clause 6.5(b), the Independent Reviewer (or any person authorised by the Independent Reviewer) may, upon giving reasonable notice to the D&C Subcontractor (except in the case of an emergency when no notice is required), enter the AW Site or the offices of the D&C Subcontractor to:
 - (1) inspect, observe or test any part of the Relevant Infrastructure or the AW Activities (whether or not such inspections, observations or tests are otherwise required in accordance with this Deed);



- (2) exercise any right or carry out any obligation which the Independent Reviewer has in accordance with this Deed and the Advanced Works Deed; or
 - (3) take such other action as the Independent Reviewer considers necessary to exercise its rights in accordance with this Deed and to discharge its duties, powers and obligations.
 - (b) **(Conditions of access):** When entering the AW Site in accordance with clause 6.5(a), the Independent Reviewer must and must ensure any authorised person:
 - (1) complies with any applicable site access and interface protocols reasonably required by the D&C Subcontractor;
 - (2) does not unnecessarily interfere with the carrying out of the AW Activities; and
 - (3) does not damage the Relevant Infrastructure or the AW Site.
 - (c) **(D&C Subcontractor to assist):** If requested by the Independent Reviewer, the D&C Subcontractor must assist the Independent Reviewer in connection with any inspection or testing in accordance with this clause 6.5, including:
 - (1) providing access to such part of the Relevant Infrastructure and all the Project Co Materials as may be required by the Independent Reviewer in performing the Services;
 - (2) preparing samples of materials used in connection with the Relevant Infrastructure as required by the Independent Reviewer; and
 - (3) forwarding the samples prepared in accordance with clause 6.5(c)(2) to the Independent Reviewer or such other place or person notified by the Independent Reviewer.

6.6 Meetings

The Project Parties and the Rail Franchisees must:

- (a) **(Design meetings):** allow the Independent Reviewer to attend design meetings; and
- (b) **(Other meetings):** attend such meetings with the Independent Reviewer as the Independent Reviewer may reasonably request to enable it to perform the Services effectively and otherwise in accordance with this Deed.

6.7 Co-operation

- (a) **(D&C Subcontractor to co-operate):** The D&C Subcontractor must and must ensure that the D&C Subcontractor's Associates co-operate with the Independent Reviewer during the carrying out of the Services.
- (b) **(Rail Franchisees to co-operate):** Each Rail Franchisee must and must ensure that its Associates co-operate with the Independent Reviewer during the carrying out of the Services.

6.8 Project Parties and Rail Franchisees not liable

On no account will a Project Party or a Rail Franchisee be liable to another Project Party or its Associates, or Rail Franchisee or its Associates for any act or omission by the



Independent Reviewer whether or not in accordance with or purportedly in accordance with a provision of this Deed, the Advanced Works Deed, or otherwise.

6.9 Role of the Rail Franchisees

The parties acknowledge and agree that:

- (a) the Rail Franchisees are party to this Deed solely for the purpose of receiving the Services provided by the Independent Reviewer in relation to any Submitted Documents to which a Rail Franchisee Input Document relates, and ensuring that the construction of the AW Works comply with the requirements of the Advanced Works Deed; and
- (b) all of the rights and obligations of a Rail Franchisee under this Deed must be interpreted by reference to the limited purpose set out in clause 6.9(a).

7 Reporting and meetings

7.1 Progress reports

The Independent Reviewer must submit a written report to each Project Party and each Rail Franchisee:

- (a) **(Before meeting of Project Control Group)**: unless otherwise requested by the Project Parties, 2 Business Days before each meeting with the Project Parties as described in clause 7.2;
- (b) **(Project Parties require)**: in such form as the Project Parties may reasonably require; and
- (c) **(Details)**: containing details of:
 - (1) the D&C Subcontractor's compliance (and details of any non-compliances) with the Advanced Works Deed;
 - (2) the results of the review of the Accelerated Design Packages in accordance with the Advanced Works Deed;
 - (3) the results of the review of the AW Activities Program in accordance with the Advanced Works Deed;
 - (4) the results of the review of the carrying out of the AW Activities during the performance of the AW Activities in accordance with the Advanced Works Deed;
 - (5) any Management Plans and Maintenance Manuals, notices and other information and documentation and the results of any review of those documents or that information received from the D&C Subcontractor in accordance with the Advanced Works Deed;
 - (6) any notices given by a Project Party to the Independent Reviewer and any notices issued by the Independent Reviewer;
 - (7) any certificates issued or received by the Independent Reviewer in accordance with the Schedule of Certificates and Notices;
 - (8) notification of reports requested by one Project Party in accordance with clause 7.3; and

- (9) such other matters in respect of the Services as the Project Parties (acting jointly) may reasonably request from time to time.

7.2 Meetings with Project Parties

The Independent Reviewer must attend, and ensure that all relevant Key People attend, meetings with the Project Parties monthly during the Term or as otherwise agreed by the parties, to discuss the progress of the Services.

7.3 Reports requested by one Project Party or Rail Franchisee

- (a) **(Request by one Project Party or Rail Franchisee):** A Project Party or a Rail Franchisee may request the Independent Reviewer to prepare an additional report which is not otherwise required by the Advanced Works Deed.
- (b) **(Independent Reviewer to prepare report):** The Independent Reviewer must prepare the additional report as requested in accordance with clause 7.3(a), except where the Independent Reviewer is:
- (1) of the reasonable opinion that it would be inappropriate to prepare such a report in light of the performance and nature of the Services; or
 - (2) not reasonably capable of preparing such a report.
- (c) **(Cost of reports):** The cost of additional reports prepared in accordance with this clause 7.3 will be paid to the Independent Reviewer in accordance with the Payment Schedule.

7.4 Questions relating to a report

- (a) **(Project Parties and Rail Franchisees may submit questions):** Without limiting clause 6.1(b), a Project Party or a Rail Franchisee may submit questions or queries to the Independent Reviewer in relation to a report issued in accordance with clause 7.1.
- (b) **(Independent Reviewer to respond):** Subject to clause 5.5, the Independent Reviewer must, within a reasonable period having regard to the nature of the question or query, respond in writing to questions and queries submitted by a Project Party or a Rail Franchisee in accordance with this clause 7.4.

8 Liability, insurance and indemnity

8.1 Limitation of Liability

Subject to clause 8.4, the Independent Reviewer's total Liability for all Claims which the Project Parties and the Rail Franchisees or their respective Associates might have (whether jointly or severally) against the Independent Reviewer:

- (a) **(This Deed):** arising in connection with this Deed;
- (b) **(Services or Project):** arising in connection with the Services or the Project; or
- (c) **(Law):** otherwise at Law or in equity including:
- (1) any statute (insofar as it is possible to exclude such Liability); or
 - (2) in tort for negligence or otherwise, including negligent misrepresentation,



in respect of any fact, matter or thing under, arising in connection with the Services, the Project or any Project Document will be limited in aggregate to the greater of:

- (d) **(Specified amount)**: the amount specified in Item 4 of the Contract Particulars;
or
- (e) **(Up to indemnity limit)**: to the extent that the relevant Liability:
 - (1) is the subject of an indemnity under any policy of insurance required to be maintained by the Independent Reviewer under clause 8.5 of this Deed; or
 - (2) would have been the subject of such indemnity in accordance with the terms of a policy of insurance required to be effected and maintained by the Independent Reviewer under clause 8.5 of this Deed but for a breach by the Independent Reviewer under this Deed or any such insurance policy,then:
 - (3) the amount of the minimum limit of indemnity required under that policy of insurance as specified in the Contract Particulars; or
 - (4) where there is a Primary Policy, the aggregate of any indemnity under the Primary Policy and any supplementary insurance policy, up to the amount specified in item 5 of the Contract Particulars

(Liability Cap).

8.2 Share of Liability Cap

As between:

- (a) **(State)**: the State, the Rail Franchisees and their respective Associates (on the one hand); and
- (b) **(D&C Subcontractor)**: the D&C Subcontractor and its Associates (on the other hand),

unless the State agrees otherwise and subject to clause 8.3:

- (c) **(Percentage for State's Claims)**: [not disclosed] per cent of the Liability Cap shall be available to satisfy the State's, the Rail Franchisees' and their respective Associates' Claims against the Independent Reviewer; and
- (d) **(Percentage for D&C Subcontractor's Claims)**: [not disclosed] per cent of the Liability Cap shall be available to satisfy the D&C Subcontractor's and its Associates' Claims against the Independent Reviewer,

provided that this clause 8.2 will only apply to Claims which are subject to the Liability Cap in accordance with clause 8.1.

8.3 Residual Liability Cap

The Project Parties and the Rail Franchisees acknowledge and agree that if:

- (a) **(Expiry)**: the Term has expired;
- (b) **(Exhausted Liability Cap)**: either the State, the Rail Franchisees and their respective Associates (collectively), or the D&C Subcontractor and its Associates (the **Capped Party**) has exhausted its share of the Liability Cap and is contemplating a claim against the Independent Reviewer or is contemplating a claim against the Independent Reviewer that, if successful, would exhaust its share of the Liability Cap; and



- (c) **(Non-Capped Party not exhausted)**: the other party (the **Non-Capped Party**) has not exhausted its share of the Liability Cap;

then:

- (d) **(Release unused portion)**: the Capped Party may request the Non-Capped Party to release all or a portion of its unused portion of the Liability Cap to the Capped Party for the purposes of its contemplated claim (and must provide the Non-Capped Party with reasonable particulars of such claim);

- (e) **(Consideration of Capped Party's request)**: the Non-Capped Party must, acting reasonably, consider the Capped Party's request and, if and to the extent that the Non-Capped Party:

- (1) has no claim outstanding against the Independent Reviewer; and
- (2) does not consider that there is any reasonable prospect that it will have a future claim against the Independent Reviewer for all or the relevant unused portion of the Liability Cap,

then:

- (f) **(Release of unused portion)**: the Non-Capped Party must, by written notice to the relevant Capped Party, release to that Capped Party all or so much of the unused portion of the Liability Cap as is not required to be retained by the Non-Capped Party for the purposes of any claims contemplated under clause 8.3(e)(1) or clause 8.3(e)(2);

- (g) **(Reduction by Independent Reviewer)**: the Non-Capped Party's proportion of the Liability Cap will only be reduced by the amount of any order made against the Independent Reviewer in respect of the relevant claim by the Capped Party (disregarding any amount in respect of which the Liability Cap does not apply); and

- (h) **(Increase in Liability Cap proportion)**: the Capped Party's proportion of the Liability Cap will only be increased by the amount of any order made against the Independent Reviewer in respect of the relevant Claim (disregarding any amount in respect of which the Liability Cap does not apply) provided that such increase does not exceed the amount released to the Capped Party in accordance with clause 8.3(f).

8.4 Exclusions

The limitation of Liability in clause 8.1 does not apply to any Claims arising in connection with any of the following on the part of the Independent Reviewer or anyone for whom it is responsible:

- (a) **(Fraud)**: fraud;
- (b) **(Wilful misconduct)**: wilful misconduct, being any conduct, act or omission done or to be done by the Independent Reviewer or Associate of the Independent Reviewer which results from conscious, intentional or reckless disregard of any provision of this Deed or the rights or welfare of those who are or may be affected by that conduct, act or omission;
- (c) **(Gross negligence)**: gross negligence, being any negligent act or omission involving a serious disregard to an obvious and material risk and which the Independent Reviewer knew, or ought reasonably to have been aware, would result in substantial losses being incurred by a Project Party or a Rail Franchisee or their respective Associates; or
- (d) **(Abandonment)**: abandonment of all or any material part of the Services.



8.5 Insurances

- (a) **(Insurances):** The Independent Reviewer must hold and maintain from the Commencement Date:
- (1) project specific public liability insurance:
 - (A) endorsed to include the Project Parties and the Rail Franchisees as named insureds in respect of any Liability a Project Party or a Rail Franchisee incur arising in connection with the acts or omissions of the Independent Reviewer;
 - (B) covering, without limitation, the Independent Reviewer's Liability in accordance with clause 8.10;
 - (C) with a limit of indemnity of not less than the amount specified in the Contract Particulars with respect to project specific public liability insurance;
 - (D) with a deductible of not more than the amount specified in the Contract Particulars with respect to project specific public liability insurance; and
 - (E) which otherwise complies with the requirements of this Deed and is on such minimum terms as set out in the Contract Particulars with respect to project specific public liability insurance;
 - (2) project specific professional indemnity insurance:
 - (A) with a limit of indemnity of not less than the amount specified in the Contract Particulars with respect to project specific professional indemnity insurance for any single claim in respect of legal Liability (including, without limitation, in connection with property damage, personal injury or death) arising in connection with a breach of professional duty under clause 5 or otherwise in connection with this Deed, whether owed in contract or otherwise, by reason of any negligent act, error or omission by the Independent Reviewer or its Associates;
 - (B) with a deductible of not more than the amount specified in the Contract Particulars with respect to project specific professional indemnity insurance; and
 - (C) which otherwise complies with the requirements of this Deed and is on such minimum terms as set out in the Contract Particulars with respect to project specific professional indemnity insurance; and
 - (3) workers' compensation insurance against any Liability, whether in accordance with statute or at common law, for the death of, or injury to, persons employed by the Independent Reviewer, or if the Independent Reviewer is comprised of more than one party, employed by each such party in carrying out the Services.
- (b) **(Requirements for Insurances):** The insurances referred to in clause 8.5(a) must be effected with Reputable Insurers and:
- (1) to the extent that the requirements of clause 8.5(a) are satisfied by having corporate insurance policies in place pursuant to clause 8.5(d), those corporate insurance policies must be on such terms as would



- be reasonably prudent for the type of Services that the Independent Reviewer is providing; and
- (2) if clause 8.5(b)(1) does not apply, be on such terms as are approved by the State (such approval not to be unreasonably withheld).
- (c) **(More than one Independent Reviewer):** If the Independent Reviewer comprises more than one person, the insurances referred to in clause 8.5(a) must (subject always to the overall limit of indemnity not being increased as a result):
- (1) insure each of those parties both jointly and severally; and
- (2) include a cross liability clause whereby the insurer agrees:
- (A) to waive all rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured; and
- (B) that the term "insured" applies to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them.
- (d) **(Corporate insurance policies):** The parties acknowledge and agree that:
- (1) subject to clause 8.5(e), the Independent Reviewer may satisfy the requirements of clause 8.5(a), including the Contract Particulars, by having corporate insurance policies in place;
- (2) the project specific professional indemnity insurance held and maintained by the Independent Reviewer in accordance with clause 8.5(a) will be the primary policy of insurance under this Deed (**Primary Policy**); and
- (3) any corporate insurance policy in place in accordance with clause 8.5(d)(1) will only be claimed against following the Primary Policy being exhausted.
- (e) **(Requirement to procure additional insurance):** If:
- (1) the Independent Reviewer provides any of the insurances required under clause 8.5(a) by having corporate insurance policies in place pursuant to clause 8.5(d); and
- (2) the amount available for recovery under the relevant type of insurance pursuant to clause 8.5(d) is at any time less than the sum required to be insured under clause 8.5(a),
- the Independent Reviewer must immediately procure additional insurance to cover the difference.
- (f) **(Maintenance of insurance):** The Independent Reviewer must:
- (1) not discontinue or cancel any insurance required under clause 8.5(a), or allow any such insurance to lapse, where this would result in the relevant insurance not meeting the requirements of this Deed, without the prior approval of the State;
- (2) not do, or permit, or omit to do, anything which prejudices any insurance required under clause 8.5(a);
- (3) promptly rectify anything which might, if not rectified, prejudice any insurance required under clause 8.5(a); and
- (4) comply at all times with the terms of any insurance required under clause 8.5(a).



8.6 Notice of matter affecting insurance

The Independent Reviewer must notify the Project Parties and the Rail Franchisees 30 days in advance of any event which could affect its insurance cover or if any policy is cancelled, avoided or allowed to lapse.

8.7 Provision of information

The Independent Reviewer must provide to the Project Parties and the Rail Franchisees:

- (a) **(Certified copies)**: certified copies of the insurance policies (where the Project Parties and the Rail Franchisees are included as named insureds), except where an insurance policy is a corporate insurance policy used pursuant to clause 8.5(d); and
- (b) **(Certificates of currency)**: certificates of currency, with respect to the insurances effected and maintained by the Independent Reviewer for the purposes of this clause 8 at any time on request by any Project Party or Rail Franchisee, and upon the renewal of each policy.

8.8 Periods for insurance

The Independent Reviewer must keep:

- (a) **(Project specific professional indemnity insurance)**: the project specific professional indemnity insurance current for a period of 6 years after the cessation of the Services or the date of termination of this Deed, whichever is earlier;
- (b) **(Workers compensation insurance)**: the workers compensation insurance current until it ceases to perform the Services;
- (c) **(Project specific public liability insurance)**: the project specific public liability insurance current until it ceases to perform the Services; and
- (d) **(Other insurances)**: any other insurances required under clause 8.5 current for such time as may reasonably be required by the Project Parties.

8.9 Obligations unaffected by insurance

The requirement to effect and maintain insurance in this clause 8 does not limit the Liability or other obligations of the Independent Reviewer in accordance with this Deed.

8.10 Indemnity

- (a) **(Breach and negligent act or omission)**: Subject to clause 8.1 the Independent Reviewer is liable for and must indemnify each Project Party and Rail Franchisee against any Claim or loss brought against, suffered or incurred by a Project Party or a Rail Franchisee in respect of:
 - (1) any breach of this Deed by the Independent Reviewer;
 - (2) any negligent act or omission of the Independent Reviewer; or
 - (3) any of the following:
 - (A) the loss or damage to or of, or loss of use of (whether total or partial), any real or personal property (including property belonging to a Project Party or a Rail Franchisee);



- (B) any injury to, illness or death of, persons; or
- (C) any third party Claims brought against a Project Party or a Rail Franchisee (including any Claim brought by another Project Party or Rail Franchisee, and any Claim or loss suffered or incurred by a Project Party or Rail Franchisee to another Project Party or Rail Franchisee),

arising in connection with any wrongful act or omission of the Independent Reviewer or any of its Associates in connection with the Project.

- (b) **(Reduction in Liability):** The Independent Reviewer's Liability to a Project Party or Rail Franchisee under this clause 8.10 is reduced proportionally to the extent to which any action, proceeding, claim or demand arises out of any negligence or wrongful act or omission of that Project Party or Rail Franchisee, or their Associates.

8.11 Proportionate Liability

- (a) **(No reduction in insurance covers):** Subject to clause 8.11(b), the Independent Reviewer must ensure that all insurances required under clause 8.5 do not reduce or exclude the insurance cover in connection with liabilities governed by Part IVAA of the *Wrongs Act 1958* (Vic) or any corresponding legislation of another Australian jurisdiction, by reason of the manner in which that legislation operates or does not operate, as the case may be, in light of any of the provisions of this Deed and the obligations undertaken by the Independent Reviewer in connection with it.
- (b) **(Reasonable endeavours):** To the extent that the Insurance is not specific to the Project, the Independent Reviewer is only required to use its reasonable endeavours to procure insurance on the terms referred to in clause 8.11(a).

9 Payment

Subject to clause 7.3, the State (on behalf of the Project Parties and the Rail Franchisees) must pay to the Independent Reviewer the Fee subject to and in accordance with the Payment Schedule.

10 Change to or suspension of Services and appointment of Substitute Reviewer

10.1 Change to Services

- (a) **(Notice of change to Services):** The Project Parties (and, to the extent the relevant Services are for the benefit of the Rail Franchisees as contemplated by clause 6.9, the relevant Rail Franchisees) may, by joint notice to the Independent Reviewer, instruct the Independent Reviewer to carry out a change to the Services (including an addition or omission) which is within the general scope of this Deed. The Independent Reviewer must comply with any such instruction.



- (b) **(Adjustment to Fee)**: The relevant Fee and the Disbursements Cap will be adjusted to reflect the change to the Services referred to in clause 10.1(a) in accordance with the Schedule of Rates and Disbursements. If the adjustment to the Fee for the change to the Services cannot be determined by reference to the Schedule of Rates and Disbursements, the adjustment will be a reasonable amount determined by the State and the D&C Subcontractor.

10.2 Appointment of Substitute Reviewer

- (a) **(Appointment of Substitute Reviewer)**: The Independent Reviewer acknowledges that the Project Parties (and, to the extent the relevant Services are for the benefit of the Rail Franchisees as contemplated by clause 6.9, the relevant Rail Franchisees) may appoint another reviewer (**Substitute Reviewer**) to carry out those Services which are omitted as referred to in clause 10.1(a).
- (b) **(Rights and powers)**: The Substitute Reviewer will have all of the rights and powers of the Independent Reviewer under the Project Documents in connection with those Services.
- (c) **(Decisions)**: Any decision of a Substitute Reviewer so appointed will be treated (between the Project Parties and the Rail Franchisees, but not as between the Project Parties, the Rail Franchisees and the Independent Reviewer) as if it is a decision of the Independent Reviewer.
- (d) **(No responsibility for performance)**: Without prejudice to any Claim which any Project Party or Rail Franchisee may have in respect of the performance of the Independent Reviewer, the Independent Reviewer is not responsible for the performance of the Substitute Reviewer.

10.3 Independent Reviewer must continue to perform

Notwithstanding a change to the Services or the appointment of a Substitute Reviewer, the Independent Reviewer must continue to perform its Services, as changed in accordance with clause 10.1, in accordance with this Deed.

10.4 Suspension of Services

- (a) **(Suspension of Services)**: The Project Parties (and, to the extent the relevant Services are for the benefit of the Rail Franchisees as contemplated by clause 6.9, the relevant Rail Franchisees) may, by joint notice to the Independent Reviewer, instruct the Independent Reviewer to suspend and, after a suspension has been instructed, to recommence, the performance of any or all of the Services.
- (b) **(Payment during suspension)**: During the period which the Independent Reviewer's performance of the Services are suspended in accordance with clause 10.4(a), the State (on behalf of the Project Parties and the Rail Franchisees) will pay the Independent Reviewer:
- (1) subject to the provisions of this Deed, for the Services that are not suspended (if any); and
 - (2) subject to the Independent Reviewer using all reasonable endeavours to mitigate, minimise or avoid the effects and consequences of the costs associated with the suspension of any or all of the Services, such unavoidable costs incurred arising in connection with the

suspension of the Services or costs incurred by the Independent Reviewer in anticipation of their Services not being suspended.

10.5 Meeting of all Project Parties and Rail Franchisees

- (a) **(Project Party or Rail Franchisee may call meeting):** If a Project Party or Rail Franchisee is of the opinion that the Independent Reviewer is not performing its duties in accordance with this Deed, that Project Party or Rail Franchisee may call a meeting of the Project Parties' Representatives and any relevant Rail Franchisee's Representative(s) who must attend within 2 Business Days (or such other period as requested by that Project Party or Rail Franchisee) to decide an appropriate action to resolve the issue.
- (b) **(Resolutions to be considered):** Without limiting the scope of the Project Parties' decision, the Project Parties and any relevant Rail Franchisee will consider at such a meeting whether to resolve the issue referred to in clause 10.5(a) by:
- (1) requesting that the Independent Reviewer comply with this Deed;
 - (2) changing the Services of the Independent Reviewer in accordance with clause 10.1 and appointing a Substitute Reviewer in accordance with clause 10.2 in connection with the Services which the Independent Reviewer is not performing in accordance with this Deed;
 - (3) suspending the Services of the Independent Reviewer in accordance with clause 10.4; or
 - (4) terminating the appointment of the Independent Reviewer in accordance with clause 11.

11 Termination

11.1 Automatic termination upon termination of the Advanced Works Deed

This Deed terminates automatically, and is of no further force or effect, upon the termination of the Advanced Works Deed without the need for any party to give notice to the other parties.

11.2 Notice of default

If the Independent Reviewer is in breach of this Deed and the breach is, in the reasonable opinion of the Project Parties, able to be remedied then the Project Parties may jointly give notice to the Independent Reviewer:

- (a) specifying the breach; and
- (b) requiring that the breach be remedied within 7 days, or such later date as agreed by the State and the D&C Subcontractor.

11.3 Termination for breach

If:



- (a) **(Unable to remedy breach)**: the Independent Reviewer is in breach of this Deed and the breach is not, in the reasonable opinion of the Project Parties, able to be remedied; or
- (b) **(Breach not remedied)**: the Project Parties give a notice in accordance with clause 11.2 and the breach is not remedied within the period of time notified to the Independent Reviewer in accordance with clause 11.2(b),

then, subject to clause 11.6, the Project Parties may immediately terminate this Deed by joint notice to the Independent Reviewer.

11.4 Termination for insolvency

If an Insolvency Event occurs in respect of the Independent Reviewer then, subject to clause 11.6, the Project Parties may immediately terminate this Deed by joint notice to the Independent Reviewer, whether or not the Independent Reviewer is then in breach of this Deed.

11.5 Termination for convenience

Subject to clause 11.6, the Project Parties may at any time for their convenience terminate this Deed upon 7 days joint notice to the Independent Reviewer, and appoint another person to act as the Independent Reviewer.

11.6 Prior agreement on replacement

Prior to serving a notice in accordance with clause 11.3, 11.4 or 11.5, the Project Parties must have agreed upon another person to act as the Independent Reviewer consistent with clause 11.9 (*Replacement of Independent Reviewer*) of the Project Agreement.

11.7 Independent Reviewer's rights upon termination for convenience

Where the appointment of the Independent Reviewer is terminated in accordance with clauses 11.1 or 11.5:

- (a) **(payment in accordance with Payment Schedule)**: the Independent Reviewer is only entitled to be paid by the State in accordance with the Payment Schedule the proportion of the Fee for Services performed up to the date of the termination; and
- (b) **(no entitlement to Claim)**: the Independent Reviewer will not otherwise be entitled to bring any Claim against the State, the D&C Subcontractor or the Rail Franchisees arising in connection with:
 - (1) the termination of this Deed; or
 - (2) the Project or the Advanced Works Deed.

11.8 Termination without prejudice

Termination of the appointment of the Independent Reviewer will be without prejudice to any other rights which the Project Parties or the Rail Franchisees may have in respect of any breach of the terms of this Deed which occurred prior to the date of termination.



11.9 Copy of notices to Rail Franchisees

A copy of any notice issued by the Project Parties in accordance with this clause 11 must be given to the Rail Franchisees at the same time as it is given to the Independent Reviewer.

12 Transition out

12.1 Delivery of documents

If requested by the State, upon completion of the Services, or upon the termination of this Deed, the Independent Reviewer:

- (a) **(Books, records and documentation)**: must deliver up to the Project Parties or to such other person as the Project Parties may direct (which may include a Rail Franchisee), all books, records, drawings, specifications and other documentation in the possession, custody or control of the Independent Reviewer relating to the Services; and
- (b) **(Right to use documentation)**: acknowledges that the Project Parties and where applicable, the Rail Franchisees, have the right to use all such books, records, drawings, specifications and other documents for the purposes of the Project.

12.2 Reasonable assistance

If requested by the State, prior to completion of the Services, or upon the termination of this Deed, the Independent Reviewer must provide full assistance to the Project Parties and any successor to the Independent Reviewer appointed in order to enable such successor to be in a position to perform the Services with effect from the appointment of such successor.

13 Intellectual property

The Independent Reviewer:

- (a) **(Grant)**: grants to the State;
- (b) **(All things necessary)**: must do all things necessary to give effect to the grant to the State of,

a world-wide, perpetual, irrevocable, non-exclusive, transferable, royalty-free licence (including the right to sub-license) to use, reproduce, modify, adapt, develop, communicate to the public or otherwise exploit the Independent Reviewer Material, for the purposes of:

- (c) **(Project)**: the Project (including where this Deed is terminated for any reason other than for convenience under clause 11.5 to complete any Services which have not been:
 - (1) carried out; or
 - (2) carried out in accordance with the Advanced Works Deed, as at the date of termination);



- (d) **(Project Documents)**: the exercise of the rights of the State or its Associates in accordance with the Advanced Works Deed; and
- (e) **(Further procurement)**: the procurement, design, supply, construction, installation, production, commissioning, completion, operation, maintenance, repair and alteration, during and after the Term, of any part of the Project, the Relevant Infrastructure or any other project relating to aspects of the Metro Tunnel.

14 GST

- (a) **(GST exclusive amounts)**: Unless otherwise expressly stated, all amounts referred to in this Deed are exclusive of GST.
- (b) **(GST payable by Supplier)**: If GST becomes payable on any Taxable Supply made by a party (**Supplier**) under or in connection with this Deed:
 - (1) any amount payable or consideration to be provided in accordance with any other provision of this Deed for that supply (**Agreed Amount**) is exclusive of GST;
 - (2) an additional amount will be payable by the party which is the recipient of the Taxable Supply (**Recipient**), equal to the amount of GST payable on that Taxable Supply as calculated by the Supplier in accordance with the GST Law, which will be payable at the same time and in the same manner as for the Agreed Amount; and
 - (3) the Supplier will provide a Tax Invoice to the Recipient in connection with that supply, either at the time expressly set out in any other provision of this Deed or no later than the time at which the Agreed Amount for that Taxable Supply is to be provided in accordance with this Deed. The Recipient is not obliged to pay any amount in accordance with this clause 14(b) unless and until a Tax Invoice is received by the Recipient in connection with the Taxable Supply except where the Recipient is required to issue the Tax Invoice.
- (c) **(Variation in GST payable)**: If for any reason, the GST payable by the Supplier in connection with a supply it makes under or in connection with this Deed (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it received from the Recipient under clause 14(b) in connection with that supply, the Supplier will provide a refund or credit to, or will be entitled to receive from, the Recipient (as appropriate) the amount of this variation. Where an Adjustment Event occurs in relation to a supply and except where the Recipient is required to issue the Adjustment Note:
 - (1) the Supplier will issue an Adjustment Note to the Recipient in connection with that supply within 14 days after becoming aware of that Adjustment Event occurring; and
 - (2) no additional amount will be payable by the Recipient unless and until an Adjustment Note is received by the Recipient.
- (d) **(GST ceasing to be payable)**: No amount is payable by a party in accordance with clauses 14(b) or 14(c) to the extent that the GST to which the amount relates has ceased to be payable by or refundable to the Supplier by the Commissioner of Taxation under the GST Law.



- (e) **(Expert Determination):** If the Recipient is dissatisfied with any calculation to be made by the Supplier in accordance with this clause 14, the Recipient may, at its own expense and after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the President of the Institute of Chartered Accountants for expert determination, which will be final and binding on all parties (except in the case of manifest error). The expert will act as an expert and not as an arbitrator and must take into account the terms of this Deed, the matters required to be taken into account by the Supplier in accordance with this clause 14 and any other matter considered by the expert to be relevant to the determination. The parties release the expert from any Liability in acting as an expert, except in the case of fraud on the part of the expert.
- (f) **(Revenue net of GST):** Any reference in this Deed or any Project Document to price, value, sales, revenue, profit or a similar amount (**Revenue**), is a reference to the GST exclusive component of that Revenue, unless the contrary intention is expressed.
- (g) **(Cost net of GST):** Any reference in this Deed or any Project Document to cost, expense, Liability or other similar amount (**Cost**) of a party, is a reference to that Cost reduced by the Input Tax Credits to which the party is entitled in respect of such Cost, unless the contrary intention is expressed.
- (h) **(General obligation):** Each party agrees to do all things, including providing Tax Invoices and other documentation, that may be necessary or desirable to enable or assist the other party in determining its GST payable on any supply made by that other party in connection with this Deed, or any Input Tax Credits, adjustments or refunds in relation to any amount of GST paid or payable in connection with any supply made in connection with this Deed.
- (i) **(GST groups):** For the purposes of this Deed, a reference to GST payable on a Taxable Supply made by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member and a reference to an Input Tax Credit entitlement of a party includes any corresponding Input Tax Credit entitlement of the representative member of any GST group of which that party is a member.
- (j) **(Project Agreement to prevail):** If, but for this clause 14(j), a GST clause in another Project Document would apply in connection with a Taxable Supply to which this clause 14 also applies, then clause 59 (*Taxes*) of the Project Agreement will apply in connection with that supply and the GST clause in the other Project Document will not apply.
- (k) **(Definitions):** In this clause 14 unless otherwise defined in this Deed, terms used have the meanings given to them in the GST Law.

15 Dispute Resolution

15.1 Disputes to be resolved in accordance with the Advanced Works Deed

Any dispute between the Project Parties, or between a Project Party and a Rail Franchisee, arising in connection with this Deed must be resolved in accordance with the procedures set out in the Advanced Works Deed.



15.2 Notice of dispute

If any dispute (other than a dispute which is to be referred for resolution in accordance with clause 15.1) arises between a Project Party or a Rail Franchisee (on the one hand) and the Independent Reviewer (on the other hand) (**Disputing Parties**) in respect of any fact, matter or thing arising out of or in connection with the Services or this Deed (**Dispute**), any of the Disputing Parties may give notice to each of the other parties specifying:

- (a) the dispute or difference;
- (b) particulars of the reasons for being dissatisfied; and
- (c) the position which is believed to be correct.

15.3 Executive negotiation

The Dispute identified in the notice given under clause 15.2 is to be referred to the persons described in the Contract Particulars who must:

- (a) (**Good faith negotiations**): meet and undertake genuine and good faith negotiations with a view to resolving the Dispute; and
- (b) (**Procedure for resolution**): if they cannot resolve the Dispute, endeavour to agree upon a procedure to resolve the Dispute.

15.4 Referral to Mediation

If the persons described in the Contract Particulars cannot resolve, or agree upon a procedure to resolve, the Dispute within 10 Business Days after the date the notice is given under clause 15.2, or within such longer period of time as these persons may agree, the Dispute is to be submitted to mediation in accordance with clauses 15.5 to 15.8.

15.5 Mediation

Within 5 Business Days of the expiration of the period referred to in clause 15.4, the Dispute will be referred for mediation to:

- (a) (**Specified Person**): the person set out in the Contract Particulars;
- (b) (**Appointed Person**) if:
 - (1) no such person is specified; or
 - (2) the mediator specified in the Contract Particulars or the person appointed in accordance with this clause 15.5(b):
 - (A) is unavailable;
 - (B) declines to act; or
 - (C) does not respond within 5 Business Days of a request for advice as to whether they are able to conduct the mediation,

a person appointed by the Chair (or acting Chair, as the case may be) of the Resolution Institute, Australia.

15.6 Place of mediation

The place of mediation will be Melbourne.



15.7 Evidence not admissible

Evidence of anything said, documents presented to, admissions made or matters raised in the course of any mediation will be confidential to the Disputing Parties and the mediator and will not be admissible in any subsequent proceedings.

15.8 Costs

Failing any agreement to the contrary between the Disputing Parties, the costs of the mediation (including any fees charged by the mediator) will be shared equally between the Disputing Parties.

15.9 Reference to litigation

If after 15 Business Days of the mediator nominated in accordance with clause 15.5 having accepted his or her appointment, the Dispute has not been resolved, then the Dispute may be referred to litigation.

15.10 Condition precedent to litigation

The Project Parties, the Rail Franchisees and the Independent Reviewer must comply with the provisions of clauses 15.2 to 15.9 as a condition precedent to commencing court proceedings in respect of any Dispute to which clause 15.2 applies (other than proceedings for urgent or injunctive relief).

15.11 Services to continue

The Independent Reviewer must continue to perform the Services in accordance with this Deed notwithstanding the existence of a Dispute referred to in clause 15.2.

16 Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Deed:

- (a) **(In writing)**: must be in writing;
- (b) **(Addressed)**: must be addressed as set out below (or as otherwise notified by that party to each other party from time to time):

State

Attention: [not disclosed]

Address: [not disclosed]

Phone [not disclosed]

Email: [not disclosed]

D&C Subcontractor

Attention: [not disclosed]

Address: [not disclosed]

Phone [not disclosed]



Mobile [not disclosed]

Email: [not disclosed]

Train Franchisee

Attention: [not disclosed]

Address: [not disclosed]

Phone: [not disclosed]

Email: [not disclosed]

Tram Franchisee

Attention: [not disclosed]

Address: [not disclosed]

Phone: [not disclosed]

Email: [not disclosed]

Independent Reviewer

Attention: [not disclosed]

Address: [not disclosed]

Phone: [not disclosed]

Email: [not disclosed]

- (c) **(Signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(Form of delivery)**: must be delivered by hand or posted by prepaid post to the address, or emailed (in the form agreed by both parties) to the email address of the addressee set out in clause 16(b); and
- (e) **(Taken to be received)**: are taken to be received by the addressee at the address set out in clause 16(b):
 - (1) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
 - (2) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and
 - (3) in the case of email, the first to occur of:
 - (A) receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - (B) the time that the communication enters an information system which is under the control of the addressee; or
 - (C) the time that the communication is first opened or read by the addressee,



unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day.

17 Miscellaneous

17.1 Governing law and jurisdiction

- (a) **(Governing Law):** This Deed is governed by, and must be construed according to, the Laws of Victoria, Australia.
- (b) **(Jurisdiction):** Without limiting clause 15, each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Deed.

17.2 Entire agreement

To the extent permitted by Law and in relation to their subject matter, this Deed and the Advanced Works Deed:

- (a) **(Entire understanding):** embody the entire understanding of the parties, and constitute the entire terms agreed by the parties; and
- (b) **(Prior agreements):** supersede any prior agreement of the parties.

17.3 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to each party) required by Law or reasonably requested by another party to give effect to this Deed.

17.4 Waiver

- (a) **(Writing):** A waiver given by a party in accordance with this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver):** A failure to, a delay in or the partial exercise or enforcement of a right provided by Law or in accordance with this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or in accordance with this Deed.
- (c) **(No waiver of another breach):** No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

17.5 Consents, approvals and directions

- (a) **(State):** A consent or approval required in accordance with this Deed from the State or the Project Parties jointly may be given or withheld, or may be given subject to any conditions, as the State (or the Project Parties jointly, if the



consent or approval is required from the Project Parties jointly) thinks fit, unless this Deed expressly provides otherwise.

- (b) **(D&C Subcontractor and Rail Franchisees)**: A consent or approval required in accordance with this Deed from the D&C Subcontractor only or a Rail Franchisee may not be unreasonably withheld or delayed, unless this Deed expressly provides otherwise.

17.6 Amendments

Except as otherwise expressly provided in this Deed, this Deed may only be varied by a deed executed by or on behalf of each party.

17.7 Expenses

Except as otherwise expressly provided in this Deed, the Advanced Works Deed or the Rail Franchisee Cooperation Agreements, each party must pay its own costs and expenses in connection with negotiating, preparing, executing, and performing this Deed.

17.8 Severance

If at any time a provision of this Deed, the Advanced Works Deed or a Rail Franchisee Cooperation Agreement is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) **(Under this Deed)**: any other provision of this Deed, the relevant State Project Documents or the relevant Rail Franchisee Cooperation Agreement; or
- (b) **(Under another jurisdiction)**: that provision under the Law of any other jurisdiction.

17.9 Counterparts

This Deed may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same Deed.

17.10 Moratorium legislation

To the fullest extent permitted by Law, the provisions of all Laws which operate to lessen or affect in favour of the Independent Reviewer any obligations under this Deed, or to prejudicially affect the exercise by the Project Parties or the Rail Franchisees of any right, power or remedy under this Deed or otherwise are expressly waived.

17.11 Proportionate liability

- (a) **(Excluded operation of Wrongs Act)**: The operation of Part IVAA of the *Wrongs Act 1958* (Vic) is excluded in relation to all and any rights, obligations or liabilities of any party under this Deed whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) **(Rights, obligations and liabilities)**: Without limiting clause 17.11(a), the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Deed and not otherwise, whether



such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

17.12 Confidentiality

- (a) **(Obligation to keep confidential):** The Independent Reviewer must keep confidential details of this Deed, the Advanced Works Deed and the Rail Franchisee Cooperation Agreements, and all information and documents provided to, or by, the Independent Reviewer relating to the Services and not disclose or use the information or documents except:
- (1) to the Project Parties or the Rail Franchisees;
 - (2) for the purposes of performing the Services;
 - (3) where required by Law or to obtain legal advice on this Deed; or
 - (4) with the prior consent of the Project Parties, and where applicable, the relevant Rail Franchisee(s).
- (b) **(Permitted Disclosure):** The Independent Reviewer agrees that notwithstanding any other provision of this Deed:
- (1) the Rail Franchisees may disclose the existence, or provide a complete copy, of this Deed and any documents or information provided or received under or in relation to this Deed to PTV, PTV's Associates or a prospective Successor Operator in order to facilitate the Rail Franchisees' compliance with the relevant Rail Franchisee Arrangements;
 - (2) the State may disclose this Deed and any documents or information provided or received under or in relation to this Deed to satisfy its Public Disclosure Obligations; and
 - (3) the Project Parties may disclose this Deed and any documents or information provided or received under or in relation to this Deed as permitted in accordance with clause 57.1 (*Confidential Information and disclosure by the State*) of the Project Agreement.

17.13 Assignment and security

- (a) **(Assignment and security):** Subject to clause 17.13(b), no party to this Deed may assign, novate, transfer, mortgage, charge, encumber or otherwise deal with any of its rights or obligations under this Deed without the prior consent of each other party to this Deed.
- (b) **(Novation by Rail Franchisee):** The parties acknowledge and agree that if the Train Franchisee Arrangements or the Tram Franchisee Arrangements are terminated or rescinded or come to an end for any reason, the relevant Rail Franchisee may be required to assign or novate, all of its rights or obligations under this Deed to PTV or a Successor Operator. Each other party consents to any such assignment or novation and must, on request by PTV, execute any document or documents required by PTV to effect such assignment or novation, provided that the new arrangements are on terms no more onerous than the terms of this Deed.

17.14 No representation or reliance

- (a) **(No representation):** Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to



it to enter into this Deed, except for representations or inducements expressly set out in this Deed.

- (b) **(No reliance)**: Each party acknowledges and confirms that it does not enter into this Deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Deed.

17.15 Indemnities

- (a) **(Continuing Liability)**: Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the parties.
- (b) **(Expense not necessary)**: It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Deed.

17.16 Indemnity held on trust

- (a) **(State holds on trust)**: The State holds on trust for its Associates the benefit of:
- (1) each indemnity and release given by the D&C Subcontractor, a Rail Franchisee or the Independent Reviewer under this Deed in favour of the State's Associates; and
 - (2) each right in this Deed to the extent that such right is expressly stated to be for the benefit of the State or the State's Associates.
- (b) **(Acknowledgement)**: The D&C Subcontractor, each Rail Franchisee and the Independent Reviewer acknowledge the existence of such trusts and consent to:
- (1) the State exercising rights in relation to, or otherwise enforcing such indemnities, releases and rights on behalf of its Associates; and
 - (2) the State's Associates exercising rights in relation to, or otherwise enforcing the indemnities, releases and those rights as if they were a party to this Deed.
- (c) **(Further Acknowledgement)**: The parties acknowledge that nothing in this clause 17.16 in and of itself increases the Independent Reviewer's Liability under this Deed.

17.17 Set off

The State may deduct from any moneys due and payable to the Independent Reviewer under this Deed or otherwise at Law:

- (a) **(Moneys due and payable)**: any moneys due and payable by the Independent Reviewer to the State; and
- (b) **(Claims)**: any Claim that the State may have against the Independent Reviewer under or in connection with this Deed or in connection with the Services.



Schedule 1

Contract Particulars

1 Independent Reviewer's Representative

Name: [not disclosed]

Attention: [not disclosed]

Address: [not disclosed]

Phone: [not disclosed]

Email: [not disclosed]

2 Project Parties' and Rail Franchisees' Representatives

2.1 State:

Name: [not disclosed]

Attention: [not disclosed]

Address: [not disclosed]

Phone: [not disclosed]

Email: [not disclosed]

2.2 D&C Subcontractor:

Name: [not disclosed]

Attention: [not disclosed]

Address: [not disclosed]

Phone: [not disclosed]

Mobile: [not disclosed]

Email: [not disclosed]

Name: [not disclosed]

Attention: [not disclosed]

Address: [not disclosed]

Phone: [not disclosed]

Email: [not disclosed]



Name: [not disclosed]
Attention: [not disclosed]
Address: [not disclosed]
Phone: [not disclosed]
Email: [not disclosed]

2.3 Train Franchisee:

Name: [not disclosed]
Attention: [not disclosed]
Address: [not disclosed]
Phone: [not disclosed]
Email: [not disclosed]

2.4 Tram Franchisee:

Name: [not disclosed]
Attention: [not disclosed]
Address: [not disclosed]
Phone: [not disclosed]
Email: [not disclosed]

3 Key People

| Name | Role |
|-----------------|-----------------|
| [not disclosed] | [not disclosed] |
| [not disclosed] | [not disclosed] |
| [not disclosed] | [not disclosed] |
| [not disclosed] | [not disclosed] |
| [not disclosed] | [not disclosed] |



| Name | Role |
|-----------------|-----------------|
| [not disclosed] | [not disclosed] |
| [not disclosed] | [not disclosed] |

4 Limitation on Independent Reviewer's Liability

Limit: [not disclosed]

5 Professional indemnity insurance

[not disclosed]

| Insurance element | Minimum Requirement |
|-------------------------|---------------------|
| Insured | [not disclosed] |
| Sum insured | [not disclosed] |
| Scope of cover | [not disclosed] |
| Situation of risk | [not disclosed] |
| Maximum Deductibles | [not disclosed] |
| Additional Requirements | • [not disclosed] |
| Period of insurance | [not disclosed] |



6 Public Liability insurance

[not disclosed]

| Insurance element | Minimum Requirement |
|--------------------------|---|
| Insured | <ul style="list-style-type: none">• [not disclosed] |
| Sum insured | [not disclosed] |
| Scope of cover: | [not disclosed] |
| Situation of risk | [not disclosed] |
| Maximum Deductibles | [not disclosed] |
| Period of cover | [not disclosed] |



Schedule 2

Services

1 General

The Independent Reviewer must:

- (a) **(Role)**: become familiar with the role (express or implied) under the Advanced Works Deed of the “Independent Reviewer”, and review information made available to the Independent Reviewer by the parties in order to become fully acquainted with the Project;
- (b) **(Discharge functions)**: discharge the functions which the Advanced Works Deed contemplates will be discharged by the Independent Reviewer;
- (c) **(Attend meetings and report)**: attend meetings and report as required from time to time by the parties;
- (d) **(Minimum surveillance)**: undertake, as a minimum, the surveillance of the Project set out or described in the Advanced Works Deed;
- (e) **(Hold Points and witness points)**: attend, as a minimum, the Hold Points and witness points set out or described in the Advanced Works Deed;
- (f) **(Certificates)**: issue certificates in accordance with and in the form set out in the Schedule of Certificates and Notices; and
- (g) **(General)**: otherwise discharge the functions of the Independent Reviewer under the Advanced Works Deed.

2 Not used

Not used

3 Functions

The Independent Reviewer's functions include, but are not necessarily limited to, the functions set out in the table below. Clause references are to the Project Agreement unless otherwise stated and clause 2.2(b) of the Advanced Works Deed applies to this section 3 as if incorporated in full.



| Clause No. | Independent Reviewer Role |
|--|---|
| <hr/> Project Agreement <hr/> | |
| 2.16(a) No State liability for review | Except as otherwise expressly provided in the Independent Reviewer Deed of Appointment, the Independent Reviewer does not owe a duty of care to Project Co to: <ul style="list-style-type: none">(a) review the Project Co Material submitted by Project Co; or(b) inspect or review the Project Activities or the Relevant Infrastructure for Defects, other errors or omissions or for compliance with the State Project Documents or any Laws. |
| 11.9(b) Replacement of Independent Reviewer | If a new Independent Reviewer is appointed in accordance with clause 11.9(a), abide by the exercise of any functions or decisions made by the previous Independent Reviewer. |
| 16.3(a) State's right to enter, inspect and test | If authorised by the State, the Independent Reviewer may during Business Hours or upon giving reasonable notice to Project Co (except in the case of an emergency when no notice is required) enter the Site or the offices of Project Co to: <ul style="list-style-type: none">(a) inspect, observe or test any part of the Relevant Infrastructure or the Project Activities;(b) exercise any right or carry out any obligation which the State has in accordance with any State Project Document;(c) take such other action as the State considers necessary to exercise its rights in accordance with any State Project Document and to discharge its executive or statutory rights or duties; or(d) examine and make copies of the records, reports and all documents reasonably requested of Project Co or any Subcontractor in connection with the Project. |
| 16.3(c) State's right to enter, inspect and test | When entering the site in accordance with clause 16.3(a) or otherwise: <ul style="list-style-type: none">(a) comply with the Site Access and Interface Protocols and any generally applicable safety and security requirements of Project Co;(b) not unnecessarily interfere with the carrying out of the Project Activities; and(c) not damage the Relevant Infrastructure or the Site. |
| 16.6 Schedule of Certificates and Notices | Receive from Project Co the certificates required by the Schedule of Certificates and Notices in accordance with the terms of the Schedule of Certificates and Notices. |



Schedule 7 (Review Procedures)

1.1(a)
Submission

Receive from Project Co any document required to be submitted under a State Project Document for review in accordance with the Review Procedures.

4.1
Response to Submitted Documents

Respond to a Submitted Document in accordance with section 4.

Schedule 25 (Design Review)

2.8(c)(1)
Review of Certified Design Documentation

Certify Design Documentation by providing to Project Co and the State a certificate in the form set out in the Schedule of Certificates and Notices.

Schedule 7 (Accelerated Design Review Process) to the Advanced Works Deed

12(a)
Receipt of Certified Design Documentation for review

Receive from the D&C Subcontractor the Certified Design Documentation for each Accelerated Design Package.

12(b)
Review of Certified Design Documentation

Provide any comments in respect of the Certified Design Documentation for each Accelerated Design Package to the D&C Subcontractor within 10 Business Days of the submission of that Certified Design Documentation.

13(c)
Receipt of consolidated comments

Receive from the D&C Subcontractor a consolidated list of comments in the design report to be included with the submission of the Certified Design Documentation.

14
Receipt of Certified Design Documentation for certification

Receive from the D&C Subcontractor the Certified Design Documentation and associated Proof Engineering Certificate.

14
Review of Certified Design Documentation

Review the Certified Design Documentation for Accelerated Design Packages within 5 Business Days of submission, taking into account any comments from the State and relevant AW Stakeholders included in the design report submitted with the Design Documentation.



| | |
|---|---|
| <p>14(a) Certification of Design Documentation</p> | <p>Certify the parts of the Design Documentation which comply with the requirements of the Advanced Works Deed, pursuant to the process set out in section 2.8(c)(1) of the Draft Project Agreement.</p> |
| <p>14(b) Non-compliance of Design Documentation</p> | <p>Notify the D&C Subcontractor if all or part of the Design Documentation contains actual non-compliances or (insofar as the Design Documentation relates to Temporary Works) contains potential non-compliances with the requirements of the Advanced Works Deed, together with the information set out in section 2.8(e)(3) of Schedule 25 of the Draft Project Agreement.</p> |
| <p>19 Meeting to discuss AW Design Documentation</p> | <p>Request the D&C Subcontractor to attend a meeting to explain and discuss the AW Design Documentation with the State (as necessary). Attend the meeting requested with the D&C Subcontractor.</p> |

4 Draft PS&TR

The Independent Reviewer's functions under Volume 2, Part A of the Draft PS&TR include, but are not necessarily limited to, the functions set out in the table below in respect of the AW Activities. Section references are to Volume 2, Part A of the Draft PS&TR unless stated otherwise.

| Section No. | Independent Reviewer Role |
|--|---|
| <p>2.1.6(f) Reference Documents</p> | <p>Where a Reference Document provides for the approval of alternative construction methods or materials by a superintendent or representative, receive from Project Co notice:</p> <ul style="list-style-type: none"> (a) in the Construction Documentation; or (b) as proposed changes to Design Documentation, of such methods or materials. |
| <p>2.1.6(h) Reference Documents</p> | <p>Where a Reference Document provides for any determination, direction or agreement by a superintendent that is not otherwise provided for expressly under section 2.1.6, receive from Project Co notice:</p> <ul style="list-style-type: none"> (a) in the Construction Documentation; or (b) as changes to Design Documentation, of such determinations, directions or agreements. |
| <p>2.1.6(i) Reference Documents –</p> | <p>Where a Reference Document provides for the approval of a proposed adoption or variance of a particular standard, code, reference, guidelines, manual or other technical document,</p> |



General determine whether to grant that approval.

The Independent Reviewer's functions under Volume 2, Part C of the Draft PS&TR include, but are not necessarily limited to, the functions set out in the table below in respect of the AW Activities. Section references are to Volume 2, Part C of the Draft PS&TR unless stated otherwise.

| Section No. | Independent Reviewer Role |
|--|--|
| 1.1.6 Process Requirements – Stage Gate Reviews | Attend Stage Gate Review workshops and meetings. |
| 1.2.2.1 Process Requirements – Receipt of Management Plans | Receive from Project Co Management Plans as set out in Annexure 1 for review in accordance with the Review Procedures. |
| 1.2.4(b) Process Requirements – Management Plans | Receive from Project Co notice of any audit proposed to be conducted in accordance with section 1.2.4, 3.5, 4.7 or 6.2 at least 5 Business Days prior to that audit occurring. |
| 1.2.4(c) Process Requirements – Management Plans | Receive from Project Co in respect of any audit conducted in accordance with section 1.2.4, 3.5, 4.7 or 6.2: <ul style="list-style-type: none">(c) an audit report; and(d) proposed and/or implemented actions for addressing any non-conformances identified in the audit report, within 5 Business Days of the audit's completion. |
| 1.3.2.1 Process Requirements – Access to records | Receive electronic access to the design and construction records indexed by Construction Package. |
| 1.3.5.2(d) Process Requirements – Records | Where it is either not practicable to undertake testing required for closure of As-Built Records before Works are covered up or in particular situations where test results are available, determine any additional inspection or testing arrangements to be included in the applicable Inspection and Test Plan. |
| 1.3.9.8 Process Requirements – Records | Determine whether non-conformances notified by the Independent Reviewer have been closed out satisfactorily. |



| | |
|--|--|
| 1.3.10 Process Requirements – Format | Determine the required form of manuals, plans, drawings, programs, reports or associated information, or any updates or revisions thereof which are required to be submitted, failing the agreement of Project Co and the State as to the required form. |
| 1.4.1.2(l) Process Requirements – Reporting | Notify Project Co of any other issues it requires to be addressed in the Monthly D&C Phase Progress Report. |
| 1.4.2.12 Process Requirements – Reporting | Notify Project Co of any other reasonable requirements as to the contents of the Monthly D&C Phase Progress Report. |
| 2.2.2.1(a) Project Management Requirements – Program Management | In respect of each update to the D&C Program, receive from Project Co a Program Summary Report listing the planning assumptions that underpin the program. |
| 2.2.3.1(a) Project Management Requirements – Program Management | Receive from Project Co updates to the D&C Program in accordance with the Project Agreement. |
| 2.8.6 Project Management Requirements – Digital Engineering | Receive training sessions from Project Co on the web-based user interface to the common data environment. |
| 2.8.6 Project Management Requirements – Digital Engineering | Receive the report of the findings of Project Co's compliance audit of the implemented digital engineering strategy against future State or Federal digital engineering (BIM) related standards or guidelines. |
| 3.5.2 Environmental Management Requirements – Environmental Audits | Receive from Project Co any environmental audit undertaken pursuant to section 3.5. |
| 6.3.1.1 Occupational Health and Safety Management – Road Safety | Determine, if requested by Project Co, whether a heavy vehicle will not perform the function for which it is intended if side under run guards are fitted. |



| | |
|---|---|
| 7.3.2 Design Requirements – Design Review Meetings | Attend design review meetings. |
| 7.4.1.3 Design Requirements – Design Risks Register | Receive from Project Co every two weeks an electronic copy of the latest Design Risk Register via the Information Exchange System. |
| 7.5.1.1(a) Design Requirements – Design Documentation | Receive from Project Co Interim Design Documentation for review in accordance with the Design Review Schedule. |
| 7.5.1.1(b) Design Requirements – Design Documentation | Receive from Project Co Certified Design Documentation for review in accordance with the Design Review Schedule or the Accelerated Design Review process (as relevant). |
| 7.5.1.1(c) Design Requirements – Design Documentation | Receive from Project Co IFC Design Documentation for review in accordance with the Design Review Schedule. |
| 7.8.5 Design Requirements – Proof Engineering | Receive each Proof Engineering Certificate of Compliance with the relevant Certified Design Documentation. |
| 7.14.2 Design Requirements – Safety in Design | Attend Safety in Design (SiD) Workshops. |
| 7.14.4.8 Design Requirements – Safety in Design | Receive from Project Co within 5 Business Days of the conclusion of each SiD Workshop a report and a copy of the outputs from the workshop, including assessed risks and recommendations. |
| 7.15.7 Design Requirements – Security Risk Assessment Workshops | Attend Security Risk Assessment Workshops. |
| 7.15.8.9 Design Requirements – Security Risk Assessment | Receive from Project Co within 5 Business Days of the completion of the Security Risk Assessment Workshops a report that include assessed risks and recommendations. |



| | |
|--|---|
| 9.9.5.2(d) Transport Management Requirements – Road Safety Audits | Receive from Project Co within 2 Business Days of a Road Safety Audit being undertaken in relation to the Worksite Traffic Management Plan a Road Safety Audit initial report and Project Co's response to that report. |
| 9.9.6 Transport Management Requirements – Road Safety Audits | Where desired, request comment by the senior Road Safety Auditor on road safety issues associated with the Works. |
| 9.11.1.2 Transport Management Requirements – Unplanned Transport Disruptions | Receive from Project Co reports of any unplanned disruptions to a traffic lane, footpath, cycleway, tramway, bus lane, or road caused by the Works. |
| 9.11.1.4 Transport Management Requirements – Unplanned Transport Disruptions | Receive from Project Co following any unplanned disruption event a report on the outcome of a review of the Transport Management Plan and the relevant Worksite Traffic Management Plan and Traffic Guidance System. |
| 10.4.5 Construction Requirements – Construction Documentation | Receive from Project Co Construction Documentation for review in accordance with the Review Procedures. |
| 10.4.6 Construction Requirements – Explanation of Construction Documentation | Where desired, require Project Co to make available appropriate personnel to explain the Construction Documentation and provide such information regarding the Design Documentation as reasonably requested. |
| 10.5.2 Construction Requirements – Construction Review Meetings | Attend construction review meetings. |
| 10.7.2.3 Construction Requirements – Site Investigation, Condition Surveys and Monitoring | Receive a copy of the condition survey within four weeks of a condition survey being undertaken and prior to the commencement of the relevant Works. |
| 10.7.3.5(d) | Upon request, receive from Project Co a copy of quality assurance |



Construction Requirements
– Site Investigation,
Condition Surveys and
Monitoring

processes and verification documentation.

10.7.4.9

Construction Requirements
– Site Investigation,
Condition Surveys and
Monitoring

Receive from Project Co:

- (e) analysis and determinations, including the original Predicted Effects and any Acceptable Effects and any revisions, and re-evaluations of the Predicted Effects and the Acceptable Effects;
- (f) results of monitoring the actual effects of the Works and the Temporary Works on the existing ground conditions, infrastructure and properties over time;
- (g) details of any adjustments to the manner in which Project Co's Works are carried out which are necessary as a consequence of any re-evaluation of Predicted Effects; and
- (h) details of designs and materials for the repair and reinstatement of infrastructure and properties required by section 10.7.4.8.

11.2.1.2(f)

Transition and Acceptance
Requirements – Handback

Determine whether Inspection and Test Plans are satisfactory.

2.10.2(n)(13)

Annexure 2 – Digital
Engineering Management
Plan

Receive from Project Co outputs from the sustainability performance model(s) demonstrating compliance with the performance requirements of the Sustainability Management Plan and Sustainability Targets.

4.1.3(o)(6)

Annexure 4 –
Environmental Management
Plans

Receive from Project Co periodic reports of environmental performance.



Schedule 3

Payment Schedule

1 Payment of the Fee for Services

- (a) **(State responsible):** Subject to sections 1(b) and 2(c) of this Schedule 3, and without limiting any provision of the Advanced Works Deed or the Project Agreement, the State will be solely and exclusively liable for making any payments due to the Independent Reviewer under this Deed.
- (b) **(Payment for special reports):** Without limiting any provision of the Advanced Works Deed or the Project Agreement, the relevant Project Party or Rail Franchisee requesting the preparation of an additional report under clause 7.3 will be solely responsible for payment to the Independent Reviewer for the costs associated with the preparation of such additional report.

2 Payment claim

- (a) **(Independent Reviewer to prepare and submit):** Subject to section 5, the Independent Reviewer must submit to the State (with a copy to the D&C Subcontractor) a claim for payment on account of the Fee (not including an additional report required under clause 7.3):
 - (1) for the Services performed in accordance with this Deed during a month, at the end of the month; and
 - (2) calculated in and otherwise in accordance with this Payment Schedule.
- (b) **(Content):** Each payment claim prepared in accordance with section 2(a) must set out:
 - (1) a breakdown of the Services, including details of personnel days worked for each resource (in a form and including such information and supporting documentation as the Project Parties may require from time to time) actually carried out during the relevant month;
 - (2) details of approved disbursements actually incurred during the relevant month (including such information and supporting documentation as the Project Parties may require from time to time);
 - (3) the part of the Fee then payable;
 - (4) if the Independent Reviewer considers acting reasonably that the Project Parties (as a result of their respective conduct) have a proportionate responsibility for the costs and expenses of the Independent Reviewer which differs from the proportions stated in Exhibit 1 to the Advanced Works Deed, the Independent Reviewer's assessment of the relevant proportions. The parties acknowledge and agree that the Independent Reviewer's assessment of the parties' respective conduct will be limited to circumstances where a party fails



to comply with its obligations under clause 6 of this Deed or acts unreasonably and that conduct has or will cause an increase in the Fee under this Deed which should be reasonably borne by the parties at a proportion different from that stated in Exhibit 1 to the Advanced Works Deed; and

- (5) the amounts previously claimed by the Independent Reviewer in relation to the Fee,

and otherwise be in a form and substance agreed with the Project Parties.

- (c) **(Payment Claims for special reports):** Where an additional report has been requested by a Project Party or a Rail Franchisee under clause 7.3, the Independent Reviewer must submit a separate payment claim to the Project Party or Rail Franchisee (as applicable) who made the request in respect of the preparation of the report.

3 Payment

- (a) **(Payment of Fee):** Subject to sections 3(b), 4(b) and 5, within 20 Business Days of receipt of a payment claim in accordance with section 2(a), the State must pay the Independent Reviewer the part of the Fee which the State believes represents the value of the Services performed by the Independent Reviewer during the period for which the payment claim is submitted.
- (b) **(Payment for special reports):** Within 20 Business Days of receipt of a payment claim under section 2(c), the relevant Project Party or Rail Franchisee (as applicable) must pay the Independent Reviewer the amount which it believes represents the value of the Services performed by the Independent Reviewer relating to the preparation of the additional report during the period for which the payment claim is submitted.

4 Payment of wages by Independent Reviewer

- (a) **(Signed statement required):** Before a payment is made to the Independent Reviewer under section 3, the relevant Project Party may require the Independent Reviewer to give the relevant Project Party a statement signed by the Independent Reviewer stating that no wages or payments to any sub-contractors of the Independent Reviewer are due and owing by the Independent Reviewer in respect of the Services at the time of payment.
- (b) **(Possible to withhold money):** If, within 2 Business Days after the request, the Independent Reviewer fails to provide the statement, then the party responsible for the payment of the relevant payment claim may withhold payment of moneys due to the Independent Reviewer until the statement is received.

5 Insurance

Before a payment claim can be made by the Independent Reviewer under section 2(a), the Independent Reviewer must have effected the insurance required by clause 8.5 on the basis set out in section 10 and provided evidence of this to the Project Parties. If a



payment claim is purported to be submitted by the Independent Reviewer prior to effecting such insurance and providing such evidence, neither of the Project Parties will be liable to make any payment in respect of such claim.

6 Books of account

The Independent Reviewer must, for the purposes of this Deed:

- (a) institute and maintain all proper books of account and operating records necessary to afford a correct and complete record and explanation of all payment claims (including relevant supporting documentation) made by the Independent Reviewer under this Deed; and
- (b) permit the Project Parties' representatives (and any persons authorised by either of them) access at all reasonable times to all relevant books of account and operating records necessary to establish that all payment claims made by the Independent Reviewer and all moneys paid to the Independent Reviewer under the terms of this Deed are or have been properly accounted for.

7 Notification of disputed amounts

If the State or the D&C Subcontractor disputes any amount which the Independent Reviewer has claimed then the State or the D&C Subcontractor (as applicable) must notify the Independent Reviewer of its reasons for disputing that amount within 20 Business Days after receipt of the relevant payment claim.

8 The Fee

- (a) The Fee will be broken down as follows:

| Description | Amount |
|---------------|-----------------|
| November 2017 | [not disclosed] |
| December 2017 | [not disclosed] |
| January 2018 | [not disclosed] |
| February 2018 | [not disclosed] |

- (b) **(Inclusions):** Except as otherwise provided, the Fee is inclusive of labour, material, disbursements and expenses, overhead, supervision, management of subcontracts, profit and insurance (including the insurances required under



clauses 8.5(a)(1) and 8.5(a)(2) and including premiums, brokerage fees, stamp duty, and exchange rate fees (if applicable) in relation to such insurances) subject to the provisions of clause 3.7.

9 Schedule of Rates and Disbursements

| Specific Personnel | Grade | Daily Rate (\$) |
|---------------------------|----------------------|------------------------|
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 3 | [not disclosed] |
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 3 | [not disclosed] |
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 3 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Industry Director 1 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 3 | [not disclosed] |



| | | |
|-----------------|------------------------|-----------------|
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Associate Director 1 | [not disclosed] |
| [not disclosed] | Principal Professional | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 3 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 3 | [not disclosed] |
| [not disclosed] | Principal Professional | [not disclosed] |
| [not disclosed] | Associate Director 1 | [not disclosed] |
| [not disclosed] | Associate Director 1 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Principal Professional | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |



| | | |
|-----------------|------------------------|-----------------|
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Principal Professional | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Principal Professional | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Industry Director 3 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 3 | [not disclosed] |
| [not disclosed] | Industry Director 1 | [not disclosed] |
| [not disclosed] | Industry Director 1 | [not disclosed] |
| [not disclosed] | Industry Director 1 | [not disclosed] |



| | | |
|-----------------|----------------------|-----------------|
| [not disclosed] | Technical Director 3 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Senior Professional | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Industry Director 1 | [not disclosed] |
| [not disclosed] | Industry Director 1 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |



| | | |
|-----------------|------------------------|-----------------|
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 3 | [not disclosed] |
| [not disclosed] | Technical Director 3 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Industry Director 1 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Associate Director 1 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Principal Professional | [not disclosed] |
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |



| | | |
|--------------------------|----------------------|------------------------|
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 3 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Industry Director 1 | [not disclosed] |
| [not disclosed] | Industry Director 1 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| General Personnel | | Daily Rate (\$) |
| Graduate | | [not disclosed] |
| Professional | | [not disclosed] |
| Senior Professional | | [not disclosed] |
| Principal Professional | | [not disclosed] |
| Associate Director 2 | | [not disclosed] |
| Associate Director 1 | | [not disclosed] |
| Technical Director 3 | | [not disclosed] |
| Technical Director 2 | | [not disclosed] |
| Technical Director 1 | | [not disclosed] |



| | |
|---|-----------------|
| Industry Director 3 | [not disclosed] |
| Industry Director 2 | [not disclosed] |
| Industry Director 1 | [not disclosed] |
| Disbursements | Rate |
| Other, including IT Software, Office Supplies, PPE, Transport, Travel – Air Fare, Travel – Hotel, Travel – Other, Travel – Per Diems. | [not disclosed] |
| Disbursements Cap | [not disclosed] |

Except as otherwise provided, the rates and prices set out in the Schedule of Rates and Disbursements are inclusive of overhead, supervision, management of subcontracts and profit.

10 Disbursements

The Independent Reviewer will:

- (a) **(Entitlement to reimbursement):** only be entitled to reimbursement of disbursements for which the Independent Reviewer is to be paid on a schedule of rates basis under this Deed if those disbursements:
 - (1) have been reasonably and properly incurred for the sole purpose of performing Services;
 - (2) have the prior approval of the State and the D&C Subcontractor;
 - (3) to the extent applicable, are in accordance with the Schedule of Rates and Disbursements; and
 - (4) are supported by documentation provided to the State and the D&C Subcontractor which is satisfactory to the State and the D&C Subcontractor; and
- (b) not be entitled to make any Claim against the State and the D&C Subcontractor arising in connection with disbursements or other costs incurred in connection with the performance of the Services other than in accordance with section 10(a); and
- (c) not be entitled to reimbursement of disbursements in accordance with section 10(a) to the extent those disbursements in aggregate with all other disbursements paid under this Deed exceed the Disbursements Cap.



11 Not used

12 GST

All lump sums, rates and amounts in this Payment Schedule do not include GST.



Signing page

Executed as a deed

State

Signed sealed and delivered by
**Coordinator-General of the
Major Transport Infrastructure
Program, a duly authorised
officer of the Melbourne Metro
Rail Authority, for and on behalf
of the Crown in Right of the
State of Victoria**

in the presence of

sign here ► [not disclosed] _____
Authorised signatory

sign here ► [not disclosed] _____
Witness

print name [not disclosed] _____

print name [not disclosed] _____



D&C Subcontractor

Signed sealed and delivered for
**John Holland Pty Ltd (ABN 11
004 282 268**

by its attorney

in the presence of

sign here ► [not disclosed] _____
Attorney

sign here ► [not disclosed] _____
Witness

print name [not disclosed] _____

print name [not disclosed] _____



D&C Subcontractor

Signed sealed and delivered for
Lendlease Engineering Pty Ltd
(ABN 40 000 201 516)

by its attorney

in the presence of

sign here ▶ [not disclosed] _____
Attorney

sign here ▶ [not disclosed] _____
Witness

print name [not disclosed] _____

print name [not disclosed] _____



D&C Subcontractor

Signed sealed and delivered for
**Bouygues Construction
Australia Pty Ltd (ABN 37 144
013 801)**

by its attorney

in the presence of

sign here ▶ [not disclosed] _____
Attorney

sign here ▶ [not disclosed] _____
Witness

print name [not disclosed] _____

print name [not disclosed] _____



Independent Reviewer

Signed sealed and delivered for
**AECOM Australia Pty Ltd (ACN
093 846 925)**
by its attorney

in the presence of

sign here ▶ [not disclosed] _____
Attorney

sign here ▶ [not disclosed] _____
Witness

print name [not disclosed] _____

print name [not disclosed] _____



Train Franchisee

Signed sealed and delivered by
Metro Trains Melbourne Pty Ltd
(ACN 136 429 948)
by

sign here ► [not disclosed] _____
Company Secretary/Director

sign here ► [not disclosed] _____
Director

print name [not disclosed] _____

print name [not disclosed] _____



Tram Franchisee

Signed sealed and delivered for
KDR Victoria Pty Ltd
by its attorney

in the presence of

sign here ► [not disclosed]

Attorney

sign here ► [not disclosed]

Witness

print name [not disclosed]

print name [not disclosed]

Exhibit 1

Draft Independent Reviewer Deed of Appointment

Refer to separate document.



HERBERT
SMITH
FREEHILLS

Deed

Preferred bidder phase
CYP

Metro Tunnel
Tunnel and Stations PPP

Independent Reviewer Deed of Appointment

The Minister for [Insert] on behalf of the Crown in
right of the State of Victoria

Project Co

AECOM Australia Pty Ltd

Metro Trains Melbourne Pty Ltd

KDR Victoria Pty Ltd

[State Note: This Independent Reviewer Deed of Appointment remains subject to amendments required by the State as a result of the preferred Respondent's proposal. It is drafted on the assumption that the same entity will perform both the IR and Sub-IR functions.]



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Independent Reviewer Deed of Appointment

Date ►

Between the parties

State **The Minister for [Insert] on behalf of the Crown in right of the State of Victoria**
of **[insert]**

Project Co **Cross Yarra Partnership Pty Limited**
[Insert ACN] of [insert]

Train Franchisee **Metro Trains Melbourne Pty Ltd**
ACN 136 429 948 of Level 17, 700 Collins St, Melbourne Victoria 3000.

Tram Franchisee **KDR Victoria Pty Ltd**
ABN 42 138 066 074 of Level 3, 555 Bourke Street, Melbourne Victoria 3000.

Independent Reviewer **AECOM Australia Pty Ltd**
ACN 093 846 925 of Collins Square, Level 10, Tower Two, 727 Collins Street, Melbourne Victoria 3008.

Recitals

- 1 The background to the Project is set out in the Project Agreement.
- 2 The Independent Reviewer is experienced generally in construction and project management and, in particular, in:
 - a the review and checking of design documentation; and
 - b design and construction in respect of rail infrastructure and tunnels,and offers its expertise in those fields.
- 3 The State Project Documents and the Project Alliance Agreements contemplate that the Independent Reviewer will discharge certain functions, including those set out in the Services Schedule.
- 4 The Independent Reviewer will perform its obligations in accordance with the terms and conditions of this Deed.



- 5 The Train Franchisee is the operator of the Melbourne metropolitan train network.
- 6 The Tram Franchisee is the operator of the Melbourne metropolitan tram network.
- 7 The Project Activities carried out by Project Co under the Project Agreement will interface with the operation of the Melbourne metropolitan train network and the Melbourne metropolitan tram network.
- 8 The Train Franchisee and Project Co, and the Tram Franchisee and Project Co, have agreed to co-operate and co-ordinate their activities in relation to the Project in accordance with the Rail Franchisee Cooperation Agreements and each Rail Franchisee enters into this Deed in its capacity as counterparty to the relevant Rail Franchisee Cooperation Agreement.

This deed witnesses as follows:



1 Definitions and interpretation

1.1 Project Agreement definitions

Unless otherwise expressly defined, expressions used in this Deed have the meanings given to them in or for the purposes of the Project Agreement.

1.2 Definitions

In this Deed, unless the context otherwise requires:

| Term | Meaning |
|---------------------------------|---|
| Adjustment Event | has the meaning given in the Project Alliance Agreements. |
| Agreed Amount | has the meaning given in clause 15(b)(1). |
| Aggregate Monthly Amount | means, for a given month, the amount set out for that month in the column entitled "Aggregate Monthly Amount" in section 8(a), 8(b), or 8(c) of Schedule 3 (as the context requires). |
| Alliance Services | means: <ol style="list-style-type: none">1 all of the functions conferred on the Independent Reviewer under a Project Alliance Agreement in respect of Non-PPP CIMs, as varied in accordance with clause 11 or the terms of the applicable Project Alliance Agreement;2 all other things or tasks which the Independent Reviewer must do to comply with its obligations under a Project Alliance Agreement in respect of Non-PPP CIMs; and3 without limiting paragraph 2, all other things and tasks in respect of Non-PPP CIMs not described in a Project Alliance Agreement if those things and tasks should have been reasonably anticipated by an experienced and expert professional provider of similar services as being necessary for the performance of those things or tasks or which are otherwise capable of inference from a Project Alliance Agreement. |
| Alliance Services Fee | means the sum of the fees payable to the Independent Reviewer for performance of the Alliance Services, as adjusted from time to time in accordance with clause 11.1 and the Payment Schedule. |
| Alliance Services Fee | has the meaning given in section 8(c) of Schedule 3. |



| Term | Meaning |
|---|--|
| Cap | |
| Alliance Services Fee Cumulative Cap | means the Aggregate Monthly Amount set out in section 8(c) of Schedule 3 (as applicable), minus the aggregate of all previous Fees paid to the Independent Reviewer in respect of the Alliance Services. |
| Authorisation | has the meaning given in the Project Alliance Agreements. |
| AW Services | has the meaning given to the term 'Services' under the Independent Reviewer Deed of Appointment (Advanced Works). |
| AW Services Fee | has the meaning given to the term 'Fee' under the Independent Reviewer Deed of Appointment (Advanced Works). |
| Capped Party | has the meaning given in clause 9.3(b). |
| Commencement Date | has the meaning given in clause 2.1. |
| Contract Particulars | means the particulars set out in Schedule 1. |
| Cost | has the meaning given in clause 15(g). |
| Critical Interface Milestones | means all of the Critical Interface Milestones set out under the: <ol style="list-style-type: none">1 Project Agreement; and2 Project Alliance Agreements. |
| Deed | means this deed and includes all Schedules, Exhibits, Attachments and Annexures to it. |
| Disbursements Cap | has the meaning given in section 9 of Schedule 3. |
| Dispute | has the meaning given in clause 16.2. |
| Disputing Parties | has the meaning given in clause 16.2. |



| Term | Meaning |
|--|---|
| DLP Fee Cap | has the meaning given in section 8(e)(1) of Schedule 3. |
| DLP Fee Cumulative Cap | means the Aggregate Monthly Amount set out in section 8(b) of Schedule 3 (as applicable), minus the aggregate of all previous Fees paid to the Independent Reviewer for the Upstream Independent Reviewer Functions (excluding the Alliance Services) performed in accordance with this Deed during the DLP Fee Period. |
| DLP Fee Period | means the period commencing on the expiry of the Initial Fee Period and ending on the date of the Last DLP. |
| DLP Fee Proposal | has the meaning given in section 8(d) of Schedule 3. |
| Downstream Independent Reviewer Contracts | means: <ol style="list-style-type: none">1 the D&C Subcontract;2 any Subcontract in respect of the Project Activities as specified in item 9 of the Contract Particulars of the Project Agreement; and3 any Sub-Independent Reviewer Deed. |
| Downstream Independent Reviewer Functions | means the functions, powers and obligations of the Independent Reviewer or the Sub-Independent Reviewer (as applicable) under the Downstream Independent Reviewer Contracts. |
| Downstream Parties | means the D&C Subcontractor. |
| Expiry Date | means the date which is the earlier of: <ol style="list-style-type: none">1 the end of the Term; and2 termination of this Deed in accordance with clause 12 or otherwise at Law. |
| Fee | means the sum of the fees payable or paid to the Independent Reviewer for performance of the Services, as adjusted from time to time in accordance with clause 11.1 and the Payment Schedule, and includes the Alliance Services Fee. |
| Hold Point | has the meaning given in the PS&TR. |



| Term | Meaning |
|--|---|
| Independent Reviewer Deed of Appointment (Advanced Works) | means the document entitled 'Independent Reviewer Deed of Appointment (Advanced Works)' dated [insert] between the State, the D&C Subcontractor, the Independent Reviewer, the Train Franchisee and the Tram Franchisee. |
| Independent Reviewer Material | means all documentation, information (including databases and drafts), models and other material in which Intellectual Property Rights are capable of subsisting prepared, used or provided by or on behalf of the Independent Reviewer in carrying out the Services. |
| Independent Reviewer's Representative | means the person named in the Contract Particulars or any other person appointed by the Independent Reviewer with the approval of the Project Parties from time to time to replace that person. |
| Independent Subcontractor | means the independent subcontractor appointed by the Independent Reviewer under clauses 5.13 and 5.14 to perform the Independent Subcontractor Services. |
| Independent Subcontractor Services | means each part of the Services relating to: <ol style="list-style-type: none">1 the certification of any Critical Interface Milestones; and2 assessing and quantifying interface cost impacts under the Project Alliance Agreements. |
| Initial Fee Cap | has the meaning given in section 8(a) of Schedule 3. |
| Initial Fee Cumulative Cap | means the Aggregate Monthly Amount set out in section 8(a) of Schedule 3 (as applicable), minus the aggregate of: <ol style="list-style-type: none">1 all previous Fees paid to the Independent Reviewer for the Upstream Independent Reviewer Functions (excluding the Alliance Services) performed in accordance with this Deed during the Initial Fee Period; and2 all of the AW Services Fees paid pursuant to the Independent Reviewer Deed of Appointment (Advanced Works). |
| Initial Fee Period | means the period commencing on the date of this Deed and ending on the Date of Final Acceptance. |
| Initial Monitoring Plan | means the document set out in Schedule 4. |
| Key People | means the people identified as such in the Contract Particulars. |



| Term | Meaning |
|------------------------------------|--|
| Key RIA People | has the meaning given in clause 4A(e). |
| Liability Cap | has the meaning given in clause 9.1. |
| Member | means a person who is a 'Member' for the purposes of the expression of interest or request for proposal in respect of the Rail Infrastructure Alliance. |
| Monitoring Plan | means a monitoring plan provided by the Independent Reviewer in accordance with clause 3.4, as amended and updated in accordance with clause 3.4. |
| Non-Capped Party | has the meaning given in clause 9.3(c). |
| Non-PPP CIM | means: <ol style="list-style-type: none">1 any RIA-RSA CIM, as that term is defined in the Rail Infrastructure Alliance Agreement; and2 any RSA-RIA CIM or RSA-HCMT CIM, as each of those terms are defined in the Rail Systems Alliance Agreement. |
| Payment Schedule | means the schedule set out in Schedule 3. |
| Project Agreement | means the document entitled 'Project Agreement' between the State and Project Co dated on or about the date of this Deed. |
| Project Alliance Agreements | means: <ol style="list-style-type: none">1 the Rail Systems Alliance Agreement; and2 the Rail Infrastructure Alliance Agreement. |
| Project Alliance Services | means each part of the Services performed under a Project Alliance Agreement. |
| Project Alliance Site | means any land, or any part of land, where the Rail Systems Alliance Works or the Rail Infrastructure Alliance Works are to be performed. |
| Project Parties | means the State and Project Co. |



| Term | Meaning |
|---|---|
| Project Parties' Representatives | means, in respect of each of the State and Project Co, the person named in the Contract Particulars or any other person appointed by the relevant Project Party from time to time to replace that person. |
| Quality Management Plan | means the plan of that name prepared and updated in accordance with the Project Management Requirements. |
| Quarter | means: <ol style="list-style-type: none">1 the period from the Commencement Date until the first Quarterly Date during the Term;2 each 3 month period commencing on a Quarterly Date; and3 the period from the last Quarterly Date during the Term until the Expiry Date. |
| Rail Franchisee Input Document | has the meaning given to the term 'Franchisee Input Document' in a Rail Franchisee Cooperation Agreement. |
| Recipient | has the meaning given in clause 15(b)(2). |
| Resource Adjustment | means an adjustment in the level of resources which are required from the Independent Reviewer to perform the Upstream Independent Reviewer Functions. |
| Resource Adjustment Order | means the document issued by the Project Parties in accordance with section 11.5 of the Payment Schedule. |
| Respondent | means a person who is a 'Respondent' for the purposes of the expression of interest or request for proposal in respect of the Rail Infrastructure Alliance. |
| Revenue | has the meaning given in clause 15(f). |
| RIA IR Services | means those parts of the Services which relate to: <ol style="list-style-type: none">1 a Critical Interface Milestone identified in the Critical Interface Milestone Program; and2 any other part of the Services which is related or connected to the RIA and which the State notifies each other party is an 'RIA IR Service' for the purposes of this Deed. |



| Term | Meaning |
|--|---|
| RIA Sub-consultant | has the meaning given in clause 4A(c). |
| Schedule of Rates and Disbursements | means the schedule of rates and prices, disbursements and caps set out in section 9 of the Payment Schedule as adjusted from time to time in accordance with clause 11.1 and the Payment Schedule. |
| Services | means: <ol style="list-style-type: none">1 the AW Services;2 the Alliance Services;3 all of the functions conferred on the Independent Reviewer under this Deed, the State Project Documents or the Downstream Independent Reviewer Contracts, as varied in accordance with clause 11 or in accordance with terms of the Downstream Independent Reviewer Contracts;4 all other things or tasks which the Independent Reviewer must do to comply with its obligations under this Deed, the State Project Documents or the Downstream Independent Reviewer Contracts; and5 without limiting paragraph 2, all other things and tasks not described in this Deed, the State Project Documents or the Downstream Independent Reviewer Contracts if those things and tasks should have been reasonably anticipated by an experienced and expert professional provider of similar services as being necessary for the performance of those things or tasks or which are otherwise capable of inference from this Deed, the State Project Documents or the Downstream Independent Reviewer Contracts. |
| Services Schedule | means the schedule set out in Schedule 2. |
| Sub-Independent Reviewer | has the meaning given in the D&C Subcontract. |
| Sub-Independent Reviewer Deed | means a document entitled 'Sub-Independent Reviewer Deed of Appointment' between Project Co, the Independent Reviewer, and the D&C Subcontractor, dated on or about the date of this Deed. |
| Sub-IR Services | has the meaning given in the Sub-Independent Reviewer Deed. |
| Substitute Reviewer | has the meaning given in clause 11.2(a). |



| Term | Meaning |
|--|--|
| Successor Operator | has the meaning given to that term in the relevant Rail Franchisee Cooperation Agreement. |
| Supplier | has the meaning given in clause 15(b). |
| Term | means the period from the Commencement Date to the date 1 month after the expiry of the D&C Phase or such later date as agreed by the parties. |
| Train Franchisee Rail Safety Requirements | means the terms of the Train Franchisee's accredited Safety Management System, including the following requirements to the extent applicable to such Maintenance Services: <ol style="list-style-type: none">1 Safety and Environmental Requirements for contractors Working on Franchisee Premises – L0-SQE-PRO-014; and2 Contractor Safety Procedure – L1-SQE-PRO-011. |
| Train Franchisee Representative | means the person named in the Contract Particulars or any other person appointed by the Train Franchisee with the prior approval of the Project Parties from time to time to replace that person. |
| Tram Franchisee Rail Safety Requirements | means the rail safety requirements arising under the terms of the Tram Franchisee's accredited Tram Safety Management System. |
| Tram Franchisee Representative | means the person named in the Contract Particulars or any other person appointed by the Tram Franchisee with the prior approval of the Project Parties from time to time to replace that person. |
| Transition Out Period | means the period of 24 months prior to the end of the Term. |
| Transition Out Plan | means the plan prepared by the Independent Reviewer to meet its obligations in accordance with clause 13 which is in a form reasonably agreed to by the Project Parties. |
| Upstream Independent Reviewer Functions | means the Services excluding the Downstream Independent Reviewer Functions. |

1.3 Interpretation

In this Deed:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;
- and unless the context otherwise requires:
- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa and a word indicating a gender includes every other gender;
- (c) **(Deed and Schedule references)**: a reference to:
- (1) a party, clause or Schedule is a reference to a party, clause or Schedule of or to this Deed;
 - (2) a section is a reference to a section of a Schedule;
 - (3) the Train Franchisee includes PTV to the extent PTV exercises any step-in rights under the Train Franchisee Arrangements as contemplated by clause 23 of the Train Franchisee Cooperation Agreement; and
 - (4) the Tram Franchisee includes PTV to the extent and for the duration PTV exercises any step-in rights under the Tram Franchisee Arrangements as contemplated by clause 18 of the Tram Franchisee Cooperation Agreement;
- (d) **(deed as amended)**: a reference to this Deed or to any other deed, agreement, document or instrument includes a reference to this Deed or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **("includes")**: "includes" will be read as if followed by the phrase "(without limitation)";
- (j) **("or")**: the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) **("\$")**: a reference to "\$", AUD or dollar is to Australian currency;
- (m) **(time)**: a reference to time is a reference to time in Melbourne, Australia;
- (n) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;



- (o) **(obligations and liabilities)**: without limiting clause 1.6 or 1.7, a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (p) **("may")**: the term "may", when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;
- (q) **(construction)**: where there is a reference to an Authority, institute or association or other body referred to in this Deed which:
 - (1) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or
 - (2) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (r) **(remedy)**: the use of the words "remedy", "cure" or any form of such words in this Deed means that the event to be remedied or cured must be remedied or cured or its effects overcome; and
- (s) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

1.4 Business Day

If the day on or by which anything is to be done in accordance with this Deed is not a Business Day, that thing must be done no later than the next Business Day.

1.5 Inconsistency

Where there is an inconsistency, ambiguity or discrepancy between:

- (a) this Deed and any other State Project Documents, then the order of precedence in clause 2.3 (*Inconsistency between State Project Documents*) of the Project Agreement applies; or
- (b) this Deed and a Project Alliance Agreement, then the greater or higher requirement, standard quality, level of service, quantum or scope as determined by the State will prevail.

1.6 Joint and several Liability of Independent Reviewer

If the Independent Reviewer comprises more than one person:

- (a) **(joint and several)**: the obligations of those persons are joint and several; and
- (b) **(proceedings)**: each Project Party and each Rail Franchisee may proceed against any or all of them for any failure of the Independent Reviewer to comply with any obligation in accordance with this Deed or otherwise.

1.7 Several Liability

- (a) **(Project Parties)**: If a provision of this Deed binds the Project Parties, that provision binds each of the Project Parties severally and not jointly and severally.



- (b) **(Project Parties and Rail Franchisees):** If a provision of this Deed binds the Project Parties and one or both of the Rail Franchisees, that provision binds each of the Project Parties and the relevant Rail Franchisees severally and not jointly and severally.

1.8 Relationship of the parties

- (a) **(No partnership or joint venture):** The relationship between and among the parties to this Deed will not be that of partners or joint venturers and nothing therein contained will be deemed to constitute a partnership or joint venture among them and no party will have authority or power to act unilaterally as agent for the other.
- (b) **(Independent contractor):** It is understood that the Independent Reviewer is acting as an independent contractor for the Project Parties and the Rail Franchisees and therefore the Independent Reviewer is not authorised to enter into any binding obligations on behalf of the Project Parties or the Rail Franchisees.
- (c) **(No relationship):** Unless otherwise expressly provided, this Deed does not:
 - (1) create a partnership, joint venture or fiduciary relationship between the parties to this Deed; or
 - (2) impose any duty of good faith on the State.

1.9 Approvals, directions and notices in writing

Unless otherwise expressly provided in this Deed or agreed between the parties, all approvals, consents, directions, requirements, requests, claims, notices, agreements and demands must be given in writing.

1.10 Action without delay

Unless there is a provision in this Deed which specifies a period of time in which something must be done by the parties, all things must be done without undue delay.

1.11 Prior approval or consent

Where Project Co, a Rail Franchisee, or the Independent Reviewer or any of them are required by this Deed to obtain the State's consent or approval to an action, document or thing, unless otherwise expressly stated, that consent or approval must be obtained prior to the actions, document or thing occurring or coming into effect.

1.12 Provisions limiting or excluding Liability

- (a) **(No limit):** A right of the State or a Rail Franchisee, or any obligation of Project Co or the Independent Reviewer, under this Deed will not limit or exclude any other right of the State or a Rail Franchisee, or obligation of Project Co or the Independent Reviewer under this Deed unless expressly stated.
- (b) **(Permitted by Law):** Any provision of this Deed which seeks, either expressly or by implication, to limit or exclude a Liability of a party is to be construed as doing so only to the extent permitted by Law.



1.13 State's rights and obligations

- (a) **(Acknowledgement):** The parties acknowledge the substance, operation and potential effect and consequences of clause 2.13 (*State's executive rights and duties*) of the Project Agreement in relation to this Deed.
- (b) **(No Claim):** Subject to clause 1.13(c) Project Co, the Rail Franchisees, and the Independent Reviewer will not be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its executive or statutory rights or duties.
- (c) **(Liability for breach):** Clauses 1.13(a) and 1.13(b) do not limit any Liability which the State would have had to Project Co, the Rail Franchisees, or the Independent Reviewer under any State Project Document as a result of a breach by the State of a term of any State Project Document but for those clauses.

1.14 Reasonable endeavours

Any statement in this Deed providing that the State will use or exercise "reasonable endeavours" or "act reasonably" in relation to an outcome, means that the State:

- (a) **(Relevant steps):** will take steps to bring about the relevant outcome so far as it is reasonably able to do so, having regard to its resources and other responsibilities;
- (b) **(No guarantee):** cannot guarantee the relevant outcome; and
- (c) **(No obligation):** is not required to:
 - (1) exercise a right of any Government Party, or to influence, over-ride, interfere with or direct any other Government Party in the proper exercise and performance of its legal, statutory or executive duties and functions;
 - (2) exercise a power or discretion in a manner that the State regards as not in the public interest;
 - (3) develop or implement new policy;
 - (4) procure legislation; oract in any way that the State regards as not in the public interest.

1.15 Cost of carrying out obligations

Each party must carry out its obligations under this Deed at its own cost, unless expressly provided otherwise.

2 Conditions precedent

2.1 Conditions precedent

The rights and obligations of the parties under this Deed will not commence until the later of:

- (a) **(Execution of this Deed):** the date of execution of this Deed by all parties to this Deed;



- (b) **(Execution of the Project Agreement)**: the date of execution of the Project Agreement by all parties to the Project Agreement;
- (c) **(Execution of the Train Franchisee Cooperation Agreement)**: the date of execution of the Train Franchisee Cooperation Agreement by all parties to the Train Franchisee Cooperation Agreement; and
- (d) **(Execution of the Tram Franchisee Cooperation Agreement)**: the date of execution of the Tram Franchisee Cooperation Agreement by all parties to the Tram Franchisee Cooperation Agreement,

(Commencement Date).

2.2 Failure to achieve Financial Close

- (a) **(Termination)**: If the Project Parties do not achieve Financial Close by the Condition Precedent Deadline, then the Project Parties may, at their option, terminate this Deed by notice to the Independent Reviewer and the Rail Franchisees.
- (b) **(Rights and obligations upon termination)**: Where this Deed is terminated in accordance with this clause 2.2 then, notwithstanding clause 12.7:
 - (1) the Independent Reviewer will only be entitled to be paid the proportion of the Fee for the Services performed up to the date of termination in accordance with the Payment Schedule; and
 - (2) the Independent Reviewer will not otherwise be entitled to bring any Claim against the Project Parties or the Rail Franchisees arising in connection with:
 - (A) the termination of this Deed; or
 - (B) the Project, the State Project Documents, the Project Alliance Agreements, the Rail Franchisee Cooperation Agreement, or the Downstream Independent Reviewer Contracts.

3 General obligations of the Independent Reviewer

3.1 Appointment

- (a) **(Appointment)**: Each of the Project Parties appoints the Independent Reviewer under this Deed to perform the Services for the benefit of each of the Project Parties and subject to clause 6.9, each of the Rail Franchisees.
- (b) **(Acceptance of appointment)**: The Independent Reviewer confirms its acceptance of the appointment.

3.2 Services

The Independent Reviewer must carry out the Services in accordance with this Deed for the Term.

3.3 Effect of Services Schedule

The Project Parties, the Rail Franchisees, and the Independent Reviewer acknowledge that the Services Schedule:

- (a) is indicative only;
- (b) is not intended to be a complete description of the Services;
- (c) does not limit or otherwise affect the Services or the performance of the Services; and
- (d) cannot be used as the aid to interpretation of the Services.

3.4 Monitoring Plan

- (a) **(Provision and amendment of Monitoring Plan):** The Independent Reviewer:
 - (1) must prepare and submit to the Project Parties and the Rail Franchisees within 25 Business Days of the date of this Deed a Monitoring Plan which must, as a minimum, address those issues set out in the Initial Monitoring Plan and which addresses the requirements for the Monitoring Plan set out in Schedule 5;
 - (2) subject to clause 3.4(e), must, throughout the performance of the Services, develop, continually review and, if necessary, amend the Monitoring Plan:
 - (A) as required by clause 3.4(c)(2);
 - (B) to reflect any Resource Adjustment;
 - (C) to take into account events which will, or may reasonably be expected to, affect the manner in which the Independent Reviewer carries out the Services, including:
 - (i) Modifications under the State Project Documents;
 - (ii) changes in Law;
 - (iii) Approvals (including the conditions of Approvals);
 - (iv) the commencement of new phases or stages of design, construction, operations or maintenance in accordance with the State Project Documents or the Project Alliance Agreements;
 - (v) to take into account the manner in which Project Co is undertaking the Works and the D&C Activities, including any Defects or non-compliances with the State Project Documents;
 - (vi) any breach or potential breach of the warranty in clause 3.4(b);
 - (vii) with respect to the Project Alliance Services, Adjustment Events under the Project Alliance Agreements;
 - (viii) with respect to the Project Alliance Services, Authorisations (including the conditions of Authorisations) under the Project Alliance Agreements; and

- (ix) with respect to the Project Alliance Services, to take into account the manner in which the Rail Systems Alliance or the Rail Infrastructure Alliance is undertaking the Rail Systems Alliance Works or the Rail Infrastructure Alliance Works, including any non-compliances with the Project Alliance Agreements;
 - (D) for the purposes of continuous improvement of the Monitoring Plan by continually improving the standards and quality of the Services carried out in accordance with the Monitoring Plan; and
 - (E) as otherwise agreed with the Project Parties and, where the proposed change relates to activities addressed by a Rail Franchisee Cooperation Agreement, the relevant Rail Franchisee(s);
- (3) must promptly submit each amended Monitoring Plan to the Project Parties and the Rail Franchisees; and
- (4) acknowledges that the Initial Monitoring Plan sets out certain minimum requirements in respect of the Monitoring Plan and no Monitoring Plan provided in accordance with this clause 3.4 can in any way limit or reduce the requirements or obligations of the Independent Reviewer set out in the Initial Monitoring Plan, except where it is necessary to do so to comply with the State Project Documents.
- (b) **(Warranty)**: The Independent Reviewer warrants that the carrying out of the Services in accordance with the Monitoring Plan will enable the Independent Reviewer to comply with its obligations under this Deed.
- (c) **(Acknowledgements)**: The Independent Reviewer acknowledges that the Monitoring Plan:
 - (1) does not limit the Independent Reviewer's obligations under this Deed; and
 - (2) will require amendment resulting from a change to the Services in accordance with clause 11.
- (d) **(Review of updated plan)**: Each Project Party, and each Rail Franchisee may:
 - (1) review each amended Monitoring Plan provided to the Project Parties and Rail Franchisees in accordance with this clause 3.4; and
 - (2) if the amended Monitoring Plan does not comply with this Deed or the State Project Documents, notify the other Project Party and the Rail Franchisees and the Independent Reviewer of that non-compliance within 15 Business Days of the submission of the amended Monitoring Plan to the Project Parties and the Rail Franchisees.
- (e) **(Amended plan)**: If the Independent Reviewer receives a notice in accordance with clause 3.4(d)(2), the Independent Reviewer must promptly submit an amended Monitoring Plan to the Project Parties and the Rail Franchisees.
- (f) **(Compliance with Plan)**: Except where otherwise provided in this Deed or the State Project Documents, the Independent Reviewer must not depart and must ensure that its subcontractors do not depart from the Monitoring Plan unless it is necessary to do so to ensure compliance with this Deed or the State Project Documents.



- (g) **(No duty to review):** The Project Parties and the Rail Franchisees owe no duty to the Independent Reviewer to review the Monitoring Plan or any amended Monitoring Plan for errors, omissions or compliance with this Deed or the State Project Documents. No comment on or approval, agreement or review of the Monitoring Plan by a Project Party or a Rail Franchisee will constitute a direction for the purposes of clause 5.6 or otherwise.

3.5 Independent Reviewer Deed of Appointment (Advanced Works)

- (a) **(Acknowledgement of termination and provision of Services):** The parties acknowledge and agree that:
- (1) the Independent Reviewer Deed of Appointment (Advanced Works) has been terminated in accordance with its terms;
 - (2) the AW Services form part of the Services to be delivered by the Independent Reviewer pursuant to this Deed; and
 - (3) the exercise of any functions or decisions made by the Independent Reviewer pursuant to the Independent Reviewer Deed of Appointment (Advanced Works) are regarded as being functions exercised or decisions made by the Independent Reviewer under this Deed.
- (b) **(Accrued Liabilities):** The Independent Reviewer:
- (1) accepts all Liabilities of the Independent Reviewer accrued under or in connection with the Independent Reviewer Deed of Appointment (Advanced Works), as such Liabilities existed immediately prior to termination of the Independent Reviewer Deed of Appointment (Advanced Works), as if those Liabilities accrued under this Deed;
 - (2) agrees that any obligation or Liability of the “Project Parties” (as defined in the Independent Reviewer Deed of Appointment (Advanced Works) immediately prior to termination) and the Rail Franchisees, including in respect of payment, arising under or in connection with the Independent Reviewer Deed of Appointment (Advanced Works) is satisfied and discharged at the time of Financial Close,

and the Independent Reviewer, the “Project Parties” (as defined in the Independent Reviewer Deed of Appointment (Advanced Works) immediately prior to termination) and the Rail Franchisees have no Claim against each other in relation to any matter arising under or in connection with the Independent Reviewer Deed of Appointment (Advanced Works).

4 Various functions of the Independent Reviewer

- (a) **(Application of clause):** This clause 4 only applies if the Independent Reviewer or any of its subcontractors undertaking the Upstream Independent Reviewer Functions is the same entity undertaking the Downstream Independent Reviewer Functions.
- (b) **(Upstream Independent Reviewer Functions paramount):** The Project Parties, the Rail Franchisees and the Independent Reviewer acknowledge and agree that the Upstream Independent Reviewer Functions represent the paramount role of the Independent Reviewer, with the intent that:
- (1) if there is any ambiguity, conflict, discrepancy or inconsistency between any Upstream Independent Reviewer Functions and any

Downstream Independent Reviewer Functions, the Upstream Independent Reviewer Functions will prevail as between the parties to this Deed;

- (2) neither the existence nor terms of a Downstream Independent Reviewer Function nor the exercise, failure to exercise or manner of exercise of a Downstream Independent Reviewer Function will be a precedent for, limit or otherwise affect the exercise of, or be construed in any way as an aid to interpretation of, an Upstream Independent Reviewer Function; and
- (3) neither:
 - (A) the receipt by the Independent Reviewer of any notice, claim, plan, program, report, manual, model or any other document or information nor the giving of any notice, the making of any comment or any other act or omission by the Independent Reviewer arising in connection with a Downstream Independent Reviewer Function; nor
 - (B) the existence or performance of any function by, any consultation with, or provision of any notice, report, certificate, comment or any other document or information to, the Independent Reviewer by any other reviewer, certifier, engineer, adviser or other consultant engaged by any party other than the State,

will:

 - (C) give rise to any obligation on the part of the Independent Reviewer to exercise (or exercise in a particular manner) any Upstream Independent Reviewer Function;
 - (D) relieve Project Co from the giving of any notice, claim, plan, program, report, manual, model or any other document or information or the doing of any other thing in respect of an Upstream Independent Reviewer Function in order to give rise to any obligation on the part of the Independent Reviewer to exercise that Upstream Independent Reviewer Function; or
 - (E) be a precedent for, limit or otherwise affect the exercise of, or be construed in any way as an aid to interpretation of, an Upstream Independent Reviewer Function.
- (c) **(State approval and consent):** The Project Parties, the Rail Franchisees, and the Independent Reviewer acknowledge and agree that:
 - (1) the Independent Reviewer may not, and must ensure that its subcontractors do not exercise any function or enter into any arrangement arising in connection with the Project, the Rail Systems Alliance Works or the Rail Infrastructure Alliance Works other than in accordance with this Deed (including in accordance with clause 7.4) or the Sub-Independent Reviewer Deed, unless approved by the State and on such terms approved by the State; and
 - (2) no Downstream Independent Reviewer Function may be varied, altered or amended without the State's consent.
- (d) **(No Liability):** Subject to clause 4(e), to the extent permitted by Law, none of the State, its Associates, the Rail Franchisees or the Independent Reviewer will have any Liability, nor will Project Co or its Associates be entitled to make,



continue or enforce any Claim against, or seek, pursue or obtain an indemnity against or contribution to Liability from the State, any of its Associates, the Rail Franchisees or the Independent Reviewer, and Project Co indemnifies the State, its Associates, each Rail Franchisee and the Independent Reviewer in respect of any such Claim or Liability arising in connection with:

- (1) any ambiguity, conflict, discrepancy or inconsistency between any Upstream Independent Reviewer Functions and any Downstream Independent Reviewer Functions; or
 - (2) subject to clause 9.10:
 - (A) the exercise, failure to exercise or manner of exercise of any Downstream Independent Reviewer Function;
 - (B) any act or omission of the Independent Reviewer arising in connection with the performance of any Downstream Independent Reviewer Function; or
 - (C) the giving of any notice, claim, plan, program, report, manual, model or any other document or information, or any other act or omission in respect of any Downstream Independent Reviewer Function or any Downstream Independent Reviewer Contract.
- (e) **(No exclusion of Liability):** For the avoidance of doubt, clause 4(d) will not operate to exclude the Independent Reviewer's Liability with respect to:
- (1) a failure by the Independent Reviewer to comply with clause 4(g); or
 - (2) any matter for which the Independent Reviewer has provided an indemnity in accordance with clause 9.10.
- (f) **(Duty of care to Project Parties):** The Independent Reviewer acknowledges that it owes a duty of care to the Project Parties and the Rail Franchisees when performing the Downstream Independent Reviewer Functions.
- (g) **(Obligations when performing downstream functions):** The Independent Reviewer warrants to the Project Parties and the Rail Franchisees that, in performing the Downstream Independent Reviewer Functions, it itself will, and will ensure that its subcontractors:
- (1) comply with all Laws, act honestly, diligently, reasonably and with the degree of professional care, knowledge, experience and skill which would be expected of an expert professional providing services similar to the Services for projects similar to the Project;
 - (2) at all times, act within the time requirements for the performance of its obligations, both as:
 - (A) Independent Reviewer in accordance with this Deed and the State Project Documents and the Project Alliance Agreements; and
 - (B) Independent Reviewer when performing any Downstream Independent Reviewer Function which has an equivalent Upstream Independent Reviewer Function;
 - (3) at all times act independently of the relevant Downstream Parties and all other parties to the Downstream Independent Reviewer Contracts;
 - (4) ensure that the performance of any Downstream Independent Reviewer Function does not give rise to any (or the possibility of any) conflict of interest;



- (5) ensure that it does not otherwise compromise its ability to perform the Upstream Independent Reviewer Functions in accordance with this Deed;
 - (6) when performing the Downstream Independent Reviewer Functions, provide to the State copies of all written communications and details of all non-written communications with the Downstream Parties and consult with and provide all further information required by the State in connection with those communications;
 - (7) otherwise comply with any reasonable requirements of the State for the purposes of this warranty; and
 - (8) use and apply the same methodology that it uses and applies in performing the Upstream Independent Reviewer Functions.
- (h) **(Fee payable solely for Services):** The Project Parties, the Rail Franchisees, and the Independent Reviewer acknowledge and agree that the Fee payable in accordance with this Deed will be payable solely for, and will relate solely to, performance of the Upstream Independent Reviewer Functions. The Fee will not, for the avoidance of doubt, be payable for or relate to any Downstream Independent Reviewer Functions, which will be separately payable in accordance with the Sub-Independent Reviewer Deed.
- (i) **(Delegation of risks, liabilities, obligations and responsibilities):** Any express or implied delegation of risks, liabilities, obligations or responsibilities by Project Co and its respective Associates, whether in the Sub-Independent Reviewer Deed, any other Downstream Independent Reviewer Contract or otherwise, does not constitute approval of such delegation by the State or in any way limit or derogate from the scope of Project Co's obligations in accordance with the State Project Documents or this Deed or affect in any way the obligations of the Independent Reviewer in accordance with the State Project Documents or this Deed. References to risks, liabilities, obligations or responsibilities assumed or accepted or acknowledgements given by any such entity or Associate in relation to any such delegation will be construed as assumed or accepted or given (as applicable) by Project Co in accordance with the State Project Documents.
- (j) **(No effect on Upstream Independent Reviewer Functions):** Reference in the Sub-Independent Reviewer Deed or any other Downstream Independent Reviewer Contract to the performance of a function by the Independent Reviewer under any Downstream Independent Reviewer Contract, or the provision to or receipt by the Independent Reviewer of a document, certificate or notice from any Downstream Party (in its capacity as Independent Reviewer), does not in any way affect the functions of the Independent Reviewer under the State Project Documents or this Deed.

4A Rail Infrastructure Alliance

- (a) **(Application of clause):** This clause 4A applies during any time period during which the Independent Reviewer or any of its subsidiaries or subcontractors is:
- (1) a Member of a Respondent for the purposes of, or is otherwise participating in, the expression of interest or request for proposal in respect of the Rail Infrastructure Alliance; or
 - (2) an RIA Participant under the Rail Infrastructure Alliance Agreement.



- (b) **(Independent Reviewer not to perform RIA IR Services):** The Independent Reviewer must not perform the RIA IR Services.
- (c) **(Engagement of RIA Sub-consultant):** The Independent Reviewer must engage a sub-consultant:
- (1) who must be Advisian Pty Ltd, or another sub-consultant approved by the State (which approval the State may grant or deny in its sole and absolute discretion);
 - (2) to solely perform the RIA IR Services on terms of engagement approved by the State (which approval the State may grant or deny in its sole and absolute discretion); and
 - (3) at the sole cost of the Independent Reviewer. The Independent Reviewer acknowledges and agrees that nothing in this clause 4A entitles the Independent Reviewer to claim a change to the Fee or to any other type of payment under the Payment Schedule,
- (RIA Sub-consultant).**
- (d) **(No subcontracting):** The RIA Sub-consultant must not subcontract any of the RIA IR Services without the prior written approval of the Project Parties.
- (e) **(Approval of Key RIA People):** The Independent Reviewer must seek the prior written approval of each of the Project Parties and the Rail Franchisees (which approval each Project Party or Rail Franchisee may grant or deny in its sole and absolute discretion) of any key personnel proposed by the RIA Sub-consultant to perform any part of the RIA IR Services **(Key RIA People)**.
- (f) **(Application of clause 5.11):** Clause 5.11 applies to Key RIA People as if they were Key People, with the following amendments:
- (1) removal of Key RIA People pursuant to clause 5.11(b) requires the prior consent of each of the Project Parties and the Rail Franchisees;
 - (2) notifications pursuant to clause 5.11(d) must be provided to both the Project Parties and the Rail Franchisees; and
 - (3) the approval of both the Project Parties and the Rail Franchisees is required to replace Key RIA People pursuant to clause 5.11(e).
- (g) **(Independent Reviewer's obligations):** The Independent Reviewer must:
- (1) ensure that:
 - (A) any of its directors, agents, officers, employees and contractors involved or connected with the subject matter of this Deed, including the provision of the Services, do not participate in the Rail Infrastructure Alliance; and
 - (B) any of its directors, agents, officers, employees and contractors involved or connected with the Rail Infrastructure Alliance do not participate in the subject matter of this Deed, including the provision of the Services;
 - (2) implement and comply with such probity arrangements as are directed by the State, including those the State considers necessary to mitigate the potential for any actual or perceived unfair advantage to be obtained by any person or entity;
 - (3) establish internal systems and processes to ensure that information is not shared beyond, and confidentiality is preserved between, those directors, agents, officers, employees and contractors which are referred to in clause 4A(g)(1); and



- (4) notify the Project Parties immediately in writing if it becomes aware of any non-compliance with this clause 4A(g).
- (h) **(Demonstration of compliance)**: The State may, at any time, require the Independent Reviewer to demonstrate to the State's satisfaction the Independent Reviewer's compliance with clause 4A(g) (or any part of it).
- (i) **(State discretion to notify of new RIA IR Services)**: Without limiting the State's rights and discretions under this Deed, if the State at any time, and in its sole and absolute discretion, is not satisfied that clause 4A(g) or (h) are being complied with, the Independent Reviewer acknowledges that the State may exercise its rights under limb (4) of the definition of RIA IR Services.

5 Performance by Independent Reviewer

5.1 Standard of care

The Independent Reviewer must and must ensure that its subcontractors exercise the standard of skill, care and diligence in the performance of the Services that would be expected of an expert professional provider of the Services experienced in providing services similar to the Services for projects similar to the Project.

5.2 Duty to act honestly, fairly and independently

The Independent Reviewer must and must ensure that its subcontractors, in performing the Services act honestly, professionally and independently of the Project Parties, the Rail Franchisees, the Rail Systems Alliance, the Rail Infrastructure Alliance and the Downstream Parties and their respective Associates.

5.3 Time requirements

The Independent Reviewer must and must ensure that its subcontractors perform the Services:

- (a) **(Time limit specified)**: within the time limits specified in this Deed, the State Project Documents and the Project Alliance Agreements; and
- (b) **(No time limit specified)**: where no time limit is specified, within a reasonable time.

5.4 Conflict of interest

- (a) **(Warranty)**: The Independent Reviewer warrants that:
 - (1) as at the date of this Deed, no conflict of interest arises out of its engagement by the Project Parties under this Deed; and
 - (2) if, during the term of this Deed, it becomes aware of the existence or possibility of a conflict of interest, it will:
 - (A) immediately notify the Project Parties of that conflict of interest or possible conflict of interest; and
 - (B) take such steps to avoid or mitigate the conflict of interest or possible conflict of interest as the Project Parties may reasonably require.



- (b) **(Prior approval):** The Independent Reviewer must not exercise and must ensure that its subcontractors do not exercise any function nor enter into any arrangement arising out of in respect of or in connection with the Project, the Rail Systems Alliance Works or the Rail Infrastructure Alliance Works other than in accordance with this Deed unless approved by the Project Parties and on such terms as are approved by the State.
- (c) **(Warranty to Rail Franchisees):** The Independent Reviewer warrants that:
 - (1) as at the date of this Deed, no conflict of interest arises out of its or its subcontractors' performance of the Services under this Deed in respect of each Rail Franchisee; and
 - (2) if, during the term of this Deed, it becomes aware of the existence or possibility of a conflict of interest, it will:
 - (A) immediately notify the Project Parties and the relevant Rail Franchisee(s) of that conflict of interest or possible conflict of interest; and
 - (B) take such steps to avoid or mitigate the conflict of interest or possible conflict of interest as the relevant Rail Franchisee(s) may reasonably require.

5.5 Communications with Project Parties

The Independent Reviewer must ensure that a copy of each written communication between the Independent Reviewer and a Project Party or a Rail Franchisee which relates to the Project or this Deed, is promptly given to each other Project Party and Rail Franchisee.

5.6 No authority to give directions or waive requirements

The Independent Reviewer has no authority to:

- (a) **(Directions):** give directions to the Project Parties, the Rail Franchisees, the Rail Systems Alliance, the Rail Infrastructure Alliance or the Downstream Parties, other than as may (if at all) be expressly set out in this Deed, the State Project Documents, the Project Alliance Agreements, the Rail Franchisee Cooperation Agreements, or a Downstream Independent Reviewer Contract;
- (b) **(Waive or vary):** waive or vary any requirements of the State Project Documents, the Project Alliance Agreements, the Rail Franchisee Cooperation Agreements, or a Downstream Independent Reviewer Contract; or
- (c) **(Discharge or release):** discharge or release a party from any of its obligations under the State Project Documents, the Project Alliance Agreements, or the Rail Franchisee Cooperation Agreements.

5.7 Acknowledgement of reliance

- (a) **(Reliance):** Subject to clause 5.7(b), the Independent Reviewer acknowledges that each Project Party, each Rail Franchisee, and each Downstream Party:
 - (1) is entitled to, and will, rely on:
 - (A) the skill and expertise of the Independent Reviewer in the performance of the Services; and

- (B) any certificate signed or given by the Independent Reviewer under the State Project Documents or the Project Alliance Agreements; and
- (2) may suffer Liability if the Independent Reviewer does not perform the Services in accordance with the requirements of this Deed.

[State Note: The parties agree that any certificate referred to in this clause which is issued to a third party will be issued by the State, and the State will rely upon the Independent Reviewer's certificate to do so.]
- (b) **(No liability):** Notwithstanding anything else in this clause 5.7, the Independent Reviewer is not responsible for, has no duty of care to, and has no Liability to a Rail Franchisee to review any Submitted Document in respect of:
 - (1) a Rail Franchisee's ability to comply with the relevant Rail Franchisee Arrangements;
 - (2) the Train Franchisee's ability to discharge its duties under the Rail Safety National Law;
 - (3) the Tram Franchisee's ability to discharge its duties under the Tram Safety Act;
 - (4) the Train Franchisee's ability to comply with the requirements of its Train Accreditation and the Train Franchisee Rail Safety Requirements, to the extent that a Submitted Document relates to any rail safety management arrangements in relation to any Maintenance Services comprising Railway Operations; or
 - (5) the Tram Franchisee's ability to comply with the requirements of its Tram Accreditation and the Tram Franchisee Rail Safety Requirements, to the extent that a Submitted Document relates to any rail safety management arrangements in relation to the Tram Works,except to the extent:
 - (6) the relevant Rail Franchisee has provided comments in relation to these matters pursuant to the State Project Documents, the Project Alliance Agreements or the relevant Rail Franchisee Cooperation Agreement; or
 - (7) the PS&TR requires the relevant Submitted Document to comply with or allow the relevant Rail Franchisee to discharge its duties in relation to such matters.

5.8 Knowledge of Project Parties' requirements

The Independent Reviewer warrants that:

- (a) **(Informed itself of documents relating to Services):** it has informed itself of the requirements of the State Project Documents, the Project Alliance Agreements, the Rail Franchisee Cooperation Agreements, and the Downstream Independent Reviewer Contracts in so far as they relate to the Services;
- (b) **(Informed itself of other requirements):** without limiting clause 5.8(a), it has informed itself of all time limits and other requirements for any function which the Independent Reviewer must perform in accordance with the State Project Documents, the Project Alliance Agreements, the Rail Franchisee Cooperation Agreements, and the Downstream Independent Reviewer Contracts;



- (c) **(Nature of work)**: it has informed itself of the nature of the work necessary for the performance of the Services and (to the maximum extent possible) the means of access to and facilities within the Site and any land, or any part of land where works are to be performed under a Project Alliance Agreement, including any restrictions on any such access; and
- (d) **(Sufficiency of the Fee)**: it has satisfied itself as to the sufficiency of the Fee and the 'Fee' (as defined in the Sub-Independent Reviewer Deed) having regard to the costs which it will incur in complying with its obligations in accordance with this Deed.

5.9 Co-ordination and co-operation

The Independent Reviewer must and must ensure that its subcontractors, in performing the Services:

- (a) **(Co-operation)**: co-operate with the Project Parties, the Rail Franchisees, the Rail Systems Alliance, the Rail Infrastructure Alliance and the Downstream Parties and their respective Associates;
- (b) **(Co-ordinate)**: co-ordinate the Services with the work to be performed by the Project Parties, the Rail Franchisees, the Rail Systems Alliance, the Rail Infrastructure Alliance and the Downstream Parties, and their respective Associates; and
- (c) **(Avoid unreasonable interference)**: avoid any unreasonable interference, disruption or delay to the work to be performed by the Project Parties, the Rail Franchisees, the Rail Systems Alliance, the Rail Infrastructure Alliance and the Downstream Parties, and their respective Associates.

5.10 Personnel

The Independent Reviewer must provide sufficient numbers of experienced and competent personnel to perform its obligations in accordance with this Deed within the timeframes specified in this Deed, the State Project Documents, the Project Alliance Agreements, the Rail Franchisee Cooperation Agreements, and the Downstream Independent Reviewer Contracts.

5.11 Key People

Without limiting its obligations in accordance with clause 5.10, the Independent Reviewer must:

- (a) **(Key People perform functions)**: ensure that the Key People perform the functions specified in the Contract Particulars and, unless reasonably directed otherwise by the Project Parties, ensure that they are committed and available to the Project, the Rail Systems Alliance Works and the Rail Infrastructure Alliance Works as required to fulfil the requirements of this Deed, the State Project Documents, the Project Alliance Agreements and the Rail Franchisee Cooperation Agreements;
- (b) **(Removal of Key People)**: subject to clause 5.11(c), not remove the Key People without the prior consent of the Project Parties (which must not be unreasonably withheld or delayed, and who must consult with the Rail Franchisees prior to providing or withholding such consent);
- (c) **(Best endeavours)**: use its best endeavours to ensure that none of the Key People resign or otherwise become unavailable to perform their functions as required by clause 5.11(a);



- (d) **(Unavailability of Key People)**: without limiting clause 5.11(f) and in relation to any Key People who resign or otherwise become or may become unavailable to perform their functions as required by clause 5.11(a) (whether temporarily or permanently), notify the Project Parties accordingly including advising the Project Parties of the way in which the Independent Reviewer proposes to address the unavailability of any such Key People;
- (e) **(Replacement of Key People)**: if any of the Key People are removed, die, become seriously ill or resign, subject to the approval of the Project Parties, replace them as soon as practicable with persons of at least equivalent skill and experience; and
- (f) **(Availability of Key People)**: ensure that the Key People are available for consultation as any Project Party may reasonably require from time to time.

5.12 Independent Reviewer's Representative

The Independent Reviewer:

- (a) **(Independent Reviewer's Representative)**: has nominated the Independent Reviewer's Representative as the person to act as its representative for the Services;
- (b) **(Nominate another person)**: may, from time to time nominate another person to act as the Independent Reviewer's Representative, subject to the Project Parties' approval (in their sole and absolute discretion and with no obligation to do so), in which case that person will be the relevant representative in lieu of the person named in the Contract Particulars; and
- (c) **(Authority to bind Independent Reviewer)**: confirms that the Independent Reviewer's Representative has the power and authority to bind the Independent Reviewer.

5.13 Subcontracting

The Independent Reviewer:

- (a) **(No subcontracting)**: may not subcontract the performance of any of its Services without the prior consent of each Project Party (which may be conditional) and the Rail Franchisees (which, in the case of the Rail Franchisees, must not be unreasonably withheld or delayed); and
- (b) **(Responsible for performance)**: remains responsible for the performance of the Services in accordance with this Deed, notwithstanding any such subcontracting.

5.14 Independent Subcontractor

- (a) The Independent Reviewer acknowledges and agrees that:
 - (1) if the Independent Reviewer or a member or Associate of the Independent Reviewer is a member or Associate of the Rail Infrastructure Alliance or the Rail Systems Alliance, it would give rise to a conflict of interest as described in clause 5.4 if the Independent Reviewer performed the Independent Subcontractor Services; and
 - (2) to avoid a conflict of interest as described in clause 5.4 it must accordingly engage the Independent Subcontractor to perform the Independent Subcontractor Services in accordance with clause 5.13 and this clause 5.14.



- (b) The Independent Reviewer acknowledges and agrees that the Independent Subcontractor must:
- (1) be independent of the Project Parties, the Rail Franchisees and the Downstream Parties;
 - (2) be suitably qualified and experienced to perform the Independent Subcontractor Services;
 - (3) perform the Independent Subcontractor Services without giving rise to any actual or potential conflict of interest; and
 - (4) except as consented to by the State in writing (either conditionally or unconditionally, and at the State's sole and absolute discretion) not be:
 - (A) affiliated (by way of joint venture, ownership, contract or otherwise) with:
 - (i) Project Co or an Associate of Project Co;
 - (ii) the Rail Systems Alliance or an Associate of the Rail Systems Alliance;
 - (iii) the Rail Infrastructure Alliance or an Associate of the Rail Infrastructure Alliance; or
 - (B) an Associate of the State or involved with the State or an Associate of the State in respect of the Metro Tunnel;
 - (C) a Utility Provider or an Associate of a Utility Provider; or
 - (D) involved in any other infrastructure projects funded by the State other than Metro Tunnel, including the 'Level Crossing Removal Project', Cranbourne Pakenham Rail Upgrade, Mernda Rail Extension, Flinders Street Station Redevelopment, West Gate Tunnel Project, the 'High Capacity Metro Trains Public Private Partnership' project and the X'Trapolis trains project.
- (c) In seeking the consent to the appointment of the Independent Subcontractor under clause 5.13(a), the Independent Reviewer must give all parties from whom consent is required clause 5.13(a) written notice of the proposed Independent Subcontractor, which must include details:
- (1) of any involvement of the proposed Independent Subcontractor and any Associates, directors, agents, officers, employees and contractors of the proposed Independent Subcontractor with any aspect of the Metro Tunnel (including any involvement in any tender process in respect of any aspect of the Metro Tunnel); and
 - (2) with respect to any of the matters listed in clause 5.14(b).
- (d) Determinations of the Independent Subcontractor in its performance of the Independent Subcontractor Services will be final and binding on the Independent Reviewer.

6 Role of the Project Parties

6.1 No interference or influence

- (a) **(No interference or influence):** The Project Parties and the Rail Franchisees must not interfere with, or attempt to influence, the Independent Reviewer or its subcontractors in the performance of any of the Services. A communication allowed by this Deed, the Project Agreement, the Project Alliance Agreements, a Rail Franchisee Cooperation Agreement, or a Downstream Independent Reviewer Contract will not, however, of itself constitute a breach of this clause 6.1(a).
- (b) **(Project Parties and Rail Franchisees may provide comments):** Clause 6.1(a) will not prevent a Project Party or a Rail Franchisee from providing written comments to the Independent Reviewer in respect of any aspect of the Project Activities, the Rail Systems Alliance Works or the Rail Infrastructure Alliance Works or as contemplated by a Rail Franchisee Cooperation Agreement.

6.2 Provision of information

- (a) Project Co must, as soon as practicable, ensure that the Independent Reviewer is provided with all information, assistance, documentation, models and particulars as the Independent Reviewer reasonably requests:
 - (1) **(Services):** relating to the Services;
 - (2) **(Project Documents):** required under the State Project Documents, the Rail Franchisee Cooperation Agreements, and the Downstream Independent Reviewer Contracts; and
 - (3) **(Performance of Services):** to enable it to perform the Services effectively and otherwise in accordance with the State Project Documents, the Rail Franchisee Cooperation Agreements, the Downstream Independent Reviewer Contracts and this Deed.
- (b) The State must, as soon as practicable, ensure that the Independent Reviewer is provided with all information, assistance, documentation, models and particulars as the Independent Reviewer reasonably requests:
 - (1) **(Project Alliance Services):** relating to the Project Alliance Services;
 - (2) **(Project Alliance Agreements):** required under the Project Alliance Agreements; and
 - (3) **(Performance of Project Alliance Services):** to enable it to perform the Project Alliance Services effectively and otherwise in accordance with the Project Alliance Agreements, the State Project Documents, the Rail Franchisee Cooperation Agreements, the Downstream Independent Reviewer Contracts and this Deed.

6.3 Access to records and systems

- (a) Without limiting the obligations of Project Co under the State Project Documents and the Rail Franchisee Cooperation Agreements, or clause 6.2, Project Co must provide the Independent Reviewer with such information and documentation (including all Design Documentation) and access to Project Co's books, records and systems as the Independent Reviewer may reasonably require to enable it to perform the Services effectively and otherwise in



accordance with this Deed, the State Project Documents and the Rail Franchisee Cooperation Agreements.

- (b) The State must provide the Independent Reviewer with such information and documentation and access to each of the Rail Systems Alliance' and the Rail Infrastructure Alliance's books, records and systems as the Independent Reviewer may reasonably require to enable it to perform the Project Alliance Services effectively and otherwise in accordance with this Deed, the State Project Documents, the Project Alliance Agreements and the Rail Franchisee Cooperation Agreements.
- (c) Nothing in this clause 6.3 will be construed as a waiver of legal professional privilege.

6.4 Access to premises

- (a) Project Co must ensure that the Independent Reviewer and its subcontractors are given such access to any place where any part of the Project Activities is being carried out (including transport within the Construction Site and where it is reasonably required access to the premises of their respective Associates) and all necessary assistance as is required to enable the Independent Reviewer or its subcontractors to perform the Services effectively and in accordance with the requirements of this Deed, the State Project Documents, the Rail Franchisee Cooperation Agreements, and the Downstream Independent Reviewer Contracts.
- (b) The State must ensure that the Independent Reviewer and its subcontractors are given such access to any place where any part of the Rail Systems Alliance Works or the Rail Infrastructure Alliance Works are being carried out and all necessary assistance as is required to enable the Independent Reviewer or its subcontractors to perform the Project Alliance Services effectively and in accordance with the requirements of this Deed, the State Project Documents, the Project Alliance Agreements, the Rail Franchisee Cooperation Agreements, and the Downstream Independent Reviewer Contracts.

6.5 Right to enter, inspect and test

- (a) **(Right of entry):** Subject to clause 6.5(b), the Independent Reviewer (or any person authorised by the Independent Reviewer) may, upon giving reasonable notice to Project Co or in the case of the Project Alliance Services, the State (except in the case of an emergency when no notice is required), enter the Site or the offices of Project Co, or in the case of the Project Alliance Services, the Project Alliance Sites or the offices of the Rail Systems Alliance or the Rail Infrastructure Alliance to:
 - (1) inspect, observe or test any part of the Relevant Infrastructure or the Project Activities or in the case of the Project Alliance Sites, any Rail Systems Alliance Works or Rail Infrastructure Alliance Works (whether or not such inspections, observations or tests are otherwise required in accordance with this Deed);
 - (2) exercise any right or carry out any obligation which the Independent Reviewer has in accordance with any State Project Document, the Project Alliance Agreements or Rail Franchisee Cooperation Agreement; or
 - (3) take such other action as the Independent Reviewer considers necessary to exercise its rights in accordance with this Deed and to discharge its duties, powers and obligations.



- (b) **(Conditions of access):** When entering the Site or the Project Alliance Sites in accordance with clause 6.5(a), the Independent Reviewer must and must ensure any authorised person:
- (1) complies with the Site Access and Interface Protocols, or in the case of the Project Alliance Sites, any equivalent site access and interface protocols under the Project Alliance Agreements;
 - (2) does not unnecessarily interfere with the carrying out of the Project Activities, or in the case of the Project Alliance Services any works carried out under the Project Alliance Agreements; and
 - (3) does not damage the Relevant Infrastructure or the Site, or in the case of the Project Alliance Services, any Rail Systems Alliance Works or Rail Infrastructure Alliance Works or the Project Alliance Sites.
- (c) **(Project Co to assist):** If requested by the Independent Reviewer, Project Co, or in the case of the Project Alliance Services, the State must assist the Independent Reviewer in connection with any inspection or testing in accordance with this clause 6.5, including:
- (1) providing access to such part of the Relevant Infrastructure and all Project Co Materials, or in the case of the Project Alliance Services, such part of the Rail Systems Alliance Works or the Rail Infrastructure Alliance Works as may be required by the Independent Reviewer;
 - (2) preparing samples of materials used in connection with the Relevant Infrastructure, or in the case of the Project Alliance Services, such part of the Rail Systems Alliance Works or the Rail Infrastructure Alliance Works as required by the Independent Reviewer; and
 - (3) forwarding the samples prepared in accordance with clause 6.5(c)(2) to the Independent Reviewer or such other place or person notified by the Independent Reviewer.

6.6 Meetings

The Project Parties and the Rail Franchisees must:

- (a) **(Design meetings):** allow the Independent Reviewer and, if applicable, its subcontractors to attend design meetings; and
- (b) **(Other meetings):** attend such meetings with the Independent Reviewer and its subcontractors as the Independent Reviewer may reasonably request to enable it to perform the Services effectively and otherwise in accordance with this Deed.

6.7 Co-operation

- (a) **(Project Co to cooperate):** Project Co must and must ensure that each Downstream Party and Project Co's Associates co-operate with the Independent Reviewer and, if applicable, its subcontractors during the carrying out of the Services.
- (b) **(Rail Franchisees to cooperate):** Each Rail Franchisee must and must ensure that its Associates co-operate with the Independent Reviewer and, if applicable, its subcontractors during the carrying out of the Services.



6.8 Project Parties and Rail Franchisees not liable

On no account will a Project Party or a Rail Franchisee be liable to another Project Party or its Associates, or Rail Franchisee or its Associates for any act or omission by the Independent Reviewer or its subcontractors whether or not in accordance with or purportedly in accordance with a provision of this Deed, the State Project Documents, the Project Alliance Agreements, the Rail Franchisee Cooperation Agreements, or otherwise.

6.9 Role of the Rail Franchisees

The parties acknowledge and agree that:

- (a) the Rail Franchisees are party to this Deed solely for the purpose of receiving the Services provided by the Independent Reviewer in relation to any Submitted Documents to which a Rail Franchisee Input Document relates, ensuring that the construction of the Works comply with the requirements of the Project Agreement and in relation to the identification and rectification of Defects during the relevant Defects Liability Period; and
- (b) all of the rights and obligations of a Rail Franchisee under this Deed must be interpreted by reference to the limited purpose set out in clause 6.9(a).

7 Reporting and meetings

7.1 Progress reports

- (a) The Independent Reviewer must submit a written report to each Project Party and each Rail Franchisee:
 - (1) **(Before meeting of Project Control Group)**: 2 Business Days before each meeting of the Project Control Group in accordance with clause 11.4 (*Project Control Group*) of the Project Agreement;
 - (2) **(Project Parties requires)**: in such form as the Project Parties may reasonably require; and
 - (3) **(Details)**: containing details of:
 - (A) Project Co's compliance (and details of any non-compliances) with the State Project Documents;
 - (B) the results of the review of Design Documentation in accordance with clause 19.3 (*Design Review Process*) of the Project Agreement;
 - (C) the results of the review of the D&C Program in accordance with clause 18 (*D&C Program*) of the Project Agreement;
 - (D) the results of review of construction of the Works during the performance of the D&C Activities in accordance with clause 26.2 (*Independent Reviewer's review of progress*) of the Project Agreement;
 - (E) any Management Plans and Maintenance Manuals, notices and other information and documentation and the results of any review of those documents or that information received from Project Co in accordance with the State Project Documents;

- (F) the results of any review of the operation of the quality system developed and implemented by Project Co and any review and assessment of the quality of the Project Activities in accordance with the State Project Documents;
 - (G) any matters or departures notified in accordance with clauses 26 (*Time*) or 25 (*Defects*) of the Project Agreement;
 - (H) any notices given by a Project Party to the Independent Reviewer and any notices issued by the Independent Reviewer;
 - (I) any certificates issued or received by the Independent Reviewer in accordance with the Schedule of Certificates and Notices;
 - (J) any certificates of completion for Provisional Acceptance or Final Acceptance, or for Handback of any Returned Assets issued or requested by Project Co or the State in relation to any of the Works;
 - (K) progress of Project Co in relation to Provisional Acceptance, each Critical Interface Milestone, each Progress Milestone, and Final Acceptance (as applicable) including the status of any Defects and the rectification of any Defects;
 - (L) the forecast cost of the Services (including for the current and following Quarter), taking into account current expenditure, resourcing and future forecasts;
 - (M) notification of reports requested by one Project Party in accordance with clause 7.4;
 - (N) relevant details in relation to the performance of any Downstream Independent Reviewer Functions; and
 - (O) such other matters in respect of the Services as the Project Parties (acting jointly) may reasonably request from time to time.
- (b) The Independent Reviewer must submit a written report to the State:
- (1) **(Before meeting of Project Control Group)**: 2 Business Days before each meeting of the Project Control Group in accordance with clause 11.4 (*Project Control Group*) of the Project Agreement;
 - (2) **(Project Parties requires)**: in such form as the State may reasonably require; and
 - (3) **(Details)**: containing details of:
 - (A) the Rail Systems Alliance and the Rail Infrastructure Alliance's compliance (and details of any non-compliances) with the Project Alliance Agreements;
 - (B) any notices given by the Rail Systems Alliance or the Rail Infrastructure Alliance to the Independent Reviewer and any notices issued by the Independent Reviewer to the Rail Systems Alliance or the Rail Infrastructure Alliance;
 - (C) any certificates issued or received by the Independent Reviewer in accordance with the Project Alliance Agreements;



- (D) the forecast cost of the Project Alliance Services (including for the current and following quarter), taking into account current expenditure, resourcing and future forecasts;
- (E) notification of reports requested by one Project Party in accordance with clause 7.4; and
- (F) such other matters in respect of the Project Alliance Services as the State may reasonably request from time to time.

7.2 Project Control Group

- (a) **(Establishment):** The Project Control Group will be established in accordance with clause 11.4 (*Project Control Group*) of the Project Agreement.
- (b) **(Independent Reviewer's obligations):** The Independent Reviewer must:
 - (1) during the D&C Phase, attend each meeting of the Project Control Group; and
 - (2) present and explain each progress report prepared in accordance with clause 7.1 at the relevant meeting.

7.3 Meetings with Project Parties

The Independent Reviewer must attend, and ensure that all relevant Key People and, if applicable, its subcontractors attend, meetings with the Project Parties and, if applicable the Rail Systems Alliance and the Rail Infrastructure Alliance monthly during the Term or as otherwise agreed by the parties, to discuss the progress of the Services.

7.4 Reports requested by one Project Party or Rail Franchisee

- (a) **(Request by one Project Party or Rail Franchisee):** A Project Party or a Rail Franchisee may request the Independent Reviewer to prepare an additional report which is not otherwise required by the State Project Documents.
- (b) **(Independent Reviewer to prepare report):** The Independent Reviewer must prepare the additional report as requested in accordance with clause 7.4(a), except where the Independent Reviewer is:
 - (1) of the reasonable opinion that it would be inappropriate to prepare such a report in light of the performance and nature of the Services; or
 - (2) not reasonably capable of preparing such a report.
- (c) **(Cost of reports):** The cost of additional reports prepared in accordance with this clause 7.4 will be paid to the Independent Reviewer in accordance with the Payment Schedule.

7.5 Questions relating to a report

- (a) **(Project Parties and Rail Franchisees may submit questions):** Without limiting clauses 6.1(b) or 7.2(b)(2), a Project Party or a Rail Franchisee may submit questions or queries to the Independent Reviewer in relation to a report issued in accordance with clause 7.1.
- (b) **(Independent Reviewer to respond):** Subject to clause 5.5, the Independent Reviewer must, within a reasonable period having regard to the nature of the



question or query, respond in writing to questions and queries submitted by a Project Party or a Rail Franchisee in accordance with this clause 7.5.

8 Quality

8.1 Quality assurance system

The Independent Reviewer must:

- (a) **(Plan and develop)**: plan, develop and implement a quality assurance system which:
 - (1) meets the requirements of the relevant AS/NZS ISO Standards as and when they are published;
 - (2) is consistent with the Monitoring Plan; and
 - (3) is consistent with the requirements for the Quality Management Plan; and
- (b) **(Provide Project Party Representatives)**: within 14 days of the date of this Deed, provide the Project Party Representatives with details of the quality assurance system which complies with clause 8.1(a) and which the Independent Reviewer proposes to adopt.

8.2 Audit

- (a) **(Independent Reviewer must allow audits)**: The Independent Reviewer must:
 - (1) allow any audit of its quality assurance system in accordance with this Deed by a Project Party or a third party appointed by the Project Parties at the request of a Project Party and at the cost of that Project Party; and
 - (2) fully co-operate with that third party in respect of the carrying out of the quality assurance audit.
- (b) **(Access to premises and information)**: Without limiting clauses 6.3, 6.4, 6.5 or 8.2(a), the Independent Reviewer must, at all times:
 - (1) give to the Project Parties or the third party appointed by the Project Parties (as the case may be) access to premises occupied by the Independent Reviewer or its subcontractors where the Services are being undertaken; and
 - (2) permit the Project Parties or the third party appointed by the Project Parties to inspect applicable information relevant to the quality assurance audit.

8.3 Quality assurance not to relieve Independent Reviewer

The Independent Reviewer will not be relieved of any responsibilities or obligations in accordance with this Deed as a result of:

- (a) **(Compliance)**: compliance with the requirements of this clause 8; or
- (b) **(Acts or omissions of Project Parties)**: any acts or omissions of the Project Parties with respect to the requirements of this clause 8, including:



- (1) any review of, comments upon, or notice in respect of, the quality assurance system or any Monitoring Plan; and
- (2) any audit in accordance with clause 8.2.

8.4 Non-complying services

The Independent Reviewer must at its cost:

- (a) **(Re-perform services)**: unless directed otherwise by the Project Parties (and, to the extent the relevant Services are for the benefit of the Rail Franchisees as contemplated by clause 6.9, the relevant Rail Franchisees), re-perform all Services which have not been performed in accordance with this Deed; and
- (b) **(All such steps)**: take all such steps as may be reasonably necessary to:
 - (1) mitigate the effect on the Project Parties and the Rail Franchisees of the failure to perform the Services in accordance with this Deed; and
 - (2) put the Project Parties and Rail Franchisees (as closely as possible) in the positions in which they would have been had the Independent Reviewer performed the Services in accordance with this Deed, including all such steps as may be reasonably directed by the Project Parties.

9 Liability, insurance and indemnity

9.1 Limitation of Liability

Subject to clause 9.4, the Independent Reviewer's total Liability for all Claims which the Project Parties, the Rail Franchisees, and the Downstream Parties or their respective Associates might have (whether jointly or severally) against the Independent Reviewer or the Sub-Independent Reviewer:

- (a) **(This Deed, the Independent Reviewer Deed of Appointment (Advanced Works) and Sub-Independent Reviewer Deed)**: arising in connection with this Deed, the Independent Reviewer Deed of Appointment (Advanced Works) and the Sub-Independent Reviewer Deed;
- (b) **(Services or Project)**: arising in connection with the Services, the Sub-IR Services, the Project, the Rail Systems Alliance Works or the Rail Infrastructure Alliance Works; or
- (c) **(Law)**: otherwise at Law or in equity including:
 - (1) any statute (insofar as it is possible to exclude such Liability); or
 - (2) in tort for negligence or otherwise, including negligent misrepresentation,

in respect of any fact, matter or thing under, arising in connection with the Services, the Sub-IR Services, the Project, the Rail Systems Alliance Works, the Rail Infrastructure Alliance Works or any Project Document or Project Alliance Agreement will be limited in aggregate to the greater of:

- (d) **(Specified amount)**: the amount specified in Item 4 of the Contract Particulars; or
- (e) **(Up to indemnity limit)**: to the extent that the relevant Liability:



- (1) is the subject of an indemnity under any policy of insurance required to be maintained by the Independent Reviewer under clause 9.5 of this Deed; or
- (2) would have been the subject of such indemnity in accordance with the terms of a policy of insurance required to be effected and maintained by the Independent Reviewer under this Deed but for a breach by the Independent Reviewer under clause 9.5 of this Deed, the Sub-Independent Reviewer Deed or any such insurance policy,

the amount of the minimum limit of indemnity required under that policy of insurance as specified in the Contract Particulars,

(Liability Cap).

9.2 Share of Liability Cap

As between:

- (a) **(State)**: the State, the Rail Franchisees and their respective Associates (on the one hand); and
- (b) **(Project Co)**: Project Co, the Downstream Parties and their respective Associates (on the other hand),

unless the State agrees otherwise and subject to clause 9.3:

- (c) **(Percentage for State's Claims)**: [not disclosed] per cent of the Liability Cap shall be available to satisfy the State's, the Rail Franchisees' and their respective Associates' Claims against the Independent Reviewer; and
- (d) **(Percentage for Project Co's Claims)**: [not disclosed] per cent of the Liability Cap shall be available to satisfy Project Co's, the Downstream Parties' and their respective Associates' Claims against the Independent Reviewer (including any Claim by the D&C Subcontractor in connection with the Independent Reviewer Deed of Appointment (Advanced Works) or the Sub-Independent Reviewer Deed),

provided that this clause 9.2 will only apply to Claims which are subject to the Liability Cap in accordance with clause 9.1.

9.3 Residual Liability Cap

The Project Parties and the Rail Franchisees acknowledge and agree that if:

- (a) **(Expiry)**: the Term has expired;
- (b) **(Exhausted Liability Cap)**: either the State, the Rail Franchisees and their respective Associates (collectively), or Project Co, the Downstream Parties and their respective Associates (the **Capped Party**) has exhausted its share of the Liability Cap and is contemplating a claim against the Independent Reviewer or is contemplating a claim against the Independent Reviewer that, if successful, would exhaust its share of the Liability Cap; and
- (c) **(Non-Capped Party not exhausted)**: the other party (the **Non-Capped Party**) has not exhausted its share of the Liability Cap;

then:

- (d) **(Release unused portion)**: the Capped Party may request the Non-Capped Party to release all or a portion of its unused portion of the Liability Cap to the Capped Party for the purposes of its contemplated claim (and must provide the Non-Capped Party with reasonable particulars of such claim);



- (e) **(Consideration of Capped Party's request):** the Non-Capped Party must, acting reasonably, consider the Capped Party's request and, if and to the extent that the Non-Capped Party:
- (1) has no claim outstanding against the Independent Reviewer; and
 - (2) does not consider that there is any reasonable prospect that it will have a future claim against the Independent Reviewer for all or the relevant unused portion of the Liability Cap,

then:

- (f) **(Release of unused portion):** the Non-Capped Party must, by written notice to the relevant Capped Party, release to that Capped Party all or so much of the unused portion of the Liability Cap as is not required to be retained by the Non-Capped Party for the purposes of any claims contemplated under clause 9.3(e)(1) or clause 9.3(e)(2);
- (g) **(Reduction by Independent Reviewer):** the Non-Capped Party's proportion of the Liability Cap will only be reduced by the amount of any order made against the Independent Reviewer in respect of the relevant claim by the Capped Party (disregarding any amount in respect of which the Liability Cap does not apply); and
- (h) **(Increase in Liability Cap proportion):** the Capped Party's proportion of the Liability Cap will only be increased by the amount of any order made against the Independent Reviewer in respect of the relevant Claim (disregarding any amount in respect of which the Liability Cap does not apply) provided that such increase does not exceed the amount released to the Capped Party in accordance with clause 9.3(f).

9.4 Exclusions

The limitation of Liability in clause 9.1 does not apply to any Claims arising in connection with any of the following on the part of the Independent Reviewer or anyone for whom it is responsible:

- (a) **(Fraud):** fraud;
- (b) **(Wilful misconduct):** wilful misconduct, being any conduct, act or omission done or to be done by the Independent Reviewer or Associate of the Independent Reviewer which results from conscious, intentional or reckless disregard of any provision of this Deed, the Independent Reviewer Deed of Appointment (Advanced Works) or any Sub-Independent Reviewer Deed or the rights or welfare of those who are or may be affected by that conduct, act or omission;
- (c) **(Gross negligence):** gross negligence, being any negligent act or omission involving a serious disregard to an obvious and material risk and which the Independent Reviewer knew, or ought reasonably to have been aware, would result in substantial losses being incurred by a Project Party, a Rail Franchisee, or a Downstream Party or their respective Associates; or
- (d) **(Abandonment):** abandonment of all or any material part of the Services.

9.5 Insurances

- (a) **(Insurances):** The Independent Reviewer must hold and maintain from the Commencement Date:
- (1) project specific public liability insurance:

- (A) endorsed to include the Project Parties, the D&C Subcontractor and the Rail Franchisees as named insureds in respect of any Liability a Project Party, the D&C Subcontractor or a Rail Franchisee incur arising in connection with the acts or omissions of the Independent Reviewer or the Sub-Independent Reviewer;
 - (B) covering, without limitation, the Independent Reviewer's Liability in accordance with clause 9.10 and the Sub-Independent Reviewer's Liability in accordance with clause 9.8 of the Sub-Independent Reviewer Deed;
 - (C) with a limit of indemnity of not less than the amount specified in the Contract Particulars with respect to project specific public liability insurance;
 - (D) with a deductible of not more than the amount specified in the Contract Particulars with respect to project specific public liability insurance;
 - (E) which otherwise complies with the requirements of this Deed and is on such minimum terms as set out in the Contract Particulars with respect to project specific public liability insurance; and
 - (F) which applies retroactively to cover Liability in respect of any Liability of a Project Party, the D&C Subcontractor or a Rail Franchisee incurred arising in connection with the acts or omissions of the Independent Reviewer in connection with the Independent Reviewer Deed of Appointment (Advanced Works);
- (2) project specific professional indemnity insurance:
- (A) with a limit of indemnity of not less than the amount specified in the Contract Particulars with respect to project specific professional indemnity insurance for any single claim in respect of legal Liability (including, without limitation, in connection with property damage, personal injury or death) arising in connection with a breach of professional duty under clause 5 or clause 5 of the Sub-Independent Reviewer Deed or otherwise in connection with this Deed or the Sub-Independent Reviewer Deed whether owed in contract or otherwise, by reason of any negligent act, error or omission by the Independent Reviewer or its Associates;
 - (B) with a deductible of not more than the amount specified in the Contract Particulars with respect to project specific professional indemnity insurance;
 - (C) which otherwise complies with the requirements of this Deed and is on such minimum terms as set out in the Contract Particulars with respect to project specific professional indemnity insurance; and
 - (D) which applies retroactively to cover legal Liability arising in connection with a breach of professional duty under clause 5 or otherwise in connection with the Independent Reviewer Deed of Appointment (Advanced Works), whether owed in contract or otherwise, by reason of any negligent act, error



or omission by the Independent Reviewer or its Associates;
and

- (3) workers' compensation insurance against any Liability, whether in accordance with statute or at common law, for the death of, or injury to, persons employed by the Independent Reviewer, or if the Independent Reviewer is comprised of more than one party, employed by each such party in carrying out the Services.

[State Note: [not disclosed]

- (b) **(Requirements for Insurances):** The insurances referred to in clause 9.5(a) must be effected with Reputable Insurers and be on such terms as are approved by the State (such approval not to be unreasonably withheld).
- (c) **(More than one Independent Reviewer):** If the Independent Reviewer comprises more than one person, the insurances referred to in clause 9.5(a) must (subject always to the overall limit of indemnity not being increased as a result):
 - (1) insure each of those parties both jointly and severally; and
 - (2) include a cross liability clause whereby the insurer agrees:
 - (A) to waive all rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured; and
 - (B) that the term "insured" applies to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them.

9.6 Notice of matter affecting insurance

The Independent Reviewer must notify the Project Parties and the Rail Franchisees 30 days in advance of any event which could affect its insurance cover or if any policy is cancelled, avoided or allowed to lapse.

9.7 Provision of information

The Independent Reviewer must provide to the Project Parties and the Rail Franchisees:

- (a) **(Certified copies):** certified copies of the insurance policies (where the Project Parties, the D&C Subcontractor and the Rail Franchisees are included as named insureds); and
- (b) **(Certificates of currency):** certificates of currency, with respect to the insurances effected and maintained by the Independent Reviewer for the purposes of this clause 9 at any time on request by any Project Party or Rail Franchisee, and upon the renewal of each policy.

9.8 Periods for insurance

The Independent Reviewer must keep:

- (a) **(Project specific professional indemnity insurance):** the project specific professional indemnity insurance current for a period of 6 years after the cessation of the Services or the date of termination of this Deed, whichever is earlier;



- (b) **(Workers compensation insurance)**: the employers' Liability and workers compensation insurance current until it ceases to perform the Services;
- (c) **(Project specific public Liability insurance)**: the project specific public liability insurance current until it ceases to perform the Services; and
- (d) **(Other insurances)**: any other insurances required under clause 9.5 current for such time as may reasonably be required by the Project Parties.

9.9 Obligations unaffected by insurance

The requirement to effect and maintain insurance in this clause 9 does not limit the Liability or other obligations of the Independent Reviewer in accordance with this Deed.

9.10 Indemnity

- (a) **(Breach and negligent act or omission)**: Subject to clause 9.1 the Independent Reviewer is liable for and must indemnify each Project Party and Rail Franchisee against any Claim or loss brought against, suffered or incurred by a Project Party or a Rail Franchisee in respect of:
 - (1) any breach of this Deed by the Independent Reviewer;
 - (2) any negligent act or omission of the Independent Reviewer or its subcontractors; or
 - (3) any of the following:
 - (A) the loss or damage to or of, or loss of use of (whether total or partial), any real or personal property (including property belonging to a Project Party or a Rail Franchisee);
 - (B) any injury to, illness or death of, persons; or
 - (C) any third party Claims brought against a Project Party or a Rail Franchisee (including any Claim brought by another Project Party or Rail Franchisee, and any Claim or loss suffered or incurred by a Project Party or Rail Franchisee to another Project Party or Rail Franchisee),

arising in connection with any wrongful act or omission of the Independent Reviewer or any of its Associates in connection with the Project, the Rail Systems Alliance Works or the Rail Infrastructure Alliance Works.
- (b) **(Reduction in Liability)**: The Independent Reviewer's Liability to a Project Party or Rail Franchisee under this clause 9.10 is reduced proportionally to the extent to which any action, proceeding, claim or demand arises out of any negligence or wrongful act or omission of that Project Party or Rail Franchisee, or their Associates.
- (c) **(Survival)**: All obligations to indemnify under this Deed survive termination of this Deed.

9.11 Proportionate Liability

- (a) **(No reduction in insurance covers)**: Subject to clause 9.11(b), the Independent Reviewer must ensure that all insurances required under clause 9.5 do not reduce or exclude the insurance cover in connection with liabilities governed by Part IVAA of the *Wrongs Act 1958* (Vic) or any corresponding legislation of another Australian jurisdiction, by reason of the manner in which



that legislation operates or does not operate, as the case may be, in light of any of the provisions of this Deed and the obligations undertaken by the Independent Reviewer in connection with it.

- (b) **(Reasonable endeavours)**: To the extent that the Insurance is not specific to the Project, the Independent Reviewer is only required to use its reasonable endeavours to procure insurance on the terms referred to in clause 9.11(a).

10 Payment

- (a) Subject to clause 7.4, the State (on behalf of the Project Parties and the Rail Franchisees) must pay to the Independent Reviewer the Fee subject to and in accordance with this clause 10 and the Payment Schedule.
- (b) **(Cumulative Caps)**: Payments in respect of the Fee:
- (1) for the Upstream Independent Reviewer Functions (excluding the Alliance Services) performed in accordance with this Deed during the Initial Fee Period must not exceed the Initial Fee Cumulative Cap for the relevant month;
 - (2) for the Upstream Independent Reviewer Functions (excluding the Alliance Services) performed in accordance with this Deed during the DLP Fee Period must not exceed the DLP Fee Cumulative Cap for the relevant month; and
 - (3) for the Alliance Services performed in accordance with this Deed, must not exceed the Alliance Services Fee Cumulative Cap for the relevant month.

11 Change to or suspension of Services and appointment of Substitute Reviewer

11.1 Change to Services

- (a) **(Notice of change to Services)**: The Project Parties (and, to the extent the relevant Services are for the benefit of the Rail Franchisees as contemplated by clause 6.9, the relevant Rail Franchisees) may, by joint notice to the Independent Reviewer, instruct the Independent Reviewer to carry out a change to the Services (including an addition or omission) which is within the general scope of this Deed. The Independent Reviewer must comply with any such instruction. For the avoidance of doubt, neither a Resource Adjustment nor a delay to the Date of Final Acceptance are of themselves a change to the Services, however:
- (1) a Modification Order issued by the State under the Project Agreement, other than a Modification Order issued under clause 38.1(b) of the Project Agreement; or
 - (2) a Modification Order under the D&C Subcontract arising out of a Modification Order described in clause 11.1(a)(1):
- which results in:
- (3) a Resource Adjustment; or



- (4) a delay to the Date of Final Acceptance,
(Relevant Modification) will constitute a change to the Services for the purpose of clause 11.1(b).
- (b) **(Adjustment to Fee Caps):** The relevant Initial Fee Cap, DLP Fee Cap, Alliance Services Fee Cap or Disbursement Cap will be adjusted to reflect the change to the Services referred to in clause 11.1(a) in accordance with the Schedule of Rates and Disbursements. If the adjustment to the relevant Initial Fee Cap, DLP Fee Cap, Alliance Services Fee Cap or Disbursements Cap for the change to the Services cannot be determined by reference to the Schedule of Rates and Disbursements, the adjustment will be a reasonable amount determined by the State and Project Co.
- (c) **(Modification-related Fees):** The parties agree that, in respect of a Relevant Modification:
- (1) notwithstanding anything to the contrary in this Deed or the Project Agreement, Project Co will not be required to reimburse the State for any part of the Fee paid to the Independent Reviewer as a direct result of an increase in the Fee directly arising out of a Relevant Modification;
 - (2) where that Relevant Modification leads to a change in the “Sub-IR Services” under the Sub-Independent Reviewer Deed, the State will pay Project Co the increase in the “Fee” (as those terms are defined under the Sub-Independent Reviewer Deed) directly arising out of that Relevant Modification within 20 Business Days after the provision to the State of a Tax Invoice (as that term is defined in the GST Law) received by Project Co from the Sub-Independent Reviewer in connection with that increase in the “Fee”;
 - (3) any claim for an increase in the Fee under this Deed or the Sub-Independent Reviewer Deed directly arising from a Relevant Modification must be provided on an “open book basis”;
 - (4) for the purposes of this clause 11.1, “open book basis” includes the Independent Reviewer providing (or procuring from the Sub-Independent Reviewer to the extent necessary) a breakdown of the calculation of all relevant labour, equipment, materials, subcontract and other costs in a clear and transparent manner and other information reasonably requested by the State including reasonably available source documents required to verify such calculation. If required by the State, the Independent Reviewer will make available the appropriate personnel to explain the basis on which a particular calculation has been made; and
 - (5) no amounts will be double counted.

11.2 Appointment of Substitute Reviewer

- (a) **(Appointment of Substitute Reviewer):** The Independent Reviewer acknowledges that the Project Parties (and, to the extent the relevant Services are for the benefit of the Rail Franchisees as contemplated by clause 6.9, the relevant Rail Franchisees) may appoint another reviewer (**Substitute Reviewer**) to carry out those Services which are omitted as referred to in clause 11.1(a).



- (b) **(Rights and powers):** The Substitute Reviewer will have all of the rights and powers of the Independent Reviewer under the Project Documents in connection with those Services.
- (c) **(Decisions):** Any decision of a Substitute Reviewer so appointed will be treated (between the Project Parties and the Rail Franchisees, but not as between the Project Parties, the Rail Franchisees and the Independent Reviewer) as if it is a decision of the Independent Reviewer.
- (d) **(No responsibility for performance):** Without prejudice to any Claim which any Project Party or Rail Franchisee may have in respect of the performance of the Independent Reviewer, the Independent Reviewer is not responsible for the performance of the Substitute Reviewer.

11.3 Independent Reviewer must continue to perform

Notwithstanding a change to the Services or the appointment of a Substitute Reviewer, the Independent Reviewer must continue to perform its Services, as changed in accordance with clause 11.1, in accordance with this Deed.

11.4 Suspension of Services

- (a) **(Suspension of Services):** The Project Parties (and, to the extent the relevant Services are for the benefit of the Rail Franchisees as contemplated by clause 6.9, the relevant Rail Franchisees) may, by joint notice to the Independent Reviewer, instruct the Independent Reviewer to suspend and, after a suspension has been instructed, to recommence, the performance of any or all of the Services.
- (b) **(Payment during suspension):** During the period which the Independent Reviewer's performance of the Services are suspended in accordance with clause 11.4(a), the State (on behalf of the Project Parties and the Rail Franchisees) will pay the Independent Reviewer:
 - (1) subject to the provisions of this Deed, for the Services that are not suspended (if any); and
 - (2) subject to the Independent Reviewer using all reasonable endeavours to mitigate, minimise or avoid the effects and consequences of the costs associated with the suspension of any or all of the Services, such unavoidable costs incurred arising in connection with the suspension of the Services or costs incurred by the Independent Reviewer in anticipation of their Services not being suspended.

11.5 Meeting of all Project Parties and Rail Franchisees

- (a) **(Project Party or Rail Franchisee may call meeting):** If a Project Party or Rail Franchisee is of the opinion that the Independent Reviewer is not performing its duties in accordance with this Deed, that Project Party or Rail Franchisee may call a meeting of the Project Parties' Representatives and any relevant Rail Franchisee's Representative(s) who must attend within 2 Business Days (or such other period as requested by that Project Party or Rail Franchisee) to decide an appropriate action to resolve the issue.
- (b) **(Resolutions to be considered):** Without limiting the scope of the Project Parties' decision, the Project Parties and any relevant Rail Franchisee will consider at such a meeting whether to resolve the issue referred to in clause 11.5(a) by:



- (1) requesting that the Independent Reviewer comply with this Deed;
- (2) changing the Services of the Independent Reviewer in accordance with clause 11.1 and appointing a Substitute Reviewer in accordance with clause 11.2 in connection with the Services which the Independent Reviewer is not performing in accordance with this Deed;
- (3) suspending the Services of the Independent Reviewer in accordance with clause 11.4; or
- (4) terminating the appointment of the Independent Reviewer in accordance with clause 12.

12 Termination

12.1 Notice of default

If the Independent Reviewer is in breach of this Deed and the breach is, in the reasonable opinion of the Project Parties, able to be remedied then the Project Parties may jointly give notice to the Independent Reviewer:

- (a) specifying the breach; and
- (b) requiring that the breach be remedied within 7 days, or such later date as agreed by the State and Project Co.

12.2 Termination for breach

If:

- (a) **(Unable to remedy breach)**: the Independent Reviewer is in breach of this Deed and the breach is not, in the reasonable opinion of the Project Parties, able to be remedied; or
- (b) **(Breach not remedied)**: the Project Parties give a notice in accordance with clause 12.1 and the breach is not remedied within the period of time notified to the Independent Reviewer in accordance with clause 12.1(b),

then, subject to clause 12.6, the Project Parties may immediately terminate the appointment of the Independent Reviewer by joint notice to the Independent Reviewer.

12.3 Termination for insolvency

If an Insolvency Event occurs in respect of the Independent Reviewer then, subject to clause 12.6, the Project Parties may immediately terminate the appointment of the Independent Reviewer by joint notice to the Independent Reviewer, whether or not the Independent Reviewer is then in breach of this Deed.

12.4 Termination for convenience

Subject to clause 12.6, the Project Parties may at any time for their convenience terminate the appointment of the Independent Reviewer upon 21 days joint notice to the Independent Reviewer, and appoint another person to act as the Independent Reviewer.



12.5 No automatic termination upon termination of any State Project Document

The appointment of the Independent Reviewer does not automatically terminate upon the termination of any of the State Project Documents, the Project Alliance Agreements or a Rail Franchisee Cooperation Agreement.

12.6 Prior agreement on replacement

Prior to serving a notice in accordance with clause 12.2, 12.3 or 12.4, the Project Parties must have agreed upon another person to act as the Independent Reviewer consistent with clause 11.9 (*Replacement of Independent Reviewer*) of the Project Agreement.

12.7 Independent Reviewer's rights upon termination for convenience

Where the appointment of the Independent Reviewer is terminated in accordance with clause 12.4:

- (a) **(payment in accordance with Payment Schedule)**: the Independent Reviewer is only entitled to be paid by the State and Project Co in accordance with the Payment Schedule the proportion of the Fee for Services performed up to the date of the termination; and

[State Note: The parties agree that during the AW Phase the Independent Reviewer will provide the Project Parties with substantiated liquidated amounts reflecting the unavoidable liabilities that would be incurred by the Independent Reviewer as a consequence of a termination in accordance with cl 12.4, to be discussed and agreed with the Project Parties. These unavoidable liabilities will be limited to employee relocation costs (during the first 12 months after Financial Close only) and project office lease break costs. Any additional categories will be considered in the Project Parties' discretion.]

- (b) **(no entitlement to Claim)**: the Independent Reviewer will not otherwise be entitled to bring any Claim against the State, Project Co or the Rail Franchisees arising in connection with:
- (1) the termination of this Deed; or
 - (2) the Project, the State Project Documents, the Project Alliance Agreements or the Rail Franchisee Cooperation Agreements.

12.8 Termination without prejudice

Termination of the appointment of the Independent Reviewer will be without prejudice to any other rights which the Project Parties or the Rail Franchisees may have in respect of any breach of the terms of this Deed which occurred prior to the date of termination.

12.9 Copy of notices to Rail Franchisees

A copy of any notice issued by the Project Parties in accordance with this clause 12 must be given to the Rail Franchisees at the same time as it is given to the Independent Reviewer.



13 Transition out

13.1 Transition Out Period

- (a) **(Obligations):** During the Transition Out Period, the Independent Reviewer must:
- (1) provide the Services required in accordance with, and otherwise comply with, the Transition Out Plan; and
 - (2) without being limited by clause 13.1(a)(1), cooperate and consult with the Project Parties and the Rail Franchisees and do all such tasks and things as may be reasonably necessary to ensure:
 - (A) the smooth transition to the State of the Independent Reviewer's responsibilities for the monitoring of Project Co's carrying out of the Project Activities; and
 - (B) the final completion of all the Services and the full discharge of all of the Independent Reviewer's responsibilities in accordance with this Deed.
- (b) **(Transition Out Plan):** For the purposes of clause 13.1(a), the Independent Reviewer must:
- (1) prepare a draft of the Transition Out Plan and provide it to the Project Parties by no later than 60 Business Days before the commencement of the Transition Out Period which:
 - (A) is based on the draft Transition Out Plan submitted by the Independent Reviewer with its tender for the Services; and
 - (B) takes into account all relevant considerations which have arisen during the Term;
 - (2) provide all drafts of the Transition Out Plan to the Project Parties for review and consult with the Project Parties as required in relation to such drafts;
 - (3) review and, if necessary, update the Transition Out Plan and make such amendments as may be reasonably required by the Project Parties to any draft of the Transition Out Plan; and
 - (4) finalise, to the reasonable satisfaction of the Project Parties, the Transition Out Plan by no later than 20 Business Days before the commencement of the Transition Out Period.
- (c) **(Review Transition Out Plan every 6 months):** The Independent Reviewer must review the Transition Out Plan at least once every 6 months during the Transition Out Period. The Independent Reviewer must consult with the Project Parties as required in relation to any necessary amendments to the Transition Out Plan. The Project Parties may require the Independent Reviewer, by notice, to make reasonable amendments to the Transition Out Plan during the Transition Out Period, if reasonably necessary to achieve the objectives specified in clause 13.1(a)(2).

13.2 Delivery of documents

Upon completion of the Services, or upon the termination of the appointment of the Independent Reviewer, the Independent Reviewer:



- (a) **(Books, records and documentation)**: must deliver up to the Project Parties or to such other person as the Project Parties may direct (which may include a Rail Franchisee), all books, records, drawings, specifications and other documentation in the possession, custody or control of the Independent Reviewer or its subcontractors relating to the Services; and
- (b) **(Right to use documentation)**: acknowledges that the Project Parties and where applicable, the Rail Franchisees, have the right to use all such books, records, drawings, specifications and other documents for the purposes of the Project, the Rail Systems Alliance Works and the Rail Infrastructure Alliance Works.

13.3 Reasonable assistance

Prior to completion of the Services, or upon the termination of the appointment of the Independent Reviewer, the Independent Reviewer must provide full assistance to the Project Parties, the Rail Franchisees, the Downstream Parties and any successor to the Independent Reviewer appointed in order to enable such successor to be in a position to perform the Services with effect from the appointment of such successor.

14 Intellectual property

The Independent Reviewer:

- (a) **(Grant)**: grants to the State;
- (b) **(All things necessary)**: must do all things necessary to give effect to the grant to the State of,

a world-wide, perpetual, irrevocable, non-exclusive, transferable, royalty-free licence (including the right to sub-license) to use, reproduce, modify, adapt, develop, communicate to the public or otherwise exploit the Independent Reviewer Material, for the purposes of:

- (c) **(Project)**: the Project, the Rail Systems Alliance Works or the Rail Infrastructure Alliance Works (including where this Deed is terminated for any reason other than for convenience under clause 12.4 to complete any Services which have not been:
 - (1) carried out; or
 - (2) carried out in accordance with the applicable State Project Documents, the Project Alliance Agreements and Rail Franchisee Cooperation Agreements,as at the date of termination);
- (d) **(Project Documents)**: the exercise of the rights of the State or its Associates in accordance with the State Project Documents (including its step-in rights in accordance with clause 41 (*Step-in by the State*) of the Project Agreement); and
- (e) **(Further procurement)**: the procurement, design, supply, construction, installation, production, commissioning, completion, operation, maintenance, repair and alteration, during and after the Term, of any part of the Project, the Relevant Infrastructure or any other project relating to aspects of the Metro Tunnel.

15 GST

- (a) **(GST exclusive amounts):** Unless otherwise expressly stated, all amounts referred to in this Deed or any Project Document are exclusive of GST.
- (b) **(GST payable by Supplier):** If GST becomes payable on any Taxable Supply made by a party (**Supplier**) under or in connection with this Deed:
- (1) any amount payable or consideration to be provided in accordance with any other provision of this Deed for that supply (**Agreed Amount**) is exclusive of GST;
 - (2) an additional amount will be payable by the party which is the recipient of the Taxable Supply (**Recipient**), equal to the amount of GST payable on that Taxable Supply as calculated by the Supplier in accordance with the GST Law, which will be payable at the same time and in the same manner as for the Agreed Amount; and
 - (3) the Supplier will provide a Tax Invoice to the Recipient in connection with that supply, either at the time expressly set out in any other provision of this Deed or no later than the time at which the Agreed Amount for that Taxable Supply is to be provided in accordance with this Deed. The Recipient is not obliged to pay any amount in accordance with this clause 15(b) unless and until a Tax Invoice is received by the Recipient in connection with the Taxable Supply except where the Recipient is required to issue the Tax Invoice.
- (c) **(Variation in GST payable):** If for any reason, the GST payable by the Supplier in connection with a supply it makes under or in connection with this Deed (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it received from the Recipient under clause 15(b) in connection with that supply, the Supplier will provide a refund or credit to, or will be entitled to receive from, the Recipient (as appropriate) the amount of this variation. Where an Adjustment Event occurs in relation to a supply and except where the Recipient is required to issue the Adjustment Note:
- (1) the Supplier will issue an Adjustment Note to the Recipient in connection with that supply within 14 days after becoming aware of that Adjustment Event occurring; and
 - (2) no additional amount will be payable by the Recipient unless and until an Adjustment Note is received by the Recipient.
- (d) **(GST ceasing to be payable):** No amount is payable by a party in accordance with clauses 15(b) or 15(c) to the extent that the GST to which the amount relates has ceased to be payable by or refundable to the Supplier by the Commissioner of Taxation under the GST Law.
- (e) **(Expert Determination):** If the Recipient is dissatisfied with any calculation to be made by the Supplier in accordance with this clause 15, the Recipient may, at its own expense and after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the President of the Institute of Chartered Accountants for expert determination, which will be final and binding on all parties (except in the case of manifest error). The expert will act as an expert and not as an arbitrator and must take into account the terms of this Deed, the matters required to be taken into account by the Supplier in accordance with this clause 15 and any other matter considered by the expert to be relevant to the determination. The parties release the expert from any



Liability in acting as an expert, except in the case of fraud on the part of the expert.

- (f) **(Revenue net of GST):** Any reference in this Deed or any Project Document to price, value, sales, revenue, profit or a similar amount (**Revenue**), is a reference to the GST exclusive component of that Revenue, unless the contrary intention is expressed.
- (g) **(Cost net of GST):** Any reference in this Deed or any Project Document to cost, expense, Liability or other similar amount (**Cost**) of a party, is a reference to that Cost reduced by the Input Tax Credits to which the party is entitled in respect of such Cost, unless the contrary intention is expressed.
- (h) **(General obligation):** Each party agrees to do all things, including providing Tax Invoices and other documentation, that may be necessary or desirable to enable or assist the other party in determining its GST payable on any supply made by that other party in connection with this Deed, or any Input Tax Credits, adjustments or refunds in relation to any amount of GST paid or payable in connection with any supply made in connection with this Deed.
- (i) **(GST groups):** For the purposes of this Deed, a reference to GST payable on a Taxable Supply made by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member and a reference to an Input Tax Credit entitlement of a party includes any corresponding Input Tax Credit entitlement of the representative member of any GST group of which that party is a member.
- (j) **(Project Agreement to prevail):** If, but for this clause 15(j), a GST clause in another Project Document would apply in connection with a Taxable Supply to which this clause 15 also applies, then clause 59 (*Taxes*) of the Project Agreement will apply in connection with that supply and the GST clause in the other Project Document will not apply.
- (k) **(Definitions):** In this clause 15 unless otherwise defined in this Deed, terms used have the meanings given to them in the GST Law.

16 Dispute Resolution

16.1 Disputes to be resolved in accordance with the Project Agreement

- (a) **(Dispute between Project Co and the State):** Any dispute between the Project Parties arising in connection with this Deed must be resolved in accordance with the procedures set out in clauses 46 (*Dispute Resolution*) to 47 (*Arbitration*) of the Project Agreement.
- (b) **(Dispute between Project Co and Train Franchisee):** Any dispute between Project Co and the Train Franchisee arising in connection with this Deed must be resolved in accordance with the procedures set out in clause 28 (*Dispute Resolution*) and clause 29 (*Arbitration*) of the Train Franchisee Cooperation Agreement.
- (c) **(Dispute between Project Co and Tram Franchisee):** Any dispute between Project Co and the Tram Franchisee arising in connection with this Deed must be resolved in accordance with the procedures set out in clause 23 (*Dispute Resolution*) and clause 24 (*Arbitration*) of the Tram Franchisee Cooperation Agreement.



- (d) **(Dispute between State and a Rail Franchisee)**: Any dispute between the State and a Rail Franchisee arising in connection with this Deed must be resolved in accordance with the procedures set out in the relevant Rail Franchisee Arrangements.

16.2 Notice of dispute

If any dispute (other than a dispute which is to be referred for resolution in accordance with clause 16.1) arises between a Project Party or a Rail Franchisee (on the one hand) and the Independent Reviewer (on the other hand) (**Disputing Parties**) in respect of any fact, matter or thing arising out of or in connection with the Services or this Deed (**Dispute**), any of the Disputing Parties may give notice to each of the other parties specifying:

- (a) the dispute or difference;
- (b) particulars of the reasons for being dissatisfied; and
- (c) the position which is believed to be correct.

16.3 Executive negotiation

The Dispute identified in the notice given under clause 16.2 is to be referred to the persons described in the Contract Particulars who must:

- (a) **(Good faith negotiations)**: meet and undertake genuine and good faith negotiations with a view to resolving the Dispute; and
- (b) **(Procedure for resolution)**: if they cannot resolve the Dispute, endeavour to agree upon a procedure to resolve the Dispute.

16.4 Referral to Mediation

If the persons described in the Contract Particulars cannot resolve, or agree upon a procedure to resolve, the Dispute within 10 Business Days after the date the notice is given under clause 16.2, or within such longer period of time as these persons may agree, the Dispute is to be submitted to mediation in accordance with clauses 16.5 to 16.8.

16.5 Mediation

Within 5 Business Days of the expiration of the period referred to in clause 16.4, the Dispute will be referred for mediation to:

- (a) **(Specified Person)**: the person set out in the Contract Particulars;
- (b) **(Appointed Person)** if:
 - (1) no such person is specified; or
 - (2) the mediator specified in the Contract Particulars or the person appointed in accordance with this clause 16.5(b):
 - (A) is unavailable;
 - (B) declines to act; or
 - (C) does not respond within 5 Business Days of a request for advice as to whether they are able to conduct the mediation,

a person appointed by the Chair (or acting Chair, as the case may be) of the Resolution Institute, Australia.



16.6 Place of mediation

The place of mediation will be Melbourne.

16.7 Evidence not admissible

Evidence of anything said, documents presented to, admissions made or matters raised in the course of any mediation will be confidential to the Disputing Parties and the mediator and will not be admissible in any subsequent proceedings.

16.8 Costs

Failing any agreement to the contrary between the Disputing Parties, the costs of the mediation (including any fees charged by the mediator) will be shared equally between the Disputing Parties.

16.9 Reference to litigation

If after 15 Business Days of the mediator nominated in accordance with clause 16.5 having accepted his or her appointment, the Dispute has not been resolved, then the Dispute may be referred to litigation.

16.10 Condition precedent to litigation

The Project Parties, the Rail Franchisees and the Independent Reviewer must comply with the provisions of clauses 16.2 to 16.9 as a condition precedent to commencing court proceedings in respect of any Dispute to which clause 16.2 applies (other than proceedings for urgent or injunctive relief).

16.11 Services to continue

The Independent Reviewer must continue to perform the Services in accordance with this Deed notwithstanding the existence of a Dispute referred to in clause 16.2.

17 Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Deed:

- (a) **(In writing)**: must be in writing;
- (b) **(Addressed)**: must be addressed as set out below (or as otherwise notified by that party to each other party from time to time):

State

Attention: [not disclosed]
 Address: [not disclosed]
 Phone: [not disclosed]
 Email: [not disclosed]

Project Co

Attention: [not disclosed]



Address: [not disclosed]
Phone: [not disclosed] Email: [not disclosed]

Train Franchisee

Attention: [not disclosed]
Address: [not disclosed]
Phone: [not disclosed]
Email: [not disclosed]

Tram Franchisee

Attention: [not disclosed]
Address: [not disclosed]
Phone: [not disclosed]
Email: [not disclosed]

Independent Reviewer

Attention: [not disclosed]
Address: [not disclosed]
Phone: [not disclosed]
Email: [not disclosed]

- (c) **(Signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(Form of delivery)**: must be delivered by hand or posted by prepaid post to the address, or emailed (in the form agreed by both parties) to the email address of the addressee set out in clause 17(b); and
- (e) **(Taken to be received)**: are taken to be received by the addressee at the address set out in clause 17(b):
 - (1) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
 - (2) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and
 - (3) in the case of email, the first to occur of:
 - (A) receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - (B) the time that the communication enters an information system which is under the control of the addressee; or
 - (C) the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day.

18 Miscellaneous

18.1 Governing law and jurisdiction

- (a) **(Governing Law):** This Deed is governed by, and must be construed according to, the Laws of Victoria, Australia.
- (b) **(Jurisdiction):** Without limiting clause 16, each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Deed.

18.2 Entire agreement

To the extent permitted by Law and in relation to their subject matter, this Deed, the State Project Documents, the Project Alliance Agreements and the Rail Franchisee Cooperation Agreements:

- (a) **(Entire understanding):** embody the entire understanding of the parties, and constitute the entire terms agreed by the parties; and
- (b) **(Prior agreements):** supersede any prior agreement of the parties.

18.3 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to each party) required by Law or reasonably requested by another party to give effect to this Deed.

18.4 Survival of certain provisions

- (a) **(Surviving clauses):** All provisions of this Deed which, expressly or by implication from their nature, are intended to survive the rescission, termination or expiration of this Deed will survive the rescission, termination or expiration of this Deed, including any provision in connection with:
 - (1) the Project Party's rights to set-off and recover money;
 - (2) confidentiality or privacy;
 - (3) any obligation to make any records available to the State;
 - (4) any indemnity or financial security given in accordance with this Deed; or
 - (5) any right or obligation arising on termination of this Deed.
- (b) **(Interpretation):** No provision of this Deed which is expressed to survive the termination of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the termination of this Deed.
- (c) **(Survival of rights and obligations):** No right or obligation of any party will merge on completion of any transaction in accordance with this Deed. All rights



and obligations in accordance with this Deed survive the execution and delivery of any transfer or other document which implements any transaction in accordance with this Deed.

18.5 Waiver

- (a) **(Writing)**: A waiver given by a party in accordance with this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver)**: A failure to, a delay in or the partial exercise or enforcement of a right provided by Law or in accordance with this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or in accordance with this Deed.
- (c) **(No waiver of another breach)**: No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

18.6 Consents, approvals and directions

- (a) **(State)**: A consent or approval required in accordance with this Deed from the State or the Project Parties jointly may be given or withheld, or may be given subject to any conditions, as the State (or the Project Parties jointly, if the consent or approval is required from the Project Parties jointly) think fit, unless this Deed expressly provides otherwise.
- (b) **(Project Co and Rail Franchisees)**: A consent or approval required in accordance with this Deed from Project Co only or a Rail Franchisee may not be unreasonably withheld or delayed, unless this Deed expressly provides otherwise.

18.7 Amendments

Except as otherwise expressly provided in this Deed, this Deed may only be varied by a deed executed by or on behalf of each party.

18.8 Expenses

Except as otherwise expressly provided in this Deed, the State Project Documents or the Rail Franchisee Cooperation Agreements, each party must pay its own costs and expenses in connection with negotiating, preparing, executing, and performing this Deed.

18.9 Severance

If at any time a provision of this Deed, a State Project Document, a Project Alliance Agreement or a Rail Franchisee Cooperation Agreement is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) **(Under this Deed)**: any other provision of this Deed, the relevant State Project Documents, the relevant Project Alliance Agreement or the relevant Rail Franchisee Cooperation Agreement; or
- (b) **(Under another jurisdiction)**: that provision under the Law of any other jurisdiction.

18.10 Counterparts

This Deed may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same Deed.

18.11 Moratorium legislation

To the fullest extent permitted by Law, the provisions of all Laws which operate to lessen or affect in favour of the Independent Reviewer any obligations under this Deed, or to prejudicially affect the exercise by the Project Parties or the Rail Franchisees of any right, power or remedy under this Deed or otherwise are expressly waived.

18.12 Proportionate liability

- (a) **(Excluded operation of Wrongs Act):** The operation of Part IVAA of the *Wrongs Act 1958* (Vic) is excluded in relation to all and any rights, obligations or liabilities of any party under this Deed whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) **(Rights, obligations and liabilities):** Without limiting clause 18.12(a), the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Deed and not otherwise, whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

18.13 Confidentiality

- (a) **(Obligation to keep confidential):** The Independent Reviewer must keep confidential details of this Deed, the State Project Documents, the Project Alliance Agreements and the Rail Franchisee Cooperation Agreements, and all information and documents provided to, or by, the Independent Reviewer relating to the Services and not disclose or use the information or documents except:
 - (1) to the Project Parties or the Rail Franchisees;
 - (2) for the purposes of performing the Services;
 - (3) where required by Law or to obtain legal advice on this Deed; or
 - (4) with the prior consent of the Project Parties, and where applicable, the relevant Rail Franchisee(s).
- (b) **(Survival):** This obligation will survive completion of the Services or the termination of this Deed.
- (c) **(Permitted Disclosure):** The Independent Reviewer agrees that notwithstanding any other provision of this Deed:
 - (1) the Rail Franchisees may disclose the existence, or provide a complete copy, of this Deed and any documents or information provided or received under or in relation to this Deed to PTV, PTV's Associates or a prospective Successor Operator in order to facilitate the Rail Franchisees' compliance with the relevant Rail Franchisee Arrangements;



- (2) the State may disclose this Deed and any documents or information provided or received under or in relation to this Deed to satisfy its Public Disclosure Obligations; and
- (3) the Project Parties may disclose this Deed and any documents or information provided or received under or in relation to this Deed as permitted in accordance with clause 57.1 (*Confidential Information and disclosure by the State*) of the Project Agreement.

18.14 Assignment and security

- (a) **(Assignment and security):** Subject to clause 18.14(b), no party to this Deed may assign, novate, transfer, mortgage, charge, encumber or otherwise deal with any of its rights or obligations under this Deed without the prior consent of each other party to this Deed.
- (b) **(Novation by Rail Franchisee):** The parties acknowledge and agree that if the Train Franchisee Arrangements or the Tram Franchisee Arrangements are terminated or rescinded or come to an end for any reason, the relevant Rail Franchisee may be required to assign or novate, all of its rights or obligations under this Deed to PTV or a Successor Operator. Each other party consents to any such assignment or novation and must, on request by PTV, execute any document or documents required by PTV to effect such assignment or novation, provided that the new arrangements are on terms no more onerous than the terms of this Deed.

18.15 No representation or reliance

- (a) **(No representation):** Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Deed, except for representations or inducements expressly set out in this Deed.
- (b) **(No reliance):** Each party acknowledges and confirms that it does not enter into this Deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Deed.

18.16 Indemnities

- (a) **(Continuing Liability):** Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the parties.
- (b) **(Expense not necessary):** It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Deed.

18.17 Indemnity held on trust

- (a) **(State holds on trust):** The State holds on trust for its Associates the benefit of:
 - (1) each indemnity and release given by Project Co, a Rail Franchisee or the Independent Reviewer under this Deed in favour of the State's Associates; and
 - (2) each right in this Deed to the extent that such right is expressly stated to be for the benefit of the State or the State's Associates.
- (b) **(Acknowledgement):** Project Co, each Rail Franchisee and the Independent Reviewer acknowledge the existence of such trusts and consent to:



- (1) the State exercising rights in relation to, or otherwise enforcing such indemnities, releases and rights on behalf of its Associates; and
 - (2) the State's Associates exercising rights in relation to, or otherwise enforcing the indemnities, releases and those rights as if they were a party to this Deed.
- (c) **(Further Acknowledgment)**: The parties acknowledge that nothing in this clause 18.17 in and of itself increases the Independent Reviewer's Liability under this Deed.

18.18 Set off

The State may deduct from any moneys due and payable to the Independent Reviewer under this Deed or otherwise at Law:

- (a) **(Moneys due and payable)**: any moneys due and payable by the Independent Reviewer to the State; and
- (b) **(Claims)**: any Claim that the State may have against the Independent Reviewer under or in connection with this Deed or in connection with the Services.



Schedule 1

Contract Particulars

1 Independent Reviewer's Representative

Name: [not disclosed]

Attention: [not disclosed]

Address: [not disclosed]

Phone: [not disclosed]

Email: [not disclosed]

2 Project Parties' and Rail Franchisees' Representatives

2.1 State:

Name: [not disclosed]

Attention: [not disclosed]

Address: [not disclosed]

Phone: [not disclosed]

Email: [not disclosed]

2.2 Project Co:

Name: [not disclosed]

Attention: [not disclosed]

Address: [not disclosed]

Phone: [not disclosed]

Email: [not disclosed]

2.3 Train Franchisee:

Name: [not disclosed]

Attention: [not disclosed]

Address: [not disclosed]

Phone: [not disclosed]

Email: [not disclosed]



2.4 Tram Franchisee:

Name: [not disclosed]
Attention: [not disclosed]
Address: [not disclosed]
Phone: [not disclosed]
Email: [not disclosed]

3 Key People

| Name | Role |
|----------|----------|
| [Insert] | [Insert] |

[State Note: AECOM to insert details of Key People.]

4 Limitation on Independent Reviewer's Liability

Limit: [not disclosed]

5 Professional indemnity insurance

[not disclosed]

| Insurance element | Minimum Requirement |
|-------------------|---------------------|
| Insured | [not disclosed] |
| Sum insured | [not disclosed] |
| Scope of cover | [not disclosed] |
| Situation of risk | [not disclosed] |



| Insurance element | Minimum Requirement |
|-------------------------|---------------------|
| Maximum Deductibles | [not disclosed] |
| Additional Requirements | • [not disclosed] |
| Period of insurance | [not disclosed] |

6 Public Liability insurance

[not disclosed]

| Insurance element | Minimum Requirement |
|---------------------|---------------------|
| Insured | • [not disclosed] |
| Sum insured | [not disclosed] |
| Scope of cover: | [not disclosed] |
| Situation of risk | [not disclosed] |
| Maximum Deductibles | [not disclosed] |
| Period of cover | [not disclosed] |

7 Dispute resolution

State's Executive Negotiator: **[insert]**

Project Co's Executive Negotiator: **[insert]**

Train Franchisee's Executive Negotiator: **[insert]**

Tram Franchisee's Executive Negotiator: **[insert]**

Independent Reviewer's Executive Negotiator: **[insert]**



Mediator: To be agreed between the parties.



Schedule 2

Services

1 General

The Independent Reviewer must:

- (a) **(Role)**: become familiar with the role (express or implied) under the State Project Documents, the Project Alliance Agreements, the Rail Franchisee Cooperation Agreements and the Downstream Independent Reviewer Contracts of the "Independent Reviewer" and review information made available to the Independent Reviewer by the parties in order to become fully acquainted with the Project, the Rail Systems Alliance Works and the Rail Infrastructure Alliance Works;
- (b) **(Discharge functions)**: discharge the functions which the State Project Documents, the Project Alliance Agreements, the Rail Franchisee Cooperation Agreements and the Downstream Independent Reviewer Contracts contemplate will be discharged by the Independent Reviewer;
- (c) **(Attend meetings and report)**: attend meetings and report as required from time to time by the parties;
- (d) **(Minimum surveillance)**: undertake, as a minimum, the surveillance of the Project, the Rail Systems Alliance Works and the Rail Infrastructure Alliance Works set out or described in the Monitoring Plan;
- (e) **(Hold Points and witness points)**: attend, as a minimum, the Hold Points and witness points set out or described in the Monitoring Plan;
- (f) **(Certificates)**: issue certificates in accordance with and in the form set out in the Schedule of Certificates and Notices and the Project Alliance Agreements (as applicable); and
- (g) **(General)**: otherwise discharge the functions of the Independent Reviewer under the State Project Documents, the Project Alliance Agreements, the Rail Franchisee Cooperation Agreements, and the Downstream Independent Reviewer Contracts.

2 Project Agreement

[State Note: The Independent Reviewer's functions listed in the table below are subject to finalisation of the Project Agreement.]

The Independent Reviewer's functions under the Project Agreement include, but are not necessarily limited to, the functions set out in the table below. Section references are to the Project Agreement unless otherwise stated.



| Clause No. | Independent Reviewer Role |
|---|---|
| Project Agreement | |
| 1.1 Definition of "D&C Program" | Set, where reasonably required, requirements for the D&C Program. |
| 1.1 Definition of "Date of Final Acceptance" | Sign the Certificate of Final Acceptance. |
| 1.1 Definition of "Date of Provisional Acceptance" | Sign the Certificate of Provisional Acceptance. |
| 1.1 Definition of "Final Acceptance" | Determine that the Maintained Rail Infrastructure Alliance Assets are complete and free of defects. |
| 1.1 Definition of "Major Default" | Notify the State and Project Co that: (a) a Remediation Plan does not satisfactorily address the requirements of clause 26.2(f) under clause 26.2(i)(1); (b) Project Co is not diligently pursuing a Remediation Plan under clause 26.2(i)(2); or (c) Project Co will not be able to achieve Provisional Acceptance by the date that is 24 months after the Date for Provisional Acceptance under clause 26.2(i)(3). |
| 1.1 Definition of "Minor Defect" | Determine if Project Co has reasonable grounds for not promptly rectifying a Defect. |
| 2.16(a) No State liability for review | Except as otherwise expressly provided in the Independent Reviewer Deed of Appointment, the Independent Review does not owe a duty of care to Project Co to: (a) review the Project Co Material submitted by Project Co; or (b) inspect or review the Project Activities or the Relevant Infrastructure for Defects, other errors or omissions or for compliance with the State Project Documents or any Laws. |
| 7.6(b) Interference, obstruction | If the levels of nuisance or interference are not reasonable, are not in the interests of the safety of persons on the Site or areas |

and nuisance adjacent to the Site, or do not meet a condition or requirement of any Approval, direct Project Co to:

- (a) stop or change the manner of undertaking the Works or carrying out of the Project Activities; and
- (b) amend the Construction Management Plan and any other relevant Management Plan or any Project Strategy and submit it for review in accordance with the Review Procedures.

11.4 Attend meetings of the Project Control Group.
Project Control Group

11.4(g) Receive from Project Co 5 Business Days before each Project Control Group meeting the following reports updated and prepared in accordance with the PS&TR:
Project Control Group

- (a) prior to the Date of Final Acceptance, a Monthly D&C Phase Progress Report for the previous Month; and
- (b) from the Date of Final Acceptance to the Expiry Date, a Monthly Performance Report for the previous month and the current Monthly Maintenance Schedule.

11.6(b) Act independently of the State and Project Co and their respective Associates.
Appointment of Independent Reviewer

11.7(a) Must not, without the prior consent of the State, be appointed by the Financiers to act in any role in connection with the Finance Documents.
Other Project roles of Independent Reviewer

11.7(d) Assess whether the parties (as a result of their respective conduct) have a proportionate responsibility for the costs and expenses of the Independent Reviewer which differs from the proportions stated in clause 11.7(c) and, where necessary, state the relevant proportions in a notice to the parties.
Other Project roles of Independent Reviewer

11.7(e) If requested by Project Co or the State, prepare a report not otherwise required by the Project Agreement or the Independent Reviewer Deed of Appointment and provide a copy of that additional report to both parties.
Other Project roles of Independent Reviewer

11.9(b) If a new Independent Reviewer is appointed in accordance with clause 11.9(a), abide by the exercise of any functions or decisions made by the previous Independent Reviewer.
Replacement of Independent Reviewer



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| 14.1 Preparation of Project Strategies and Management Plans | Review the Project Strategies and Management Plans in accordance with the Review Procedures, and request any information that is reasonably required. |
| 14.3(c) Updates and revisions of Management Plans | If the State gives notice under clause 14.3(b), review the amended or updated Management Plan in accordance with the Review Procedures. |
| 14.3(d) Updates and revisions of Management Plans | Receive from Project Co notice of any proposed changes to a Management Plan and review the amended Management Plan in accordance with the Review Procedures. |
| 16.3(a) State's right to enter, inspect and test | <p>If authorised by the State, the Independent Reviewer may during Business Hours or upon giving reasonable notice to Project Co (except in the case of an emergency when no notice is required) enter the Site or the offices of Project Co to:</p> <ul style="list-style-type: none">(a) inspect, observe or test any part of the Relevant Infrastructure or the Project Activities;(b) exercise any right or carry out any obligation which the State has in accordance with any State Project Document;(c) take such other action as the State considers necessary to exercise its rights in accordance with any State Project Document and to discharge its executive or statutory rights or duties; or(d) examine and make copies of the records, reports and all documents reasonably requested of Project Co or any Subcontractor in connection with the Project. |
| 16.3(c) State's right to enter, inspect and test | <p>When entering the site in accordance with clause 16.3(a) or otherwise:</p> <ul style="list-style-type: none">(a) comply with the Site Access and Interface Protocols and any generally applicable safety and security requirements of Project Co;(b) not unnecessarily interfere with the carrying out of the Project Activities; and(c) not damage the Relevant Infrastructure or the Site. |
| 16.6 Schedule of Certificates and Notices | Receive from Project Co the certificates required by the Schedule of Certificates and Notices in accordance with the terms of the Schedule of Certificates and Notices. |
| 18.1(a) Submission of the D&C | Receive from Project Co the D&C Program for review in accordance with the Review Procedures. |



Program

18.1(d)
Submission of the D&C Program

In the event of a proposed or likely departure from the D&C Program, receive from Project Co a notice of any proposed or likely departure together with reasons for the departure.

18.1(f)
Submission of the D&C Program

Exercise discretion as to whether to use the D&C Program for any purpose, including assessing any Claim made by Project Co.

18.2
Updates to the D&C Program

Receive from Project Co updates of the D&C Program (including all sub-programs and associated reports) for review in accordance with the Review Procedures at the following intervals:

- (a) within 10 Business Days of Financial Close;
- (b) at least monthly;
- (c) within 5 Business Days of Project Co being granted an extension of time, instructed to accelerate the D&C Activities or directed to carry out a Modification; and
- (d) within 5 Business Days of Project Co deciding to make any material changes to the information contained in the D&C Program.

19.2(c) and (d)
Design Review Process

Receive the Design Documentation submitted or resubmitted by Project Co and review it in accordance with the Design Review Schedule.

22.1(a)
Certificate of Critical Interface Milestone Achievement

Receive from Project Co:

- (a) notice that it has achieved a Critical Interface Milestone;
- (b) a request for a Certificate of Critical Interface Milestone Achievement; and
- (c) a detailed list of an Minor Defects relevant to the Critical Interface Milestone.

22.1(b)
Certificate of Critical Interface Milestone Achievement

Receive from the State:

- (a) notice that it considers a Critical Interface Milestone has been achieved; and
- (b) a request that a Certificate of Critical Interface Milestone Achievement be issued.

21.2(c)
Certificate of Critical Interface Milestone

As soon as reasonably practicable and, in any event, within 15 Business Days of receiving notice of Critical Interface Milestone achievement from either Project Co or the State, determine whether the Critical Interface Milestone has been achieved and:



- Achievement
- (a) if the Critical Interface Milestone has been achieved, issue the required Certificate of Critical Interface Milestone Achievement to the State and Project Co; or
 - (b) if the Critical Interface Milestone has not been achieved, issue the required notice to the State and Project Co.
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21.2(d)
Certificate of Critical Interface Milestone Achievement

Receive from Project Co notice when work remaining to be undertaken to achieve Critical Interface Milestone has been completed.

21.2(f)
Certificate of Critical Interface Milestone Achievement

Determine whether Critical Interface Milestone has been achieved:

- (a) without restriction by any notice, list or opinion previously provided to Project Co under clause 21.2(c); and
- (b) with entitlement to raise any other items of work as a ground for determining that a Critical Interface Milestone has not been achieved.

23.1(b)
Testing and Commissioning

Receive from Project Co and review any updated Testing and Commissioning Management Plans with the intent of allowing Project Co the opportunity to recover any delays or reduce the likelihood of further delays.

23.2
Test Procedures

For each Test:

- (a) receive from Project Co the relevant Test Procedure at least 60 Business Days (or 30 Business Days for revised Test Procedures) prior to the proposed date of the Test;
- (b) within 20 Business Days (or 10 Business Days for revised Test Procedures) of receiving the Test Procedure, review the Test Procedure; and
- (c) certify the Test Procedure by providing to Project Co and the State a certificate in the form set out in the Schedule of Certificates and Notices.

23.3(a)
Notice of Tests

Receive from Project Co at least 10 Business Days' notice of the date, time and place for the conduct of each Test.

23.3(c)
Notice of Tests

If Project Co decides to postpone a Test, receive from Project Co at least 5 Business Days' notice of the rescheduled date, time and place for the conduct of that Test.

23.3(d)
Notice of Tests

Receive from Project Co:

- (a) an extract from the D&C Program that specifies the date, time and place for the conduct of each Test to be conducted for the

following 25 Business Day period; and

- (b) an updated extract from the D&C Program each week during the period that Project Co is carrying out Tests.

23.4(b)
Conduct of Tests

Approve amendments to a Test Procedure proposed by Project Co during the conduct of the relevant Test to account for any circumstances that arise during the Test.

23.4(c)
Conduct of Tests

Attend and witness the conduct of Tests.

23.5(a)
Test Reports

Receive from Project Co, within 10 Business Days of Project Co carrying out a Test, a Test Report.

23.5(c)
Test Reports

Within 20 Business Days of receiving a Test Report:

- (a) certify that the Test has been passed in accordance with the Test Procedure by issuing a certificate in the form set out in the Schedule of Certificates and Notices; or
- (b) notify Project Co and the State that the Test has been failed or that the Test Report does not comply with the requirements of this Agreement.

23.7
Non-compliant Test Report

Receive from Project Co re-submitted Test Reports.

23.8
Additional testing

Confirm whether tests required by the Project Agreement, the PS&TR, the Testing and Commissioning Management Plan, the Completion Schedule or the Systems Engineering Standard have been carried out as required or in accordance with Best Industry Practice.

24.2
Notice before Provisional Acceptance

Receive from Project Co notice 60 Business Days and 20 Business Days prior to the date upon which it expects to achieve Provisional Acceptance.

If, after giving notice, the date on which Project Co expects to achieve Provisional Acceptance changes, receive promptly from Project Co notice of the revised date.

24.3(a)
Provisional Acceptance

Receive from Project Co:

- (a) notice that it has achieved Provisional Acceptance;
- (b) a request for a Certificate of Provisional Acceptance; and
- (c) a detailed list of work to be undertaken to achieve Final



Acceptance.

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| 24.3(b) Provisional Acceptance | Receive from the State: (a) notice that it considers Provisional Acceptance has been achieved; and (b) a request that the Certificate of Provisional Acceptance be issued. |
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| 24.3(c) Provisional Acceptance | As soon as reasonably practicable and, in any event, within 15 Business Days of receiving notice of Provisional Acceptance from either Project Co or the State, determine whether Provisional Acceptance has been achieved and: (a) if Provisional Acceptance has been achieved, issue the required Certificate of Provisional Acceptance to the State and Project Co; or (b) if Provisional Acceptance has not been achieved, issue the required notice to the State and Project Co. |
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| 24.3(e) Provisional Acceptance | Receive from Project Co notice when work remaining to be undertaken to achieve Provisional Acceptance has been completed. |
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| 24.3(g) Provisional Acceptance | Determine whether Provisional Acceptance has been achieved: (a) without restriction by any notice, list or opinion previously provided to Project Co under clause 24.3(c); and (b) with entitlement to raise any other items of work (other than the Defects of the kind referred to in paragraph 1 of the definition of Provisional Acceptance) as a ground for determining that Provisional Acceptance has not been achieved. |
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| 24.4(a) Completion and Handback of Returned Works | Progressively inspect the Returned Works, consider whether the Returned Works have been completed in accordance with the State Project Documents and carry out any reinspection or other activities required by this Agreement or the Independent Reviewer Deed of Appointment. |
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| 24.4(b)(2) Completion and Handback of Returned Works | Receive from Project Co notice in the form required by the Schedule of Certificates and Notices which: (a) states that the Returned Asset has been completed in accordance with the State Project Documents; and (b) lists any relevant Defects. |
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| 24.4(b)(3) Completion and Handback | Jointly inspect the Returned Asset with Project Co and the Returned Asset Owner no more than 5 Business Days after receipt |
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| of Returned Works | of Project Co's notice under clause 24.4(b)(2). |
| 24.4(c) Completion and Handback of Returned Works | In determining whether or not to issue a notice under clause 24.4(d), consider any reasonable comments of the relevant Returned Asset Owner provided within 5 Business Days after the time of the inspection under clause 24.4(b)(3). |
| 24.4(d) Completion and Handback of Returned Works | As soon as reasonably practicable following inspection under clause 24.4(b)(3), determine whether the Returned Asset has been completed in accordance with the State Project Documents (subject only to relevant Defects) and issue to the State and Project Co either: (a) a notice in the form required by the Schedule of Certificates and Notices confirming that the Returned Asset has been completed; or (b) a notice either: (i) listing the work remaining to be undertaken in order to complete the Returned Asset; or (ii) stating that the Returned Asset is so far from being completed in accordance with the State Project Documents that it is not practicable to provide a list of work remaining to be undertaken. |
| 24.4(d) Completion and Handback of Returned Works | Provide a copy of: (a) any notice under clause 24.4(d)(1) to the relevant Facility Owner; and (b) any notice under clause 24.4(d)(2) to the relevant Returned Asset Owner, where requested by the Returned Asset Owner. |
| 24.4(f) Completion and Handback of Returned Works | Receive from Project Co notice when the work listed in a notice issued by the Independent Reviewer under clause 24.4(d)(2)(A) has been completed. |
| 24.4(h) Completion and Handback of Returned Works | Determine whether the Returned Asset has been completed: (a) without restriction by any notice, list or opinion which it previously provided to Project Co under clause 24.4(d)(2); and (b) with entitlement to raise any other items of work (other than Defects of the kind referred to in clause 24.4(b)(1)) as a ground for determining that the Returned Asset has not been completed in accordance with the State Project Documents. |
| 24.5(b) Final Acceptance | Determine whether Final Acceptance has been achieved: (a) without restriction by any Certificate of Provisional Acceptance, notice, list or opinion previously provided or |



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| | obligation of Project Co to correct any Defects; and |
| | (b) with entitlement to raise any other items of work as a ground for determining that Final Acceptance has not been achieved. |
| 25.1(b) Defects | Receive from Project Co notice of any Defects identified by Project Co in accordance with the procedure for notification of Defects. |
| 25.1(c) Defects | If the Independent Reviewer believes there is a Defect at any time during the Term, issue to Project Co a notice specifying: (a) that Defect; and (b) the reasonable period of time within which Project Co must rectify that Defect. |
| 25.1(d) Defects | Receive from Project Co notice that a notice given in accordance with clause 25.1(c) or a determination made in accordance with clause 24.4(d) and disputed by Project Co under clause 25.1(d)(3) is being referred for resolution under the Project Agreement. |
| 25.1(h) Defects | Receive from Project Co notice that a Defect has been rectified promptly after its rectification by Project Co. |
| 25.1(i) Defects | Receive from the State notice under clause 25.1(i)(3) and, within 10 Business Days of receiving the State's notice, issue to the State and Project Co a notice setting out the determined cost necessary to rectify the relevant Defect. |
| 25.2(a)(2)(B) Defects Liability Periods for Returned Assets | Assess whether Defects in a Returned Asset: (a) existing at the date referred to in clause 25.2(a)(2)(A); (b) notified by Project Co pursuant to clause 25.1(b); or (c) notified by the State or the Independent Reviewer pursuant to clause 25.1(c) prior to the date referred to in clause 25.2(a)(2)(A), have been rectified. |
| 26.2(a) Independent Reviewer's review of progress | Continually review (by general overview and reasonable checking, including where requested by the State) the carrying out of the D&C Activities to ensure that: (a) the obligations of Project Co under the State Project Documents relating to the D&C Activities are being complied with; (b) Provisional Acceptance will be achieved by the Date for Provisional Acceptance; (c) each Critical Interface Milestone will be achieved by the |

relevant Critical Interface Milestone Date;

- (d) each Progress Milestone will be achieved by the relevant Progress Milestone Date;
- (e) from the Date of Provisional Acceptance, Project Co is expeditiously and diligently progressing the Works to achieve Final Acceptance; and
- (f) the D&C Program accurately reflects the actual progress of the Works in all material respects.

26.2(b)

Independent Reviewer's review of progress

Notify Project Co and the State, with reasons, if of the opinion that:

- (a) the obligations of Project Co under the State Project Documents relating to the D&C Activities are not being complied with;
- (b) the D&C Program does not accurately reflect the actual progress of the Works in all material respects;
- (c) a Critical Interface Milestone will not be achieved by the relevant Critical Interface Milestone Date;
- (d) a Progress Milestone will not be achieved by the relevant Progress Milestone Date;
- (e) Provisional Acceptance will not be achieved by the Date for Provisional Acceptance; or
- (f) from the Date of Provisional Acceptance, Project Co is not expeditiously and diligently progressing the Works to achieve Final Acceptance.

26.2(c)

Independent Reviewer's review of progress

In response to the notice issued by the Independent Reviewer under clause 26.2(b), receive from Project Co notice setting out:

- (a) any matters with which it disagrees, together with its reasons for doing so (**Explanation**); and
- (b) to the extent it does not disagree, a plan and a program for the rectification of any non-compliance in accordance with clause 26.2(f) (**Remediation Plan**),

for review in accordance with the Review Procedures.

26.2(d)

Independent Reviewer's review of progress

Within 10 Business Days of receiving an Explanation, notify the State and Project Co of its opinion as to whether or not the Explanation satisfactorily addresses its concerns, together with reasons for forming that opinion.

26.2(e)

Independent Reviewer's review of progress

If the Independent Reviewer notifies Project Co under clause 26.2(d) that the Explanation is not satisfactory, receive from Project Co within 10 Business Days of Project Co receiving the notice a Remediation Plan in accordance with clause 26.2(f) for review in accordance with the Review Procedures.

26.2(f)-(g)

If a Remediation Plan has been prepared in response to a notice



Independent Reviewer's review of progress issued under clause 26.2(b) or 26.2(e)(2), review the Remediation Plan in accordance with the Review Procedures and determine if it is satisfactory having regard to the Remediation Plan requirements set out in clause 26.2(f).

26.2(h)
Independent Reviewer's review of progress Notify the State and Project Co that, in its opinion, a Remediation Plan is satisfactory and receive from Project Co monthly updates to the Remediation Plan for review in accordance with the Review Procedures.

26.2(i)
Independent Reviewer's review of progress Notify the State and Project Co that, in its opinion:

- (a) a Remediation Plan does not satisfactorily address the requirements of clause 26.2(f);
- (b) Project Co is not diligently pursuing the Remediation Plan; or
- (c) Project Co will not be able to achieve Provisional Acceptance by the date that is 24 months after the Date for Provisional Acceptance.

26.3
Notification of delay to Acceptance Receive from Project Co notice promptly after it becomes aware of any matter which will, or is likely to, give rise to a delay in achieving Provisional Acceptance, a Critical Interface Milestone, or a Progress Milestone Date.

26.6
Change Notice Receive from Project Co any Change Notice submitted in accordance with clause 26.6.

26.7
Conditions precedent to extension Determine whether Project Co has demonstrated that:

- (a) it has been, or will be, delayed in achieving the Date for Provisional Acceptance, the relevant Critical Interface Milestone Date, or relevant Progress Milestone Date by an Extension Event; and
- (b) the Extension Event has caused or will cause activities on the critical path contained in the then current D&C Program to be delayed.

26.8(a)
Extension of Time determined by Independent Reviewer Receive from the State any evidence it considers relevant to the Independent Reviewer's consideration of Project Co's Change Notice under clause 26.6.

26.8(b)
Extension of Time determined by Independent Reviewer If the conditions precedent in clause 26.7 have been satisfied, determine a reasonable period by which to extend the Date for Provisional Acceptance, any relevant Critical Interface Milestone Date, and relevant Progress Milestone Date and, in doing so, take into account all relevant evidence presented by the parties and not



be bound by the D&C Program.

31.1(b) Receive from Project Co a Change Notice submitted in accordance
Intervening Events with clause 31.1(b).

44.5(b) Receive from the State notice pursuant to clause 44.5(b) and
Major Default not capable of submit to the State within 10 Business Days of the date of the
remedy or cure notice any comments or other information the Independent
Reviewer considers may be relevant to the State forming or not
forming a view in accordance clause 44.5(a).

60.2 Notify Project Co that it is not satisfied that:
Revised LIDP (a) Project Co has met the Local Content Requirements; or
(b) Project Co will be able to meet the aggregate Local Content
Requirements,
and receive from Project Co a revised LIDP for review in
accordance with the Review Procedures.

60.4(a) Certify, on the Date of Provisional Acceptance:
Adjustment of Quarterly (a) the percentage of Local Content (ANZ) used by Project Co to
Service Payments the Date of Provisional Acceptance in undertaking the D&C
Activities; and
(b) the percentage of the Project Co D&C Phase Workforce to the
Date of Provisional Acceptance which comprised of Priority
Jobseekers undertaking D&C Activities in Victoria, calculated
as an Annualised Employee Equivalent against the Project Co
D&C Phase Workforce,
by issuing a certificate in the form set out in the Schedule of
Certificates and Notices.

61.3 Certify, on the Date of Provisional Acceptance, the percentage of
Adjustment of Quarterly the total labour hours for the Works performed by Apprentices,
Service Payments Trainees and Engineering Cadets to the Date of Provisional
Acceptance by issuing a certificate in the form set out in the
Schedule of Certificates and Notices.

61.6 Review any revised Compliance Plans in accordance with the
Revised Major Projects Review Procedures.
Skills Guarantee
Compliance Plan

Schedule 4 (*Change Compensation Principles*)



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| 5.1(c) Change Notice and State Response | Receive from Project Co any Change Notice submitted in respect of a Change Compensation Event. |
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| 6.1(a) State to issue Change Response | Respond to a Change Notice received pursuant to section 5.1(c) in accordance with section 6. |
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Schedule 7 (Review Procedures)

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| 1.1(a) Submission | Receive from Project Co any document required to be submitted under a State Project Document for review in accordance with the Review Procedures. |
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| 4.1 Response to Submitted Documents | Respond to a Submitted Document in accordance with section 4. |
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Schedule 25 (Design Review)

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| 2.8(c)(1) Review of Certified Design Documentation | Certify Design Documentation by providing to Project Co and the State a certificate in the form set out in the Schedule of Certificates and Notices. |
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Schedule 26 (Completion Schedule)

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| 3.2 Provisional Acceptance report | Receive from Project Co a report in respect of the Maintained Assets (excluding the Final Acceptance Works) and Returned Works (excluding the Returned Train Works and the Returned VicTrack Works). Determine whether the Provisional Acceptance report includes all information reasonably necessary for operation, use and maintenance. |
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| 4.2 Final Acceptance report | Receive from Project Co a report in respect of the Maintained Assets, the Returned Train Works and the Returned VicTrack Works. Determine whether the Final Acceptance report includes all information reasonably necessary for operation, use and maintenance. |
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3 PS&TR

[State Note: The table below is to be amended and updated to reflect the final version of the PS&TR.]

The Independent Reviewer's functions under Volume 2, Part A of the PS&TR include, but are not necessarily limited to, the functions set out in the table below. Section references are to Volume 2, Part A of the PS&TR unless stated otherwise.

| Section No. | Independent Reviewer Role |
|--|---|
| <p>2.1.6(f) Reference Documents</p> | <p>Where a Reference Document provides for the approval of alternative construction methods or materials by a superintendent or representative, receive from Project Co notice:</p> <ul style="list-style-type: none"> (a) in the Construction Documentation; or (b) as proposed changes to Design Documentation, of such methods or materials. |
| <p>2.1.6(h) Reference Documents</p> | <p>Where a Reference Document provides for any determination, direction or agreement by a superintendent that is not otherwise provided for expressly under section 2.1.6, receive from Project Co notice:</p> <ul style="list-style-type: none"> (a) in the Construction Documentation; or (b) as changes to Design Documentation, of such determinations, directions or agreements. |
| <p>2.1.6(i) Reference Documents – General</p> | <p>Where a Reference Document provides for the approval of a proposed adoption or variance of a particular standard, code, reference, guidelines, manual or other technical document, determine whether to grant that approval.</p> |

The Independent Reviewer's functions under Volume 2, Part C of the PS&TR include, but are not necessarily limited to, the functions set out in the table below. Section references are to Volume 2, Part C of the PS&TR unless stated otherwise.

| Section No. | Independent Reviewer Role |
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| <p>1.2.4(b) Process Requirements – Management Plans</p> | <p>Receive from Project Co notice of any audit proposed to be conducted in accordance with section 1.2.4, 3.5 or 4.7 at least 5 Business Days prior to that audit occurring.</p> |
| <p>1.2.4(c) Process Requirements – Management Plans</p> | <p>Receive from Project Co in respect of any audit conducted in accordance with section 1.2.4, 3.5 or 4.7:</p> <ul style="list-style-type: none"> (a) an audit report; and |



(b) proposed and/or implemented actions for addressing any non-conformances identified in the audit report,
within 5 Business Days of the audit's completion.

1.3.3.2
Process Requirements –
Records

Receive, as a condition precedent to Final Acceptance, a complete electronic copy of the As-Built Records for each Construction Package (including the final revised electronic versions of IFC Design Documentation).

1.3.3.3
Process Requirements –
Records

Receive, no later than 60 days after the date of completion of the Returned Works and as a condition precedent to Handback of Returned Works, a complete electronic copy of the As-Built Records for each Returned Works Construction Package (including the final revised electronic versions of IFC Design Documentation and maintenance records for the Returned Works during construction).

1.3.5.2(b)(5)
Process Requirements –
Records

Certify As-Built Records by providing a certificate in the form set out in the Schedule of Certificates and Notices.

1.3.5.2(c)(1)
Process Requirements –
Records

Certify As-Built Records by providing a certificate in the form set out in the Schedule of Certificates and Notices.

1.3.5.2(c)(1)
Process Requirements –
Records

Determine, for the purposes of closing as As-Built Records, whether subsequent Works will prevent inspection or repair of the Works represented by the As-Built Records.

1.3.5.2(d)
Process Requirements –
Records

Where it is either not practicable to undertake testing required for closure of As-Built Records before Works are covered up or in particular situations where test results are available, determine any additional inspection or testing arrangements to be included in the applicable Inspection and Test Plan.

1.3.5.2(d)
Process Requirements –
Records

Where it is either not practicable to undertake testing required for closure of As-Built Records before Works are covered up or in particular situations where test results are available, determine any additional inspection or testing arrangements to be included in the applicable Inspection and Test Plan.

1.3.9.8
Process Requirements –
Records

Determine whether non-conformances identified by the Independent Reviewer have been closed out satisfactorily.



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| 1.4.1.2(k) Process Requirements – Reporting | Notify Project Co of any other issues it requires to be addressed in the Monthly D&C Phase Progress Report. |
| 2.2.2.1(a) Project Management Requirements – Program Management | In respect of each update to the D&C Program, receive from Project Co a Program Summary Report listing the planning assumptions that underpin the program. |
| 2.2.3.1(a) Project Management Requirements – Program Management | Receive from Project Co updates to the D&C Program in accordance with the Project Agreement. |
| 2.6.4.7 Project Management Requirements – Information Management | Receive from Project Co a report in respect of Project Co's compliance audit of the implemented digital engineering strategy against future State or Federal digital engineering (BIM) related standards or guidelines. |
| 3.5.1.3 Environmental Management Requirements – Environmental Audits | Receive from Project Co any environmental audit undertaken pursuant to section 3.5. |
| 6.3.1.1(a) Occupational Health and Safety Management – Road Safety | Determine, if requested by Project Co, whether a heavy vehicle will not perform the function for which it is intended if side under run guards are fitted. |
| 7.3.2 Design Requirements – Design Review Meetings | Attend design review meetings. |
| 7.4.1.3 Design Requirements – Design Risks Register | Receive from Project Co every two weeks a copy of the latest Design Risk Register. |
| 7.5.1.2 Design Requirements – Design Documentation | Receive from Project Co Interim Design Documentation for review in accordance with the Design Review Schedule. |



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| 7.5.2.2 Design Requirements – Design Documentation | Receive from Project Co Certified Design Documentation for review in accordance with the Design Review Schedule. |
| 7.5.1.2 Design Requirements – Design Documentation | Receive from Project Co IFC Design Documentation for review in accordance with the Design Review Schedule. |
| 7.7.5 Design Requirements – Proof Engineering | Receive each Proof Engineering Certificate of Compliance with the relevant Certified Design Documentation. |
| 7.13.2 Design Requirements – Safety in Design | Attend Safety in Design (SiD) Workshops. |
| 7.13.4.7 Design Requirements – Safety in Design | Receive from Project Co within 5 Business Days of the conclusion of each SiD Workshop a report and a copy of the outputs from the workshop, including assessed risks and recommendations. |
| 9.9.5.2(d) Transport Management Requirements – Road Safety Audits | Receive from Project Co within 2 Business Days of a Road Safety Audit being undertaken in relation to the Worksite Traffic Management Plan a Road Safety Audit initial report and Project Co's response to that report. |
| 9.9.6 Transport Management Requirements – Road Safety Audits | Where desired, request comment by the senior Road Safety Auditor on road safety issues associated with the Contract. |
| 9.11.1.2 Transport Management Requirements – Unplanned Transport Disruptions | Receive from Project Co reports of any unplanned disruptions to a traffic lane, footpath, cycleway, tramway, bus lane, or road caused by the Works |
| 9.11.1.4 Transport Management Requirements – Unplanned Transport Disruptions | Receive from Project Co following any unplanned disruption event a report on the outcome of a review of the Transport Management Plan and the relevant Worksite Traffic Management Plan and Traffic Guidance System. |
| 10.3.2.1 | Receive from Project Co within 2 Business Days of any incident a |



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| Construction Requirements – Notification of Incidents | report including all relevant details of the incident. |
| 10.4.5 Construction Requirements – Construction Documentation | Receive from Project Co Construction Documentation for review in accordance with the Review Procedures. |
| 10.5.2 Construction Requirements – Construction Review Meetings | Attend construction review meetings. |
| 10.7.2.3 Construction Requirements – Site Investigation, Condition Surveys and Monitoring | Receive within four weeks of a condition survey being undertaken and prior to the commencement of the relevant Works the condition survey. |
| 10.7.3.5(d) Construction Requirements – Site Investigation, Condition Surveys and Monitoring | Upon request, receive from Project Co a copy of quality assurance processes and verification documentation. |
| 10.7.4.9 Construction Requirements – Site Investigation, Condition Surveys and Monitoring | Receive from Project Co: <ul style="list-style-type: none">(a) analysis and determinations, including the original Predicted Effects and any Acceptable Effects and any revisions, and re-evaluations of the Predicted Effects and the Acceptable Effects;(b) results of monitoring the actual effects of the Works and the Temporary Works on the existing ground conditions, infrastructure and properties over time;(c) details of any adjustments to the manner in which Project Co's Works are carried out which are necessary as a consequence of any re-evaluation of Predicted Effects; and(d) details of designs and materials for the repair and reinstatement of infrastructure and properties required by section 10.7.4.8. |
| 11.1.5.1 Transition and Acceptance Requirements – Testing and Commissioning | Receive notice of any non-conformance or Defect identified by testing and commissioning. |



| | |
|---|--|
| <p>11.2.1.2(f) Transition and Acceptance Requirements – Handback</p> | <p>Determine whether Inspection and Test Plans are satisfactory.</p> |
| <p>11.2.1.2(v) Transition and Acceptance Requirements – Handback</p> | <p>Determine whether Handback Documentation includes all information necessary for operation, use and maintenance and, where necessary, request that additional information be included.</p> |
| <p>11.2.2.1 Transition and Acceptance Requirements – Handback</p> | <p>Receive from Project Co a Health and Safety Completion Report.</p> |
| <p>6.2(m)(13) Annexure 2 – Digital Engineering Management Plan</p> | <p>Receive from Project Co outputs from the sustainability performance model(s) demonstrating compliance with the performance requirements of the Sustainability Management Plan and Sustainability Targets.</p> |

4 D&C Subcontract

[State Note: The table below is to be amended and updated to reflect the final version of the State Project Documents and the downstream Independent Reviewer Agreements.]

The Independent Reviewer's and/or the Sub-Independent Reviewer's functions (as the case may be) under the D&C Subcontract include, but are not necessarily limited to:

| Clause No. | Independent Reviewer Role |
|------------|---------------------------|
|------------|---------------------------|

[insert]

[insert]

* Function performed by the Sub-Independent Reviewer under the D&C Subcontract.

** Function performed by both the Independent Reviewer and Sub-Independent Reviewer under the D&C Subcontract.

5 Rail Systems Alliance

[State Note: The Independent Reviewer's functions listed in the table below are subject to finalisation of the Rail Systems Alliance Agreement]



The Independent Reviewer's functions under the Rail Systems Alliance include, but are not necessarily limited to, the functions set out in the table below. Section references are to the Rail Systems Alliance Agreement unless otherwise stated. Capitalised terms in this Section 5 that are not defined under clause 1 of this Deed have the meaning given to them in the Rail Systems Alliance Agreement.

| Clause No. | Independent Reviewer Role |
|---|--|
| <p>[21.1(a)] Certificate of Critical Interface Milestone Achievement</p> | <p>Receive notice under clause 21.1(a) from the ALT, the Project Owner, PPP Contractor, the RIA Participants or the HCMT Contractor (as the case may be), that the party considers it will be delayed in achieving a CIM by the Date for CIM Achievement.</p> |
| <p>[21.1(b)] Certificate of Critical Interface Milestone Achievement</p> | <p>Receive an updated notice where the relevant party considers the extent of the delay notified to the Independent Reviewer under clause 21.1(a) has changed.</p> |
| <p>[21.1(c)] Certificate of Critical Interface Milestone Achievement</p> | <p>Receive from the ALT, the Project Owner, the PPP Contractor, the RIA Participants or the HCMT Contractor:</p> <ul style="list-style-type: none"> (a) a notice that in the opinion of the relevant party, a CIM has been achieved; and (b) a request for a Certificate of CIM Achievement. |
| <p>[21.1(d)] Certificate of Critical Interface Milestone Achievement</p> | <p>Receive from the Owner Participant:</p> <ul style="list-style-type: none"> (a) a notice that in the opinion of the Owner Participant or the NOPS (as the case may be), the NOPS, the PPP Contractor, the RIA Participants or the HCMT Contractor have achieved a CIM; and (b) a request for a Certificate of CIM Achievement. |
| <p>[21.1(e)] Certificate of Critical Interface Milestone Achievement</p> | <p>As soon as reasonably practicable and, in any event, within 3 Business Days of the ALT complying with clause 21.1(a) or the Owner Participant giving notice under clause 21.1(d), determine whether the relevant CIM has been achieved and either:</p> <ul style="list-style-type: none"> (a) if the relevant CIM has been achieved, issue the required Certificate of CIM Achievement to the Participants and the IDS Counterparty (and if the date is after the relevant Date for CIM Achievement, the number of days that the Participants or the IDS Counterparty have caused or contributed to the delay by failing to achieve an earlier CIM or non-CIM in the same IDS); or (b) if the relevant CIM has not been achieved, issue the required notice to the Participants and the IDS Counterparty. |
| <p>[21.1(f)]</p> | <p>Receive notice from the NOPS when any work listed under clause</p> |



| | |
|---|--|
| Certificate of Critical Interface Milestone Achievement | 21.1(e)(2) has been completed. |
| [21.1(g)] Certificate of Critical Interface Milestone Achievement | Consider under clause 21.1(d) and 21.1(e) the notice given under clause 21.1(f) as if it were the original notice given under clause 21.1(a) |
| [21.4(b)] CIM Achievement (RSA-HCMT CIM, RSA-PPP CIM and RSA-RIA CIM) | Receive notice that within 3 Business Days of the Date of CIM Achievement, an IDS Counterparty believes it can overcome or mitigate the delay or part of the delay in order to achieve the subsequent CIM or a future CIM in the same IDS in accordance with clause 21.4(a). |
| [23.1(a)] Interface Costs – Participants impacting a Specified Related Works Contractor | Assess and quantify the additional costs of Interface Impacts to the Project Owner as set out in clause 23.1(a) and notify the Project Owner and the NOPs of the costs, in writing, within 10 Business Days of such Interface Impact. |

6 Rail Infrastructure Alliance

[State Note: The Independent Reviewer’s functions listed in the table below are subject to finalisation of the Rail Infrastructure Alliance Agreement.]

The Independent Reviewer's functions under the Rail Infrastructure Alliance include, but are not necessarily limited to, the functions set out in the table below. Section references are to the Rail Infrastructure Alliance Agreement unless otherwise stated. Capitalised terms in this Section 6 that are not defined under clause 1 of this Deed have the meaning given to them in the Rail Systems Alliance Agreement.

| Clause No. | Independent Reviewer Role |
|---|---|
| [22.1(a)] Certificate of Critical Interface Milestone Achievement | Receive notice under clause 22.1(a) from the ALT, the Project Owner, PPP Contractor or the RSA Participants (as the case may be), that the party considers it will be delayed in achieving a CIM by the Date for CIM Achievement. |
| [22.1(b)] Certificate of Critical Interface Milestone Achievement | Receive an updated notice from, where the relevant party considers the extent of the delay notified to the Independent Reviewer under clause 22.1(a) has changed. |



| | |
|--|---|
| <p>[22.1(c)] Certificate of Critical Interface Milestone Achievement</p> | <p>Receive from the ALT, the Project Owner, the PPP Contractor or the RSA Participants:</p> <ul style="list-style-type: none">(a) a notice that in the opinion of the relevant party, a CIM has been achieved; and(b) a request for a Certificate of CIM Achievement. |
| <p>[22.1(d)] Certificate of Critical Interface Milestone Achievement</p> | <p>Receive from the Owner Participant:</p> <ul style="list-style-type: none">(a) a notice that in the opinion of the Owner Participant or the NOPs (as the case may be), the NOPS, the PPP Contractor or the RSA Participants have achieved a CIM; and(b) a request for a Certificate of CIM Achievement. |
| <p>[22.1(e)] Certificate of Critical Interface Milestone Achievement</p> | <p>As soon as reasonably practicable and, in any event, within 3 Business Days of the ALT complying with clause 22.1(a) or the Owner Participant giving notice under clause 22.1(d), determine whether the relevant CIM has been achieved and either:</p> <ul style="list-style-type: none">(a) if the relevant CIM has been achieved, issue the required Certificate of CIM Achievement to the Participants and the IDS Counterparty (and if the date is after the relevant Date for CIM Achievement, the number of days that the Participants or the IDS Counterparty have caused or contributed to the delay by failing to achieve an earlier CIM or non-CIM in the same IDS); or(b) if the relevant CIM has not been achieved, issue the required notice to the Participants and the IDS Counterparty. |
| <p>[22.1(f)] Certificate of Critical Interface Milestone Achievement</p> | <p>Receive notice from the NOPS when any work listed under clause 22.1(e)(2) has been completed.</p> |
| <p>[22.1(g)] Certificate of Critical Interface Milestone Achievement</p> | <p>Consider under clause 22.1(d) and 22.1(e) the notice given under clause 22.1(f) as if it were the original notice given under clause 22.1(a)</p> |
| <p>[22.4(b)] CIM Achievement (RSA-HCMT CIM, RSA-PPP CIM and RSA-RIA CIM)</p> | <p>Receive notice that within 3 Business Days of the Date of CIM Achievement, an IDS Counterparty believes it can overcome or mitigate the delay or part of the delay in order to achieve the subsequent CIM or a future CIM in the same IDS in accordance with clause 22.4(a).</p> |
| <p>[24.1(a)] Interface Costs – Participants impacting a Specified Related Works</p> | <p>Assess and quantify the additional costs of Interface Impacts to the Project Owner as set out in clause 24.1(a) and notify the Project Owner and the NOPs of the costs, in writing, within 10 Business Days of such Interface Impact.</p> |



Contractor



Schedule 3

Payment Schedule

1 Payment of the Fee for Services

- (a) **(State responsible)**: Subject to sections 1(b) and 1(c) of this Schedule 3, and without limiting any provision of the Project Agreement, the State will be solely and exclusively liable for making any payments due to the Independent Reviewer under this Deed.
- (b) **(Payment for special reports)**: Without limiting any provision of the Project Agreement, the relevant Project Party or Rail Franchisee requesting the preparation of an additional report under clause 7.4 will be solely responsible for payment to the Independent Reviewer for the costs associated with the preparation of such additional report.
- (c) **(Payment for Downstream Independent Reviewer Functions)**: For the avoidance of doubt, if Project Co requires the Independent Reviewer to exercise its functions under the Sub-Independent Reviewer Deed, Project Co will assume sole Liability in respect of the applicable fees (in addition to any fees otherwise payable in accordance with this section 1).
- (d) **(AW Services Fee)**: The parties acknowledge and agree that the AW Services Fee for the AW Services has been paid pursuant to the Independent Reviewer Deed of Appointment (Advanced Works). Nothing in this Deed makes the Project Parties liable for, and the Independent Reviewer has no Claim to be paid any amount for or in respect of, the AW Services (including any associated disbursements) under this Deed, including any part of the AW Services performed by the Independent Reviewer after Financial Close.

2 Payment claim

- (a) **(Independent Reviewer to prepare and submit)**: Subject to section 5, the Independent Reviewer must submit to the State (with a copy to Project Co) a claim for payment on account of the Fee (not including an additional report required under clause 7.4):
 - (1) for the Upstream Independent Reviewer Functions performed in accordance with this Deed during a month, at the end of the month; and
 - (2) calculated in and otherwise in accordance with this Payment Schedule.
- (b) **(Content)**: Each payment claim prepared in accordance with section 2(a) must set out:
 - (1) a breakdown of the Upstream Independent Reviewer Functions, including details of personnel days worked for each resource (in a

form and including such information and supporting documentation) as the Project Parties may require from time to time) actually carried out during the relevant month;

- (2) details of approved disbursements actually incurred during the relevant month (including such information and supporting documentation as the Project Parties may require from time to time);
- (3) the part of the Fee then payable;
- (4) if the Independent Reviewer considers acting reasonably, for the purposes of clause 11.7(d) (*Proportionate payment of costs*) of the Project Agreement, that the Project Parties (as a result of their respective conduct) have a proportionate responsibility for the costs and expenses of the Independent Reviewer which differs from the proportions stated in clause 11.7(c) (*Payment of costs*) of the Project Agreement, the Independent Reviewer's assessment of the relevant proportions. The parties acknowledge and agree that the Independent Reviewer's assessment of the parties' respective conduct for the purposes of clause 11.7(d) (*Proportionate payment of costs*) of the Project Agreement will be limited to circumstances where a party fails to comply with its obligations under clause 6 of this Deed or acts unreasonably and that conduct has or will cause an increase in the Fee under this Deed which should be reasonably borne by the parties at a proportion different from that stated in clause 11.7(c) (*Payment of costs*) of the Project Agreement; and
- (5) the amounts previously claimed by the Independent Reviewer in relation to the applicable Initial Fee Cap, DLP Fee Cap, Alliances Services Fee Cap or Disbursements Cap (both on a real and nominal basis) and the amount of the monthly or quarterly payment,

and otherwise be in a form and substance agreed with the Project Parties.

- (c) **(Payment Claims for special reports):** Where an additional report has been requested by a Project Party or a Rail Franchisee under clause 7.4, the Independent Reviewer must submit a separate payment claim to the Project Party or Rail Franchisee (as applicable) who made the request in respect of the preparation of the report.

3 Payment

- (a) **(Payment of Fee):** Subject to sections 3(b), 4(b) and 5, within 20 Business Days of receipt of a payment claim in accordance with section 2(a), the State must pay the Independent Reviewer the part of the Fee which the State believes represents the value of the Upstream Independent Reviewer Functions performed by the Independent Reviewer during the period for which the payment claim is submitted.
- (b) **(Payment for special reports):** Within 20 Business Days of receipt of a payment claim under section 2(c), the relevant Project Party must pay the Independent Reviewer the amount which it believes represents the value of the Upstream Independent Reviewer Functions performed by the Independent Reviewer relating to the preparation of the additional report during the period for which the payment claim is submitted.



- (c) **(Costs borne by Project Co):** Without limiting the State's obligations under clause 10, the State and Project Co have agreed the further matters set out in Schedule 6.

4 Payment of wages by Independent Reviewer

- (a) **(Signed statement required):** Before a payment is made to the Independent Reviewer under section 3, the relevant Project Party may require the Independent Reviewer to give the relevant Project Party a statement signed by the Independent Reviewer stating that no wages or payments to any sub-contractors of the Independent Reviewer are due and owing by the Independent Reviewer in respect of the Services at the time of payment.
- (b) **(Possible to withhold money):** If, within 2 Business Days after the request, the Independent Reviewer fails to provide the statement, then the party responsible for the payment of the relevant payment claim may withhold payment of moneys due to the Independent Reviewer until the statement is received.

5 Insurance

Before a payment claim can be made by the Independent Reviewer under section 2(a), the Independent Reviewer must have effected the insurance required by clause 9.5 on the basis set out in section 10 and provided evidence of this to the Project Parties. If a payment claim is purported to be submitted by the Independent Reviewer prior to effecting such insurance and providing such evidence, neither of the Project Parties will be liable to make any payment in respect of such claim.

6 Books of account

The Independent Reviewer must, for the purposes of this Deed:

- (a) institute and maintain all proper books of account and operating records necessary to afford a correct and complete record and explanation of all payment claims (including relevant supporting documentation) made by the Independent Reviewer under this Deed; and
- (b) permit the Project Parties' Representatives (and any persons authorised by either of them) access at all reasonable times to all relevant books of account and operating records necessary to establish that all payment claims made by the Independent Reviewer and all moneys paid to the Independent Reviewer under the terms of this Deed are or have been properly accounted for.

7 Notification of disputed amounts

If the State or Project Co disputes any amount which the Independent Reviewer has claimed then the State or Project Co (as applicable) must notify the Independent Reviewer of its reasons for disputing that amount within 20 Business Days after receipt of the relevant payment claim.



8 The Fee

(a) **(Initial Fee Cap):** The Initial Fee Cap for the Initial Fee Period (which will include the cost of procuring the insurances required under clauses 9.5(a)(1) and 9.5(a)(2)) is set out below (being the aggregate of the monthly fees in this section 8(a)):

State Note: [not disclosed]

| Description | Amount | Aggregate Monthly Amount |
|---------------|-----------------|--------------------------|
| November 2017 | [not disclosed] | [not disclosed] |
| December 2017 | [not disclosed] | [not disclosed] |
| January 2018 | [not disclosed] | [not disclosed] |
| February 2018 | [not disclosed] | [not disclosed] |
| Mar-18 | [not disclosed] | [not disclosed] |
| Apr-18 | [not disclosed] | [not disclosed] |
| May-18 | [not disclosed] | [not disclosed] |
| Jun-18 | [not disclosed] | [not disclosed] |
| Jul-18 | [not disclosed] | [not disclosed] |
| Aug-18 | [not disclosed] | [not disclosed] |
| Sep-18 | [not disclosed] | [not disclosed] |
| Oct-18 | [not disclosed] | [not disclosed] |
| Nov-18 | [not disclosed] | [not disclosed] |



| Description | Amount | Aggregate Monthly Amount |
|--------------------|-----------------|---------------------------------|
| Dec-18 | [not disclosed] | [not disclosed] |
| Jan-19 | [not disclosed] | [not disclosed] |
| Feb-19 | [not disclosed] | [not disclosed] |
| Mar-19 | [not disclosed] | [not disclosed] |
| Apr-19 | [not disclosed] | [not disclosed] |
| May-19 | [not disclosed] | [not disclosed] |
| Jun-19 | [not disclosed] | [not disclosed] |
| Jul-19 | [not disclosed] | [not disclosed] |
| Aug-19 | [not disclosed] | [not disclosed] |
| Sep-19 | [not disclosed] | [not disclosed] |
| Oct-19 | [not disclosed] | [not disclosed] |
| Nov-19 | [not disclosed] | [not disclosed] |
| Dec-19 | [not disclosed] | [not disclosed] |
| Jan-20 | [not disclosed] | [not disclosed] |
| Feb-20 | [not disclosed] | [not disclosed] |
| Mar-20 | [not disclosed] | [not disclosed] |



| Description | Amount | Aggregate Monthly Amount |
|--------------------|-----------------|---------------------------------|
| Apr-20 | [not disclosed] | [not disclosed] |
| May-20 | [not disclosed] | [not disclosed] |
| Jun-20 | [not disclosed] | [not disclosed] |
| Jul-20 | [not disclosed] | [not disclosed] |
| Aug-20 | [not disclosed] | [not disclosed] |
| Sep-20 | [not disclosed] | [not disclosed] |
| Oct-20 | [not disclosed] | [not disclosed] |
| Nov-20 | [not disclosed] | [not disclosed] |
| Dec-20 | [not disclosed] | [not disclosed] |
| Jan-21 | [not disclosed] | [not disclosed] |
| Feb-21 | [not disclosed] | [not disclosed] |
| Mar-21 | [not disclosed] | [not disclosed] |
| Apr-21 | [not disclosed] | [not disclosed] |
| May-21 | [not disclosed] | [not disclosed] |
| Jun-21 | [not disclosed] | [not disclosed] |
| Jul-21 | [not disclosed] | [not disclosed] |



| Description | Amount | Aggregate Monthly Amount |
|--------------------|-----------------|---------------------------------|
| Aug-21 | [not disclosed] | [not disclosed] |
| Sep-21 | [not disclosed] | [not disclosed] |
| Oct-21 | [not disclosed] | [not disclosed] |
| Nov-21 | [not disclosed] | [not disclosed] |
| Dec-21 | [not disclosed] | [not disclosed] |
| Jan-22 | [not disclosed] | [not disclosed] |
| Feb-22 | [not disclosed] | [not disclosed] |
| Mar-22 | [not disclosed] | [not disclosed] |
| Apr-22 | [not disclosed] | [not disclosed] |
| May-22 | [not disclosed] | [not disclosed] |
| Jun-22 | [not disclosed] | [not disclosed] |
| Jul-22 | [not disclosed] | [not disclosed] |
| Aug-22 | [not disclosed] | [not disclosed] |
| Sep-22 | [not disclosed] | [not disclosed] |
| Oct-22 | [not disclosed] | [not disclosed] |
| Nov-22 | [not disclosed] | [not disclosed] |



| Description | Amount | Aggregate Monthly Amount |
|--------------------|-----------------|---------------------------------|
| Dec-22 | [not disclosed] | [not disclosed] |
| Jan-23 | [not disclosed] | [not disclosed] |
| Feb-23 | [not disclosed] | [not disclosed] |
| Mar-23 | [not disclosed] | [not disclosed] |
| Apr-23 | [not disclosed] | [not disclosed] |
| May-23 | [not disclosed] | [not disclosed] |
| Jun-23 | [not disclosed] | [not disclosed] |
| Jul-23 | [not disclosed] | [not disclosed] |
| Aug-23 | [not disclosed] | [not disclosed] |
| Sep-23 | [not disclosed] | [not disclosed] |
| Oct-23 | [not disclosed] | [not disclosed] |
| Nov-23 | [not disclosed] | [not disclosed] |
| Dec-23 | [not disclosed] | [not disclosed] |
| Jan-24 | [not disclosed] | [not disclosed] |
| Feb-24 | [not disclosed] | [not disclosed] |
| Mar-24 | [not disclosed] | [not disclosed] |



| Description | Amount | Aggregate Monthly Amount |
|------------------------|-----------------|--------------------------|
| Apr-24 | [not disclosed] | [not disclosed] |
| May-24 | [not disclosed] | [not disclosed] |
| Jun-24 | [not disclosed] | [not disclosed] |
| Jul-24 | [not disclosed] | [not disclosed] |
| Aug-24 | [not disclosed] | [not disclosed] |
| Sep-24 | [not disclosed] | [not disclosed] |
| Initial Fee Cap | [not disclosed] | [not disclosed] |

[not disclosed]

- (b) **(DLP Fee Period estimate):** The estimated Fee cap for the DLP Fee Period (which will include the cost of procuring the insurances required under clauses 9.5(a)(1) and 9.5(a)(2)) is set out below (being the aggregate quarterly fee in this section 8(b)):

| Description | Amount | Aggregate Monthly Amount |
|-------------|-----------------|--------------------------|
| Oct-24 | [not disclosed] | [not disclosed] |
| Nov-24 | [not disclosed] | [not disclosed] |
| Dec-24 | [not disclosed] | [not disclosed] |
| Jan-25 | [not disclosed] | [not disclosed] |
| Feb-25 | [not disclosed] | [not disclosed] |



| Description | Amount | Aggregate Monthly Amount |
|--------------------|-----------------|---------------------------------|
| Mar-25 | [not disclosed] | [not disclosed] |
| Apr-25 | [not disclosed] | [not disclosed] |
| May-25 | [not disclosed] | [not disclosed] |
| Jun-25 | [not disclosed] | [not disclosed] |
| Jul-25 | [not disclosed] | [not disclosed] |
| Aug-25 | [not disclosed] | [not disclosed] |
| Sep-25 | [not disclosed] | [not disclosed] |
| Oct-25 | [not disclosed] | [not disclosed] |
| Nov-25 | [not disclosed] | [not disclosed] |
| Dec-25 | [not disclosed] | [not disclosed] |
| Jan-26 | [not disclosed] | [not disclosed] |
| Feb-26 | [not disclosed] | [not disclosed] |
| Mar-26 | [not disclosed] | [not disclosed] |
| Apr-26 | [not disclosed] | [not disclosed] |
| May-26 | [not disclosed] | [not disclosed] |
| Jun-26 | [not disclosed] | [not disclosed] |



| Description | Amount | Aggregate Monthly Amount |
|--------------------|-----------------|---------------------------------|
| Jul-26 | [not disclosed] | [not disclosed] |
| Aug-26 | [not disclosed] | [not disclosed] |
| Sep-26 | [not disclosed] | [not disclosed] |
| Oct-26 | [not disclosed] | [not disclosed] |
| Nov-26 | [not disclosed] | [not disclosed] |
| Dec-26 | [not disclosed] | [not disclosed] |
| Jan-27 | [not disclosed] | [not disclosed] |
| Feb-27 | [not disclosed] | [not disclosed] |
| Mar-27 | [not disclosed] | [not disclosed] |
| Apr-27 | [not disclosed] | [not disclosed] |
| May-27 | [not disclosed] | [not disclosed] |
| Jun-27 | [not disclosed] | [not disclosed] |
| Jul-27 | [not disclosed] | [not disclosed] |
| Aug-27 | [not disclosed] | [not disclosed] |
| Sep-27 | [not disclosed] | [not disclosed] |
| Oct-27 | [not disclosed] | [not disclosed] |



| Description | Amount | Aggregate Monthly Amount |
|--------------------------------|-----------------|--------------------------|
| Nov-27 | [not disclosed] | [not disclosed] |
| Dec-27 | [not disclosed] | [not disclosed] |
| Jan-28 | [not disclosed] | [not disclosed] |
| DLP Fee Period estimate | [not disclosed] | [not disclosed] |

[not disclosed]

(c) **(Alliance Services Fee Cap):** The Alliance Services Fee Cap for the Initial Fee Period and the DLP Fee Period (which will include the cost of procuring the insurances required under clauses 9.5(a)(1) and 9.5(a)(2)) is set out below (being the aggregate monthly and quarterly fee in this section 8(c)):

| Description | Amount | Aggregate Monthly Amount |
|-------------|-----------------|--------------------------|
| Nov-17 | [not disclosed] | [not disclosed] |
| Dec-17 | [not disclosed] | [not disclosed] |
| Jan-18 | [not disclosed] | [not disclosed] |
| Feb-18 | [not disclosed] | [not disclosed] |
| Mar-18 | [not disclosed] | [not disclosed] |
| Apr-18 | [not disclosed] | [not disclosed] |
| May-18 | [not disclosed] | [not disclosed] |
| Jun-18 | [not disclosed] | [not disclosed] |



| Description | Amount | Aggregate Monthly Amount |
|--------------------|-----------------|---------------------------------|
| Jul-18 | [not disclosed] | [not disclosed] |
| Aug-18 | [not disclosed] | [not disclosed] |
| Sep-18 | [not disclosed] | [not disclosed] |
| Oct-18 | [not disclosed] | [not disclosed] |
| Nov-18 | [not disclosed] | [not disclosed] |
| Dec-18 | [not disclosed] | [not disclosed] |
| Jan-19 | [not disclosed] | [not disclosed] |
| Feb-19 | [not disclosed] | [not disclosed] |
| Mar-19 | [not disclosed] | [not disclosed] |
| Apr-19 | [not disclosed] | [not disclosed] |
| May-19 | [not disclosed] | [not disclosed] |
| Jun-19 | [not disclosed] | [not disclosed] |
| Jul-19 | [not disclosed] | [not disclosed] |
| Aug-19 | [not disclosed] | [not disclosed] |
| Sep-19 | [not disclosed] | [not disclosed] |
| Oct-19 | [not disclosed] | [not disclosed] |



| Description | Amount | Aggregate Monthly Amount |
|--------------------|-----------------|---------------------------------|
| Nov-19 | [not disclosed] | [not disclosed] |
| Dec-19 | [not disclosed] | [not disclosed] |
| Jan-20 | [not disclosed] | [not disclosed] |
| Feb-20 | [not disclosed] | [not disclosed] |
| Mar-20 | [not disclosed] | [not disclosed] |
| Apr-20 | [not disclosed] | [not disclosed] |
| May-20 | [not disclosed] | [not disclosed] |
| Jun-20 | [not disclosed] | [not disclosed] |
| Jul-20 | [not disclosed] | [not disclosed] |
| Aug-20 | [not disclosed] | [not disclosed] |
| Sep-20 | [not disclosed] | [not disclosed] |
| Oct-20 | [not disclosed] | [not disclosed] |
| Nov-20 | [not disclosed] | [not disclosed] |
| Dec-20 | [not disclosed] | [not disclosed] |
| Jan-21 | [not disclosed] | [not disclosed] |
| Feb-21 | [not disclosed] | [not disclosed] |



| Description | Amount | Aggregate Monthly Amount |
|--------------------|-----------------|---------------------------------|
| Mar-21 | [not disclosed] | [not disclosed] |
| Apr-21 | [not disclosed] | [not disclosed] |
| May-21 | [not disclosed] | [not disclosed] |
| Jun-21 | [not disclosed] | [not disclosed] |
| Jul-21 | [not disclosed] | [not disclosed] |
| Aug-21 | [not disclosed] | [not disclosed] |
| Sep-21 | [not disclosed] | [not disclosed] |
| Oct-21 | [not disclosed] | [not disclosed] |
| Nov-21 | [not disclosed] | [not disclosed] |
| Dec-21 | [not disclosed] | [not disclosed] |
| Jan-22 | [not disclosed] | [not disclosed] |
| Feb-22 | [not disclosed] | [not disclosed] |
| Mar-22 | [not disclosed] | [not disclosed] |
| Apr-22 | [not disclosed] | [not disclosed] |
| May-22 | [not disclosed] | [not disclosed] |
| Jun-22 | [not disclosed] | [not disclosed] |



| Description | Amount | Aggregate Monthly Amount |
|--------------------|-----------------|---------------------------------|
| Jul-22 | [not disclosed] | [not disclosed] |
| Aug-22 | [not disclosed] | [not disclosed] |
| Sep-22 | [not disclosed] | [not disclosed] |
| Oct-22 | [not disclosed] | [not disclosed] |
| Nov-22 | [not disclosed] | [not disclosed] |
| Dec-22 | [not disclosed] | [not disclosed] |
| Jan-23 | [not disclosed] | [not disclosed] |
| Feb-23 | [not disclosed] | [not disclosed] |
| Mar-23 | [not disclosed] | [not disclosed] |
| Apr-23 | [not disclosed] | [not disclosed] |
| May-23 | [not disclosed] | [not disclosed] |
| Jun-23 | [not disclosed] | [not disclosed] |
| Jul-23 | [not disclosed] | [not disclosed] |
| Aug-23 | [not disclosed] | [not disclosed] |
| Sep-23 | [not disclosed] | [not disclosed] |
| Oct-23 | [not disclosed] | [not disclosed] |



| Description | Amount | Aggregate Monthly Amount |
|--------------------|-----------------|---------------------------------|
| Nov-23 | [not disclosed] | [not disclosed] |
| Dec-23 | [not disclosed] | [not disclosed] |
| Jan-24 | [not disclosed] | [not disclosed] |
| Feb-24 | [not disclosed] | [not disclosed] |
| Mar-24 | [not disclosed] | [not disclosed] |
| Apr-24 | [not disclosed] | [not disclosed] |
| May-24 | [not disclosed] | [not disclosed] |
| Jun-24 | [not disclosed] | [not disclosed] |
| Jul-24 | [not disclosed] | [not disclosed] |
| Aug-24 | [not disclosed] | [not disclosed] |
| Sep-24 | [not disclosed] | [not disclosed] |
| Oct-24 | [not disclosed] | [not disclosed] |
| Nov-24 | [not disclosed] | [not disclosed] |
| Dec-24 | [not disclosed] | [not disclosed] |
| Jan-25 | [not disclosed] | [not disclosed] |
| Feb-25 | [not disclosed] | [not disclosed] |



| Description | Amount | Aggregate Monthly Amount |
|--------------------|-----------------|---------------------------------|
| Mar-25 | [not disclosed] | [not disclosed] |
| Apr-25 | [not disclosed] | [not disclosed] |
| May-25 | [not disclosed] | [not disclosed] |
| Jun-25 | [not disclosed] | [not disclosed] |
| Jul-25 | [not disclosed] | [not disclosed] |
| Aug-25 | [not disclosed] | [not disclosed] |
| Sep-25 | [not disclosed] | [not disclosed] |
| Oct-25 | [not disclosed] | [not disclosed] |
| Nov-25 | [not disclosed] | [not disclosed] |
| Dec-25 | [not disclosed] | [not disclosed] |
| Jan-26 | [not disclosed] | [not disclosed] |
| Feb-26 | [not disclosed] | [not disclosed] |
| Mar-26 | [not disclosed] | [not disclosed] |
| Apr-26 | [not disclosed] | [not disclosed] |
| May-26 | [not disclosed] | [not disclosed] |
| Jun-26 | [not disclosed] | [not disclosed] |



| Description | Amount | Aggregate Monthly Amount |
|--------------------|-----------------|---------------------------------|
| Jul-26 | [not disclosed] | [not disclosed] |
| Aug-26 | [not disclosed] | [not disclosed] |
| Sep-26 | [not disclosed] | [not disclosed] |
| Oct-26 | [not disclosed] | [not disclosed] |
| Nov-26 | [not disclosed] | [not disclosed] |
| Dec-26 | [not disclosed] | [not disclosed] |
| Jan-27 | [not disclosed] | [not disclosed] |
| Feb-27 | [not disclosed] | [not disclosed] |
| Mar-27 | [not disclosed] | [not disclosed] |
| Apr-27 | [not disclosed] | [not disclosed] |
| May-27 | [not disclosed] | [not disclosed] |
| Jun-27 | [not disclosed] | [not disclosed] |
| Jul-27 | [not disclosed] | [not disclosed] |
| Aug-27 | [not disclosed] | [not disclosed] |
| Sep-27 | [not disclosed] | [not disclosed] |
| Oct-27 | [not disclosed] | [not disclosed] |



| Description | Amount | Aggregate Monthly Amount |
|----------------------------------|-----------------|--------------------------|
| Nov-27 | [not disclosed] | [not disclosed] |
| Dec-27 | [not disclosed] | [not disclosed] |
| Jan-28 | [not disclosed] | [not disclosed] |
| Alliance Services Fee Cap | [not disclosed] | [not disclosed] |

[not disclosed]

- (d) **(DLP Fee Proposal):** At least 3 Months prior to the end of the Initial Fee Period, the Independent Reviewer must submit a proposal to the Project Parties setting out its proposed fee estimate and estimated fee cap (which must include the cost of procuring the insurances required under clauses 9.5(a)(1) and 9.5(a)(2)) for the DLP Fee Period (**DLP Fee Proposal**). The DLP Fee Proposal must:
- (1) to the extent applicable, be based on the Schedule of Rates and Disbursements; and
 - (2) not exceed the estimated DLP Fee Period estimate set out in section 8(b) of this Schedule 3.
- (e) **(DLP Fee Cap):** Within 20 Business Days of receipt of a DLP Fee Proposal, the Project Parties must either:
- (1) notify the Independent Reviewer that the DLP Fee Proposal is accepted, in which case the total amount set out in the DLP Fee Proposal will be the fee cap for the DLP Fee Period (**DLP Fee Cap**); or
 - (2) notify the Independent Reviewer that the DLP Fee Proposal is not accepted, in which case:
 - (A) the Project Parties and the Independent Reviewer must meet to undertake good faith negotiations with a view to agreeing on a fee cap for the DLP Fee Period; and
 - (B) to the extent the Project Parties and the Independent Reviewer do not agree on a fee cap for the DLP Fee Period under section 8(e)(2)(A) within 20 Business Days of meeting in accordance with section 8(e)(2) of this Schedule 3, the DLP Fee Cap for the DLP Fee Period will be reasonably determined by the Project Parties.
- (f) **(Fee Cap):** The maximum Fee payable to the Independent Reviewer under this Deed during:
- (1) the Initial Fee Period (excluding the Alliance Services Fee and disbursements) must not exceed the Initial Fee Cap; and



- (2) the DLP Fee Period (excluding the Alliance Services Fee and disbursements) must not exceed the DLP Fee Cap.
- (g) **(Alliance Services Fee Cap):** The maximum Alliance Services Fee payable to the Independent Reviewer under this Deed during the Initial Fee Period and the DLP Fee Period (excluding disbursements) must not exceed the Alliances Services Fee Cap.
- (h) **(Inclusions):** Except as otherwise provided, the Initial Fee Cap, DLP Fee Cap and the Alliance Services Fee Cap are inclusive of labour, material, overhead, supervision, management of subcontracts, profit and insurance (including the insurances required under clauses 9.5(a)(1) and 9.5(a)(2) and including premiums, brokerage fees, stamp duty, and exchange rate fees (if applicable) in relation to such insurances).

9 Schedule of Rates and Disbursements

| Specific Personnel | Grade | Daily Rate (\$) |
|--------------------|----------------------|-----------------|
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 3 | [not disclosed] |
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 3 | [not disclosed] |
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 3 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Industry Director 1 | [not disclosed] |



| | | |
|-----------------|------------------------|-----------------|
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 3 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Associate Director 1 | [not disclosed] |
| [not disclosed] | Principal Professional | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 3 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 3 | [not disclosed] |
| [not disclosed] | Principal Professional | [not disclosed] |
| [not disclosed] | Associate Director 1 | [not disclosed] |
| [not disclosed] | Associate Director 1 | [not disclosed] |



| | | |
|-----------------|------------------------|-----------------|
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Principal Professional | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Principal Professional | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Principal Professional | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Industry Director 3 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 3 | [not disclosed] |



| | | |
|-----------------|----------------------|-----------------|
| [not disclosed] | Industry Director 1 | [not disclosed] |
| [not disclosed] | Industry Director 1 | [not disclosed] |
| [not disclosed] | Industry Director 1 | [not disclosed] |
| [not disclosed] | Technical Director 3 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Senior Professional | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Industry Director 1 | [not disclosed] |
| [not disclosed] | Industry Director 1 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |



| | | |
|-----------------|----------------------|-----------------|
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 3 | [not disclosed] |
| [not disclosed] | Technical Director 3 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Industry Director 1 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Associate Director 1 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |



| | | |
|--------------------------|------------------------|------------------------|
| [not disclosed] | Principal Professional | [not disclosed] |
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 3 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Industry Director 1 | [not disclosed] |
| [not disclosed] | Industry Director 1 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| General Personnel | | Daily Rate (\$) |
| Graduate | | [not disclosed] |
| Professional | | [not disclosed] |
| Senior Professional | | [not disclosed] |
| Principal Professional | | [not disclosed] |
| Associate Director 2 | | [not disclosed] |
| Associate Director 1 | | [not disclosed] |



| | | |
|--------------------------|--------------------------------------|--|
| Technical Director 3 | [not disclosed] | |
| Technical Director 2 | [not disclosed] | |
| Technical Director 1 | [not disclosed] | |
| Industry Director 3 | [not disclosed] | |
| Industry Director 2 | [not disclosed] | |
| Industry Director 1 | [not disclosed] | |
| Disbursements | Amount | |
| [not disclosed] | [not disclosed] | |
| [not disclosed] | [not disclosed] | |
| [not disclosed] | [not disclosed] | |
| Disbursements Cap | [not disclosed] | |
| Date | Project Office Monthly Amount | Other Monthly Amount* |
| | | *inclusive of IT Software, Office Supplies, PPE, Transport, Travel – Air Fare, Travel – Hotel, Travel – Other, Travel – Per Diems. |
| Nov 2017 | [not disclosed] | [not disclosed] |
| Dec 2017 | [not disclosed] | [not disclosed] |
| Jan 2018 | [not disclosed] | [not disclosed] |
| Feb 2018 | [not disclosed] | [not disclosed] |



| | | |
|--------|-----------------|-----------------|
| Mar-18 | [not disclosed] | [not disclosed] |
| Apr-18 | [not disclosed] | [not disclosed] |
| May-18 | [not disclosed] | [not disclosed] |
| Jun-18 | [not disclosed] | [not disclosed] |
| Jul-18 | [not disclosed] | [not disclosed] |
| Aug-18 | [not disclosed] | [not disclosed] |
| Sep-18 | [not disclosed] | [not disclosed] |
| Oct-18 | [not disclosed] | [not disclosed] |
| Nov-18 | [not disclosed] | [not disclosed] |
| Dec-18 | [not disclosed] | [not disclosed] |
| Jan-19 | [not disclosed] | [not disclosed] |
| Feb-19 | [not disclosed] | [not disclosed] |
| Mar-19 | [not disclosed] | [not disclosed] |
| Apr-19 | [not disclosed] | [not disclosed] |
| May-19 | [not disclosed] | [not disclosed] |
| Jun-19 | [not disclosed] | [not disclosed] |
| Jul-19 | [not disclosed] | [not disclosed] |



| | | |
|--------|-----------------|-----------------|
| Aug-19 | [not disclosed] | [not disclosed] |
| Sep-19 | [not disclosed] | [not disclosed] |
| Oct-19 | [not disclosed] | [not disclosed] |
| Nov-19 | [not disclosed] | [not disclosed] |
| Dec-19 | [not disclosed] | [not disclosed] |
| Jan-20 | [not disclosed] | [not disclosed] |
| Feb-20 | [not disclosed] | [not disclosed] |
| Mar-20 | [not disclosed] | [not disclosed] |
| Apr-20 | [not disclosed] | [not disclosed] |
| May-20 | [not disclosed] | [not disclosed] |
| Jun-20 | [not disclosed] | [not disclosed] |
| Jul-20 | [not disclosed] | [not disclosed] |
| Aug-20 | [not disclosed] | [not disclosed] |
| Sep-20 | [not disclosed] | [not disclosed] |
| Oct-20 | [not disclosed] | [not disclosed] |
| Nov-20 | [not disclosed] | [not disclosed] |
| Dec-20 | [not disclosed] | [not disclosed] |



| | | |
|--------|-----------------|-----------------|
| Jan-21 | [not disclosed] | [not disclosed] |
| Feb-21 | [not disclosed] | [not disclosed] |
| Mar-21 | [not disclosed] | [not disclosed] |
| Apr-21 | [not disclosed] | [not disclosed] |
| May-21 | [not disclosed] | [not disclosed] |
| Jun-21 | [not disclosed] | [not disclosed] |
| Jul-21 | [not disclosed] | [not disclosed] |
| Aug-21 | [not disclosed] | [not disclosed] |
| Sep-21 | [not disclosed] | [not disclosed] |
| Oct-21 | [not disclosed] | [not disclosed] |
| Nov-21 | [not disclosed] | [not disclosed] |
| Dec-21 | [not disclosed] | [not disclosed] |
| Jan-22 | [not disclosed] | [not disclosed] |
| Feb-22 | [not disclosed] | [not disclosed] |
| Mar-22 | [not disclosed] | [not disclosed] |
| Apr-22 | [not disclosed] | [not disclosed] |
| May-22 | [not disclosed] | [not disclosed] |



| | | |
|--------|-----------------|-----------------|
| Jun-22 | [not disclosed] | [not disclosed] |
| Jul-22 | [not disclosed] | [not disclosed] |
| Aug-22 | [not disclosed] | [not disclosed] |
| Sep-22 | [not disclosed] | [not disclosed] |
| Oct-22 | [not disclosed] | [not disclosed] |
| Nov-22 | [not disclosed] | [not disclosed] |
| Dec-22 | [not disclosed] | [not disclosed] |
| Jan-23 | [not disclosed] | [not disclosed] |
| Feb-23 | [not disclosed] | [not disclosed] |
| Mar-23 | [not disclosed] | [not disclosed] |
| Apr-23 | [not disclosed] | [not disclosed] |
| May-23 | [not disclosed] | [not disclosed] |
| Jun-23 | [not disclosed] | [not disclosed] |
| Jul-23 | [not disclosed] | [not disclosed] |
| Aug-23 | [not disclosed] | [not disclosed] |
| Sep-23 | [not disclosed] | [not disclosed] |
| Oct-23 | [not disclosed] | [not disclosed] |



| | | |
|--------|-----------------|-----------------|
| Nov-23 | [not disclosed] | [not disclosed] |
| Dec-23 | [not disclosed] | [not disclosed] |
| Jan-24 | [not disclosed] | [not disclosed] |
| Feb-24 | [not disclosed] | [not disclosed] |
| Mar-24 | [not disclosed] | [not disclosed] |
| Apr-24 | [not disclosed] | [not disclosed] |
| May-24 | [not disclosed] | [not disclosed] |
| Jun-24 | [not disclosed] | [not disclosed] |
| Jul-24 | [not disclosed] | [not disclosed] |
| Aug-24 | [not disclosed] | [not disclosed] |
| Sep-24 | [not disclosed] | [not disclosed] |

[State Note: [not disclosed]

Except as otherwise provided, the rates and prices set out in the Schedule of Rates are inclusive of overhead, supervision, management of subcontracts and profit.

10 Disbursements

The Independent Reviewer will:

- (a) **(Entitlement to reimbursement):** only be entitled to reimbursement of disbursements for which the Independent Reviewer is to be paid on a schedule of rates basis under this Deed if those disbursements:
- (1) have been reasonably and properly incurred for the sole purpose of performing Services;
 - (2) have the prior approval of the State and Project Co;
 - (3) to the extent applicable, are in accordance with the Schedule of Rates and Disbursements; and



- (4) are supported by documentation provided to the State and Project Co which is satisfactory to the State and Project Co;
- (b) not be entitled to make any Claim against the State and Project Co arising in connection with disbursements or other costs incurred in connection with the performance of the Services other than in accordance with section 10(a); and
- (c) not be entitled to reimbursement of disbursements in accordance with section 10(a) to the extent those disbursements exceed:
 - (1) the Disbursements Cap; or
 - (2) the cumulative aggregate of the monthly disbursements for the corresponding disbursement period as set out in section 9.

11 Adjustments to Payments

11.1 Fee caps

Subject to sections 11 and 12 of this Schedule 3, the Initial Fee Cap, DLP Fee Cap, DLP Fee Period estimate, Alliance Services Fee Cap and Disbursements Cap set out in or otherwise agreed in accordance with sections 8 and 9 of this Schedule 3 are fixed amounts and are not subject to adjustment and the Independent Reviewer will not be entitled to make any Claim in connection with a delay to Final Acceptance.

11.2 Not used

11.3 No indexation

For the avoidance of doubt, no amount contained in this Deed is subject to any form of adjustment or indexation whatsoever, including but not limited to:

- (a) the Initial Fee Cap, DLP Fee Cap, DLP Fee Period estimate, Alliance Services Fee Cap, and Disbursements Cap; and
- (b) any amount set out in sections 8 and 9 of this Schedule 3.

11.4 Not used

11.5 Resource Adjustment Order

The Project Parties may direct the Independent Reviewer to carry out a Resource Adjustment by issuing a document entitled 'Resource Adjustment Order' in accordance with this section. The parties will act reasonably in issuing such directions, including where the progress of the Project is different to that anticipated at the time of entering this Deed.

11.6 Notice of resource evaluation

- (a) No fewer than 20 Business Days before the start of every Quarter, the Independent Reviewer must provide the Project Parties with a notice setting out:
 - (1) its evaluation of the resource levels and disbursements (in a form set out in Schedule 6 or as otherwise agreed by the Project Parties) required for the upcoming Quarter having regard to the actual nature

and extent of the Upstream Independent Reviewer Functions to be carried out by the Independent Reviewer during the relevant Quarter (having regard to the minimum resourcing estimates contained in the Initial Monitoring Plan); and

- (2) any suggested re-profiling of resources and disbursements for the Services over the expected balance of the Term having regard to its evaluation of the resource levels required to complete the Services and the Initial Fee Cap, DLP Fee Cap, Alliance Services Fee Cap and Disbursements Cap and the amount by which the relevant monthly or quarterly fees for the Quarter should be adjusted as a result of the Resource Adjustment (if any).
- (b) The Independent Reviewer acknowledges that any suggested re-profiling of resources, disbursements and adjustments to the future monthly or quarterly fee for the Quarter as a result of the Resource Adjustment:
- (1) may adjust the relevant monthly or quarterly fees and disbursements for future periods and spread the remaining Fees and disbursements up to the Initial Fee Cap, DLP Fee Cap, Alliance Services Fee Cap or Disbursement Cap (as applicable) over the then expected balance of the Term; and
 - (2) must not exceed the cumulative value of the original monthly or quarterly fees or disbursements set out in sections 8(a), 8(b) or 9 (as applicable) at any time.

11.7 Quarterly meeting

No fewer than 10 Business Days before the start of every Quarter, the Independent Reviewer must meet with the Project Parties to:

- (a) evaluate the resource levels and disbursements required for the Quarter having regard to the actual nature and extent of the Upstream Independent Reviewer Functions to be carried out by the Independent Reviewer in that Quarter; and
- (b) discuss:
 - (1) the possibility of effecting a Resource Adjustment in that Quarter; and
 - (2) the Independent Reviewer's estimate of the amount by which the relevant monthly or quarterly fees and disbursements should be adjusted as a result of any such Resource Adjustment.

11.8 Resource adjustment and its approval

If the Project Parties' and the Independent Reviewer agree (acting reasonably) on a Resource Adjustment and the adjustment in the monthly or quarterly fees or disbursements (as applicable) before the start of the relevant Quarter, then:

- (a) the Project Parties will issue a Resource Adjustment Order;
- (b) subject to section 11.6(b), the monthly or quarterly fees and disbursements (as applicable) will be adjusted by the agreed amount outlined in the Resource Adjustment Order; and
- (c) the Independent Reviewer must promptly effect the Resource Adjustment.



12 GST

All lump sums, rates and amounts in this Payment Schedule do not include GST.



Schedule 4

Initial Monitoring Plan

Refer separate document.



Schedule 5

Requirements for Monitoring Plan

- (a) Update contents and clause number references throughout the Monitoring Plan and its annexures to reflect the terms of the executed versions of this Deed, the Project Agreement and the PS&TR and all relevant schedules and annexures to those documents.
- (b) Update all relevant contents, processes and procedures to ensure coordination with the terms of the Sub-Independent Reviewer Deed.
- (c) Update, incorporate and attach the Review Process Procedures and Internal Administration Procedures set out in Annexure B to the Monitoring Plan.
- (d) Comprehensive and detailed methodologies to be articulated for the performance of the Services.
- (e) Timeframes for reports and the provision of deliverables contemplated in the Monitoring Plan to be co-ordinated across the Project Documents for the Project as agreed.
- (f) A resource allocation indicating the level, nature and timing of resources which are required from the Independent Reviewer to perform the Services consistent with the Independent Reviewer's tender submitted to the State for the Services.
- (g) Any other requirements reasonably requested by the Project Parties.



Schedule 6

Resource Allocation proforma



Signing page

Executed as a deed

[State note: Execution blocks to be inserted]

Exhibit 2

Draft Sub-Independent Reviewer Deed

Refer to separate document.

Metro Tunnel
Tunnel and Stations PPP

Sub-Independent Reviewer Deed of Appointment

[Insert] (Project Co)

The unincorporated joint venture comprising Lendlease Engineering Pty Limited (ACN 000 201 516), John Holland Pty Limited (ABN 11 004 282 268), Bouygues Construction Australia Pty Limited (ABN 37 144 013 801) (**D&C Subcontractor**)

[Insert Sub-Independent Reviewer]

[Note: Elements of the Sub IR Deed are still subject to

- amendments to align the scope of the Sub IR Deed with the final versions of the Project Deed, IR Deed and D&C Subcontract.]**

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Sub-Independent Reviewer Deed of Appointment

Date ►

Between the parties

Project Co **[Insert]**

D&C Subcontractor The unincorporated joint venture comprising:

- 1 **Lendlease Engineering Pty Limited** (ACN 000 201 516) of Level 14, Tower Three, International Towers Sydney, Exchange Place, 300 Barangaroo Avenue, Barangaroo NSW 2000;
- 2 **John Holland Pty Limited** (ABN 11 004 282 268) of Level 3, 65 Pirrama Road, Pyrmont NSW 2009; and
- 3 **Bouygues Construction Australia Pty Limited** (ABN 37 144 013 801) of Level 8, 77 Pacific Highway, North Sydney NSW 2060.

Sub-Independent Reviewer **[Insert]**
[Insert] of **[insert]**

Recitals

- 1 The background to the Project is set out in the D&C Subcontract.
- 2 The Sub-Independent Reviewer is experienced generally in construction and project management and, in particular, in:
 - a the review and checking of design documentation; and
 - b design and construction in respect of rail infrastructure and tunnels,and offers its expertise in those fields.
- 3 The D&C Project Documents contemplate that the Sub-Independent Reviewer will discharge certain functions, including those set out in the Services Schedule.
- 4 The Sub-Independent Reviewer will perform its obligations in accordance with the terms and conditions of this Deed.

This deed witnesses as follows:

1 Definitions and interpretation

1.1 D&C Subcontract definitions

Unless otherwise expressly defined, expressions used in this Deed have the meanings given to them in or for the purposes of the D&C Subcontract.

1.2 Definitions

In this Deed, unless the context otherwise requires:

| Term | Meaning |
|---|---|
| Agreed Amount | has the meaning given in clause 15(b)(1). |
| Commencement Date | has the meaning given in clause 2.1. |
| Consumer Price Index | has the meaning given in the Indexes Schedule. |
| Contract Particulars | means the particulars set out in Schedule 1. |
| Cost | has the meaning given in clause 15(g). |
| D&C Parties | means Project Co and the D&C Subcontractor. |
| D&C Parties' Representatives | means, in respect of each of Project Co and the D&C Subcontractor, the person named in the Contract Particulars or any other person appointed by the relevant D&C Party from time to time to replace that person. |
| D&C Subcontract | means the deed between Project Co and the D&C Subcontractor for the design and construction of the Works, dated on or about the date of this deed. |
| Dispute | has the meaning given in clause 16.2. |
| Disputing Parties | has the meaning given in clause 16.2. |

| Term | Meaning |
|--|---|
| Downstream Sub-Independent Reviewer Contracts | means: <ol style="list-style-type: none"> 1 the D&C Subcontract; and 2 any Subcontract in respect of the D&C Activities as specified in item 9 of the Contract Particulars of the D&C Subcontract. |
| Expiry Date | means the date which is the earlier of: <ol style="list-style-type: none"> 1 the end of the Term; and 2 termination of this Deed in accordance with clause 12 or otherwise at Law. |
| Fee | means the lump sum amount payable to the Sub-Independent Reviewer for the performance of the Sub-IR Services in accordance with the Payment Schedule |
| Hold Point | has the meaning given in the PS&TR. |
| Independent Reviewer | means the party appointed to perform the services outlined in the Independent Reviewer Deed of Appointment. |
| Independent Reviewer Deed of Appointment | means the document so entitled between (amongst others) the State, Project Co and the Independent Reviewer. |
| Independent Reviewer Deed of Appointment (Advanced Works) | means the document so entitled between (amongst others) the State, the D&C Subcontractor and the Independent Reviewer. |
| Initial Monitoring Plan | means the document set out in Schedule 4. |
| Key People | means the people identified as such in the Contract Particulars. |
| Monitoring Plan | means a monitoring plan provided by the Sub-Independent Reviewer in accordance with clause 3.4, as amended and updated in accordance with clause 3.4. |
| Payment Schedule | means the schedule set out in Schedule 3. |
| Project Agreement | means the document entitled 'Project Agreement' between the |

| Term | Meaning |
|--|---|
| | State and Project Co dated on or about the date of this Deed. |
| Quality Management Plan | means the plan of that name prepared and updated in accordance with the Project Management Requirements. |
| Quarter | means: <ol style="list-style-type: none"> 1 the period from the Commencement Date until the first Quarterly Date during the Term; 2 each 3 month period commencing on a Quarterly Date; and 3 the period from the last Quarterly Date during the Term until the Expiry Date. |
| Recipient | has the meaning given in clause 15(b)(2). |
| Resource Adjustment | means an adjustment in the level of resources which are required from the Sub-Independent Reviewer to perform the Sub-IR Services. |
| Resource Adjustment Order | means the document issued by the Project Parties in accordance with section 11.5 of the Payment Schedule. |
| Revenue | has the meaning given in clause 15(f). |
| Schedule of Rates | means the schedule of rates and prices set out in section 9 of the Payment Schedule as adjusted from time to time in accordance with clause 11.1 and the Payment Schedule. |
| Services Schedule | means the schedule set out in Schedule 2. |
| Sub-Independent Reviewer Material | means all documentation, information (including databases and drafts), models and other material in which Intellectual Property Rights are capable of subsisting prepared, used or provided by or on behalf of the Sub-Independent Reviewer in carrying out the Services. |
| Sub-Independent Reviewer's Representative | means the person named in the Contract Particulars or any other person appointed by the Sub-Independent Reviewer with the approval of the D&C Parties from time to time to replace that person. |

| Term | Meaning |
|--|--|
| Sub-IR Services | <p>means:</p> <ol style="list-style-type: none"> 1 all of the functions conferred on the Sub-Independent Reviewer under this Deed, or the Downstream Sub-Independent Reviewer Contracts, as varied in accordance with clause 11 or in accordance with terms of the Downstream Sub-Independent Reviewer Contracts; 2 all other things or tasks which the Sub-Independent Reviewer must do to comply with its obligations under this Deed, the D&C Project Documents or the Downstream Sub-Independent Reviewer Contracts; and 3 without limiting paragraph 2, all other things and tasks not described in this Deed, the D&C Project Documents or the Downstream Sub-Independent Reviewer Contracts if those things and tasks should have been reasonably anticipated by an experienced and expert professional provider of similar services as being necessary for the performance of those things or tasks or which are otherwise capable of inference from this Deed, the D&C Project Documents or the Downstream Sub-Independent Reviewer Contracts. |
| Substitute Reviewer | has the meaning given in clause 11.2(a). |
| Supplier | has the meaning given in clause 15(b). |
| Term | means the period from the Commencement Date to the date 1 month after the expiry of the D&C Phase or such later date as agreed by the parties. |
| Transition Out Period | means the period of 24 months prior to the end of the Term. |
| Transition Out Plan | means the plan prepared by the Independent Reviewer in accordance with clause 13 of the Independent Reviewer Deed of Appointment. |
| Upstream Fee | means the fee payable under the Independent Reviewer Deed of Appointment. |
| Upstream Independent Reviewer Functions | means all of the functions conferred on the Independent Reviewer under the Independent Reviewer Deed of Appointment. |

1.3 Interpretation

In this Deed:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;
- and unless the context otherwise requires:
- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa and a word indicating a gender includes every other gender;
- (c) **(Deed and Schedule references)**: a reference to:
- (1) a party, clause or Schedule is a reference to a party, clause or Schedule of or to this Deed; and
 - (2) a section is a reference to a section of a Schedule.
- (d) **(deed as amended)**: a reference to this Deed or to any other deed, agreement, document or instrument includes a reference to this Deed or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **("includes")**: "includes" will be read as if followed by the phrase "(without limitation)";
- (j) **("or")**: the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) **("\$")**: a reference to "\$", AUD or dollar is to Australian currency;
- (m) **(time)**: a reference to time is a reference to time in Melbourne, Australia;
- (n) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (o) **(obligations and liabilities)**: without limiting clause 1.6 or 1.7, a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (p) **("may")**: the term "may", when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;
- (q) **(construction)**: where there is a reference to an Authority, institute or association or other body referred to in this Deed which:

- (1) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or
- (2) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (r) **(remedy)**: the use of the words “remedy”, “cure” or any form of such words in this Deed means that the event to be remedied or cured must be remedied or cured or its effects overcome; and
- (s) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

1.4 Business Day

If the day on or by which anything is to be done in accordance with this Deed is not a Business Day, that thing must be done no later than the next Business Day.

1.5 Inconsistency

Where there is an inconsistency, ambiguity or discrepancy between this Deed and any D&C Project Document, then the order of precedence in clause 2.3 (*Inconsistency between D&C Project Documents*) of the D&C Subcontract applies.

1.6 Joint and several Liability of Sub-Independent Reviewer

If the Sub-Independent Reviewer comprises more than one person:

- (a) **(joint and several)**: the obligations of those persons are joint and several; and
- (b) **(proceedings)**: each D&C Party may proceed against any or all of them for any failure of the Sub-Independent Reviewer to comply with any obligation in accordance with this Deed or otherwise.

1.7 Several Liability of D&C Parties

If a provision of this Deed binds the D&C Parties, that provision binds each of the D&C Parties severally and not jointly and severally.

1.8 Relationship of the parties

- (a) **(No partnership or joint venture)**: The relationship between and among the parties to this Deed will not be that of partners or joint venturers and nothing therein contained will be deemed to constitute a partnership or joint venture among them and no party will have authority or power to act unilaterally as agent for the other.
- (b) **(Independent contractor)**: It is understood that the Sub-Independent Reviewer is acting as an independent contractor for the D&C Parties and therefore the Sub-Independent Reviewer is not authorised to enter into any binding obligations on behalf of the D&C Parties.
- (c) **(No relationship)**: Unless otherwise expressly provided, this Deed does not create a partnership, joint venture or fiduciary relationship between the parties to this Deed.

1.9 Approvals, directions and notices in writing

Unless otherwise expressly provided in this Deed or agreed between the parties, all approvals, consents, directions, requirements, requests, claims, notices, agreements and demands must be given in writing.

1.10 Action without delay

Unless there is a provision in this Deed which specifies a period of time in which something must be done by the parties, all things must be done without undue delay.

1.11 Not used

1.12 Provisions limiting or excluding Liability

- (a) **(No limit):** A right or any obligation of a party under this Deed will not limit or exclude any other right or obligation of that party under this Deed unless expressly stated.
- (b) **(Permitted by Law):** Any provision of this Deed which seeks, either expressly or by implication, to limit or exclude a Liability of a party is to be construed as doing so only to the extent permitted by Law.

1.13 Not used

1.14 Not used

1.15 Cost of carrying out obligations

Each party must carry out its obligations under this Deed at its own cost, unless expressly provided otherwise.

2 Conditions precedent

2.1 Conditions precedent

The rights and obligations of the parties under this Deed will not commence until the later of:

- (a) **(Execution of this Deed):** the date of execution of this Deed by all parties to this Deed; and
- (b) **(Execution of the D&C Subcontract):** the date of execution of the D&C Subcontract by all parties to the D&C Subcontract and satisfaction or waiver of each of the conditions precedent to the D&C Subcontract.

(Commencement Date).

3 General obligations of the Sub-Independent Reviewer

3.1 Appointment

- (a) **(Appointment):** Each of the D&C Parties appoints the Sub-Independent Reviewer under this Deed to perform the Sub-IR Services for the benefit of each of the D&C Parties.
- (b) **(Acceptance of appointment):** The Sub-Independent Reviewer confirms its acceptance of the appointment.

3.2 Sub-IR Services

The Sub-Independent Reviewer must carry out the Sub-IR Services in accordance with this Deed and the D&C Subcontract for the Term.

3.3 Effect of Services Schedule

The D&C Parties and the Sub-Independent Reviewer acknowledge that the Services Schedule:

- (a) is indicative only;
- (b) is not intended to be a complete description of the Sub-IR Services;
- (c) does not limit or otherwise affect the Sub-IR Services or the performance of the Sub-IR Services; and
- (d) cannot be used as the aid to interpretation of the Sub-IR Services.

3.4 Monitoring Plan

- (a) **(Provision and amendment of Monitoring Plan):** The Sub-Independent Reviewer:
 - (1) must prepare and submit to the D&C Parties within 25 Business Days of the date of this Deed a Monitoring Plan which must, as a minimum, address those issues set out in the Initial Monitoring Plan and which addresses the requirements for the Monitoring Plan set out in Schedule 5;
 - (2) subject to clause 3.4(e), must, throughout the performance of the Sub-IR Services, develop, continually review and, if necessary, amend the Monitoring Plan:
 - (A) as required by clause 3.4(c)(2);
 - (B) to reflect any Resource Adjustment;
 - (C) to take into account events which will, or may reasonably be expected to, affect the manner in which the Sub-Independent Reviewer carries out the Sub-IR Services, including:
 - (i) Modifications under the D&C Project Documents;
 - (ii) changes in Law;
 - (iii) Approvals (including the conditions of Approvals);

- (iv) the commencement of new phases or stages of design or construction in accordance with the D&C Project Documents;
 - (v) to take into account the manner in which the D&C Activities are being undertaken, including any Defects or non-compliances with the D&C Project Documents; and
 - (vi) any breach or potential breach of the warranty in clause 3.4(b);
- (D) for the purposes of continuous improvement of the Monitoring Plan by continually improving the standards and quality of the Sub-IR Services carried out in accordance with the Monitoring Plan; and
- (E) as otherwise agreed with the D&C Parties;
- (3) must promptly submit each amended Monitoring Plan to the D&C Parties; and
- (4) acknowledges that the Initial Monitoring Plan sets out certain minimum requirements in respect of the Monitoring Plan and no Monitoring Plan provided in accordance with this clause 3.4 can in any way limit or reduce the requirements or obligations of the Sub-Independent Reviewer set out in the Initial Monitoring Plan, except where it is necessary to do so to comply with the D&C Project Documents.
- (b) **(Warranty):** The Sub-Independent Reviewer warrants that the carrying out of the Sub-IR Services in accordance with the Monitoring Plan will enable the Sub-Independent Reviewer to comply with its obligations under this Deed.
- (c) **(Acknowledgements):** The Sub-Independent Reviewer acknowledges that the Monitoring Plan:
 - (1) does not limit the Sub-Independent Reviewer's obligations under this Deed; and
 - (2) will require amendment resulting from a change to the Sub-IR Services in accordance with clause 11.
- (d) **(Review of updated plan):** Each D&C Party may:
 - (1) review each amended Monitoring Plan provided to the D&C Parties in accordance with this clause 3.4; and
 - (2) if the amended Monitoring Plan does not comply with this Deed or the D&C Project Documents, notify the other D&C Party and the Sub-Independent Reviewer of that non-compliance within 15 Business Days of the submission of the amended Monitoring Plan to the D&C Parties.
- (e) **(Amended plan):** If the Sub-Independent Reviewer receives a notice in accordance with clause 3.4(d)(2), the Sub-Independent Reviewer must promptly submit an amended Monitoring Plan to the D&C Parties.
- (f) **(Compliance with Plan):** Except where otherwise provided in this Deed or the D&C Project Documents, the Sub-Independent Reviewer must not depart and must ensure that its subcontractors do not depart from the Monitoring Plan unless it is necessary to do so to ensure compliance with this Deed or the D&C Project Documents.

- (g) **(No duty to review):** The D&C Parties owe no duty to the Sub-Independent Reviewer to review the Monitoring Plan or any amended Monitoring Plan for errors, omissions or compliance with this Deed or the D&C Project Documents. No comment on or approval, agreement or review of the Monitoring Plan by a D&C Party will constitute a direction for the purposes of clause 5.6 or otherwise.

4 Various functions of the Sub-Independent Reviewer

- (a) **(Application of clause):** This clause 4 only applies if the party undertaking the Upstream Independent Reviewer Functions or any of its subcontractors is the same entity undertaking the Sub-IR Services.
- (b) **(Upstream Independent Reviewer Functions paramount):** The D&C Parties and the Sub-Independent Reviewer acknowledge and agree that the Upstream Independent Reviewer Functions represent the paramount role of the Sub-Independent Reviewer, with the intent that:
- (1) if there is any ambiguity, conflict, discrepancy or inconsistency between any Upstream Independent Reviewer Functions and any Sub-IR Services, the Upstream Independent Reviewer Functions will prevail as between the parties to this Deed to the extent relating to the relevant ambiguity, conflict, discrepancy or inconsistency;
 - (2) neither the existence nor terms of a Sub-IR Service nor the exercise, failure to exercise or manner of exercise of a Sub-IR Service will be a precedent for, limit or otherwise affect the exercise of, or be construed in any way as an aid to interpretation of, an Upstream Independent Reviewer Function; and
 - (3) neither:
 - (A) the receipt by the Sub-Independent Reviewer of any notice, claim, plan, program, report, manual, model or any other document or information nor the giving of any notice, the making of any comment or any other act or omission by the Sub-Independent Reviewer arising in connection with a Sub-IR Service; nor
 - (B) the existence or performance of any function by, any consultation with, or provision of any notice, report, certificate, comment or any other document or information to, the Sub-Independent Reviewer by any other reviewer, certifier, engineer, adviser or other consultant engaged by any party other than the State,

will:

 - (C) give rise to any obligation on the part of the Sub-Independent Reviewer to exercise (or exercise in a particular manner) any Upstream Independent Reviewer Function;
 - (D) relieve Project Co from the giving of any notice, claim, plan, program, report, manual, model or any other document or information or the doing of any other thing in respect of an Upstream Independent Reviewer Function in order to give rise to any obligation on the part of the Sub-Independent Reviewer to exercise that Upstream Independent Reviewer Function; or

- (E) be a precedent for, limit or otherwise affect the exercise of, or be construed in any way as an aid to interpretation of, an Upstream Independent Reviewer Function.
- (c) Not used.
- (d) **(No Liability):** Subject to clause 4(e), to the extent permitted by Law, none of the State, its Associates or the Sub-Independent Reviewer will have any Liability, nor will the D&C Parties or their Associates be entitled to make, continue or enforce any Claim against, or seek, pursue or obtain an indemnity against or contribution to Liability from the State, any of its Associates or the Sub-Independent Reviewer, and Project Co indemnifies the State, its Associates and the Sub-Independent Reviewer in respect of any such Claim or Liability arising in connection with:
- (1) any ambiguity, conflict, discrepancy or inconsistency between any Upstream Independent Reviewer Functions and any Sub-IR Service; or
 - (2) subject to clause 9.8:
 - (A) the exercise, failure to exercise or manner of exercise of any Sub-IR Service;
 - (B) any act or omission of the Sub-Independent Reviewer arising in connection with the performance of any Sub-IR Service; or
 - (C) the giving of any notice, claim, plan, program, report, manual, model or any other document or information, or any other act or omission in respect of any Sub-IR Service or any Downstream Sub-Independent Reviewer Contract.
- (e) **(No exclusion of Liability):** For the avoidance of doubt and subject to clause 4(d) of the Independent Reviewer Deed of Appointment, clause 4(d) will not operate to exclude the Sub-Independent Reviewer's Liability with respect to:
- (1) a failure by the Sub-Independent Reviewer to comply with clause 4(g); or
 - (2) any matter for which the Sub-Independent Reviewer has provided an indemnity in accordance with clause 9.8.
- (f) **(Duty of care to D&C Parties):** The Sub-Independent Reviewer:
- (1) acknowledges that it owes a duty of care to the D&C Parties when performing the Sub-IR Services and the Upstream Independent Reviewer Functions under the Independent Reviewer Deed of Appointment; and
 - (2) undertakes and warrants in favour of the D&C Subcontractor that it will undertake and perform the Upstream Independent Reviewer Functions in accordance with the requirements of the Independent Reviewer Deed of Appointment.
- (g) **(Obligations when performing Sub-IR Services):** The Sub-Independent Reviewer warrants to the D&C Parties that, in performing the Sub-IR Services, it itself will, and will ensure that its subcontractors:
- (1) comply with all Laws, act honestly, diligently, reasonably and with the degree of professional care, knowledge, experience and skill which would be expected of an expert professional providing services similar to the Sub-IR Services for projects similar to the Project;

- (2) at all times, act within the time requirements for the performance of its obligations, both as:
 - (A) Independent Reviewer in accordance with the Independent Reviewer Deed of Appointment and the State Project Documents; and
 - (B) Sub-Independent Reviewer when performing any Sub-IR Service which has an equivalent Upstream Independent Reviewer Function;
 - (3) at all times act independently of the D&C Parties;
 - (4) ensure that the performance of any Sub-IR Service does not give rise to any (or the possibility of any) conflict of interest;
 - (5) ensure that it does not otherwise compromise its ability to perform the Upstream Independent Reviewer Functions in accordance with the Independent Reviewer Deed of Appointment;
 - (6) when performing the Sub-IR Services, provide to the State and the D&C Parties copies of all written communications and details of all non-written communications given under this Deed and consult with and provide all further information required by the State and the D&C Parties in connection with those communications;
 - (7) otherwise comply with any reasonable requirements of the State and the D&C Parties for the purposes of this warranty; and
 - (8) use and apply the same methodology that it uses and applies in performing the Upstream Independent Reviewer Functions.
- (h) **(Fee payable solely for Sub-IR Services):** The D&C Parties and the Sub-Independent Reviewer acknowledge and agree that the Upstream Fee payable in accordance with the Independent Reviewer Deed of Appointment will be payable solely for, and will relate solely to, performance of the Upstream Independent Reviewer Functions. The Upstream Fee will not, for the avoidance of doubt, be payable for or relate to any Sub-IR Service, which will be separately payable in accordance with this Deed.
- (i) **(Delegation of risks, liabilities, obligations and responsibilities):** Any express or implied delegation of risks, liabilities, obligations or responsibilities by the D&C Subcontractor and its respective Associates, whether in this Deed, any other Downstream Sub-Independent Reviewer Contract or otherwise, does not constitute approval of such delegation by Project Co or in any way limit or derogate from the scope of the D&C Subcontractor's obligations in accordance with the D&C Project Documents or affect in any way the obligations of the Sub-Independent Reviewer in accordance with the D&C Project Documents, the Independent Reviewer Deed of Appointment or this Deed. References to risks, liabilities, obligations or responsibilities assumed or accepted or acknowledgements given by any such entity or Associate in relation to any such delegation will be construed as assumed or accepted or given (as applicable) by the D&C Subcontractor in accordance with the D&C Project Documents.
- (j) **(No effect on Upstream Independent Reviewer Functions):** Reference in this Deed or any other D&C Project Document to the performance of a function by the Sub-Independent Reviewer, or the provision to or receipt by the Sub-Independent Reviewer of a document, certificate or notice from any party (in its capacity as Sub-Independent Reviewer), does not in any way affect the functions of the Independent Reviewer under the State Project Documents or the Independent Reviewer Deed of Appointment.

5 Performance by Sub-Independent Reviewer

5.1 Standard of care

The Sub-Independent Reviewer must and must ensure that its subcontractors exercise the standard of skill, care and diligence in the performance of the Sub-IR Services that would be expected of an expert professional provider of the Sub-IR Services experienced in providing services similar to the Sub-IR Services for projects similar to the Project.

5.2 Duty to act honestly, fairly and independently

The Sub-Independent Reviewer must and must ensure that its subcontractors, in performing the Sub-IR Services act honestly, professionally and independently of the D&C Parties and their respective Associates.

5.3 Time requirements

The Sub-Independent Reviewer must and must ensure that its subcontractors perform the Sub-IR Services:

- (a) **(Time limit specified):** within the time limits specified in this Deed and the D&C Project Documents; and
- (b) **(No time limit specified):** where no time limit is specified, within a reasonable time.

5.4 Conflict of interest

- (aa) **(Acknowledgment):** The D&C Parties acknowledge that the Sub-Independent Reviewer is the same entity as the Independent Reviewer appointed under the Independent Reviewer Deed of Appointment.
- (a) **(Warranty):** The Sub-Independent Reviewer warrants that:
 - (1) as at the date of this Deed, no conflict of interest arises out of its engagement by the D&C Parties under this Deed; and
 - (2) if, during the term of this Deed, it becomes aware of the existence or possibility of a conflict of interest, it will:
 - (A) immediately notify the D&C Parties of that conflict of interest or possible conflict of interest; and
 - (B) take such steps to avoid or mitigate the conflict of interest or possible conflict of interest as the D&C Parties may reasonably require.

5.5 Communications with D&C Parties

The Sub-Independent Reviewer must ensure that a copy of each written communication between the Sub-Independent Reviewer and a D&C Party which relates to the Project (D&C) or this Deed, is promptly given to each other D&C Party.

5.6 No authority to give directions or waive requirements

The Sub-Independent Reviewer has no authority to:

- (a) **(Directions)**: give directions to the D&C Parties other than as may (if at all) be expressly set out in this Deed, the D&C Project Documents or a Downstream Sub-Independent Reviewer Contract;
- (b) **(Waive or vary)**: waive or vary any requirements of the D&C Project Documents or a Downstream Sub-Independent Reviewer Contract; or
- (c) **(Discharge or release)**: discharge or release a party from any of its obligations under the D&C Project Documents.

5.7 Acknowledgement of reliance

(Reliance): the Sub-Independent Reviewer acknowledges that each D&C Party:

- (a) is entitled to, and will, rely on:
 - (1) the skill and expertise of the Sub-Independent Reviewer in the performance of the Sub-IR Services; and
 - (2) any certificate signed or given by the Sub-Independent Reviewer under the D&C Project Documents; and
- (b) may suffer Liability if the Sub-Independent Reviewer does not perform the Sub-IR Services in accordance with the requirements of this Deed.

[Note: The parties agree that any certificate referred to in this clause which is issued to a third party will be issued by the D&C Parties, and the D&C Parties will rely upon the Sub-Independent Reviewer's certificate to do so.]

5.8 Knowledge of D&C Parties' requirements

The Sub-Independent Reviewer warrants that:

- (a) **(Informed itself of documents relating to Sub-IR Services)**: it has informed itself of the requirements of the D&C Project Documents and the Downstream Sub-Independent Reviewer Contracts in so far as they relate to the Sub-IR Services;
- (b) **(Informed itself of other requirements)**: without limiting clause 5.8(a), it has informed itself of all time limits and other requirements for any function which the Sub-Independent Reviewer must perform in accordance with the D&C Project Documents and the Downstream Sub-Independent Reviewer Contracts;
- (c) **(Nature of work)**: it has informed itself of the nature of the work necessary for the performance of the Sub-IR Services and (to the maximum extent possible) the means of access to and facilities within the Site, including any restrictions on any such access; and
- (d) **(Sufficiency of the Fee)**: it has satisfied itself as to the sufficiency of the Fee and the Upstream Fee having regard to the costs which it will incur in complying with its obligations in accordance with this Deed.

5.9 Co-ordination and co-operation

The Sub-Independent Reviewer must and must ensure that its subcontractors, in performing the Sub-IR Services:

- (a) **(Co-operation)**: co-operate with the D&C Parties and their respective Associates;

- (b) **(Co-ordinate)**: co-ordinate the Sub-IR Services with the work to be performed by the D&C Parties and their respective Associates; and
- (c) **(Avoid unreasonable interference)**: avoid any unreasonable interference, disruption or delay to the work to be performed by the D&C Parties and their respective Associates.

5.10 Personnel

The Sub-Independent Reviewer must provide sufficient numbers of experienced and competent personnel to perform its obligations in accordance with this Deed within the timeframes specified in this Deed, the D&C Project Documents and the Downstream Sub-Independent Reviewer Contracts.

5.11 Key People

Without limiting its obligations in accordance with clause 5.10, the Sub-Independent Reviewer must:

- (a) **(Key People perform functions)**: ensure that the Key People perform the functions specified in the Contract Particulars and, unless reasonably directed otherwise by the D&C Parties, ensure that they are committed and available to the Project as required to fulfil the requirements of this Deed and the D&C Project Documents;
- (b) **(Removal of Key People)**: subject to clause 5.11(c), not remove the Key People without the prior consent of the D&C Parties (which must not be unreasonably withheld or delayed);
- (c) **(Best endeavours)**: use its best endeavours to ensure that none of the Key People resign or otherwise become unavailable to perform their functions as required by clause 5.11(a);
- (d) **(Unavailability of Key People)**: without limiting clause 5.11(f) and in relation to any Key People who resign or otherwise become or may become unavailable to perform their functions as required by clause 5.11(a) (whether temporarily or permanently), notify the D&C Parties accordingly including advising the D&C Parties of the way in which the Sub-Independent Reviewer proposes to address the unavailability of any such Key People;
- (e) **(Replacement of Key People)**: if any of the Key People are removed, die, become seriously ill or resign, subject to the approval of the D&C Parties, replace them as soon as practicable with persons of at least equivalent skill and experience; and
- (f) **(Availability of Key People)**: ensure that the Key People are available for consultation as any D&C Party may reasonably require from time to time.

5.12 Sub-Independent Reviewer's Representative

The Sub-Independent Reviewer:

- (a) **(Sub-Independent Reviewer's Representative)**: has nominated the Sub-Independent Reviewer's Representative as the person to act as its representative for the Sub-IR Services;
- (b) **(Nominate another person)**: may, from time to time nominate another person to act as the Sub-Independent Reviewer's Representative, subject to the D&C Parties' approval (in their sole and absolute discretion and with no obligation to

do so), in which case that person will be the relevant representative in lieu of the person named in the Contract Particulars; and

- (c) **(Authority to bind Sub-Independent Reviewer)**: confirms that the Sub-Independent Reviewer's Representative has the power and authority to bind the Sub-Independent Reviewer.

5.13 Subcontracting

The Sub-Independent Reviewer:

- (a) **(No subcontracting)**: may not subcontract the performance of any of its Sub-IR Services without the prior consent of each D&C Party (which may be conditional); and
- (b) **(Responsible for performance)**: remains responsible for the performance of the Sub-IR Services in accordance with this Deed, notwithstanding any such subcontracting.

6 Role of the D&C Parties

6.1 No interference or influence

- (a) **(No interference or influence)**: The D&C Parties must not interfere with, or attempt to influence, the Sub-Independent Reviewer or its subcontractors in the performance of any of the Sub-IR Services. A communication allowed by this Deed, the D&C Subcontract or a Downstream Sub-Independent Reviewer Contract will not, however, of itself constitute a breach of this clause 6.1(a).
- (b) **(D&C Parties may provide comments)**: Clause 6.1(a) will not prevent a D&C Party from providing written comments to the Sub-Independent Reviewer in respect of any aspect of the D&C Activities.

6.2 Provision of information

The D&C Parties must, as soon as practicable, ensure that the Sub-Independent Reviewer is provided with all information, assistance, documentation, models and particulars as the Sub-Independent Reviewer reasonably requests:

- (a) **(Sub-IR Services)**: relating to the Sub-IR Services;
- (b) **(Project Documents)**: required under the D&C Project Documents and the Downstream Sub-Independent Reviewer Contracts; and
- (c) **(Performance of Sub-IR Services)**: to enable it to perform the Sub-IR Services effectively and otherwise in accordance with the D&C Project Documents the Downstream Sub-Independent Reviewer Contracts and this Deed.

6.3 Access to records and systems

Without limiting the obligations of the D&C Parties under the D&C Project Documents or clause 6.2, the D&C Parties must provide the Sub-Independent Reviewer with such information and documentation (including all Design Documentation) and access to the D&C Parties' books, records and systems as the Sub-Independent Reviewer may reasonably require to enable it to perform the Sub-IR Services effectively and otherwise

in accordance with this Deed and the D&C Project Documents. Nothing in this clause 6.3 will be construed as a waiver of legal professional privilege.

6.4 Access to premises

The D&C Parties must ensure that the Sub-Independent Reviewer and its subcontractors are given such access to any place where any part of the Project Activities is being carried out (including transport within the Construction Site and where it is reasonably required, access to the premises of their respective Associates) and all necessary assistance as is required to enable the Sub-Independent Reviewer or its subcontractors to perform the Sub-IR Services effectively and in accordance with the requirements of this Deed, the D&C Project Documents and the Downstream Sub-Independent Reviewer Contracts.

6.5 Right to enter, inspect and test

- (a) **(Right of entry):** Subject to clause 6.5(b), the Sub-Independent Reviewer (or any person authorised by the Sub-Independent Reviewer) may, upon giving reasonable notice to the D&C Parties (except in the case of an emergency when no notice is required), enter the Site or the offices of the D&C Parties to:
- (1) inspect, observe or test any part of the Relevant Infrastructure or the Project Activities (whether or not such inspections, observations or tests are otherwise required in accordance with this Deed);
 - (2) exercise any right or carry out any obligation which the Sub-Independent Reviewer has in accordance with any D&C Project Document; or
 - (3) take such other action as the Sub-Independent Reviewer considers necessary to exercise its rights in accordance with this Deed and to discharge its duties, powers and obligations.
- (b) **(Conditions of access):** When entering the Site in accordance with clause 6.5(a), the Sub-Independent Reviewer must and must ensure any authorised person:
- (1) complies with the Site Access and Interface Protocols;
 - (2) does not unnecessarily interfere with the carrying out of the D&C Activities; and
 - (3) does not damage the Relevant Infrastructure or the Site.
- (c) **(Project Co to assist):** If requested by the Sub-Independent Reviewer, the D&C Parties must assist the Sub-Independent Reviewer in connection with any inspection or testing in accordance with this clause 6.5, including:
- (1) providing access to such part of the Relevant Infrastructure and all Project Co Materials and D&C Subcontractor Materials as may be required by the Sub-Independent Reviewer;
 - (2) preparing samples of materials used in connection with the Relevant Infrastructure as required by the Sub-Independent Reviewer; and
 - (3) forwarding the samples prepared in accordance with clause 6.5(c)(2) to the Sub-Independent Reviewer or such other place or person notified by the Sub-Independent Reviewer.

6.6 Meetings

The D&C Parties must:

- (a) **(Design meetings)**: allow the Sub-Independent Reviewer and, if applicable, its subcontractors to attend design meetings; and
- (b) **(Other meetings)**: attend such meetings with the Sub-Independent Reviewer and its subcontractors as the Sub-Independent Reviewer may reasonably request to enable it to perform the Sub-IR Services effectively and otherwise in accordance with this Deed.

6.7 Co-operation

The D&C Parties must and must ensure that their respective Associates co-operate with the Sub-Independent Reviewer and, if applicable, its subcontractors during the carrying out of the Sub-IR Services.

6.8 D&C Parties not liable

On no account will a D&C Party be liable to another D&C Party or its Associates for any act or omission by the Sub-Independent Reviewer or its subcontractors whether or not in accordance with or purportedly in accordance with a provision of this Deed, the D&C Project Documents or otherwise.

7 Reporting and meetings

7.1 Progress reports

The Sub-Independent Reviewer must submit a written report to each D&C Party:

- (a) **(Before meeting of Project Control Group)**: 2 Business Days before each meeting of the Project Control Group in accordance with clause 11.4 (*Project Control Group*) of the D&C Subcontract;
- (b) **(D&C Parties requires)**: in such form as the D&C Parties may reasonably require; and
- (c) **(Details)**: containing details of:
 - (1) the D&C Subcontractor's compliance (and details of any non-compliances) with the D&C Project Documents;
 - (2) Not used;
 - (3) the results of the review of the D&C Program in accordance with clause 18 (*D&C Program*) of the D&C Subcontract;
 - (4) the results of review of construction of the Works during the performance of the D&C Activities in accordance with clause 26.2A (*Sub-Independent Reviewer review of progress*) of the D&C Subcontract;
 - (5) any Management Plans and Maintenance Manuals, notices and other information and documentation and the results of any review of those documents or that information received from the D&C Parties in accordance with the D&C Project Documents;

- (6) the results of any review of the operation of the quality system developed and implemented by the D&C Parties and any review and assessment of the quality of the D&C Activities in accordance with the D&C Project Documents;
- (7) any matters or departures notified in accordance with clauses 26 (*Time*) or 25 (*Defects*) of the D&C Subcontract;
- (8) any notices given by a D&C Party to the Sub-Independent Reviewer and any notices issued by the Sub-Independent Reviewer;
- (9) any certificates issued or received by the Sub-Independent Reviewer in accordance with the Schedule of Certificates and Notices;
- (10) Not used;
- (11) progress of the D&C Subcontractor in relation to Provisional Acceptance, each Critical Interface Milestone, each Progress Milestone, and Final Acceptance (as applicable) including the status of any Defects and the rectification of any Defects;
- (12) the forecast cost of the Sub-IR Services (including for the current and following Quarter), taking into account current expenditure, resourcing and future forecasts;
- (13) notification of reports requested by one D&C Party in accordance with clause 7.4;
- (14) relevant details in relation to the performance of the Sub-IR Services; and
- (15) such other matters in respect of the Sub-IR Services as the D&C Parties (acting jointly) may reasonably request from time to time.

7.2 Project Control Group and Construction Control Group

- (a) **(Establishment):** The Project Control Group will be established in accordance with clause 11.4 (*Project Control Group*) of the Project Agreement.
- (b) **(Sub-Independent Reviewer's obligations):** The Sub-Independent Reviewer must if requested by Project Co to do so:
 - (1) during the D&C Phase, attend each meeting of the Project Control Group; and
 - (2) present and explain each progress report prepared in accordance with clause 7.1 at the relevant meeting.
- (c) **(Establishment):** The Construction Control Group will be established in accordance with clause 11.5A (*Construction Control Group*) of the D&C Subcontract.
- (d) **(Sub-Independent Reviewer's obligations):** The Sub-Independent Reviewer must if requested by Project Co to do so:
 - (1) during the D&C Phase, attend each meeting of the Construction Control Group; and
 - (2) present and explain each progress report prepared in accordance with clause 7.1 at the relevant meeting.

7.3 Meetings with D&C Parties

The Sub-Independent Reviewer must attend, and ensure that all relevant Key People and, if applicable, its subcontractors attend, meetings with the D&C Parties monthly during the Term or as otherwise agreed by the parties, to discuss the progress of the Sub-IR Services.

7.4 Reports requested by one D&C Party

- (a) **(Request by one D&C Party):** A D&C Party may request the Sub-Independent Reviewer to prepare an additional report which is not otherwise required by the D&C Project Documents.
- (b) **(Sub-Independent Reviewer to prepare report):** The Sub-Independent Reviewer must prepare the additional report as requested in accordance with clause 7.4(a), except where the Sub-Independent Reviewer is:
 - (1) of the reasonable opinion that it would be inappropriate to prepare such a report in light of the performance and nature of the Sub-IR Services; or
 - (2) not reasonably capable of preparing such a report.
- (c) **(Cost of reports):** The cost of additional reports prepared in accordance with this clause 7.4 will be paid to the Sub-Independent Reviewer in accordance with the Payment Schedule.

7.5 Questions relating to a report

- (a) **(D&C Parties may submit questions):** Without limiting clauses 6.1(b) or 7.2(b)(2), a D&C Party may submit questions or queries to the Sub-Independent Reviewer in relation to a report issued in accordance with clause 7.1.
- (b) **(Sub-Independent Reviewer to respond):** Subject to clause 5.5, the Sub-Independent Reviewer must, within a reasonable period having regard to the nature of the question or query, respond in writing to questions and queries submitted by a D&C Party in accordance with this clause 7.5.

8 Quality

8.1 Quality assurance system

The Sub-Independent Reviewer must:

- (a) **(Plan and develop):** plan, develop and implement a quality assurance system which:
 - (1) meets the requirements of the relevant AS/NZS ISO Standards as and when they are published;
 - (2) is consistent with the Monitoring Plan; and
 - (3) is consistent with the requirements for the Quality Management Plan; and
- (b) **(Provide D&C Party Representatives):** within 14 days of the date of this Deed, provide the D&C Parties' Representatives with details of the quality assurance

system which complies with clause 8.1(a) and which the Sub-Independent Reviewer proposes to adopt.

8.2 Audit

- (a) **(Sub-Independent Reviewer must allow audits):** The Sub-Independent Reviewer must:
- (1) allow any audit of its quality assurance system in accordance with this Deed by a D&C Party or a third party appointed by the D&C Parties at the request of a D&C Party and at the cost of that D&C Party; and
 - (2) fully co-operate with that third party in respect of the carrying out of the quality assurance audit.
- (b) **(Access to premises and information):** Without limiting clauses 6.3, 6.4, 6.5 or 8.2(a), the Sub-Independent Reviewer must, at all times:
- (1) give to the D&C Parties or the third party appointed by the D&C Parties (as the case may be) access to premises occupied by the Sub-Independent Reviewer or its subcontractors where the Sub-IR Services are being undertaken; and
 - (2) permit the D&C Parties or the third party appointed by the D&C Parties to inspect applicable information relevant to the quality assurance audit.

8.3 Quality assurance not to relieve Sub-Independent Reviewer

The Sub-Independent Reviewer will not be relieved of any responsibilities or obligations in accordance with this Deed as a result of:

- (a) **(Compliance):** compliance with the requirements of this clause 8; or
- (b) **(Acts or omissions of D&C Parties):** any acts or omissions of the D&C Parties with respect to the requirements of this clause 8, including:
- (1) any review of, comments upon, or notice in respect of, the quality assurance system or any Monitoring Plan; and
 - (2) any audit in accordance with clause 8.2.

8.4 Non-complying services

The Sub-Independent Reviewer must at its cost:

- (a) **(Re-perform services):** unless directed otherwise by the D&C Parties, re-perform all Sub-IR Services which have not been performed in accordance with this Deed; and
- (b) **(All such steps):** take all such steps as may be reasonably necessary to:
- (1) mitigate the effect on the D&C Parties of the failure to perform the Sub-IR Services in accordance with this Deed; and
 - (2) put the D&C Parties (as closely as possible) in the positions in which they would have been had the Sub-Independent Reviewer performed the Sub-IR Services in accordance with this Deed, including all such steps as may be reasonably directed by the D&C Parties.

9 Liability, insurance and indemnity

9.1 Limitation of Liability

- (a) Subject to clause 9.2 the Sub-Independent Reviewer's total Liability for all Claims which the D&C Parties or their respective Associates might have (whether jointly or severally) against the Sub-Independent Reviewer or the Independent Reviewer:
- (1) **(This Deed and the Independent Reviewer Deed of Appointment):** arising in connection with this Deed, the Independent Reviewer Deed of Appointment (Advanced Works) or the Independent Reviewer Deed;
 - (2) **(Sub-IR Services or Services):** arising in connection with the Sub-IR Services or the Services (as defined under the Independent Reviewer Deed of Appointment) or the Project; or
 - (3) **(Law):** otherwise at Law or in equity including:
 - (A) any statute (insofar as it is possible to exclude such Liability); or
 - (B) in tort for negligence or otherwise, including negligent misrepresentation,

in respect of any fact, matter or thing under, arising in connection with the Sub-IR Services, Services (as defined under the Independent Reviewer Deed of Appointment or the Independent Reviewer Deed of Appointment (Advanced Works)), the Project or any D&C Project Document will be limited in aggregate to the greater of:

 - (4) **(Specified amount):** [not disclosed], being the amount specified in Item 4 of the Independent Reviewer Deed of Appointment contract particulars; or
 - (5) **(Up to indemnity limit):** to the extent that the relevant Liability:
 - (A) is the subject of an indemnity under any policy of insurance required to be maintained by the Independent Reviewer under clause 9.5 of the Independent Reviewer Deed of Appointment; or
 - (B) would have been the subject of such indemnity in accordance with the terms of a policy of insurance required to be effected and maintained by the Independent Reviewer under clause 9.5 of the Independent Reviewer Deed of Appointment but for a breach by the Independent Reviewer under the Independent Reviewer Deed of Appointment or any such insurance policy,

the amount of the minimum limit of indemnity required under that policy of insurance as specified in item 9 of the Independent Reviewer Deed Contract Particulars,

up to the share of the Liability Cap under the Independent Reviewer Deed of Appointment reserved for Project Co, the D&C Subcontractor and their respective Associates (as adjusted in accordance with the Independent Reviewer Deed of Appointment).

9.2 Exclusions

The limitation of Liability in clause 9.1 does not apply to any Claims arising in connection with any of the following on the part of the Sub-Independent Reviewer, the Independent Reviewer or anyone for whom it is responsible:

- (a) **(Fraud)**: fraud;
- (b) **(Wilful misconduct)**: wilful misconduct, being any conduct, act or omission done or to be done by the Sub-Independent Reviewer, the Independent Reviewer or Associate of the Sub-Independent Reviewer or the Independent Reviewer which results from conscious, intentional or reckless disregard of any provision of this Deed or the Independent Reviewer Deed of Appointment or the rights or welfare of those who are or may be affected by that conduct, act or omission;
- (c) **(Gross negligence)**: gross negligence, being any negligent act or omission involving a serious disregard to an obvious and material risk and which the Sub-Independent Reviewer, the Independent Reviewer knew, or ought reasonably to have been aware, would result in substantial losses being incurred by a D&C Party or their respective Associates; or
- (d) **(Abandonment)**: abandonment of all or any material part of the Sub-IR Services or Services (as defined under the Independent Reviewer Deed of Appointment).

9.3 Insurances

- (a) **(Insurances)**: The parties acknowledge that under the Independent Reviewer Deed of Appointment, the Independent Reviewer must hold and maintain from the Commencement Date:
 - (1) project specific public liability insurance:
 - (A) endorsed to include the D&C Parties as named insureds in respect of any Liability a D&C Party incurs arising in connection with the acts or omissions of the Independent Reviewer and the Sub-Independent Reviewer;
 - (B) covering, without limitation, the Sub-Independent Reviewer's Liability in accordance with clause 9.8;
 - (C) with a limit of indemnity of not less than the amount specified in the Contract Particulars with respect to project specific public liability insurance;
 - (D) with a deductible of not more than the amount specified in the Contract Particulars with respect to project specific public liability insurance; and
 - (E) which otherwise complies with the requirements of this Deed and is on such minimum terms as set out in the Contract Particulars with respect to project specific public liability insurance;
 - (2) project specific professional indemnity insurance:
 - (A) with a limit of indemnity of not less than the amount specified in the Contract Particulars with respect to project specific professional indemnity insurance for any single claim in respect of legal Liability (including, without limitation, in connection with property damage, personal injury or death)

- arising in connection with a breach of professional duty under clause 5 or otherwise in connection with this Deed, whether owed in contract or otherwise, by reason of any negligent act, error or omission by the Sub-Independent Reviewer or its Associates;
- (B) with a deductible of not more than the amount specified in the Contract Particulars with respect to project specific professional indemnity insurance; and
 - (C) which otherwise complies with the requirements of this Deed and is on such minimum terms as set out in the Contract Particulars with respect to project specific professional indemnity insurance; and
- (3) workers' compensation insurance against any Liability, whether in accordance with statute or at common law, for the death of, or injury to, persons employed by the Sub-Independent Reviewer, or if the Sub-Independent Reviewer is comprised of more than one party, employed by each such party in carrying out the Sub-IR Services.
- (b) **(Requirements for Insurances):** The insurances referred to in clause 9.3(a) must be effected with Reputable Insurers and be on such terms as are approved by the D&C Parties (such approval not to be unreasonably withheld).
- (c) **(More than one Sub-Independent Reviewer):** If the Sub-Independent Reviewer comprises more than one person, the insurances referred to in clause 9.3(a) must (subject always to the overall limit of indemnity not being increased as a result):
- (1) insure each of those parties both jointly and severally; and
 - (2) include a cross liability clause whereby the insurer agrees:
 - (A) to waive all rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured; and
 - (B) that the term "insured" applies to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them.
- [not disclosed]

9.4 Notice of matter affecting insurance

The Sub-Independent Reviewer must notify the D&C Parties 30 days in advance of any event which could affect its insurance cover or if any policy is cancelled, avoided or allowed to lapse.

9.5 Provision of information

The Sub-Independent Reviewer must provide to the D&C Parties:

- (a) **(Certified copies):** certified copies of the insurance policies (where the D&C Parties are included as named insureds); and
- (b) **(Certificates of currency):** certificates of currency, with respect to the insurances effected and maintained by the Sub-Independent Reviewer for the

purposes of this clause 9 at any time on request by any D&C Party and upon the renewal of each policy.

9.6 Periods for insurance

The Sub-Independent Reviewer must ensure that:

- (a) **(Project specific professional indemnity insurance)**: the project specific professional indemnity insurance current for a period of 6 years after the cessation of the Sub-IR Services or the date of termination of this Deed, whichever is earlier;
- (b) **(Workers compensation insurance)**: the employers' Liability and workers compensation insurance current until it ceases to perform the Sub-IR Services;
- (c) **(Project specific public Liability insurance)**: the project specific public Liability insurance current until it ceases to perform the Sub-IR Services; and
- (d) **(Other insurances)**: any other insurances required under clause 9.3 current for such time as may reasonably be required by the D&C Parties.

9.7 Obligations unaffected by insurance

The requirement to effect and maintain insurance in this clause 9 does not limit the Liability or other obligations of the Sub-Independent Reviewer in accordance with this Deed.

9.8 Indemnity

- (a) **(Breach and negligent act or omission)**: Subject to clause 9.1 the Sub-Independent Reviewer is liable for and must indemnify each D&C Party against any Claim or loss brought against, suffered or incurred by a D&C Party in respect of:
 - (1) any breach of this Deed by the Sub-Independent Reviewer;
 - (2) any negligent act or omission of the Sub-Independent Reviewer or its subcontractors; or
 - (3) any of the following:
 - (A) the loss or damage to or of, or loss of use of (whether total or partial), any real or personal property (including property belonging to a D&C Party);
 - (B) any injury to, illness or death of, persons; or
 - (C) any third party Claims brought against a D&C Party (including any Claim brought by another D&C Party and any Claim or loss suffered or incurred by a D&C Party to another D&C Party),

arising in connection with any wrongful act or omission of the Sub-Independent Reviewer or any of its Associates in connection with the Project.
- (b) **(Reduction in Liability)**: The Sub-Independent Reviewer's Liability to a D&C Party under this clause 9.8 is reduced proportionally to the extent to which any action, proceeding, claim or demand arises out of any negligence or wrongful act or omission of that D&C Party or their Associates.

- (c) **(Survival)**: All obligations to indemnify under this Deed survive termination of this Deed.

9.9 Proportionate Liability

- (a) **(No reduction in insurance covers)**: Subject to clause 9.9(b), the Sub-Independent Reviewer must ensure that all insurances required under clause 9.3 do not reduce or exclude the insurance cover in connection with liabilities governed by Part IVAA of the *Wrongs Act 1958* (Vic) or any corresponding legislation of another Australian jurisdiction, by reason of the manner in which that legislation operates or does not operate, as the case may be, in light of any of the provisions of this Deed and the obligations undertaken by the Sub-Independent Reviewer in connection with it.
- (b) **(Reasonable endeavours)**: To the extent that the Insurance is not specific to the Project, the Sub-Independent Reviewer is only required to use its reasonable endeavours to procure insurance on the terms referred to in clause 9.9(a).

10 Payment

Subject to clause 7.4, Project Co (on behalf of the D&C Parties) must pay to the Sub-Independent Reviewer the Fee subject to and in accordance with the Payment Schedule.

11 Change to or suspension of Sub-IR Services and appointment of Substitute Reviewer

11.1 Change to Sub-IR Services

- (a) **(Notice of change to Sub-IR Services)**: The D&C Parties may, by joint notice to the Sub-Independent Reviewer, instruct the Sub-Independent Reviewer to carry out a change to the Sub-IR Services (including an addition or omission) which is within the general scope of this Deed. The Sub-Independent Reviewer must comply with any such instruction. For the avoidance of doubt, neither a Resource Adjustment nor a delay to the Date of Final Acceptance are of themselves a change to the Sub-IR Services, however:
- (1) a Modification Order issued by the State under the Project Agreement, other than a Modification Order issued under clause 38.1(b) of the Project Agreement; or
 - (2) a Modification Order under the D&C Subcontract arising out of a Modification Order described in clause 11.1(a)(1):
- which results in:
- (3) a Resource Adjustment; or
 - (4) a delay to the Date of Final Acceptance,
- (Relevant Modification)** will constitute a change to the Sub-IR Services for the purpose of clause 11.1(b).

- (b) **(Adjustment to Fee):** The Fee will be adjusted to reflect the change to the Sub-IR Services referred to in clause 11.1(a) in accordance with the Schedule of Rates. If the adjustment to the Fee for the change to the Sub-IR Services cannot be determined by reference to the Schedule of Rates, the adjustment will be a reasonable amount determined by Project Co.
- (c) **(Modification-related Fees):** The parties agree that, in respect of a Relevant Modification:
- (1) where that Relevant Modification leads to a change in the Sub-IR Services:
 - (A) the Sub-Independent Reviewer must provide Project Co with a Tax Invoice (as that term is defined in the GST Law) in connection with any increase in the Fee claimed by the Sub-Independent Reviewer and otherwise comply with payment claim requirements outlined in Schedule 3; and
 - (B) Project Co will pay the increase in the Fee directly arising out of that Relevant Modification promptly upon receipt of such amounts from the State under the Independent Reviewer Deed of Appointment;
 - (2) any claim for an increase in the Fee directly arising from a Relevant Modification must be provided on an “open book basis”;
 - (3) for the purposes of this clause 11.1, “open book basis” includes the Sub-Independent Reviewer providing a breakdown of the calculation of all relevant labour, equipment, materials, subcontract and other costs in a clear and transparent manner and other information reasonably requested by Project Co (or the State under the Independent Reviewer Deed of Appointment) including reasonably available source documents required to verify such calculation. If required by Project Co (or the State under the Independent Reviewer Deed of Appointment), the Sub-Independent Reviewer will make available the appropriate personnel to explain the basis on which a particular calculation has been made; and
 - (4) no amounts will be double counted.

11.2 Appointment of Substitute Reviewer

- (a) **(Appointment of Substitute Reviewer):** The Sub-Independent Reviewer acknowledges that the D&C Parties may appoint another reviewer (**Substitute Reviewer**) to carry out those Sub-IR Services which are omitted as referred to in clause 11.1(a).
- (b) **(Rights and powers):** The Substitute Reviewer will have all of the rights and powers of the Sub-Independent Reviewer under the D&C Project Documents in connection with those Sub-IR Services.
- (c) **(Decisions):** Any decision of a Substitute Reviewer so appointed will be treated (between the D&C Parties, but not as between the D&C Parties and the Sub-Independent Reviewer) as if it is a decision of the Sub-Independent Reviewer.
- (d) **(No responsibility for performance):** Without prejudice to any Claim which any D&C Party may have in respect of the performance of the Sub-Independent Reviewer, the Sub-Independent Reviewer is not responsible for the performance of the Substitute Reviewer.

11.3 Sub-Independent Reviewer must continue to perform

Notwithstanding a change to the Sub-IR Services or the appointment of a Substitute Reviewer, the Sub-Independent Reviewer must continue to perform its Sub-IR Services, as changed in accordance with clause 11.1, in accordance with this Deed.

11.4 Suspension of Sub-IR Services

- (a) **(Suspension of Sub-IR Services):** The D&C Parties may, by joint notice to the Sub-Independent Reviewer, instruct the Sub-Independent Reviewer to suspend and, after a suspension has been instructed, to recommence, the performance of any or all of the Sub-IR Services.
- (b) **(Payment during suspension):** During the period which the Sub-Independent Reviewer's performance of the Sub-IR Services are suspended in accordance with clause 11.4(a), the State (on behalf of the D&C Parties) will pay the Sub-Independent Reviewer:
 - (1) subject to the provisions of this Deed, for the Sub-IR Services that are not suspended (if any); and
 - (2) subject to the Sub-Independent Reviewer using all reasonable endeavours to mitigate, minimise or avoid the effects and consequences of the costs associated with the suspension of any or all of the Sub-IR Services, such unavoidable costs incurred arising in connection with the suspension of the Sub-IR Services or costs incurred by the Sub-Independent Reviewer in anticipation of their Sub-IR Services not being suspended.

11.5 Meeting of D&C Parties

- (a) **(D&C Party may call meeting):** If a D&C Party is of the opinion that the Sub-Independent Reviewer is not performing its duties in accordance with this Deed, that D&C Party may call a meeting of the D&C Parties' Representatives who must attend within 2 Business Days (or such other period as requested by that D&C Party) to decide an appropriate action to resolve the issue.
- (b) **(Resolutions to be considered):** Without limiting the scope of the D&C Parties' decision, the D&C Parties will consider at such a meeting whether to resolve the issue referred to in clause 11.5(a) by:
 - (1) requesting that the Sub-Independent Reviewer comply with this Deed;
 - (2) changing the Sub-IR Services of the Sub-Independent Reviewer in accordance with clause 11.1 and appointing a Substitute Reviewer in accordance with clause 11.2 in connection with the Sub-IR Services which the Sub-Independent Reviewer is not performing in accordance with this Deed;
 - (3) suspending the Sub-IR Services of the Sub-Independent Reviewer in accordance with clause 11.4; or
 - (4) terminating the appointment of the Sub-Independent Reviewer in accordance with clause 12.

12 Termination

12.1 Notice of default

If the Sub-Independent Reviewer is in breach of this Deed and the breach is, in the reasonable opinion of the D&C Parties, able to be remedied then the D&C Parties may jointly give notice to the Sub-Independent Reviewer:

- (a) specifying the breach; and
- (b) requiring that the breach be remedied within 7 days, or such later date as agreed by the D&C Parties.

12.2 Termination for breach

If:

- (a) **(Unable to remedy breach):** the Sub-Independent Reviewer is in breach of this Deed and the breach is not, in the reasonable opinion of the D&C Parties, able to be remedied; or
- (b) **(Breach not remedied):** the D&C Parties give a notice in accordance with clause 12.1 and the breach is not remedied within the period of time notified to the Sub-Independent Reviewer in accordance with clause 12.1(b),

then, subject to clause 12.6, the D&C Parties may immediately terminate the appointment of the Sub-Independent Reviewer by joint notice to the Sub-Independent Reviewer.

12.3 Termination for insolvency

If an Insolvency Event occurs in respect of the Sub-Independent Reviewer then, subject to clause 12.6, the D&C Parties may immediately terminate the appointment of the Sub-Independent Reviewer by joint notice to the Sub-Independent Reviewer, whether or not the Sub-Independent Reviewer is then in breach of this Deed.

12.4 Termination for convenience

Subject to clause 12.6, the D&C Parties may at any time for their convenience terminate the appointment of the Sub-Independent Reviewer upon 21 days joint notice to the Sub-Independent Reviewer, and appoint another person to act as the Sub-Independent Reviewer.

12.5 No automatic termination upon termination of any D&C Project Document

The appointment of the Sub-Independent Reviewer does not automatically terminate upon the termination of any of the D&C Project Documents.

12.6 Prior agreement on replacement

Prior to serving a notice in accordance with clause 12.2, 12.3 or 12.4, the D&C Parties must have agreed upon another person to act as the Sub-Independent Reviewer in accordance with clause 11.14 of the D&C Subcontract.

12.7 Sub-Independent Reviewer's rights upon termination for convenience

Where the appointment of the Sub-Independent Reviewer is terminated in accordance with clause 12.4:

- (a) **(payment in accordance with Payment Schedule)**: the Sub-Independent Reviewer is only entitled to be paid in accordance with the Payment Schedule the proportion of the Fee for Sub-IR Services performed up to the date of the termination; and
- (b) **(no entitlement to Claim)**: the Sub-Independent Reviewer will not otherwise be entitled to bring any Claim against the D&C Parties arising in connection with:
 - (1) the termination of this Deed; or
 - (2) the Project (D&C), the D&C Project Documents.

12.8 Termination without prejudice

Termination of the appointment of the Sub-Independent Reviewer will be without prejudice to any other rights which the D&C Parties may have in respect of any breach of the terms of this Deed which occurred prior to the date of termination.

13 Transition out

13.1 Transition Out Period

- (a) During the Transition Out Period, the Sub-Independent Reviewer must cooperate with the Independent Reviewer and provide any information, documents or assistance required by the Independent Reviewer to prepare the Transition Out Plan.
- (b) The Sub-Independent Reviewer must provide to the D&C Parties a copy of the Transition Out Plan, adding any items which the Sub-Independent Reviewer considers relevant to the Sub-Independent Reviewer Services.

13.2 Delivery of documents

Upon completion of the Sub-IR Services, or upon the termination of the appointment of the Sub-Independent Reviewer, the Sub-Independent Reviewer:

- (a) **(Books, records and documentation)**: must deliver up to the D&C Parties or to such other person as the D&C Parties may direct, all books, records, drawings, specifications and other documentation in the possession, custody or control of the Sub-Independent Reviewer or its subcontractors relating to the Sub-IR Services; and
- (b) **(Right to use documentation)**: acknowledges that the D&C Parties have the right to use all such books, records, drawings, specifications and other documents for the purposes of the Project.

13.3 Reasonable assistance

Prior to completion of the Sub-IR Services, or upon the termination of the appointment of the Sub-Independent Reviewer, the Sub-Independent Reviewer must provide full

assistance to the D&C Parties and any successor to the Sub-Independent Reviewer appointed in order to enable such successor to be in a position to perform the Sub-IR Services with effect from the appointment of such successor.

14 Intellectual property

The Sub-Independent Reviewer:

- (a) **(Grant)**: grants to the D&C Parties;
- (b) **(All things necessary)**: must do all things necessary to give effect to the grant to the D&C Parties of,

a world-wide, perpetual, irrevocable, non-exclusive, transferable, royalty-free licence (including the right to sub-license) to use, reproduce, modify, adapt, develop, communicate to the public or otherwise exploit the Sub-Independent Reviewer Material, for the purposes of:

- (c) **(Project)**: the Project (including where this Deed is terminated for any reason other than for convenience under clause 12.4 to complete any Sub-IR Services which have not been:
 - (1) carried out; or
 - (2) carried out in accordance with the applicable D&C Project Documents, as at the date of termination); and
- (d) **(Project Documents)**: the performance by the D&C Parties or their Associates of their obligations under the D&C Project Documents.

15 GST

- (a) **(GST exclusive amounts)**: Unless otherwise expressly stated, all amounts referred to in this Deed or any D&C Project Document are exclusive of GST.
- (b) **(GST payable by Supplier)**: If GST becomes payable on any Taxable Supply made by a party (**Supplier**) under or in connection with this Deed:
 - (1) any amount payable or consideration to be provided in accordance with any other provision of this Deed for that supply (**Agreed Amount**) is exclusive of GST;
 - (2) an additional amount will be payable by the party which is the recipient of the Taxable Supply (**Recipient**), equal to the amount of GST payable on that Taxable Supply as calculated by the Supplier in accordance with the GST Law, which will be payable at the same time and in the same manner as for the Agreed Amount; and
 - (3) the Supplier will provide a Tax Invoice to the Recipient in connection with that supply, either at the time expressly set out in any other provision of this Deed or no later than the time at which the Agreed Amount for that Taxable Supply is to be provided in accordance with this Deed. The Recipient is not obliged to pay any amount in accordance with this clause 15(b) unless and until a Tax Invoice is received by the Recipient in connection with the Taxable Supply except where the Recipient is required to issue the Tax Invoice.

- (c) **(Variation in GST payable):** If for any reason, the GST payable by the Supplier in connection with a supply it makes under or in connection with this Deed (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it received from the Recipient under clause 15(b) in connection with that supply, the Supplier will provide a refund or credit to, or will be entitled to receive from, the Recipient (as appropriate) the amount of this variation. Where an adjustment event occurs in relation to a supply and except where the Recipient is required to issue the Adjustment Note:
- (1) the Supplier will issue an Adjustment Note to the Recipient in connection with that supply within 14 days after becoming aware of that adjustment event occurring; and
 - (2) no additional amount will be payable by the Recipient unless and until an Adjustment Note is received by the Recipient.
- (d) **(GST ceasing to be payable):** No amount is payable by a party in accordance with clauses 15(b) or 15(c) to the extent that the GST to which the amount relates has ceased to be payable by or refundable to the Supplier by the Commissioner of Taxation under the GST Law.
- (e) **(Expert Determination):** If the Recipient is dissatisfied with any calculation to be made by the Supplier in accordance with this clause 15, the Recipient may, at its own expense and after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the President of the Institute of Chartered Accountants for expert determination, which will be final and binding on all parties (except in the case of manifest error). The expert will act as an expert and not as an arbitrator and must take into account the terms of this Deed, the matters required to be taken into account by the Supplier in accordance with this clause 15 and any other matter considered by the expert to be relevant to the determination. The parties release the expert from any Liability in acting as an expert, except in the case of fraud on the part of the expert.
- (f) **(Revenue net of GST):** Any reference in this Deed or any D&C Project Document to price, value, sales, revenue, profit or a similar amount (**Revenue**), is a reference to the GST exclusive component of that Revenue, unless the contrary intention is expressed.
- (g) **(Cost net of GST):** Any reference in this Deed or any D&C Project Document to cost, expense, Liability or other similar amount (**Cost**) of a party, is a reference to that Cost reduced by the Input Tax Credits to which the party is entitled in respect of such Cost, unless the contrary intention is expressed.
- (h) **(General obligation):** Each party agrees to do all things, including providing Tax Invoices and other documentation, that may be necessary or desirable to enable or assist the other party in determining its GST payable on any supply made by that other party in connection with this Deed, or any Input Tax Credits, adjustments or refunds in relation to any amount of GST paid or payable in connection with any supply made in connection with this Deed.
- (i) **(GST groups):** For the purposes of this Deed, a reference to GST payable on a Taxable Supply made by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member and a reference to an Input Tax Credit entitlement of a party includes any corresponding Input Tax Credit entitlement of the representative member of any GST group of which that party is a member.
- (j) **(D&C Subcontract to prevail):** If, but for this clause 15(j), a GST clause in another D&C Project Document would apply in connection with a Taxable

Supply to which this clause 15 also applies, then clause 59 (*Taxes*) of the D&C Subcontract will apply in connection with that supply and the GST clause in the other D&C Project Document will not apply.

- (k) **(Definitions):** In this clause 15 unless otherwise defined in this Deed, terms used have the meanings given to them in the GST Law.

16 Dispute Resolution

16.1 Disputes to be resolved in accordance with the D&C Subcontract

(Dispute between Project Co and the D&C Subcontractor): Any dispute between the D&C Parties arising in connection with this Deed must be resolved in accordance with the procedures set out in clauses 46 (*Dispute Resolution*) to 47 (*Arbitration*) of the D&C Subcontract.

16.2 Notice of dispute

If any dispute (other than a dispute which is to be referred for resolution in accordance with clause 16.1) arises between a D&C Party (on the one hand) and the Sub-Independent Reviewer (on the other hand) (**Disputing Parties**) in respect of any fact, matter or thing arising out of or in connection with the Sub-IR Services or this Deed (**Dispute**), any of the Disputing Parties may give notice to each of the other parties specifying:

- (a) the dispute or difference;
- (b) particulars of the reasons for being dissatisfied; and
- (c) the position which is believed to be correct.

16.3 Executive negotiation

The Dispute identified in the notice given under clause 16.2 is to be referred to the persons described in the Contract Particulars who must:

- (a) **(Good faith negotiations):** meet and undertake genuine and good faith negotiations with a view to resolving the Dispute; and
- (b) **(Procedure for resolution):** if they cannot resolve the Dispute, endeavour to agree upon a procedure to resolve the Dispute.

16.4 Referral to Mediation

If the persons described in the Contract Particulars cannot resolve, or agree upon a procedure to resolve, the Dispute within 10 Business Days after the date the notice is given under clause 16.2, or within such longer period of time as these persons may agree, the Dispute is to be submitted to mediation in accordance with clauses 16.5 to 16.8.

16.5 Mediation

Within 5 Business Days of the expiration of the period referred to in clause 16.4, the Dispute will be referred for mediation to:

- (a) **(Specified Person):** the person set out in the Contract Particulars;

- (b) **(Appointed Person)** if:
- (1) no such person is specified; or
 - (2) the mediator specified in the Contract Particulars or the person appointed in accordance with this clause 16.5(b):
 - (A) is unavailable;
 - (B) declines to act; or
 - (C) does not respond within 5 Business Days of a request for advice as to whether they are able to conduct the mediation,
- a person appointed by the Chair (or acting Chair, as the case may be) of the Resolution Institute, Australia.

16.6 Place of mediation

The place of mediation will be Melbourne.

16.7 Evidence not admissible

Evidence of anything said, documents presented to, admissions made or matters raised in the course of any mediation will be confidential to the Disputing Parties and the mediator and will not be admissible in any subsequent proceedings.

16.8 Costs

Failing any agreement to the contrary between the Disputing Parties, the costs of the mediation (including any fees charged by the mediator) will be shared equally between the Disputing Parties.

16.9 Reference to litigation

If after 15 Business Days of the Mediator nominated in accordance with clause 16.5 having accepted his or her appointment, the Dispute has not been resolved, then the Dispute may be referred to litigation.

16.10 Condition precedent to litigation

The D&C Parties and the Sub-Independent Reviewer must comply with the provisions of clauses 16.2 to 16.9 as a condition precedent to commencing court proceedings in respect of any Dispute to which clause 16.2 applies (other than proceedings for urgent or injunctive relief).

16.11 Sub-IR Services to continue

The Sub-Independent Reviewer must continue to perform the Sub-IR Services in accordance with this Deed notwithstanding the existence of a Dispute referred to in clause 16.2.

17 Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Deed:

- (a) **(In writing)**: must be in writing;
- (b) **(Addressed)**: must be addressed as set out below (or as otherwise notified by that party to each other party from time to time):

Project Co

Attention: [insert]

Address: [insert]

Email: [insert]

D&C Subcontractor

Attention: [insert]

Address: [insert]

Email: [insert]

Sub-Independent Reviewer

Attention: [not disclosed]

Address: [not disclosed]

Email: [not disclosed]

- (c) **(Signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(Form of delivery)**: must be delivered by hand or posted by prepaid post to the address, or emailed (in the form agreed by both parties) to the email address of the addressee set out in clause 17(b); and
- (e) **(Taken to be received)**: are taken to be received by the addressee at the address set out in clause 17(b):
 - (1) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
 - (2) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and
 - (3) in the case of email, the first to occur of:
 - (A) receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - (B) the time that the communication enters an information system which is under the control of the addressee; or

- (C) the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day.

18 Miscellaneous

18.1 Governing law and jurisdiction

- (a) **(Governing Law)**: This Deed is governed by, and must be construed according to, the Laws of Victoria, Australia.
- (b) **(Jurisdiction)**: Without limiting clause 16, each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Deed.

18.2 Entire agreement

To the extent permitted by Law and in relation to their subject matter, this Deed, the D&C Project Documents:

- (a) **(Entire understanding)**: embody the entire understanding of the parties, and constitute the entire terms agreed by the parties; and
- (b) **(Prior agreements)**: supersede any prior agreement of the parties.

18.3 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to each party) required by Law or reasonably requested by another party to give effect to this Deed.

18.4 Survival of certain provisions

- (a) **(Surviving clauses)**: All provisions of this Deed which, expressly or by implication from their nature, are intended to survive the rescission, termination or expiration of this Deed will survive the rescission, termination or expiration of this Deed, including any provision in connection with:
- (1) the D&C Party's rights to set-off and recover money;
 - (2) confidentiality or privacy;
 - (3) any obligation to make any records available to the State;
 - (4) any indemnity or financial security given in accordance with this Deed; or
 - (5) any right or obligation arising on termination of this Deed.
- (b) **(Interpretation)**: No provision of this Deed which is expressed to survive the termination of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the termination of this Deed.

- (c) **(Survival of rights and obligations)**: No right or obligation of any party will merge on completion of any transaction in accordance with this Deed. All rights and obligations in accordance with this Deed survive the execution and delivery of any transfer or other document which implements any transaction in accordance with this Deed.

18.5 Waiver

- (a) **(Writing)**: A waiver given by a party in accordance with this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver)**: A failure to, a delay in or the partial exercise or enforcement of a right provided by Law or in accordance with this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or in accordance with this Deed.
- (c) **(No waiver of another breach)**: No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

18.6 Consents, approvals and directions

A consent or approval required in accordance with this Deed from the D&C Parties jointly may be given or withheld, or may be given subject to any conditions, as the D&C Parties jointly, if the consent or approval is required from the D&C Parties jointly) think fit, unless this Deed expressly provides otherwise

18.7 Amendments

Except as otherwise expressly provided in this Deed, this Deed may only be varied by a deed executed by or on behalf of each party.

18.8 Expenses

Except as otherwise expressly provided in this Deed and the D&C Project Documents, each party must pay its own costs and expenses in connection with negotiating, preparing, executing, and performing this Deed.

18.9 Severance

If at any time a provision of this Deed or a D&C Project Document is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) **(Under this Deed)**: any other provision of this Deed, the relevant D&C Project Documents; or
- (b) **(Under another jurisdiction)**: that provision under the Law of any other jurisdiction.

18.10 Counterparts

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

delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same Deed.

18.11 Moratorium legislation

To the fullest extent permitted by Law, the provisions of all Laws which operate to lessen or affect in favour of the Sub-Independent Reviewer any obligations under this Deed, or to prejudicially affect the exercise by the D&C Parties of any right, power or remedy under this Deed or otherwise are expressly waived.

18.12 Proportionate liability

- (a) **(Excluded operation of Wrongs Act):** The operation of Part IVAA of the *Wrongs Act 1958* (Vic) is excluded in relation to all and any rights, obligations or liabilities of any party under this Deed whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) **(Rights, obligations and liabilities):** Without limiting clause 18.12(a), the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Deed and not otherwise, whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

18.13 Confidentiality

- (a) **(Obligation to keep confidential):** The Sub-Independent Reviewer must keep confidential details of this Deed, the D&C Project Documents and all information and documents provided to, or by, the Sub-Independent Reviewer relating to the Sub-IR Services and not disclose or use the information or documents except:
 - (1) to the D&C Parties;
 - (2) for the purposes of performing the Sub-IR Services;
 - (3) where required by Law or to obtain legal advice on this Deed; or
 - (4) with the prior consent of the D&C Parties.
- (b) **(Survival):** This obligation will survive completion of the Sub-IR Services or the termination of this Deed.
- (c) **(Permitted Disclosure):** The Sub-Independent Reviewer agrees that notwithstanding any other provision of this Deed:
 - (1) Not used
 - (2) Not used; and
 - (3) Project Co may disclose this Deed and any documents or information provided or received under or in relation to this Deed as permitted in accordance with clause 57.1 (*Confidential Information and disclosure by Project Co*) of the D&C Subcontract.

18.14 Assignment and security

(Assignment and security): No party to this Deed may assign, novate, transfer, mortgage, charge, encumber or otherwise deal with any of its rights or obligations under this Deed without the prior consent of each other party to this Deed.

18.15 No representation or reliance

- (a) **(No representation)**: Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Deed, except for representations or inducements expressly set out in this Deed.
- (b) **(No reliance)**: Each party acknowledges and confirms that it does not enter into this Deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Deed.

18.16 Indemnities

- (a) **(Continuing Liability)**: Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the parties.
- (b) **(Expense not necessary)**: It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Deed.

18.17 Set off

Project Co may deduct from any moneys due and payable to the Sub-Independent Reviewer under this Deed or otherwise at Law any moneys due and payable by the Sub-Independent Reviewer to Project Co.

Schedule 1

Contract Particulars

1 Sub-Independent Reviewer's Representative

Name: [not disclosed]
Attention: [not disclosed]
Address: [not disclosed]
Email: [not disclosed]

2 D&C Parties' Representatives

2.1 Project Co:

Name: **[insert]**
Attention: **[insert]**
Address: **[insert]**
Email: **[insert]**

2.2 D&C Subcontractor:

Name: **[insert]**
Attention: **[insert]**
Address: **[insert]**
Email: **[insert]**

3 Key People

| Name | Role |
|-----------------|-----------------|
| [Insert] | [Insert] |

4 Not used

5 Professional indemnity insurance

[not disclosed]

| Insurance element | Minimum Requirement |
|--------------------------|----------------------------|
| Insured | [not disclosed] |
| Sum insured | [not disclosed] |
| Scope of cover | [not disclosed] |
| Situation of risk | [not disclosed] |
| Maximum Deductibles | [not disclosed] |
| Additional Requirements | • [not disclosed] |
| Period of insurance | [not disclosed] |

6 Public Liability insurance

[not disclosed]

| Insurance element | Minimum Requirement |
|--------------------------|----------------------------|
| Insured | • [not disclosed] |
| Sum insured | [not disclosed] |
| Scope of cover: | [not disclosed] |

| Insurance element | Minimum Requirement |
|--------------------------|----------------------------|
| Situation of risk | [not disclosed] |
| Maximum Deductibles | [not disclosed] |
| Period of cover | [not disclosed] |

7 Dispute resolution

Project Co's Executive Negotiator: **[insert]**

D&C Subcontractor's Executive Negotiator: **[insert]**

Sub-Independent Reviewer's Executive Negotiator: **[insert]**

Mediator: To be agreed between the parties.

Schedule 2

Sub-IR Services

[Note: the scope of services will be updated and conformed against the final Project Agreement, D&C Subcontract and Independent Reviewer Deed of Appointment once finalised.]

1 General

The Sub-Independent Reviewer must:

- (a) **(Role)**: become familiar with the role (express or implied) under the D&C Project Documents and the Downstream Sub-Independent Reviewer Contracts and review information made available to the Sub-Independent Reviewer by the parties in order to become fully acquainted with the Project;
- (b) **(Discharge functions)**: discharge the functions which the D&C Project Documents and the Downstream Sub-Independent Reviewer Contracts contemplate will be discharged by the Sub-Independent Reviewer;
- (c) **(Attend meetings and report)**: attend meetings and report as required from time to time by the parties;
- (d) **[(Minimum surveillance)**: undertake, as a minimum, the surveillance of the Project set out or described in the Monitoring Plan;]
- (e) **(Hold Points and witness points)**: attend, as a minimum, the Hold Points and witness points set out or described in the Monitoring Plan;
- (f) **(Certificates)**: issue certificates in accordance with and in the form set out in the Schedule of Certificates and Notices (D&C); and
- (g) **(General)**: otherwise discharge the functions of the Sub-Independent Reviewer under the D&C Project Documents and the Downstream Sub-Independent Reviewer Contracts.

2 D&C Subcontract

The Sub-Independent Reviewer's functions under the D&C Subcontract include, but are not necessarily limited to, the functions set out in the table below. Section references are to the D&C Subcontract unless otherwise stated.

| Clause No. | Sub-Independent Reviewer Role |
|---|--|
| D&C Subcontract | |
| 1.1 Definition of "D&C Program" | Set, where reasonably required, requirements for the D&C Program. |
| 1.1 Definition of "Major Default (D&C)" | Notify Project Co that it has formed the view that the D&C Subcontractor will not achieve Provisional Acceptance within the period covered by the then current Liquidated Damages (Provisional Acceptance) Cap. |
| 1.1 Definition of "Minor Defect" | Determine if the D&C Subcontractor or the relevant Metro Tunnel Package Contractor has reasonable grounds for not promptly rectifying a Defect. |
| 2.16(a) No Project Co liability for review | <p>Except as otherwise expressly provided in the Sub-Independent Reviewer Deed of Appointment, Project Co and the Sub-Independent Reviewer do not owe a duty of care to the D&C Subcontractor to:</p> <ul style="list-style-type: none"> (a) review the D&C Subcontractor Material submitted by the D&C Subcontractor; or (b) inspect or review the D&C Activities, the Final Acceptance Works, the Relevant Infrastructure, the Metro Tunnel Interface Works, or the Ticketing Works for Defects, other errors or omissions or for compliance with the D&C Project Documents or any Laws. |
| 11.4 Project Control Group | If requested to, attend meetings of the Project Control Group. |
| 11.4(g) Project Control Group | <p>Receive from the D&C Subcontractor no later than 8 Business Days before each Project Control Group meeting the following reports updated and prepared in accordance with the PS&TR:</p> <ul style="list-style-type: none"> (a) prior to the Date of Final Acceptance, a Monthly D&C Phase Progress Report for the previous Month; and (b) from the Date of Final Acceptance to the expiry of the D&C Phase, a Monthly Performance Report for the previous Month. |
| 11.5A(i) Construction Control Group | If requested to, attend meetings of the Construction Control Group. |

11.7(d)
Other Project roles of Independent Reviewer

Determine the proportionate responsibility of Project Co or the D&C Subcontractor (as a result of their respective conduct) for any Higher IC Payment Proportion (PA).

11.11(b)
Appointment of Sub-Independent Reviewer

Act independently of the D&C Parties.

11.12(c)
Other Project roles and costs of Sub-Independent Reviewer

Assess whether the parties (as a result of their respective conduct) have a proportionate responsibility for the costs and expenses of the Sub-Independent Reviewer which differs from the position in clause 11.7(c) that Project Co will pay such costs and expenses and, where necessary, state the relevant proportions in a notice to the parties.

11.12(d)
Other Project roles of Sub-Independent Reviewer

If the Sub-Independent Reviewer prepares a report not otherwise required by the D&C Subcontract or the Sub-Independent Reviewer Deed of Appointment, provide a copy of that additional report to both parties, with the cost of preparing the report being borne by the party that requested it.

11.14
Replacement of Sub-Independent Reviewer

If a new Sub-Independent Reviewer is appointed in accordance with clause 11.14, abide by the exercise of any functions or decisions made by the previous Sub-Independent Reviewer.

14.1
Preparation of Management Plans

Review the Management Plans in accordance with the Review Procedures (D&C), and request any information that is reasonably required.

14.3(c)
Updates and revisions of Management Plans

If Project Co gives notice under clause 14.3(b), review the amended or updated Management Plan in accordance with the Review Procedures (D&C).

14.3(d)
Updates and revisions of Management Plans

Receive from the D&C Subcontractor notice of any proposed changes to a Management Plan and review the amended Management Plan in accordance with the Review Procedures (D&C).

16.3(a)
The State and Project Co's right to enter, inspect and test

If authorised by Project Co, the Sub-Independent Reviewer may during Business Hours or upon giving reasonable notice to Project Co (except in the case of an emergency when no notice is required) enter the Site or the offices of the D&C Subcontractor for the purposes set out in clause 16.3(a) of the D&C Subcontract.

| | |
|---|--|
| 16.3(c) The State and Project Co's right to enter, inspect and test | When entering the site in accordance with clause 16.3(a) or otherwise: (a) comply with the Site Access and Interface Protocols and any generally applicable safety and security requirements of the D&C Subcontractor; (b) not unnecessarily interfere with the carrying out of the D&C Activities and the Final Acceptance Works; and (c) not damage the Relevant Infrastructure or the Site. |
| 16.6 Schedule of Certificates and Notices (D&C) | Receive from the D&C Subcontractor the certificates required by the Schedule of Certificates and Notices (D&C) in accordance with the terms of the Schedule of Certificates and Notices (D&C). |
| 18.1(a) Submission of the D&C Program | Receive from the D&C Subcontractor the D&C Program for review in accordance with the Review Procedures (D&C). |
| 18.1(d) Submission of the D&C Program | In the event of a proposed or likely departure from the D&C Program, receive from the D&C Subcontractor a notice of any proposed or likely departure together with reasons for the departure. |
| 18.1(g) Submission of the D&C Program | Exercise discretion as to whether to use the D&C Program for any purpose, including assessing any Claim made by the D&C Subcontractor. |
| 18.2 Updates to the D&C Program | Receive from the D&C Subcontractor updates of the D&C Program (including all sub-programs and associated reports) for review in accordance with the Review Procedures at the following intervals: (a) within 8 Business Days of Financial Close; (b) at least monthly; (c) within 4 Business Days of the D&C Subcontractor being granted an extension of time, instructed to accelerate the D&C Activities or directed to carry out a Modification; and (d) within 4 Business Days of the D&C Subcontractor deciding to make any material changes to the information contained in the D&C Program. |
| 23.1(b) Testing and Commissioning | Receive from the D&C Subcontractor and review any updated Testing and Commissioning Management Plans with the intent of allowing the D&C Subcontractor the opportunity to recover any delays or reduce the likelihood of further delays. |

| | |
|------------------------------------|---|
| 23.2 Test Procedures | <p>For each Test:</p> <ul style="list-style-type: none"> (a) receive from the D&C Subcontractor the relevant Test Procedure at least 65 Business Days (or 35 Business Days for revised Test Procedures) prior to the proposed date of the Test; (b) within 28 Business Days (or 14 Business Days for revised Test Procedures) of receiving the Test Procedure, review the Test Procedure; and (c) certify (strictly in accordance with any certification of the Independent Reviewer) the Test Procedure by providing to the D&C Subcontractor and Project Co a certificate in the form set out in the Schedule of Certificates and Notices (D&C). |
| 23.3(a) Notice of Tests | Receive from the D&C Subcontractor at least 12 Business Days' notice of the date, time and place for the conduct of each Test. |
| 23.3(b) Notice of Tests | Receive from the D&C Subcontractor notice of the postponement of any Test. |
| 23.3(c) Notice of Tests | If the D&C Subcontractor decides to postpone a Test, receive from the D&C Subcontractor at least 6 Business Days' notice of the rescheduled date, time and place for the conduct of that Test. |
| 23.3(d) Notice of Tests | <p>Receive from the D&C Subcontractor:</p> <ul style="list-style-type: none"> (a) an extract from the D&C Program that specifies the date, time and place for the conduct of each Test to be conducted for the following 25 Business Day period; and (b) an updated extract from the D&C Program each week during the period that the D&C Subcontractor is carrying out Tests. |
| 23.4(b) Conduct of Tests | Approve amendments to a Test Procedure proposed by the D&C Subcontractor during the conduct of the relevant Test to account for any circumstances that arise during the Test. |
| 23.4(c) Conduct of Tests | Attend and witness the conduct of Tests. |
| 23.5(a) Test Reports | Receive from Project Co, within 8 Business Days of the D&C Subcontractor carrying out a Test, a Test Report. |

| | |
|---|--|
| 23.5(c) Test Reports | <p>Within 24 Business Days of receiving a Test Report and strictly in accordance with any direction of the Independent Reviewer:</p> <ul style="list-style-type: none"> (a) certify that the Test has been passed in accordance with the Test Procedure by issuing a certificate in the form set out in the Schedule of Certificates and Notices (D&C); or (b) notify the D&C Subcontractor and Project Co that the Test has been failed or that the Test Report does not comply with the requirements of the D&C Subcontract. |
| 23.7 Non-compliant Test Report | Receive from the D&C Subcontractor re-submitted Test Reports. |
| 24.2 Notice before Provisional Acceptance | <p>Receive from the D&C Subcontractor notice 62 Business Days and 22 Business Days prior to the date upon which it expects to achieve Provisional Acceptance.</p> <p>If, after giving notice, the date on which the D&C Subcontractor expects to achieve Provisional Acceptance changes, receive promptly from the D&C Subcontractor notice of the revised date.</p> |
| 25.1(b) Defects | Receive from the D&C Subcontractor notice of any Defects identified by the D&C Subcontractor in accordance with the procedure for notification of Defects. |
| 25.1(c) Defects | <p>If the Sub-Independent Reviewer believes there is a Defect at any time during the relevant Defects Term, issue to the D&C Subcontractor a notice specifying:</p> <ul style="list-style-type: none"> (a) that Defect; and (b) the reasonable period of time within which the D&C Subcontractor must rectify that Defect. |
| 25.1(d) Defects | Receive from the D&C Subcontractor notice that a notice given in accordance with clause 25.1(c) or a determination made in accordance with clause 24.4(d) and disputed by the D&C Subcontractor under clause 25.1(d)(3) is being referred for resolution under the D&C Subcontract. |
| 25.1(h) Defects | Receive from the D&C Subcontractor notice that a Defect has been rectified promptly after its rectification by the D&C Subcontractor. |
| 25.1(i) Defects | Receive from the State notice under clause 25.1(i)(3) and, within 12 Business Days of receiving Project Co's notice, issue to Project Co and the D&C Subcontractor a notice setting out the determined cost necessary to rectify the relevant Defect. |

| | |
|--|---|
| 25.2(a)(2)(B) Defects Liability Periods for Returned Assets | Assess whether Defects in a Returned Asset: (a) existing at the date referred to in clause 25.2(a)(2)(A); (b) notified by the D&C Subcontractor pursuant to clause 25.1(b); or (c) notified by Project Co or the Sub-Independent Reviewer pursuant to clause 25.1(c) prior to the date referred to in clause 25.2(a)(2)(A), have been rectified. |
| 26.2A(a) Sub-Independent Reviewer's review of progress | Notify Project Co and the D&C Subcontractor of the Sub-Independent Reviewer's opinion on: (a) when the D&C Subcontractor is reasonably likely to achieve Provisional Acceptance; and (b) if Provisional Acceptance will not be achieved within the period covered by the then current Liquidated Damages (Provisional Acceptance) Cap, within [2] Business Days after receipt of a notice from the Independent Reviewer under clause 26.2(i)(2) or clause 26.2(i)(3) of the Project Agreement. |
| 26.3 Notification of delay to Acceptance | Receive from the D&C Subcontractor notice promptly after it becomes aware of any matter which will, or is likely to, give rise to a delay in achieving Provisional Acceptance, a Critical Interface Milestone, or a Progress Milestone Date. |
| 26.6 Change Notice | Receive from the D&C Subcontractor any Change Notice submitted in accordance with clause 26.6. |
| 26.7 Conditions precedent to extension | Determine whether the D&C Subcontractor has demonstrated that: (a) it has been, or will be, delayed in achieving the Date for Provisional Acceptance, the relevant Critical Interface Milestone Date, or relevant Progress Milestone Date by an Extension Event; and (b) the Extension Event has caused or will cause activities on the critical path contained in the then current D&C Program to be delayed. |
| 26.8(a) Extension of Time determined by Sub-Independent Reviewer | Receive from Project Co any evidence it considers relevant to the Sub-Independent Reviewer's consideration of the D&C Subcontractor's Change Notice under clause 26.6. |

26.8(b)
Extension of Time determined by Sub-Independent Reviewer

If the conditions precedent in clause 26.7 have been satisfied, determine a reasonable period by which to extend the Date for Provisional Acceptance, any relevant Critical Interface Milestone Date, and relevant Progress Milestone Date (which, except in respect of Construction Extension Events, must be strictly in accordance with the Independent Reviewer's determination under clause 26.8 of the Project Agreement) and, in doing so, take into account all relevant evidence presented by the parties and not be bound by the D&C Program.

31.1(b)
Intervening Events

Receive from the D&C Subcontractor a Change Notice submitted in accordance with clause 31.1(b).

44.5(b)
Major Default not capable of remedy or cure

Receive from the Project Co notice pursuant to clause 44.5(a) and submit to Project Co within 8 Business Days of the date of the notice any comments or other information the Sub-Independent Reviewer considers may be relevant to Project Co forming or not forming a view in accordance clause 44.5(a).

60.2
Revised LIDP

Notify the D&C Subcontractor that it is not satisfied that:

- (a) the D&C Subcontractor has met the Local Content Requirements; or
- (b) the D&C Subcontractor will be able to meet the aggregate Local Content Requirements,

and receive from the D&C Subcontractor a revised LIDP for review in accordance with the Review Procedures (D&C).

61.6
Revised Major Projects Skills Guarantee Compliance Plan

Review any revised Compliance Plans in accordance with the Review Procedures (D&C).

Schedule 4 (Change Compensation Principles)

5.1(c)
Change Notice and State Response

Receive from the D&C Subcontractor any Change Notice submitted in respect of a Change Compensation Event.

6.1(a)
Project Co to issue Change Response

Respond to a Change Notice received pursuant to section 5.1(c) in accordance with section 6.

Schedule 7 (Review Procedures)

1.1(a)
Submission

Receive from the D&C Subcontractor any document required to be submitted under a D&C Project Document for review in accordance with the Review Procedures (D&C).

4.1
Response to Submitted Documents

Respond to a Submitted Document in accordance with section 4.

Schedule 3

Payment Schedule

1 Payment of the Fee for Sub-IR Services

- (a) **(Project Co responsible):** Subject to section 1(b) of this Schedule 3, and without limiting any provision of the D&C Subcontract, Project Co will be solely and exclusively liable for making any payments due to the Sub-Independent Reviewer under this Deed.
- (b) **(Payment for special reports):** Without limiting any provision of the D&C Subcontract, the relevant D&C Party requesting the preparation of an additional report under clause 7.4 will be solely responsible for payment to the Sub-Independent Reviewer for the costs associated with the preparation of such additional report.

2 Payment claim

- (a) **(Sub-Independent Reviewer to prepare and submit):** Subject to section 5, the Sub-Independent Reviewer must submit to Project Co (with a copy to the D&C Subcontractor) a claim for payment on account of the Fee (not including an additional report required under clause 7.4):
 - (1) for the Sub-IR Services performed in accordance with this Deed during a Quarter, at the end of the Quarter; and
 - (2) calculated in and otherwise in accordance with this Payment Schedule.
- (b) **(Content):** Each payment claim prepared in accordance with section 2(a) must set out:
 - (1) a breakdown of the Sub-IR Services, including details of personnel days worked for each resource (in a form and including such information and supporting documentation) as the D&C Parties may require from time to time) actually carried out during the relevant Quarter;
 - (2) details of approved disbursements actually incurred during the relevant Quarter (including such information and supporting documentation as the D&C Parties may require from time to time);
 - (3) the part of the Fee then payable;
 - (4) if:
 - (A) the Independent Reviewer determines under clause 11.7(d) (*Proportionate payment of costs*) of the Project Agreement, that Project Co is required to pay a higher proportion for the

costs and expenses of the Independent Reviewer which differs from the proportions stated in clause 11.7(c) (*Payment of costs*) of the Project Agreement; or

- (B) the Sub-Independent Reviewer considers acting reasonably, for the purposes of clause 11.12(c) (*Proportionate payment of costs*) of the D&C Subcontract, that the D&C Parties (as a result of their respective conduct) have a proportionate responsibility for the costs and expenses of the Sub-Independent Reviewer which differs from the position in clause 11.7(c) that Project Co will pay such costs and expenses,

the Sub-Independent Reviewer's assessment of the relevant proportions as between Project Co and the D&C Subcontractor. The parties acknowledge and agree that the Sub-Independent Reviewer's assessment of the parties' respective conduct for the purposes of clause 11.7(d) (*Proportionate payment of costs*) or 11.12(c) (*Proportionate payment of costs*) of the D&C Subcontract will be limited to circumstances where a party fails to comply with its obligations under clause 6 of this Deed or acts unreasonably and that conduct has or will cause an increase in the Fee under this Deed which should be reasonably borne by the parties at the proportion determined by the Sub-Independent Reviewer; and

- (5) the amounts previously claimed by the Sub-Independent Reviewer in relation to the Fee,

and otherwise be in a form and substance agreed with the D&C Parties.

- (c) **(Payment Claims for special reports):** Where an additional report has been requested by a D&C Party under clause 7.4, the Sub-Independent Reviewer must submit a separate payment claim to the D&C Party (as applicable) who made the request in respect of the preparation of the report.

3 Payment

- (a) **(Payment of Fee):** Subject to sections 3(b), 4(b) and 5, within 20 Business Days of receipt of a payment claim in accordance with section 2(a), Project Co must pay the Sub-Independent Reviewer the part of the Fee which Project Co believes represents the value of the Sub-IR Services performed by the Sub-Independent Reviewer during the period for which the payment claim is submitted.
- (b) **(Payment for special reports):** Within 20 Business Days of receipt of a payment claim under section 2(c), the relevant D&C Party must pay the Sub-Independent Reviewer the amount which it believes represents the value of the Sub-IR Services performed by the Sub-Independent Reviewer relating to the preparation of the additional report during the period for which the payment claim is submitted.

4 Payment of wages by Sub-Independent Reviewer

- (a) **(Signed statement required):** Before a payment is made to the Sub-Independent Reviewer under section 3, the relevant D&C Party may require the Sub-Independent Reviewer to give the relevant D&C Party a statement signed by the Sub-Independent Reviewer stating that no wages or payments to any sub-contractors of the Sub-Independent Reviewer are due and owing by the Sub-Independent Reviewer in respect of the Sub-IR Services at the time of payment.
- (b) **(Possible to withhold money):** If, within 2 Business Days after the request, the Sub-Independent Reviewer fails to provide the statement, then the party responsible for the payment of the relevant payment claim may withhold payment of moneys due to the Sub-Independent Reviewer until the statement is received.

5 Insurance

Before a payment claim can be made by the Sub-Independent Reviewer under section 2(a), the Sub-Independent Reviewer must have effected the insurance required by clause 9.3 and provided evidence of this to the D&C Parties. If a payment claim is purported to be submitted by the Sub-Independent Reviewer prior to effecting such insurance and providing such evidence, neither of the D&C Parties will be liable to make any payment in respect of such claim.

6 Books of account

The Sub-Independent Reviewer must, for the purposes of this Deed:

- (a) institute and maintain all proper books of account and operating records necessary to afford a correct and complete record and explanation of all payment claims (including relevant supporting documentation) made by the Sub-Independent Reviewer under this Deed; and
- (b) permit the D&C Parties' representatives (and any persons authorised by either of them) access at all reasonable times to all relevant books of account and operating records necessary to establish that all payment claims made by the Sub-Independent Reviewer and all moneys paid to the Sub-Independent Reviewer under the terms of this Deed are or have been properly accounted for.

7 Notification of disputed amounts

If Project Co disputes any amount which the Sub-Independent Reviewer has claimed then Project Co must notify the Sub-Independent Reviewer of its reasons for disputing that amount within 20 Business Days after receipt of the relevant payment claim.

8 The Fee

(a) The Fee payable is set out below:

| Description / Quarter end | Amount |
|----------------------------------|-----------------|
| Mar-18 | [not disclosed] |
| Jun-18 | [not disclosed] |
| Sep-18 | [not disclosed] |
| Dec-18 | [not disclosed] |
| Mar-19 | [not disclosed] |
| Jun-19 | [not disclosed] |
| Sep-19 | [not disclosed] |
| Dec-19 | [not disclosed] |
| Mar-20 | [not disclosed] |
| Jun-20 | [not disclosed] |
| Sep-20 | [not disclosed] |
| Dec-20 | [not disclosed] |
| Mar-21 | [not disclosed] |
| Jun-21 | [not disclosed] |
| Sep-21 | [not disclosed] |

| Description / Quarter end | Amount |
|----------------------------------|-----------------|
| Dec-21 | [not disclosed] |
| Mar-22 | [not disclosed] |
| Jun-22 | [not disclosed] |
| Sep-22 | [not disclosed] |
| Dec-22 | [not disclosed] |
| Mar-23 | [not disclosed] |
| Jun-23 | [not disclosed] |
| Sep-23 | [not disclosed] |
| Dec-23 | [not disclosed] |
| Mar-24 | [not disclosed] |
| Jun-24 | [not disclosed] |
| Sep-24 | [not disclosed] |
| Dec-24 | [not disclosed] |
| Mar-25 | [not disclosed] |
| Jun-25 | [not disclosed] |
| Sep-25 | [not disclosed] |

| Description / Quarter end | Amount |
|---------------------------|-----------------|
| Dec-25 | [not disclosed] |
| Mar-26 | [not disclosed] |
| Jun-26 | [not disclosed] |
| Sep-26 | [not disclosed] |
| Dec-26 | [not disclosed] |
| Mar-27 | [not disclosed] |
| Jun-27 | [not disclosed] |
| Sep-27 | [not disclosed] |
| Dec-27 | [not disclosed] |
| Total | [not disclosed] |

- (b) **(Inclusions):** Except as otherwise provided, the Fee are inclusive of labour, material, disbursements and expenses, overhead, supervision, management of subcontracts, profit and insurance (including the insurances required under clauses 9.3(a)(1) and 9.3(a)(2) and including premiums, brokerage fees, stamp duty, and exchange rate fees (if applicable) in relation to such insurances).

9 Schedule of Rates

| Key People | Grade | Daily Rate (\$) |
|-----------------|----------------------|-----------------|
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 3 | [not disclosed] |

| | | |
|-----------------|------------------------|-----------------|
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 3 | [not disclosed] |
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 3 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Industry Director 1 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 3 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Associate Director 1 | [not disclosed] |
| [not disclosed] | Principal Professional | [not disclosed] |

| | | |
|-----------------|------------------------|-----------------|
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 3 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 3 | [not disclosed] |
| [not disclosed] | Principal Professional | [not disclosed] |
| [not disclosed] | Associate Director 1 | [not disclosed] |
| [not disclosed] | Associate Director 1 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Principal Professional | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Principal Professional | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 2 | [not disclosed] |

| | | |
|-----------------|------------------------|-----------------|
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Principal Professional | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Industry Director 3 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 3 | [not disclosed] |
| [not disclosed] | Industry Director 1 | [not disclosed] |
| [not disclosed] | Industry Director 1 | [not disclosed] |
| [not disclosed] | Industry Director 1 | [not disclosed] |
| [not disclosed] | Technical Director 3 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |

| | | |
|-----------------|----------------------|-----------------|
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Senior Professional | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Industry Director 1 | [not disclosed] |
| [not disclosed] | Industry Director 1 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 3 | [not disclosed] |

| | | |
|-----------------|------------------------|-----------------|
| [not disclosed] | Technical Director 3 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Industry Director 1 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Associate Director 1 | [not disclosed] |
| [not disclosed] | Industry Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| [not disclosed] | Principal Professional | [not disclosed] |
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 2 | [not disclosed] |
| [not disclosed] | Technical Director 3 | [not disclosed] |
| [not disclosed] | Technical Director 1 | [not disclosed] |
| [not disclosed] | Industry Director 1 | [not disclosed] |

| | | |
|--------------------------|----------------------|------------------------|
| [not disclosed] | Industry Director 1 | [not disclosed] |
| [not disclosed] | Associate Director 2 | [not disclosed] |
| General Personnel | | Daily Rate (\$) |
| Graduate | | [not disclosed] |
| Professional | | [not disclosed] |
| Senior Professional | | [not disclosed] |
| Principal Professional | | [not disclosed] |
| Associate Director 2 | | [not disclosed] |
| Associate Director 1 | | [not disclosed] |
| Technical Director 3 | | [not disclosed] |
| Technical Director 2 | | [not disclosed] |
| Technical Director 1 | | [not disclosed] |
| Industry Director 3 | | [not disclosed] |
| Industry Director 2 | | [not disclosed] |
| Industry Director 1 | | [not disclosed] |

Except as otherwise provided, the rates and prices set out in the Schedule of Rates are inclusive of overhead, supervision, management of subcontracts and profit.

10 Disbursements

The Fee includes the cost of all disbursements which may be incurred in the performance of the Sub-IR Services.

11 Adjustments to payments

11.1 Fee cap

Subject to clause 11.1(b), the Fee is a fixed amount and is not subject to adjustment and the Sub-Independent Reviewer will not be entitled to make any Claim in connection with a delay to Final Acceptance

11.2 Not used

11.3 No indexation

For the avoidance of doubt, no amount contained in this Deed, including sections 8 and 9 of this Schedule 3 is subject to any form of adjustment or indexation whatsoever.

11.4 Not used

11.5 Resource Adjustment Order

The D&C Parties may direct the Sub-Independent Reviewer to carry out a Resource Adjustment by issuing a document entitled 'Resource Adjustment Order' in accordance with this section. The parties will act reasonably in issuing such directions, including where the progress of the Project is different to that anticipated at the time of entering this Deed.

11.6 Notice of resource evaluation

- (a) No fewer than 20 Business Days before the start of every Quarter, the Sub-Independent Reviewer must provide the D&C Parties with a notice setting out:
- (1) its evaluation of the resource levels (in a form set out in Schedule 6 or as otherwise agreed by the D&C Parties) required for the upcoming Quarter having regard to the actual nature and extent of the Sub-IR Services to be carried out by the Sub-Independent Reviewer during the relevant Quarter (having regard to the minimum resourcing estimates contained in the Initial Monitoring Plan); and
 - (2) any suggested re-profiling of resources for the Sub-IR Services over the expected balance of the Term having regard to its evaluation of the resource levels required to complete the Sub-IR Services and the amount by which the Fee should be adjusted as a result of the Resource Adjustment (if any).
- (b) The Sub-Independent Reviewer acknowledges that any suggested re-profiling of resources and adjustment to the Fee for the Quarter as a result of the Resource Adjustment:
- (1) may adjust the Fee over the then expected balance of the Term; and

- (2) must not exceed the Fee set out in sections 8(a) at any time.

11.7 Quarterly meeting

No fewer than 10 Business Days before the start of every Quarter, the Sub-Independent Reviewer must meet with the D&C Parties to:

- (a) evaluate the resource levels and disbursements required for the Quarter having regard to the actual nature and extent of the Sub-IR Services to be carried out by the Sub-Independent Reviewer in that Quarter; and
- (b) discuss:
 - (1) the possibility of effecting a Resource Adjustment in that Quarter; and
 - (2) the Sub-Independent Reviewer's estimate of the amount by which the Fee should be adjusted as a result of any such Resource Adjustment.

11.8 Resource adjustment and its approval

If the D&C Parties' and the Sub-Independent Reviewer agree (acting reasonably) on a Resource Adjustment and the adjustment in the Fee before the start of the relevant Quarter, then:

- (a) the D&C Parties will issue a Resource Adjustment Order;
- (b) subject to section 11.6(b), the Fee will be adjusted by the agreed amount outlined in the Resource Adjustment Order; and
- (c) the Sub-Independent Reviewer must promptly effect the Resource Adjustment.

12 GST

All lump sums, rates and amounts in this Payment Schedule do not include GST.

Schedule 4

Initial Monitoring Plan

Refer separate document.

Schedule 5

Requirements for Monitoring Plan

- (a) Update contents and clause number references throughout the Monitoring Plan and its annexures to reflect the terms of the executed versions of this Deed, the Project Agreement, D&C Subcontract and the PS&TR and all relevant schedules and annexures to those documents.
- (b) Update all relevant contents, processes and procedures to ensure coordination with the terms of the Independent Reviewer Deed of Appointment.
- (c) Update, incorporate and attach the Review Process Procedures and Internal Administration Procedures set out in Annexure B to the Monitoring Plan.
- (d) Comprehensive and detailed methodologies to be articulated for the performance of the Sub-IR Services.
- (e) Timeframes for reports and the provision of deliverables contemplated in the Monitoring Plan to be co-ordinated across the D&C Project Documents for the Project as agreed.
- (f) A resource allocation indicating the level, nature and timing of resources which are required from the Sub-Independent Reviewer to perform the Sub-IR Services.
- (g) Any other requirements reasonably requested by the D&C Parties.



Schedule 6

Resource Allocation proforma

Signing page

Executed as a deed



HERBERT
SMITH
FREEHILLS

Deed

Execution Version

Metro Tunnel
Tunnel and Stations PPP

Escrow Agreement (Financial Model)

The Minister for Public Transport on behalf of the
Crown in right of the State of Victoria

Cross Yarra Partnership

Perpetual Corporate Trust Limited



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Escrow Agreement (Financial Model)

Date ►

Between the parties

| | |
|-------|---|
| State | The Minister for Public Transport on behalf of the Crown in right of the State of Victoria |
|-------|---|

| | |
|------------|---|
| Project Co | Cross Yarra Partnership ABN 57 956 065 885 of Level 8, 136 Exhibition Street, Melbourne, Victoria, 3000 |
|------------|---|

| | |
|--------------|---|
| Escrow Agent | Perpetual Corporate Trust Limited ACN 000 341 533 of Level 18, Angel Place, 123 Pitt Street, Sydney, NSW 2000 |
|--------------|---|

| | |
|----------|---|
| Recitals | The background to this Project is set out in the Project Agreement. The Escrow Agent has been appointed by the State and Project Co to hold the Escrow Material in escrow. |
|----------|---|

This deed witnesses as follows:



1 Definitions and interpretation

1.1 Project Agreement definitions

Unless otherwise expressly defined, expressions used in this Agreement have the meaning given to them in or for the purpose of the Project Agreement.

1.2 Definitions

The meanings of the terms used in this agreement are set out below.

| Term | Meaning |
|--------------------------|---|
| Agreed Amount | has the meaning given in clause 12(b)(1). |
| Agreement | means this agreement and includes all schedules, exhibits, attachments and annexures to it. |
| Commencement Date | means the date of this Agreement. |
| Cost | has the meaning given in clause 12(g). |
| Disputing Parties | has the meaning given in clause 18.1(a). |
| Escrow Fee | means the fees described in Schedule 2. |
| Escrow Material | means: <ol style="list-style-type: none">1 the Financial Model; and2 any Other Material. |
| Other Material | means any data or material provided by Project Co or the State to the Escrow Agent in accordance with the terms of this Agreement (other than the Financial Model provided in accordance with clause 5.1(a)) as varied, added to or replaced from time to time. |
| Project Agreement | means the document entitled 'Project Agreement' between the State and Project Co dated on or around the date of this Agreement. |



| Term | Meaning |
|-----------------------|---|
| Recipient | has the meaning given in clause 12(b)(2). |
| Representative | has the meaning given in clause 18.2(a). |
| Revenue | has the meaning given in clause 12(f). |
| Supplier | has the meaning given in clause 12(b). |

1.3 Interpretation

In this Agreement:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;
- and unless the context otherwise requires:
- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa and a word indicating a gender includes every other gender;
 - (c) **(agreement and schedule references)**: a reference to:
 - (1) a party, clause, Schedule, Exhibit, or Annexure is a reference to a party, clause, Schedule, Exhibit or Annexure of or to this Agreement; and
 - (2) a section is a reference to a section of a Schedule;
 - (d) **(agreement as amended)**: a reference to this Agreement or to any other deed, agreement, document or instrument includes a reference to this Agreement or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
 - (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
 - (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
 - (g) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
 - (h) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
 - (i) **(includes)**: 'includes' will be read as if followed by the phrase '(without limitation)';



- (j) **(or)**: the meaning of 'or' will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) **(\$)**: a reference to '\$', AUD or dollar is to Australian currency;
- (m) **(time)**: a reference to time is a reference to time in Melbourne, Australia;
- (n) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (o) **(obligations and liabilities)**: a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (p) **(may)**: the term 'may', when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;
- (q) **(construction)**: where there is a reference to an Authority, institute or association or other body referred to in this Agreement which:
 - (1) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Agreement is deemed to refer to that other entity; or
 - (2) ceases to exist, this Agreement is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (r) **(remedy)**: the use of the words 'remedy' or 'cure' or any form of such words in this Agreement means that the event to be remedied cured must be remedied or cured or its effects overcome; and
- (s) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

1.4 Business Day

If the day on or by which anything is to be done in accordance with this Agreement is not a Business Day, that thing must be done no later than the next Business Day.

1.5 Approvals, directions and notices in writing

Unless otherwise expressly provided in this Agreement or agreed between the parties, all approvals, consents, directions, requirements, requests, claims, notices, agreements and demands must be given in writing.

1.6 Action without delay

Unless there is a provision in this Agreement which specifies a period of time in which something must be done by the parties, all things must be done without undue delay.



1.7 State's rights and obligations

- (a) **(Acknowledgement):** The parties acknowledge the substance, operation and potential effect and consequences of clause 2.13 (*State's executive rights and duties*) of the Project Agreement in relation to this Agreement.
- (b) **(No Claim):** Subject to clause 1.7(c), Project Co and the Escrow Agent will not be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its executive or statutory rights or duties.
- (c) **(Liability for breach):** Clauses 1.7(a) and (b) do not limit any Liability which the State would have had to Project Co or the Escrow Agent under any State Project Document as a result of a breach by the State of a term of any State Project Document but for these clauses.

1.8 CY Trustee's limitation of liability

- (a) **(Capacity):** The parties acknowledge that the obligations of each CY Trustee under this Agreement are incurred by it solely in its capacity as trustee of the relevant CY Trust other than where expressly provided otherwise, including as contemplated by clause 1.8(c)(1) below.
- (b) **(Limited liability):** Subject to clause 1.8(c), each CY Trustee will:
 - (1) not be liable to pay or satisfy any of its obligations or liabilities under this Agreement in relation to the relevant CY Trust out of any assets held by it personally;
 - (2) only be liable to pay or satisfy any of its obligations or liabilities under this Agreement in relation to the relevant CY Trust out of the assets of that CY Trust out of which it is actually indemnified;
 - (3) not be liable to pay or satisfy any of its obligations or liabilities under this Agreement in its personal capacity out of any asset held by it personally (other than out of the property the subject of the State Securities); and
 - (4) only be liable to pay or satisfy any of its obligations or liabilities under the Project Documents in its personal capacity out of the property the subject of the State Securities held by it personally.
- (c) **(Circumstances where a CY Trustee is personally liable):**
 - (1) Each CY Trustee will be personally liable under this Agreement for any loss or damage which the Escrow Agent or the State (as applicable) may suffer as a result of a breach of this Agreement by that CY Trustee where such breach is caused by:
 - (A) fraud of that CY Trustee;
 - (B) wilful default of that CY Trustee;
 - (C) that CY Trustee having committed a breach of trust;
 - (D) that CY Trustee having been negligent in the performance of its duties as trustee of the relevant CY Trust;
 - (E) a representation or warranty given by that CY Trustee under this Agreement in respect of itself (in any capacity) or the relevant CY Trust being untrue, incorrect or misleading when made or repeated; or

- (F) a breach of any undertaking (other than an undertaking to pay) of that CY Trustee given under this Agreement.
- (2) The Escrow Agent or the State (as applicable) may:
 - (A) do anything necessary to enforce its rights in connection with any representation or warranty (with respect to the relevant CY Trustee or the relevant CY Trust) or undertaking (other than an undertaking to pay) given by any CY Trustee under this Agreement;
 - (B) do anything necessary to enforce its rights under each State Security;
 - (C) take proceedings to obtain an injunction or other order to restrain any breach of this Agreement by any CY Trustee or declaratory relief or other similar judgment or order as to the obligations of any CY Trustee under this Agreement; and
 - (D) prove in any insolvency proceedings in respect of any CY Trustee only in order to protect and enforce its rights in respect of the property of the relevant CY Trust and the Trustee's Indemnity.
- (3) Nothing in this clause 1.8 prevents the Escrow Agent or the State (as applicable) obtaining any injunctive relief, order for specific performance, declaration or similar relief against any CY Trustee.
- (d) **(Limited recourse):** The Escrow Agent and the State must not, except to the extent a CY Trustee is personally liable under clause 1.8(c)(1) and subject to clauses 1.8(c)(2) and 1.8(e):
 - (1) bring any proceeding for the winding up or liquidation of a CY Trustee;
 - (2) appoint, or seek the appointment of, a receiver or receiver and manager or other controller (as defined in the Corporations Act) to a CY Trustee or its assets or the assets of a CY Trust other than one appointed over any property secured by the State Securities;
 - (3) incur, or permit any receiver, receiver and manager appointed under a State Security, attorney appointed under a State Security or any other person to incur, any obligation binding on a CY Trustee unless the obligation is limited in accordance with this clause 1.8;
 - (4) take any action to obtain a judgment against a CY Trustee or to enforce a judgment against a CY Trustee other than:
 - (A) a judgment required to prove the amount of any Secured Moneys (as defined in the State Security);
 - (B) a counterclaim in any proceedings commenced by a CY Trustee; or
 - (C) as permitted by clause 1.8(c)(3); or
 - (5) levy or enforce a levy or distress or other execution upon or against any assets of a CY Trustee other than any property secured by the State Securities or the assets of the relevant CY Trustee or CY Trust.
- (e) **(No limitation on enforcement of security provided under the State Securities):** This clause 1.8 does not limit or affect in any way the enforcement of the State Securities and, for the avoidance of doubt, it is acknowledged and agreed by each CY Trustee (in its personal capacity and as trustee for the relevant CY Trust) that the security granted under the State Securities by it



constitutes a Security Interest over all of the Trust Property and all of its Trustee's Indemnity.

- (f) **(CY Trustee as Partner)**: A reference to a CY Trustee includes a reference to the relevant CY Trustee as a partner in the Cross Yarra Partnership.

2 Purpose of agreement

Subject to the terms and conditions of this Agreement, to secure the interests of the State and Project Co under the Project Agreement:

- (a) **(Deposit of Financial Model)**: Project Co must deposit the Financial Model in accordance with the Project Agreement and any Other Material in accordance with this Agreement, with the Escrow Agent in Melbourne; and
- (b) **(Escrow Material)**: the Escrow Agent must act as escrowee of the Escrow Material.

3 Term of agreement

- (a) **(Commencement)**: Subject to clause 3(b), this Agreement commences on the Commencement Date and will remain in force until this Agreement is terminated.
- (b) **(Conditions Precedent)**: The satisfaction or waiver of the Conditions Precedent in accordance with clause 3 of the Project Agreement is a condition precedent to the coming into operation of this Agreement (other than this clause 3(b)).

4 Conduct of Escrow Agent

Neither the State nor Project Co will be liable for any act or omission of the Escrow Agent.

5 Deposit of Financial Model

5.1 Deposit of Financial Model

- (a) **(At Financial Close)**: Project Co must deposit the Financial Model with the Escrow Agent promptly following Financial Close as required by the Project Agreement and the Escrow Agent must accept custody of the Financial Model.
- (b) **(When updated)**: Upon the occurrence of any of the events set out in clause 54.8 (*Custody of Financial Model*) of the Project Agreement, or when otherwise agreed by the State and Project Co, the State and Project Co may:
- (1) seek the release in accordance with clause 8 or 9 (as the case may be) of the then current version of the Financial Model held by the Escrow Agent; and



- (2) subsequently deposit that Financial Model, or a further updated version of the Financial Model as Other Material in accordance with clause 5.2, with the Escrow Agent.

5.2 Other Material

Project Co and the State may agree Other Material (which may be updated versions of the Financial Model amended in accordance with the Project Agreement or otherwise by agreement between the State and Project Co) to be deposited with the Escrow Agent and the Escrow Agent must accept custody of such Other Material deposited with it.

5.3 Confirmation of receipt

The Escrow Agent must give Project Co and the State confirmation of receipt of all Escrow Material referred to in clauses 5.1 and 5.2 immediately when it is received.

5.4 Storage of Escrow Material

The Escrow Agent must store the Escrow Material in a safe and secure place at the Escrow Agent's premises in Melbourne.

5.5 Escrow Material register

The Escrow Agent must maintain a register of Escrow Material deposited, stored and released under this Agreement in the form agreed by the State, Project Co and the Escrow Agent.

5.6 Information and inspection requests

- (a) **(Requests for inspection):** The Escrow Agent must promptly comply with a request of the State or Project Co to inspect and be furnished with a copy of the register referred to in clause 5.5 and to be furnished with information about storage, safety and security procedures relating to the Escrow Material.
- (b) **(Cost of Escrow Agent):** The reasonable costs of the Escrow Agent complying with a request in this clause 5.6 will be borne by Project Co.
- (c) **(State to reimburse for State requests):** The State will promptly reimburse Project Co for the costs of the Escrow Agent borne by Project Co arising from a request by the State under this clause 5.6.

6 Access to Escrow Material

Subject to this Agreement and unless required by Law, no other person will have access to the Escrow Material unless the Escrow Agent has been notified in advance by Project Co and the State.



7 Loss of Escrow Material

7.1 Loss of Escrow Material

If the Escrow Material or any medium containing the Escrow Material is lost, destroyed or damaged while in the possession, custody or control of the Escrow Agent:

- (a) **(notification)**: the Escrow Agent must promptly notify Project Co and the State; and
- (b) **(obligation to replace)**: Project Co must within 7 Business Days replace the lost, damaged or destroyed Escrow Material to the extent it is replaceable at:
 - (1) the Escrow Agent's cost if the loss, damage or destruction was caused by the Escrow Agent's fraud, negligence, recklessness, act or omission or breach of this Agreement; or
 - (2) Project Co's and the State's cost (shared equally in each case) in all other circumstances.

7.2 Specific performance

Without derogating from any other right to obtain specific performance, Project Co acknowledges that the State is entitled to specific performance of Project Co's obligations in clause 7.1.

8 Release of Escrow Material

The Escrow Agent will immediately release the Escrow Material to:

- (a) **(any nominated person)**: any person nominated by a notice signed by both the State and Project Co; and
- (b) **(State's auditor)**: upon the State's request, the State's auditor (appointed in accordance with clause 54.7 (*Auditing the Financial Model*) of the Project Agreement). The State's auditor will conduct the audit under that clause at the Escrow Agent's premises or, if the Escrow Agent does not have the required equipment or facilities, at Project Co's premises.

9 Release of Escrow Material to State on termination

The Escrow Agent must release the Escrow Material to the State immediately after notice from the State that:

- (a) **(unable or unwilling to perform functions)**: Project Co is unable or unwilling to perform its obligations under this Agreement;
- (b) **(Major Default or Default Termination Event)**: a Major Default or Default Termination Event has occurred under the Project Agreement;
- (c) **(termination)**: the Project Agreement has been terminated; or
- (d) **(expiration)**: the Term of the Project Agreement has expired.

10 Release of Escrow Material to new Escrow Agent

In the event that this Agreement terminates in accordance with clause 15, or the Escrow Agent:

- (a) **(unable to perform functions)**: refuses to or is unable to perform its obligations under this Agreement;
- (b) **(Insolvency Event)**: becomes, threatens to become or is in jeopardy of becoming subject to an Insolvency Event; or
- (c) **(breach)**: is otherwise in breach of this Agreement,

then the Escrow Agent will on instruction from the State and Project Co immediately release the Escrow Material to a new escrow agent agreed by the State and Project Co and notified to the Escrow Agent or, failing agreement, appointed, in accordance with clause 54.9 (*Replacement of Escrow Agent*) of the Project Agreement.

11 Escrow fees and charges

11.1 Payment

During the term of this Agreement, Project Co and the State will each pay [not disclosed] of the Escrow Fee to the Escrow Agent without demand in accordance with the payment terms of the Escrow Fee in Schedule 2.

11.2 Increases

The Escrow Agent may increase its fees in accordance with Schedule 2.

11.3 Late payments

- (a) **(Escrow Agent to notify)**: The Escrow Agent will notify the parties within a reasonable period if either of them fails to make any payment to the Escrow Agent by the due date. On receipt of such notice, the other party may pay to the Escrow Agent all amounts for which the defaulting party is in arrears.
- (b) **(Deduction of late payments)**: The State or Project Co may deduct amounts paid or incurred under clause 11.3(a) by the State or Project Co (as the case may be) from any moneys otherwise due from the State or Project Co (as the case may be) under the Project Agreement or otherwise or recover such amounts as a debt.

11.4 Other charges

The Escrow Fee is inclusive of all taxes, duties, fees or other government charges which may be imposed on the storage of the Escrow Material under this Agreement or otherwise.

12 Goods and Services Tax (GST)

- (a) **(GST exclusive amounts):** Unless otherwise expressly stated, all amounts referred to in this Agreement or any Project Document are exclusive of GST.
- (b) **(GST payable by Supplier):** If GST becomes payable on any Taxable Supply made by a party (**Supplier**) under or in connection with this Agreement:
- (1) any amount payable or consideration to be provided in accordance with any other provision of this Agreement for that supply (**Agreed Amount**) is exclusive of GST;
 - (2) an additional amount will be payable by the party which is the recipient of the Taxable Supply (**Recipient**), equal to the amount of GST payable on that Taxable Supply as calculated by the Supplier in accordance with the GST Law, which will be payable at the same time and in the same manner as for the Agreed Amount; and
 - (3) the Supplier will provide a Tax Invoice to the Recipient in connection with that supply, either at the time expressly set out in any other provision of this Agreement or no later than the time at which the Agreed Amount for that Taxable Supply is to be provided in accordance with this Agreement. The Recipient is not obliged to pay any amount in accordance with this clause 12 unless and until a Tax Invoice is received by the Recipient in connection with the Taxable Supply except where the Recipient is required to issue the Tax Invoice.
- (c) **(Variation in GST payable):** If, for any reason, the GST payable by the Supplier in connection with a supply it makes under or in connection with this Agreement (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it received from the Recipient under clause 12(b) in connection with that supply, the Supplier will provide a refund or credit to, or will be entitled to receive from, the Recipient (as appropriate) the amount of this variation. Where an adjustment event occurs in relation to a supply and except where the Recipient is required to issue the Adjustment Note:
- (1) the Supplier will issue an Adjustment Note to the Recipient in connection with that supply within 14 days after becoming aware of that adjustment event occurring; and
 - (2) no additional amount will be payable by the Recipient unless and until an Adjustment Note is received by the Recipient.
- (d) **(GST ceasing to be payable):** No amount is payable by a party in accordance with clause 12(b) or 12(c) to the extent that the GST to which the amount relates has ceased to be payable by or refundable to the Supplier by the Commissioner of Taxation under the GST Law.
- (e) **(Expert Determination):** If the Recipient is dissatisfied with any calculation to be made by the Supplier in accordance with this clause 12 the recipient may, at its own expense and after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the President of the Institute of Chartered Accountants for expert determination, which will be final and binding on all parties (except in the case of manifest error). The expert will act as an expert and not as an arbitrator and must take into account the terms of this Agreement, the matters required to be taken into account by the Supplier in accordance with this clause 12 and any other matter considered by the expert to be relevant to



the determination. The parties release the expert from any liability in acting as an expert, except in the case of fraud on the part of the expert.

- (f) **(Revenue net of GST):** Any reference in this Agreement to price, value, sales, revenue, profit or a similar amount (**Revenue**), will be a reference to the GST exclusive component of that Revenue unless the contrary intention is expressed.
- (g) **(Cost net of GST):** Any reference in this Agreement to cost, expense, liability or other similar amount (**Cost**), will be a reference to that Cost reduced by the Input Tax Credits in respect of such Cost to which the party is entitled in respect of such Cost, unless the contrary intention is expressed.
- (h) **(General obligation):** Each party agrees to do all things, including providing Tax Invoices and other documentation, that may be necessary or desirable to enable or assist the other party in determining its GST payable on any supply made by that other party in connection with this Agreement, or any Input Tax Credits, adjustments or refunds in relation to any amount of GST paid or payable in connection with any supply made in connection with this Agreement.
- (i) **(GST Groups):** For the purposes of this Agreement, a reference to GST payable on a Taxable Supply made by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member and a reference to an Input Tax Credit entitlement of a party includes any corresponding Input Tax Credit entitlement of the representative member of any GST group of which that party is a member, and if a party to this Agreement makes a Taxable Supply by virtue of entering into or performing this Agreement and the 'recipient' of that Taxable Supply (within the meaning of the GST Act) is an Associate of another party to this Agreement (which for this purpose includes, in relation to the State, the Secretary), that other party to this Agreement will be obliged either to pay the amount referred to in clause 12(b)(2) or procure that the actual recipient pays the relevant amount, and the payer of that amount shall be the 'Recipient' for the purposes of this clause 12 in relation to the relevant Taxable Supply.
- (j) **(Project Agreement to prevail):** If clause 59 (*Taxes*) of the Project Agreement would apply in respect of a Taxable Supply to which this clause 12 also applies, then clause 59 (*Taxes*) of the Project Agreement will apply in respect of that supply and the provisions of this clause 12 (but for this paragraph) will not apply.
- (k) **(Definitions):** In this clause 12 unless otherwise defined in this Agreement, terms used have the meanings given to them in the GST Law.

13 Confidentiality

13.1 Confidentiality of Escrow Material

The Escrow Agent acknowledges that the Escrow Material is the property of Project Co or the State and accordingly must treat the Escrow Material which comes into its possession, control or custody, under this Agreement as confidential.



13.2 Prohibited acts

Other than as set out in this Agreement, the Escrow Agent must not copy, reproduce, deal with or in any way use the Escrow Material or disclose it to any person without the permission of both Project Co and the State.

13.3 After termination

The obligations under this clause 13 survive the termination of this Agreement or the release of the Escrow Material.

14 Escrow Agent's further obligations

- (a) **(Obligations):** The Escrow Agent must:
 - (1) retain the Escrow Material in a safe and secure manner and in an environment that minimises degradation of the Escrow Material; and
 - (2) ensure the Escrow Material remains in the same condition it was in at the time of deposit with the Escrow Agent.
- (b) **(Limitations on obligations):** The Escrow Agent has no obligation to verify:
 - (1) the completeness or accuracy of Escrow Materials, or of electronic or other notations on such deposits; or
 - (2) that the Escrow Material is sufficient to enable the State to use the Escrow Material as contemplated by the Project Agreement.

15 Termination of Agreement

This Agreement will immediately terminate if both Project Co and the State give 10 Business Days' notice to the Escrow Agent of such termination or, where the Escrow Material has been released to the State under clause 9 upon termination or expiry of the Project Agreement, if the State gives 10 Business Days' notice to the Escrow Agent of such termination.

16 Assignment

16.1 Assignment by Escrow Agent

The benefit of this Agreement will not be dealt with in any way by the Escrow Agent (whether by assignment or otherwise) without the prior consent of both Project Co and the State.

16.2 Assignment by State and Project Co

The State and Project Co may at any time assign, novate or otherwise transfer all or any part of their rights or liabilities under this Agreement to any person to whom the State or Project Co assign their rights under the Project Agreement.



17 Subcontracting

The Escrow Agent must not subcontract or otherwise arrange for another person to perform any part of this Agreement or to discharge any of its obligations under this Agreement without the prior consent of the State and Project Co.

18 Dispute Resolution

18.1 Procedure for resolving disputes

- (a) **(Disputes to be resolved):** Any dispute arising under this Agreement must be resolved by the parties to that dispute (**Disputing Parties**) in accordance with this clause 18.
- (b) **(Procedure):** The procedure that is to be followed to resolve a dispute is as follows:
 - (1) firstly, the dispute must be the subject of negotiation as required by clause 18.2;
 - (2) secondly, if the dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 18.2(c)(1) the Disputing Parties may agree that the dispute will be referred to an expert for determination in accordance with clauses 18.4 to 18.8 (inclusive) or to arbitration under clause 19; and
 - (3) thirdly, if:
 - (A) the dispute remains unresolved (in whole or in part) and has not been referred to expert determination after the expiration of the period for negotiation referred to in clause 18.2(c)(1) and irrespective of whether the Disputing Parties failed to meet as required by that clause or whether having so met the parties fail to agree whether the Dispute should be referred to an expert or to arbitration within 20 Business Days after the expiration of the period for negotiation referred to in clause 18.2(c)(2);
 - (B) the dispute has been referred to expert determination and a determination is not made by the expert within 30 days after the expert's acceptance of appointment; or
 - (C) the dispute is referred to expert determination and a notice of dissatisfaction is given in accordance with clause 18.6(a),

then the dispute must be referred to arbitration in accordance with clause 19.

18.2 Negotiation

- (a) **(Notification):** If a dispute arises then a party may give notice to each other party requesting that the dispute be referred for resolution by negotiation between the Chief Executive Officers (or equivalent) of the Disputing Parties (**Representatives**).
- (b) **(Contents of Notice):** A notice under clause 18.2(a) must:
 - (1) state that it is a notice under this clause 18; and



- (2) include or be accompanied by particulars of the matters which are the subject of the dispute.
- (c) **(Attempt to resolve Dispute):** If a dispute is referred for resolution by negotiation under clause 18.2(a), then:
 - (1) the Representatives must meet and attempt in good faith to resolve the dispute (in whole or in part) within 10 Business Days of the date on which the notice under clause 18.2(a) is received (or such later date as the Disputing Parties may agree); and
 - (2) any agreement reached between the Representatives will be reduced to writing, signed by or on behalf of each Disputing Party and will be contractually binding on the Disputing Parties.

18.3 Expert determination

If:

- (a) **(dispute unresolved by Representatives):** a dispute which has been referred to the Representatives for negotiation in accordance with clause 18.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 18.2(c)(1); and
- (b) **(referral to expert):** the Disputing Parties agree within 20 Business Days after the expiration of the period for negotiation referred to in clause 18.2(c)(1), that the dispute be referred to an expert for determination,

then those parts of the dispute which remain unresolved will be referred to an expert for determination under clauses 18.4 to 18.8. For the avoidance of doubt, a dispute may only be referred to an expert for determination by agreement of the Disputing Parties.

18.4 Selection of expert

- (a) **(Exchange of lists of 3 preferred experts):** Within 7 Business Days after the date on which the Disputing Parties agree to refer a dispute to an expert for determination under clause 18.3, the Disputing Parties must exchange lists of 3 persons (in order of preference) who, if appointed, would satisfy the requirements of clause 18.4(d), from whom the expert is to be chosen.
- (b) **(Appointment of person who appears on both lists):** Any person who appears on the list of all of the Disputing Parties exchanged under clause 18.4(a) will be appointed as the expert to determine a dispute and if more than one person appears on the list of all of the Disputing Parties, the person given the highest order of priority by the party who gave the notice under clause 18.2(a) will be appointed.
- (c) **(Appointment if no person appears on both lists):** If no person appears on the list of all of the Disputing Parties and the Disputing Parties cannot otherwise agree an expert, the party which gave the notice under clause 18.2(a) must procure:
 - (1) the president (or the senior non-executive officer, howsoever described) of the institute or governing body for the technical or professional discipline the subject of the relevant dispute to nominate the expert, having regard to, but not being bound by, those persons proposed by the Disputing Parties under clause 18.3(a); or
 - (2) if there is no governing body for the technical or professional discipline the subject of the relevant dispute or such governing body advises that it will not nominate an expert, the President of the Australian



Centre for International Commercial Arbitration to nominate a person to act as the expert, having regard to, but not being bound by, those persons proposed by the Disputing Parties under clause 18.4(a).

- (d) **(Appropriate skills)**: It is the intention of the parties that the expert appointed to determine a dispute will be an independent person with appropriate skills having regard to the nature of the matters in dispute.
- (e) **(No entitlement to challenge appointment)**: No Disputing Party will be entitled to challenge the appointment of an expert under this clause 18.4 on the basis that the expert does not satisfy the requirements of clause 18.4(d).
- (f) **(Not an arbitration agreement)**: Any agreement for expert determination under this Agreement will not constitute an arbitration agreement for the purposes of the *Commercial Arbitration Act 2011* (Vic).
- (g) **(Agreement)**: Once an expert is appointed, the Disputing Parties must enter into an agreement with the expert on the terms of the Expert Determination Agreement or such other reasonable terms as the expert may require.

18.5 Rules of expert determination

The expert determination process will be administered, and the expert will be required to act, under the terms of the Expert Determination Agreement.

18.6 Expert finding

- (a) **(Notification)**: The determination of the expert must be in writing and will be final and binding on the Disputing Parties unless, within 10 Business Days of receipt of the determination, a Disputing Party gives notice to each other Disputing Party of its dissatisfaction and intention to refer the matter to arbitration in accordance with clause 19.
- (b) **(Amendment to determination)**: Upon submission by any Disputing Party, the expert may amend the determination to correct:
 - (1) a clerical mistake;
 - (2) an error from an accidental slip or omission;
 - (3) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
 - (4) a defect in form.

18.7 Liability of expert

- (a) **(Liability of expert)**: The Disputing Parties agree:
 - (1) that the expert will not be liable in connection with the expert determination, except in the case of fraud on the part of the expert; and
 - (2) to indemnify the expert against any Claim or Liability in connection with the expert determination, except in the case of fraud on the part of the expert, in which case a Claim may be made against him or her by any person who is party to the dispute.
- (b) **(Engagement)**: The Disputing Parties will jointly engage the expert services in connection with the expert determination proceedings and each Disputing Party will seek a separate Tax Invoice equal to its share of the costs of the expert.



18.8 Costs

The Disputing Parties must:

- (a) bear their own costs in connection with the expert determination proceedings; and
- (b) pay an equal portion of the costs of the expert.

19 Arbitration

19.1 Reference to Arbitration

- (a) **(Dispute):** If:
 - (1) a dispute:
 - (A) which has been referred to the parties' Representatives for negotiation in accordance with clause 18.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 18.2(c)(1); and
 - (B) the Disputing Parties do not agree to refer the dispute to an expert for determination; or
 - (2) in the case of a dispute which the Disputing Parties agree to refer to expert determination under clause 18.3:
 - (A) a determination is not made within 30 days of the expert's acceptance of the appointment; or
 - (B) a notice of dissatisfaction is given in accordance with clause 18.6,then any Disputing Party may notify the other Disputing Parties that it requires the dispute to be referred to arbitration.
- (b) **(Referral):** Upon receipt by a Disputing Party of a notice under clause 19.1(a), the dispute will be referred to arbitration.

19.2 Arbitration

- (a) **(ACICA Rules):** Arbitration in accordance with this clause 19 will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Rules) as current at the date the Dispute is referred to arbitration and as otherwise set out in this clause 19 with this clause 19 having priority to the extent of any inconsistency.
- (b) **(Seat):** The seat of the arbitration will be Melbourne, Victoria.
- (c) **(Language):** The language of the arbitration will be English.

19.3 Appointment of arbitrator

The parties will endeavour to agree on the arbitrator or arbitrators (if the Disputing Parties agree to appoint three arbitrators), but if no such agreement is reached within 14 Business Days of the dispute being referred to arbitration in accordance with clause 19.1(b), the arbitrator or arbitrators will be appointed by the Australian Centre for International Commercial Arbitration.



19.4 General Principles for conduct of arbitration

- (a) **(Conduct of arbitration):** The Disputing Parties agree that:
- (1) they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any dispute;
 - (2) any arbitration conducted in accordance with this clause 19 will not necessarily mimic court proceedings of the seat of the arbitration or the place where hearings take place (if different), and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and
 - (3) in conducting the arbitration, the arbitrator must take into account the matters set out in clauses 19.4(a)(1) and 19.4(a)(2).
- (b) **(Evidence in writing):** All evidence in chief must be in writing unless otherwise ordered by the arbitrator.
- (c) **(Evidence and discovery):** The rules for evidence and discovery will be the IBA Rules on the Taking of Evidence in International Arbitration current at the date of arbitration.
- (d) **(Oral hearing):** The oral hearing must be conducted as follows:
- (1) any oral hearing must take place in Melbourne, Victoria and all outstanding issues must be addressed at the oral hearing;
 - (2) the date and duration of the oral hearing must be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in clause 19.4(a) when determining the duration of the oral hearing;
 - (3) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
 - (4) the oral hearing must be conducted on a stop clock basis with the effect that the time available to the parties must be split equally between the parties so that each party has the same time to conduct its case unless, in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the parties;
 - (5) not less than 28 days prior to the date fixed for oral hearing each of the Disputing Parties must give notice of those witnesses (both factual and expert) of each other Disputing Party that it wishes to attend the hearing for cross examination;
 - (6) in exceptional circumstances the arbitrator may amend the date of hearing and extend the time for the oral hearing set in accordance with clause 19.4(d)(2);
 - (7) a Disputing Party will not be bound to accept the written evidence of a witness submitted on behalf of the opposing party which is not challenged in cross examination; and
 - (8) each Disputing Party is expected to put its case on significant issues in cross examination of a relevant witness called by the other Disputing Party or, where it seeks to challenge the evidence of a witness not called for cross-examination by reference to other evidence, to identify that evidence in its written opening submissions so that the other Disputing Party may know the nature of and basis for the challenge to the witness' written evidence.



- (e) **(Experts):** Unless otherwise ordered each Disputing Party may only rely upon one expert witness in connection with any recognised area of specialisation.

19.5 Proportional liability

To the extent permitted by Law, the arbitrator will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this clause 19.5, have applied to any dispute referred to arbitration in accordance with this clause 19.

19.6 Extension of ambit of arbitration proceedings

- (a) **(Extending Disputes):** Where:
- (1) a dispute between the Disputing Parties to this Agreement is referred to arbitration in accordance with this clause 19; and
 - (2) there is some other dispute also between the Disputing Parties to and in accordance with this Agreement (whenever occurring),
- the arbitrator may, upon application being made to the arbitrator by one or more of the Disputing Parties at any time before a final award is made in relation to the first-mentioned dispute, make an order directing that the arbitration be extended so as to include the other dispute.
- (b) **(Arbitrator's order):** An arbitrator may make an order in accordance with clause 19.6(a) on such terms and conditions (if any) as the arbitrator thinks fit.

19.7 Award final and binding

- (a) **(Final and binding):** Subject to clause 19.7(b), any award will be final and binding on the Disputing Parties.
- (b) **(Appeal):** Each Disputing Party consents to any appeal to a court where that appeal is made under the *Commercial Arbitration Act 2011* (Vic) on a question of law arising in connection with an arbitral award made in accordance with this clause 19.

19.8 Continue to perform

Notwithstanding the existence of a dispute, each Disputing Party must continue to carry out its obligations in accordance with this Agreement.

19.9 Governing law of arbitration agreement

The Law governing this arbitration agreement is the law of Victoria, Australia.

19.10 Interlocutory relief

This clause 19 does not prevent a Disputing Party from seeking urgent interlocutory relief from a court of competent jurisdiction where, in that Disputing Party's reasonable opinion, that action is necessary to protect that Disputing Party's rights.



20 Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Agreement:

- (a) **(in writing)**: must be in writing;
- (b) **(addressed)**: must be addressed as set out below (or as otherwise notified by that party to each other party from time to time);

State

Attention: [not disclosed]

Address: [not disclosed]

Email: [not disclosed]

Project Co

Attention: [not disclosed]

Address: [not disclosed]

Email [not disclosed]

Escrow Agent

Attention: [not disclosed]

Address: [not disclosed]

Email: [not disclosed]

[not disclosed]

- (c) **(signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of that party on its behalf;
- (d) **(form of delivery)**: must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by both parties) to the email address of the addressee in accordance with clause 20(b); and
- (e) **(taken to be received)**: are taken to be received by the addressee:
 - (1) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00am on the next Business Day;
 - (2) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia;
 - (3) in the case of email, the first to occur of:
 - (A) receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - (B) the time that the communication enters an information system which is under the control of the addressee; or
 - (C) the time that the communication is first opened or read by the addressee,

- (D) unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00am on the next Business Day.

21 Miscellaneous

21.1 Governing Law and jurisdiction

- (a) (**Governing Law**): This Agreement is governed by, and must be construed according to, the Laws of Victoria, Australia.
- (b) (**Jurisdiction**): Without limiting clauses 18 to 19, each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Agreement.

21.2 Entire agreement

To the extent permitted by Law and in relation to their subject matter, this Agreement:

- (a) (**entire understanding**): embodies the entire understanding of the parties and constitute the entire terms agreed by the parties; and
- (b) (**prior agreement**): supersedes any prior agreement of the parties.

21.3 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to both parties) required by Law or reasonably requested by another party to give effect to this Agreement.

21.4 Survival of certain provisions

- (a) (**Surviving clauses**): All provisions of this Agreement which, expressly or by implication from their nature, are intended to survive the rescission, termination or expiration of this Agreement will survive the rescission, termination or expiration of this Agreement, including any provision in connection with:
- (1) the State's rights to set-off and recover money;
 - (2) confidentiality or privacy;
 - (3) Intellectual Property Rights;
 - (4) any obligation to make any records available to the State;
 - (5) any indemnity or financial security given in accordance with this Agreement; or
 - (6) any right or obligation arising on termination of this Agreement.
- (b) (**Interpretation**): No provision of this Agreement which is expressed to survive the termination of this Agreement will prevent any other provision of this Agreement, as a matter of interpretation, also surviving the termination of this Agreement.



- (c) **(Survival of rights and obligations):** No right or obligation of any party will merge on completion of any transaction in accordance with this Agreement. All rights and obligations in accordance with this Agreement survive the execution and delivery of any transfer or other document which implements any transaction in accordance with this Agreement.

21.5 Waiver

- (a) **(Writing):** A waiver given by a party in accordance with this Agreement is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver):** A failure to, a delay in or the partial exercise or enforcement of a right provided by Law or in accordance with this Agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or in accordance with this Agreement.
- (c) **(No waiver of another breach):** No waiver of a breach of a term of this Agreement operates as a waiver of another breach of that term or of a breach of any other term of this Agreement.

21.6 Consents, approvals and directions

A consent required in accordance with this Agreement from the State may be given or withheld, or may be given subject to any conditions, as the State thinks fit, unless this Agreement expressly provides otherwise.

21.7 Amendments

Except as otherwise expressly provided in this Agreement, this Agreement may only be varied by a deed executed by or on behalf of each party.

21.8 Expenses

Except as otherwise expressly provided in this Agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Agreement.

21.9 Severance

If, at any time, a provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this Agreement or any other relevant State Project Document; or
- (b) that provision under the Law of any other jurisdiction.

21.10 Counterparts

This Agreement may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same Agreement.



21.11 Moratorium legislation

Without limiting clause 5.3 of the Project Agreement, to the fullest extent permitted by Law, the provisions of all Laws which operate to lessen or affect in favour of a party other than the State any obligation under this Agreement, or to prejudicially affect the exercise by the State of any right, power or remedy under this Agreement or otherwise, are expressly waived.

21.12 Proportionate liability

- (a) **(Excluded operation of Wrongs Act):** The operation of Part IVAA of the *Wrongs Act 1958* (Vic) is excluded in relation to all and any rights, obligations or liabilities of either party under this Agreement whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) **(Rights, obligations and liabilities):** Without limiting clause 21.12(a), the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Agreement and not otherwise, whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.



Schedule 1

Notice details

| | |
|--------------|--|
| State | The Minister for Public Transport on behalf of the Crown in right of the State of Victoria |
| Address | [not disclosed] |
| Attention | [not disclosed] |
| Phone | [not disclosed] |
| Fax | [not disclosed] |
| Email | [not disclosed] |

| | |
|-------------------|-------------------------|
| Project Co | Cross Yarra Partnership |
| Address | [not disclosed] |
| Attention | [not disclosed] |
| Phone | [not disclosed] |
| Fax | [not disclosed] |
| Email | [not disclosed] |

| | |
|---------------------|-----------------------------------|
| Escrow Agent | Perpetual Corporate Trust Limited |
| Address | [not disclosed] |
| Attention | [not disclosed] |
| Phone | [not disclosed] |
| Fax | [not disclosed] |
| Email | [not disclosed] |



Schedule 2

Fees and Charges

The Escrow Fee consists of the following:

Establishment and Annual Fee

- (a) Establishment Fee: [not disclosed] (payable at Financial Close). All applicable GST is payable in addition to the fee; and
- (b) Annual Fee: [not disclosed] per annum (payable annually in advance from Financial Close). The fee is indexed to CPI annually and all applicable GST is payable in addition to the fee.

CPI means the All Groups Consumer Price Index Weighted Average of Eight Capital Cities (IECC) (ABS Cat No. 6401.0 Series ID A2325846C) published quarterly by the Australian Bureau of Statistics or, if there is a change to that index, the index determined in accordance with section 3 of Schedule 22 of the Project Agreement.

Time in Attendance Fee

A time in attendance fee may be charged for:

- (a) amendments to this Agreement;
- (b) significant changes to the scope, nature or frequency of services undertaken by the Escrow Agent, including the restructure of the transaction; and
- (c) work that was not originally contemplated.

The fee will be charged at the Escrow Agent's time in attendance rate applicable at the time of incurring the fee. On request, the applicable time in attendance rate will be provided to the State and / or Project Co.

The Escrow Agent's current time in attendance hourly rates are:

| Simplified for across PCT (excluding GST) | | |
|--|-----------------|---|
| Team Assistant | [not disclosed] | Team Assistant |
| Client Service Officer | [not disclosed] | Client Service Officer Associate |
| Senior Client Service Officer | [not disclosed] | Senior Client Service Officer Senior Associate |
| Manager | [not disclosed] | Senior Client Service Manager Manager Manager Corporate Clients - New Business Client Service Manager |
| Senior Manager | [not | Senior Manager |



| | | |
|--|-----------------|--|
| | disclosed] | Senior Corporate Clients Manager Senior Securitisation Manager Senior Transaction Manager Senior Risk Manager |
| Head of | [not disclosed] | Head of |
| Legal Counsel Senior Legal Counsel | [not disclosed] | Legal Counsel Senior Legal Counsel |
| Group General Counsel Company Secretary | [not disclosed] | Group General Counsel Company Secretary |
| General Manager | [not disclosed] | GM |
| Group Executive | [not disclosed] | GE |
| CEO | [not disclosed] | CEO |

Out of Pocket Expenses

The Escrow Agent must be reimbursed for all out of pocket expenses and costs, subject to the following:

- (a) the expenses and costs have been reasonably and properly incurred for the sole purpose of performing the services under this Agreement;
- (b) where they exceed or are likely to exceed [not disclosed] per annum, have the prior approval of the State and Project Co; and
- (c) are supported by documentation provided to the State and Project Co which is satisfactory to the State and Project Co.



Signing page

Executed as a deed

State

Signed sealed and delivered by
**The Minister for Public
Transport on behalf of the
Crown in right of the State of
Victoria**

in the presence of

sign here ► [not disclosed]
Minister

sign here ► [not disclosed]
Witness

print name [not disclosed]

print name [not disclosed]

CY Partner 1

Signed sealed and delivered for
[not disclosed]
by its attorneys

sign here ► [not disclosed]
Attorney

[not disclosed]
Attorney

print name [not disclosed]

[not disclosed]

in the presence of

sign here ► [not disclosed]
Witness

[not disclosed]
Witness

print name [not disclosed]

[not disclosed]



CY Partner 2

Signed sealed and delivered for
[not disclosed]
by its attorney

in the presence of

sign here ► [not disclosed]
Attorney

sign here ► [not disclosed]
Witness

print name [not disclosed]

print name [not disclosed]

CY Partner 3

Signed sealed and delivered for
[not disclosed]
by its attorney

in the presence of

sign here ► [not disclosed]
Attorney

sign here ► [not disclosed]
Witness

print name [not disclosed]

print name [not disclosed]

CY Partner 4

Signed sealed and delivered for
[not disclosed]
by its attorney

in the presence of

sign here ► [not disclosed]
Attorney

sign here ► [not disclosed]
Witness

print name [not disclosed]

print name [not disclosed]



Escrow Agent

Signed sealed and delivered for
**Perpetual Corporate Trust
Limited ACN 000 341 533**

by its attorney

in the presence of

sign here ► [not disclosed] _____
Attorney

sign here ► [not disclosed] _____
Witness

print name [not disclosed] _____

print name [not disclosed] _____



HERBERT
SMITH
FREEHILLS

Deed

Execution version

Metro Tunnel
Tunnel and Stations PPP

Finance Direct Deed

The Minister for Public Transport on behalf of the
Crown in right of the State of Victoria

Cross Yarra Partnership

Stella MMTS Finance Pty Limited

ANZ Fiduciary Services Pty Limited

Australia and New Zealand Banking Group Limited



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Finance Direct Deed

Date ►

Between the parties

State **The Minister for Public Transport** on behalf of the Crown in right of the State of Victoria

Project Co 1 [not disclosed];
2 [not disclosed];
3 [not disclosed]; and
4 [not disclosed],
(together, **Cross Yarra Partnership**) (ABN 57 956 065 885) of Level 8, 136 Exhibition Street, Melbourne, VIC 3000, Australia.

Finance Co **Stella MMTS Finance Pty Limited**
ACN 612 094 078 of Level 14, Tower Three, International Towers Sydney, Exchange Place, 300 Barangaroo Ave, Barangaroo, New South Wales 2000

Security Trustee **ANZ Fiduciary Services Pty Limited**
ABN 91 100 709 493 of Level 12, 100 Queen Street, Melbourne VIC 3000

Agent **Australia and New Zealand Banking Group Limited**
ABN 11 005 357 522 of Level 12, 100 Queen Street, Melbourne VIC 3000

Recitals

- 1 The background to the Project is set out in the Project Agreement.
- 2 Under the Finance Documents, the Financiers have agreed to provide finance to Finance Co in respect of the Project, and Project Co, Finance Co, the Security Trustee, the Agent and the Financiers have entered, or will enter, into the Finance Documents to finance the Project.
- 3 Under the Project Agreement the State has agreed to pay the State Contributions to Project Co and granted Project Co the right to earn the Quarterly Service Payment and the Early Acceptance Incentive Payment.



-
- 4 Each Project Entity has agreed to grant the Financiers Securities to the Security Trustee to secure the due performance of its obligations under the Finance Documents, and to grant the State Securities to the State to secure its obligations to the State under the State Project Documents.
 - 5 The Security Trustee, the Agent, the State, Finance Co and Project Co wish to regulate the manner in which certain rights in respect of the Project are to be exercised.
-

This deed witnesses as follows:



Operative provisions

1 Definitions and interpretation

1.1 Project Agreement definitions

Unless otherwise expressly defined, expressions used in this Deed have the meanings given to them in or for the purposes of the Project Agreement.

1.2 Definitions

In this Deed, unless the context otherwise requires:

| Term | Meaning |
|---|--|
| Acceptance Related Major Default | means a Major Default under any of paragraphs 3(c) (<i>Independent Reviewer Notice</i>), 4 (<i>Failure to achieve Provisional Acceptance</i>) or 6 (<i>Failure to achieve Critical Interface Milestone (PPP Responsible)</i>) of the definition of 'Major Default' in the Project Agreement. |
| Account Bank | has the meaning given in clause 6.5. |
| Agreed Amount | has the meaning given in clause 18(b)(1). |
| Amendment | has the meaning given in clause 10.1. |
| Beneficiaries | the beneficiaries from time to time under the Security Trust Deed. |
| Consent Deed | each of the D&C Consent Deed and the Maintenance Consent Deed. |
| Cost | has the meaning given in clause 18(g). |
| Cure Activities | the remedy of all PA Default Events (or overcoming their effects to the reasonable satisfaction of the State). |
| D&C Consent Deed | means the document entitled 'D&C Consent Deed – Metro Tunnel' between the D&C Subcontractor, the relevant Parent Guarantor, Project Co, the Security Trustee and others. |



| | |
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| Debt | Project Debt together with accrued interest payable (other than default interest) plus or minus any amounts payable or receivable under any hedging or swap arrangements forming part of the Finance Documents and deducting all credit balances on all debt reserve and debt service accounts (however named) held by or on behalf of any Project Entity or any Financier and related to the Project but does not include equity shareholder loans or amounts in the nature of equity. |
| Deed | this deed and includes all schedules, exhibits, attachments and annexures to it. |
| Direct Deeds | 6 the D&C Direct Deed; and 7 the Maintenance Direct Deed. |
| Disputing Parties | has the meaning given in clause 16.1(a). |
| Enforcing Party | any agent, attorney, trustee, receiver, receiver and manager, administrator, liquidator or provisional liquidator appointed under any Security. |
| Finance Default | 1 an event of default (however described) under the Finance Documents; or 2 any event which entitles any Finance Party to cease to make available any financial accommodation in respect of a Project Entity's financial indebtedness (other than voluntary cancellation of financial accommodation by a Project Entity which the directors of Project Co determine is surplus to the requirements of Project Co to deliver the Project in full compliance with the State Project Documents). |
| Finance Party | the Security Trustee, the Agent, each Financier and each other Beneficiary. |
| Financier Enforcing Party | the Security Trustee and any Enforcing Party appointed under the Financiers Securities. |
| Financiers' Cure Program | at any time, the steps and actions that together comprise a program and the date or dates then specified in the program for cure of any PA Default Event, as outlined in clause 5.2(c) and as extended (if at all) in accordance with clause 5.4. |
| Financiers Securities | each of: 1 the deed entitled 'General Security Deed - Borrower' between |



Finance Co and the Security Trustee;

- 2 the deed entitled 'General Security Deed – Borrower HoldCo' between Stella CYP Holdings Pty Limited and the Security Trustee;
- 3 the deed entitled 'General Security Deed – CY Trusts, CY Trustees and the Cross Yarra Partnership' between Project Co, CY Trustee 1, CY Trustee 2, CY Trustee 3 and CY Trustee 4 each in both its personal capacity and as trustee for CY Trust 1, CY Trust 2, CY Trust 3 or CY Trust 4 respectively, and the Security Trustee;
- 4 the deed entitled 'General Security Deed – CY HoldCos and CY Holding Trusts' between CY HoldCo 1, CY HoldCo 2, CY HoldCo 3 and CY HoldCo 4, each in both its personal capacity and as trustee for CY Holding Trust 1, CY Holding Trust 2, CY Holding Trust 3 or CY Holding Trust 4 respectively, and the Security Trustee;
- 5 each other Security (as defined in the Facility Agreement); and
- 6 any other Security Interest which is at any time collateral to any of the foregoing.

Fit and Proper Person in respect of a person, that if that person acquired Control of a Project Entity by means of a Share Capital Dealing then the State would not be entitled to withhold its consent to the relevant Share Capital Dealing because in the State's reasonable opinion one or more of the criteria in clause 53.5 (*State's right to withhold consent*) of the Project Agreement are satisfied.

Maintenance Consent Deed means the document entitled 'Maintenance Consent Deed – Metro Tunnel' between the Maintenance Subcontractor, the relevant Parent Guarantor, Project Co, the Security Trustee and others.

PA Default Event

- 1 subject to paragraph 2, a Major Default or a Default Termination Event; and
- 2 for the purposes of clauses 5.6 and 5.7 only:
 - a a Major Default constituted by an Insolvency Event occurring in respect of the D&C Subcontractor, the Maintenance Subcontractor or the Parent Guarantors; or
 - b a Default Termination Event constituted by Project Co at any time displaying an intention to wholly or substantially abandon or does permanently abandoning the D&C Activities or the Services.

Permitted Amendment has the meaning given in clause 10.2.

Permitted Fund any fund identified in Schedule 1.



| | |
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| Project Account | each Project Account as defined in the Facility Agreement and any other account of Project Co with a Finance Party (but excluding the Distributions Account (if any) as defined in the Facility Agreement). |
| Project Agreement | the document entitled 'Project Agreement' between the State and Project Co dated on or about the date of this Deed. |
| Project Entities' Rights | the Project Entities' rights under the Project Documents (whether held jointly or severally). |
| Project Co Termination Payment | any Termination Payment payable by Project Co to the State. |
| Receipt | has the meaning given in clause 4.6. |
| Recipient | has the meaning given in clause 18(b)(2). |
| Relevant Financier | has the meaning given in clause 5.7(a)(2). |
| Representatives | has the meaning given in clause 16.2(a). |
| Revenue | has the meaning given in clause 18(f). |
| Securities | <ol style="list-style-type: none">1 the State Securities; and2 the Financiers Securities, and Security means each or any one of them as the context requires. |
| Security Interest | any mortgage, charge, pledge, lien, encumbrance, assignment, hypothecation, security interest, title retention, preferential right, trust arrangement, contractual right of set-off or any other security agreement or arrangement in favour of any person including a security interest under section 12 of the <i>Personal Property Securities Act 2009</i> (Cth). |
| Security Trust | has the meaning given in the Security Trust Deed. |
| Security Trustee Tripartite Rights | has the meaning given in clause 9.3(a). |



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| Specific Major Default | means a Major Default under, insofar as it relates to breach of requirements of any Project Document relating to vibration, electromagnetic interference or disturbance, or compliance with Approvals relating to the D&C Activities or the Final Acceptance Works, paragraph 16 (<i>default by Project Entity</i>) or 17 (<i>material breach by Project Co's Associates</i>) of the definition of 'Major Default' in the Project Agreement. |
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| State Priority Moneys | any amounts owing to the State under clauses 41.4 (<i>Payments</i>), 43.10 (<i>State may effect Insurances</i>) and 45.7 (<i>Payment on termination</i>) of the Project Agreement or as a result of action taken under clause 7 of a Direct Deed following receipt by the State of a State Cure Notice (as defined in the relevant Direct Deed). |
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| State Securities | <ol style="list-style-type: none">1 the State Security; and2 any other instrument or Security Interest which is at any time collateral to any of the foregoing. |
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| Super Majority Financiers | Financiers holding senior debt commitments other than the Relevant Financier, and holding in aggregate senior debt commitments equal to or greater than [not disclosed] of all senior debt commitments. |
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| Supplier | has the meaning given in clause 18(b). |
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| Valid Claim | a claim by a Subcontractor (other than the D&C Subcontractor or Maintenance Subcontractor) for payment for works performed by that Subcontractor under its Subcontract and in respect of which the Subcontractor has become entitled to suspend work pursuant to the Security of Payment Act because of a failure by the D&C Subcontractor or Maintenance Subcontractor or any of their respective Associates to pay the amount claimed. |
|--------------------|--|

1.3 Interpretation

In this Deed:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;
- and unless the context otherwise requires:
- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa and a word indicating a gender includes every other gender;
- (c) **(agreement and schedule references)**: a reference to:
- (1) a party, clause, Schedule, Exhibit, or Annexure is a reference to a party, clause, schedule, exhibit or annexure of or to this Deed; and
 - (2) a section is a reference to a section of a Schedule;



- (d) **(agreement as amended)**: subject to clause 1.3(e), a reference to this Deed or to any other deed, agreement, document or instrument includes a reference to this Deed or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(consent to amendments)**: references to the D&C Subcontract, the Maintenance Subcontract, the Consent Deeds, the Finance Documents and the Equity Documents or any of them are references to those documents or the relevant document in the form either before the date of this Deed, or in satisfaction of the conditions outlined in clause 3 (*Conditions Precedent*) of the Project Agreement but as modified, varied, amended or replaced by the parties to those documents, with the consent of the State (as required) under clause 53.1 (*Assignment, amendments to Project Documents and other dealings by Project Co*) of the Project Agreement;
- (f) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (g) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (h) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (i) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) **(‘includes’)**: ‘includes’ will be read as if followed by the phrase ‘(without limitation)’;
- (k) **(‘or’)**: the meaning of ‘or’ will be that of the inclusive, being one, some or all of a number of possibilities;
- (l) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (m) **(‘\$’)**: a reference to ‘\$’, AUD or dollar is to Australian currency;
- (n) **(time)**: a reference to time is a reference to time in Melbourne, Australia;
- (o) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (p) **(obligations and liabilities)**: a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (q) **(‘may’)**: the term ‘may’, when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;
- (r) **(construction)**: where there is a reference to an Authority, institute or association or other body referred to in this Deed which:
 - (1) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or



- (2) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (s) **(remedy)**: the use of the words 'remedy' or 'cure' or any form of such words in this Deed means that the event to be remedied or cured must be remedied or cured or its effects overcome, and clause 44.1 (*Failures capable of remedy*) of the Project Agreement also applies for the purposes of this Deed; and
- (t) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

1.4 Business Day

If the day on or by which anything is to be done in accordance with this Deed is not a Business Day, that thing must be done:

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

1.5 Provisions limiting or excluding Liability, rights or obligations

- (a) A right of the State or an obligation of a party other than the State under this Deed will not limit or exclude any other right of the State or obligation of a party other than the State under this Deed unless expressly stated.
- (b) Any provision of this Deed which seeks, either expressly or by implication, to limit or exclude any liability of a party is to be construed as doing so only to the extent permitted by Law.

1.6 Approvals, directions and notices in writing

Unless otherwise expressly provided in this Deed or agreed between the parties, all approvals, consents, directions, requirements, requests, claims, notices, agreements and demands must be given in writing.

1.7 Prior approval or consent

Where the Agent or the Security Trustee or both are required by this Deed to obtain the State's consent or approval to an action, document or thing, unless otherwise expressly stated, that consent or approval must be obtained prior to the actions, document or thing occurring or coming into effect.

1.8 Action without delay

Unless there is a provision in this Deed which specifies a period of time in which something must be done by the parties, all things must be done without undue delay.

1.9 Reasonable endeavours of State

Any statement in this Deed providing that the State will use or exercise 'reasonable endeavours' or 'act reasonably' in relation to an outcome, means that the State:

- (a) **(relevant steps)**: will take steps to bring about the relevant outcome so far as it is reasonably able to do so, having regard to its resources and other responsibilities;

- (b) **(no guarantee)**: cannot guarantee the relevant outcome; and
- (c) **(no obligation)**: is not required to:
 - (1) exercise a right of any Government Party, or to influence, over-ride, interfere with or direct any other Government Party in the proper exercise and performance of its legal, statutory or executive duties and functions;
 - (2) exercise a power or discretion in a manner that the State regards as not in the public interest;
 - (3) develop or implement new policy;
 - (4) procure legislation; or
 - (5) act in any way that the State regards as not in the public interest.

1.10 Capacity of Security Trustee

- (a) **(Capacity of Security Trustee)**: The Security Trustee enters into and performs this Deed as trustee for the Beneficiaries under the Security Trust Deed without incurring liability in any other capacity and with recourse limited to the Security Trustee's right of indemnity:
 - (1) out of the assets of the Security Trust; and
 - (2) from the Beneficiaries.
- (b) **(No application)**: The provisions of this clause 1.10 will not apply to any obligation or liability of the Security Trustee to the extent that it is not satisfied because there is a reduction in the extent, or an extinguishment, of the Security Trustee's indemnification out of the trust assets under the Security Trust Deed, because the Security Trustee has been guilty of fraud, wilful misconduct or gross negligence.
- (c) **(Role of Security Trustee)**: Each party acknowledges that the Security Trustee holds the benefit of this Deed for the benefit of the Beneficiaries and, as between the Security Trustee and the Beneficiaries:
 - (1) is bound to act on the instructions of the Beneficiaries in accordance with the terms of the Security Trust Deed; and
 - (2) in the absence of such instructions from the Beneficiaries, the Security Trustee is not bound to act,in each case without derogating from the rights of the State under this Deed arising from any act or failure to act.
- (d) **(Obligations limited)**: The Security Trustee's obligations, duties and responsibilities are limited to those expressly set out in the Security Trust Deed and this Deed.
- (e) **(Appointment)**: Each other party to this Deed may assume that the Security Trustee has been duly appointed, that its appointment has not been terminated or suspended (or the terms of its appointment materially amended) and that it is authorised to give any instruction, notice, consent or direction which it purports to give under this Deed.

1.11 Replacement of Security Trustee

- (a) **(Assignment or novation)**: If the Security Trustee is replaced as trustee under the Security Trust Deed, then the Security Trustee may assign, novate or



otherwise transfer its rights and obligations under this Deed to the replacement trustee.

- (b) **(Novation deed)**: Each party agrees that it will enter into a novation deed with any replacement security trustee that is appointed under the Security Trust Deed (in a form reasonably acceptable to the Security Trustee and the replacement security trustee).

1.12 Capacity of Agent

- (a) **(Capacity of Agent)**: The Agent enters into this Deed in the capacity as agent for each of the Financiers. The rights and obligations of the Agent under this Deed at any time are the rights and obligations of the Financiers at that time. The Agent holds the benefit of this Deed for the benefit of each of the Financiers and is bound to act in accordance with the Finance Documents. No party to this Deed is obliged to enquire whether an exercise by the Agent of any right is within the Agent's authority as agent of the Financiers.
- (b) **(Replacement)**: If the Agent is replaced as agent for the Financiers under the Finance Documents, then the Agent may assign, novate or otherwise transfer its rights and obligations under this Deed to the replacement facility agent. Each party agrees that it will enter into a novation deed with any replacement agent that is appointed under the Finance Documents (in a form reasonably acceptable to the Agent and the replacement agent).

1.13 Inconsistency between State Project Documents

Where there is an inconsistency, ambiguity or discrepancy between this Deed and any other State Project Document, or within or between any of the State Project Documents (excluding the Project Agreement), then the following order of precedence applies:

- (a) this Deed;
- (b) the Project Agreement; and
- (c) the remaining State Project Documents.

1.14 Project Documents

The Security Trustee and the Agent each acknowledge that they have received a copy of the Project Documents.

1.15 Finance Documents

Each Project Entity represents and warrants to the State that:

- (a) **(Full disclosure)**: before the date of this Deed, it has fully disclosed to the State the terms of the Finance Documents, the On-Loan Agreement and the Interest Rate On-Swap; and
- (b) **(Documents governing and creating Project Co financial indebtedness)**: those Finance Documents, the On-Loan Agreement and the Interest Rate On-Swap (together with the Equity Documents) are, on the date of this Deed, the only documents governing or creating each Project Entity's financial indebtedness.

1.16 Continuance of rights

- (a) **(Rights not affected)**: This Deed does not affect the rights or obligations of a party under a Project Document, except to the extent expressly provided in this Deed.
- (b) **(Liability not affected)**: The failure by a party (other than a Project Entity) to comply with the provisions of this Deed does not affect the liability of any Project Entity under any other Project Document.

1.17 Representations and warranties

- (a) Each party represents and warrants to each other party that:
 - (1) **(power)**: it has power to enter into each Project Document to which it is a party and perform its obligations under or as contemplated by those Project Documents and all necessary action has been taken to authorise its execution, delivery and performance;
 - (2) **(valid and binding)**: each Project Document to which it is a party constitutes its valid and binding obligations enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject to the availability of equitable remedies; and
 - (3) **(execution)**: the execution by it of, the performance by it of its obligations under, and the compliance by it with, the provisions of each Project Document to which it is a party does not and will not contravene any existing Law to which it is subject or violate any document or agreement to which it is a party or which is binding on it or any of its assets.
- (b) Finance Co represents and warrants for the benefit of the State that:
 - (1) **(power to execute)**: it has the power to execute, deliver and perform its obligations under the Project Documents;
 - (2) **(legality)**: the execution, delivery and performance of each Project Document to which it is a party does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;
 - (3) **(validity)**: each Project Document to which it is a party constitutes a valid and legally binding obligation on it in accordance with its terms;
 - (4) **(registration)**: it is duly registered, properly constituted and remains in existence;
 - (5) **(no trust relationship)**: it is not the trustee or Responsible Entity of any trust nor does it hold any property subject to or impressed by any trust;
 - (6) **(no subsidiaries)**: it has no subsidiaries;
 - (7) **(no tax consolidation)**: it is not a member of any tax consolidation group within the meaning of the *Income Tax Assessment Act 1997* (Cth) or GST group within the meaning of the GST Law, except with the consent of the State;
 - (8) **(no trading)**: it has not traded since its incorporation, other than for the purposes of entering into the Project Documents and has no



liabilities other than those that have arisen in connection with entering into the Project Documents;

- (9) **(no material change)**: unless otherwise notified and accepted by the State (acting reasonably), there has been no material change in its financial condition (since the later of its date of incorporation and the date of its last accounts) which would prejudice its ability to perform its obligations under the Project Documents;
 - (10) **(information true and correct)**: all information that has been provided to the State by Finance Co is true and correct and Finance Co is not aware of any material facts or circumstances that have not been disclosed to the State and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this Deed with Finance Co;
 - (11) **(authorisations)**: it has taken all necessary corporate action to authorise, execute, deliver and perform its obligations under each Project Document to which it is a party and any other instrument required under a Project Document; and
 - (12) **(no other security interests)**: none of its assets are subject to any 'Encumbrance' other than a 'Permitted Encumbrance' (as each of those terms is defined in the State Security).
- (c) Each representation and warranty given by Finance Co under this Deed:
- (1) **(date of deed)**: is made on the date of this Deed; and
 - (2) **(repetition)**: will be deemed to be repeated each day during the period from the date of this Deed to the Expiry Date,
- with reference to the facts and circumstances then subsisting.

1.18 State's rights and obligations

- (a) **(Acknowledgement)**: The parties acknowledge the substance, operation and potential effect and consequences of clause 2.13 of the Project Agreement in relation to this Deed.
- (b) **(No Claim)**: Subject to clause 1.18(c), each Project Entity, the Agent and the Security Trustee will not be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its executive or statutory rights or duties.
- (c) **(Liability for breach)**: Clauses 1.18(a) and 1.18(b) do not limit any Liability which the State would have had to any Project Entity, the Agent or the Security Trustee under any State Project Document as a result of a breach by the State of a term of any State Project Document to which it is a party but for these clauses.

1.19 Cost of carrying out obligations

Each party must carry out its obligations under this Deed at its own cost, unless expressly provided otherwise.



2 Conditions precedent

The satisfaction or waiver of the Conditions Precedent in accordance with clause 3 (*Conditions Precedent*) of the Project Agreement, is a condition precedent to the coming into operation of this Deed (other than this clause 2 and clauses 1.1 to 1.3, 1.9, 1.10, 1.12, 1.17, 14, 16, 17, 19 and 20).

3 Consent to Securities

3.1 Consent by the State

- (a) **(Consent)**: The State consents to the Financiers Securities.
- (b) **(Permitted Encumbrance)**: The State acknowledges that each of the Security Interests created under the Financiers Securities is a 'Permitted Encumbrance' for the purposes of the State Security.

3.2 Consent by Security Trustee and Agent

- (a) **(Consent)**: The Security Trustee and the Agent each consent to the State Securities.
- (b) **(Permitted Security Interests)**: The Security Trustee and the Agent each acknowledge that the State Securities are 'Permitted Security Interests' for the purposes of the Finance Documents.

3.3 Nature of consents

Neither the State, the Agent nor the Security Trustee by their respective consents given in clauses 3.1 and 3.2, will be deemed to have:

- (a) **(approved)**: approved the terms of any document;
- (b) **(agreed)**: agreed, affirmed, represented or warranted the validity or enforceability or binding nature of any document; or
- (c) **(consented)**: consented to any document granting or creating any interest in any right, title or property other than as set out in this Deed.

4 Order of priorities

4.1 Priority of Securities

Subject to clause 4.3, the parties agree that the order of priority of the Financiers Securities and the State Securities is, at any time:

- (a) **(State Securities)**: firstly, the State Securities for any State Priority Moneys and any Project Co Termination Payment at that time;
- (b) **(Financiers Securities)**: secondly, the Financiers Securities for the aggregate of:
 - (1) the Debt at that time; and



- (2) any fees, costs or expenses then due from a Project Entity under a Finance Document at that time including because of its breach of a Finance Document, including default interest;
- (c) **(other State Securities)**: thirdly, the State Securities for any amounts secured by them at that time, other than the State Priority Moneys and any Project Co Termination Payment; and
- (d) **(other Financiers Securities)**: fourthly, the Financiers Securities for any amount secured by them at that time other than those to which clause 4.1(b) applies.

4.2 Provisions apply despite anything to the contrary

Clause 4.1 applies notwithstanding:

- (a) **(Contents of Financiers Securities and State Securities)**: anything contained in the Financiers Securities or the State Securities;
- (b) **(Date or order of the Securities)**: the date or order of execution or registration of any of the Securities;
- (c) **(Order)**: the order in which any moneys may be or may have been advanced or deemed to be or have been advanced or become or became payable or secured under the respective Securities;
- (d) **(Payment and repayment)**: the payment or repayment in whole or in part from time to time of the money secured by the Financiers Securities or the State Securities;
- (e) **(Fluctuation in secured amounts)**: any fluctuation in the amount secured by the Financiers Securities or the State Securities from time to time;
- (f) **(Date)**: the respective dates on which anything is done or omitted to be done under or in relation to the Financiers Securities or the State Securities;
- (g) **(Contingent payment or moneys not due for payment)**: the moneys secured by the Financiers Securities or the State Securities being contingently payable or not due for payment; or
- (h) **(Contrary rule of law or equity)**: any rule of law or equity to the contrary.

4.3 Application of payments on enforcement

To give effect to the agreed order of priority under clause 4.1, the parties agree that any moneys received by the State, the Security Trustee or any Enforcing Party on enforcement of a Financiers Security or a State Security, as the case may be, will be applied in the following order of priority:

- (a) **(reasonable costs)**: first, *pari passu* towards the reasonable costs, charges and expenses of the State, the Security Trustee and any Enforcing Party appointed under a Security incurred in the enforcement of a Security in accordance with this Deed;
- (b) **(remuneration)**: secondly, towards the remuneration of any such Enforcing Party;
- (c) **(priorities)**: thirdly, to the State and the Security Trustee in accordance with the priorities set out in clause 4.1; and
- (d) **(surplus amount)**: fourthly, any surplus amount is to be paid to an account in the name of Project Co with any bank nominated by Project Co. That surplus



will not carry interest while held by the State, the Security Trustee or the Enforcing Party.

4.4 Contingent liabilities

If a Security secures contingent liabilities to the State or the Security Trustee then, until the State or the Security Trustee (as the case may be) is satisfied that the contingent liability has been extinguished, the State or the Security Trustee may retain from the proceeds of a realisation of the Security an amount consistent with the order and amount of priority established under clause 4.1 which they reasonably estimate to be the amount of the contingent liability.

4.5 Enforcement by the State

(a) **(No enforcement without consent):** Subject to the provisions of this Deed, for so long as there is Actual Debt secured by the Finance Documents, the State must not:

- (1) take any action in or towards exercising any right under or in respect of the State Securities; or
- (2) petition for (or vote in favour of any resolution for) or initiate or support or take steps with a view to any insolvency, liquidation, reorganisation, administration, or dissolution proceedings or any voluntary arrangement or assignment for the benefit of creditors or the termination or dissolution of any Project Entity,

without first obtaining the consent of the Security Trustee, which consent must not be unreasonably withheld or delayed.

(b) **(Priority of enforcement action):** Subject to clause 4.5(c):

- (1) any enforcement action under the Financiers Securities by a Financier Enforcing Party will take precedence over any enforcement action by the State or an Enforcing Party appointed under the State Securities; and
- (2) if an Enforcing Party is appointed in relation to any property under any of the Financiers Securities:
 - (A) the Enforcing Party may (if it notifies the State of its desire to do so) assume possession and control of that property from any Enforcing Party in possession and control of that property under any State Securities; and
 - (B) the State Securities will not preclude or restrict the free dealing with the property by such an Enforcing Party, notwithstanding the security created by any State Securities, or any provision of any State Securities to the contrary.

(c) **(State's superior rights under Project Documents):** Clauses 4.5(a) and 4.5(b) do not:

- (1) prevent the State from exercising its rights at any time under the State Securities to the extent necessary to allow the State to exercise its rights and give effect to Project Co's obligations under clauses 32 (*Handover*), 41 (*Step-in by the State*) and 45 (*Termination*) of the Project Agreement;
- (2) affect the State's right to set off under clause 35.8 (*Set-off*) of the Project Agreement;



- (3) prevent the State from enforcing the State Securities upon the appointment of an administrator to a Project Entity by any person under part 5.3A of the Corporations Act before or during the decision period (as defined in section 9 of the Corporations Act) provided that if the Security Trustee is enforcing or subsequently enforces its claim over all or substantially all of that Project Entity's property (except to the extent that the State is entitled to exercise its rights under this clause 4.5(c)), the State agrees that it will instruct any Enforcing Party to comply with clause 4.5(b); or
- (4) limit the rights of the State in relation to any third party.
- (d) **(Financier Enforcing Parties to co-operate):** Without limiting clause 4.5(c), if the State appoints an Enforcing Party in the circumstances referred to in clause 4.5(c)(1), then the Security Trustee must procure that any Financier Enforcing Party will promptly and fully cooperate with the Enforcing Party appointed by the State to the extent that the State reasonably requires and not do anything to prevent or hinder the Enforcing Party appointed by the State.

4.6 Receipts

If a party receives any payment in cash or in kind or recovers any amount (including by way of set off or combination of accounts) (**Receipt**) which:

- (a) is not a payment required under any Project Document (provided that a payment required to be made following enforcement of a Security is not considered to be a required payment for the purposes of this clause); or
- (b) is a payment required under a Project Document but is not made in the manner and to the person prescribed in the relevant Project Document,

and a Security is enforced, then the party will immediately pay the amount of the Receipt to the other party for distribution in accordance with clauses 4.1 and 4.3.

4.7 Registration and notice

The State and the Security Trustee must co-operate with a view to reflecting the priority of the Securities set out in this Deed in any register or with any filing or registration authority and in giving notice to insurers and debtors liable for obligations covered by the Securities.

4.8 Priority for all moneys

Subject to clause 4.5(c), the order and amount of priority established under this clause 4 operates in respect of all amounts received or realised by way of set off by the State or the Security Trustee on a realisation of any of the Securities.

4.9 Marshalling of securities

Neither the State nor the Security Trustee is obliged to marshal in favour of the other. If any of the Securities becomes unenforceable, each of the State and the Security Trustee may determine the extent (if any) to which it will have recourse to any of its Securities.

4.10 Claims against the Financiers' Certifier

If:



- (a) **(Claim by State):** a Claim has been brought by the State against the Financiers' Certifier; and
- (b) **(Claim by Project Co etc):** a Claim is also brought against the Financiers' Certifier by or on behalf of a Project Entity, the Agent, the Security Trustee, a Financier or an Enforcing Party,

the parties agree that the State's Claim will rank in priority to all other Claims, and that accordingly:

- (c) **(payable to State first):** no amount will be payable to a party other than the State in respect of a Claim against the Financiers' Certifier whilst any Claim by the State remains outstanding;
- (d) **(State to recover amounts first):** to the extent that the State is successful in a Claim against the Financiers' Certifier, the State will be entitled to recover amounts owing by the Financiers' Certifier in respect of that Claim, including from the proceeds of any insurance maintained by the Financiers' Certifier, before any amount is payable by the Financiers' Certifier (or its insurers) to a party other than the State in respect of a Claim by that other party; and
- (e) **(held on trust for State):** to the extent that any party other than the State receives or recovers any amount from the Financiers' Certifier (or its insurers) whilst the State has any Claim outstanding, it will hold such amount on trust for the State until such time as it is to be applied in accordance with clause 4.10(d) or the State confirms that it has no further Claims against the Financiers' Certifier.

5 PA Default Events

5.1 Notice of PA Default Events

The State agrees with the Security Trustee that it will give the Security Trustee a copy of any notice given by the State to Project Co in respect of a PA Default Event at or about the same time as the notice is given to Project Co.

5.2 Security Trustee's right to remedy

- (a) **(Security Trustee's right to remedy):** The Security Trustee may (but is not obliged to), upon providing the State with notice within the timeframe set out in clause 5.5(a) of its intention to do so, take steps to remedy or procure the remedy of a PA Default Event by developing a Financiers' Cure Program in accordance with this clause 5.2.
- (b) **(Additional right):** The right to develop a Financiers' Cure Program is in addition to Project Co's right to remedy a Major Default under the Project Agreement. Any remedy of a PA Default Event effected by the Security Trustee or an Enforcing Party will (as between Project Co and the State) be effective as a remedy of the PA Default Event by Project Co.
- (c) **(Financiers' Cure Program):** If the Security Trustee gives a notice to the State under clause 5.2(a), the State and the Security Trustee must meet as soon as reasonably practicable to agree in good faith a program for the Security Trustee or the Enforcing Party appointed by the Security Trustee (or both) to undertake the Cure Activities and a date by which the relevant PA Default Event must be remedied or its effects overcome (**Financiers' Cure Program**). If the Security Trustee and the State fail to agree on a Financiers' Cure Program, then either



party may refer the matter for resolution in accordance with clause 16. The program agreed or determined in accordance with clause 16 will be the Financiers' Cure Program.

- (d) **(Provision of access and information):** Upon a PA Default Event occurring, the State must, to the extent reasonably requested by a Financier Enforcing Party, and provided it is in accordance with the Financiers' Cure Program:
- (1) provide reasonable assistance to allow any Financier Enforcing Party all necessary access to the Works and the Site, subject to the terms of the State Project Documents; and
 - (2) promptly provide that Financier Enforcing Party with all material information in its possession relevant to the PA Default Event.
- (e) **(Security Trustee Acknowledgement):** Without limiting any rights the Security Trustee can exercise in accordance with this clause 5.2 or clause 6.1, but subject to the acknowledgements in clause 9.1, the Security Trustee acknowledges and agrees that neither it nor any other Enforcing Party will in any way interfere with the performance by the D&C Subcontractor or the Maintenance Subcontractor (as the case may be) of its obligations under the relevant Subcontract, without obtaining the State's prior consent, unless such action is permitted by the terms of the D&C Subcontract or the Maintenance Subcontract (as the case may be) or in accordance with the terms of the D&C Consent Deed or the Maintenance Consent Deed.

5.3 Information regarding action to cure PA Default Event

- (a) **(Obligations of Security Trustee):** After the State notifies the Security Trustee of a PA Default Event, the Security Trustee must:
- (1) in accordance with the Financiers' Cure Program and whenever reasonably requested by the State; and
 - (2) in any event, at least every month,
update and advise the State of the Security Trustee's plans in relation to the PA Default Event including providing details of:
 - (3) material changes to its Financiers' Cure Program from time to time and progress being made in the implementation of the Financiers' Cure Program, where a Financiers' Cure Program has been agreed; or
 - (4) alternative courses of action it is considering in respect of the PA Default Event and its estimates of the timing of such courses of action, where a Financiers' Cure Program has not been agreed,and must expand upon any such details when reasonably requested by the State.
- (b) **(Provision of details):** Details of the plans of the Security Trustee must, when time and circumstances make it appropriate to do so, or when the State so requests, be provided by the Security Trustee in writing.

5.4 Extension of Financiers' Cure Program

- (a) **(Impact of Relief Event):** Subject to clause 5.4(b), if a Financier Enforcing Party is prevented from carrying out its obligations in accordance with a Financiers' Cure Program as a direct result of a Relief Event, then the program to remedy the PA Default Event under the Financiers' Cure Program will be



extended to reflect the period the Financier Enforcing Party is prevented by that Relief Event from carrying out its obligations in accordance with the Financiers' Cure Program, subject to the Financier Enforcing Party demonstrating to the State's satisfaction (acting reasonably) that it has diligently pursued and, to the extent reasonably possible, continues to diligently pursue the Financiers' Cure Program.

- (b) **(Concurrent delays):** The program to remedy the PA Default Event under a Financiers' Cure Program will not be extended to reflect the period that the Financier Enforcing Party is prevented by a Relief Event from carrying out its obligations in accordance with the Financiers' Cure Program to the extent that any period that the Financier Enforcing Party is prevented by a Relief Event from carrying out its obligations in accordance with a Financiers' Cure Program is contemporaneous with any period that the Financier Enforcing Party is prevented from carrying out its obligations in accordance with a Financiers' Cure Program by an event which is not a Relief Event.
- (c) **(When extensions to be given):** Subject to clause 5.4(d) (and other than in the circumstances contemplated in clause 5.4(a)), if a Financier Enforcing Party:
- (1) reasonably considers that the date specified for the Cure Activities in respect of a PA Default Event under the Financiers' Cure Program is no longer appropriate; and
 - (2) is and has been diligently pursuing the Cure Activities in respect of the PA Default Event and complying with the Financiers' Cure Program,
- it may submit an extension request no later than 10 Business Days before the end of the Financiers' Cure Program requesting one extension to that Financiers' Cure Program. Such request must provide evidence why, notwithstanding diligent pursuit, it has been unable to remedy or overcome the effects of the PA Default Event in accordance with the Financiers' Cure Program. If the State is reasonably satisfied with such evidence and that the Financiers' Cure Program has been and continues to be diligently pursued then it will not unreasonably refuse to grant one extension to the date specified in the Financiers' Cure Program for the Cure Activities in respect of that PA Default Event by such period as the State determines is reasonably required to enable the Financier Enforcing Party to remedy the PA Default Event or overcome its effects.
- (d) **(Maximum extension):** The maximum period of time, including any extension under clause 5.4(c), which the Financier Enforcing Party may be given to remedy a PA Default Event will be no longer than the applicable time period specified in clause 5.5(b)(1).
- (e) **(Date for remedy):** Any date set for remedy (or overcoming the effects) of a PA Default Event under the Financiers' Cure Program, and any change to that date in accordance with this clause 5.4, must be consistent with the period reasonably required by the Security Trustee or any other Financier Enforcing Party to remedy (or overcome the effects of) the PA Default Event assuming that the Security Trustee or other Financier Enforcing Party (as applicable) were diligently pursuing the remedy or overcoming its effects.
- (f) **(Negotiation):** If the Security Trustee reasonably considers that the extension determined by the State in accordance with clause 5.4(c) is not sufficient, the Security Trustee:
- (1) may (provided that the Security Trustee or other Financier Enforcing Party has been diligently pursuing the Cure Activities) refer the matter for resolution in accordance with clause 16; and



- (2) whilst the matter is being determined, must continue to diligently pursue or procure that a Financier Enforcing Party continues to diligently pursue the Cure Activities,

and, subject to clause 5.5(b)(2), the State must not terminate the Project Agreement until such dispute is resolved.

- (g) **(Suspension of Financiers' Cure Program):** Where a Financier Enforcing Party has taken action under a Financiers Security, on and from the date on which the State exercises its rights under clause 41 (*Step-in by the State*) of the Project Agreement, the Financiers' Cure Program (and any related cure period) will be suspended to the extent that the State's exercise of those rights prevents the Financiers' Cure Program from being performed, unless the exercise of those rights was caused by an act or omission of the Financier Enforcing Party.
- (h) **(Diligent Pursuit):** The Security Trustee must itself diligently pursue and must ensure that each other Financier Enforcing Party is diligently pursuing any Cure Activities at all relevant times and is complying with the applicable Financiers' Cure Program, and for the purposes of this Deed, in assessing what can be achieved by diligent pursuit and in assessing whether there has been a failure to diligently pursue the Cure Activities, regard is required to be had to the time necessary to enforce the D&C Subcontract or the Maintenance Subcontract, or to engage a substitute D&C Subcontractor, Maintenance Subcontractor, or Parent Guarantor, if to do so would be consistent with the required steps and actions being diligently pursued, recognising that the Security Trustee is not a D&C Subcontractor or Maintenance Subcontractor (as applicable).

5.5 Termination of Project Agreement

The State agrees that it will not terminate, rescind or treat as repudiated the Project Agreement unless it first notifies the Security Trustee of its intention to do so in accordance with clause 5.1 and:

- (a) **(no response):** the Security Trustee has not responded to the notice from the State within 15 Business Days of receipt or has responded that it does not intend to remedy or overcome the effects of the PA Default Event; or
- (b) **(notice given):** the Security Trustee gives a notice to the State under clause 5.2(a) within 15 Business Days of receipt of the notice from the State under clause 5.1 and:
- (1) the PA Default Event has not been remedied (or its effects overcome) by the earlier of the date set out in the Financiers' Cure Program and the date which is:
- (A)
- (I) in respect of any Acceptance Related Major Default, 36 Months;
 - (II) in respect of any Specific Major Default occurring during the D&C Phase or the FAW Phase, 30 Months;
 - (III) in respect of a Major Default occurring during the D&C Phase or the FAW Phase (other than an Acceptance Related Major Default or a Specific Major Default), 24 Months; and
 - (IV) in respect of a Major Default occurring during the Maintenance Phase, 24 Months,

from the date of the first notice given by the State to Project Co in respect of the Major Default (a copy of which will be provided by the State to the Security Trustee under clause 5.1), plus:

- (V) the period (if any) of any extension to the maximum remedy period in clause 44.3(d) (*Project Co to provide Cure Program and comply with Major Default Notice*) of the Project Agreement pursuant to clause 44.4(a) (*Extension of Cure Program*) of the Project Agreement;
- (B) in respect of a Default Termination Event arising under paragraph 3 (*Insolvency Event of Consortium Member*) or paragraph 9 (*Service Failure*) of the definition of Default Termination Event in the Project Agreement, 12 Months from the date of the first notice given by the State to Project Co in respect of the Default Termination Event (a copy of which will be provided by the State to the Security Trustee under clause 5.1); and
- (C) in respect of a Default Termination Event (other than a Default Termination Event arising under paragraph 3 (*Insolvency Event of Consortium Member*) or paragraph 9 (*Service Failure*) of the definition of Default Termination Event in the Project Agreement or resulting from a failure to cure or remedy a Major Default), 6 Months from the date of the first notice given by the State to Project Co in respect of the Default Termination Event (a copy of which will be provided by the State to the Security Trustee under clause 5.1),

plus:

- (D) the period (if any) of any extension granted under clause 5.4(a) in respect of a Relief Event which prevents a Financier Enforcing Party from carrying out its obligations in accordance with a Financiers' Cure Program,

and provided that there is no double counting of the periods referred to in clause 5.5(b)(1)(A)(V) or clause 5.5(b)(1)(D); or

- (2) a Financier Enforcing Party is not:
 - (A) diligently pursuing the Cure Activities; or
 - (B) following the Date of Final Acceptance, continuing to make available and provide, and maintain and repair the Maintained Assets in accordance with the provisions of the Project Agreement,

provided, however, that the State may not terminate, rescind or treat as repudiated the Project Agreement due to a failure to which clause 5.5(b)(2) applies, unless it has given the Security Trustee notice of the failure described in clause 5.5(b)(2)(A) or 5.5(b)(2)(B) and such failure has not been remedied within 15 Business Days of receipt of such notice by the Security Trustee.



5.6 Payments to Subcontractors on PA Default Event

- (a) **(Details of Valid Claims):** Without limiting clause 13.6 (*Payment of amounts owed to Subcontractors*) of the Project Agreement, if a PA Default Event has occurred and is subsisting, Project Co must, immediately upon request by the State, provide to the State details of any Valid Claims then outstanding.
- (b) **(Application of funds):** If:
- (1) a PA Default Event has occurred and is subsisting;
 - (2) there are Valid Claims that have not been paid and which, if a remedy program under clause 44.3 (*Project Co to provide Cure Program and comply with Major Default Notice*) of the Project Agreement is in place and specifies when such Valid Claims are to be paid, have not been paid in accordance with the remedy program; and
 - (3) there are funds standing to the credit of a Project Account at the relevant time,
- the State may from time to time give a notice to the Project Entities, the Agent or the Security Trustee requiring the Project Entities, the Agent or the Security Trustee (as the case may be) to apply funds standing to the credit of a Project Account in or towards payment of any one or more of the Valid Claims specified in that notice subject to the Subcontractor entering into a deed of release and subrogation in respect of such Valid Claims in form and substance satisfactory to the State, acting reasonably.
- (c) **(Compliance by Project Entities, Agent and Security Trustee):** Each of the Project Entities, the Agent and the Security Trustee (as applicable) must comply with a notice issued by the State under clause 5.6(b) within 5 Business Days of receipt.
- (d) **(Compliance by other Financier Enforcing Party):** The Security Trustee and the Agent will ensure that any other Financier Enforcing Party complies with each notice issued by the State under clause 5.6(b) within 5 Business Days of receipt.
- (e) **(Payments from Project Account):** Each Project Entity:
- (1) consents to the Security Trustee and the Agent (or any Financier Enforcing Party) making any payments from time to time from the Project Accounts that they are required to make in order to comply with a notice issued by the State under clause 5.6(b); and
 - (2) agrees that any such payment will be taken to have been made at the request of the Project Entities and the Secured Moneys (as defined in the Facility Agreement) will not be taken to be reduced to the extent of any such payment.
- (f) **(Contrary to law):** No party is required to make any payment under this clause 5.6 if to do so would be contrary to any law.

5.7 Super Majority Financiers

- (a) **(No consent by Relevant Financier):** If:
- (1) a PA Default Event has occurred and is subsisting; and
 - (2) a Financier (**Relevant Financier**) refuses to grant its consent to any amendment, consent or waiver under a Project Document sought by the State or a Project Entity to which the Super Majority Financiers



have consented or would otherwise have consented (including any amendment, consent or waiver for the provision of additional debt financing and the subordination of the existing senior debt) which requires (but has not then received) the consent of all Financiers,

then the Project Entities, the State and the Super Majority Financiers may proceed with such consent, amendment or waiver without the consent of the Relevant Financier.

- (b) **(No obligation or reduction):** Nothing in clause 5.7(a):
- (1) imposes an obligation on any Financier to pay or advance an amount which is more than the amount which it has committed to pay or advance under the Finance Documents; or
 - (2) enables:
 - (A) the reduction of any amount payable to a Financier under the Finance Documents;
 - (B) the extension:
 - (I) to the date for payment of any amount under the Finance Documents; or
 - (II) of availability for utilisation, of any commitment of any Financier;
 - (C) a change to the sharing provisions applicable to, or to the priority of any payment to, a Financier who is a participant in a facility, unless:
 - (I) the change affects the Financier in a manner which is consistent with the treatment of other Financiers who are participants in that facility;
 - (II) the change relates to the introduction of super senior debt incurred in connection with a workout or restructure to remedy the effects of a subsisting PA Default Event; and
 - (III) the change is consented to by Financiers holding in aggregate senior debt commitments equal to or greater than [not disclosed] of all senior debt commitments; or
 - (D) the release of any Financiers Securities or guarantees granted in favour of a Finance Party, other than for the purpose of any restructuring pertaining to Project Co and/or Finance Co undertaken in accordance with the Finance Documents and the Project Documents,

without that Financier's agreement.

6 Enforcement by Security Trustee

6.1 Enforcement by Security Trustee

Without limiting the actions which the Security Trustee may be entitled to take following the occurrence of a PA Default Event (whether in accordance with the Finance Documents or otherwise), a Financier Enforcing Party may:

- (a) exercise some or all of the Project Entities' Rights;
- (b) engage one or more other persons to exercise some or all of the Project Entities' Rights; and
- (c) assign, novate, transfer or otherwise dispose of all or any of the Project Entities' Rights,

subject to the terms of those documents, this Deed and the rights and duties of the Financier Enforcing Party under the Financiers Securities and at Law.

6.2 No liability

- (a) **(No liability)**: Without limiting the liability of each Project Entity (which, subject to clause 6.2(b), continues to be responsible for the performance of its obligations under the Project Documents), none of the Finance Parties nor any Financier Enforcing Party is or will be liable for any obligation or liability of any Project Entity under the Project Documents by reason only of the Financiers Securities or the exercise, in accordance with the Financiers Securities, of any of their rights under the Financiers Securities.
- (b) **(Obligations remain effective)**: The State acknowledges that all money expended by the Finance Parties or any Financier Enforcing Party and all acts, matters or things done or effected by them which would satisfy (had they been expended, done or effected by a Project Entity) any of the obligations of a Project Entity under the Project Documents will be effective, as between the State and that Project Entity, to fully satisfy and discharge the obligations of that Project Entity, in respect of which such payment has been made or act, matter or thing has been done or effected.

6.3 Restriction on set off by Financiers

- (a) Subject to clause 6.3(b) and without limiting the operation of clause 4, each of the Security Trustee and the Agent agrees on its own behalf and on behalf of each Finance Party that it and none of them will exercise:
 - (1) **(set off)**: any right of set off or combination of accounts in relation to a Project Account other than, in respect of set off, amounts standing to the credit of a Project Account which are directly referable to principal amounts advanced by, or net payments made under swap agreements by, a Financier under a Finance Document; or
 - (2) **(insurance proceeds)**: any other right in relation to any of those accounts the effect of which would be to apply money standing to the credit of the account in a way inconsistent with clause 43.12 (*Insurance Proceeds Account*) of the Project Agreement and clause 8.
- (b) Each of the Security Trustee and the Agent agrees on its own behalf and on behalf of each Finance Party that:
 - (1) its rights under clause 6.3(a) are subject to clause 5.6;



- (2) it will not exercise any of its rights under clause 6.3(a) unless clause 5.6 has been fully complied with; and
- (3) its rights under clause 6.3(a)(1) do not extend to any State Construction Contributions standing to the credit of a Project Account.

6.4 Security Trustee not to hinder State under Project Documents

The Security Trustee must not knowingly exercise (and must procure that any other Financier Enforcing Party will not exercise) any rights (whether arising under a Financiers Security or otherwise) in any manner which interferes with, or restricts in any way, the proper and lawful exercise by the State of the State's rights under clauses 32 (*Handover*), 35.8 (*Set-off*) or 41 (*Step-in by the State*) of the Project Agreement, the State Securities, the Direct Deeds, this Deed or any other Direct Deed entered into by the State and a Project Entity, among others, in relation to the Project.

6.5 Third party account bank

Each Project Entity must ensure that no Project Account is held with a party (**Account Bank**) other than the Security Trustee or a Finance Party unless the Project Entity first procures that the Account Bank undertakes to the State in form and substance reasonably satisfactory to the State, to be bound by clause 6.3 in the same terms as the Security Trustee.

6.6 Replacement of D&C Subcontractor or Maintenance Subcontractor

- (a) **(No replacement without consent):** If, at any time, the Security Trustee proposes to remedy a PA Default Event or a Finance Default by appointing a new Subcontractor to replace either the D&C Subcontractor or the Maintenance Subcontractor, or by novating the D&C Subcontract or the Maintenance Subcontract (and other relevant Project Documents) to a replacement Subcontractor, then the Security Trustee must first obtain the State's prior consent, which must not be unreasonably withheld if the State is satisfied the matters set out in clause 6.6(b) are satisfied.
- (b) **(When consent must be given):** The State must not unreasonably withhold its consent if it is satisfied (acting reasonably) that:
 - (1) the State has been provided with written details of the proposed replacement Subcontractor and the terms and conditions on which the proposed replacement Subcontractor is to be engaged;
 - (2) were the same appointment made by Project Co, the appointment of the replacement Subcontractor would comply with the Project Agreement in all respects, including the satisfaction of the State's probity requirements and the financial capacity, experience and capability to perform the obligations of the Subcontractor being replaced;
 - (3) except as otherwise agreed by the State, the proposed terms and conditions of the replacement Subcontractor's engagement are either:
 - (A) not less onerous from the perspective of the Subcontractor than those which apply to the current Subcontractor; or
 - (B) are less onerous from the perspective of the Subcontractor than those which apply to the current Subcontractor but Project Co is reasonably able to satisfy its increased

obligations (including payment obligations) owed to that Subcontractor,

and include a requirement to perform such of the obligations of the current Subcontractor under the relevant Project Document which remain unsatisfied;

- (4) the proposed replacement Subcontractor has agreed to be bound by the terms of the relevant Project Documents (including a relevant Direct Deed) or such other terms as agreed to by the State; and
- (5) a person other than the State bears all of the State's reasonable costs and expenses (including legal costs and expenses) of and incidental to:
 - (A) any enquiries which the State may make for the purposes of determining whether to consent to the replacement Subcontractor;
 - (B) the procurement of a replacement Subcontractor; and
 - (C) the preparation, negotiation and execution of any relevant documentation and any stamp duty or similar charges in relation to such documentation.
- (c) **(Facilitation of appointment of replacement Subcontractor by State and Security Trustee):** To the extent that the appointment of a replacement Subcontractor in accordance with this clause 6 involves the novation of a Project Document:
 - (1) each of the State and the Security Trustee will release those of the Securities as it is necessary to release (but only to the extent necessary) to facilitate the novation; and
 - (2) each party to this Deed and party to the Project Document consents to that novation,

but without prejudice to any rights and claims against the replaced Subcontractor accrued at the time of novation.
- (d) **(Release):** To the extent that the release of a Security is necessary under clause 6.6(c), each party will use reasonable endeavours to ensure that the Project Document (as novated) becomes subject to a Security Interest in favour of the party who granted the release, on terms substantially similar to those of the released Security.

6.7 Disposal of Project Co's interest

- (a) **(No disposal without consent):** If a Financier Enforcing Party proposes to remedy a PA Default Event or a Finance Default by assigning, novating, transferring or otherwise disposing of an interest in Project Co or Project Co's interest in, or obligations under, the Project Documents in accordance with the Enforcing Party's rights or the Financiers' rights under the Finance Documents, the Security Trustee must first obtain the State's prior consent, which must not be unreasonably withheld if the State is satisfied the matters set out in clause 6.7(b) are satisfied.
- (b) **(When consent must be given):** The State must not unreasonably withhold its consent if it is satisfied (acting reasonably) that:
 - (1) the State has been provided with written details of the proposed purchaser and the terms and conditions of the proposed disposal;

- (2) either:
 - (A) the proposed disposal is by way of a Permitted Share Capital Dealing;
 - (B) the State is not permitted to withhold its consent to the proposed disposal under clause 53.5 (*State's right to withhold consent*) of the Project Agreement; or
 - (C) the proposed purchaser:
 - (I) is a Fit and Proper Person (and each person who Controls that person is a Fit and Proper Person);
 - (II) has the necessary financial, commercial and technical capacity, and contractual and financing arrangements with third parties in place, to perform or procure the performance of Project Co's obligations under the State Project Documents;
- (3) the proposed disposal would not result in there being any adverse effect on the rights of, or increase in the Liabilities or obligations of, the State under the State Project Documents than if the relevant interests or obligations were not disposed of;
- (4) the proposed purchaser has agreed to be bound by the terms of the relevant Project Documents; and
- (5) a person other than the State bears all of the State's reasonable costs and expenses (including legal costs and expenses) of and incidental to:
 - (A) any enquiries which the State may make for the purposes of determining whether to consent to the disposal;
 - (B) the procurement of a purchaser; and
 - (C) the preparation, negotiation and execution of any relevant documentation and any stamp duty or similar charges in relation to such documentation.

6.8 Appointment of Enforcing Party

- (a) **(Appointment):** Without derogating from any other rights the Security Trustee may have under this Deed, the State agrees that:
 - (1) if the Security Trustee appoints an Enforcing Party under the Financiers Securities:
 - (A) that appointment will not constitute a PA Default Event; and
 - (B) in respect of an appointment in relation to a Project Entity, that appointment will be taken to remedy any PA Default Event constituted by:
 - (I) the occurrence prior to that appointment of an Insolvency Event in relation to that Project Entity; or
 - (II) an event that would restrict or cancel, or entitle a Financier to restrict or cancel, the obligation to provide finance in accordance with the Finance Documents,

but this does not prevent a PA Default Event from arising if the Enforcing Party does not otherwise perform or procure the performance of the obligations of the relevant Project Entity under the Project Documents; and

- (2) any:
- (A) enforcement action taken by a Financier Enforcing Party in accordance with clause 6.1;
 - (B) replacement of a D&C Subcontractor or the Maintenance Subcontractor in accordance with clause 6.6; or
 - (C) disposal of an interest in Project Co or Project Co's interest in the Project Documents in accordance with clause 6.7,

will not, by itself, provide the State with the right to terminate any State Project Document.

- (b) **(Fit and Proper Person)**: The Security Trustee acknowledges and agrees that it will not appoint any Financier Enforcing Party unless:
- (1) the proposed Enforcing Party is a Fit and Proper Person (and each person who Controls that person is a Fit and Proper Person); and
 - (2) the appointment is otherwise in accordance with this Deed.
- (c) **(Notice)**: The Security Trustee will not, and will ensure that a Financier Enforcing Party does not, exercise or purport to exercise the Project Entities' Rights without first notifying the State.
- (d) **(Minimising disruption)**: The Security Trustee must minimise, and must ensure that a Financier Enforcing Party will minimise, any disruption that may result from it exercising the Project Entities' Rights.

6.9 Documentation

If the State consents to the replacement of the D&C Subcontractor or the Maintenance Subcontractor, or the disposal of Project Co's interest in the Project Documents, in accordance with clause 6.6 or 6.7 respectively, the State, the Financier Enforcing Party and the replacement Subcontractor or purchaser (as the case may be) will execute such documents as are reasonably necessary to give effect to the replacement, novation, assignment, transfer or disposal.

7 Finance Default

7.1 Notice of Finance Default

The Security Trustee and the Agent must each provide notice to the State promptly after it gives notice of a Finance Default to a Project Entity, setting out:

- (a) **(details)**: comprehensive details of the Finance Default; and
- (b) **(exercise of rights)**: whether it intends to exercise its rights under the Finance Documents, and if so, the proposed date for, and proposed method of, such exercise.



7.2 Notice of enforcement action

The Security Trustee must not declare any moneys secured under the Finance Documents due and payable, or take any action to enforce the Financiers Securities or recover any moneys secured under the Financiers Securities, unless the Security Trustee has first provided to the State:

- (a) **(24 hours' prior notice)**: in the case of the appointment of a Financier Enforcing Party where the Security Trustee is of the reasonable opinion that any delay in such appointment would materially adversely affect the Financiers, no less than 24 hours' prior notice; or
- (b) **(10 days prior notice)**: in all other cases, no less than 10 days' prior notice.

7.3 Information to the State

Upon the occurrence of a Finance Default:

- (a) **(all correspondence)**: the Security Trustee and the Agent must each provide to the State copies of all correspondence and documents issued by it to a Project Entity relating to the Finance Default;
- (b) **(measures to remedy Finance Default)**: if the Finance Default is capable of remedy, the Project Entities must keep the State informed of all measures taken or intended to be taken to remedy the Finance Default; and
- (c) **(all measures taken in consequence of Finance Default)**: in any case, the Project Entities, the Agent and the Security Trustee must keep the State informed of all measures taken or intended to be taken by it in consequence of the Finance Default (including details of any action taken by the Security Trustee to enforce the Financiers Securities).

7.4 Payments by State

The parties acknowledge that the State will not be liable for any costs incurred by a party to this Deed in attempting to remedy (or overcome the effects) of a Finance Default or in exercising rights under the Finance Documents.

8 Insurance proceeds

- (a) **(Deposit)**: All Insurance proceeds received, which (were they to have been received by Project Co) would have been required to have been deposited into the Insurance Proceeds Account under the Project Agreement, must be deposited in the Insurance Proceeds Account.
- (b) **(Application)**: The Security Trustee and the Agent each acknowledge and agree with the State that the Insurance proceeds paid or payable in connection with the Project must be applied in accordance with clause 43 (*Insurance*) of the Project Agreement.
- (c) **(Operation of account)**: Without limiting the Finance Parties' rights under clause 6.3, Project Co, the Agent and the Security Trustee must not make any payment (and must take all reasonable and proper steps to ensure that no payment is made) out of the Insurance Proceeds Account except in accordance with the provisions of the Project Agreement and this Deed.



- (d) **(Assistance):** The Security Trustee and the Agent each acknowledge and agree with the State that Project Co will be permitted, and the Security Trustee and the Agent will each use reasonable endeavours to assist Project Co, to take any action as contemplated by clause 43 (*Insurance*) of the Project Agreement.

9 Recognition of rights

9.1 Recognition of the State's step-in rights

- (a) **(State Rights):** The Security Trustee and the Agent each recognise and acknowledge the rights available to the State under:
- (1) clause 32 (*Handover*) of the Project Agreement;
 - (2) clause 41 (*Step-in by the State*) of the Project Agreement; and
 - (3) subject to clause 9.1(c), the Direct Deeds,
- including to require an assignment of the D&C Subcontract or the Maintenance Subcontract if it becomes entitled to terminate the Project Agreement.
- (b) **(Security Trustee and Agent to facilitate):** The Security Trustee and the Agent will each use reasonable endeavours to ensure that rights under the Finance Documents are exercised in a way which facilitates the effective exercise by the State of the rights referred to in clause 9.1(a). To the extent that the exercise of any such rights involves the assignment of the D&C Subcontract or the Maintenance Subcontract, the Security Trustee will release the D&C Subcontract or Maintenance Subcontract (as applicable) from the Financiers Securities to facilitate the assignment. Nothing in this clause 9.1 or the Direct Deeds requires the Security Trustee or the Agent to release or forgo any rights or claims against any Project Entity.
- (c) **(When State may exercise rights):** The State acknowledges and agrees that it will not exercise its rights under clause 6.1 (*Property Committee*) or clause 7 (*Site Conditions*) of a Direct Deed unless:
- (1) a circumstance which entitles the State to appoint an Enforcing Party under the State Securities subsists; or
 - (2) the State is entitled to exercise its rights under clause 41 (*Step-in by the State*) of the Project Agreement.
- (d) **(State acknowledgement):** The State acknowledges and agrees that it will not exercise its rights under clause 41.1(a)(1) or clause 41.1(a)(3) (*State Step-In*) of the Project Agreement in respect of a PA Default Event for so long as a Financier Enforcing Party is diligently pursuing (to the satisfaction of the State) a Financiers' Cure Program in respect of that PA Default Event in accordance with this Deed.

9.2 Release of Security

- (a) **(Obligation to release):** Subject to clause 9.2(b), to the extent that Project Co is required to handover, surrender, transfer, pay or otherwise dispose of property (including rights to Insurance proceeds) to the State or its nominee under the Project Agreement and that property is in whole or part the subject of any Security Interest in favour of the Security Trustee or any Finance Party (including any Security Interest under the Financiers Securities), the Security Trustee will promptly ensure that the Security Interest is released in respect of



that property and will do all things including registering documents as the State may reasonably require or as may be necessary or desirable to give effect to that release.

- (b) **(Security over payment obligation):** Nothing in clauses 9.2(a) or 6.4 requires the Security Trustee to release a Security Interest over the right of Project Co to be paid a Termination Payment.

9.3 Recognition of Security Trustee rights

- (a) **(Rights):** The State acknowledges the right of the Security Trustee under each Consent Deed (**Security Trustee Tripartite Rights**).
- (b) **(State not to hinder Security Trustee):** The State and the Security Trustee agree that if the Security Trustee appoints an Enforcing Party and exercises its rights to step in under any applicable Consent Deed, then subject to the rights of the State under clauses 4.5(c) and 9.1, the Security Trustee Tripartite Rights will take precedence over the rights of the State under the Direct Deeds and the State must not exercise its rights under a Direct Deed in such a manner as to prevent or hinder the Security Trustee in its exercise of the Security Trustee Tripartite Rights. For the avoidance of doubt nothing in this clause limits the State in performing or procuring the normal operation of the Maintained Assets.
- (c) **(Keep informed):** The Security Trustee must keep the State informed of all measures taken and intended to be taken in exercising the Security Trustee Tripartite Rights.

9.4 Novation of Finance Documents

- (a) Subject to clause 9.4(b), the Security Trustee, the Agent and Finance Co each acknowledge the rights of the State under clause 45.8 (*Novation of liabilities to the State*) of the Project Agreement to elect to assume some or all of the obligations of a Project Entity in respect of Actual Debt, consents to each Project Entity procuring the novation of such Actual Debt obligations, and will do all things reasonably required by the State to effect such novation.
- (b) The State undertakes that, if it elects to assume some (but not all) of the obligations of a Project Entity in respect of Actual Debt, it will assume such obligations on a *pro rata* basis across all relevant Financiers.

9.5 State dealings with the Security Trustee and Agent

- (a) **(State may raise queries):** The State may at any time and from time to time raise with the Security Trustee or the Agent any concerns or questions that the State may have regarding any Project Entity, the performance by any Project Entity of its obligations under the Project Documents or Finance Documents, or the Project generally.
- (b) **(Disclosure):** To the extent required, each Project Entity authorises each of the State, the Agent and the Security Trustee to disclose to the others such information relating to the matters referred to in clause 9.5(a) as the State, the Agent or the Security Trustee may consider necessary or appropriate in the context of any discussions or other correspondence contemplated in clause 9.5(a).

9.6 No role for Independent Reviewer

Each of the Security Trustee and the Agent acknowledges and agrees:



- (a) **(Independent Reviewer)**: that Project Co is required under clause 11.7 (*Other Project roles of Independent Reviewer*) of the Project Agreement to ensure that the Financiers do not appoint the Independent Reviewer to act in any role in connection with the Finance Documents, without the prior consent of the State Representative and on such terms approved by the State Representative; and
- (b) **(prior consent)**: that they will not agree to any appointment of the Independent Reviewer by the Financiers without the prior consent of the State Representative.

10 Amendments to Finance Documents

10.1 No amendments without consent

Subject to clauses 10.2 and 10.5, each of the Security Trustee and the Agent undertakes to the State that it will not agree to or permit any variation, amendment, waiver or replacement (**Amendment**) of any Finance Document without the State's prior consent, which consent must not be unreasonably withheld.

10.2 Permitted Amendments

The prior consent of the State is not required for an Amendment that:

- (a) **(novation, assignment or substitution)**: is a novation, assignment or substitution of a Financier or any of the rights or obligations of a Financier if:
 - (1) the novatee, assignee or substitute is:
 - (A) a Financier;
 - (B) has a credit rating of at least [not disclosed] by Standard and Poor's (Australia) Pty Limited or [not disclosed] by Moody's Investors Services, Inc; or
 - (C) for a period of 6 months from Financial Close, an investment fund which is a Permitted Fund; or
 - (2) that Financier has fully funded its commitment under the Finance Documents;
- (b) **(State consent)**: the State has consented to as part of giving its consent to a refinancing under clause 40.1 (*Consent to Refinancing*) of the Project Agreement;
- (c) **(Modification)**: is an Amendment that solely gives effect to Project Co's obligation to proceed with a Modification in accordance with a notice that has been accepted by the State under clause 38 (*Modifications*) of the Project Agreement;
- (d) **(novation or assignment)**: is a novation or assignment under clause 13.1;
- (e) **(consent)**: has otherwise been consented to by the State under the Project Agreement,

(each a **Permitted Amendment**).

10.3 Notice of Permitted Amendment

Each of Project Co, the Agent and the Security Trustee must:



- (a) **(notice)**: give notice to the State of any Permitted Amendment within 5 Business Days after that Permitted Amendment is made, including details of the reasons for the Permitted Amendment and copies of any documents relevant to the Permitted Amendment; and
- (b) **(further information)**: provide any further information reasonably requested by the State regarding the Permitted Amendment within 10 Business Days of receipt of a request from the State.

10.4 Notice of intended Amendment (other than a Permitted Amendment)

In seeking prior consent to an Amendment under clause 10.1, Project Co must give notice to the State of the intended Amendment including:

- (a) **(details)**: full details of:
 - (1) the terms of the Amendment and the reasons for the Amendment;
 - (2) the responses or anticipated response of any other party to the relevant documents regarding the Amendment;
 - (3) the response or anticipated response of any assignee of, or person holding a Security Interest in, the documents relevant to the Amendment; and
 - (4) the impact or potential impact of the Amendment on:
 - (A) delivery of the Project by Project Co;
 - (B) performance of, and the capacity of each Project Entity to perform its obligations under, the Project Documents;
 - (C) the financial structure or business of each Project Entity;
 - (D) the State's interest under or in respect of the Project Documents; and
 - (E) Equity IRR or Distributions; and
- (b) **(copies of Documentation)**: copies of all draft contractual and security documentation relevant to the Amendment.

10.5 Consent to Amendments

Unless the State is a party to the relevant Finance Document, the State must advise Project Co, the Agent and the Security Trustee within 20 Business Days (or such longer period as the State reasonably requests given the nature of the Amendment) of receiving the notice under clause 10.1, that:

- (a) **(consents)**: it consents to the Amendment;
- (b) **(unacceptable)**: the Amendment is unacceptable to it and the reasons why the Amendment is unacceptable; or
- (c) **(further information)**: it requires further information regarding the Amendment. If so, the other parties must provide the additional information sought by the State within a further period of 10 Business Days after which the State must respond in terms of clauses 10.5(a) and 10.5(b) within 10 Business Days of receipt of the additional information.



10.6 No restriction on exercise of existing rights

Subject to clause 10.7, nothing in this clause 10 or clause 53.1 (*Assignment, amendments to Project Documents and other dealings by Project Co*) of the Project Agreement prevents or restricts any person exercising any rights they have under the Finance Documents.

10.7 Consequences of Amending without consent

If any Amendment is made to a Finance Document otherwise than in accordance with this clause 10:

- (a) **(not effective)**: the Amendment will not be effective as between the parties to that Finance Document (and any agreement at any time between any of them which purports to limit the operation of this clause 10.7, including any provision that a Finance Document prevail over this Deed, will be ineffective); and
- (b) **(State liable)**: the State will only be liable under the Project Documents to the extent it would have been had there been no such Amendment.

11 State Contributions

11.1 State Capital Contribution

- (a) **(Payment of State Capital Contribution)**: The Security Trustee, the Agent and each Project Entity each acknowledge and agree:
 - (1) that the State Capital Contribution, when paid by the State into the account specified in a State Capital Contribution Notice, will be, and will be taken to be, applied towards mandatory prepayment of Actual Debt outstanding;
 - (2) without limiting clause 11.1(a)(1), that upon payment of the State Capital Contribution into the account specified in a State Capital Contribution Notice, the amount of Actual Debt for the purposes of the Project Documents will be reduced by the amount of such payment; and
 - (3) that upon prepayment of the Actual Debt in accordance with clause 11.1(a)(1), the relevant facilities under the Finance Documents will be cancelled to the extent of the prepayment and that such prepaid amounts will not be available for redrawing, other than as permitted in clause 11.1(c).
- (b) **(Receipt of State Capital Contribution)**: The Security Trustee and the Agent must notify the State promptly upon receipt of the State Capital Contribution into the relevant account, and confirm in that notice each of the matters referred to in clause 11.1(a).
- (c) **(Redraw)**: Finance Co may redraw the amount of any Actual Debt prepaid utilising the State Capital Contribution provided that:
 - (1) the amount, pricing and tenor of any amounts so redrawn do not exceed those set out in the Financial Model; and

- (2) for the avoidance of doubt, if any Amendment is proposed to be made at the time of the redraw, such Amendment will require the consent of the State under clause 10.

11.2 State Construction Contribution

- (a) **(No prepayments):** Prior to the Date of Provisional Acceptance, Finance Co must not make, and the Agent and Security Trustee must each not permit Finance Co to make, a prepayment of the Construction Facility, except with the prior consent of the State.
- (b) **(Insurance proceeds):** If, notwithstanding clauses 8 and 11.2(a), the Security Trustee applies the amount of any Insurance proceeds to the prepayment of Actual Debt, other than as permitted under the Project Agreement, the State will not be required to pay any further State Construction Contributions.
- (c) **(Equity Proceeds):** The parties agree that prior to the Expiry Date, all amounts of Equity (as defined in the Facility Agreement) and any drawings under the 'Equity Support' (as defined in the Facility Agreement) must be deposited in the Construction Proceeds Account (as required under the Finance Documents).

11.3 State Construction Contribution Withdrawals

- (a) **(No waiver of withdrawal conditions):** Unless the State gives its prior consent to an amendment or waiver of such conditions:
 - (1) Project Co must ensure that withdrawals are only made from the Construction Proceeds Account on the conditions set out in the Finance Documents having been satisfied; and
 - (2) the Agent must not consent to an amendment or waiver of any such conditions to withdrawal from the Construction Proceeds Account.
- (b) **(State consent):** Without limiting the State's discretion under clause 11.3(a), the State will not be obliged to consider a request for its consent under clause 11.3(a) unless:
 - (1) the Agent and either Project Co or Finance Co have provided the State with such information as the State reasonably requires concerning the requested consent, including in the case of the Agent, engaging in a good faith consultation with the State as to why the Financiers propose to give their consent to the amendment or waiver;
 - (2) the State has received confirmation from the Agent that the Agent will consent to the proposed amendment or waiver if the State will give its consent, together with confirmation of any conditions in favour of both the State and the Agent that will be imposed by the Agent;
 - (3) to the extent that the amendment or waiver relates to a failure to satisfy the Cost to Complete Test (as defined in the Facility Agreement), the State is satisfied that either sufficient funding sources are nevertheless reasonably likely to be available to enable the Project to achieve Provisional Acceptance or the shortfall is otherwise reasonably likely to be corrected prior to the Date of Provisional Acceptance;
 - (4) to the extent that the amendment or waiver relates to a default under the Finance Documents, Project Co commits to, and the Agent approves, arrangements to ensure that default is remedied or its consequences are overcome;



- (5) the amounts to be withdrawn from the Construction Proceeds Account will not be used directly or indirectly to pay or repay principal, interest, fees, charges or hedge break costs under the Finance Documents which are not provided for in the Financial Model; and
 - (6) the amounts to be withdrawn from the Construction Proceeds Account will not be used to pay any Distributions.
- (c) **(Application of State Construction Contribution):** The Agent acknowledges that Project Co may only use amounts withdrawn from the Construction Proceeds Account after the date on which the first State Construction Contribution is paid into the Construction Proceeds Account for the payment of SCC Project Costs or GST related to SCC Project Costs in accordance with clause 33.4 (*Payment of State Construction Contributions*) of the Project Agreement.
- (d) **(Simultaneous withdrawals):** Subject to this clause 11, it is the intention of the State and the Agent that withdrawals from the Construction Proceeds Account in respect of Actual Debt and State Construction Contributions will occur simultaneously and only in circumstances where all withdrawal conditions under the Finance Documents and the State Project Documents are satisfied. To the extent that a condition under any such document remains unsatisfied or the balance of the Construction Proceeds Account is or would be insufficient to meet the amount required to be withdrawn, then the Agent must not permit a withdrawal unless and until that condition is satisfied or the account balance is sufficient (as applicable).
- (e) **(No amendment by the State):** The State will not agree to any amendment to the State Construction Contribution Schedule without the prior consent of the Agent.
- (f) **(No amendment by the Agent):** The Agent agrees that, notwithstanding clause 10.1, any consent to an amendment to the Drawdown Schedule under and as defined in the Facility Agreement may be given or withheld by the State in its absolute discretion.
- (g) **(Provision of information):** The State:
 - (1) may from time to time request from the Agent (and provide a copy of such request to Project Co) or Project Co, any information or analyses prepared by the Financiers (other than any confidential internal papers of a Financier) in relation to the manner in which Project Co has applied or may apply funds withdrawn from the Construction Proceeds Account, over and above any information provided in a State Construction Contribution Notice, and the Agent or Project Co (as applicable) will promptly comply with any such request where it is reasonable to do so; and
 - (2) acknowledges that any information or analysis provided under clause 11.3(g)(1) is, unless expressly agreed otherwise, provided on a non-reliance basis, and may be subject to such other conditions (including as to confidentiality) as the disclosing party may reasonably require, and the State may not bring any Claim against Project Co, the Agent, or a Financier in relation to any such information or analysis.



12 Construction Bond

- (a) **(Default by D&C Subcontractor):** Where any obligation of Project Co to pay the State under the Project Agreement has arisen by reason of default by the D&C Subcontractor under the D&C Subcontract, and that obligation is not satisfied within 10 Business Days of receipt of demand, each Project Entity, the Agent and the Security Trustee agree with the State that:
- (1) to the extent that Project Co has a right to set off or deduct an amount owing by the D&C Subcontractor arising from the relevant default from a claim for payment by the D&C Subcontractor due under the D&C Subcontract, which a Project Entity would otherwise be entitled to draw under the Finance Documents, the relevant Project Entity will set off that amount, draw down the equivalent amount and pay it to the State at the time set off is exercised; and
 - (2) to the extent that Project Co does not have a right of set off or deduction as described in clause 12(a)(1) it will comply with:
 - (A) clause 12(b)(1) in relation to the period prior to Provisional Acceptance; and
 - (B) clause 12(b)(2) in relation to the period commencing on the Date of Provisional Acceptance and ending 24 months after Final Acceptance.
- (b) **(Construction Bond):** Project Co will as and when required under clause 27 (*State right to require Project Co to call on Construction Bond*) of the Project Agreement (and without limiting the State's rights under that clause), claim the amount owing to the State as referred to in clause 12(a) from the Construction Bond to the extent of funds then available from the Construction Bond and up to an amount no greater than:
- (1) in the period prior to Provisional Acceptance, [not disclosed] of the D&C Subcontract Price; and
 - (2) in the period commencing on the Date of Provisional Acceptance and ending 24 months after Final Acceptance, [not disclosed] of the D&C Subcontract Price,
- and pay that amount to the State, and if not so claimed by Project Co under the Construction Bond and paid to the State, the Security Trustee agrees to waive priority under clause 4 over the Construction Bond in favour of the State to the extent that the proceeds of the Construction Bond to which Project Co is entitled (up to an amount no greater than as set out above in this clause 12(b)) are used by the State to pay to itself the amount owing by Project Co to the State under the Project Agreement.
- (c) **(Security Trustee to inform):** The Security Trustee must promptly inform the State when it makes a demand under the Construction Bond.
- (d) **(No surrender of Construction Bond):** Other than in accordance with the D&C Subcontract, the Security Trustee must not surrender the original of the Construction Bond except when making demands under the Construction Bond or with the State's consent.
- (e) **(Application of Construction Bond proceeds):** The State, Project Co and the Security Trustee agree that, upon termination of the Project Agreement, and without limiting clause 4.1:



- (1) the proceeds of the Construction Bond are to be applied in accordance with clause 4.1; and
 - (2) upon payment of any relevant Termination Payment to the Security Trustee or where a Project Co Termination Payment is payable, the Security Trustee waives any priority over (and each of Project Co and the Security Trustee must assign to the State) any right under and benefit of any Construction Bond issued in favour of Project Co or the Security Trustee in each case for an amount no greater than as set out in clause 27 (*State right to require Project Co to call on Construction Bond*) of the Project Agreement.
- (f) **(State to provide notice)**: Without limiting the rights of the State under any Project Document in any way, the State agrees with the Security Trustee that it will provide to the Security Trustee a copy of any notice delivered by the State to the entity which issued the Construction Bond to effect an assignment to the State of Project Co's and the Security Trustee's rights under and benefits from the Construction Bond under clause 12(e) at the same time as the State gives such notice to that issuing entity.

13 Assignment

13.1 No assignment without consent

Subject to clauses 13.2 and 13.3, no party may assign, novate or otherwise transfer any of its rights or obligations under this Deed without the prior written consent of each other party, which consent must not be unreasonably withheld.

13.2 Assignment by the Security Trustee or Agent

No party will withhold its consent to any assignment or transfer by the Security Trustee or the Agent if:

- (a) **(right, title and interest)**: it is related to all its right, title and interest in this Deed and in the Finance Documents (in its capacity as Security Trustee or Agent);
- (b) **(Finance Documents)**: it occurs consequent upon the implementation of provisions in a Finance Document providing for the replacement of the Security Trustee or Agent;
- (c) **(solvent and reputable replacement)**: it relates to a replacement Security Trustee or Agent which is a solvent and reputable financial institution or trustee corporation; and
- (d) **(accession deed)**: the replacement Security Trustee or Agent has executed an accession deed under which it agrees to be bound by the provisions of this Deed.

13.3 Assignment by the State

Nothing will prevent the assignment, novation or transfer by the State to an assignee, novatee or transferee of the State's rights and obligations under the Project Agreement made in accordance with clause 53.10 (*Assignment by the State*) of the Project Agreement, provided the proposed assignee, novatee or transferee agrees to execute a deed in favour of the Security Trustee (in such form as the Security Trustee reasonably

requires) under which the assignee, novatee or transferee agrees to be bound by this Deed as if it were the State.

14 Confidential Information and disclosure

14.1 Confidential Information and disclosure by the State

- (a) **(Public Disclosure Obligations):** The State or any Authority may disclose any information in connection with the Project (including any Confidential Information) in accordance with its Public Disclosure Obligations and the Security Trustee and the Agent must each use all reasonable endeavours to assist the State or an Authority in meeting its Public Disclosure Obligations.
- (b) **(Other purposes):** The State or any Authority may disclose any information in connection with the Project (including any Confidential Information, but excluding the Finance Documents other than this Deed) in connection with:
 - (1) the State selling, transferring, assigning or otherwise disposing of, re-franchising, contracting or otherwise dealing with all or any part of the Franchisee business; and
 - (2) the requirements of the State Project Documents (including any tender process required to be conducted under the Termination Payments Schedule, or Change Compensation Principles).
- (c) **(State's rights):** Subject to clause 14.1(d), in meeting its Public Disclosure Obligations or as otherwise considered necessary by the State, the State may publish, disclose or make generally available each Project Document on a Victorian Government website.
- (d) **(Commercially sensitive information):** The State will not publish, disclose or otherwise make generally available the information which is specified in the Confidential Information Schedule (including the Financial Model), except if required to do so to comply with the Public Disclosure Obligations in accordance with clause 14.1(b).
- (e) **(Exercise of Licence):** Nothing in this Agreement prevents the State and any sublicensees using or disclosing any information (including Confidential Information) to extent necessary or desirable for, or in connection with, the exercise of any licence granted under the Intellectual Property Schedule.

14.2 Confidential Information and disclosure by Project Entities and the Security Trustee

- (a) **(Confidentiality obligation):** Subject to clause 14.2(b), Project Co, the Agent and the Security Trustee must treat as secret and confidential all Confidential Information in connection with this Deed and any other State Project Document.
- (b) **(Disclosure of Confidential Information):** Without limiting Project Co's, the Agent's and the Security Trustee's obligation under clause 14.1(a) and subject to clause 14.2(c), Project Co, the Agent and the Security Trustee may disclose Confidential Information to:
 - (1) its Associates to the extent necessary for the purpose of undertaking the Project; or
 - (2) any Financier, prospective financier or equity investor of the Project, subject to the State having been provided necessary information in



respect of the proposed parties and having carried out any Probity Investigation that the State considers necessary.

- (c) **(Confidentiality deed):** Before disclosing any Confidential Information, Project Co, the Agent or the Security Trustee (whichever is disclosing the Confidential Information) must ensure that the person to whom the information is disclosed enters into a confidentiality deed with Project Co, the Agent or the Security Trustee (whichever is disclosing the Confidential Information) incorporating the same obligation of confidentiality as that contained in this Deed.

14.3 Disclosure by the Agent and the Security Trustee

- (a) **(The Agent's and the Security Trustee's disclosure obligations):** Subject to clause 14.3(b), the Agent and the Security Trustee must each:
- (1) not make any public disclosures, announcements or statements in relation to the Project or the State's or any of the State's Associates' involvement in the Project without the State's prior consent;
 - (2) comply with any terms and conditions the State imposes and must use all reasonable endeavours to agree with the State the wording and timing of all public disclosures, announcements or statements by it or any of its Associates relating to the Project or the State's or any of the State's Associates' involvement in the Project before the relevant disclosure, announcement or statement is made; and
 - (3) as soon as practicable, give to the State a copy of any public disclosure, announcement or statement agreed to or approved by the State in accordance with this clause 14.3(a) or for which the State's consent or approval was not required in accordance with clause 14.3(b).
- (b) **(Permitted disclosure):** For the purposes of clause 14.3(a), the Agent and the Security Trustee will not be required to obtain the State's consent or approval to the extent that any disclosure, announcement or statement is:
- (1) required by Law, provided that it:
 - (A) notifies the State of the requirement to make that disclosure; and
 - (B) takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;
 - (2) required to obtain legal or other advice from its advisers;
 - (3) required to be made to a court in the course of proceedings to which it is a party; or
 - (4) required by a relevant stock exchange, subject to:
 - (A) such disclosure, announcement or statement not referring to the State's or any of its Associates' involvement in the Project (to the extent permitted by the disclosure requirements of the relevant stock exchange); and
 - (B) the Agent or the Security Trustee (as applicable) having used all reasonable endeavours to obtain the State's consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant stock exchange.



15 Termination

- (a) **(Termination):** This Deed will terminate if the parties so agree in writing.
- (b) **(Accrued rights):** The termination of this Deed does not affect the rights of any party which have accrued to that party before the date of termination.

16 Dispute Resolution

16.1 Procedure for resolving disputes

- (a) **(Disputes to be resolved):** Any dispute arising under this Deed must be resolved by the parties to that dispute (**Disputing Parties**) in accordance with this clause 16.
- (b) **(Procedure):** The procedure that is to be followed to resolve a dispute is as follows:
 - (1) firstly, the dispute must be the subject of negotiation as required by clause 16.2;
 - (2) secondly, if the dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 16.2(c)(1) the Disputing Parties may agree that the dispute will be referred to an expert for determination in accordance with clauses 16.4 to 16.8 (inclusive) or to arbitration under clause 17; and
 - (3) thirdly, if:
 - (A) the dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 16.2(c)(1) and irrespective of whether the Disputing Parties failed to meet as required by that clause or whether having so met the parties failed to agree whether the Dispute should be referred to an expert or to arbitration within 20 Business Days after the expiration of the period for negotiation referred to in clause 16.2(c)(1);
 - (B) the dispute has been referred to expert determination and a determination is not made by the expert within 30 days after the expert's acceptance of appointment; or
 - (C) the dispute is referred to expert determination and a notice of dissatisfaction is given in accordance with clause 16.6(a),then the dispute must be referred to arbitration in accordance with clause 17.

16.2 Negotiation

- (a) **(Notification):** If a dispute arises then a party may give notice to each other party requesting that the dispute be referred for resolution by negotiation between the Chief Executive Officers (or equivalent) of the Disputing Parties (**Representatives**).
- (b) **(Contents of Notice):** A notice under clause 16.2(a) must:
 - (1) state that it is a notice under this clause 16; and



- (2) include or be accompanied by particulars of the matters which are the subject of the dispute.
- (c) **(Attempt to resolve Dispute):** If a dispute is referred for resolution by negotiation under clause 16.2(a), then:
 - (1) the Representatives must meet and attempt in good faith to resolve the dispute (in whole or in part) within 10 Business Days of the date on which the notice under clause 16.2(a) is received (or such later date as the Disputing Parties may agree); and
 - (2) any agreement reached between the Representatives will be reduced to writing, signed by or on behalf of each Disputing Party and will be contractually binding on the Disputing Parties.

16.3 Expert determination

- (a) Where this Deed requires a matter to be referred to or resolved by an expert or if:
 - (1) **(dispute unresolved):** a dispute which has been referred to the Representatives for negotiation in accordance with clause 16.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 16.2(c)(1); and
 - (2) **(Disputing Parties agree):** the Disputing Parties agree within 20 Business Days after the expiration of the period for negotiation referred to in clause 16.2(c)(1), that the dispute be referred to an expert for determination,then those parts of the dispute which remain unresolved will be referred to an expert for determination under clauses 16.4 to 16.8.
- (b) For the avoidance of doubt:
 - (1) a dispute may only be referred to an expert for determination by agreement of the Disputing Parties; and
 - (2) where this Deed requires a matter to be referred directly to an expert, the dispute resolution procedures in clause 16.1(b)(1) will not apply.

16.4 Selection of expert

- (a) **(Exchange of lists of 3 preferred experts):** Within 7 Business Days after the date on which the Disputing Parties agree to refer a dispute to an expert for determination under clause 16.3, the Disputing Parties must exchange lists of 3 persons (in order of preference) who, if appointed, would satisfy the requirements of clause 16.4(d), from whom the expert is to be chosen.
- (b) **(Appointment of person who appears on both lists):** Any person who appears on the list of all of the Disputing Parties exchanged under clause 16.4(a) will be appointed as the expert to determine a dispute and if more than one person appears on the list of all of the Disputing Parties, the person given the highest order of priority by the party who gave the notice under clause 16.3(a) will be appointed.
- (c) **(Appointment if no person appears on both lists):** If no person appears on the list of all of the Disputing Parties and the Disputing Parties cannot otherwise agree an expert, the party which gave the notice under clause 16.3(a) must procure:



- (1) the president (or the senior non-executive officer, howsoever described) of the institute or governing body for the technical or professional discipline the subject of the relevant dispute to nominate the expert, having regard to, but not being bound by, those persons proposed by the Disputing Parties under clause 16.3(a); or
 - (2) if there is no governing body for the technical or professional discipline the subject of the relevant dispute or such governing body advises that it will not nominate an expert, the President of the Australian Centre for International Commercial Arbitration to nominate a person to act as the expert, having regard to, but not being bound by, those persons proposed by the Disputing Parties under clause 16.4(a),
within 7 Business Days of the exchange of notices under clause 16.4(a).
- (d) **(Appropriate skills)**: It is the intention of the Disputing Parties that the expert appointed to determine a dispute will be an independent person with appropriate skills having regard to the nature of the matters in dispute.
 - (e) **(No entitlement to challenge appointment)**: No Disputing Party will be entitled to challenge the appointment of an expert under this clause 16.4 on the basis that the expert does not satisfy the requirements of clause 16.4(d).
 - (f) **(Not an arbitration agreement)**: Any agreement for expert determination under this Deed will not constitute an arbitration agreement for the purposes of the *Commercial Arbitration Act 2011 (Vic)*.
 - (g) **(Agreement)**: Once an expert is appointed, the Disputing Parties must enter into an agreement with the expert on the terms of the Expert Determination Agreement or such other reasonable terms as the expert may require.

16.5 Rules of expert determination

The expert determination process will be administered, and the expert will be required to act, under the terms of the Expert Determination Agreement.

16.6 Expert finding

- (a) **(Notification)**: The determination of the expert must be in writing and will be final and binding on the Disputing Parties unless, within 10 Business Days of receipt of the determination, a Disputing Party gives notice to each other Disputing Party of its dissatisfaction and intention to refer the matter to arbitration in accordance with clause 17.
- (b) **(Amendment to determination)**: Upon submission by any Disputing Party, the expert may amend the determination to correct:
 - (1) a clerical mistake;
 - (2) an error from an accidental slip or omission;
 - (3) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
 - (4) a defect in form.

16.7 Liability of expert

- (a) **(Liability of expert)**: The Disputing Parties agree:



- (1) that the expert will not be liable in connection with the expert determination, except in the case of fraud on the part of the expert; and
 - (2) to indemnify the expert against any Claim or Liability in connection with the expert determination, except in the case of fraud on the part of the expert, in which case a Claim may be made against him or her by any person who is party to the dispute.
- (b) **(Engagement):** The Disputing Parties will jointly engage the expert services in connection with the expert determination proceedings and each Disputing Party will seek a separate Tax Invoice equal to its share of the costs of the expert.

16.8 Costs

The Disputing Parties must:

- (a) bear their own costs in connection with the expert determination proceedings; and
- (b) pay an equal portion of the costs of the expert.

16.9 Proportionate Liability

To the extent permitted by Law, the expert will have no power to apply or to have regard to the provisions of any proportionate liability legislation which might in the absence of this clause 16.9, have applied to any dispute referred to the expert in accordance with this clause 16.

17 Arbitration

17.1 Reference to Arbitration

- (a) **(Dispute):** If:
 - (1) a dispute:
 - (A) which has been referred to the parties' Representatives for negotiation in accordance with clause 16.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 16.2(c)(1); and
 - (B) the Disputing Parties do not agree to refer the dispute to an expert for determination; or
 - (2) in the case of a dispute which the Disputing Parties agree to refer to expert determination under clause 16.3:
 - (A) a determination is not made within 30 days of the expert's acceptance of the appointment; or
 - (B) a notice of dissatisfaction is given in accordance with clause 16.6,then any Disputing Party may notify the other Disputing Parties that it requires the dispute to be referred to arbitration.
- (b) **(Referral):** Upon receipt by a Disputing Party of a notice under clause 17.1(a), the dispute will be referred to arbitration.



17.2 Arbitration

- (a) **(ACICA Rules):** Arbitration in accordance with this clause 17 will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the **ACICA Rules**) as current at the date the Dispute is referred to arbitration and as otherwise set out in this clause 17 with this clause 17 having priority to the extent of any inconsistency.
- (b) **(Seat):** The seat of the arbitration will be Melbourne, Victoria.
- (c) **(Language):** The language of the arbitration will be English.

17.3 Appointment of arbitrator

The Disputing Parties will endeavour to agree on the arbitrator or arbitrators (if the parties agree to appoint three arbitrators), but if no such agreement is reached within 14 Business Days of the dispute being referred to arbitration in accordance with clause 17.1(b), the arbitrator or arbitrators will be appointed in accordance with the ACICA Rules.

17.4 General Principles for conduct of arbitration

- (a) **(Conduct of arbitration):** The Disputing Parties agree that:
 - (1) they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any dispute;
 - (2) any arbitration conducted in accordance with this clause 17 will not necessarily mimic court proceedings of the seat of the arbitration or the place where hearings take place (if different), and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and
 - (3) in conducting the arbitration, the arbitrator must take into account the matters set out in clauses 17.4(a)(1) and 17.4(a)(2).
- (b) **(Evidence in writing):** All evidence in chief must be in writing unless otherwise ordered by the arbitrator.
- (c) **(Evidence and discovery):** The rules for evidence and discovery will be the IBA Rules on the Taking of Evidence in International Arbitration current at the date of arbitration (or if there are no current rules, the most recent version of those rules).
- (d) **(Oral hearing):** The oral hearing must be conducted as follows:
 - (1) any oral hearing must take place in Melbourne, Victoria and all outstanding issues must be addressed at the oral hearing;
 - (2) the date and duration of the oral hearing must be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in clause 17.4(a) when determining the duration of the oral hearing;
 - (3) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
 - (4) the oral hearing must be conducted on a stop clock basis with the effect that the time available to the parties must be split equally between the parties so that each party has the same time to conduct its case unless in the opinion of the arbitrator, such a split would



breach the rules of natural justice or is otherwise unfair to one of the parties;

- (5) not less than 28 days prior to the date fixed for oral hearing each of the Disputing Parties must give notice of those witnesses (both factual and expert) of each other Disputing Party that it wishes to attend the hearing for cross examination;
 - (6) in exceptional circumstances the arbitrator may amend the date of hearing and extend the time for the oral hearing set in accordance with clause 17.4(d)(2);
 - (7) a Disputing Party will not be bound to accept the written evidence of a witness submitted on behalf of the opposing party which is not challenged in cross examination; and
 - (8) each Disputing Party is expected to put its case on significant issues in cross examination of a relevant witness called by the other Disputing Party or, where it seeks to challenge the evidence of a witness not called for cross-examination by reference to other evidence, to identify that evidence in its written opening submissions so that the other Disputing Party may know the nature of and basis for the challenge to the witness' written evidence.
- (e) **(Experts):** Unless otherwise ordered each Disputing Party may only rely upon one expert witness in connection with any recognised area of specialisation.

17.5 Proportional liability

To the extent permitted by Law, the arbitrator will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this clause 17.5, have applied to any dispute referred to arbitration in accordance with this clause 17.

17.6 Extension of ambit of arbitration proceedings

- (a) **(Extending Disputes):** Where:
- (1) a dispute between the Disputing Parties to this Deed is referred to arbitration in accordance with this clause 17; and
 - (2) there is some other dispute also between the Disputing Parties to and in accordance with this Deed (whenever occurring),
- the arbitrator may, upon application being made to the arbitrator by one or more of the Disputing Parties at any time before a final award is made in relation to the first-mentioned dispute, make an order directing that the arbitration be extended so as to include the other dispute.
- (b) **(Arbitrator's order):** An arbitrator may make an order in accordance with clause 17.6(a) on such terms and conditions (if any) as the arbitrator thinks fit.

17.7 Award final and binding

- (a) **(Final and binding):** Subject to clause 17.7(b), any award will be final and binding on the Disputing Parties.
- (b) **(Appeal):** Each Disputing Party consents to any appeal to a court where that appeal is made under the *Commercial Arbitration Act 2011* (Vic) on a question



of law arising in connection with an arbitral award made in accordance with this clause 17.

17.8 Continue to perform

Notwithstanding the existence of a dispute, each Disputing Party must continue to carry out its obligations in accordance with this Deed.

17.9 Governing law of arbitration agreement

The Law governing this arbitration agreement is the law of Victoria, Australia.

17.10 Interlocutory relief

This clause 17 does not prevent a Disputing Party from seeking urgent interlocutory relief from a court of competent jurisdiction where, in that Disputing Party's reasonable opinion, that action is necessary to protect that Disputing Party's rights.

18 GST

- (a) **(GST exclusive amounts):** Unless otherwise expressly stated, all amounts referred to in this Deed or any Project Document are exclusive of GST.
- (b) **(GST payable by Supplier):** If GST becomes payable on any Taxable Supply made by a party (**Supplier**) under or in connection with this Deed:
 - (1) any amount payable or consideration to be provided in accordance with any other provision of this Deed for that Taxable Supply (**Agreed Amount**) is exclusive of GST;
 - (2) an additional amount will be payable by the party which is the recipient of the Taxable Supply (**Recipient**), equal to the amount of GST payable on that Taxable Supply as calculated by the Supplier in accordance with the GST Law, which will be payable at the same time and in the same manner as for the Agreed Amount; and
 - (3) the Supplier will provide a Tax Invoice to the Recipient in connection with that supply, either at the time expressly set out in any other provision of this Deed or no later than the time at which the Agreed Amount for that Taxable Supply is to be provided in connection with this Deed. The Recipient is not obliged to pay any amount in accordance with this clause 18(b) unless and until a Tax Invoice is received by the Recipient in connection with the Taxable Supply except where the Recipient is required to issue the Tax Invoice.
- (c) **(Variation in GST payable):** If for any reason, the GST payable by the Supplier in connection with a supply it makes under or in connection with this Deed (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it received from the Recipient under clause 18(b) in connection with that supply, the Supplier will provide a refund or credit to, or will be entitled to receive from, the Recipient (as appropriate) the amount of this variation. Where an adjustment event occurs in relation to a supply and except where the Recipient is required to issue the Adjustment Note:



- (1) the Supplier will issue an Adjustment Note to the Recipient in connection with that supply within 14 days after becoming aware of that adjustment event occurring; and
 - (2) no additional amount will be payable by the Recipient unless and until an Adjustment Note is received by the Recipient.
- (d) **(GST ceasing to be payable):** No amount is payable by a party in accordance with clause 18(b) or 18(c) to the extent that the GST to which the amount relates has ceased to be payable by or refundable to the Supplier by the Commissioner of Taxation under the GST Law.
- (e) **(Expert Determination):** If the Recipient is dissatisfied with any calculation to be made by the Supplier in connection with this clause 18 the Recipient may, at its own expense and after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the President of the Institute of Chartered Accountants for expert determination, which will be final and binding on all parties (except in the case of manifest error). The expert will act as an expert and not as an arbitrator and must take into account the terms of this Deed, the matters required to be taken into account by the Supplier in connection with this clause 18 and any other matter considered by the expert to be relevant to the determination. The parties release the expert from any liability in acting as an expert, except in the case of fraud on the part of the expert.
- (f) **(Revenue net of GST):** Any reference in this Deed to price, value, sales, revenue, profit or a similar amount (**Revenue**), is a reference to the GST exclusive component of that Revenue, unless the contrary intention is expressed.
- (g) **(Cost net of GST):** Any reference in this Deed to cost, expense, liability or other similar amount (**Cost**) of a party, is a reference to that Cost reduced by the Input Tax Credits to which the party is entitled in respect of such Cost, unless the contrary intention is expressed.
- (h) **(Recipient Supply):** To the extent that the consideration provided for the Supplier's taxable supply to which clause 18(b) applies is a taxable supply made by the Recipient (**Recipient Supply**), then:
 - (1) the additional amount for GST that would otherwise be payable by the Recipient to the Supplier in accordance with clause 18(b)(2) shall be reduced by the amount of GST payable by the Recipient on the Recipient Supply; and
 - (2) the Recipient must issue to the Supplier a tax invoice for any Recipient Supply at the same time that the Supplier is required to issue a tax invoice to the Recipient for the Supplier's corresponding taxable supply pursuant to clause 18(b)(3).
- (i) **(General obligation):** Each party agrees to do all things, including providing Tax Invoices and other documentation, that may be necessary or desirable to enable or assist the other party in determining its GST payable on any supply made by that other party in connection with this Deed, or any input tax credits, adjustments or refunds in relation to any amount of GST paid or payable in connection with any supply made under or in connection with this Deed.
- (j) **(GST Groups):** For the purposes of this Deed, a reference to GST payable on a Taxable Supply made by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member and a reference to an input tax credit entitlement of a party includes any corresponding input tax credit entitlement of the representative member of any GST group of which that party is a member, and if a party to this Deed makes a



Taxable Supply by virtue of entering into or performing this Deed and the 'recipient' of that Taxable Supply (within the meaning of the GST Act) is an Associate of another party to this Deed (which for this purpose includes, in relation to the State, MMRA), that other party to this Deed will be obliged either to pay the amount referred to in clause 18(b)(2) or procure that the actual recipient pays the relevant amount, and the payer of that amount shall be the 'Recipient' for the purposes of this clause 18 in relation to the relevant Taxable Supply.

- (k) **(Project Agreement to prevail):** If clause 59 (*Taxes*) of the Project Agreement would apply in connection with a Taxable Supply to which this clause 18 also applies then clause 59 (*Taxes*) of the Project Agreement will apply in connection with that supply and the provisions of this clause 18 (but for this paragraph) will not apply.
- (l) **(Definitions):** In this clause 18, unless otherwise defined in or for the purposes of this Deed, terms used have the meanings given to them in the GST Law.

19 Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) under or in connection with this Deed:

- (a) **(in writing):** must be in writing;
- (b) **(addressed):** must be addressed as set out below (or as otherwise notified by that party to each other party from time to time);

State:

Attention: [not disclosed]
Address: [not disclosed]
Email: [not disclosed]

Project Co:

Attention: [not disclosed]
Address: [not disclosed]
Email: [not disclosed]

Finance Co:

Attention: [not disclosed]
Address: [not disclosed]
Email: [not disclosed]
[not disclosed]

Agent:

Attention: [not disclosed]
Address: [not disclosed]
Email: [not disclosed]



Security Trustee:

Attention: [not disclosed]

Address: [not disclosed]

Email: [not disclosed]

- (c) **(signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(form of delivery)**: must be delivered by hand or posted by prepaid post to the address, or emailed (in the form agreed by both parties) to the email address of the addressee, in accordance with clause 19(b); and
- (e) **(taken to be received)**: are taken to be received by the addressee at the address set out in clause 19(b):
 - (1) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
 - (2) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and
 - (3) in the case of email, the first to occur of:
 - (A) receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - (B) the time that the communication enters an information system which is under the control of the addressee; or
 - (C) the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day.

20 Miscellaneous

20.1 Governing law and jurisdiction

- (a) **(Governing Law)**: This Deed is governed by, and must be construed according to, the laws of Victoria, Australia.
- (b) **(Jurisdiction)**: Without limiting clauses 16.1 to 16.9 and 17.1 to 17.9, each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Deed.



20.2 Entire agreement

To the extent permitted by Law, and in relation to its subject matter, this Deed and the other State Project Documents:

- (a) **(entire understanding)**: embody the entire understanding of the parties, and constitute the entire terms agreed by the parties; and
- (b) **(prior agreements)**: supersede any prior agreement of the parties.

20.3 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to that party) required by Law or reasonably requested by another party to give effect to this Deed.

20.4 Survival of certain provisions

- (a) **(Surviving clauses)**: All provisions of this Deed which, expressly or by implication from their nature, are intended to survive the rescission, termination or expiration of this Deed will survive the rescission, termination or expiration of this Deed, including and provision in connection with:
 - (1) the State's rights to set-off and recover money;
 - (2) confidentiality or privacy;
 - (3) Intellectual Property Rights;
 - (4) any obligation to make any records available to the State;
 - (5) any indemnity or financial security given in accordance with this Deed;
or
 - (6) any right or obligation arising on termination of this Deed.
- (b) **(Interpretation)**: No provision of this Deed which is expressed to survive the termination of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the termination of this Deed.
- (c) **(Survival of rights and obligations)**: No right or obligation of any party will merge on completion of any transaction under this Deed. All rights and obligations in accordance with this Deed survive the execution and delivery of any transfer or other document which implements any transaction in accordance with this Deed.

20.5 Waiver

- (a) **(Writing)**: A waiver given by a party in accordance with this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver)**: A failure to, a delay in or the partial exercise or enforcement of a right provided by Law or in accordance with this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or in accordance with this Deed.
- (c) **(No waiver of another breach)**: No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.



20.6 Consents

A consent or approval required in accordance with this Deed from the State may be given or withheld, or may be given subject to any conditions, as the State thinks fit, unless this Deed expressly provides otherwise. A requirement on the State to act reasonably in providing any consent or approval does not preclude the State from imposing reasonable conditions upon such consent or approval.

20.7 Amendments

Except as otherwise expressly provided in this Deed, this Deed may only be varied by a deed executed by or on behalf of each party.

20.8 Expenses

Except as otherwise expressly provided in this Deed or (as between the State and Project Co) the Project Agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

20.9 Severance

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this Deed; or
- (b) that provision under the Law of any other jurisdiction.

20.10 Counterparts

This Deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same agreement.

20.11 Moratorium legislation

Without limiting clause 5.3 (*All risks*) of the Project Agreement, to the fullest extent permitted by Law, the provisions of all Laws which operate to lessen or affect in favour of a party other than the State any obligation under this Deed, or to prejudicially affect the exercise by the State of any right, power or remedy under this Deed or otherwise, are expressly waived.

20.12 Proportionate liability

- (a) **(Excluded operation of Wrongs Act):** The operation of Part IVAA of the *Wrongs Act 1958* (Vic) is excluded in relation to all and any rights, obligations or liabilities of either party under this Deed whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) **(Rights, obligations and liabilities):** Without limiting clause 20.12(a), the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Deed and not otherwise, whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.



20.13 No representation or reliance

- (a) **(No representation):** Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Deed, except for representations or inducements expressly set out in this Deed.
- (b) **(No reliance):** Each party acknowledges and confirms that it does not enter into this Deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Deed.

20.14 Indemnities

- (a) **(Continuing Indemnity):** Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Deed.
- (b) **(Expense):** It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Deed.

20.15 Relationship of the parties

Unless otherwise expressly provided, neither this Deed nor any other Project Document:

- (a) **(no additional relationship):** creates a partnership, joint venture, fiduciary, employment or agency relationship between the parties; or
- (b) **(no good faith):** imposes any duty of good faith on the State.



Schedule 1

Permitted Fund

Each of the following funds is a Permitted Fund for the purposes of clause 10.2(a)(1)(C):

- (a) Each institution on the 'Permitted Financier List' attached as Schedule 13 to the Facility Agreement (or any replacement schedule consented to by the State).



Signing page

Executed as a deed

State

Signed sealed and delivered by
**the Honourable Jacinta Allan
MP, in her capacity as the
Minister for Public Transport, on
behalf of the Crown in right of
the State of Victoria** in the
presence of

sign here ► [not disclosed] _____
Witness

[not disclosed] _____
Signature of Minister

print name [not disclosed] _____



Project Co

Signed sealed and delivered for
[not disclosed]
by its attorneys

sign here ► [not disclosed] [not disclosed]
Attorney Attorney

print name [not disclosed] [not disclosed]

in the presence of

sign here ► [not disclosed] [not disclosed]
Witness Witness

print name [not disclosed] [not disclosed]

Signed sealed and delivered for
[not disclosed]
by its attorney

in the presence of

sign here ► [not disclosed] [not disclosed]
Attorney Witness

print name [not disclosed] *print name* [not disclosed]

Signed sealed and delivered for
[not disclosed]
by its attorney

in the presence of

sign here ► [not disclosed] [not disclosed]
Attorney Witness

print name [not disclosed] *print name* [not disclosed]



Signed sealed and delivered for
[not disclosed]
by its attorney

in the presence of

sign here ▶ [not disclosed]
Attorney

sign here ▶ [not disclosed]
Witness

print name [not disclosed]

print name [not disclosed]



Finance Co

Signed sealed and delivered for
**Stella MMTS Finance Pty
Limited (ACN 612 094 078)**

by its attorneys

in the presence of

sign here ▶ [not disclosed] _____
Attorney

sign here ▶ [not disclosed] _____
Witness

print name [not disclosed] _____

print name [not disclosed] _____

sign here ▶ [not disclosed] _____
Attorney

sign here ▶ [not disclosed] _____
Witness

print name [not disclosed] _____

print name [not disclosed] _____



Security Trustee

Signed sealed and delivered for
ANZ Fiduciary Services Pty Limited
by its attorney and by executing this deed the attorney states that the attorney has received no
notice of revocation of the power of attorney

sign here ► [not disclosed] _____
Attorney

print name [not disclosed] _____

in the presence of

sign here ► [not disclosed] _____
Witness

print name [not disclosed] _____

print address [not disclosed] _____



Agent

Signed sealed and delivered for
Australia and New Zealand Banking Group Limited
by its attorney and by executing this deed the attorney states that the attorney has received no
notice of revocation of the power of attorney

sign here ► [not disclosed] _____
Attorney

print name [not disclosed] _____

in the presence of

sign here ► [not disclosed] _____
Witness

print name [not disclosed] _____

print address [not disclosed] _____



HERBERT
SMITH
FREEHILLS

Deed

Execution Version

Metro Tunnel
Tunnel and Stations PPP

State Security

The Minister for Public Transport on behalf of the
Crown in the right of the State of Victoria

Each Grantor listed in Schedule 1



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State Security

Date ►

Between the parties

| | |
|-------|---|
| State | The Minister for Public Transport on behalf of the Crown in right of the State of Victoria |
|-------|---|

| | |
|----------|---|
| Grantors | Each Grantor listed in Schedule 1 (each a Grantor and together the Grantors) |
|----------|---|

| | |
|----------|--|
| Recitals | <ol style="list-style-type: none">1 The background to the Project is set out in the Project Agreement.2 This Deed sets out the terms on which each Grantor grants a first ranking charge to the State over its entire assets and undertakings as security for the performance of its obligations under each State Project Document. |
|----------|--|

The parties agree as follows:



1 Definitions and interpretation

1.1 Project Agreement definitions

Unless otherwise expressly defined, expressions used in this Deed have the meaning given to them in or for the purpose of the Project Agreement.

1.2 Definitions

In this Deed, unless the context otherwise requires:

| Term | Meaning |
|----------------------------------|---|
| Authorised Representative | <ol style="list-style-type: none">1 in respect of the State, the State Representative; and2 in respect of each Grantor, the Project Co Representative. |
| Capital | in relation to each Grantor, the uncalled and called but unpaid nominal or premium capital of the Grantor. |
| Collateral | <p>in relation to each Grantor, all present and after acquired property, interests, rights and proceeds in respect of which that Grantor has at any time sufficient rights to grant a Security Interest or a charge, including all of the following:</p> <ol style="list-style-type: none">1 the assets, undertaking and goodwill of the business of that Grantor; and2 the Capital. |
| Deal | sell, convey, assign, transfer, lease, licence or otherwise dispose or part with possession of, make any bailment over, grant any option over or create or permit to exist any other interest in any part of the Collateral. |
| Deed | this deed and includes all schedules, exhibits, attachments and annexures to it. |
| Encumbrance | a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off or any other security agreement or arrangement in favour of any person and includes any Security Interest. |



| Term | Meaning |
|------------------------------|---|
| Enforcement Event | <p>the occurrence of any of the following events:</p> <ol style="list-style-type: none">1 the State has elected, by notice under clause 45 (<i>Termination</i>) of the Project Agreement to terminate the Project Agreement in connection with a Major Default or a Default Termination Event; or2 the State has elected to exercise a Step-In Right in accordance with the Project Agreement and Project Co has failed to comply with any of its obligations under clause 41 (<i>Step-in by the State</i>) of the Project Agreement. |
| Insolvency Provisions | <p>any Law relating to insolvency, sequestration, liquidation or bankruptcy (including any Law relating to the avoidance of conveyances in fraud of creditors or beneficiaries of trusts or any Law of preferences, and any Law under which a liquidator or trustee in bankruptcy may set aside or avoid transactions), and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person.</p> |
| Marketable Securities | <p>has the meaning given to it in section 9 of the Corporations Act.</p> |
| Non PPSA Property | <p>property:</p> <ol style="list-style-type: none">1 which is not personal property as defined in the PPSA; or2 to which the PPSA does not apply. |
| Obligations | <p>all the liabilities and obligations of each Grantor to the State in connection with any State Project Document to which it is a party, and includes any liabilities or obligations that:</p> <ol style="list-style-type: none">1 are liquidated or unliquidated;2 are present, prospective or contingent;3 are in existence before or come into existence upon or after the date of this Deed;4 relate to the payment of money or the performance or omission of any act;5 sound in damages only; or6 accrue as a result of any Major Default or Default Termination Event, <p>and irrespective of:</p> <ol style="list-style-type: none">7 whether the Grantor is liable or obligated solely, jointly or jointly and severally with another person;8 the circumstances in which the State comes to be owed each liability or obligation and in which each liability or obligation comes to be secured by this Deed, including any assignment of |



| Term | Meaning |
|------------------------------|--|
| | any liability or obligation or of this Deed; or |
| | 9 the capacity in which the State or the Grantor comes to owe or be owed such liability or obligation. |
| Permitted Encumbrance | <ol style="list-style-type: none">1 a lien arising solely by operation of Law and in the ordinary course of a Grantor's ordinary business, provided that the Grantor is not in default in payment to the licensee on the due date;2 an Encumbrance to which the State has given its prior consent, but only to the extent it secures financial indebtedness in amounts to which the State has given consent; and3 each Financier's Security (as defined in the Finance Direct Deed). |
| Power of Attorney | each power of attorney created under clause 9.3. |
| PPSA | the <i>Personal Property Securities Act 2009</i> (Cth). |
| Project Agreement | the document entitled "Project Agreement" between the State and Project Co dated on or about the date of this Deed. |
| Receiver | a receiver or receiver and manager appointed by the State under this Deed, and, if more than one, then each of them, and also any servant, agent or delegate of any of them. |
| Revolving Asset | any part of the Collateral: <ol style="list-style-type: none">1 which is:<ol style="list-style-type: none">a inventory;b a negotiable instrument;c machinery, plant or equipment which is not inventory and has a value of less than \$1,000 or its equivalent;d money (including money withdrawn or transferred to a third party from an account of any Grantor with a bank or other financial institution); and2 in respect of which a Grantor has a current licence to Deal under clause 5.2. |
| Secured Money | at any time, all money the payment or repayment of which then forms part of the Obligations. |



| Term | Meaning |
|---------------------------------|---|
| Security Interest | has the meaning given to that term in section 12 of the PPSA. |
| Serial Numbered Property | Collateral that may or must be described by serial number in a financing statement under the PPSA. |
| Step-In Right | any right of the State to step in under clause 41 (<i>Step-in by the State</i>) of the Project Agreement. |

1.3 Interpretation

In this Deed:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;
- and unless the context otherwise requires:
- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa and a word indicating a gender includes every other gender;
 - (c) **(agreement and schedule references)**: a reference to:
 - (1) a party, clause, Schedule, Exhibit, or Annexure is a reference to a party, clause, Schedule, Exhibit or Annexure of or to this Deed; and
 - (2) a section is a reference to a section of a Schedule;
 - (d) **(deed as amended)**: a reference to this Deed or to any other deed, agreement, document or instrument includes a reference to this Deed or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
 - (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
 - (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
 - (g) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
 - (h) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
 - (i) **("includes")**: "includes" will be read as if followed by the phrase "(without limitation)";
 - (j) **("or")**: the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;



- (k) (**information**): a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) ("**\$**"): a reference to "\$", AUD or dollar is to Australian currency;
- (m) (**time**): a reference to time is a reference to time in Melbourne, Australia;
- (n) (**rights**): a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (o) (**obligations and liabilities**): a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (p) ("**may**"): the term "may", when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;
- (q) (**construction**): where there is a reference to an Authority, institute or association or other body referred to in this Deed which:
 - (1) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or
 - (2) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (r) (**remedy**): the use of the words "remedy" or "cure" or any form of such words in this Deed means that the event to be remedied or cured must be remedied or cured or its effects overcome;
- (s) (**contra proferentem rule not to apply**): each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision;
- (t) (**more than one Grantor**): if more than one person is identified as the Grantor, that expression refers to them, and the obligations of the Grantor under this Deed bind them, jointly and severally;
- (u) (**assets**): a reference to an asset includes any real or personal, present or future, tangible or intangible, property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived, from the property or asset;
- (v) (**PPSA**): each of the terms "personal property", "purchase money security interest", "financing statement", "financing change statement", "chattel paper" and "verification statement" have the meanings given to them in the PPSA; and
- (w) (**rights**) a right of the State or an obligation of each Grantor under this Deed will not limit or exclude any other right of the State or obligation of each Grantor under this Deed unless expressly stated.

1.4 Business Day

If the day on or by which anything is to be done in accordance with this Deed is not a Business Day, that thing must be done no later than the next Business Day.



1.5 Provisions limiting or excluding liability, rights or obligations

- (a) A right of the State or an obligation of each Grantor under this Deed will not limit or exclude any other right of the State or obligation of each Grantor under this Deed unless expressly stated.
- (b) Any provision of this Deed which seeks, either expressly or by implication, to limit or exclude any liability of a party is to be construed as doing so only to the extent permitted by Law.

1.6 Approvals, directions and notices in writing

Unless otherwise expressly provided in this Deed or agreed between the parties, all approvals, consents, directions, requirements, requests, claims, notices, agreements and demands must be given in writing.

1.7 Action without delay

Unless there is a provision in this Deed which specifies a period of time in which something must be done by the parties, all things must be done without undue delay.

1.8 Reasonable endeavours of State

Any statement in this Deed providing that the State will use or exercise "reasonable endeavours" or "act reasonably" in relation to an outcome, means that the State:

- (a) **(relevant steps)**: will take steps to bring about the relevant outcome so far as it is reasonably able to do so, having regard to its resources and other responsibilities;
- (b) **(no guarantee)**: cannot guarantee the relevant outcome; and
- (c) **(no obligation)**: is not required to:
 - (1) exercise a right of any Government Party, or to influence, over-ride, interfere with or direct any other Government Party in the proper exercise and performance of its legal, statutory or executive duties and functions;
 - (2) exercise a power or discretion in a manner that the State regards as not in the public interest;
 - (3) develop or implement new policy;
 - (4) procure legislation; or
 - (5) act in any way that the State regards as not in the public interest.

1.9 Relationship of the parties

Unless otherwise expressly provided, this Deed does not:

- (a) **(No relationship)**: create a partnership, joint venture, fiduciary, employment or agency relationship between the parties; or
- (b) **(No duty of good faith)**: impose any duty of good faith on the State.



1.10 State's rights and obligations

- (a) **(Acknowledgement):** The parties acknowledge the substance, operation and potential effect and consequences of clause 2.13 (*State's executive rights and duties*) of the Project Agreement in relation to this Deed.
- (b) **(No Claim):** Subject to clause 1.10(c), no Grantor will be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its executive or statutory rights or duties.
- (c) **(Liability for breach):** Clauses 1.10(a) and 1.10(b) do not limit any Liability which the State would have had to any Grantor under any State Project Document as a result of a breach by the State of a term of this Deed but for these clauses.

1.11 CY Trustee's limitation of liability

- (a) **(Capacity):** The parties acknowledge that the obligations of each CY Trustee under this Deed are incurred by it solely in its capacity as trustee of the relevant CY Trust other than where expressly provided otherwise, including as contemplated by clause 1.11(c)(1) below.
- (b) **(Limited liability):** Subject to clause 1.11(c), each CY Trustee will:
 - (1) not be liable to pay or satisfy any of its obligations or liabilities under this Deed in relation to the relevant CY Trust out of any assets held by it personally;
 - (2) only be liable to pay or satisfy any of its obligations or liabilities under this Deed in relation to the relevant CY Trust out of the assets of that CY Trust out of which it is actually indemnified;
 - (3) not be liable to pay or satisfy any of its obligations or liabilities under this Deed in its personal capacity out of any asset held by it personally (other than out of the property the subject of the State Securities); and
 - (4) only be liable to pay or satisfy any of its obligations or liabilities under the Project Documents in its personal capacity out of the property the subject of the State Securities held by it personally.
- (c) **(Circumstances where a CY Trustee is personally liable):**
 - (1) Each CY Trustee will be personally liable under this Deed for any loss or damage which the State may suffer as a result of a breach of this Deed by that CY Trustee where such breach is caused by:
 - (A) fraud of that CY Trustee;
 - (B) wilful default of that CY Trustee;
 - (C) that CY Trustee having committed a breach of trust;
 - (D) that CY Trustee having been negligent in the performance of its duties as trustee of the relevant CY Trust;
 - (E) a representation or warranty given by that CY Trustee under this Deed in respect of itself (in any capacity) or the relevant CY Trust being untrue, incorrect or misleading when made or repeated; or
 - (F) a breach of any undertaking (other than an undertaking to pay) of that CY Trustee given under this Deed.
 - (2) The State may:



- (A) do anything necessary to enforce its rights in connection with any representation or warranty (with respect to the relevant CY Trustee or the relevant CY Trust) or undertaking (other than an undertaking to pay) given by any CY Trustee under this Deed;
 - (B) do anything necessary to enforce its rights under each State Security;
 - (C) take proceedings to obtain an injunction or other order to restrain any breach of this Deed by any CY Trustee or declaratory relief or other similar judgment or order as to the obligations of any CY Trustee under this Deed; and
 - (D) prove in any insolvency proceedings in respect of any CY Trustee only in order to protect and enforce its rights in respect of the property of the relevant CY Trust and the Trustee's Indemnity.
- (3) Nothing in this clause 1.11 prevents the State obtaining any injunctive relief, order for specific performance, declaration or similar relief against any CY Trustee.
- (d) **(Limited recourse):** The State must not, except to the extent a CY Trustee is personally liable under clause 1.11(c)(1) and subject to clauses 1.11(c)(2) and 1.11(e):
 - (1) bring any proceeding for the winding up or liquidation of a CY Trustee;
 - (2) appoint, or seek the appointment of, a receiver or receiver and manager or other controller (as defined in the Corporations Act) to a CY Trustee or its assets or the assets of a CY Trust other than one appointed over any property secured by the State Securities;
 - (3) incur, or permit any receiver, receiver and manager appointed under a State Security, attorney appointed under a State Security or any other person to incur, any obligation binding on a CY Trustee unless the obligation is limited in accordance with this clause 1.11;
 - (4) take any action to obtain a judgment against a CY Trustee or to enforce a judgment against a CY Trustee other than:
 - (A) a judgment required to prove the amount of the Secured Money;
 - (B) a counterclaim in any proceedings commenced by a CY Trustee; or
 - (C) as permitted by clause 1.11(c)(3); or
 - (5) levy or enforce a levy or distress or other execution upon or against any assets of a CY Trustee other than any property secured by the State Securities or the assets of the relevant CY Trustee or CY Trust.
- (e) **(No limitation on enforcement of security provided under the State Securities):** This clause 1.11 does not limit or affect in any way the enforcement of the State Securities and, for the avoidance of doubt, it is acknowledged and agreed by each CY Trustee (in its personal capacity and as trustee for the relevant CY Trust) that the security granted under the State Securities by it constitutes a Security Interest over all of the Trust Property and all of its Trustee's Indemnity.
- (f) **(CY Trustee as Partner):** A reference to a CY Trustee includes a reference to the relevant CY Trustee as a partner in the Cross Yarra Partnership.



2 Conditions precedent

The satisfaction or waiver of the Conditions Precedent in accordance with clause 3 (*Conditions Precedent*) of the Project Agreement, is a condition precedent to the coming into operation of this Deed (other than this clause 2 and clauses 1.1, 1.2, 1.3, 1.8 to 1.10, 5 and 16 to 18).

3 Security Interest

3.1 Creation

- (a) **(Security interest):** Each Grantor grants a security interest in the Collateral to the State to secure the satisfaction of the Obligations and the payment of the Secured Money.
- (b) **(Nature):** This security interest is:
 - (1) a transfer by way of security of Collateral consisting of:
 - (A) accounts or chattel paper which are not, or cease to be, Revolving Assets; or
 - (B) a Project Document; and
 - (2) a charge of the Collateral not so transferred.
- (c) **(Further action):** If any law governing this Deed requires that some action be taken or some consent be obtained before a valid security interest can be granted by a Grantor over any part of the Collateral, then this security interest will only apply to that part of the Collateral once such action is taken or consent is obtained but will at all times apply to the relevant proceeds from that Collateral. Each Grantor agrees to promptly do anything necessary to ensure that the relevant action is taken or consent is obtained and remains in force.

3.2 Nature of security interest over Non PPSA Property

To the extent that any Non PPSA Property subject to this security interest consists of a Revolving Asset, this security interest will operate as a floating charge in respect of that property until it ceases to be a Revolving Asset. This security interest will otherwise operate as a fixed charge over all Non PPSA Property.

3.3 Priority

Subject to the Finance Direct Deed, this security interest is a first ranking security and takes priority over all other Encumbrances given by each Grantor.

3.4 State assumes no obligations

The State will not be deemed by virtue of this Deed to have assumed any obligation of the Grantor under any Law.

4 Dealing with Collateral

4.1 Dealing restrictions

Each Grantor will not without the State's prior consent or as expressly permitted in any other State Project Document:

- (a) **(no encumbrances)**: create, purport or attempt to create or permit to exist any Encumbrance over the Collateral other than a Permitted Encumbrance;
- (b) **(no dealing)**: subject to clause 4.2, Deal with any part of the Collateral; or
- (c) **(not to prejudice)**: do, fail to do or consent to any act, omission or thing as a result of which the Collateral becomes or could become liable to surrender, forfeiture or cancellation, or becomes or could become prejudiced in any manner, or the value to the State of any Encumbrance under this Deed becomes or could become materially lessened.

4.2 Licence to Deal

Subject to clause 4.3, each Grantor may Deal with (but not grant any Encumbrance other than a Permitted Encumbrance over) any Revolving Asset in the ordinary course of its ordinary business.

4.3 Termination of licence to Deal

- (a) **(End of licence)**: A Grantor's licence to Deal with any Revolving Assets under clause 4.2 will come to an end if:
 - (1) that Grantor breaches clause 4.1 or takes any steps which would result in a breach of that clause;
 - (2) an Authority takes a step (including signing a notice or direction) which may result in Taxes ranking ahead of the security interest created by this Deed;
 - (3) an Insolvency Event occurs in relation to that Grantor; or
 - (4) an Enforcement Event occurs.
- (b) **(Reinstatement of licence)**: A Grantor's licence to Deal may be reinstated by the State giving that Grantor a notice stating that, from a date specified in the notice, the Collateral specified in the notice is again subject to the licence to Deal.

4.4 Notice to debtor or contractual counterparty

Each Grantor authorises the State to give notice to any debtor or contractual counterparty under any:

- (a) account or chattel paper which is not, or ceases to be, a Revolving Asset; or
- (b) Project Document transferred under clause 3.1(b)(1)(B).

4.5 Control of inventory

Any inventory which is not, or ceases to be, a Revolving Asset is specifically appropriated to the Security Interest under this Deed. No Grantor may remove any such inventory without obtaining the specific and express authority of the State to do so.



4.6 Finance Direct Deed

Despite any other provision in this Deed, the State's rights in accordance with this Deed, including the exercise of any power by the State, a receiver or an attorney, are subject to the Finance Direct Deed.

5 Representations and warranties by the Grantors

5.1 Representations and warranties

Each Grantor represents and warrants for the benefit of the State that:

- (a) **(good title)**: it has good right and title to grant a security interest in the Collateral in the manner provided in this Deed;
- (b) **(no Encumbrances)**: the Collateral is free of all Encumbrances other than in favour of the State or Permitted Encumbrances; and
- (c) **(information for financing statement)**: the State has received from the Grantor all information reasonably requested by the State to complete the financing statement (or financing change statement if necessary) for this Deed and that information is true and correct in all respects.

5.2 Repetition of representations and warranties

The representations and warranties of each Grantor under clause 5.1 are made and given on the date of this Deed and each of them is taken to be repeated on the first Business Day of each Quarter commencing after the date of this Deed whilst any Secured Money remains outstanding or any Obligation remains unfulfilled (whether or not then due for payment or fulfilment, respectively), with reference to the facts and circumstances then subsisting at those dates.

6 General Undertakings

6.1 Performance of Obligations by the Grantors

Each Grantor must punctually perform, observe and fulfil the Obligations and pay the Secured Money relating to it in the manner provided in any State Project Document.

6.2 Grantor details

Each Grantor will notify the State before:

- (a) it changes its name or any trust in respect of which it is a trustee (if applicable) changes its name;
- (b) any ABN, ARBN or ARSN allocated to it changes, is cancelled or ceases to apply to it;
- (c) any ABN, ARBN or ARSN is allocated to it where it did not previously have one; or
- (d) it becomes the trustee of any trust not specified in this Deed.

6.3 Collateral generally

- (a) **(Obligations of Grantors):** Each Grantor will:
- (1) except to the extent otherwise agreed in the Finance Direct Deed, lodge with the State all certificates, scrip and other indicia of that Grantor's title or interest in any Marketable Securities, all negotiable instruments other than cheques, all chattel paper forming part of the Collateral and all other documents of title to the whole or part of the Collateral, immediately on receipt of the same;
 - (2) take all steps reasonably necessary to ensure that all Security Interests which it holds are attached, enforceable and continuously perfected under the PPSA until the obligations they secure are satisfied or they are released for value;
 - (3) at the request of the State, effect all registrations that the State, acting reasonably, considers necessary or desirable for the preservation, protection or recovery of the Collateral;
 - (4) as and when reasonably requested by the State, provide the State with written details of any property in which it has rights that is, or is capable of being, subject to a purchase money security interest in favour of any third party and the amount secured;
 - (5) not permit the Collateral, or any part of the Collateral to become:
 - (A) commingled with any asset that is not subject to the Security Interest under this Deed, except in the ordinary course of that Grantor's business; or
 - (B) an accession to or affixed to any asset that is not subject to the Security Interest under this Deed; and
 - (6) immediately notify the State if it becomes aware of the acquisition of any Serial Numbered Property which forms part of the Collateral and, in respect of that Serial Numbered Property, all the details required by the PPSA to be entered in a financing statement.
- (b) **(Nominee):** Each Grantor irrevocably and unconditionally appoints, for the purposes of section 153 of the PPSA, the State as its nominee and authorises the State to act on its behalf in connection with any Security Interest granted in favour of that Grantor that:
- (1) is evidenced or created by any chattel paper or Project Document which has been, or will be, transferred in favour of the State under this Deed; and
 - (2) has been perfected by registration under the PPSA.

7 Rights to demand payment and exercise powers

If an Enforcement Event occurs then, during any period it subsists, at the option of the State and notwithstanding any delay or previous waiver of the right to exercise that option:

- (a) **(demand):** the Secured Money becomes immediately due and payable on demand from the State;
- (b) **(powers):** all rights not previously exercisable become exercisable; and



- (c) **(rights)**: any right of a Grantor to Deal with the Collateral (other than through a Receiver appointed under this Deed) immediately cease.

8 Receivers: Appointment and rights

8.1 Appointment

While an Enforcement Event subsists, the State may appoint any person or persons to be the Receiver of the whole or part of the Collateral.

8.2 Removal

- (a) **(Right to remove)**: The State may at any time withdraw the appointment of the Receiver appointed under clause 8.1 as to the whole or part of the Collateral. In case of the removal, retirement or death of any Receiver, the State, subject to clause 8.2(b), may appoint another person or persons in the Receiver's place.
- (b) **(Obligation to remove)**: Unless the State is otherwise entitled to appoint a Receiver under clause 8.1, the State must withdraw the appointment of the Receiver appointed as a result of an Enforcement Event as soon as practicable after the State ceases to exercise its Step-In Rights.

8.3 More than one Receiver

If more than one person is appointed as the Receiver, the State may at its option specify whether the appointment and the rights of each appointee will be joint, or joint and several. If no specification is made, the appointment and the rights of each appointee will be joint and several.

8.4 Remuneration of Receiver

The State may fix the rate of remuneration of any Receiver, which rate will not exceed the standard hourly rate from time to time charged by the firm of which the Receiver is a member for work of the level conducted by the Receiver.

8.5 Agent of Grantors

Every Receiver will be the agent of the relevant Grantor and, subject to all applicable Laws, each Grantor will be solely responsible for all acts and omissions by, and the remuneration of, the Receiver.

8.6 Indemnity

The State may give such indemnities to any Receiver concerning the performance of the Receiver's duties as are permitted by Law. If the State is obliged to pay any money under any indemnity, that money will become part of the Secured Money.

8.7 Rights of Receiver

In addition to powers conferred by statute and any other rights, and without the need for any consent from the Grantor or any other person, the Receiver will have all of the



following rights in relation to the Collateral with respect to which the Receiver has been appointed:

- (a) **(Section 420)**: all of the powers granted to a receiver of property of a corporation under section 420 of the Corporations Act;
- (b) **(to take possession)**: to take possession or control of, or to make use of, the whole or any part of the Collateral, or to relinquish such possession or control;
- (c) **(to convert to money)**: to convert, liquidate and reduce the whole or any part of the Collateral into money;
- (d) **(to lease)**: whether or not the Receiver has taken possession, to lease or licence in the name of the relevant Grantor or otherwise the whole or any part of the Collateral for any period and on any terms, or to vary or terminate a lease or licence;
- (e) **(to carry on business)**: to carry on or concur in carrying on any business then conducted by the relevant Grantor, and to effect all Insurances required to be taken out or maintained under the Project Agreement and do all acts which that Grantor might do in the ordinary conduct of such business for the protection or improvement of the whole or part of the Collateral;
- (f) **(to employ)**: to employ consultants, professional advisers, sub-contractors, agents and employees (including any person associated with a firm or company in which the Receiver is a member or in which the Receiver is interested, and that person may charge for his or her services as if he or she had been independently retained at such salaries or remuneration as the Receiver thinks fit), and to act on any advice given by that person;
- (g) **(to conduct works)**: to repair, renew, replace, renovate or clean the Collateral, to erect any new buildings or make any improvements to any land forming part of the Collateral, and to demolish, alter, rebuild or extend any existing improvements on the Collateral. All outlays and expenses paid or incurred by the Receiver in this regard will be deemed to form part of the Secured Money;
- (h) **(to sell property)**: whether or not the Receiver has taken possession, to sell or concur in selling all or any of the Collateral by public auction, private treaty or tender, for cash or on credit, in one lot or in parcels, with or without special conditions or stipulations as to title, or the time and the mode of payment of purchase money, and on such other terms as the Receiver thinks fit, with power to allow deferred payment of any part of the purchase money, whether or not secured by an Encumbrance from the purchaser and with full power to buy in and to rescind or vary any contract for sale, and to resell without being responsible for loss including a right to require that the purchaser assume all or any obligations of the Grantors under the Project Documents, whether those obligations are present or future, actual or contingent;
- (i) **(contracts for sale)**: to exercise all or any rights of the relevant Grantor under any contract for sale, and to execute those contracts, any applications for transfer, transfers, assignments and assurances of all or any part of the Collateral in the name and on behalf of the relevant Grantor or otherwise, and to do all other acts and things for implementing and completing any sale that the Receiver deems necessary;
- (j) **(to sever and sell fixtures)**: to sever fixtures belonging to the relevant Grantor and to sell those separately from any other part of the Collateral;
- (k) **(to invest proceeds against contingencies)**: if any part of the Secured Money is contingent, to invest, deposit or hold any part of the Collateral in a form or mode of investment for the time being as the Receiver in its absolute discretion thinks fit, with like power to vary, transpose or re-invest the investments or



deposits from time to time until such part of the Secured Money ceases to be contingent;

- (l) **(to enter into contracts)**: to enter into any contract or arrangement with any person for any purpose connected with this Deed or the whole or any part of the Collateral or in furtherance of any right (other than a contract for borrowing or raising of funds), on such terms and conditions as the Receiver in its absolute discretion thinks fit including granting or conferring options to, in favour of or exercisable by, any person for the purpose of or in connection with the sale, purchase, leasing, hiring or other dealing with, the whole or any part of the Collateral;
- (m) **(to perform contracts)**: to perform, observe and carry out, enforce specific performance of, exercise or refrain from exercising, obtain the benefit of, and to vary or rescind, the relevant Grantor's rights under all contracts and rights forming part of the Collateral or entered into in the exercise of any right;
- (n) **(to take proceedings)**: to institute, conduct or defend any proceedings in Law, equity or bankruptcy, and to submit to arbitration, mediation or conciliation in the name of the relevant Grantor or otherwise and on any terms, any proceeding, claim, question or dispute in connection with the Collateral or otherwise;
- (o) **(to compromise)**: to make any settlement, arrangement or compromise regarding any action or dispute arising in connection with the Collateral, and to grant to any person involved in any action or dispute or other indulgence, and to execute, such releases or discharges in connection with any action or dispute as the Receiver thinks expedient in the interests of the State;
- (p) **(to appeal)**: to appeal against or to enforce any judgment or order;
- (q) **(to bankrupt debtors and wind-up companies)**: to make debtors bankrupt and to wind-up companies and to do all things in connection with any bankruptcy or winding up which the Receiver thinks is necessary for the recovery or protection of the whole or part of the Collateral, or for the security or other benefit of the State;
- (r) **(to delegate)**: with the consent of the State, to delegate to any person for such time or times as the State approves, any of the rights, including this power of delegation;
- (s) **(to file)**: to file all certificates, registrations and other documents and to take any and all action on behalf of the relevant Grantor which the State or Receiver believes is necessary to protect, preserve or improve any or all of the Collateral and the rights of the relevant Grantor and the State in respect of any agreement for sale, and to obtain for the State all of the benefits of this Deed and any Project Document, and, in particular, the placing of the relevant Grantor into liquidation or the appointment of a Receiver will be deemed to be an event against which the State may protect its rights;
- (t) **(to make calls on Capital)**: to call and get in Capital;
- (u) **(to operate bank accounts)**: to open or operate any bank account in the name of the relevant Grantor whether alone or jointly to the exclusion of that Grantor, and to deposit or withdraw any money to the credit of that account, and to sign and endorse or to authorise others to sign and endorse in the name of that Grantor cheques, promissory notes bills of exchange and other negotiable instruments;
- (v) **(to do all other things necessary)**: to do all things necessary to perform, observe and fulfil any of the covenants on the part of the Grantor contained in this Deed; and



- (w) **(Receiver's discretion)**: subject to duties owed by the Receiver to the relevant Grantor and its creditors at Law which may not be excluded by contract, to do all other acts and things without limitation as the Receiver thinks expedient in the interests of the State,

and any further powers and discretions as the State confers on the Receiver by notice to the Receiver for the purposes referred to in this clause 8.7.

9 State's powers

9.1 Exercise of rights

- (a) **(State's rights)**: Subject to clause 9.1(b), while an Enforcement Event subsists the State may without notice and whether or not a Receiver has been appointed:
- (1) exercise all or any of the rights conferred on a Receiver or which would be conferred on a Receiver if appointed, as if those rights had been expressly conferred on the State;
 - (2) exercise all other rights; and
 - (3) appoint an agent or joint and several agents and delegate such powers to it or them (in which case clauses 8.1, 8.4 and 8.6 will apply as if it or they were appointed as the Receiver).
- (b) **(Withdrawal)**: If the State must withdraw the appointment of the Receiver in accordance with clause 8.2(b), the State must as soon as practicable cease to exercise rights under this clause 9.1.

9.2 Act jointly

The State or the Receiver may exercise any of the rights in conjunction with the exercise of similar powers by any other holder of an Encumbrance of the whole or part of the Collateral or by any Receiver appointed by that other holder of an Encumbrance, and may enter into and give effect to agreements and arrangements with that other holder of an Encumbrance or receiver as the State or the Receiver thinks fit.

9.3 Power of attorney

- (a) **(Acts requested by State)**: As from the date of this Deed, for the purpose of doing any act which a Grantor is required to do under this Deed, each Grantor irrevocably appoints the State, and each agent and attorney from time to time of the State, and any Receiver appointed under this Deed, severally, as attorney of the relevant Grantor, with power to:
- (1) do all acts which are required to be done by that Grantor under this Deed and which that Grantor has failed to do within 20 Business Days of being requested by notice to do so by the State; and
 - (2) appoint (and remove at will) at any time any person as a substitute for an attorney.
- (b) **(Acts while certain circumstances subsist)**: Each Grantor irrevocably appoints the State, each agent from time to time of the State, and any Receiver appointed under this Deed, severally, as attorney of the relevant Grantor, with power while an Enforcement Event subsists to:



- (1) do all acts which are required to be done by that Grantor under this Deed or another Project Document or to exercise any right;
 - (2) take further action and to execute further instruments which are, or are in the reasonable opinion of the State, necessary to perfect the Encumbrance created by this Deed; and
 - (3) appoint (and remove at will) at any time any person as a substitute for an attorney.
- (c) **(Ratification and confirmation):** Each Grantor ratifies and confirms now and for the future all actions lawfully undertaken by or on behalf of its attorney under this Power of Attorney.
- (d) **(Duration):** Each Grantor declares that this Power of Attorney will continue until the discharge of this Deed.

9.4 Exclusion of PPSA provisions

To the extent permitted by law, and in respect of each Security Interest created by this Deed:

- (a) **(contracting out):** the parties contract out of sections 95, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA (to the extent, if any, mentioned in section 115(1) of the PPSA);
- (b) **(waiver under PPSA):** each Grantor waives its rights to receive any information under section 275 of the PPSA and agrees not to make any request under that section or to take any action which would otherwise require the State to make a disclosure under that section; and
- (c) **(waiver of verification statement):** each Grantor irrevocably and unconditionally waives its right to receive any notice of any verification statement in respect of any financing statement or financing change statement relating to this Deed.

9.5 Exercise of rights

If the State exercises a right in connection with this Deed, that exercise will be taken to be an exercise of the right under the general law unless the right is only available under the PPSA or the State states otherwise at the time of exercise.

10 Time periods

10.1 Exclusion of time periods

Neither the State nor any Receiver need give any Grantor any notice or demand or allow time to elapse before exercising a right under this Deed or conferred by Law (including a right to sell) unless the notice, demand or lapse of time is required by Law and cannot be excluded, or is otherwise expressly required by this Deed.

10.2 Mandatory notice period

If the Law requires that a period of notice must be given or a lapse of time must occur or be permitted before a right under this Deed or conferred by Law may be exercised, then:



- (a) **(mandatory period)**: when a period of notice or lapse of time is mandatory, that period of notice must be given or that lapse of time must occur or be permitted by the State; or
- (b) **(fixed period)**: when the Law provides that a period of notice or lapse of time may be stipulated or fixed by this Deed, then one day is stipulated and fixed as that period of notice or lapse of time including (if applicable) as the period of notice or lapse of time during which:
 - (1) default must continue before a notice is given or requirement otherwise made for payment of the Secured Money or the observance of other obligations under this Deed; and
 - (2) a notice or request for payment of the Secured Money or the observance of other obligations under this Deed must remain not complied with before the State or a Receiver may exercise its rights.

11 Application of money

11.1 Priority of payments

Subject to the Finance Direct Deed, all money received by the State or by the Receiver as a result of the exercise of the rights may be applied:

- (a) **(incidental to exercise of rights)**: in payment of all fees, costs, charges, expenses and disbursements incurred in or incidental to the exercise or performance or attempted exercise or performance of any of the rights;
- (b) **(outgoings)**: in payment of any other outgoings as the State or the Receiver thinks fit;
- (c) **(payment of prior encumbrances)**: in payment of other Encumbrances of which the State is aware to the extent to which they have priority to this Deed, in the order of their priority;
- (d) **(payment of Secured Money)**: in payment of the Secured Money then owing or contingently or prospectively owing, whether or not due and payable;
- (e) **(subsequent encumbrances)**: in payment of subsequent Encumbrances of which the State is aware to the extent to which they have priority after this Deed, in the order of their priority; and
- (f) **(surplus)**: if there is any surplus (which will belong to the relevant Grantor but will not carry interest), in payment to the relevant Grantor.

11.2 Money received

In applying any money towards satisfaction of the Secured Money, each Grantor will be credited only with so much of the money available for that purpose as will be actually received by the State or the Receiver in relation to the relevant Collateral and not required for whatever reason to be disgorged, any credit to be dated from the time of receipt. It is acknowledged that the amount of money actually received in relation to relevant Collateral may be a function of the amount attributed to the Collateral by the State or the Receiver.



11.3 Application of payments or credits

Each of the State and the Receiver has an absolute discretion to apply any payment or credit received by it under this Deed (and, to the extent relevant, attributed to the Secured Money) in reduction of any part or parts of the Secured Money, whenever and on whatever account the Secured Money became secured, notwithstanding any principle or presumption of Law to the contrary or any direction given at the time of receipt, and without the need to communicate its election to any person.

11.4 Reliance on certificate

In making any payment to any other holder of an Encumbrance under clause 11.1, the State and the Receiver may rely on a certificate from that holder of an Encumbrance as to the amount secured, and are not bound to enquire as to the accuracy of the certificate or whether the amount referred to is validly secured by the Encumbrance.

12 Liability and release

12.1 Continuing obligation

Subject to clause 12.5, this Deed constitutes a continuing obligation regardless of any settlement of account, intervening payment, express or implied revocation, or any other matter or thing. Without limiting the generality of the foregoing, each indemnity in this Deed is a separate additional and continuing obligation and will survive the discharge of this Deed. Unless otherwise agreed, payment by the State will not be a pre-condition to liability under any indemnity.

12.2 Personal liability

No grant of full or partial satisfaction of or discharge from this Deed by the State will, unless it expressly provides otherwise, release a Grantor from personal liability under this Deed or under any other State Project Document until none of the Secured Money is owing (whether actually, contingently or prospectively) and it is not reasonably foreseeable that there could be any Secured Money owing in the future.

12.3 Settlement conditional

- (a) **(Conditions on settlement):** Any settlement or discharge between the State and a Grantor is conditional on any security or payment given or made to the State by the relevant Grantor or any other person in relation to the Obligations relating to a Grantor not being avoided, repaid or reduced by virtue of any Insolvency Provision. If the security or payment is avoided, repaid or reduced, the State is entitled to recover the value or amount of such security or payment avoided, repaid or reduced from the Grantors subsequently as if that settlement or discharge had not occurred.
- (b) **(Consequences of settlement):** If:
 - (1) the State has at any time released or discharged:
 - (A) a Grantor from its Obligations; or
 - (B) any assets of a Grantor from this Deed,



- in either case in reliance on a payment, receipt or other transaction to or in favour of the State; or
- (2) any payment, receipt or other transaction to or in favour of the State has the effect of releasing or discharging:
 - (A) a Grantor from its Obligations; or
 - (B) any assets of a Grantor from this Deed; and
 - (3) that payment, receipt or other transaction is subsequently claimed by any person to be void, voidable or capable of being set aside for any reason, including under an Insolvency Provision or under any other law; and
 - (4) that claim is upheld or is conceded or compromised by the State, then:
 - (5) the State will immediately become entitled against the relevant Grantor to all rights as it had immediately before that release or discharge; and
 - (6) the relevant Grantor must, to the extent permitted by law:
 - (A) immediately do all things and execute all documents as the State, acting reasonably, may require to restore to the State all those rights; and
 - (B) indemnify the State against all costs, damages, claims, demands and actions suffered or incurred by it in or in connection with any negotiations or proceedings relating to the claim or as a result of the upholding, concession or compromise of the claim.

12.4 Grantors' liability not affected

This Deed and the Liability and responsibility of each Grantor and the State's rights against each Grantor under this Deed or otherwise according to Law, will not be affected or discharged by any of the following:

- (a) **(indulgence)**: the granting to any Grantor or to any other person of any time or other indulgence or consideration;
- (b) **(Project Documents)**: the State failing or neglecting to recover by the realisation of any Project Documents, other Encumbrance or otherwise any of the Secured Money relating to any Grantor;
- (c) **(laches)**: any other laches, acquiescence, delay, act, omission or mistake on the part of the State or any other person;
- (d) **(release)**: the release, discharge, abandonment or transfer, whether wholly or partially and with or without consideration, of any Project Document, other Encumbrance, judgment or negotiable instrument held from time to time or recovered by the State from or against any Grantor or any other person; or
- (e) **(any other thing)**: any other matter or thing.

12.5 Release of Collateral

The State will, upon application by a Grantor, grant a release of the relevant Collateral from this Deed, if at the time the release is to be provided, the State is satisfied that none



of the Secured Money is owing (whether actually, contingently or prospectively) and none of the Obligations remain to be performed.

13 Liability and indemnity

13.1 Waiver by Grantors

To the extent permitted by Law, each Grantor waives in favour of the State:

- (a) any requirement that the State take any action or exhaust any right against any other person before enforcing this Deed against any Grantor;
- (b) all rights against the State and any other person, estate or assets as far as is necessary to give effect to any provision of this Deed;
- (c) promptness and diligence on the part of the State; and
- (d) all rights inconsistent with the provisions of this Deed.

13.2 No liability for loss

To the extent permitted by Law, neither the State, nor any Receiver will have any Liability for any omission, delay or mistake or any loss or irregularity in or about the exercise or attempted exercise, non-exercise or purported exercise of any right, except for fraud or wilful act or omission.

13.3 No liability to account

To the extent permitted by Law, neither the State nor any Receiver will, by reason of the State or the Receiver entering into possession of the whole or part of the Collateral, be liable to account as mortgagee or secured party in possession, or for anything except actual receipts (and, if relevant, attributed to the Collateral), or be liable for any loss on realisation or for any default, omission, delay or mistake for which a mortgagee or secured party in possession might be liable.

13.4 No conflict

The State and any Receiver may exercise any right notwithstanding that the exercise of that right involves a conflict between any duty owed to a Grantor by the State or that Receiver and any duty owed by the State or that Receiver to any other person, or the interests of the State or that Receiver. No contract will be void or voidable by virtue of any such conflict of duty or interest, nor will the State or any Receiver be liable to account to any Grantor or any other person for any money or property as a result of such conflict.

13.5 No notice or enforcement

The State need not give any notice of the security created by this Deed to any debtor of any Grantor, or to any purchaser, or to any other person, or to enforce payment of any money payable to any Grantor, or realise any of the Collateral, or to take any steps or proceedings for that purpose.



13.6 Indemnity

The Grantors bear all risks with respect to and must indemnify the State and the Receiver on demand against any Claim or Liability (including any Claim made by, or Liability to, a third party) which the State or any Receiver suffers or incurs arising out of or in respect of or in connection with:

- (a) **(exercise of right)**: the exercise, attempted exercise or non-exercise of any right under this Deed, including (without limitation) those consequent on any mistake, oversight, error of judgment or want of prudence on the part of the State or any Receiver, unless the same is due to fraud or wilful act or omission;
- (b) **(Enforcement Event)**: a consequence of the occurrence of an Enforcement Event; and
- (c) **(act or omission)**: any act or omission for which the State or any Receiver is exonerated by this Deed.

13.7 Protection of persons dealing with State or Receiver

No person acquiring any money or asset from, or paying or handing over any money or asset to, or otherwise dealing with, the State, the Receiver or any attorney appointed under this Deed, or to whom is tendered for registration an instrument executed by the State, the Receiver or any attorney appointed under this Deed, will be:

- (a) **(inquiries)**: bound to inquire:
 - (1) whether the State or the Receiver has the right to dispose of any money or asset;
 - (2) whether an Enforcement Event has occurred;
 - (3) whether any of the Secured Money is owing or payable;
 - (4) whether the Receiver or an attorney has been properly appointed;
 - (5) as to the propriety or regularity of the exercise or purported exercise of any right; or
 - (6) as to any other matter or thing;
- (b) **(actual or constructive notice)**: affected by actual or constructive notice that any transaction, document or other dealing is unnecessary or improper; or
- (c) **(application of money or asset)**: concerned to see to the application of any money or asset, or be answerable or accountable for any loss or misapplication of any money or asset,

and the irregular, improper or unnecessary exercise of any right will be, as regards the protection of any such person, deemed to be authorised by each Grantor and valid.

14 Payments

14.1 Money repayable as agreed or on demand

Unless otherwise provided in the Project Agreement, the Secured Money will be payable by the Grantors to the State in Australian dollars on the due date (or if no date is specified immediately on demand by the State).



14.2 Payment of interest

The Grantors will pay interest on the Secured Money which is due and payable to the State but unpaid in accordance with any State Project Document or, in the absence of any relevant provision, at the Overdue Rate calculated daily from, but excluding, the date upon which or the expiration of the period within which they should have been paid to, and including, the date upon which the moneys are paid.

14.3 Capitalisation of interest

The State may capitalise any interest which has become due and owing in accordance with any State Project Document or, in the absence of any relevant provision, then at such periods of not less than one Month and from such dates as the State elects. The accumulation of capitalised interest may continue until the Secured Money has been paid in full notwithstanding any composition, compromise judgment or order in respect of any person or any other thing.

14.4 Merger

If the liability of a Grantor to pay to the State any of the Secured Money becomes merged in any judgment or order, as an independent obligation that Grantor will pay interest at the rate which is the higher of that payable under this Deed and that fixed by or payable under that judgment or order.

14.5 No deduction for taxes and no set off or counterclaim

All payments by a Grantor under any State Project Document, whether of principal, interest or other amounts, will (except as provided for in a Project Document) be:

- (a) **(no set off or counterclaim)**: free of any set off or counterclaim; and
- (b) **(no deduction or withholding)**: without deduction or withholding for any present or future Tax unless that Grantor is compelled by law to deduct or withhold the same, in which case that Grantor will pay to the State any additional amounts necessary to enable the State to receive, after all deductions and withholding for such Tax, a net amount equal to the full amount which would otherwise have been payable had no such deduction or withholding been required to be made.

15 Termination of this Deed

- (a) **(Termination)**: This Deed will terminate on the latest of:
 - (1) performance and satisfaction of all of the Obligations; and
 - (2) the date on which all Secured Money has been repaid in full.
- (b) **(Effect of termination)**: The termination of this Deed does not affect the rights of any party which have accrued to that party before the date of termination.



16 Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Deed:

- (a) **(in writing)**: must be in writing;
- (b) **(addressed)**: must be addressed as set out below (or as otherwise notified by that party to each other party from time to time);

State:

Attention: [not disclosed]

Address: [not disclosed]

Email: [not disclosed]

Grantors:

Attention: [not disclosed]

Address: [not disclosed]

Email: [not disclosed]

- (c) **(signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(form of delivery)**: must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by both parties) to the email address of the addressee set out in clause 16(b); and
- (e) **(taken to be received)**: are taken to be received by the addressee at the address set out in clause 16(b):
 - (1) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
 - (2) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and
 - (3) in the case of email, the first to occur of:
 - (A) receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - (B) the time that the communication enters an information system which is under the control of the addressee; or
 - (C) the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day.



17 Dispute resolution

If any dispute or difference of opinion arises between the parties under this Deed, each party may refer any such matter for resolution in accordance with this clause 17 and the dispute or difference of opinion must be resolved in the same manner that disputes or differences of opinion under the Project Agreement are resolved. Accordingly, the provisions of clause 46 (*Dispute Resolution*) and clause 47 (*Arbitration*) of the Project Agreement are incorporated into this Deed but as if:

- (a) **(Parties)**: the only persons party to the Project Agreement, and the only persons party to the relevant dispute or difference of opinion, are the parties to the relevant dispute; and
- (b) **(Matters for determination)**: the only matters for expert determination under those provisions are the matters referred for expert determination under this Deed.

18 Miscellaneous

18.1 Governing Law and jurisdiction

- (a) **(Governing Law)**: This Deed is governed by, and must be construed according to, the Laws of Victoria, Australia.
- (b) **(Jurisdiction)**: Without limiting clause 17, each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought in connection with this Deed.

18.2 Entire agreement

To the extent permitted by Law, and in relation to their subject matter, this Deed and the other State Project Documents:

- (a) **(entire understanding)**: embody the entire understanding of the parties, and constitute the entire terms agreed by the parties; and
- (b) **(prior agreements)**: supersede any prior agreement of the parties.

18.3 Further acts and documents

- (a) **(Give effect to this Deed)**: Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to both parties) required by Law or reasonably requested by another party to give effect to this Deed.
- (b) **(Security Interest)**: Without limiting clause 18.3(a) if the State determines that a State Project Document (or a transaction related to a State Project Document) is or contains a Security Interest, each Grantor agrees to promptly do anything (including amending any Project Document or executing any new document) which the State reasonably requires for the purposes of:
 - (1) ensuring that the Security Interest is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective;



- (2) enabling the State to apply for registration, or give any notification, in connection with the Security Interest so that the Security Interest has the priority required by the State; or
- (3) enabling the State to exercise rights in connection with the Security Interest.

18.4 Survival of certain provisions

- (a) **(Surviving clauses):** All provisions of this Deed which, expressly or by implication from their nature, are intended to survive the rescission, termination or expiration of this Deed will survive the rescission, termination or expiration of this Deed, including any provision in connection with:
 - (1) the State's rights to set-off and recover money;
 - (2) confidentiality or privacy;
 - (3) Intellectual Property Rights;
 - (4) any obligation to make any records available to the State;
 - (5) any indemnity or financial security given in accordance with this Deed; or
 - (6) any right or obligation arising on termination of this Deed.
- (b) **(Interpretation):** No provision of this Deed which is expressed to survive the termination of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the termination of this Deed.
- (c) **(Survival of rights and obligations):** No right or obligation of any party will merge on completion of any transaction in accordance with this Deed. All rights and obligations in accordance with this Deed survive the execution and delivery of any transfer or other document which implements any transaction in accordance with this Deed.

18.5 Waiver

- (a) **(Writing):** A waiver given by a party in accordance with this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver):** A failure to, a delay in or the partial exercise or enforcement of a right provided by Law or in accordance with this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or in accordance with this Deed.
- (c) **(No waiver of another breach):** No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

18.6 Consents, approvals and directions

A consent or approval required in accordance with this Deed from the State may be given or withheld, or may be given subject to any conditions, as the State thinks fit, unless this Deed expressly provides otherwise.



18.7 Amendments

Except as otherwise expressly provided in this Deed, this Deed may only be varied by a deed executed by or on behalf of each party.

18.8 Expenses

Except as otherwise expressly provided in this Deed or the Project Agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

18.9 Severance

If, at any time, a provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this Deed; or
- (b) that provision under the Law of any other jurisdiction.

18.10 Counterparts

This Deed may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same agreement.

18.11 Moratorium legislation

Without limiting clause 5.3 (*All risks*) of the Project Agreement, to the fullest extent permitted by Law, the provisions of all Laws which operate to lessen or affect in favour of a Grantor any obligation under this Deed, or to prejudicially affect the exercise by the State of any right, power or remedy under this Deed or otherwise, are expressly waived.

18.12 Proportionate liability

- (a) **(Excluded operation of Wrongs Act):** The operation of Part IVAA of the *Wrongs Act 1958* (Vic) is excluded in relation to all and any rights, obligations or liabilities of either party under this Deed whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) **(Rights, obligations and liabilities):** Without limiting clause 18.12(a), the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Deed and not otherwise, whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

18.13 Indemnity held on trust

- (a) **(Benefit of indemnities):** The State holds on trust for any Receiver the benefit of:
 - (1) each indemnity, promise and release given by each Grantor under this Deed in favour of the Receiver; and



- (2) each right in this Deed to the extent that such right is expressly provided to be for the benefit of the Receiver.
- (b) **(Grantor acknowledgement):** Each Grantor acknowledges the existence of such trusts and consents to:
 - (1) the State exercising rights in relation to, or otherwise enforcing such indemnities, releases and rights on behalf of any Receiver; and
 - (2) the Receiver exercising rights in relation to, or otherwise enforcing the indemnities, releases and those rights as if they were a party to this Deed.
- (c) **(Consent not required):** The parties agree that the State does not require the consent of the Receiver to amend or waive any provision of any State Project Document.

18.14 Registration

The State may register this Deed, or any financing statement or financing change statement relating to this Deed, in the manner prescribed by law to ensure the full efficacy of this Deed as an Encumbrance to the State in all relevant jurisdictions.

18.15 Confidentiality

- (a) **(Confidential):** Subject to clause 18.15(b), if any Grantor is a debtor as defined in the PPSA, the parties agree to keep all information of the kind mentioned in section 275(1) of the PPSA confidential and not to disclose that information to anyone.
- (b) **(Exceptions):** Clause 18.15(a) does not apply to any disclosure of information or documents:
 - (1) in any proceeding arising out of or in connection with this Deed to the extent that the disclosure is deemed by the disclosing party necessary to protect its interests;
 - (2) where the information is in the public domain other than as a result of a breach by that disclosing party of this clause 18.15;
 - (3) if required to do so under a binding order of any Authority or any procedure for discovery in any proceedings;
 - (4) if the disclosing party reasonably believes it is required to do so by any law or stock exchange (except that this paragraph does not permit the State to disclose any information of the kind referred to in section 275(1) of the PPSA, to the extent that disclosure can be resisted under subsection 275(6) of the PPSA);
 - (5) otherwise as required or permitted by any State Project Document;
 - (6) to a disclosing party's Related Bodies Corporate, its legal advisors and its consultants as long as it advises them of the confidential nature of the information or documents or that nature is clear from the circumstances of the disclosure;
 - (7) by the State to a proposed assignee or transferee of any rights or obligations under any Project Document or to any sub-participant or other person with whom any other transaction may be entered into under which payments may be made by reference to any Project Document or the relevant Grantor;



- (8) by the State with the relevant Grantor's prior consent;
 - (9) by the relevant Grantor with the State's prior consent.
- (c) **(Authority to disclose):** Each party authorises disclosures made by the other party in accordance with clause 18.15(b)(1) to 18.15(b)(7) provided that the disclosure is not otherwise prohibited under any State Project Document.



Schedule 1 – Grantors

- (a) **Project Co**
 - (1) [not disclosed];
 - (2) [not disclosed];
 - (3) [not disclosed]; and
 - (4) [not disclosed],(together, **Cross Yarra Partnership**) (ABN 57 956 065 885).
- (b) **CY Trustee 1**
[not disclosed].
- (c) **CY Trustee 2**
[not disclosed].
- (d) **CY Trustee 3**
[not disclosed].
- (e) **CY Trustee 4**
[not disclosed].
- (f) **Finance Co**
Stella MMTS Finance Pty Limited (ACN 612 094 078).



Signing page

Executed as a deed

State

Signed sealed and delivered by
**the Honourable Jacinta Allan
MP, in her capacity as the
Minister for Public Transport,
on behalf of the Crown in right
of the State of Victoria** in the
presence of

sign here ► [not disclosed] _____
Witness

[not disclosed] _____
Signature of Minister

print name [not disclosed] _____



Grantors

Signed sealed and delivered for
[not disclosed]
by its attorneys

sign here ► [not disclosed] Attorney [not disclosed] Attorney

print name [not disclosed] [not disclosed]

in the presence of

sign here ► [not disclosed] Witness [not disclosed] Witness

print name [not disclosed] [not disclosed]

Signed sealed and delivered for
[not disclosed]
by its attorney

in the presence of

sign here ► [not disclosed] Attorney *sign here* ► [not disclosed] Witness

print name [not disclosed] *print name* [not disclosed]

Signed sealed and delivered for
[not disclosed]
by its attorney

in the presence of

sign here ► [not disclosed] Attorney *sign here* ► [not disclosed] Witness

print name [not disclosed] *print name* [not disclosed]



Signed sealed and delivered for
[not disclosed]
by its attorney

in the presence of

sign here ▶ [not disclosed]
Attorney

sign here ▶ [not disclosed]
Witness

print name [not disclosed]

print name [not disclosed]



CY Partner 1

Signed sealed and delivered for
[not disclosed]
by its attorneys

sign here ▶ [not disclosed]
Attorney

[not disclosed]
Attorney

print name [not disclosed]

[not disclosed]

in the presence of

sign here ▶ [not disclosed]
Witness

[not disclosed]
Witness

print name [not disclosed]

[not disclosed]

CY Partner 2

Signed sealed and delivered for
[not disclosed]
by its attorney

in the presence of

sign here ▶ [not disclosed]
Attorney

sign here ▶ [not disclosed]
Witness

print name [not disclosed]

print name [not disclosed]

CY Partner 3

Signed sealed and delivered for
[not disclosed]
by its attorney

in the presence of

sign here ▶ [not disclosed]
Attorney

sign here ▶ [not disclosed]
Witness

print name [not disclosed]

print name [not disclosed]



CY Partner 4

Signed sealed and delivered for
[not disclosed]
by its attorney

in the presence of

sign here ▶ [not disclosed]
Attorney

sign here ▶ [not disclosed]
Witness

print name [not disclosed]

print name [not disclosed]



Finance Co

Signed sealed and delivered for
**Stella MMTS Finance Pty
Limited (ACN 612 094 078)**
by its attorneys

sign here ► [not disclosed]
Attorney

[not disclosed]
Attorney

print name [not disclosed]

[not disclosed]

in the presence of

sign here ► [not disclosed]
Witness

[not disclosed]
Witness

print name [not disclosed]

[not disclosed]



Execution version

Payment directions deed

Metro Tunnel – Tunnel and Stations PPP Project

The Minister for Public Transport on behalf of the
Crown in right of the State of Victoria (**State**)

The parties listed in Schedule 1
(together, **Project Co**)

Stella MMTS Finance Pty Limited (**Finance Co**)

Australia and New Zealand Banking Group Limited
(**Facility Agent**)

Payment directions deed

Metro Tunnel – Tunnel and Stations PPP Project

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Details

Date

Parties

| | |
|-----------------|---|
| Name | The Minister for Public Transport on behalf of the Crown in right of the State of Victoria |
| Short form name | State |

| | |
|-----------------|--|
| Name | [not disclosed]; [not disclosed]; [not disclosed]; and [not disclosed], |
| Short form name | together, Project Co |

| | |
|-----------------|--|
| Name | Stella MMTS Finance Pty Limited ACN 612 094 078 |
| Short form name | Finance Co |
| Notice details | [not disclosed] |

| | |
|-----------------|---|
| Name | Australia and New Zealand Banking Group Limited ABN 11 005 357 522 |
| Short form name | Facility Agent |
| Notice details | [not disclosed] |

Background

- A The State and Project Co are parties to the Project Agreement.
- B The State, Project Co and Finance Co are parties to the Receivables Purchase Deed.
- C The Facility Agent is agent for the Financiers in respect of the Construction Facilities provided to Finance Co.
- D Under the On-Loan Agreement, Finance Co has agreed to lend money to Project Co.
- E This deed sets out directions as to the payment of amounts owing or to be lent under the above documents.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

The meanings of the terms used in this deed are set out below, or to the extent they are not set out below, they have the meaning given to them in the Project Agreement.

Construction Facility Drawdown Amount means the amount drawn by Finance Co under the Construction Facility or the State Capital Contribution Bridge Facility on a Drawdown Date but does not include the RPP Drawdown Amount.

Construction Proceeds Account has the meaning given to that term in the Facility Agreement.

Conversion Date has the meaning given to that term in the Facility Agreement.

CY Partner means:

- (a) [not disclosed];
- (b) [not disclosed];
- (c) [not disclosed]; or
- (d) [not disclosed],

each in its capacity as a partner of the Cross Yarra Partnership.

Drawdown Date has the meaning given to that term in the Facility Agreement.

Loan has the meaning given to that term in the On-Loan Agreement.

On-Loan Agreement the agreement entitled 'On-Loan Agreement – Metro Tunnel – Tunnel and Stations PPP Project' dated on or about the date of this deed between Finance Co as lender and Project Co as borrower.

Purchase Date has the meaning given to that term in the Receivables Purchase Deed.

Principal Outstanding has the meaning given to that term in the On-Loan Agreement.

Proceeds Account has the meaning given to that term in the Facility Agreement.

Project Agreement means the document entitled 'Metro Tunnel – Tunnel and Stations PPP Project - Project Agreement' entered into by the State and Project Co and dated on or about the date of this deed.

Receivables Purchase Deed means the document entitled 'Receivables Purchase Deed – Metro Tunnel – Tunnel and Stations PPP Project' entered into by the State, Project Co and Finance Co and dated on or about the date of this deed.

Receivables Purchase Price has the meaning given to that term in the Receivables Purchase Deed.

Proceeds Account has the meaning given to that term in the Facility Agreement.

RPP Drawdown Amount means the amount drawn by Finance Co under the Construction Facility or the State Capital Contribution Bridge Facility to the extent that such amount is to be applied for the purposes of funding all or any part of the Receivables Purchase Price.

RPP Funding Amount means an amount repaid by Project Co to Finance Co under the On-Loan Agreement to fund the Receivables Purchase Price.

1.2 Interpretation

In this deed:

- (a) headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) a word importing the singular includes the plural and vice versa and a word indicating a gender includes every other gender;
- (c) a reference to a party, clause, schedule or exhibit is a reference to a party, clause, schedule or exhibit of or to this deed, and a section is a reference to a section of a schedule;
- (d) a reference to this deed or to any other deed, agreement, document or instrument includes a reference to this deed or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) 'includes' will be read as if followed by the phrase '(without limitation)';
- (j) the meaning of 'or' will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) a reference to '\$', AUD or dollar is to Australian currency;
- (m) a reference to time is a reference to time in Melbourne, Australia;
- (n) a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (o) a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (p) the term 'may', when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;
- (q) where there is a reference to an Authority, institute or association or other body referred to in this deed which:
 - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this deed is deemed to refer to that other entity; or
 - (ii) ceases to exist, this deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity; and
- (r) the use of the words 'remedy', 'cure' or any form of such words in this deed means that the event to be remedied or cured must be remedied or cured or its effects overcome.

1.3 No bias against drafting party

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

1.4 Business Day

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

1.5 The Cross Yarra Partnership

- (a) The obligations, undertakings, representations, warranties, indemnities and Liabilities of Project Co under this deed bind all the CY Partners jointly and severally as partners.
- (b) Without prejudice to anything else contained in this deed, if the membership of the Cross Yarra Partnership changes from the CY Partners for any reason whatsoever this deed continues to bind each former partner and each current partner of the Cross Yarra Partnership in respect of any accrued Liabilities that were incurred by Project Co during the period that the former partner was a member of the Cross Yarra Partnership.
- (c) Without prejudice to anything else contained in this deed, if Project Co for any reason at any time ceases business, this deed continues to bind:
 - (i) the CY Partners; and
 - (ii) any former partners of the Cross Yarra Partnership in respect of any accrued Liabilities that were incurred by Project Co during the period that the former partner was a member of the Cross Yarra Partnership.

1.6 CY Trustee's limitation of liability

- (a) As between the State and each CY Trustee, clauses 2.21(a) to 2.21(d) and clause 2.21(f) of the Project Agreement apply to this agreement as if set out in full and all references to "the Project Documents" were to "this deed".
- (b) As between Finance Co and each CY Trustee, clauses 2.21(a) to 2.21(d) and clause 2.21(f) of the Project Agreement apply to this deed as if set out in full and
 - (i) all references to "the Project Documents" were to "this deed";
 - (ii) all references to "the State" were to "Finance Co"; and
 - (iii) all references to "State Security" and "State Securities" were removed.
- (c) As between the Facility Agent and each CY Trustee, clause 1.9 of the Facility Agreement applies to this deed as if set out in full and all references to "Transaction Party" were to "CY Trustee" and all references to "a Finance Document" or "any Finance Document" were to "this deed".

2. Receivables Payment Directions

2.1 Finance Co funding directions

- (a) Finance Co irrevocably directs:
 - (i) the Facility Agent to pay the RPP Drawdown Amount; and
 - (ii) if there is no further RPP Drawdown Amount, Project Co to pay each RPP Funding Amount under the On-Loan Agreement,to, or as directed by, the State in full and final satisfaction of Finance Co's obligation to pay the Receivables Purchase Price for the Receivables to the State under clause 2.7(a) (*Payment of Receivables Purchase Price*) of the Receivables Purchase Deed on the Purchase Date.
- (b) Finance Co irrevocably directs the Facility Agent to pay each Construction Facility Drawdown Amount to, or as directed by, Project Co in full and final satisfaction of Finance Co's obligation to make an Advance (as defined in the On-Loan Agreement) to Project Co under clause 3(a) (*Loans*) of the On-Loan Agreement on the Drawdown Date.

2.2 State payment direction

- (a) The State irrevocably directs the Facility Agent or Project Co (as relevant) to pay the amount referred to in clause 2.1(a) (*Finance Co funding directions*) to, or as directed by, Project Co in full and final satisfaction of the State's obligation to pay the Final D&C Phase Payment to Project Co under clauses 33.1 (*State Construction Contribution*) and 35A.1 (*Final D&C Phase Payment*) of the Project Agreement.
- (b) Nothing in this deed affects the limitation in clause 35A.1(b) (*Final D&C Phase Payment*) of the Project Agreement on the obligation of the State to pay the Final D&C Phase Payment.

2.3 Project Co direction

Project Co irrevocably directs the Facility Agent to pay the amount referred to in clause 2.1(b) (*Finance Co funding directions*) and the amount referred to in clause 2.2 (*State payment direction*) to the Construction Proceeds Account.

2.4 Payment of Receivables Refund Payment

- (a) On the SMPC Payment Date, Finance Co irrevocably directs the State to pay the Receivables Refund Payment to the Proceeds Account.
- (b) Finance Co acknowledges and agrees that the deposit into the Proceeds Account made in accordance with the direction in clause 2.4(a) satisfies, to the equivalent extent, the State's obligation to pay the Receivables Refund Payment to Finance Co under the Receivables Purchase Deed.

2.5 Payment of Contribution Payment

- (a) On the SMPC Payment Date and if a Contribution Payment is payable by the State to Project Co under clause 34A of the Project Agreement, Project Co irrevocably directs the State to pay the Contribution Payment to the Proceeds Account.
- (b) Project Co acknowledges and agrees that the deposit into the Proceeds Account made in accordance with the direction in clause 2.5(a) satisfies, to the equivalent extent, the State's obligation to pay the Contribution Payment to Project Co under the Project Agreement.

3. Termination Payment directions

- (a) Where the State is required to pay a Termination Payment to Project Co under the Project Agreement, Project Co irrevocably directs the State to pay the proceeds of such Termination Payment:
 - (i) to the extent of any Principal Outstanding under the On-Loan Agreement on the due date for payment of such amount under the Project Agreement, to or as directed by Finance Co under paragraph 3(b) below to repay Principal Outstanding under the On-Loan Agreement; and
 - (ii) to the extent of the excess of the Termination Payment over the Principal Outstanding under the On-Loan Agreement on the due date for payment of such amount under the Project Agreement, to the Construction Proceeds Account or, if after the Conversion Date, to the Proceeds Account.
- (b) Finance Co irrevocably directs the State to pay any amount referred to in clause 3(a)(i) to the Compensation Account (as defined in the Facility Agreement).
- (c) Finance Co irrevocably directs the State to pay any Securitisation Refund Payment payable under clause 8 (*Termination of Project Agreement*) of the Receivables Purchase Deed to the Construction Proceeds Account or, if after the Conversion Date to the Proceeds Account.
- (d) On or before the date which is 5 Business Days prior to the due date for payment of a Termination Payment, Finance Co must notify the State of the Principal Outstanding under the On-Loan Agreement and, for the purposes of making payment under clause 3(a)(i),

the State is not bound to enquire as to the validity of or basis for determining the amount so notified to it and may rely on any such notification in making any payment under that clause.

4. Acknowledgements regarding payments

4.1 Receivables Purchase Price

- (a) The State acknowledges and agrees that payment or payments made in accordance with the direction in clause 2.1(a) (*Finance Co funding directions*) satisfies, to the equivalent extent, Finance Co's obligation to pay the Receivables Purchase Price to the State under the Receivables Purchase Deed.
- (b) Project Co acknowledges and agrees that payment of the Construction Facility Drawdown Amount made by the Facility Agent in accordance with the direction in clause 2.1(b) (*Finance Co funding directions*) satisfies, to the equivalent extent, Finance Co's obligation to pay that amount to Project Co under the On-Loan Agreement.
- (c) Finance Co acknowledges and agrees that payment of the RPP Funding Amount made by Project Co in accordance with the direction in clause 2.1(a)(ii) (*Finance Co funding directions*) satisfies, to the equivalent extent, Project Co's obligation to repay that amount to Finance Co under the On-Loan Agreement.
- (d) Finance Co acknowledges and agrees that:
 - (i) payment of the RPP Drawdown Amount made by the Facility Agent in accordance with the direction in clause 2.1(a)(i) (*Finance Co funding directions*); and
 - (ii) payment of each Construction Facility Drawdown Amount made by the Facility Agent in accordance with the direction in clause 2.1(b) (*Finance Co funding directions*),satisfies, to the equivalent extent, the Facility Agent's obligation to pay that amount to Finance Co under the Construction Facility.

4.2 Final D&C Phase Payment

Project Co acknowledges and agrees that payment in accordance with the direction in clause 2.2 (*State payment direction*) satisfies, to the equivalent extent, the State's obligation to pay the Final D&C Phase Payment to Project Co under clauses 33.1 (*State Construction Contribution*) and 35A.1 (*Final D&C Phase Payment*) of the Project Agreement.

4.3 Termination Payment

- (a) Finance Co acknowledges and agrees that:
 - (i) payment by the State in accordance with the directions in clause 3(a)(i) and 3(b) satisfies in full Project Co's obligation to use the proceeds of the Termination Payment to repay in part or full the Principal Outstanding under the On-Loan Agreement; and
 - (ii) payment by the State in accordance with the directions in clause 3(c) satisfies in full the State's obligation to pay the Securitisation Refund Payment to Finance Co under the Receivables Purchase Deed.
- (b) Project Co acknowledges and agrees that payment by the State in accordance with the directions in clause 3 (*Termination Payment directions*) satisfies in full the State's obligation to pay the Termination Payment to Project Co under the Project Agreement.

4.4 Amounts are GST – exclusive

The parties acknowledge that the directions in relation to the Final D&C Phase Payment do not include the GST component of that payment. The State acknowledges that the GST payable on the Final D&C Phase Payment is separately payable to Project Co.

4.5 Facility Agent exclusion of liability

- (a) Without limiting clause 4.5(b) below, the Facility Agent will not be liable for any action taken by it, or for omitting to take action under or in connection with this deed, unless directly caused by its own fraud, gross negligence or wilful misconduct.
- (b) No party (other than the Facility Agent) may take any proceedings against any officer, employee or agent of the Facility Agent in respect of any claim it might have against the Facility Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to this deed and any officer, employee or agent of the Facility Agent may rely on this clause 4.5.
- (c) The Facility Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under this deed to be paid by the Facility Agent if the Facility Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Facility Agent for that purpose.

5. Notices

5.1 General

All communications (including notices, consents, approvals, requests and demands) under or in connection with this deed:

- (a) must be in writing;
- (b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

- (i) **The State:**

The Minister for Public Transport on behalf of the Crown in right of the State of Victoria

Address [not disclosed]
Attention [not disclosed]
Phone [not disclosed]
Email [not disclosed]

- (ii) **Project Co:**

Cross Yarra Partnership

Address [not disclosed]
Attention [not disclosed]
Fax [not disclosed]
Email [not disclosed]

- (iii) **Finance Co:**

Stella MMTS Finance Pty Limited (ACN 612 094 078)

Address [not disclosed]
Attention [not disclosed]
Fax [not disclosed]
Email [not disclosed]

- (iv) **Facility Agent:**

Australia and New Zealand Banking Group Limited (ABN 11 005 357 522)

Address [not disclosed]

Attention [not disclosed]
Fax [not disclosed]
Email [not disclosed]

- (c) must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by both parties) to the email address of the addressee set out in clause 5.1(b); and
- (e) are taken to be received by the addressee at the address set out in clause 5.1(b):
 - (i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00am on the next Business Day;
 - (ii) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and
 - (iii) in the case of email, the first to occur of:
 - (A) receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - (B) the time that the communication enters an information system which is under the control of the addressee; or
 - (C) the time that the communication is first opened or read by the addressee, unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00am on the next Business Day.

5.2 Process service

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this deed may be served by any method contemplated by this clause 5 or in accordance with any applicable law.

6. General

6.1 Duty

- (a) As between the parties, Project Co is liable for and must pay all duty (including any fine or penalty except where it arises from default by the other party) on or relating to this deed, any document executed under it or any dutiable transaction evidenced or effected by it.
- (b) If a party other than Project Co pays any duty (including any fine or penalty) on or relating to this deed, any document executed under it or any dutiable transaction evidenced or effected by it, Project Co must pay that amount to the paying party on demand.

6.2 Amendment

Except as otherwise expressly provided in this deed, this deed may only be varied by a deed executed by or on behalf of each party.

6.3 Waiver

- (a) A waiver given by a party in accordance with this deed is only effective and binding on that party if it is given or confirmed in writing by that party.

- (b) A failure to, a delay in or the partial exercise or enforcement of a right provided by Law or in accordance with this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or in accordance with this deed.
- (c) No waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

6.4 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory that party) required by Law or reasonably requested by another party to give effect to this deed.

6.5 Assignment

- (a) Subject to the Finance Direct Deed, a party must not assign, transfer or dispose of, or otherwise deal with any of its right, title and interest in or under this deed without the prior written consent of the other parties except by way of a Security Interest constituted by a Finance Document or the State Security.
- (b) Any purported dealing in breach of this clause is of no effect.

6.6 Counterparts

This deed may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same deed.

6.7 Governing law and jurisdiction

- (a) This deed is governed by, and must be construed according to, the Laws of Victoria, Australia.
- (b) Without limiting clauses 46 (*Dispute Resolution*) to 47 (*Arbitration*) of the Project Agreement, each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this deed.

6.8 Attorneys

Each of the attorneys executing this deed states that the attorney has no notice of the revocation of the power of attorney appointing that attorney.

Schedule 1 – Project Co

1. [not disclosed];
2. [not disclosed];
3. [not disclosed]; and
4. [not disclosed].

Signing page

EXECUTED as a deed.

State

Signed sealed and delivered by
**the Honourable Jacinta Allan
MP, in her capacity as the
Minister for Public Transport,
on behalf of the Crown in right
of the State of Victoria** in the
presence of

sign here ► [not disclosed] _____
Witness

[not disclosed] _____
Signature of Minister

print name [not disclosed] _____

Signed sealed and delivered for **Project Co** by
**Signed, sealed and delivered for [not disclosed]
of Cross Yarra Partnership** by its attorneys in the
presence of

[not disclosed] _____
Signature of witness

[not disclosed] _____
Signature of attorney

[not disclosed] _____
Name of witness (print)

[not disclosed] _____
Name of attorney (print)

[not disclosed] _____
Signature of witness

[not disclosed] _____
Signature of attorney

[not disclosed] _____
Name of witness (print)

[not disclosed] _____
Name of attorney (print)

Signed, sealed and delivered for [not disclosed] of Cross Yarra Partnership by its attorney in the presence of

[not disclosed]

Signature of witness

[not disclosed]

Signature of attorney

[not disclosed]

Name of witness (print)

[not disclosed]

Name of attorney (print)

Signed, sealed and delivered for [not disclosed] of Cross Yarra Partnership by its attorney in the presence of

[not disclosed]

Signature of witness

[not disclosed]

Signature of attorney

[not disclosed]

Name of witness (print)

[not disclosed]

Name of attorney (print)

Signed, sealed and delivered for [not disclosed] of Cross Yarra Partnership by its attorney in the presence of

[not disclosed]

Signature of witness

[not disclosed]

Signature of attorney

[not disclosed]

Name of witness (print)

[not disclosed]

Name of attorney (print)

Finance Co

Signed, sealed and delivered for Stella MMTS Finance Pty Limited ACN 612 094 078 by its attorneys in the presence of

[not disclosed]

Signature of witness

[not disclosed]

Signature of attorney

[not disclosed]

Name of witness (print)

[not disclosed]

Name of attorney (print)

[not disclosed]

Signature of witness

[not disclosed]

Signature of attorney

[not disclosed]

Name of witness (print)

[not disclosed]

Name of attorney (print)

Facility Agent

Signed, sealed and delivered for and on behalf of **Australia and New Zealand Banking Group Limited (ABN 11 005 357 522)** under power of attorney in the presence of:

[not disclosed]

[not disclosed]

Signature of witness
[not disclosed]

Signature of attorney
[not disclosed]

Name of witness (print)

Name of attorney (print)



Execution version

Receivables purchase deed

Metro Tunnel – Tunnel and Stations PPP Project

The Minister for Public Transport on behalf of the
Crown in right of the State of Victoria (**State**)

The parties listed in Schedule 1
(together, **Project Co**)

Stella MMTS Finance Pty Limited (**Finance Co**)

Receivables purchase deed

Metro Tunnel – Tunnel and Stations PPP Project

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Details

Date

Parties

| | |
|-----------------|---|
| Name | The Minister for Public Transport on behalf of the Crown in right of the State of Victoria |
| Short form name | State |
| Notice details | As specified in clause 11.1 |

| | |
|-----------------|--|
| Name | [not disclosed]; [not disclosed]; [not disclosed]; and [not disclosed], |
| Short form name | together, Project Co |
| Notice details | As specified in clause 11.1 |

| | |
|-----------------|--|
| Name | Stella MMTS Finance Pty Limited ACN 612 094 078 |
| Short form name | Finance Co |
| Notice details | [not disclosed] |

Background

- A Under the Project Agreement, the State has agreed to grant the Maintenance Licence to Project Co on the terms set out in the Project Agreement.
- B Project Co will be obliged to pay the Licence Fees to the State in accordance with the Maintenance Licence.
- C The State wishes to make an offer to Finance Co for the purchase by Finance Co of the Receivables referable to the Licence Fees from the State, on the terms set out in this deed.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

The meanings of the terms used in this deed are set out below, or to the extent they are not set out below, they have the meaning given to them in the Project Agreement.

Additional Receivables means all of the State's right, title to, and interest in any amount which satisfies the following criteria:

- (a) it is payable by Project Co to the State by way of increased Licence Fees in accordance with clause 5.1 (*Payment of Licence Fees*) of the Maintenance Licence;
- (b) it is not an Initial Receivable;
- (c) it is an amount that Finance Co has notified in accordance with clause 2.4(a) is to be an Additional Receivables; and
- (d) it is not an amount payable in respect of GST.

Authorised Representative means:

- (a) in respect of the State, the State Representative;
- (b) in respect of Project Co, the Project Co Representative; and
- (c) in respect of Finance Co:
 - (i) any company secretary or director of Finance Co; or
 - (ii) any person nominated by or on behalf of Finance Co as an Authorised Representative by notice to the State and Project Co, the notice being accompanied by and certifying the correctness of a copy of the signature of any person so appointed.

Contribution Payment has the meaning given in the Project Agreement.

CY Partner means:

- (a) CY Trustee 1 in its capacity as trustee of the CY Trust 1;
- (b) CY Trustee 2 in its capacity as trustee of the CY Trust 2;
- (c) CY Trustee 3 in its capacity as trustee of the CY Trust 3; or
- (d) CY Trustee 4 in its capacity as trustee of the CY Trust 4,

each in its capacity as a partner of the Cross Yarra Partnership.

Initial Receivables means all of the State's right, title to, and interest in all Licence Fees, (excluding any amount payable in respect of GST), which, as at the Date of Provisional Acceptance, are or will become payable in accordance with the Maintenance Licence.

Initial Receivables Purchase Price means an amount equal to the Final D&C Phase Payment payable in accordance with clause 35A of the Project Agreement, referable to the D&C Activities and equal to the amount indicated by name range 'Construction_Pmt_Amount_1' in the Financial Model. Such amount may be updated at the Date of Provisional Acceptance.

Initial Receivables Refund Payment means the amount calculated in accordance with Schedule 4 to this deed.

Licence Fee Payment Schedule has the meaning given to that term in the Maintenance Licence.

On-Loan Agreement means the agreement entitled 'On-loan agreement' between Finance Co (as lender) and Project Co (as borrower) dated on or about the date of this deed.

Payment Directions Deed means the deed entitled 'Payment directions deed' between, amongst others, the State, Project Co and Finance Co dated on or about the date of this deed.

Principal Outstanding has the meaning to that term given in the On-Loan Agreement.

Project Agreement means the document entitled 'Metro Tunnel – Tunnel and Stations PPP - Project Agreement ' entered into by the State and Project Co and dated on or about the date of this deed.

Project Co Fin Co ISDA means the ISDA Master Agreement and schedule dated on or before the date of this agreement between Finance Co (as Party A) and Project Co (as Party B) and each transaction thereunder.

Project Loan Document means:

- (a) the On-Loan Agreement; and
- (b) each Project Co Fin Co ISDA.

Purchase Date means the Date of Provisional Acceptance.

Receivables means:

- (a) the Initial Receivables; and
- (b) any Additional Receivables.

Receivables Purchase Price means the aggregate of:

- (a) the Initial Receivables Purchase Price; and
- (b) in relation to any Additional Receivables, the amount calculated using the same methodology (but with the variables used in this calculation to be determined at the time) as was used to determine the amount referred to in paragraph (a) above and notified to the State in accordance with clause 2.4 (*Additional Receivables*),

which (exclusive of GST) must equal the Final D&C Phase Price.

Receivables Refund Payment means the amount payable by the State to Finance Co on the SMPC Payment Date which is specified in the SMPC Project Co Notice.

Securitisation Refund Payment means an amount equal to the Initial Receivables Refund Payment as adjusted (if at all) in accordance with clause 10(e) (*Termination of Project Agreement*).

SMPC Payment Date has the meaning given in the Project Agreement.

SMPC Receivables means all of the Finance Co's right, title to and interest in those Receivables originally transferred to Finance Co under this deed which correspond to the Receivables Refund Payment and as identified in the updated Model Output Schedule.

State Maintenance Phase Contribution has the meaning given to it in the Project Agreement.

1.2 Interpretation

In this deed:

- (a) headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) a word importing the singular includes the plural and vice versa and a word indicating a gender includes every other gender;
- (c) a reference to a party, clause, schedule or exhibit is a reference to a party, clause, schedule or exhibit of or to this deed, and a section is a reference to a section of a schedule;

- (d) a reference to this deed or to any other deed, agreement, document or instrument includes a reference to this deed or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) 'includes' will be read as if followed by the phrase '(without limitation)';
- (j) the meaning of 'or' will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) a reference to '\$', AUD or dollar is to Australian currency;
- (m) a reference to time is a reference to time in Melbourne, Australia;
- (n) reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (o) a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (p) the term 'may', when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;
- (q) where there is a reference to an Authority, institute or association or other body referred to in this deed which:
 - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this deed is deemed to refer to that other entity; or
 - (ii) ceases to exist, this deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity; and
- (r) the use of the words 'remedy', 'cure' or any form of such words in this deed means that the event to be remedied or cured must be remedied or cured or its effects overcome.

1.3 No bias against drafting party

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

1.4 Business Day

If the date on or by which any act must be done under this deed is not a Business Day, the act must be done on or by the next Business Day.

1.5 The Cross Yarra Partnership

- (a) The obligations, undertakings, representations, warranties, indemnities and Liabilities of Project Co under this deed bind all the CY Partners jointly and severally as partners.
- (b) Without prejudice to anything else contained in this deed, if the membership of the Cross Yarra Partnership changes from the CY Partners for any reason whatsoever this deed continues to bind each former partner and each current partner of the Cross Yarra Partnership in respect of any accrued Liabilities that were incurred by Project Co during the period that the former partner was a member of the Cross Yarra Partnership.
- (c) Without prejudice to anything else contained in this deed, if Project Co for any reason at any time ceases business, this deed continues to bind:
 - (i) the CY Partners; and
 - (ii) any former partners of the Cross Yarra Partnership in respect of any accrued Liabilities that were incurred by Project Co during the period that the former partner was a member of the Cross Yarra Partnership.

1.6 CY Trustee's limitation of liability

- (a) As between the State and each CY Trustee, clauses 2.21(a) to 2.21(d) and clause 2.21(f) of the Project Agreement apply to this deed as if set out in full and all references to "the Project Documents" were to "this deed".
- (b) As between Finance Co and each CY Trustee, clauses 2.21(a) to 2.21(d) and clause 2.21(f) of the Project Agreement apply to this deed as if set out in full and
 - (i) all references to "the Project Documents" were to "this agreement";
 - (ii) all references to "the State" were to "Finance Co"; and
 - (iii) all references to "State Security" and "State Securities" were removed.

2. Offer to sell

2.1 Offer

The State irrevocably offers, on the terms set out in this deed, to sell:

- (a) the Initial Receivables; and
- (b) any Additional Receivables,

to Finance Co on the Purchase Date for the Receivables Purchase Price payable for those Receivables on the Purchase Date.

2.2 Method of acceptance

- (a) Finance Co may only accept the offer in clause 2.1 (*Offer*) by paying the Receivables Purchase Price for those Receivables on the Purchase Date in accordance with clause 2.7 (*Payment of Receivables Purchase Price*).
- (b) If Finance Co pays the Receivables Purchase Price for the Receivables on the Purchase Date in accordance with clause 2.7 (*Payment of Receivables Purchase Price*), Finance Co will be deemed to have accepted the offer in clause 2.1 (*Offer*) in respect of those Receivables on the Purchase Date.

2.3 Receivables Purchase Price

In consideration for the sale of:

- (a) the Initial Receivables; and
- (b) any Additional Receivables,

Finance Co shall pay the State the Receivables Purchase Price for those Receivables on the Purchase Date.

2.4 Additional Receivables

- (a) If the Licence Fees are, or will be, increased on or after the date of this deed but before the Purchase Date, as contemplated by clause 5.1 (*Payment of Licence Fees*) of the Maintenance Licence, Finance Co must, if it wants that increased amount to be an Additional Receivable, give written notice to the State that the increased amount is to be an Additional Receivable.
- (b) In the written notice to the State under clause 2.4(a), Finance Co must also specify the Receivables Purchase Price applicable to those Additional Receivables which must be at least equal to the Final D&C Phase Modification Payment agreed to be payable by the State under clause 35A.2 (*Final D&C Phase Modification Payment*) of the Project Agreement.

2.5 Assignment

Subject to clause 2.6 (*Obligations on the Purchase Date*), on payment of the Receivables Purchase Price in respect of the Receivables on the Purchase Date:

- (a) the State assigns to Finance Co all of its right, title and interest in the Receivables, free of any Security Interest, other than an interest that arises under the Project Documents, on the terms set out in this deed;
- (b) Finance Co accepts that assignment; and
- (c) Project Co consents to that assignment.

2.6 Obligations on the Purchase Date

Subject to Finance Co accepting the offer in clause 2.1 (*Offer*) and complying with its obligations under 2.4 (*Additional Receivables*) (if applicable), on the Purchase Date the State must execute and deliver to Project Co a notice in the form set out in Schedule 2 to this deed in respect of the Receivables. Upon receiving such notice, Project Co must execute and deliver to Finance Co and the State a notice in the form set out in Schedule 3 to this deed in respect of the Receivables.

2.7 Payment of Receivables Purchase Price

- (a) Subject to clause 2.7(b), the Receivables Purchase Price must be paid by Finance Co to, or as directed by, the State in full when due on the Purchase Date in cleared funds, without any set off or counterclaim and (to the maximum extent permitted by law) free and clear of, and without deduction or withholding for or on account of, any Taxes.
- (b) The parties acknowledge that, subject to Finance Co accepting the offer in clause 2.1 (*Offer*), payment of the Receivables Purchase Price to be made by Finance Co to the State will be made in accordance with the Payment Directions Deed.
- (c) The State may rely on Project Co's notification of the Initial Receivables Purchase Price and is not bound to enquire as to the validity of or basis for the Initial Receivables Purchase Price so notified.

2.8 Obligation to satisfy conditions

Subject to Finance Co accepting the offer in clause 2.1 (*Offer*), the parties must:

- (a) use reasonable endeavours to ensure that the obligations referred to in this clause 2 (*Offer to sell*) are satisfied on the Purchase Date; and
- (b) keep each other informed of any circumstance that may result in any of those conditions not being satisfied in accordance with its terms.

2.9 No liability

The State will not be liable for any failure or delay in the performance of Project Co's obligations to pay Finance Co in full the amount of Receivables purchased by Finance Co pursuant to this deed.

2.10 No change in risk allocation

- (a) The parties acknowledge and agree that the Securitisation Structure is not intended to result in an Increased State Risk Allocation.
- (b) If the State believes (on reasonable grounds supported by external accounting, legal or tax advice) that the Securitisation Structure results or is likely to result in an Increased State Risk Allocation, then it may give Project Co and Finance Co a notice stating that the Securitisation Structure is to be amended to the extent necessary to ensure there is no Increased State Risk Allocation.
- (c) Project Co and Finance Co agree to do anything reasonably requested by the State in a notice given by the State under clause 2.10(b) or otherwise reasonably necessary to modify the Securitisation Structure to ensure there is no Increased State Risk Allocation.
- (d) Project Co and Finance Co undertake not to make any Claim inconsistent with the acknowledgement in clause 2.10(a).
- (e) Project Co and Finance Co acknowledge and agree that:
 - (i) damages may not be an adequate remedy for the State for any failure by Project Co or Finance Co to comply with the undertaking in clause 2.10(d); and
 - (ii) if there is a breach or purported breach by Project Co or Finance Co of their respective obligations in clause 2.10(d), the State may seek and is entitled to injunctive or declaratory relief.

3. Receivables Refund Payment

3.1 Receivables Refund Payment

If in accordance with clause 34A (*State Maintenance Phase Contribution*) of the Project Agreement the State elects (in its absolute discretion) to pay the State Maintenance Phase Contribution, the State must pay the Receivables Refund Payment to repurchase the SMPC Receivables in accordance with this clause 3 (*Receivables Refund Payment*).

3.2 Offer

Finance Co irrevocably offers, on the terms set out in this clause 3 (*Receivables Refund Payment*), to sell the SMPC Receivables to the State on the SMPC Payment Date for a purchase price equal to the Receivables Refund Payment.

3.3 Method of acceptance

- (a) The State may only accept the offer in clause 3.2 (*Offer*) by paying the Receivables Refund Payment to Finance Co on the SMPC Payment Date in accordance with clause 3.7 (*Payment of Receivables Refund Payment*).
- (b) If the State pays the Receivables Refund Payment to Finance Co on the SMPC Payment Date in accordance with clause 3.7 (*Payment of Receivables Refund Payment*), the State will be deemed to have accepted the offer in clause 3.2 (*Offer*) in respect of the SMPC Receivables.

3.4 Consideration

- (a) The parties acknowledge that, subject to the State accepting the offer in clause 3.2 (*Offer*), the Receivables Refund Payment is payable by the State to Finance Co in

consideration for the sale of the SMPC Receivables by Finance Co to the State on the SMPC Payment Date.

- (b) Receipt by Finance Co (including by way of payment in accordance with Finance Co's payment direction) of the Receivables Refund Payment is conclusive evidence that Finance Co has sold the SMPC Receivables to the State.

3.5 Assignment

Subject to the State accepting the offer in clause 3.2 (*Offer*), Finance Co assigns to the State and the State accepts the assignment to it of all of the right, title and interest of Finance Co in the SMPC Receivables on payment of the Receivables Refund Payment on the terms set out in this deed.

3.6 Obligations on Assignment

On the assignment of the SMPC Receivables in clause 3.5 (*Assignment*), subject to the State accepting the offer in clause 3.2 (*Offer*), Finance Co must execute and deliver to Project Co a notice in the form set out in Schedule 5 (*SMPC Notice of Assignment*).

3.7 Payment of Receivables Refund Payment

- (a) The State must pay the Receivables Refund Payment to, or as directed by, Finance Co in full when due in cleared funds, without any set off or counterclaim and (to the maximum extent permitted by law) free and clear of, and without deduction or withholding for or on account of, any Taxes.
- (b) The parties acknowledge that payment of the Receivables Refund Payment to be made by the State to Finance Co will be made in accordance with the Payment Directions Deed.

3.8 Application of Receivables Refund Payment

Finance Co must use the Receivables Refund Payment received by it from the State to finally prepay or repay a principal component of Actual Debt in the same amount and must not redraw any amounts so repaid.

4. Contribution Payment

- (a) If in accordance with clause 34A (State Maintenance Phase Contribution) of the Project Agreement the State elects (in its absolute discretion) to pay the State Maintenance Phase Contribution, the State must pay the Contribution Payment to, or as directed by, Project Co in full when due in cleared funds, without any set off or counterclaim and (to the maximum extent permitted by law) free and clear of, and without deduction or withholding for or on account of, any Taxes.
- (b) The parties acknowledge that payment of the Contribution Payment to be made by the State to Project Co will be made in accordance with the Payment Directions Deed.

5. Other undertakings

5.1 Assignment, amendments and other dealings by Finance Co

- (a) (**Restrictions on Project Entities**): Except as expressly permitted by the Project Agreement, the Finance Direct Deed, the State Security or this deed, Finance Co must not:
 - (i) assign, sell, novate, transfer, (subject to clause 53.2 (*Financiers' securities*) of the Project Agreement) mortgage or charge, create or allow to exist any security interest over, or otherwise deal with all or any part of its interest in, or obligations under;

- (ii) lease, license, transfer, sell, dispose of, part with possession of, or otherwise deal with;
- (iii) make or permit any amendment to, replacement of or waiver of a provision of;
- (iv) terminate, surrender, rescind or accept repudiation of; or
- (v) enter into any agreement or arrangement which affects the operation or interpretation of,

any of the Project Documents (each an **Amendment** for the purpose of this clause 5.1), the whole or any part of the Construction Areas, Maintenance Areas or the Relevant Infrastructure.

- (b) (**Exceptions**): Clauses 5.1(a)(iii) to 5.1(a)(v) do not apply in respect of:
 - (i) a Refinancing, which is to be dealt with in accordance with clause 5.4 (*Refinancing*) of this document, or clause 40 (*Refinancings*) of the Project Agreement; or
 - (ii) a Share Capital Dealing, which is to be dealt with in accordance with clauses 53.4 (*Restrictions on Share Capital Dealings*) and 53.6 (*Permitted Share Capital Dealings and on-market acquisitions*) of the Project Agreement.
- (c) (**Notice of intended Amendment**): If Finance Co requires an Amendment, it must submit to the State a written request seeking its consent. Such a request must set out:
 - (i) the Amendment and the reasons for it;
 - (ii) the response or anticipated response of any other party to the Project Documents regarding the Amendment;
 - (iii) the response or anticipated response of any assignee or incoming party of the Project Documents to the Amendment; and
 - (iv) copies of any documents relevant to Finance Co's request.
- (d) (**State to advise**): The State must advise Finance Co, within:
 - (i) 15 Business Days of receiving its request under clause 5.1(c), that:
 - (A) it consents to the Amendment; or
 - (B) the Amendment is unacceptable to it and the reasons why the Amendment is unacceptable; and
 - (ii) 10 Business Days of receiving its request under clause 5.1(c) if it requires further information from Finance Co regarding the Amendment, in which case Finance Co must provide the additional information sought by the State within a further period of 10 Business Days, and clause 5.1(c) and 5.1(d)(i) will apply again to that Amendment.
- (e) (**Failure to respond**): If the State fails to respond for any reason within the period specified under clause 5.1(d)(i) in relation to an Amendment in respect of a Project Document, which is not a State Project Document:
 - (i) Finance Co may send a reminder notice; and
 - (ii) if that notice is not responded to within 7 Business Days of the reminder notice, the State will be deemed to have given its consent to such Amendment.

5.2 Ownership

[not disclosed]

5.3 State's right to withhold consent

The State may only withhold its consent to a request from Finance Co under clause **Error! Reference source not found.** (*Ownership*) if the State is of the opinion (acting reasonably) that:

- (a) an Entity proposed to directly or indirectly Control Finance Co:
 - (i) is or are not Solvent and reputable; or
 - (ii) has or have an interest or duty which conflicts or may conflict in a material way with the interests of the State; or
- (b) consent to the request:
 - (i) is against the public interest;
 - (ii) would adversely affect the ability or capability of a Project Entity to carry out its obligations in accordance with any Project Document;
 - (iii) could lead to a Probity Event; or
 - (iv) would increase the Liability of, or risks accepted by, the State under the State Project Documents or in any other way in connection with the Project.

5.4 Refinancing

Finance Co undertakes in favour of the State:

- (a) **(Project Agreement)** to ensure that any act or omission by Finance Co does not cause Project Co to breach the Project Agreement; and
- (b) **(Refinancing)** that it will not, without the prior written consent of the State:
 - (i) enter into or implement any Refinancing; or
 - (ii) execute or amend any document in connection with a Refinancing (including by amending, restating or replacing any Finance Document),

unless Project Co would be permitted to enter into or implement that Refinancing and execute or amend that document under clause 40 (*Refinancings*) of the Project Agreement, and must not execute any Refinancing until any new financiers have executed or agreed to be bound by a deed as described in clause 40.3(c) (*Refinancing documents*) of the Project Agreement.

5.5 Project Co and Finance Co acknowledgement and agreement

Project Co and Finance Co acknowledge and agree that any breach by Finance Co of its undertakings in this clause 5 (*Other undertakings*) will constitute a breach by Project Co of the corresponding provisions of the Project Agreement.

6. Undertaking by the State

If, on or after the Purchase Date and notwithstanding the assignment under clause 2.5 (*Assignment*), the State receives an amount in respect of any Receivables purchased by Finance Co, the State must immediately pay such amount to, or as directed by, Finance Co.

7. Representations and warranties

7.1 Representations and warranties by the State

The State represents and warrants to, and for the benefit of, Finance Co that:

- (a) the State has:
 - (i) the power to execute this deed and does so through the Minister for Public Transport on behalf of the Crown in right of the State of Victoria; and

- (ii) the power to deliver and carry out its obligations under this deed, and all necessary action has been taken to authorise that execution, delivery and performance;
- (b) this deed constitutes a valid and binding obligation on it in accordance with its terms; and
- (c) the execution, delivery and performance of this deed does not violate any Law to which the State is subject.

7.2 Representations and warranties by Finance Co

Finance Co represents and warrants to, and for the benefit of, the State that:

- (a) it has the power to execute, deliver and perform its obligations under this deed and all necessary action has been taken to authorise that execution, delivery and performance;
- (b) the execution, delivery and performance of this deed does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;
- (c) this deed constitutes a valid and legally binding obligation on it in accordance with its terms;
- (d) it is duly registered, properly constituted and remains in existence; and
- (e) it is not the trustee or Responsible Entity of any trust nor does it hold any property subject to or impressed by any trust.

7.3 Additional representations and warranties regarding the Receivables

Subject to any interests that arise under the Project Documents, the State represents and warrants to Finance Co that it is legally and beneficially entitled to the Receivables and the Receivables are not subject to any Security Interest.

7.4 Repetition of representations and warranties

The representations and warranties in clauses 7.1 (*Representations and warranties by the State*), 7.2 (*Representations and warranties by Finance Co*) and 7.3 (*Additional representations and warranties regarding the Receivables*) are taken to be repeated on the Purchase Date on the basis of the facts and circumstances existing at that date.

7.5 Reliance on representations and warranties

Each party has executed this deed and agreed to take part in the transactions that this deed contemplates in reliance on the representations and warranties that are made or repeated in this clause.

8. Power of attorney

8.1 Appointment of attorneys

The State irrevocably appoints Finance Co and each Authorised Representative of Finance Co (each an **Attorney**) severally as its attorney to:

- (a) demand, receive and give discharges for the Receivables; and
- (b) conduct any legal proceedings in relation to the Receivables.

8.2 General

- (a) An Attorney may do anything contemplated by this clause even if the Attorney is affected by an actual or potential conflict of interest or duty, or might benefit from doing it.
- (b) An Attorney may do anything contemplated by this clause in its name, in the name of the State or in the name of both of them.
- (c) The State must ratify anything done by an Attorney under this clause.

- (d) The State gives the power of attorney in this clause:
 - (i) to secure performance by the State of its obligations to Finance Co under this deed and any property interest of Finance Co under this deed; and
 - (ii) for valuable consideration, receipt of which is acknowledged by the State.

9. Assignee's indemnity and warranty

- (a) Finance Co must indemnify the State against, and must pay the State on demand the amount of, all losses, liabilities, expenses incurred by the State as a result of anything done by Finance Co or any of its Authorised Representatives as the attorney of the State under clause 8 (*Power of attorney*).
- (b) Finance Co warrants to the State that it will comply with its obligations to Project Co under the Finance Documents to which it is a party.

10. Termination of Project Agreement

- (a) If the Project Agreement is terminated in accordance with clause 45 (*Termination*) of the Project Agreement, the State must pay to Finance Co the Securitisation Refund Payment on or before the date on which the State is required to pay the Termination Payment to Project Co in accordance with clause 45.7(a) (*Payment on termination*) of the Project Agreement.
- (b) The State may rely on Project Co's notification of the Initial Receivables Refund Payment in accordance with Schedule 4 to this deed and is not bound to enquire as to the validity of or basis for the Initial Receivables Refund Payment so notified.
- (c) Interest accrues on the Securitisation Refund Payment from and including the date and at the rate applicable to the Termination Payment as specified in section 7 of Schedule 5 of the Project Agreement on the basis of a 365 day year and for the actual number of days elapsed from and including the date specified for the commencement of interest accruing under section 7 of Schedule 5 of the Project Agreement to but excluding the date of payment. Interest is payable on the date on which the Securitisation Refund Payment is paid.
- (d) Finance Co agrees that the Initial Receivables Refund Payment can never exceed the relevant Termination Payment (disregarding for this purpose only any deduction from the Termination Payment calculation for the Securitisation Refund Payment contemplated under Schedule 5 (*Termination Payments Schedule*) of the Project Agreement).
- (e) If the Initial Receivables Refund Payment is a negative amount, the Securitisation Refund Payment under this deed will be deemed for all purposes to be zero.

11. Notices

11.1 General

All communications (including notices, consents, approvals, requests and demands) under or in connection with this deed:

- (a) must be in writing;

- (b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):
- (i) **The State:**
The Minister for Public Transport on behalf of the Crown in right of the State of Victoria
Address [not disclosed]
Attention [not disclosed]
Phone [not disclosed]
Email [not disclosed]
 - (ii) **Project Co:**
Cross Yarra Partnership
Address [not disclosed]
Attention [not disclosed]
Fax [not disclosed]
Email [not disclosed]
 - (iii) **Finance Co:**
Stella MMTS Finance Pty Limited (ACN 612 094 078)
Address [not disclosed]
Attention [not disclosed]
Fax [not disclosed]
Email [not disclosed]
- (c) must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by both parties) to the email address of the addressee set out in clause 11.1(b); and
- (e) are taken to be received by the addressee at the address set out in clause 11.1(b):
- (i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00am on the next Business Day;
 - (ii) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and
 - (iii) in the case of email, the first to occur of:
 - (A) receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - (B) the time that the communication enters an information system which is under the control of the addressee; or
 - (C) the time that the communication is first opened or read by the addressee, unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00am on the next Business Day.

11.2 Process service

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this deed may be served by any method contemplated by this clause 11 or in accordance with any applicable law.

12. GST

12.1 Interpretation

In this clause 12:

- (a) words and expressions which are not defined in this deed but which have a defined meaning in GST Law have the same meaning as in the GST Law;
- (b) **GST Law** has the meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
- (c) **Taxable Supply** has the meaning given in the GST Law, excluding sections 84 5 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

12.2 Consideration GST – exclusive

- (a) (**Payment**): In addition to any other consideration, the recipient of a Taxable Supply made under or in connection with this deed (which recipients may include, for the avoidance of doubt, State's Associates under a Project Document in which case the State must procure that the State's Associate comply with this subclause) (the **Recipient**) must pay to the party making the Taxable Supply (the **Supplier**) the amount of GST in respect of the Taxable Supply. Subject to clause 12.2(c) and to any contrary provision of a Project Document, an amount payable under this subclause must be paid at the same time and in the same manner as the consideration specified for the relevant Taxable Supply. This subclause does not apply if the consideration specified for the Taxable Supply is expressly agreed to be GST inclusive.
- (b) (**Excess or deficiency**): If the amount paid by the Recipient to the Supplier in respect of GST (whether because of an adjustment (within the meaning of the GST Law) or otherwise):
 - (i) is more than the GST on the relevant Supply, then the Supplier will refund the excess to the Recipient; or
 - (ii) is less than the GST on the relevant Supply, then the Recipient will pay the deficiency to the Supplier.

Any refund, credit or further amount, as applicable, will be calculated by the Supplier in accordance with GST Law and the Supplier or Recipient as applicable, must pay the refund, credit or further amount within 14 days after becoming aware of the variation in the amount of GST payable. If an adjustment (within the meaning of the GST Law) has occurred, the Recipient is not obliged to pay any amount under paragraph (ii) of this clause unless and until it receives an adjustment note (within the meaning of the GST Law).

- (c) (**GST Documentation**): The Recipient is not obliged to pay any amount in respect of GST to the Supplier unless and until the Supplier issues a Tax Invoice to the Recipient in respect of the Taxable Supply. If an adjustment (within the meaning of the GST Law) has occurred, the Supplier must issue an Adjustment Note to the Recipient.
- (d) (**Revenue net of GST**): Any reference in this deed to price, value, sales, revenue, profit or a similar amount (**Revenue**), will be a reference to the GST exclusive component of that Revenue unless the contrary intention is expressed.
- (e) (**Cost net of GST**): Any reference in this deed to cost, expense, liability or other similar amount (**Cost**), will be a reference to that Cost reduced by the Input Tax Credits to which the entity incurring the Cost is entitled in respect of such Cost.

- (f) **(GST Group):** Any reference in this deed to GST that is payable by an entity includes any GST that is payable by the representative member of any GST Group of which that entity is a member and input tax credits to which an entity is entitled include input tax credits to which the representative member of the entity's GST Group is entitled.
- (g) **(State's Associate):** Any reference in this clause to a Recipient of a Taxable Supply includes, where relevant, any State's Associate and this clause so applies to such Recipients, in which case the State must procure that the State's Associate complies with the Recipient's obligations under this clause.

12.3 Receivables are GST – exclusive

The parties acknowledge that the Receivables are GST exclusive. Notwithstanding either the assignment of the Receivables or anything else in this deed, Project Co will continue to pay the GST component (if any) of amounts payable by Project Co to the State in respect of Licence Fees to the State.

13. General

13.1 Finance Co not to disclose

- (a) Subject to clause 13.1(b), Finance Co must:
 - (i) not make any public disclosures, announcements or statements in relation to the Project or the State's or any of the State's Associates' involvement in the Project without the State's prior consent;
 - (ii) comply with any terms and conditions the State imposes and must use all reasonable endeavours to agree with the State the wording and timing of all public disclosures, announcements or statements by it or any of its Associates relating to the Project or the State's or any of the State's Associates' involvement in the Project before the relevant disclosure, announcement or statement is made; and
 - (iii) as soon as practicable, give to the State a copy of any public disclosure, announcement or statement agreed to or approved by the State in accordance with this clause 13.1(a) or for which the State's consent or approval was not required in accordance with clause 13.1(b).
- (b) For the purposes of clause 13.1(a), Finance Co will not be required to obtain the State's consent or approval to the extent that any disclosure, announcement or statement is:
 - (i) required by Law, provided that it:
 - (A) notifies the State of the requirement to make that disclosure; and
 - (B) takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;
 - (ii) required to obtain legal or other advice from its advisers;
 - (iii) required to be made to a court in the course of proceedings to which Finance Co is a party;
 - (iv) required by a relevant stock exchange, subject to:
 - (A) such disclosure, announcement or statement not referring to the State's or any of its Associates' involvement in the Project; and
 - (B) Finance Co having used all reasonable endeavours to obtain the State's consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant stock exchange; or

- (v) a disclosure by:
 - (A) the Train Franchisee Interface Party made in accordance with clause 21.3(c) of the Train Franchisee Cooperation Agreement; or
 - (B) the Tram Franchisee Interface Party made in accordance with clause 16.3(c) of the Tram Franchisee Cooperation Agreement.

13.2 Amendment

Except as otherwise expressly provided in this deed, this deed may only be varied by a deed executed by or on behalf of each party.

13.3 Waiver

- (a) A waiver given by a party in accordance with this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) A failure to, a delay in or the partial exercise or enforcement of a right provided by Law or in accordance with this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or in accordance with this deed.
- (c) No waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

13.4 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to that party) required by Law or reasonably requested by another party to give effect to this deed.

13.5 Assignment

- (a) Subject to the Finance Direct Deed, a party must not assign, transfer or dispose of, or otherwise deal with any of its right, title and interest in or under this deed without the prior written consent of the other parties except by way of a Security Interest constituted by a Finance Document or the State Security.
- (b) Any purported dealing in breach of this clause is of no effect.

13.6 Counterparts

This deed may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same deed.

13.7 Governing law and jurisdiction

- (a) This deed is governed by, and must be construed according to, the Laws of Victoria, Australia.
- (b) Without limiting clauses 46 (*Dispute Resolution*) to 47 (*Arbitration*) of the Project Agreement, each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this deed.

13.8 Attorneys

Each of the attorneys executing this deed states that the attorney has no notice of the revocation of the power of attorney appointing that attorney.

Schedule 1 – Project Co

- 1. [not disclosed];
- 2. [not disclosed];
- 3. [not disclosed]; and
- 4. [not disclosed].

Schedule 2 – Notice

To:

[not disclosed] of Cross Yarra Partnership (together, **Project Co**)

Address: [not disclosed]
Fax: [not disclosed]
For the attention of: [not disclosed]
Email: [not disclosed]

We refer to the Receivables Purchase Deed dated [_____] 2017 between The Minister for Public Transport on behalf of the Crown in right of the State of Victoria (the **State**), Stella MMTS Finance Pty Limited (ACN 612 094 078) (**Finance Co**) and Project Co (**Receivables Purchase Deed**). Terms used in this Notice that are defined in the Receivables Purchase Deed have the same meaning in this Notice.

- (a) The State gives you irrevocable notice that the State has assigned all of its respective right, title and interest in the Receivables (**Assigned Receivables**) to Finance Co in accordance with an offer made under the Receivables Purchase Deed.
- (b) The State gives you irrevocable notice that you must pay all amounts in respect of the Assigned Receivables to, or at the direction of, Finance Co.
- (c) For the avoidance of doubt, any GST (as defined in clause 12.1 (*Interpretation*) of the Receivables Purchase Deed) referable to the Assigned Receivables must continue to be paid to the State.
- (d) Please acknowledge receipt of this notice by signing the acknowledgment that is attached to the enclosed copy of this notice, and send the acknowledgment to Finance Co at the address set out below:

Address: [not disclosed]
Fax: [not disclosed]
For the attention of: [not disclosed]
Email: [not disclosed]

Dated [insert]

[Insert execution block for the State]

Schedule 3 – Acknowledgment of Notice

To: Stella MMTS Finance Pty Limited (ACN 612 094 078)
[not disclosed]
For the attention of: [not disclosed]
Email: [not disclosed]

cc: The State

[not disclosed] of Cross Yarra Partnership (together, **Project Co**), acknowledges receiving a copy of the attached notice dated [insert] (**Notice**).

Unless otherwise defined in this acknowledgment, terms defined in the Notice have the same meaning when used in this acknowledgment.

Project Co confirms that:

- (a) it must pay all amounts in respect of the Receivables (exclusive of GST) to Finance Co in accordance with the Notice;
- (b) it must pay the GST payable in respect of the Receivables to the State;
- (c) it is not entitled to raise any set off, counterclaim or other right that may affect the right of Finance Co to recover the full amount of the Receivables in accordance with its terms;
- (d) it has not previously received a notice of assignment of all or any part of the Receivables; and
- (e) the assignment referred to in the Notice does not affect its obligations to the State in respect of the Receivables.

Dated [insert]

Project Co

[Insert execution block for Project Co]

Schedule 4 – Initial Receivables Refund Payment

Initial Receivables Refund Payment means the amount notified by Project Co to the State as being equal to the lesser of:

- (a) the amount calculated as follows:
[not disclosed]
- (b) the amount calculated as follows:
[not disclosed]

In calculating the amounts set out in this deed, there will be no double counting of amounts.

Schedule 5 – SMPC Notice of Assignment

To: Cross Yarra Partnership ABN 57 956 065 885 (**Project Co**)

We refer to the Receivables Purchase Deed dated [*] between The Minister for Public Transport on behalf of the Crown in right of the State of Victoria (the **State**), Stella MMTS Finance Pty Limited (**Finance Co**) and the Project Co (**Receivables Purchase Deed**).

Terms used in this Notice that are defined in the Receivables Purchase Deed have the same meaning in this Notice.

- (a) Finance Co gives you irrevocable notice that it has assigned all of its respective right, title and interest in the SMPC Receivables to the State in accordance with an offer made under the Receivables Purchase Deed.
- (b) Finance Co gives you irrevocable notice that you must pay the SMPC Receivables to, or at the direction of, the State. For the avoidance of doubt, any GST (as defined in the Receivables Purchase Deed) referable to the SMPC Receivables must continue to be paid to the State.
- (c) Please acknowledge receipt of this notice by signing the acknowledgment that is attached to the enclosed copy of this notice, and send the acknowledgment to the State at the address set out below:

Address: [*]
Fax: [*]
For the attention of: [*]
Email: [*]

Dated [insert]

[Insert execution block for Finance Co]

To: The State

cc: Stella MMTS Finance Pty Limited (ACN 612 094 078)
[not disclosed]
For the attention of: [not disclosed]
Email: [not disclosed]

[not disclosed] of Cross Yarra Partnership (together, **Project Co**), acknowledges receiving a copy of the attached notice dated [insert] (**SMPC Notice**).

Terms used in this acknowledgement that are defined in the SMPC Notice have the same meaning in this acknowledgement.

Project Co acknowledges and confirms that:

- (a) it must pay all amounts in respect of the SMPC Receivables to State in accordance with the SMPC Notice. For the avoidance of doubt, any GST referable to the SMPC Receivables must be paid to the State;
- (b) it is not entitled to raise any set off, counterclaim or other right that may affect the right of the State to recover the full amount of the SMPC Receivables in accordance with its terms;
- (c) it has not previously received a notice of assignment of all or any part of the SMPC Receivables other than pursuant to the Receivables Purchase Deed; and
- (d) the assignment referred to in the SMPC Notice does not affect its obligations to the State in respect of the Licence Fee (as defined in the Maintenance Licence).

Dated [insert]

Project Co

[Insert execution block for Project Co]

Signing page

EXECUTED as a deed.

State

Signed sealed and delivered by
**the Honourable Jacinta Allan
MP, in her capacity as the
Minister for Public Transport,
on behalf of the Crown in right
of the State of Victoria** in the
presence of

sign here ► [not disclosed] _____
Witness

[not disclosed] _____
Signature of Minister

print name [not disclosed] _____

Signed sealed and delivered for **Project Co** by

Signed, sealed and delivered for [not disclosed]
of Cross Yarra Partnership by its attorneys in the
presence of

[not disclosed] _____
Signature of witness

[not disclosed] _____
Signature of attorney

[not disclosed] _____
Name of witness (print)

[not disclosed] _____
Name of attorney (print)

[not disclosed] _____
Signature of witness

[not disclosed] _____
Signature of attorney

[not disclosed] _____
Name of witness (print)

[not disclosed] _____
Name of attorney (print)

Signed, sealed and delivered for [not disclosed] of Cross Yarra Partnership by its attorney in the presence of

[not disclosed]

Signature of witness

[not disclosed]

Signature of attorney

[not disclosed]

Name of witness (print)

[not disclosed]

Name of attorney (print)

Signed, sealed and delivered for [not disclosed] of Cross Yarra Partnership by its attorney in the presence of

[not disclosed]

Signature of witness

[not disclosed]

Signature of attorney

[not disclosed]

Name of witness (print)

[not disclosed]

Name of attorney (print)

Signed, sealed and delivered for [not disclosed] of Cross Yarra Partnership by its attorney in the presence of

[not disclosed]

Signature of witness

[not disclosed]

Signature of attorney

[not disclosed]

Name of witness (print)

[not disclosed]

Name of attorney (print)

Finance Co

Signed, sealed and delivered for Stella MMTS Finance Pty Limited ACN 612 094 078 by its attorneys in the presence of

[not disclosed]

Signature of witness

[not disclosed]

Signature of attorney

[not disclosed]

Name of witness (print)

[not disclosed]

Name of attorney (print)

[not disclosed]

Signature of witness

[not disclosed]

Signature of attorney

[not disclosed]

Name of witness (print)

[not disclosed]

Name of attorney (print)



HERBERT
SMITH
FREEHILLS

Deed

Execution version

Metro Tunnel
Tunnel and Stations PPP

Early Works Services Agreement

The Minister for Public Transport on behalf of the
Crown in right of the State of Victoria

D&C Subcontractor

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Early Works Services Agreement

Date ►

Between the parties

| | |
|-------|---|
| State | The Minister for Public Transport on behalf of the Crown in right of the State of Victoria |
|-------|---|

| | |
|-------------------|--|
| D&C Subcontractor | The unincorporated joint venture comprising: <ol style="list-style-type: none">1 Lendlease Engineering Pty Limited (ABN 40 000 201 516) of Level 14, Tower Three, International Towers Sydney, Exchange Place, 300 Barangaroo Avenue, Barangaroo NSW 2000;2 John Holland Pty Ltd (ABN 11 004 282 268) of Level 3, 65 Pirrama Road, Pyrmont NSW 2009; and3 Bouygues Construction Australia Pty Ltd (ABN 37 144 013 801) of Level 8, 77 Pacific Highway, North Sydney NSW 2060. |
|-------------------|--|

| | |
|----------|--|
| Recitals | <ol style="list-style-type: none">1 The State has conducted a public tender process and has selected the CYP Consortium as the preferred tenderer for the Project.2 Delays to the Early Works have the potential to delay the achievement of Acceptance.3 The parties have agreed that from the Commencement Date, the D&C Subcontractor will perform the Early Works Services for the purpose of the Delegate assuming active control and management of the delivery of the Early Works to facilitate the Early Works Managing Contractor delivering the Early Works in a timely manner including by directing the Early Works Managing Contractor to make changes to the Early Works so as to minimise and mitigate the potential for further delay to the Early Works and the achievement of Acceptance.4 The D&C Subcontractor will not be entitled to extensions to the Original Date for Provisional Acceptance, or adjustments to the Original D&C Subcontract Price, as a consequence of delay to the Early Works other than as set out in this Deed.5 In consideration for the D&C Subcontractor performing the Early Works Services and accepting the risk for further delay to the Early Works, the State will pay the D&C Subcontractor the Early Services Fee and the Early Works Risk Fee. |
|----------|--|

This deed witnesses as follows:

1 Definitions and interpretation

1.1 Project Agreement definitions

Unless otherwise expressly defined under clause 1.2, or modified in accordance with clause 2.1, expressions used in this Deed have the meaning given to them in the Project Agreement.

1.2 Definitions

The meanings of the terms used in this Deed are set out below.

| Term | Meaning |
|--------------------------------|--|
| Advanced Works Deed | means the document titled 'Metro Tunnel: Tunnel and Stations PPP, Advanced Works Deed' dated 21 September 2017 between the Coordinator-General of the Major Transport Infrastructure Program for and on behalf of the Crown in Right of the State of Victoria and the D&C Subcontractor. |
| Associate or Associates | <p>means:</p> <ol style="list-style-type: none"> 1 in relation to a person, any officer, agent, adviser, consultant, contractor or employee of that person (to the extent acting in that capacity); 2 in the case of the State, does not include the D&C Subcontractor or any of its Associates; and 3 in the case of the D&C Subcontractor, includes: <ol style="list-style-type: none"> a. the D&C Subcontractor Representative set out in clause 11; b. the Early Works Managing Contractor; c. the Delegate; and d. any Subcontractor and their respective officers, agents, advisers, consultants, contractors and employees, <p>each acting in connection with the Project, but does not include Project Co or any of its Associates, the Maintenance Subcontractor or any of its Associates, the State or any of its Associates, the Rail Franchisees (including in their capacities as Rail Franchisee Interface Parties), the CityLink Manager, the Metro Tunnel Package Contractors, the Independent Reviewer, the Sub-Independent Reviewer, the Financiers' Certifier, CBD North OSD Developer or any of its Associates, CBD South OSD Developer or any of its Associates, the Commercial Opportunities Subcontractors, any Handover Reviewer, or any Escrow Agent.</p> |

| Term | Meaning |
|------------------------------------|---|
| Capella Capital | means Capella Management Services (ACN 127 727 842) of Level 14, Tower Three, International Towers Sydney, Exchange Place, 300 Barangaroo Avenue, Barangaroo NSW 2000. |
| CBD North Shaft | means a shaft constructed, or to be constructed, by the Early Works Managing Contractor pursuant to the Early Work Managing Contractor Agreement in connection with the Station at CBD North. |
| Commencement Date | means the date upon which the Condition Precedent is satisfied or waived, as set out in the written confirmation issued under clause 4.2(b). |
| CUB Contamination Plume | means the known groundwater contamination plume associated with former industrial activities at the former Carlton and United Brewery site. |
| CUB Plume Mitigation System | the groundwater contamination mitigation system for the CUB Contamination Plume designed by the D&C Subcontractor pursuant to the Advanced Works Deed. |
| CYP Consortium | means: <ol style="list-style-type: none"> 1 Capella Capital Pty Limited (ACN 127 727 771) as agent for the Capella Capital Partnership (ABN 68 720 326 224) and financial adviser; and 2 the industrial sponsors being; <ol style="list-style-type: none"> a. John Holland Group Pty Ltd (ACN 37 050 242 147) as equity provider, D&C Subcontractor and Maintenance Subcontractor; b. Bouygues Construction Australia Pty Ltd (ABN 37 144 013 801) as equity provider and D&C Subcontractor; and c. Lendlease Engineering Pty Limited (ACN 000 201 516) as D&C Subcontractor. |
| D&C Subcontract | means the agreement between Project Co and the D&C Subcontractor to carry out the D&C Activities and the Final Acceptance Works and any other contract between Project Co and a Subcontractor to carry out the D&C Activities or the Final Acceptance Works. |
| D&C Scope Change Works | has the meaning given in clause 6.3(b). |

| Term | Meaning |
|--|---|
| Deed | means this deed and includes all Schedules, Exhibits, Attachments and Annexures to it. |
| Delegate | means the individual nominated by the D&C Subcontractor, and appointed pursuant to a Delegation Agreement, pursuant to clause 5.1. |
| Delegation Activities | means the activities to be performed by the Delegate pursuant to the Delegation Agreement. |
| Delegation Agreement | means the document titled 'Delegation Agreement' in the form attached at Exhibit 1 between the Principal's Representative, the D&C Subcontractor Representative and the Delegate. |
| Delegation Pre-Approval Letter | the letter titled 'Metro Tunnel: Delegation Pre-Approval' from [not disclosed] to [not disclosed] and executed as a deed by [not disclosed], [not disclosed] and [not disclosed] on or about 16 October 2017. |
| Early Services Fee | means [not disclosed], as reduced in accordance with clause 6.2, or otherwise adjusted in accordance with this Deed. |
| Early Services Fee Payment Date | means the day of each calendar month prior to Financial Close, by which the State must make a payment to the D&C Subcontractor pursuant to the Advanced Works Deed. |
| Early Works | means the 'Works' (as defined in the Early Works Managing Contractor Agreement), including: <ol style="list-style-type: none"> 1 all work which the Early Works Managing Contractor is, or may be, required to execute or manage under the Early Works Managing Contractor Agreement; and 2 the activities described in Schedule 3. |
| Early Works Managing Contractor | means John Holland Pty Ltd (ABN 11 004 282 268). |
| Early Works Managing Contractor Agreement | means the document titled 'Melbourne Metro Rail Project: Early Works Managing Contractor Agreement, General Conditions of Contract' dated 24 June 2016 between the Secretary to the Department of Economic Development, Jobs, Transport and Resources on behalf of the Crown in Right of the State of Victoria |

| Term | Meaning |
|---|---|
| | and the Early Works Managing Contractor, as amended or replaced from time to time. |
| Early Works Proposal Letter | the letter titled 'Melbourne Metro (Tunnel and Station) PPP Project: Early Works Proposal including summary of outstanding items which may have a cost impact on CYP's Proposal' dated 21 September 2017 from Capella Capital and the D&C Subcontractor to [not disclosed]. |
| Early Works Risk Fee | means [not disclosed]. |
| Early Works Services | means all of the things, including the activities described in Schedule 2, which the D&C Subcontractor must carry out or do to comply with its obligations under this Deed, including the Delegation Activities, but excluding the Early Works. |
| General Liability Cap | means [not disclosed]. |
| Liability | <p>means any debt, obligation, claim, action, cost, (including legal costs, deductibles or increased premiums), expense, loss (whether direct or indirect), damage, compensation, charge or liability of any kind (including fines or penalties), whether it is:</p> <ol style="list-style-type: none"> 1 actual, prospective or contingent; or 2 currently ascertainable or not, <p>and whether under this Deed or arising at Law.</p> |
| Original D&C Subcontract Price | means the named range "Capex_Facility_1" set out in the Original Financial Model. |
| Original Date for Provisional Acceptance | means 17 September 2023. |
| Original Financial Model | means the version of the Financial Model issued to the State on or about, and dated, 18 September 2017. |
| PPP Transfer Works | has the meaning given in clause 6.3(d). |
| Preferred Respondent | means the letter from the State to the CYP Consortium dated 17 |

| Term | Meaning |
|---|---|
| Process Letter | July 2017. |
| Principal's Representative | has the meaning given in the Early Works Managing Contractor Agreement. |
| Project Agreement | means the document entitled 'Metro Tunnel - Project Agreement' between the State and Project Co dated on or about the date of this deed, as amended from time to time. |
| Project Co | means the Cross Yarra Partnership, being the special purpose entity to be established by the Equity Investors pursuant to the partnership deed for the purposes of entering into the Project Documents and delivering the Project. |
| Proposal | means the CYP Consortium proposal in respect of the Project submitted to the State on 6 April 2017 in response to the RFP and as amended in response to the Structured Clarification Process Brief. |
| RFP | means the Request for Proposal prepared by MMRA and issued to Shortlisted Respondents on 21 September 2016. |
| RFP Terms and Conditions | means the terms and conditions contained in Appendix C of Volume 1 (Project Overview & General Requirements), Part A (General Information & Instructions to Shortlisted Respondents) of the RFP issued in respect of the Project, as supplemented by the Preferred Respondent Process Letter. |
| Security of Payment Act | means the <i>Building and Construction Industry Security of Payment Act 2002</i> (Vic). |
| Shortlisted Respondents | means the respondents who were selected by MMRA to submit a proposal for the Project in response to the RFP. |
| Site | means any land, or any part of land, where the Early Works Services are to be performed. |
| Structured Clarification Process Brief | means the document entitled 'Structured Clarification Process Brief' prepared by MMRA and issued to Shortlisted Respondents on 8 May 2017. |

| Term | Meaning |
|----------------------------------|--|
| Subcontractor | has the meaning given in the Project Agreement but excludes the Early Works Managing Contractor's subcontractors or consultants. |
| Termination Accrued Costs | means the sum of: <ol style="list-style-type: none"> 1 the actual costs incurred by the D&C Subcontractor in performing the Early Works Services up to the date of termination of this Deed; and 2 the Early Services Fee which would have been payable on the next Early Services Fee Payment Date, reduced pro rata for the number of days between the date of termination of this Deed and the next Early Services Fee Payment Date, capped at the sum of the unpaid Early Services Fee and the Early Works Risk Fee. |
| Variation | has the meaning given in the Early Works Managing Contractor Agreement. |
| Variation Quotation | has the meaning given in the Early Works Managing Contractor Agreement. |

2 Relationship with Project Agreement

2.1 Project Agreement provisions

- (a) The following clauses of the Project Agreement, as amended by clause 2.1(b), *mutatis mutandis* form part of this Deed as if incorporated in full to the extent applicable to the performance of the Early Works Services:
- (1) clause 2.1 (Interpretation);
 - (2) clause 2.6 (Business Day);
 - (3) clause 2.8 (Approvals, directions and notices in writing);
 - (4) clause 2.9 (Prior approval or consent);
 - (5) clause 2.10 (Action without delay);
 - (6) clause 2.11 (Provisions limiting or excluding Liability, rights or obligations);
 - (7) clause 2.12 (Relationship of the parties);
 - (8) clause 2.13 (State's executive rights and duties);
 - (9) clause 2.16 (No State liability for review);

- (10) clauses 5.1(a)(3) to (5) and 5.1(b)(2) (Project Co's primary obligations);
 - (11) clause 5.3 (All risks);
 - (12) clause 5.4 (All Risks (Project Requirements));
 - (13) clause 8 (Approvals);
 - (14) clause 13 (Subcontracting and third party arrangements);
 - (15) clause 15.1 (Health and safety);
 - (16) clauses 15.2(c)(1), (c)(2) and (e)(2) (Project Co's general health and safety obligations);
 - (17) clause 15.5 (Notification) but only in respect of Health and Safety Incidents that involve the Delegate or personnel of the D&C Subcontractor who are assisting the Delegate;
 - (18) clause 42.11 and 42.15;
 - (19) clause 46 (Dispute Resolution);
 - (20) clause 50 (Project Co to inform itself);
 - (21) clause 56 (Intellectual Property Rights);
 - (22) clause 57 (Confidential Information and disclosure);
 - (23) clause 58 (Privacy);
 - (24) clause 59 (Taxes);
 - (25) clause 62 (Probity Events and Probity Investigations);
 - (26) clause 63.1 (Notices);
 - (27) clause 64 (Miscellaneous), except for clauses 64.2 and 64.4; and
 - (28) Schedule 12 (Intellectual Property).
- (b) To the extent that clauses of the Project Agreement are incorporated into this Deed:
- (1) all references to the "Date for Provisional Acceptance" will be read as 17 September 2023;
 - (2) the word "party" means the State or the D&C Subcontractor as the context permits;
 - (3) all references to "Project Co", "Group Member" or "Consortium Member" must be read as a reference to "the D&C Subcontractor";
 - (4) the term "the Project" includes the performance of the Early Works Services under this Deed;
 - (5) all references to "State Project Documents" must be read as a reference to this Deed and any other document the State informs the D&C Subcontractor in writing is a State Project Document for the purposes of this Deed;
 - (6) all references to "Project Documents" must be read as a reference to this Deed and any other document the State informs the D&C Subcontractor in writing is a Project Document for the purposes of this Deed;

- (7) in respect of clause 42.15(d)(1)(B) of the Project Agreement, references to “Insurances” must be read as references to insurances required under this Deed. All other references to “Insurances” must be disregarded;
 - (8) all references to “Project Activities”, “D&C Activities” or the “Works” must be read as references to Early Works Services;
 - (9) all references to “Relevant Infrastructure” must be read as references to any works performed as part of the Early Works Services;
 - (10) all references to the “Site” must be read as references to the Site;
 - (11) all references to the “State Representative” must be read as references to the State Representative as defined in clause 11(b) of this Deed;
 - (12) all references to “D&C Phase” and “Term” must be read as references to the term of this Deed;
 - (13) all references to the “PS&TR” must be read as references to the Draft PS&TR;
 - (14) in respect of clause 15 of the Project Agreement all references to “Management Plans” or “Health and Safety Management Plan” will be read as references to the “Health and Safety Management Plan” (as defined in the Early Works Managing Contractor Agreement);
 - (15) all references to the “Construction Areas” must be read as references to the Site; and
 - (16) in respect of clause 63.1 of the Project Agreement, the reference to item 17 of the Contract Particulars will be replaced with the representatives of each of the parties specified in clause 11 of this Deed.
- (c) Notwithstanding this clause 2.1, neither party will be entitled to rely on the execution of this Deed by the other party as approval of the whole, or any provision of, the Project Agreement.

2.2 No commitment

The D&C Subcontractor acknowledges and agrees that nothing in this Deed obliges the State to proceed with, or engage the CYP Consortium or the D&C Subcontractor or any part of the CYP Consortium to perform any further part of, the Project.

2.3 Amendment

The parties may at any time during the term of this Deed agree in writing to amend the scope of the Early Works Services.

2.4 Joint and several liability

If the D&C Subcontractor comprises more than one person:

- (a) the obligations of those persons are joint and several;
- (b) the State may proceed against any or all of them for any failure of the D&C Subcontractor to comply with any obligation in accordance with this Deed or otherwise; and

- (c) any payment by the State under this Deed to any account nominated in writing by the D&C Subcontractor, or failing such nomination, to any one or more persons constituting the D&C Subcontractor, will be deemed to be payment to all persons constituting the D&C Subcontractor.

2.5 Inconsistency

Where there is an inconsistency, ambiguity or discrepancy between any of this Deed, the Delegation Agreement, the Advanced Works Deed and the Early Works Proposal Letter, then the following order of precedence applies:

- (a) the Advanced Works Deed;
- (b) this Deed;
- (c) the Delegation Agreement; and
- (d) the Early Works Proposal Letter.

3 Commencement and term

3.1 Commencement and termination

- (a) This Deed will commence on the Commencement Date.
- (b) This Deed terminates on the earlier of:
 - (1) the expiry of the last Defects Liability Period under the Early Works Managing Contractor Agreement;
 - (2) the date of termination of the Project Agreement; and
 - (3) 7 days from the date of written notice given to the D&C Subcontractor from the State of:
 - (A) a breach by the D&C Subcontractor of this Deed; or
 - (B) a breach by the D&C Subcontractor or the Delegate of the Delegation Agreement,
 where that breach is subsisting.

3.2 Termination

- (a) Subject to clause 3.2(c), if this Deed is terminated or otherwise comes to an end other than in accordance with clause 3.1(b)(1):
 - (1) the D&C Subcontractor must:
 - (A) immediately cease performing the Early Works Services under this Deed;
 - (B) provide to the State all deliverables and documentation prepared under this Deed (including design documents, supply agreements and approvals);
 - (C) do all things necessary (including executing any documentation) to ensure that all Intellectual Property Rights are licensed to the State or its nominee in the manner

- required by section 3(d) of Schedule 12 to the Project Agreement; and
- (D) do all things necessary to ensure that the D&C Subcontractor's rights under any subcontracts entered into by the D&C Subcontractor in respect of the Early Works Services are assigned or otherwise transferred to the State or its nominee;
- (2) the D&C Subcontractor will have no Claim against the State in relation to any matter arising under or in connection with this Deed, including in connection with the Early Works Services, other than in accordance with clauses 3.2(a)(4) and 3.2(b);
- (3) the following clauses of this Deed survive the termination of this Deed:
- (A) clauses 2.1(a)(1), 2.1(a)(2), 2.1(a)(18) to 2.1(a)(22) (Project Agreement provisions);
- (B) clause 2.5 (Inconsistency);
- (C) clause 3.2 (Termination);
- (D) clause 6 (Payment), to the extent applicable to the Tax Invoice referred to in clause 3.2(a)(4) and clause 6.5 in the circumstances described in clause 6.5;
- (E) clause 9 (Insurance); and
- (F) clause 12 (D&C Subcontractor Liability); and
- (4) subject to clause 3.2(b), the D&C Subcontractor will be entitled to claim its Termination Accrued Costs from the State by submitting:
- (A) a Tax Invoice for the Termination Accrued Costs;
- (B) a breakdown of the value of the Termination Accrued Costs; and
- (C) a statutory declaration signed by the D&C Subcontractor Representative which:
- (I) states that all amounts due and payable by the D&C Subcontractor to any Subcontractors, which are not in dispute, have been paid by the D&C Subcontractor; or
- (II) where an amount has not been paid, states the reasons for such non-payment together with supporting documentation.
- (b) The D&C Subcontractor's entitlement to make a Claim under clause 3.2(a)(4) is subject to the D&C Subcontractor having complied with its obligations under clause 3.2(a)(1).
- (c) Notwithstanding clause 3.2(a), the State may request in writing that the D&C Subcontractor continue to perform all or part of the Early Works Services under this Deed, and the parties must use all reasonable endeavours to negotiate the terms of any continued performance.

4 Condition Precedent

4.1 Commencement

- (a) This Deed will not commence until the Condition Precedent has been satisfied (or waived in accordance with clause 4.3), except for the provisions contained in clause 1, 2.1(a)(1), 2.1(a)(2), 2.1(a)(19), 2.1(a)(22), 2.1(a)(23), 2.1(a)(25), 2.1(a)(26) and 2.1(a)(27), 3.1(b), this clause 4, 10 and 12 which will commence on the date of this Deed.
- (b) The D&C Subcontractor agrees to deliver to the State original counterparts of the Delegation Agreement duly executed by the Delegate and the D&C Subcontractor (**Condition Precedent**).

4.2 Satisfaction of Condition Precedent

- (a) The D&C Subcontractor must satisfy the Condition Precedent.
- (b) When the Condition Precedent has been satisfied or waived, the State Representative must confirm in writing that the Condition Precedent has been satisfied or waived and the date upon which the Condition Precedent was satisfied or waived.

4.3 Waiver of Condition Precedent

A Condition Precedent is only waived where the State gives notice of the waiver of the Condition Precedent to the D&C Subcontractor.

5 Carrying out the Early Works Services

5.1 Delegation

- (a) The D&C Subcontractor must nominate an individual as its agent to perform the obligations set out in the Delegation Agreement (**Delegate**), provided that the individual nominated must:
 - (1) be reasonably acceptable to the State;
 - (2) have appropriate qualifications and experience; and
 - (3) have no interest or duty which conflicts or may conflict with its functions as the Delegate (the State notes that broader involvement in the Project as part of the D&C Subcontractor's team does not constitute such a conflict).
- (b) Promptly following nomination of a Delegate pursuant to clause 5.1(a):
 - (1) the State must procure that the Principal's Representative; and
 - (2) the D&C Subcontractor must procure that the D&C Subcontractor's Representative and the Delegate enter into,

the Delegation Agreement.
- (c) The D&C Subcontractor must comply, and must ensure that the Delegate complies, with the Delegation Agreement.

- (d) If:
- (1) the Delegation Agreement is terminated in accordance with its terms; or
 - (2) the Delegate ceases to act as the Delegate for the purposes of this Deed,

the D&C Subcontractor will nominate another individual who satisfies the requirements of clause 5.1(a) to act as the Delegate on the same terms as the Delegation Agreement, and the requirements of this clause 5.1 will apply in respect of that replacement Delegate.

5.2 Progress

The D&C Subcontractor must:

- (a) diligently progress the carrying out of the Early Works Services in accordance with the requirements of this Deed; and
- (b) ensure that the Delegate diligently progresses the carrying out of the Delegation Activities in accordance with the requirements of the Delegation Agreement.

5.3 Standard of care

The D&C Subcontractor must:

- (a) carry out the Early Works Services; and
- (b) ensure that the Delegate carries out the Delegation Activities,

exercising the standard of skill, care and diligence that would be expected of a professional consultant that is experienced in performing services similar to the Early Works Services for projects similar to the Early Works.

6 Payment

6.1 The State's payment obligation

- (a) The State must pay the D&C Subcontractor the Early Services Fee and the Early Works Risk Fee in accordance with this Deed.
- (b) The Early Services Fee is payable to the D&C Subcontractor in respect of the execution of the Early Works Services and all obligations that are performed by the D&C Subcontractor and the Delegate in accordance with this Deed and the Delegation Agreement, and the Early Works Risk Fee is payable to the D&C Subcontractor in respect of the D&C Subcontractor accepting the risk for delay to the Early Works (in accordance with the terms set out in this Deed).
- (c) Payments in respect of the Early Services Fee and the Early Works Risk Fee made in accordance with this clause 6:
 - (1) include all of the D&C Subcontractor's and the Delegate's costs, expenses, margin and overhead that they may incur in executing the Early Works Services and its other obligations under this Deed or the Delegation Agreement; and
 - (2) are exclusive of GST.

6.2 Early Services Fee

- (a) Prior to Financial Close and subject to clauses 6.2(b) and 6.6, the Early Services Fee will be paid by the State in equal instalments of [not disclosed] on each Early Services Fee Payment Date.
- (b) On Financial Close and subject to clause 6.4, all remaining amounts of the Early Services Fee will be paid by the State to the D&C Subcontractor as a lump sum.
- (c) The Early Services Fee will be reduced by any amounts paid by the State to the D&C Subcontractor prior to the Commencement Date in contemplation of the appointment of the Delegate and the Delegation Activities.

6.3 Early Works Risk Fee

- (a) On Financial Close and subject to clause 6.4, the Early Works Risk Fee will be paid by the State to the D&C Subcontractor as a lump sum.
- (b) Where the Delegate seeks the consent of the State to direct a Variation under the Early Works Managing Contractor Agreement and that Variation includes works which would otherwise form part of the D&C Subcontractor's works under the D&C Subcontract (**D&C Scope Change Works**), the D&C Subcontractor must:
 - (1) request a Variation Quotation in respect of the D&C Scope Change Works; and
 - (2) provide a copy of the Variation Quotation received from the Early Works Managing Contractor to the State.
- (c) The D&C Subcontractor must pay the Early Works Managing Contractor for all D&C Scope Change Works:
 - (1) in accordance with the terms of the Early Works Managing Contractor Agreement (including amounts in respect of the 'Fixed Management Fee', the 'Variable Management Fee' and 'Profit', each as defined in the Early Works Managing Contractor Agreement); or
 - (2) as otherwise agreed between the D&C Subcontractor and the Early Works Managing Contractor.
- (d) Where the Delegate seeks the consent of the State to direct a Variation under the Early Works Managing Contractor Agreement and that Variation provides for works which would otherwise form part of the Early Works to be excluded from the Early Works and instead form part of the Works to be performed by Project Co under the Project Agreement, and form part of the works to be performed by the D&C Subcontractor under the D&C Subcontractor (**PPP Transfer Works**), the D&C Subcontractor must:
 - (1) request a Variation Quotation in respect of the PPP Transfer Works; and
 - (2) provide a copy of the Variation Quotation received from the Early Works Managing Contractor to the State,

and the State and the D&C Subcontractor will agree the amount to be included in any Modification Quote under the Project Agreement in respect of PPP Transfer Works.

- (e) The D&C Subcontractor must indemnify the State against all Claims by the Early Works Managing Contractor, or a subcontractor of the Early Works Managing Contractor, in connection with:
 - (1) a payment under the Early Works Managing Contractor Agreement in relation to the D&C Scope Change Works; and
 - (2) PPP Transfer Works.
- (f) The D&C Subcontractor and its Associates will have no Claim against the State to the extent the Early Works Managing Contractor performs any D&C Scope Change Works.

6.4 Payment direction

The D&C Subcontractor irrevocably directs the State to pay any amounts under clause 6.2(b) or clause 6.3 to Project Co.

6.5 Tax Invoice

- (a) No later than 5 Business Days prior to an Early Services Fee Payment Date, the D&C Subcontractor must issue the State with a Tax Invoice for an amount equal to the amount of the Early Services Fee payable on that Early Services Fee Payment Date.
- (b) On or prior to Financial Close the D&C Subcontractor must issue the State with a Tax Invoice for an amount equal to the sum of the Early Services Fee and the Early Works Risk Fee payable on Financial Close.
- (c) The State has no liability in respect of GST in connection with the payment of an instalment of the Early Services Fee or the Early Works Risk Fee until the D&C Subcontractor has issued a Tax Invoice in accordance with this clause 6.5.

6.6 Payment

- (a) Following provision by the D&C Subcontractor of a Tax Invoice:
 - (1) in accordance with clause 6.5(a), if the amount set out in the Tax Invoice does not exceed the Early Services Fee payable, the State must pay the D&C Subcontractor the amount stated as payable in the Tax Invoice within 5 Business Days; and
 - (2) in accordance with clause 6.5(b), if the amount set out in the Tax Invoice does not exceed the Early Services Fee and Early Works Risk Fee payable, the State must pay the D&C Subcontractor the amount stated as payable in the Tax Invoice on Financial Close.
- (b) If a Tax Invoice submitted by the D&C Subcontractor pursuant to clause 6.5 does not satisfy the requirements of clause 6.6(a):
 - (1) the State will not be obliged to make a payment pursuant to clause 6.6(a);
 - (2) the D&C Subcontractor must re-issue the Tax Invoice; and
 - (3) the requirements of clause 6.5 and clause 6.6 will apply to the revised Tax Invoice.
- (c) Any payment by the State under this clause 6.6 in respect of the Early Services Fee is on account only and will not constitute evidence of approval or acceptance of the work the subject of the payment.

- (d) The parties acknowledge and agree that the obligations of the D&C Subcontractor under this Deed constitute a Taxable Supply and are subject to GST.

7 Change in circumstances

7.1 Entitlement to time and cost

The D&C Subcontractor acknowledges and agrees that the Early Services Fee and the Early Works Risk Fee are not subject to adjustment (including rise and fall or indexation), except as expressly provided in this Deed.

7.2 Due diligence

The D&C Subcontractor acknowledges that at the Commencement Date it has had reasonable opportunity to conduct due diligence in respect of the progress of the Early Works.

8 Security of payment

- (a) This clause 8 applies only if the Security of Payment Act applies to this Deed.
- (b) The parties agree that for the purposes of the Security of Payment Act:
- (1) the date prescribed by clause 6.5(a) or 6.5(b) (as relevant) is, for the purposes of section 9(2) of the Security of Payment Act, the 'reference date'; and
 - (2) a reference to a Tax Invoice issued under clause 6.5 is a reference to a "payment claim" and to a "payment schedule" as those terms are used in the Security of Payment Act.
- (c) For the purpose of section 12 of the Security of Payment Act a progress payment is due and payable in accordance with clause 6.6.
- (d) Nothing in this clause 8 will preclude any party from disputing any amounts due from one party to the other.
- (e) If the D&C Subcontractor makes an adjudication application under the Security of Payment Act, the authorised nominating authorities for the purpose of section 18(3)(b) of the Security of Payment Act will be the Resolution Institute (Victorian Chapter), Rialto Adjudications Pty Ltd and Adjudicate Today Pty Limited.
- (f) The D&C Subcontractor shall:
- (1) ensure that a copy of any written communication it delivers or arranges to deliver to a Subcontractor regarding adjudication, review adjudication, or a payment dispute under the Security of Payment Act is provided to the State at the same time;
 - (2) promptly and without delay give the State a copy of any written communication regarding adjudication or review adjudication under the Security of Payment Act, which the D&C Subcontractor receives from a Subcontractor; and

- (3) require each Subcontractor promptly and without delay, to give the State a copy of any written communication regarding adjudication or review adjudication under the Security of Payment Act, which the Subcontractor receives from another party.
- (g) The State may in its absolute discretion (including where the State becomes aware that a Subcontractor is entitled to suspend work which forms part of work under this Deed pursuant to the Security of Payment Act) pay out of any monies due or to become due to the D&C Subcontractor any monies owing by the D&C Subcontractor to a Subcontractor in relation to the execution of work under this Deed.

9 Insurance

The D&C Subcontractor must ensure that the professional indemnity insurance procured pursuant to the Advanced Works Deed:

- (a) provides cover in respect of the Early Works Services; and
- (b) includes the Delegate as an Associate of the D&C Subcontractor.

10 Representations and warranties

10.1 State's representations and warranties

The State represents and warrants for the benefit of the D&C Subcontractor that:

- (a) the State has:
 - (1) the power to execute this Deed and does so through a duly authorised officer of the Melbourne Metro Rail Authority, an administrative office in relation to the Department of Economic Development, Jobs, Transport and Resources, for and on behalf of the State of Victoria; and
 - (2) the power to deliver and carry out its obligations under this Deed, and all necessary action has been taken to authorise that execution, delivery and performance;
- (b) this Deed constitutes a valid and legally binding obligation on it in accordance with its terms; and
- (c) the execution, delivery and performance of this Deed does not violate any Law to which the State is subject.

10.2 D&C Subcontractor's representations and warranties

The D&C Subcontractor represents and warrants for the benefit of the State that:

- (a) it has the power to execute, deliver and perform its obligations under this Deed;
- (b) the execution, delivery and performance of this Deed does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets; and

- (c) this Deed constitutes a valid and legally binding obligation on it in accordance with its terms.

10.3 Repetition of representation and warranties

Each representation and warranty given by the D&C Subcontractor under this Deed:

- (a) is made on the Commencement Date; and
- (b) will be deemed to be repeated each day during the period from the Commencement Date until the date of termination of this Deed,

with reference to the facts and circumstances then subsisting.

11 Representatives

- (a) The D&C Subcontractor appoints the person set out in Schedule 1 as its representative for the purposes of this Deed (the **D&C Subcontractor Representative**).
- (b) The State appoints the person set out in Schedule 1 as its representative for the purposes of this Deed (the **State Representative**).
- (c) Each party must promptly notify the other of any change to their representative.

12 D&C Subcontractor Liability

12.1 Damage to third party property

- (a) In the carrying out of the Early Works Services, the D&C Subcontractor and the Delegate must not interfere with, obstruct, damage or destroy any property on, in or in the vicinity of the Site other than in accordance with their obligations under this Deed and the Delegation Agreement.
- (b) If the D&C Subcontractor or the Delegate breaches clause 12.1(a), the D&C Subcontractor must:
 - (1) promptly repair any such obstruction, damage or destruction; and
 - (2) reasonably compensate the affected person for any loss suffered in connection with such interference, obstruction, damage or destruction (where the D&C Subcontractor has a legal liability to do so).
- (c) The D&C Subcontractor's obligation to compensate the Early Works Managing Contractor will be reduced to the extent that the Early Works Managing Contractor is actually indemnified under any Insurance required to be effected and maintained under this Deed.

12.2 Indemnity for D&C Subcontractor or Delegate breach

The D&C Subcontractor must indemnify the State and its Associates against any Claim or Liability in connection with any breach by the D&C Subcontractor or any of its Associates under this Deed or the Delegation Agreement.

12.3 General indemnity

- (a) The D&C Subcontractor must indemnify:
- (1) the State and its Associates against any Claim or Liability arising in connection with loss or damage to or of the Early Works and the Relevant Infrastructure; and
 - (2) the State and its Associates in respect of:
 - (A) loss or damage to or of (whether total or partial) any real or personal property including property belonging to the State and its Associates that is not Early Works or Relevant Infrastructure;
 - (B) loss of use of (whether total or partial) any real or personal property including property belonging to the State and its Associates that is not Early Works or Relevant Infrastructure;
 - (C) any injury to, illness or death of, persons; and
 - (D) any Claims brought against the State or any of its Associates by a third party,

to the extent caused or contributed to by any breach of this Deed or the Delegation Agreement by, or any negligent or unlawful act or omission of, the D&C Subcontractor or its Associates, in connection with the performance of the Early Works Services (including the Delegation Activities) pursuant to this Deed.
- (b) The indemnity in clause 12.3(a)(2)(D) will not apply to the extent the act or omission is an act or omission of the D&C Subcontractor or any of its Associates which is authorised or permitted under this Deed or the Delegation Agreement.
- (c) The D&C Subcontractor's Liability under clause 12.3(a)(2)(A) (to the extent the Liability is for loss of use arising out of the loss or damage) and clause 12.3(a)(2)(B) will be limited to the greater of insurance proceeds:
- (1) payable to the D&C Subcontractor under any insurance which the D&C Subcontractor is required to effect and maintain under this Deed for such loss of use in respect of the event or circumstances giving rise to the loss of use; and
 - (2) which would have been payable to the D&C Subcontractor under any insurance which the D&C Subcontractor is required to effect and maintain under this Deed for such loss of use, in respect of the event or circumstances giving rise to the loss of use but for a failure by the D&C Subcontractor to comply with this Deed or a failure by the D&C Subcontractor or any of its Associates to comply with the terms of those insurances.

12.4 Limits on D&C Subcontractor liability

- (a) Subject to clause 12.4(b), the D&C Subcontractor's maximum aggregate liability to the State or any of its Associates in connection with this Deed, the performance of the Early Works Services, the Delegation Agreement or the performance of the Delegation Activities:
- (1) in contract;

- (2) in tort (including negligence);
 - (3) under any statute (to the extent it is possible to exclude such Liability); and
 - (4) otherwise at Law,
- and irrespective of how it arises, is limited in aggregate to the General Liability Cap.
- (b) The General Liability Cap does not apply to exclude or limit the liability of the D&C Subcontractor to the extent:
- (1) it is liability arising from criminal acts, fraud or wilful misconduct on the part of the D&C Subcontractor, the Delegate or other person assisting the Delegate;
 - (2) it arises out of or is a liability that cannot be limited or excluded at Law;
 - (3) it is an insured liability in accordance with an insurance required under this Deed, in respect of an amount equal to any insurance proceeds payable to the D&C Subcontractor;
 - (4) it is a liability which would have been paid or payable under an insurance required under this Deed but for:
 - (A) the inclusion of clause 12.4(a);
 - (B) a failure by the D&C Subcontractor to comply with this Deed;
 - (C) a failure by the D&C Subcontractor or any of its Associates to claim under the relevant insurances; or
 - (D) a failure by the D&C Subcontractor or any of its Associates to comply with the terms of the relevant insurances (including the claims procedure under the relevant insurances),

up to the sum which would otherwise have been insured under the insurances required by this Deed; or
 - (5) it is a liability in connection with a Claim by the Early Works Managing Contractor, or a subcontractor of the Early Works Managing Contractor, in connection with:
 - (A) a payment under the Early Works Managing Contractor Agreement in relation to D&C Scope Change Works; or
 - (B) PPP Transfer Works.

12.5 Third party claim under indemnity

If a Claim is made by a third party against the State or any of its Associates in respect of which the D&C Subcontractor is required to indemnify in accordance with this Deed, to the extent that the State's insurers in connection with such a Claim agree, the State must:

- (a) do all things reasonably required by the D&C Subcontractor in negotiating, defending or otherwise taking action or proceedings in respect of that Claim; and
- (b) not settle that Claim with the claimant without the D&C Subcontractor's involvement in and agreement to any such settlement.

12.6 Continuing obligation

- (a) Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the parties.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity under this Deed.

13 No assignment

The D&C Subcontractor must not, without the State's prior written approval, assign, novate, charge or encumber this Deed or any part of it or any right, benefit, money or interest under this Deed.

14 Entire agreement

To the extent permitted by Law and in relation to its subject matter, this Deed and the Delegation Agreement:

- (a) embodies the entire understanding of the parties and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior agreement of the parties, including any prior correspondence in connection with the subject matter, including the Early Works Proposal Letter and the Delegation Pre-Approval Letter,

however the Early Works Proposal Letter will remain binding on the parties to the extent that the rights and obligations therein are reflected in the Project Agreement or the D&C Subcontract or where this Deed is terminated under clause 3.1(b)(3).

Schedule 1

Notice details

| | |
|----------------------|-----------------|
| State Representative | [not disclosed] |
| Address | [not disclosed] |
| Attention | [not disclosed] |
| Phone | [not disclosed] |
| Email | [not disclosed] |

| | |
|----------------------------------|-----------------|
| D&C Subcontractor Representative | [not disclosed] |
| Address | [not disclosed] |
| Attention | [not disclosed] |
| Phone | [not disclosed] |
| Mobile | [not disclosed] |
| Email | [not disclosed] |

Schedule 2

Early Works Services

Refer to separate document

Early Works Services Agreement (Schedule 2)

D&C Subcontractor Tasks (which will not limit the scope of the Early Works Services or the Delegation Activities)

| No. | Task | Role of the D&C Subcontractor in respect of task |
|-----|--|---|
| 1. | Progress and Reporting | <ol style="list-style-type: none"> 1. Provide the State with a monthly report on the progress and status of the performance of the Early Works Services. The D&C Subcontractor must ensure that the monthly report is reasonably detailed and includes: <ol style="list-style-type: none"> a. details of the Early Works Services performed; and b. any other information reasonably requested by the State. 2. Attend and present, and ensure that the Delegate attends and presents, at progress meetings regarding the Early Works Services as reasonably requested by the State. The D&C Subcontractor must ensure that the meetings are attended by representatives of the D&C Subcontractor who have the knowledge and authority to respond to queries raised by the State's Representative and to propose solutions to those queries. |
| 2. | Early Works Delay | Provide updates to the Principal's Representative and the State on any delay to the Early Works it becomes aware of from time to time. |
| 3. | Variations | Propose to the State and (to the extent consent is provided by the State) direct variations it has identified and considers appropriate, consistent with the purpose of the delegation (as set out in the Delegation Agreement). |
| 4. | Inspection of the Early Works | Inspect the Early Works in accordance with clause 27.2(a) of the Early Works Managing Contractor Agreement to the extent relevant to or interfacing with the D&C Activities. |
| 5. | Completion Tests | Attend Works Completion Tests under clause 30 of the Early Works Managing Contractor Agreement in respect of Early Works relevant to or interfacing with the D&C Activities. |
| 6. | Inspection and Outstanding Works List | Inspect the Early Works to the extent relevant to or interfacing with the D&C Activities in accordance with clause 31.2(a) of the Early Works Managing Contractor Agreement and direct tests and rectification in accordance with that clause (to the extent consent is provided by the State). |
| 7. | Health and Safety | <p>The D&C Subcontractor's responsibilities in relation to safety management (noting that the D&C Subcontractor's role for the purpose of this allocation of tasks is to provide assurance regarding safety and is not intended to provide it with control over the Site or any aspects of health and safety in connection with the Works):</p> <ol style="list-style-type: none"> 1. Review any health safety management plans and sub-plans prepared by the EWMC, noting that MMRA will also review these plans |

Early Works Services Agreement (Schedule 2)

| No. | Task | Role of the D&C Subcontractor in respect of task |
|-----|------|---|
| | | <ol style="list-style-type: none"> 2. Review and provide comments to the EWMC on the monthly safety report which is prepared by the EWMC, noting MMRA will also review and comment on these reports. 3. With MMRA, jointly receive, review and comment on incident reports prepared by the EWMC. 4. Receive, review and comment on high potential incidents including safety alerts. The EWMC is required to prepare HPI presentations which are then given to the MMRA executive. The D&C Subcontractor should review these presentations but also attend the presentation with the EWMC. 5. The D&C Subcontractor would receive a copy of the incident report that the EWMC must prepare and provide to MMRA within 48 hours of any incident. 6. The D&C Subcontractor would review the KPIs and lag tracking which the EWMC is required to prepare and report. 7. The D&C Subcontractor to undertake regular safety walks and inspections. 8. EWMC conduct weekly project leadership engagement meetings. The D&C Subcontractor will attend these meetings. 9. If there is an incident the D&C Subcontractor will attend any post incident inspection and discuss with MMRA and the EWMC what action the EWMC intends to take. 10. Currently MMRA and EWMC senior manager undertake a safety walk on an ad hoc basis. The D&C Subcontractor will attend these safety walks. 11. The EMMC and MMRA have a regular safety meeting. The D&C Subcontractor will attend these meetings. 12. MTM and EMWC have interface meetings to discuss access arrangements. The D&C Subcontractor will attend these meetings where appropriate. 13. The EWMC has meetings with the MMRA precinct teams to discuss safety issues. The D&C Subcontractor will attend these on an ad hoc basis. |

Early Works Services Agreement (Schedule 2)

| No. | Task | Role of the D&C Subcontractor in respect of task | |
|-----|----------------|--|--|
| | | 14. The EWMC conducts high risk reviews and safety evaluations on work activities. The D&C Subcontractor will attend these. | |
| 8. | LP&E | <p>D&C Subcontractor Role</p> <ol style="list-style-type: none"> 1. Attendance at regular meetings with the Early Works Managing Contractor (fortnightly environment team meeting, fortnightly tree meetings, fortnightly approvals meetings with Deb Cownley and as required). 2. Attendance at fortnightly early works meetings with Heritage Victoria (and other regulators/stakeholders as required). 3. Co-ordination and submission of planning and heritage approval documentation such as Early Works Plan amendments and heritage permits/consents. 4. Review and approval of Tree Removal Plans (coordinated by Maggie). 5. Monthly environmental site inspections with the Early Works Managing Contractor. 6. Coordination and review of weekly and monthly monitoring summary reports. | <p>State Role</p> <ol style="list-style-type: none"> 1. Review and acceptance of management plans (CEMP, sub-plans, SEIPS etc) through TeamBinder (including acceptance by yourself and Karoline). 2. Review of Early Works Managing Contractor monthly reports and follow up with outstanding actions (eg incidents etc). 3. Input into the MMRA Early Works monthly report. 4. Monthly environmental site inspections with the Early Works Managing Contractor. 5. Coordination and review of weekly and monthly monitoring summary reports. 6. Review and oversight of Early Works Managing Contractor EPR compliance (as detailed in Early Works Managing Contractor monthly report). |
| 9. | Communications | <p>D&C Subcontractor Role</p> | <p>State Role</p> |

Early Works Services Agreement (Schedule 2)

| No. | Task | Role of the D&C Subcontractor in respect of task | |
|-----|-------------------------|---|--|
| | and Stakeholders | <ol style="list-style-type: none"> 1. Attendance at regular meetings with EWMC (fortnightly environment team meeting, fortnightly tree meetings, fortnightly communications and stakeholder relations team meetings, weekly corporate communications and media milestones meeting, fortnightly hoarding meeting. 2. Review written materials including works notifications, fact sheets, brochures, etc. 3. Review written materials incl. works notifications, fact sheets, brochures, etc. 4. Respond to Project Information Line and email enquiries relating to construction impacts. 5. Complaint management, incl. escalations to third-party authorities such as the PTO. 6. Coordination and management of Community Reference Groups and preparation of materials (agenda, minutes, presentations). 7. Review and approve Community Reference Group agendas, minutes and presentations 8. Review hoarding design, development, production and installation. 9. Attendance at community and stakeholder events, presentations and briefings (other than CRGs/PRG) 10. Management of management of the EWMC in it undertaking its obligations regarding business disruption. | <ol style="list-style-type: none"> 1. Approve written materials incl. works notifications, fact sheets, brochures, etc. 2. Oversight of key stakeholder relationships relating to impacts from Early Works. 3. Oversight of Community Reference Groups 4. Review and approve hoarding designs prior to production and installation |

Schedule 3

Early Works

1 Demolition and other works

The demolition of the buildings set out in the table below:

- (a) including termination of services, but excluding the removal of any ground slabs or basements; and
- (b) including the archaeology tasks (other than where indicated below to be performed by the D&C Subcontractor under the D&C Subcontract).

| Precinct | Sites | Comments |
|-----------|------------------------------|--------------------------------------|
| CBD South | 9-11 Swanston St | D&C Subcontractor to do archaeology. |
| | 13 Swanston St | D&C Subcontractor to do archaeology. |
| | 15-19 Swanston St | D&C Subcontractor to do archaeology. |
| | 21-25 Swanston St | D&C Subcontractor to do archaeology. |
| | 27-29 Swanston St | D&C Subcontractor to do archaeology. |
| | 228-236 Flinders St | D&C Subcontractor to do archaeology. |
| CBD North | 17-27 Little La Trobe Street | D&C Subcontractor to do archaeology. |
| | 212-222 La Trobe St | D&C Subcontractor to do archaeology. |
| | 204-206 La Trobe St | D&C Subcontractor to do archaeology. |
| | 208-210 La Trobe St | D&C Subcontractor to do archaeology. |
| | 200 La Trobe St | D&C Subcontractor to do archaeology. |
| | 389-391 Swanston St | D&C Subcontractor to do archaeology. |

2 CUB Plume Mitigation System

The procurement, supply, construction, commissioning, and operation of the CUB Plume Mitigation System.

3 Strutting

The procurement, supply, construction, and commissioning of the steel strutting for the CBD North Shafts in accordance with the design prepared by the D&C Subcontractor pursuant to the Advanced Works Deed.

Signing page

Executed as a deed

Date ►

State

Signed sealed and delivered by
**the Honourable Jacinta Allan
MP, in her capacity as the
Minister for Public Transport,
on behalf of the Crown in right
of the State of Victoria** in the
presence of

sign here ► [not disclosed] _____
Witness

[not disclosed] _____
Signature of Minister

print name [not disclosed] _____

D&C Subcontractor

Signed sealed and delivered for
**John Holland Pty Ltd (ABN 11
004 282 268)**
by its attorney

in the presence of

sign here ▶ [not disclosed]
Attorney

sign here ▶ [not disclosed]
Witness

print name [not disclosed]

print name [not disclosed]

D&C Subcontractor

Signed sealed and delivered for
**Lendlease Engineering Pty
Limited (ABN 40 000 201 516)**
by its attorney

in the presence of

sign here ▶ [not disclosed]
Attorney

sign here ▶ [not disclosed]
Witness

print name [not disclosed]

print name [not disclosed]

D&C Subcontractor

Signed sealed and delivered for
**Bouygues Construction
Australia Pty Ltd (ABN 37 144
013 801)**
by its attorney

in the presence of

sign here ▶ [not disclosed]
Attorney

sign here ▶ [not disclosed]
Witness

print name [not disclosed]

print name [not disclosed]

Delegation Agreement

Tender No. 20648

[not disclosed]
D&C Subcontractor Representative
Cross Yarra Partnership

BY EMAIL

Dear [not disclosed],

METRO TUNNEL: DELEGATION AGREEMENT

1. Background

- (a) This letter (**Letter**) is issued by the Melbourne Metro Rail Authority on behalf of the Crown in Right of the State of Victoria (the **State**) in respect of the 'Early Works' and the 'Tunnel and Stations PPP' components of the Metro Tunnel Project (the **Project**).
- (b) The State refers to the document titled 'Early Works Services Agreement' (**Early Works Services Agreement**) dated today between the State of Victoria through the Melbourne Metro Rail Authority, an Administrative Office in relation to the Department of Economic Development, Jobs, Transport and Resources, and the unincorporated joint venture between Lendlease Engineering Pty Limited, John Holland Pty Limited and Bouygues Construction Australia Pty Ltd (together the **D&C Subcontractor**).
- (c) This Letter is the 'Delegation Agreement' referred to in the Early Works Services Agreement.
- (d) Capitalised terms used in this Letter but not defined, have the meanings given to them in the Early Works Services Agreement.

2. Delegation

- (a) Pursuant to clause 6.1 (*Principal's Representative*) of the Early Works Managing Contractor Agreement, the Principal's Representative appoints **[Insert] (Delegate)** to exercise the functions of the Principal's Representative under the Early Works Managing Contractor Agreement as set out in this Letter (**Delegation Activities**).
- (b) The D&C Subcontractor acknowledges and agrees that:
 - (i) it nominated the Delegate pursuant to clause 5.1 (*Delegation*) of the Early Works Services Agreement;
 - (ii) the Delegate remains an employee of a member of the D&C Subcontractor, and is authorised by the D&C Subcontractor to perform the Delegation Activities; and

- (iii) it will provide the Delegate with adequate resources and support to perform the Delegation Activities; and
- (iv) it will be liable to the State to the extent that:
 - (1) the Delegate performs the Delegation Activities other than in accordance with this Letter; or
 - (2) the State incurs liability arising from criminal acts, fraud, gross negligence or wilful misconduct of the Delegate.
- (c) The Delegate accepts the appointment by the State to perform the Delegation Activities.

3. Purpose of delegation

- (a) The Delegate must perform the Delegation Activities diligently and the parties acknowledge that the purpose of the Delegation Activities is for the Delegate to assume active control and management of the delivery of the Early Works to facilitate the Early Works Managing Contractor delivering the Early Works in a timely manner including by directing the Early Works Managing Contractor to make changes to the Early Works so as to minimise and mitigate the potential for further delay to the Early Works (including any relevant Stage Completion Date under the Early Works Managing Contractor Agreement) by reference to the Early Works Managing Contractor's program dated 4 October 2017 (**Early Works Current Program**) and the Tunnel and Stations PPP component of the Project.
- (b) The Delegate is authorised to perform the Delegation Activities:
 - (i) so as to minimise and mitigate delay to the Early Works (including any relevant Stage Completion Date under the Early Works Managing Contractor Agreement) and the Tunnel and Stations PPP component of the Project; and
 - (ii) without limiting the Delegate's rights under paragraph 3(b)(i), to the extent reasonably possible, in a manner that minimises additional costs payable by the State in connection with the Works, including by complying with all timeframes set out in the Early Works Managing Contractor Agreement which are relevant to the performance of the Delegation Activities.

4. Scope of delegation

- (a) The Delegate is authorised to exercise all functions of the Principal's Representative under the Early Works Managing Contractor Agreement subject to paragraphs 4(b) to 4(d).
- (b) In addition to those functions listed in clause 6.1(b) of the Early Works Managing Contractor Agreement, the Delegate is not authorised to perform functions of the 'Principal' or the 'Principal's Representative' under the following clauses of the Early Works Managing Contractor Agreement:
 - (i) Clause 6.3 – Certifying Functions;
 - (ii) Clause 8.4 – Probity;
 - (iii) Clause 9 – Target Budget;
 - (iv) Clause 10 – Target Schedule;
 - (v) Clause 15 – Payment;

- (vi) Clause 16 – Performance Incentive Regime and Performance Amount;
 - (vii) Clause 20 – Workplace health and safety (subject to clause 6);
 - (viii) Clause 26 – Security;
 - (ix) Clause 36 – Confidential information;
 - (x) Clause 41 – Termination and expiry of Agreement;
 - (xi) Clauses 42 and 43 – Dispute Resolution and Arbitration;
 - (xii) Clause 46 – Probity Events and probity audit; and
 - (xiii) Clause 48.10 – Variation to this Agreement.
- (c) The Delegate is only authorised to perform functions of the Principal's Representative under those clauses of the Early Works Managing Contractor Agreement listed in Part A of Attachment 1 to this letter with the prior written consent of the State.
- (d) The Delegate is authorised to perform functions of the Principal's Representative under those clauses of the Early Works Managing Contractor Agreement listed in Part B of Attachment 1 to this letter without the prior written consent of the State.
- (e) Where the Delegate requires the prior written consent of the State to perform a function:
- (i) the State must not unreasonably withhold or delay giving its consent;
 - (ii) without otherwise limiting the State's right to withhold or delay giving its consent, it will be unreasonable for the State to withhold or delay giving its consent solely on the basis that such consent will increase the cost of the Early Works; and
 - (iii) the State (or the Principal's Representative) will counter sign the relevant direction or notice to indicate that consent has been given.
- (f) The Delegate may not delegate the Delegation Activities to any other person.
- (g) The Delegate must:
- (i) keep the State informed regarding any exercise of functions in relation to 'Major Incidents' or 'Issues' on or in relation to the Early Works (each as defined in the Early Works Managing Contractor Agreement), and any proposed exercise of the Principal's step-in or suspension rights; and
 - (ii) attend and present at progress meetings regarding the Delegation Activities as reasonably requested by the State or the Principal's Representative.
- (h) Without limiting the State's discretion in respect of paragraphs 4(c) or 7, or the State's entitlement to perform the functions reserved by it pursuant to paragraph 4(b), the State will ensure that it and the Principal's Representative co-operate and co-ordinate with the Delegate in a manner that enables the Delegate to undertake the Delegation Activities in accordance with this Letter.

5. Risk and Liability

- (a) The parties acknowledge that the obligations of the Delegate under this Letter are incurred by it solely in its capacity as an employee of a member of the D&C Subcontractor.
- (b) Without limiting the State's recourse to the D&C Subcontractor, the Delegate will not be liable to pay or satisfy any of its obligations or liabilities in respect of the Delegation Activities or this Letter out of any assets held by the Delegate personally.
- (c) The D&C Subcontractor's maximum aggregate liability to the State or any of its Associates (as defined in the Project Agreement) in connection with this Letter, the Early Works Services Agreement or the performance of the Delegation Activities:
 - (i) in contract;
 - (ii) in tort (including negligence);
 - (iii) under any statute (to the extent it is possible to exclude such Liability); and
 - (iv) otherwise at Law,and irrespective of how it arises, is limited in aggregate to [not disclosed] **(General Liability Cap)**.
- (d) The D&C Subcontractor must ensure that the professional indemnity insurance it is required to procure under the Advanced Works Deed (notwithstanding the termination of that document) applies in respect of the Delegation Activities at all times while the Delegation Activities are being performed.
- (e) The General Liability Cap does not apply to exclude or limit the liability of the D&C Subcontractor to the extent:
 - (i) it is liability arising from criminal acts, fraud or wilful misconduct on the part of the D&C Subcontractor, the Delegate or other person assisting the Delegate;
 - (ii) it arises out of or is a liability that cannot be limited or excluded at Law;
 - (iii) it is an insured liability in accordance with an insurance required under this Letter, in respect of an amount equal to any insurance proceeds payable to the D&C Subcontractor;
 - (iv) it is a liability which would have been paid or payable under an insurance required under this Letter but for:
 - (1) the inclusion of paragraph 5(c);
 - (2) a failure by the D&C Subcontractor to comply with this Letter (including paragraph 5(d));
 - (3) a failure by the D&C Subcontractor or any of its Associates to claim under the relevant insurances; or
 - (4) a failure by the D&C Subcontractor or any of its Associates to comply with the terms of the relevant insurance (including the claims procedure under the relevant insurance),up to the sum which would otherwise have been insured under the insurance required by this Letter; or

- (v) it is a liability in connection with a Claim by the Early Works Managing Contractor, or a subcontractor of the Early Works Managing Contractor, in connection with:
 - (1) a payment under the Early Works Managing Contractor Agreement in relation to D&C Scope Change Works; or
 - (2) PPP Transfer Works.
- (f) Clause 42.15 of the Project Agreement as amended in the Early Works Services Agreement forms part of this Letter as if incorporated in full.

6. Early Works Services

The Delegate must in performing the Delegation Activities:

- (a) notwithstanding paragraph 4(a)(v), if it observes any act, fact or circumstance associated with the Delegation Activities, the Site or the Early Works which it considers to be unsafe or a material risk to health:
 - (1) intervene (in which case the Delegate will be authorised to exercise the Principal's rights pursuant to clause 20.14(a) (Failure to comply with health and safety obligations of the Early Works Managing Contractor Agreement)); and
 - (2) immediately advise the State;
- (b) comply with the Site safety and security requirements of the Early Works Managing Contractor as set out in the Health and Safety Management Plan (as defined in the Early Works Managing Contractor Agreement); and
- (c) not give any direction which it knows (or ought reasonably to have known) would result in the Early Works Managing Contractor breaching clause 20 (Workplace health and safety) or clause 21 (Incident management) of the Early Works Managing Contractor Agreement.

7. Termination

This Letter automatically terminates on the earlier of:

- (a) the termination of the Early Works Services Agreement ;
- (b) the expiry of the last Defects Liability Period under the Early Works Managing Contractor Agreement;
- (c) the State giving written notice to the Delegate and the D&C Subcontractor that the State cancels the Delegate's appointment, and requesting that the D&C Subcontractor nominate a replacement Delegate; and
- (d) the Delegate or the D&C Subcontractor giving written notice to the State:
 - (i) that the Delegate no longer agrees to act as the Delegate, or that the D&C Subcontractor wishes to nominate another person to act as Delegate; and
 - (ii) the D&C Subcontractor delivering to the State a new Delegation Agreement executed by the D&C Subcontractor and the replacement Delegate.

8. Interaction with the Early Works Managing Contractor

Notwithstanding the terms and conditions set out in the request for proposal for the Tunnel and Stations PPP, the State gives its consent for the Delegate to co-locate, share information, and otherwise interact with the Early Works Managing Contractor for the purposes of performing the Delegation Activities.

9. General

- (a) This letter is governed by, and must be construed according to, the laws of Victoria, Australia.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this letter.
- (c) Each party must promptly do all further acts reasonably requested by another party to give effect to this letter.
- (d) Except as otherwise expressly provided in this letter, this letter may only be varied by a deed executed by or on behalf of each party. The parties acknowledge and agree that this letter is executed as a deed.
- (e) This letter may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same deed.
- (f) No party to this letter may assign, novate, transfer, mortgage, charge, encumber or otherwise deal with any of its rights or obligations under this letter without the prior consent of each other party to this letter.

Yours sincerely

[[not disclosed]]
Chief Executive Officer
Melbourne Metro Rail Authority

Signing page

Executed as a Deed

Date ►

Principal's Representative

Signed sealed and delivered by
**[Insert], as the Principal's
Representative**

in the presence of

sign here ► _____
State Representative

sign here ► _____
Witness

print name _____

print name _____

D&C Subcontractor's Representative

Signed sealed and delivered by
**[Insert], as the D&C
Subcontractor's Representative**

in the presence of

sign here ► _____
D&C Subcontractor's Representative

sign here ► _____
Witness

print name _____

print name _____

Delegate

Signed sealed and delivered
By

in the presence of

sign here ► _____
Delegate

sign here ► _____
Witness

print name _____

print name _____

Attachment 1

Functions of the Principal's Representative to be undertaken by the Delegate



HERBERT
SMITH
FREEHILLS

Deed

Metro Tunnel
Tunnel and Stations PPP

D&C Direct Deed

The Minister for Public Transport on behalf of the
Crown in right of the State of Victoria

Cross Yarra Partnership

Lendlease Engineering Pty Ltd

Bouygues Construction Australia Pty Limited

John Holland Pty Ltd

Lendlease Construction Australia Holdings Pty
Limited

Bouygues Construction S.A.

CCCC International Holding Limited



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D&C Direct Deed

Date ►

Between the parties

State The Minister for Public Transport on behalf of the Crown in right of the State of Victoria

Project Co 1 [not disclosed];
2 [not disclosed];
3 [not disclosed]; and
4 [not disclosed],
(together, **Cross Yarra Partnership**) (ABN 57 956 065 885) of Level 8, 136 Exhibition Street, Melbourne, VIC 3000, Australia.

D&C Subcontractor The unincorporated joint venture comprising:
1 Lendlease Engineering Pty Ltd ABN 40 000 201 516 of Level 6 / 476 St Kilda Road, Melbourne VIC 3004;
2 Bouygues Construction Australia Pty Limited ABN 37 144 013 801 of Level 8, 77 Pacific Highway, North Sydney NSW 2060; and
3 John Holland Pty Ltd ABN 11 004 282 268 of Level 3, 65 Pirrama Road, Pyrmont NSW 2009

Parent Guarantors 1 Lendlease Construction Australia Holdings Pty Limited ABN 50 147 880 966 of Level 14, Tower Three, International Towers Sydney, Exchange Place, 300 Barangaroo Avenue, Barangaroo NSW 2000;
2 Bouygues Construction S.A. of 1 avenue Eugène Freyssinet - 78061 Saint Quentin en Yvelines Cedex – France; and
3 CCCC International Holding Limited of Room 2805, Convention Plaza Office Tower 1, Harbour Road, Wanchai, Hong Kong

Recitals 1 The background to the Project is set out in the Project Agreement.
2 Project Co and the D&C Subcontractor are or will become parties to the D&C Subcontract.
3 The D&C Subcontractor has agreed to grant to the State certain rights in relation to the D&C Subcontract.
4 Project Co and each Parent Guarantor are or will become parties



to the Parent Guarantees.

- 5 The Parent Guarantors have agreed to grant the State certain rights in relation to the Parent Guarantees.

This deed witnesses as follows:



1 Defined terms and interpretation

1.1 Project Agreement definitions

Unless otherwise expressly defined, expressions used in this Deed have the meanings given to them in or for the purposes of the Project Agreement.

1.2 Definitions

In this Deed, unless the context requires otherwise:

| Term | Meaning |
|--|---|
| Additional Obligor | means a company or other entity which is wholly owned by the State. |
| Additional Obligor Step-In Notice | has the meaning given in clause 7.1(a)(4). |
| Additional Obligor Step-Out Date | has the meaning given in clause 7.3(d). |
| Agreed Amount | has the meaning given in clause 13(b)(1). |
| Assumption Date | has the meaning given in clause 7.3(a). |
| Cost | has the meaning given in clause 13(g). |
| D&C Subcontract | means the document entitled 'D&C Subcontract' dated on or about the date of this Deed between Project Co and the D&C Subcontractor. |
| D&C Subcontractor Associate | means any: <ol style="list-style-type: none">1 D&C Subcontractor Relevant Person in respect of the D&C Subcontractor only (excluding the Project Co Representative); and2 officer, agent, adviser, consultant, contractor or employee of the D&C Subcontractor. |



| Term | Meaning |
|--|--|
| D&C Subcontractor Consent Deed | means the document entitled 'D&C Consent Deed' dated on or about the date of this Deed between Project Co, the D&C Subcontractor Parties and the Security Trustee. |
| D&C Subcontractor Document | means: <ol style="list-style-type: none">1 in respect of the D&C Subcontractor, the D&C Subcontract; and2 in respect of the Parent Guarantors, the Parent Guarantees. |
| D&C Subcontractor Parties | means: <ol style="list-style-type: none">1 the D&C Subcontractor; and2 the Parent Guarantors, and D&C Subcontractor Party means each of them. |
| D&C Subcontractor Relevant Person | means: <ol style="list-style-type: none">1 a director or secretary of a D&C Subcontractor Party; or2 any officer or employee, consultant, contractor or agent of a D&C Subcontractor Party who:<ol style="list-style-type: none">a has the ability to exercise influence or control in relation to the D&C Subcontractor Party, or in matters relating to the Project;b works in any role in connection with the Project Activities, including undertaking any task for the purpose of a D&C Subcontractor Document or this Deed; orc has access to Confidential Information in connection with the Project. |
| D&C Subcontractor Statement | has the meaning given in clause 6.4. |
| Deed | means this deed and includes all Schedules, Exhibits, Attachments and Annexures to it. |
| Default Event | means any: <ol style="list-style-type: none">1 breach by Project Co of any of its obligations under a D&C Subcontractor Document; or2 other event or circumstance, which alone or with the giving of notice or passage of time or both, would entitle the D&C Subcontractor Party to terminate, rescind, accept the repudiation of, or suspend any or all of its obligations under, the D&C Subcontractor Documents. |



| Term | Meaning |
|--------------------------------|---|
| Default Event Notice | has the meaning given in clause 6.2(a). |
| Disputing Parties | has the meaning given in clause 9.1(a). |
| Material Adverse Effect | means a material adverse effect on: <ol style="list-style-type: none">1 the ability of each of Project Co or a D&C Subcontractor Party to perform and observe their respective obligations under any Project Document to which it is a party; or2 the rights of the State under any State Project Document, or the ability or capacity of the State to exercise its rights or perform its obligations under a State Project Document. |
| Novation Notice | has the meaning given in clause 8.1(a). |
| Novation Notice Date | means: <ol style="list-style-type: none">1 in relation to clause 8.3, the later of the date of the Novation Notice and the date each of the D&C Subcontractor Parties consents or is deemed (in accordance with clause 8.3(d)) to have consented to the novation; and2 otherwise, the date of the Novation Notice. |
| Parent Guarantees | means each document dated on or about the date of this Deed entitled 'Performance Guarantee' between a Parent Guarantor and Project Co. |
| Project Agreement | means the document entitled 'Project Agreement' between the State and Project Co dated on or about the date of this deed. |
| Project Co's Rights | has the meaning given in clause 7.3(b)(1)(A). |
| Receiver | means a receiver or receiver and manager appointed by the State under the State Security. |
| Recipient | has the meaning given in clause 13(b)(2). |
| Representative | has the meaning given in clause 9.2(a). |



| Term | Meaning |
|------------------------------|---|
| Revenue | has the meaning given in clause 13(f). |
| State Cure Notice | has the meaning given in clause 6.2(c). |
| Statement Beneficiary | means the State, an Additional Obligor or Receiver appointed under clause 7. |
| Step-In Period | has the meaning given in clause 7.1(b). |
| Step-In Right | has the meaning given in clause 7.1(a). |
| Substitute Party | has the meaning given in clause 8.1(a). |
| Supplier | has the meaning given in clause 13(b). |
| Suspension Notice | means any notification given by the D&C Subcontractor to Project Co that the D&C Subcontractor intends to suspend performance of any or all of its obligations in accordance with the D&C Subcontract as a result of a Default Event or any written demand issued by the D&C Subcontractor under clause 34A.9 of the D&C Subcontract. |
| Termination Notice | means a notice issued by the D&C Subcontractor under clause 45.3(a)(2) or clause 45.4B of the D&C Subcontract. |

1.3 Interpretation

In this Deed:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;
and unless the context otherwise requires:
- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa and a word indicating a gender includes every other gender;
- (c) **(references)**: a reference to:
 - (1) a party, clause, Schedule, Exhibit, or Annexure is a reference to a party, clause, Schedule, Exhibit or Annexure of or to this Deed; and
 - (2) a section is a reference to a section of a Schedule;
- (d) **(Deed as amended)**: a reference to this Deed or to any other deed, agreement, document or instrument includes a reference to this Deed or such other deed,



- agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **(‘includes’)**: ‘includes’ will be read as if followed by the phrase ‘(without limitation)’;
- (j) **(‘or’)**: the meaning of ‘or’ will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) **(‘\$’)**: a reference to ‘\$’, AUD or dollar is to Australian currency;
- (m) **(time)**: a reference to time is a reference to time in Melbourne, Australia;
- (n) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (o) **(obligations and liabilities)**: a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (p) **(‘may’)**: the term ‘may’, when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;
- (q) **(construction)**: where there is a reference to an Authority, institute or association or other body referred to in this Deed which:
- (1) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or
 - (2) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (r) **(remedy)**: the use of the words ‘remedy’ or ‘cure’ or any form of such words in this Deed means that the event to be remedied or cured must be remedied or cured or its effects overcome; and
- (s) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.



1.4 Priority of documents

To the extent of any inconsistency, ambiguity or discrepancy between this Deed and a D&C Subcontractor Document, this Deed prevails.

1.5 State Project Documents

Each of the D&C Subcontractor Parties acknowledges that it has received a copy of the Project Agreement, the State Security and the Finance Direct Deed.

1.6 Inconsistency

Where there is an inconsistency, ambiguity or discrepancy between this Deed and any other State Project Document, then the order of precedence in clause 2.3 of the Project Agreement applies.

1.7 Business Day

If the day on or by which anything is to be done in accordance with this Deed is not a Business Day, that thing must be done no later than the next Business Day.

1.8 Prior approval or consent

Where the D&C Subcontractor Parties are required by this Deed to obtain the State's consent or approval to an action, document or thing, unless otherwise expressly stated, that consent or approval must be obtained prior to the actions, document or thing occurring or coming into effect.

1.9 Action without delay

Unless there is a provision in this Deed which specifies a period of time in which something must be done by the parties, all things must be done without undue delay.

1.10 Provisions limiting or excluding Liability, rights or obligations

- (a) **(No limit):** A right of the State or any obligation of the D&C Subcontractor Parties or Project Co under this Deed will not limit or exclude any other right of the State or obligation of the D&C Subcontractor Parties or Project Co under this Deed unless expressly stated.
- (b) **(Permitted by Law):** Any provision of this Deed which seeks, either expressly or by implication, to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.

1.11 Relationship of the parties

Unless otherwise expressly provided, this Deed does not:

- (a) **(no additional relationship):** create a partnership, joint venture, fiduciary, employment or agency relationship between the parties; or
- (b) **(no good faith):** impose any duty of good faith on the State.



1.12 Approvals, directions and notices in writing

Unless otherwise expressly provided in this Deed or agreed between the parties, all approvals, consents, directions, requirements, requests, claims, notices, agreements and demands given or required to be given under this Deed must be given in writing.

1.13 State's rights and obligations

- (a) **(Acknowledgement)**: The parties acknowledge the substance, operation and potential effect and consequences of clause 2.13 of the Project Agreement in relation to this Deed.
- (b) **(No Claim)**: Subject to clause 1.13(c), Project Co and the D&C Subcontractor Parties will not be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its executive or statutory rights or duties.
- (c) **(Liability for breach)**: Clauses 1.13(a) and 1.13(b) do not limit any Liability which the State would have had to Project Co or the D&C Subcontractor Parties under any State Project Document as a result of a breach by the State of a term of any State Project Document but for these clauses.

1.14 Reasonable endeavours of State

Any statement in this Deed providing that the State will use or exercise 'reasonable endeavours' or 'act reasonably' in relation to an outcome, means that the State:

- (a) **(relevant steps)**: will take steps to bring about the relevant outcome so far as it is reasonably able to do so, having regard to its resources and other responsibilities;
- (b) **(no guarantee)**: cannot guarantee the relevant outcome; and
- (c) **(no obligation)**: is not required to:
 - (1) exercise a right of any Government Party, or to influence, over-ride, interfere with or direct any other Government Party in the proper exercise and performance of its legal, executive or statutory rights and duties and functions;
 - (2) exercise a power or discretion in a manner that the State regards as not in the public interest;
 - (3) develop or implement new policy;
 - (4) procure legislation; or
 - (5) act in any way that the State regards as not in the public interest.

1.15 Joint and several liability

Without limiting clause 1.3(o), an obligation or Liability assumed by or right conferred on the D&C Subcontractor under this Deed and the D&C Subcontractor Documents is joint and several and each person constituting the D&C Subcontractor acknowledges and agrees that it will be responsible for the acts and omissions (including breaches of this Deed or any D&C Subcontractor Document) of the others as if those acts or omissions were its own.



2 Conditions precedent

The satisfaction or waiver of the Conditions Precedent in accordance with clause 3 of the Project Agreement, is a condition precedent to the coming into operation of this Deed (other than this clause 2 and clauses 1.1 to 1.3, 1.7, 1.8, 1.11, 1.12, 1.13, 1.14, 4, 9, 10, 12, 14, 15 and 17).

3 Acknowledgments

3.1 By the D&C Subcontractor Parties concerning the State Security

The D&C Subcontractor Parties each acknowledge and agree:

- (a) **(grant of security by Project Co)**: that Project Co may give a security interest in the form of the State Security in favour of the State over all assets and undertakings of Project Co including Project Co's right, title and interest under the D&C Subcontractor Documents or assign Project Co's right, title and interest under the D&C Subcontractor Documents to the State by way of security, and the D&C Subcontractor Parties each consent to the State Security and any such assignment;
- (b) **(exercise of rights)**: to the State's rights under the State Security including the appointment by Project Co of the State as attorney of Project Co to do, perform and exercise all things, acts and rights under the D&C Subcontractor Documents on behalf of and for the account of Project Co;
- (c) **(no Default Event)**: that the grant of, or exercise by the State of its rights under, the State Security will not itself contravene, or constitute a Default Event under, a D&C Subcontractor Document or entitle a D&C Subcontractor Party to exercise any right (including termination) under it;
- (d) **(Liabilities and obligations)**: that nothing in the State Security will cause the State or State Associate to assume any Liabilities or obligations under a D&C Subcontractor Document except as may result from its own acts or omissions in exercising rights or in performing or failing to perform obligations under a D&C Subcontractor Document as envisaged by this Deed;
- (e) **(notice of any other assignment)**: that with the exception of the security interests under the Finance Documents, it has not received notice of any other assignment or charge by Project Co of any right, title, interest in or benefit of Project Co under the D&C Subcontractor Documents; and
- (f) **(set off)**: that as of the date of this Deed, it has no knowledge of any right of set off or counterclaim which it may have against Project Co so as to diminish any money payable by it to Project Co under a D&C Subcontractor Document, except only where the right of set off or counterclaim is contained within the D&C Subcontractor Document.

3.2 By the D&C Subcontractor Parties concerning the State's rights

- (a) **(State's rights)**: The D&C Subcontractor Parties each acknowledge the State's rights under clauses 2.13, 16.3, 25, 28.5, 35, 41, 44, 45 and 62.2 of the Project Agreement and the other relevant clauses listed in clause 13.3(c) of the Project Agreement.



- (b) **(Facilitation of rights):** The D&C Subcontractor must exercise its rights under the D&C Subcontract in a way that facilitates the effective exercise by the State of the rights referred to in clause 3.2(a) and will on reasonable notice permit the State or a State Associate to have access to, and take copies of, the records, reports, documents and other papers to which the State is entitled to have access in accordance with the State's rights referred to in clause 3.2(a).
- (c) **(Continued performance):** During the period in which the State is exercising a right referred to in clause 3.2(a), the State may, in accordance with the Project Agreement and the D&C Subcontract, require the suspension or the continuation of performance by the D&C Subcontractor of its obligations under the D&C Subcontract, and if it does so, the D&C Subcontractor will comply with this requirement (but without limiting the D&C Subcontractor's rights under clause 6) and with all reasonable directions of the State in relation to the performance of the D&C Subcontract by the D&C Subcontractor during such period.
- (d) **(State not liable):** The requirement of the State that the D&C Subcontractor suspend or continue to perform its obligations under the D&C Subcontract and the giving of any direction under clause 3.2(c) by the State will not be construed as an assumption by the State of any obligations of the D&C Subcontractor under the D&C Subcontract.
- (e) **(Subcontracting):** The D&C Subcontractor will not subcontract any of its obligations under the D&C Subcontract without the prior consent of the State, where so required in accordance with clause 13 of the Project Agreement.
- (f) **(Probity Investigations):** Without limiting clauses 3.2(a) to (e), the D&C Subcontractor Parties each acknowledge and agree that:
- (1) in accordance with clauses 13 and 62.2 of the Project Agreement, from time to time, the State may or may require Project Co to conduct Probity Investigations of;
 - (A) the D&C Subcontractor Parties;
 - (B) D&C Subcontractor Relevant Persons; or
 - (C) other persons in relation to any further subcontracting by the D&C Subcontractor of any of its obligations under the D&C Subcontract;
 - (2) on request of the State, it will procure the consent of each D&C Subcontractor Relevant Person:
 - (A) to any Probity Investigation; and
 - (B) to the extent that the State is entitled to do so under the Project Agreement, to such other probity and security investigations that the State may require; and
 - (3) it:
 - (A) will not appoint, or retain the appointment of; and
 - (B) will ensure that no other person appoints, or retains the appointment of,

a person to the position of a D&C Subcontractor Relevant Person in relation to the management or performance of the D&C Subcontract without the State's approval which may be withdrawn at any time including following a Probity Investigation and other such investigations that the State may require under clauses 13 and 62.2 of the Project Agreement.



3.3 By Project Co

Project Co is bound by, and must cooperate in the implementation of, this Deed. It acknowledges that this Deed is intended to benefit only the D&C Subcontractor Parties and the State, and does not in any way affect any obligation or right of Project Co under the D&C Subcontractor Documents or under any Project Document except as expressly set out herein.

3.4 Information

Project Co and the D&C Subcontractor Parties each acknowledge and agree that:

- (a) **(information purpose):** any information, data and documents provided by the State or a State Associate:
 - (1) are provided for information purposes only and all of the State's or a State Associates' Intellectual Property Rights therein remain the property of the State or the State Associate (as the case may be); and
 - (2) do not form part of this Deed or constitute an invitation, offer or recommendation by or on behalf of the State or a State Associate;
- (b) **(no Liability):** to the extent permitted by Law, none of the State or the State Associates will have any Liability to the D&C Subcontractor Parties or any D&C Subcontractor Associate, nor will a D&C Subcontractor Party or any D&C Subcontractor Associate be entitled to make any Claim against the State, or seek, pursue or obtain an indemnity against or contribution to Liability from the State or a State Associate arising in connection with:
 - (1) the provision of, or purported reliance upon, or use of, any information, data and documents referred to in clause 3.4(a) by a D&C Subcontractor Party or any other person to whom such information is disclosed by a D&C Subcontractor Party, a D&C Subcontractor Associate, or any person on behalf of a D&C Subcontractor Party or any D&C Subcontractor Associate;
 - (2) any reference to the State in a D&C Subcontractor Document; or
 - (3) any review of, comments upon, acceptance, approval or certification of the form or substance of a D&C Subcontractor Document by the State.

3.5 D&C Subcontract not to affect State rights

Project Co and the D&C Subcontractor Parties each acknowledge and agree that:

- (a) **(rights not affected):** where the D&C Subcontractor is expressed in the D&C Subcontract to have a right (or possible right) to compensation or relief which is dependent on or determined by reference to the Project Agreement or an equivalent or similar right of Project Co:
 - (1) this does not of itself expand Project Co's rights, or the State's Liability, under the Project Agreement to include the compensation or relief to which the D&C Subcontractor is or may become entitled under the D&C Subcontract; and
 - (2) Project Co's rights, and the State's Liability, under the Project Agreement will be determined solely in accordance with the terms of the Project Agreement;



- (b) **(risk of discrepancy)**: as between the State (on the one hand) and Project Co and the D&C Subcontractor Parties (on the other hand), Project Co and the D&C Subcontractor Parties accept and will bear the risk of any inconsistency, ambiguity or discrepancy between the terms of the D&C Subcontract and the Project Agreement; and
- (c) **(dealing directly with State)**: notwithstanding anything to the contrary in the D&C Subcontract, no D&C Subcontractor Party has any right to deal directly with the State or participate in any meeting, consultation or process (including negotiation or dispute resolution) unless:
 - (1) expressly provided to the contrary in the Project Agreement or this Deed; or
 - (2) the State consents.

3.6 Construction Bond

- (a) **(Demand)**: The State may require Project Co to make a demand under any Construction Bond subject to and in accordance with clause 27 (*State right to require Project Co to call on Construction Bond*) of the Project Agreement and clause 12 (*Construction Bond*) of the Finance Direct Deed.
- (b) **(Inform State)**: Project Co must immediately inform the State when a demand is made under any Construction Bond.
- (c) **(State Liability)**: Without limiting the D&C Subcontractor's rights against Project Co if a demand is made that is not permitted under the D&C Subcontract, the State will have no Liability to the D&C Subcontractor, and the D&C Subcontractor releases the State from and against any Claim the D&C Subcontractor may have, arising in connection with the State requiring Project Co to make a demand under the Construction Bond as contemplated by clause 3.6(a).

4 Representations and warranties by the D&C Subcontractor Parties

Each D&C Subcontractor Party represents and warrants for the benefit of the State that:

- (a) **(power to execute)**: it has the power to execute, deliver and carry out its obligations under this Deed, the D&C Subcontractor Documents, and each other Project Document to which it is a party and all necessary action has been taken to authorise that execution, delivery and performance;
- (b) **(legality)**: the execution, delivery and performance of this Deed, the D&C Subcontractor Documents, and each other Project Document to which it is a party does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;
- (c) **(validity)**: this Deed, the D&C Subcontractor Documents, and each other Project Document to which it is a party constitutes a valid and legally binding obligation on it in accordance with its terms;
- (d) **(registration)**: it is duly registered, properly constituted and remains in existence;



- (e) **(no trust relationship)**: except as stated in this Deed, it is not the trustee or responsible entity of any trust nor does it hold any property subject to or impressed by any trust in relation to this Project;
- (f) **(information true and correct)**: all information provided by it to the State is true and correct to the best of its knowledge and belief (having undertaken enquiries reasonably expected of a skilled professional carrying out the obligations of the D&C Subcontractor under the D&C Subcontract) as at the date on which it is provided and no D&C Subcontractor Party is aware of any material facts or circumstances that have not been disclosed to the State and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this Deed or to consent to the entry into the D&C Subcontract;
- (g) **(litigation)**: no Claim against it is current or pending or (to its knowledge) is threatened, which will or is likely to have a material adverse effect upon it or its ability to perform its financial and other obligations under this Deed, the D&C Subcontractor Documents, or any other Project Document to which it is a party;
- (h) **(Insolvency Event)**: no Insolvency Event has occurred in respect of it;
- (i) **(accounts)**: in respect of its accounts:
 - (1) its most recent consolidated audited (if the requirement for auditing is applicable) accounts give a true and fair view of its and its subsidiaries' state of affairs as at the date to which they relate and the results of its and its subsidiaries' operations for the accounting period ended on such date;
 - (2) there has been no material adverse change in its or its subsidiaries' state of affairs since such date that will or is likely to have a material adverse effect upon it or its ability to perform its financial and other obligations under this Deed, the D&C Subcontractor Documents, or any other Project Document to which it is a party; and
 - (3) such accounts have been prepared in accordance with the Corporations Act and accounting principles and practices generally accepted in Australia consistently applied, except to the extent of departures from such principles and practices disclosed in such accounts;
- (j) **(no default)**:
 - (1) no default has occurred under any document or agreement binding on it or its assets which relates to financial indebtedness; and
 - (2) nothing else has occurred,which, with the giving of notice or lapse of time, constitute an event of default, cancellation, prepayment event (pursuant to a bona fide right to exercise prepayment) or similar event (whatever called) under any such document or agreement, would have a Material Adverse Effect;
- (k) **(no immunity)**: neither it nor any of its assets enjoys any immunity from set off, suit or execution; and
- (l) **(own investigations)**: in entering into this Deed, the D&C Subcontractor Documents to which it is a party, and any other Project Document to which it is a party it relied upon its own investigations and has not relied upon any representation or warranty about its subject matter by the State, Project Co or any other person unless in respect of Project Co or any other person, other than the State or any of its Associates, it is expressly permitted to do so in accordance with a Project Document to which it is a party.

5 Undertakings of the D&C Subcontractor Parties

5.1 Undertakings

The D&C Subcontractor Parties each undertake to the State as follows:

- (a) **(notification of Default Event)**: in the case of the D&C Subcontractor, it will notify the State of any Default Event promptly after it gives a Termination Notice or a Suspension Notice in respect of that Default Event in accordance with the D&C Subcontract;
- (b) **(documents in relation to Default Event)**: in the case of the D&C Subcontractor, it will promptly give the State a copy of all documents issued by the D&C Subcontractor to Project Co in relation to a Default Event;
- (c) **(no amendment without consent)**: it will not:
 - (1) make or permit any amendment, replacement of, or addition to;
 - (2) subject to clause 6.2, terminate, surrender, rescind, or accept repudiation of;
 - (3) except in accordance with this Deed, permit the novation, assignment or substitution of any party's rights, obligations, or interest in; or
 - (4) allow any express waiver of its material rights and obligations under, a D&C Subcontractor Document without the consent of the State, provided that the State will not withhold its consent where the State has given, or is required to give, an equivalent consent under the Project Agreement;
- (d) **(deed of accession)**: it will not novate, assign or substitute any of its rights, obligations or interest in a D&C Subcontractor Document without first procuring that the proposed novatee, assignee or substitute executes a deed in favour of the State (in form and substance approved by the State) pursuant to which the novatee, assignee or substitute agrees to accept and be bound by this Deed as if it were the D&C Subcontractor or the Parent Guarantors (as the case may be);
- (e) **(attend meetings and inspections)**: it will (when reasonably requested by the State):
 - (1) attend meetings with the State or any of its Associates;
 - (2) provide the State, any of its Associates and other authorised personnel (including the Independent Reviewer) with:
 - (A) in the case of the D&C Subcontractor, full access to the Site to the extent provided in the Project Agreement and to the extent that the D&C Subcontractor has access or is granted access under the D&C Subcontract; and
 - (B) any other information, records or documents that the State, any of its Associates (acting reasonably) or the Independent Reviewer require in relation to the carrying out of the performance of the obligations under or compliance with the D&C Subcontract or any information required by the State to comply with requests from the Victorian Auditor-General; and
 - (3) in the case of the D&C Subcontractor, to the extent provided in the Project Agreement, permit the State and any of its Associates to



attend all tests and inspections to be carried out by the D&C Subcontractor in connection with the Project; and

- (f) **(access to records)**: in the case of the D&C Subcontractor, at the request of the State (acting reasonably), the D&C Subcontractor will:
- (1) permit the State and any of its Associates to inspect all records, reports, plans, programs, specifications, and technical documents prepared or kept by the D&C Subcontractor in relation to the performance of its obligations under the D&C Subcontract or otherwise relating to the Project; and
 - (2) supply the State and any of its Associates with a copy of any such report or document which they may require from time to time.

5.2 State access to Site

When entering the Site in accordance with clause 5.1(e)(2)(A), the State agrees to comply with, and ensure that its Associates and the authorised personnel comply with, clause 16.3 (*State's right to enter, inspect and test*) of the Project Agreement.

5.3 Appointment of D&C Subcontractor as principal contractor

In respect of the Licensed Construction Areas, upon Financial Close and up to and including the termination of the last Construction Licence in connection with the D&C Activities:

- (a) **(appointment)**: the State appoints John Holland Pty Ltd (**John Holland**) as Principal Contractor and authorises John Holland to manage or control the Licensed Construction Areas to the extent necessary to discharge the duties of a Principal Contractor under the OHS Legislation;
- (b) **(acceptance of appointment)**: John Holland accepts the appointment by the State as Principal Contractor, and agrees:
 - (1) to comply with all the obligations of; and
 - (2) to manage or control the Licensed Construction Areas to the extent necessary to discharge its duties as,
a Principal Contractor under the OHS Legislation; and
- (c) **(Revised appointment)**: John Holland accepts any revised appointment as Principal Contractor that may be necessary as a result of a Change in Mandatory Requirements the subject of a Modification Order.

6 Right to cure before termination of the D&C Subcontract

6.1 State's cure rights

- (a) **(Provide State with notices)**: The D&C Subcontractor must give the State:
 - (1) Default Event Notices; and
 - (2) State Cure Notices,as required by clause 6.2.



- (b) **(State Cure Notice)**: On receiving a State Cure Notice, and subject to the Finance Direct Deed, the State may (but is not obliged to) take steps to:
- (1) remedy, or procure the remedy of, that Default Event; or
 - (2) if the Default Event is not capable of remedy, commence and continue to perform the obligations of Project Co under the D&C Subcontract.

6.2 Termination or suspension with cause

The D&C Subcontractor may only exercise a right under the D&C Subcontract to terminate, rescind, accept the repudiation of, or (subject to clause 6.3) suspend the performance of any or all of its obligations under the D&C Subcontract if:

- (a) **(prior notice)**: the D&C Subcontractor has given to the State prior notice setting out details of the Default Event giving rise to that proposed exercise in accordance with clause 6.4 **(Default Event Notice)**;
- (b) **(expiration of remedy period)** any remedy period available to the Financiers in respect of the Default Event under the D&C Subcontractor Consent Deed has expired without a remedy being achieved;
- (c) **(State cure notice)**: the D&C Subcontractor has given notice to the State **(State Cure Notice)** confirming that any remedy period available to the Financiers in respect of the Default Event under the D&C Subcontractor Consent Deed has expired without a remedy being achieved; and
- (d) **(Default Event remedy)**: where:
 - (1) the Default Event is capable of remedy within 20 Business Days after the date on which the State received the State Cure Notice, the Default Event has not been remedied within that 20 Business Day period;
 - (2) the Default Event is capable of remedy within a period longer than 20 Business Days after the date on which the State received the State Cure Notice, the State (or an Additional Obligor or Receiver appointed under clause 7) has not commenced remedying the Default Event within that 20 Business Day period or, having commenced remedying, has not continued to diligently pursue that remedy;
 - (3) the Default Event is not capable of remedy and the Default Event Notice contains a claim for reasonable compensation for the Default Event, Project Co or the State (or another person on behalf of either of them) has not paid or otherwise provided that compensation to the D&C Subcontractor:
 - (A) to the extent that the relevant amount of compensation has been referred to dispute resolution under clauses 9 to 10, within 20 Business Days after that dispute is resolved; or
 - (B) otherwise within 20 Business Days after the date on which the State received the State Cure Notice;
 - (4) the Default Event is not capable of remedy and the Default Event Notice does not contain a claim for reasonable compensation for the Default Event, the State (or an Additional Obligor or Receiver appointed under clause 7) does not commence and continue to perform Project Co's obligations under the D&C Subcontract within 20 Business Days after the date on which the State received the State Cure Notice; or



- (5) the State notifies the D&C Subcontractor that it elects not to remedy, or procure the remedy of, the Default Event.

6.3 Early suspension of D&C Subcontractor's obligations

If:

- (a) **(right to suspend)**: the D&C Subcontractor, but for the operation of clause 6.2, would have a right to suspend the performance of its obligations under the D&C Subcontract;
- (b) **(State Cure Notice)**: the D&C Subcontractor has issued a State Cure Notice to the State with respect to that Default Event;
- (c) **(dispute, non-payment or expired period)**: either:
- (1) the State has not undertaken to pay to the D&C Subcontractor the amounts payable under the D&C Subcontract within 10 Business Days of:
- (A) subject to clause 6.3(c)(2), the date of receipt of the State Cure Notice; or
- (B) if the State refers the amounts in the Default Event Notice to dispute resolution under clauses 9 to 10, the dispute being determined; or
- (2) without limiting clause 6.2(d), the State has undertaken to pay the D&C Subcontractor amounts payable under the D&C Subcontract for a stated period and that period has expired without the State paying such amounts or without that period being extended by the State (acting reasonably); and
- (d) **(not remedied)**: the Default Event has not otherwise been remedied,

then the D&C Subcontractor may suspend performance of its obligations under the D&C Subcontract.

6.4 D&C Subcontractor Statements

As part of any Default Event Notice, the D&C Subcontractor must include a statement of:

- (a) **(all amounts due and payable)**: all amounts due and payable to the D&C Subcontractor under the D&C Subcontract on or before the date of the Default Event Notice but remaining unpaid at such date;
- (b) **(Claim)**: the nature and, to the best of the D&C Subcontractor's knowledge and belief, the amount of any Claim asserted by the D&C Subcontractor arising in connection with the D&C Subcontract against Project Co; and
- (c) **(Intention to terminate)**: where the D&C Subcontractor intends to terminate the D&C Subcontract due to a default or breach of condition of a non-financial nature or intends to claim damages or to seek some other form of relief:
- (1) the provisions of the D&C Subcontract alleged to have been breached or not fulfilled;
- (2) sufficient information to enable the State to identify the material facts;
- (3) the steps reasonably required to remedy the Default Event (if reasonably capable of remedy);
- (4) the time within which the specified steps can reasonably be expected to be taken;



- (5) if applicable, the amount of damages claimed and the manner in which they have been calculated; and
- (6) if applicable, the other relief to be sought,

(being the **D&C Subcontractor Statement**).

6.5 Warranty of accuracy and waiver

The D&C Subcontractor:

- (a) (**warranty**): warrants to the State that each D&C Subcontractor Statement will, subject to unintended error which the D&C Subcontractor agrees to rectify, be a true, complete and accurate statement of the amounts or other relief to which the D&C Subcontractor considers itself entitled; and
- (b) (**waiver**): waives and abandons all Claims then known or which ought reasonably to have been known to the D&C Subcontractor arising in connection with the D&C Subcontract prior to the date of the Default Event Notice other than the claims disclosed in the D&C Subcontractor Statement.

6.6 Verification of D&C Subcontractor Statements

The State may appoint one or more independent chartered accountants, technical advisers or other appropriately qualified persons to verify (at the cost of Project Co) a D&C Subcontractor Statement, and the D&C Subcontractor must, subject to such persons executing an appropriate confidentiality agreement as the D&C Subcontractor may reasonably request, permit such persons to have access to and to make copies of all records, documents, data and accounting and other information not subject to legal (including, without limitation, solicitor and own client) and other professional privilege which is reasonably required with a view to confirming the accuracy and completeness of such D&C Subcontractor Statement.

6.7 D&C Subcontractor Statements to be conclusive evidence

- (a) (**Reliance**): Each Statement Beneficiary is entitled to rely on a D&C Subcontractor Statement for the purpose of determining the extent of the matters occurring prior to a Default Event which are required to be remedied and the requirements to effect the remedy of that Default Event by a Statement Beneficiary.
- (b) (**Conclusive evidence**): A D&C Subcontractor Statement will, to the extent provided for in clause 6.4 and 6.5, be conclusive evidence in favour of any Statement Beneficiary that the D&C Subcontractor has waived and abandoned all Claims then known or which ought reasonably to have been known to the D&C Subcontractor arising in connection with the D&C Subcontract prior to the date of the Default Event Notice other than the Claims disclosed in the D&C Subcontractor Statement.
- (c) (**Claims against Project Co**): Clauses 6.5(b), 6.7(a) and 6.7(b) are without prejudice to the rights of the D&C Subcontractor to pursue any Claims against Project Co following the end of the Step-In Period or termination of the D&C Subcontract.
- (d) (**Disputes**): For the avoidance of doubt, a D&C Subcontractor Statement will not prevent any Statement Beneficiary from disputing the amount of any Claim or other relief sought by the D&C Subcontractor or the existence of any default by Project Co under the D&C Subcontract. In the case of any such dispute:



- (1) the time periods set out in clause 6.2(d) will continue to apply to those amounts and obligations (if any) which are not in dispute;
- (2) the dispute must be referred to dispute resolution under clauses 9 to 10; and
- (3) during the period of dispute resolution, all parties must continue to perform their obligations under this Deed and the Project Documents.

7 Step-In by the State

7.1 Step-In Right

- (a) **(Exercise):** Following receipt of a State Cure Notice or if the State is entitled to exercise any of the rights referred to in clause 3.2 or otherwise as permitted under any Project Document, the State may:
- (1) if permitted under the State Security and the Finance Direct Deed, appoint a Receiver over Project Co or any or all of its assets (including the D&C Subcontractor Documents);
 - (2) itself enter into possession of any or all of the assets of Project Co;
 - (3) take such other action as it is permitted to take under the terms of the Project Documents; or
 - (4) by notice to the D&C Subcontractor (**Additional Obligor Step-In Notice**), procure that an Additional Obligor assumes jointly and severally with Project Co all of Project Co's rights and obligations under the D&C Subcontractor Documents,
- (each a **Step-In Right**).
- (b) **(Step-In Period):** The period from the date on which the D&C Subcontractor receives notice of the exercise of any Step-In Right to the earliest of:
- (1) the Additional Obligor Step-Out Date;
 - (2) the date on which the D&C Subcontractor terminates the D&C Subcontract;
 - (3) the date of any transfer under clause 8;
 - (4) the date which the State has notified the D&C Subcontractor will be the date that the State ceases to exercise its Step-In Rights; and
 - (5) any other date on which the State ceases to continue to exercise its Step-In Rights,
- is the **Step-In Period**.
- (c) **(Acknowledgment):** The D&C Subcontractor Parties each acknowledge that the exercise by the State of a Step-In Right in the manner contemplated by this Deed will not of itself contravene the D&C Subcontractor Documents, or constitute a Default Event under the D&C Subcontract or entitle a D&C Subcontractor Party to exercise any right (including termination) under a D&C Subcontractor Document.



7.2 Step-In by the State

- (a) **(Rights):** Subject to the Finance Direct Deed, the State may at any time during a Step-In Period, exercise all or any of its rights and carry out all or any of the obligations of Project Co in connection with the D&C Subcontractor Documents, as if it were Project Co to the exclusion of Project Co.
- (b) **(No Liability):** Project Co and the D&C Subcontractor Parties each agree that, subject to clause 7.3(b):
- (1) none of the State or its Associates will have any Liability; and
 - (2) none of Project Co or the D&C Subcontractor Parties will be entitled to make, continue or enforce any Claim against the State or any of its Associates,

arising in connection with the D&C Subcontractor Documents or this Deed by reason only of the State or any of its Associates exercising any of Project Co's rights, or performing any of Project Co's obligations under the D&C Subcontractor Documents other than, and then only to the extent of, Liability for fraudulent, reckless, unlawful or malicious acts or omissions, or wilful misconduct of the State or any State Associate.

7.3 Step-In using Additional Obligor

- (a) **(Assumption Date):** If clause 7.1(a)(4) applies, the Additional Obligor will become a party to the D&C Subcontractor Documents on the date on which the Additional Obligor Step-In Notice is given to the D&C Subcontractor or such later date as the D&C Subcontractor and the State may agree (**Assumption Date**).
- (b) **(Rights and obligations of Additional Obligor):** During a Step-In Period in respect of which the State has exercised a Step-In Right under clause 7.1(a)(4):
- (1) subject to clause 7.3(b)(2), the Additional Obligor and Project Co will be jointly and severally:
 - (A) entitled to exercise the rights of Project Co under the D&C Subcontractor Documents (excluding any accrued rights of Project Co in respect of any damage, loss, cost, charge, expense, outgoing or payment to the extent that the rights arose prior to the Assumption Date) (**Project Co's Rights**); and
 - (B) liable for the performance or non-performance of all Project Co's obligations under the D&C Subcontractor Documents arising on or after the Assumption Date except as released in accordance with clause 7.3(e);
 - (2) as between Project Co, the D&C Subcontractor Parties and the Additional Obligor, only the Additional Obligor is authorised to deal with the D&C Subcontractor Parties and to exercise Project Co's Rights;
 - (3) Project Co acknowledges that it will be legally bound by all the acts and omissions of the Additional Obligor in so dealing with the D&C Subcontractor Parties and in exercising Project Co's Rights;
 - (4) the Additional Obligor will be bound by any earlier decision, directions, approvals, notices or consents given or made prior to the Assumption Date;



- (5) clause 14 will apply to the D&C Subcontractor Parties and the Additional Obligor as if the address and email address of the Additional Obligor (as notified to the D&C Subcontractor Parties and Project Co) were set out in addition to those of Project Co; and
 - (6) the D&C Subcontractor Parties will owe their respective obligations under the D&C Subcontractor Documents to Project Co and the Additional Obligor jointly but the performance by a D&C Subcontractor Party in favour of either Project Co or the Additional Obligor will be a good discharge of the relevant obligations under the D&C Subcontractor Documents.
- (c) **(No Liability)**: Without prejudice to the D&C Subcontractor's rights under clauses 6.2 and 6.3, the Additional Obligor will have no obligation to, and no Liability in respect of, remedying any default or breach of Project Co under the D&C Subcontractor Documents arising prior to the Assumption Date.
- (d) **(Additional Obligor Step-Out Date)**: The Additional Obligor may at any time give the D&C Subcontractor notice terminating the Additional Obligor's rights and obligations under the D&C Subcontractor Documents (without affecting the continuation of Project Co's obligations or liabilities towards the D&C Subcontractor Parties under the D&C Subcontractor Documents). Such notice must specify the date on which it takes effect, which must be:
- (1) at least 30 days after the date of the notice; or
 - (2) if a Novation Notice has been given, the Novation Notice Date,
- (Additional Obligor Step-Out Date)**.
- (e) **(Release)**: On and from the Additional Obligor Step-Out Date, as between the D&C Subcontractor Parties and the Additional Obligor only, each of the D&C Subcontractor Parties and the Additional Obligor will be released from all obligations under the D&C Subcontractor Documents (except for those obligations owed to each other which have arisen during the relevant Step-In Period), whether or not a Claim has been made in respect of those obligations or they have not fallen due to be performed or have not been performed. For the avoidance of doubt, on and from the Additional Obligor Step-Out Date, the D&C Subcontractor Parties will continue to owe their obligations under the D&C Subcontractor Documents to:
- (1) Project Co; or
 - (2) if a Novation Notice has been given, to the Substitute Party.

7.4 Indemnity

Project Co must indemnify the State, its Associates and any Additional Obligor against any Claim or Liability (including any Claim made by, or Liability to, a third party) the State, any of its Associates or any Additional Obligor suffers or incurs arising in connection with taking any action under clause 7.2 or clause 7.3, except to the extent that such Claim or Liability is caused or contributed to by any of the events set out in clause 42.11 (*Limits on Project Co liability to indemnify and release*) of the Project Agreement.

8 State's option to novate to the State or third party

8.1 Option

- (a) **(Novation Notice)**: The State may require a novation of the D&C Subcontractor Documents upon the termination of the Project Agreement by giving a notice **(Novation Notice)** to the D&C Subcontractor Parties. The Novation Notice must specify the person to whom the State intends to novate the D&C Subcontractor Documents whether this be the State or another person **(Substitute Party)**.
- (b) **(D&C Subcontractor's obligations to continue)**: If the State issues a Novation Notice then (without prejudice to the D&C Subcontractor's rights under clauses 6.2 and 6.3) the D&C Subcontractor Parties, until the Novation Notice Date, must continue to perform their respective obligations under the D&C Subcontractor Documents.
- (c) **(D&C Subcontractor to continue work)**: If the D&C Subcontractor has exercised any rights it has to suspend the performance of any of its obligations under the D&C Subcontract, the D&C Subcontractor must recommence performance of those obligations from the Novation Notice Date or the date on which the cause of the suspension is remedied (whichever is the earlier).
- (d) **(Novation Notice not a Default Event)**: The D&C Subcontractor Parties each acknowledge that the giving of a Novation Notice by the State will not of itself contravene, or constitute a Default Event under, a D&C Subcontractor Document, or entitle the D&C Subcontractor Party to exercise any power (including termination) under it.

8.2 Novation to Substitute Party

- (a) **(Effect of novation)**: Subject to clause 8.3, with effect from the Novation Notice Date:
 - (1) the Substitute Party will assume (and if the Substitute Party is not the State, the State will procure that the Substitute Party assumes):
 - (A) any obligation of Project Co under the D&C Subcontract arising before the Novation Notice Date insofar as it relates to the payment of an amount of money that:
 - 1) is due and payable under the terms of the D&C Subcontract; and
 - 2) is not the subject of a dispute under the D&C Subcontract (or is the subject of a dispute under the D&C Subcontract in which case the Substitute Party will, on the determination of such dispute, assume such obligations in accordance with that determination); and
 - (B) the obligations of Project Co under the D&C Subcontractor Documents arising on and from the Novation Notice Date (including obligations in relation to the payment of amounts which become due and payable in respect of work performed before the Novation Notice Date) subject to any amendments to the D&C Subcontractor Documents agreed in accordance with clause 8.2(a)(6);



- (2) without prejudice to any then accrued rights against Project Co (other than termination), any D&C Subcontractor's right to suspend under the D&C Subcontract which exists at the Novation Notice Date will be of no further effect;
 - (3) subject to any amendments agreed to the D&C Subcontractor Documents in accordance with clause 8.2(a)(6), the Substitute Party will have all the rights of Project Co under the D&C Subcontractor Documents (excluding any accrued rights of Project Co in respect of any damage, loss, cost, charge, expense, outgoing or payment to the extent that those rights arose prior to the Novation Notice Date and are the subject of any unresolved dispute referred to in clause 8.2(a)(1)(A)2));
 - (4) subject to clause 8.2(a)(3) and any amendments agreed to the D&C Subcontractor Documents in accordance with clause 8.2(a)(6), the D&C Subcontractor Parties will:
 - (A) be bound by and must comply with the provisions of the D&C Subcontractor Documents as if the Substitute Party were Project Co; and
 - (B) be entitled to any extensions of time and other entitlements which accrued to the D&C Subcontractor prior to the Novation Notice Date;
 - (5) Project Co is released from all of its obligations and Liabilities under the D&C Subcontractor Documents, excluding any accrued obligations or Liabilities of Project Co to the extent that those accrued obligations or Liabilities:
 - (A) arose in connection with events occurring prior to the Novation Notice Date; and
 - (B) are not obligations and Liabilities assumed by the Substitute Party under clause 8.2(a)(1);
 - (6) the D&C Subcontractor Parties and the Substitute Party will promptly negotiate in good faith, any amendments to the D&C Subcontractor Documents that are necessary to reflect the termination of the Project Agreement; and
 - (7) for the avoidance of doubt, any caps on Liability in the D&C Subcontractor Documents will continue to apply, but so that any Liability of the D&C Subcontractor Parties incurred to Project Co prior to the Novation Notice Date is taken into account in respect of any ongoing Liability of the D&C Subcontractor Parties to the Substitute Party.
- (b) **(No set off):** Neither D&C Subcontractor Party is entitled to exercise any right of set off, deduction, abatement or counterclaim against the Substitute Party if, and to the extent that, such right arose prior to the Novation Notice Date.
- (c) **(Novation Deed):** Subject to clause 8.3(b), Project Co, the D&C Subcontractor Parties and the Substitute Party must enter into an agreement in form and substance reasonably requested by the Substitute Party reflecting the novation of the D&C Subcontractor Documents as contemplated in clause 8.2(a) and take such other action as is required to vest in the Substitute Party full legal and equitable title to any retention account, bank guarantee, performance bond, letter of credit or other security held by Project Co to secure the obligations of a D&C Subcontractor Party under the D&C Subcontractor Document.



- (d) **(Attorney):** For valuable consideration, Project Co and the D&C Subcontractor Parties each irrevocably appoint the State, on its behalf and in its name or otherwise, as its attorney to do anything which Project Co or a D&C Subcontractor Party is obliged to do (but has not done within 5 Business Days of request) under clause 8.2(c). Each of Project Co and the D&C Subcontractor Parties ratifies and confirms and agrees to ratify and confirm whatever any such attorney lawfully does in the exercise of the power of attorney in this clause 8.2(d).

8.3 Novation to a Substitute Party other than the State

- (a) **(Information to be provided by the State):** If the State gives a Novation Notice that states that Project Co must novate the D&C Subcontract Documents to a Substitute Party other than the State or a State Associate, the State must, at the time it gives the Novation Notice, provide to the D&C Subcontractor Parties the following particulars of the Substitute Party:
- (1) its name, place of incorporation and identity of shareholder(s) (including, unless a shareholder is listed on a securities exchange, the ultimate shareholders);
 - (2) if available, its most recent published audited accounts; and
 - (3) sufficient particulars of the finance available to the Substitute Party to enable each D&C Subcontractor Party to decide whether to grant its consent to the Substitute Party.
- (b) **(Consent by the D&C Subcontractor):** A novation to, and the giving of a Novation Notice with respect to, a Substitute Party other than the State or a State Associate in accordance with this clause 8 will only be effective, and the D&C Subcontractor Parties will only be required to enter into a novation agreement under clause 8.2(c), if the D&C Subcontractor Parties each consent to that novation (such consent not to be unreasonably withheld or delayed) or are deemed to have consented in accordance with clause 8.3(d).
- (c) **(Further information):** The State must as soon as practicable supply the D&C Subcontractor Parties with such additional information to that provided under clause 8.3(a) as the D&C Subcontractor Parties each reasonably require to enable it to decide whether to grant consent under clause 8.3(b), and the D&C Subcontractor Parties must each consider such information expeditiously and inform the State promptly if it reasonably requires further information.
- (d) **(Deemed consent):** The D&C Subcontractor Parties' consent to the novation will be deemed to be given if the D&C Subcontractor Parties have not notified the State under clause 8.3(e)(2) within 15 Business Days of the later of:
- (1) the receipt of the Novation Notice; and
 - (2) the receipt of the State's response to the D&C Subcontractor Parties' request for information under clause 8.3(c).
- (e) **(Unreasonably withholding consent):** A D&C Subcontractor Party is not entitled to refuse consent to the novation unless:
- (1) the grounds for refusal are reasonable and are based on:
 - (A) the proposed novation deed referred to in clause 8.2(c) for the Substitute Party to assume the rights and obligations of Project Co under the D&C Subcontractor Documents not being effective to substitute the Substitute Party for Project Co;



- (B) the Substitute Party not having the legal capacity, power and authorisation to become a party to and perform the obligations of Project Co in accordance with the D&C Subcontractor Documents including any necessary authorisations and consents;
 - (C) the technical competence or financial standing of the Substitute Party being insufficient for it to meet the obligations of Project Co in accordance with the D&C Subcontractor Documents; or
 - (D) a D&C Subcontractor Party being placed in breach of any Laws by the proposed novation; and
- (2) it has notified the State of such reasons.
- (f) **(If the D&C Subcontractor withholds consent):** If either D&C Subcontractor Party withholds its consent to a Novation Notice under this clause 8.3, this will not prejudice the ability of the State to give one or more subsequent Novation Notices, and information under clause 8.3(a), containing changed particulars relating to the same Substitute Party or particulars relating to another Substitute Party.

8.4 Accrued obligations and liabilities

Clause 8.2 does not operate to:

- (a) **(State not to assume):** require the State to assume any obligations or Liabilities arising from, or which are required to be performed in connection with the D&C Subcontractor Documents prior to the Novation Notice Date unless expressly required to do so in clause 8.2; or
- (b) **(Release Project Co):** release Project Co from such obligations or Liabilities unless expressly provided for in clause 8.2.

9 Dispute Resolution

9.1 Procedure for resolving disputes

- (a) **(Disputes to be resolved):** Any dispute arising under this Deed must be resolved by the parties to that dispute (**Disputing Parties**) in accordance with clause 9 and clause 10.
- (b) **(Procedure):** The procedure that is to be followed to resolve a dispute is as follows:
 - (1) firstly, the dispute must be the subject of negotiation as required by clause 9.2;
 - (2) secondly, if the dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 9.2(c)(1) the Disputing Parties may agree that the dispute will be referred to an expert for determination in accordance with clauses 9.4 to 9.9 or to arbitration under clause 10; and
 - (3) thirdly, if:
 - (A) the dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in



- clause 9.2(c)(1) and irrespective of whether the Disputing Parties failed to meet as required by that clause or whether having so met the Disputing Parties failed to agree whether the Dispute should be referred to an expert or to arbitration within 20 Business Days after the expiration of the period for negotiation referred to in clause 9.2(c)(1);
- (B) the dispute has been referred to expert determination and a determination is not made by the expert within 30 days after the expert's acceptance of appointment; or
 - (C) the dispute is referred to expert determination and a notice of dissatisfaction is given in accordance with clause 9.6(a),
- (4) then the dispute must be referred to arbitration in accordance with clause 10.

9.2 Negotiation

- (a) **(Notification)**: If a dispute arises then a party may give notice to each other Disputing Party requesting that the dispute be referred for resolution by negotiation between the Chief Executive Officers (or equivalent) of the Disputing Parties (**Representatives**).
- (b) **(Contents of Notice)**: A notice under clause 9.2(a) must:
 - (1) state that it is a notice under this clause 9; and
 - (2) include or be accompanied by particulars of the matters which are the subject of the dispute.
- (c) **(Attempt to resolve Dispute)**: If a dispute is referred for resolution by negotiation under clause 9.2(a), then:
 - (1) the Representatives must meet and attempt in good faith to resolve the dispute (in whole or in part) within 10 Business Days of the date on which the notice under clause 9.2(a) is received (or such later date as the Disputing Parties may agree); and
 - (2) any agreement reached between the Representatives will be reduced to writing, signed by or on behalf of each Disputing Party and will be contractually binding on the Disputing Parties.

9.3 Expert determination

If:

- (a) **(dispute unresolved by Representatives)**: a dispute which has been referred to the Representatives for negotiation in accordance with clause 9.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 9.2(c)(1); and
- (b) **(referral to expert)**: the Disputing Parties agree within 20 Business Days after the expiration of the period for negotiation referred to in clause 9.2(c)(1), that the dispute be referred to an expert for determination,

then those parts of the dispute which remain unresolved will be referred to an expert for determination under clauses 9.4 to 9.9. For the avoidance of doubt, a dispute may only be referred to an expert for determination by agreement of the Disputing Parties.



9.4 Selection of expert

- (a) **(Exchange of lists of 3 preferred experts):** Within 7 Business Days after the date on which the Disputing Parties agree to refer a dispute to an expert for determination under clause 9.3, the Disputing Parties must exchange lists of 3 persons (in order of preference) who, if appointed, would satisfy the requirements of clause 9.4(d), from whom the expert is to be chosen.
- (b) **(Appointment of person who appears on both lists):** Any person who appears on the list of all Disputing Parties exchanged under clause 9.4(a) will be appointed as the expert to determine a dispute and if more than one person appears on the list of all Disputing Parties, the person given the highest order of priority by the party who gave the notice under clause 9.2(a) will be appointed.
- (c) **(Appointment if no person appears on both lists):** If no person appears on the list of all the Disputing Parties, the party which gave the notice under clause 9.2(a) must procure:
- (1) the president (or the senior non-executive officer, howsoever described) of the institute or governing body for the technical or professional discipline the subject of the relevant dispute to nominate the expert, having regard to, but not being bound by, those persons proposed by the Disputing Parties under clause 9.4(a); or
 - (2) if there is no governing body for the technical or professional discipline the subject of the relevant dispute or the Disputing Parties cannot agree the technical or professional discipline relevant to the dispute or such governing body advises that it will not nominate an expert, the Australian Centre for International Commercial Arbitration to nominate a person to act as the expert, having regard to, but not being bound by, those persons proposed by the Disputing Parties under clause 9.4(a),
- within 7 Business Days of the exchange of notices under clause 9.4(a).
- (d) **(Appropriate skills):** It is the intention of the parties that the expert appointed to determine a dispute will be an independent person with appropriate skills having regard to the nature of the matters in dispute.
- (e) **(No entitlement to challenge appointment):** No Disputing Party will be entitled to challenge the appointment of an expert under this clause 9.4 on the basis that the expert does not satisfy the requirements of clause 9.4(d).
- (f) **(Not an arbitration agreement):** Any agreement for expert determination under this Deed will not constitute an arbitration agreement for the purposes of the *Commercial Arbitration Act 2011 (Vic)*.
- (g) **(Agreement):** Once an expert is appointed, the Disputing Parties must enter into an agreement with the expert on the terms of the Expert Determination Agreement or such other reasonable terms as the expert may require.

9.5 Rules of expert determination

The expert determination process will be administered, and the expert will be required to act, under the terms of the Expert Determination Agreement.

9.6 Expert finding

- (a) **(Notification):** The determination of the expert must be in writing and will be final and binding on the Disputing Parties unless, within 10 Business Days of



receipt of the determination, a Disputing Party gives notice to each other Disputing Party of its dissatisfaction and intention to refer the matter to arbitration in accordance with clause 10.

- (b) **(Amendment to determination):** Upon submission by any Disputing Party, the expert may amend the determination to correct:
 - (1) a clerical mistake;
 - (2) an error from an accidental slip or omission;
 - (3) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
 - (4) a defect in form.

9.7 Liability of expert

- (a) **(Liability of expert):** The Disputing Parties agree:
 - (1) that the expert will not be Liable in connection with the expert determination, except in the case of fraud on the part of the expert; and
 - (2) to indemnify the expert against any Claim or Liability in connection with the expert determination, except in the case of fraud on the part of the expert, in which case a Claim may be made against him or her by any person who is a party to the dispute.
- (b) **(Engagement):** The Disputing Parties will jointly engage the expert services in connection with the expert determination proceedings and each Disputing Party will seek a separate Tax Invoice equal to its share of the cost of the expert.

9.8 Costs

The Disputing Parties must:

- (a) **(own costs):** bear their own costs in connection with the expert determination proceedings; and
- (b) **(engagement):** pay an equal portion of the costs of the expert.

9.9 Proportionate Liability

To the extent permitted by Law, the Expert will have no power to apply or to have regard to the provisions of any proportionate liability legislation which might in the absence of this clause 9.9, have applied to any dispute referred to the Expert in accordance with this clause 9.

10 Arbitration

10.1 Reference to Arbitration

- (a) **(Dispute):** If:
 - (1) a dispute:
 - (A) which has been referred to the Disputing Parties' Representatives for negotiation in accordance with



clause 9.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 9.2(c)(1); and

- (B) the Disputing Parties do not agree to refer the dispute to an expert for determination; or
- (2) in the case of a dispute which the Disputing Parties agree to refer to expert determination under clause 9.3:
 - (A) a determination is not made within 30 days of the expert's acceptance of the appointment; or
 - (B) a notice of dissatisfaction is given in accordance with clause 9.6(a),

then any Disputing Party may notify the other Disputing Parties that it requires the dispute to be referred to arbitration.

- (b) **(Referral):** Upon receipt by a Disputing Party of a notice under clause 10.1(a), the dispute will be referred to arbitration.

10.2 Arbitration

- (a) **(ACICA Rules):** Arbitration in accordance with this clause 10 will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Rules) as current at the date the Dispute is referred to arbitration and as otherwise set out in this clause 10 with this clause 10 having priority to the extent of any inconsistency.
- (b) **(Seat):** The seat of the arbitration will be Melbourne, Victoria.
- (c) **(Language):** The language of the arbitration will be English.

10.3 Appointment of arbitrator

The parties will endeavour to agree on the arbitrator or arbitrators (if the parties agree to appoint three arbitrators), but if no such agreement is reached within 14 Business Days of the dispute being referred to arbitration in accordance with clause 10.1(b), the arbitrator or arbitrators will be appointed in accordance with the ACICA Rules.

10.4 General Principles for conduct of arbitration

- (a) **(Conduct of arbitration):** The Disputing Parties agree that:
 - (1) they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any dispute;
 - (2) any arbitration conducted in accordance with this clause 10 will not necessarily mimic court proceedings of the seat of the arbitration or the place where hearings take place (if different), and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and
 - (3) in conducting the arbitration, the arbitrator must take into account the matters set out in clauses 10.4(a)(1) and 10.4(a)(2).
- (b) **(Evidence in writing):** All evidence in chief must be in writing unless otherwise ordered by the arbitrator.
- (c) **(Evidence and discovery):** The rules for evidence and discovery will be the IBA Rules on the Taking of Evidence in International Arbitration current at the



date of arbitration (or if there are no current rules, the most recent version of those rules).

- (d) **(Oral hearing):** The oral hearing must be conducted as follows:
- (1) any oral hearing must take place in Melbourne, Victoria and all outstanding issues must be addressed at the oral hearing;
 - (2) the date and duration of the oral hearing must be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in clause 10.4(a) when determining the duration of the oral hearing;
 - (3) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
 - (4) the oral hearing must be conducted on a stop clock basis with the effect that the time available to the Disputing Parties must be split equally between the Disputing Parties so that each party has the same time to conduct its case unless, in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the Disputing Parties;
 - (5) not less than 28 days prior to the date fixed for oral hearing each of the Disputing Parties must give notice of those witnesses (both factual and expert) of each other Disputing Party that it wishes to attend the hearing for cross examination;
 - (6) in exceptional circumstances the arbitrator may amend the date of hearing and extend the time for the oral hearing set in accordance with clause 10.4(d)(2);
 - (7) a Disputing Party will not be bound to accept the written evidence of a witness submitted on behalf of an opposing Disputing Party which is not challenged in cross examination; and
 - (8) each Disputing Party is expected to put its case on significant issues in cross examination of a relevant witness called by the other Disputing Party or, where it seeks to challenge the evidence of a witness not called for cross-examination by reference to other evidence, to identify that evidence in its written opening submissions so that the other Disputing Party may know the nature of and basis for the challenge to the witness' written evidence.
- (e) **(Experts):** Unless otherwise ordered each Disputing Party may only rely upon one expert witness in connection with any recognised area of specialisation.

10.5 Proportional liability

To the extent permitted by Law, the arbitrator will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this clause 10.5, have applied to any dispute referred to arbitration in accordance with this clause 10.

10.6 Extension of ambit of arbitration proceedings

- (a) **(Extending Disputes):** Where:
- (1) a dispute between the Disputing Parties to this Deed is referred to arbitration in accordance with this clause 10; and



- (2) there is some other dispute also between the Disputing Parties to and in accordance with this Deed (whenever occurring),

the arbitrator may, upon application being made to the arbitrator by one or more of the Disputing Parties at any time before a final award is made in relation to the first-mentioned dispute, make an order directing that the arbitration be extended so as to include the other dispute.

- (b) **(Arbitrator's order)**: An arbitrator may make an order in accordance with clause 10.6(a) on such terms and conditions (if any) as the arbitrator thinks fit.

10.7 Award final and binding

- (a) **(Final and binding)**: Subject to clause 10.7(b), any award will be final and binding on the Disputing Parties.
- (b) **(Appeal)**: Each Disputing Party consents to any appeal to a court where that appeal is made under the *Commercial Arbitration Act 2011* (Vic) on a question of law arising in connection with an arbitral award made in accordance with this clause 10.

10.8 Continue to perform

Notwithstanding the existence of a dispute, each Disputing Party must continue to carry out its obligations in accordance with this Deed.

10.9 Governing law of arbitration agreement

The Law governing this arbitration agreement is the law of Victoria, Australia.

10.10 Interlocutory relief

Clause 9 and clause 10 do not prevent a Disputing Party from seeking urgent interlocutory relief from a court of competent jurisdiction where, in that Disputing Party's reasonable opinion, that action is necessary to protect that Disputing Party's rights.

11 Termination of this Deed

- (a) **(Satisfaction of obligations under the D&C Subcontract)**: This Deed will terminate upon the performance and satisfaction of all of the obligations under the D&C Subcontractor Documents.
- (b) **(Does not affect rights of parties)**: The termination of this Deed does not affect the rights of any party which have accrued to that party before the date of termination.

12 Insurances

- (a) **(Insurances)**: Notwithstanding anything else contained in the D&C Subcontractor Documents or this Deed, the D&C Subcontractor will:
- (1) take out all insurances as are required to be taken out by it under the D&C Subcontract; and



- (2) otherwise comply with all of its obligations in relation to insurance in the D&C Subcontract.
- (b) **(Not to prejudice)**: Project Co and the D&C Subcontractor must each ensure that it does not do or omit to do anything or does not permit anything to be done or omitted to be done whereby any insurance policy required under the D&C Subcontract may be prejudiced.
- (c) **(Void or Voidable)**: If any default occurs by the D&C Subcontractor in effecting or maintaining such insurance policy or if any such insurance policy becomes void or voidable, the State may (but is not obliged to) effect or maintain that Insurance policy at the cost of the D&C Subcontractor or, failing it, Project Co.
- (d) **(State to be covered)**: If required by the Project Agreement, in respect of any insurance contract entered into by the D&C Subcontractor as contemplated by clause 12(a), the D&C Subcontractor must ensure that the State and the State's Associates are specified as a person to whom the insurance cover provided by that contract extends.
- (e) **(All documents, evidence and information)**: Project Co and the D&C Subcontractor must each do all things necessary and provide all documents, evidence and information necessary to enable the State to collect or recover any moneys due or to become due to the State in respect of any insurance policy required under the D&C Subcontract at the cost of the D&C Subcontractor or, failing it, Project Co.
- (f) **(Cancellation, lapse or material change)**: Without prejudice to clauses 12(a) to 12(e), neither Project Co nor the D&C Subcontractor will cause or take any steps to bring about the cancellation, lapse, material change, reduction or any rescinding of any such insurance policy unless it has first obtained the consent of the State.
- (g) **(Notify the State)**: Project Co and the D&C Subcontractor must each immediately notify the State of any cancellation, lapse, material change, reduction, or any rescinding of any such insurance policy, and of the occurrence of any event giving rise to any claim under any such insurance policy in respect of the Project.
- (h) **(Several obligations)**: Notwithstanding clause 1.3(o), but subject to the obligations of Project Co under the terms of the Project Agreement, the obligations of Project Co and the D&C Subcontractor in this clause 12 are several.

13 Goods and Services Tax (GST)

- (a) **(GST exclusive amounts)**: Unless otherwise expressly stated, all amounts referred to in this Deed, the D&C Subcontractor Documents, or any Project Document are exclusive of GST.
- (b) **(GST payable by Supplier)**: If GST becomes payable on any Taxable Supply made by a party (**Supplier**) under or in connection with this Deed:
 - (1) any amount payable or consideration to be provided in accordance with any other provision of this Deed for that supply (**Agreed Amount**) is exclusive of GST;
 - (2) an additional amount will be payable by the party which is the recipient of the Taxable Supply (**Recipient**), equal to the amount of GST payable on that Taxable Supply as calculated by the Supplier in



accordance with the GST Law, payable at the same time and in the same manner as for the Agreed Amount; and

- (3) the Supplier will provide a Tax Invoice to the Recipient in connection with that supply, either at the time expressly set out in any other provision of this Deed or no later than the time at which the Agreed Amount for that Taxable Supply is to be provided in accordance with this Deed. The Recipient is not obliged to pay any amount in accordance with this clause 13(b) unless and until a Tax Invoice is received by the Recipient in connection with the Taxable Supply except where the Recipient is required to issue the Tax Invoice.
- (c) **(Variation in GST payable):** If for any reason, the GST payable by the Supplier in connection with a supply it makes under or in connection with this Deed (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it received from the Recipient under clause 13(b) in connection with that supply, the Supplier will provide a refund or credit to, or will be entitled to receive from, the Recipient (as appropriate) the amount of this variation. Where an adjustment event occurs in relation to a supply and except where the Recipient is required to issue the Adjustment Note:
 - (1) the Supplier will issue an Adjustment Note to the Recipient in connection with that supply within 14 days after becoming aware of that adjustment event occurring; and
 - (2) no additional amount will be payable by the Recipient unless and until an Adjustment Note is received by the Recipient.
- (d) **(GST ceasing to be payable):** No amount is payable by a party in accordance with clause 13(b) or 13(c) to the extent that the GST to which the amount relates has ceased to be payable by or refundable to the Supplier by the Commissioner of Taxation under the GST Law.
- (e) **(Expert determination):** If the Recipient is dissatisfied with any calculation to be made by the Supplier in accordance with this clause 13 the Recipient may, at its own expense and after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the President of the Institute of Chartered Accountants for expert determination, which will be final and binding on all parties (except in the case of manifest error on the face of the expert determination). The expert will act as an expert and not as an arbitrator and must take into account the terms of this Deed, the matters required to be taken into account by the Supplier in accordance with this clause 13 and any other matter considered by the expert to be relevant to the determination. The parties release the expert from any liability in acting as an expert, except in the case of fraud on the part of the expert.
- (f) **(Revenue net of GST):** Any reference in this Deed to price, value, sales, revenue, profit or a similar amount (**Revenue**) is a reference to the GST exclusive component of that Revenue, unless the contrary intention is expressed.
- (g) **(Cost net of GST):** Any reference in this Deed to cost, expense, liability or other similar amount (**Cost**) of a party is a reference to that Cost reduced by the Input Tax Credits to which the party is entitled in respect of such Cost, unless the contrary intention is expressed.
- (h) **(General obligation):** Each party agrees to do all things, including providing Tax Invoices and other documentation, that may be necessary or desirable to enable or assist the other party in determining its GST payable on any supply made by that other party in connection with this Deed, or any input tax credits,



adjustments or refunds in relation to any amount of GST paid or payable in connection with any supply made in connection with this Deed.

- (i) **(GST Groups):** For the purposes of this Deed, a reference to GST payable on a Taxable Supply made by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member and a reference to an input tax credit entitlement of a party includes any corresponding input tax credit entitlement of the representative member of any GST group of which that party is a member.
- (j) **(Project Agreement to prevail):** If clause 59 (*Taxes*) of the Project Agreement would apply in respect of a Taxable Supply to which this clause 13 also applies then clause 59 (*Taxes*) of the Project Agreement will apply in respect of that supply and the provisions of this clause 13 (but for this clause 13(j)) will not apply.
- (k) **(Definitions):** In this clause 13 unless otherwise defined in this Deed, terms used have the meanings given to them in the GST Law.

14 Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Deed:

- (a) **(in writing):** must be in writing;
- (b) **(addressed):** must be addressed as set out below (or as otherwise notified by that party to each other party from time to time);

State:

Attention: [not disclosed]
 Address: [not disclosed]
 Email: [not disclosed]

Project Co:

Attention: [not disclosed]
 Address: [not disclosed]
 Email: [not disclosed]

D&C Subcontractor:

Name: Lendlease Engineering Pty Ltd
 Attention: [not disclosed]
 Address: [not disclosed]
 Email: [not disclosed]

Name: Bouygues Construction Australia Pty Limited
 Attention: [not disclosed]



Address: [not disclosed]
Email: [not disclosed]

Name: John Holland Pty Ltd
Attention: [not disclosed]
Address: [not disclosed]
Email: [not disclosed]

Parent Guarantors:

Name: Lendlease Construction Australia Holdings Pty Limited
Attention: [not disclosed]
Address: [not disclosed]
Email: [not disclosed]

Name: Bouygues Construction
Attention: [not disclosed]
Address: [not disclosed]
Email: [not disclosed]

Name: CCCC International Holding Limited
Attention: [not disclosed]
Address: [not disclosed]
Email: [not disclosed]

- (c) **(signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(form of delivery)**: must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by the parties) to the email address of the addressee set out in clause 14(b); and
- (e) **(taken to be received)**: are taken to be received by the addressee at the address set out in clause 14(b):
 - (1) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00am on the next Business Day;
 - (2) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and
 - (3) in the case of email, the first to occur of:

- (A) receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
- (B) the time that the communication enters an information system which is under the control of the addressee; or
- (C) the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00am on the next Business Day.

15 Confidential Information and disclosure

15.1 Confidential Information and disclosure by the State

The D&C Subcontractor Parties acknowledge and agree that:

- (a) **(Public Disclosure Obligations)**: the State or any Authority may disclose any information in connection with the Project (including any Confidential Information) in accordance with its Public Disclosure Obligations and the D&C Subcontractor Parties must use all reasonable endeavours to assist the State or an Authority in meeting its Public Disclosure Obligations;
- (b) **(Other purposes)**: the State or any Authority may disclose any information in connection with the Project (including any Confidential Information) in connection with:
 - (1) any Re-franchising; and
 - (2) the requirements of the State Project Documents (including any tender process required to be conducted under the Termination Payments Schedule, or Change Compensation Principles);
- (c) **(State's rights)**: subject to clause 15.1(d), in meeting its Public Disclosure Obligations or as otherwise considered necessary by the State, the State may publish, disclose or make generally available each Project Document on a Victorian Government website;
- (d) **(Commercially sensitive information)**: the State will not publish, disclose or otherwise make generally available the information which is specified in the Confidential Information Schedule (including the Financial Model), except if required to do so to comply with the Public Disclosure Obligations or as required under clause 15.1(b); and
- (e) **(Exercise of licence)**: nothing in this Deed prevents the State and any sublicensees using or disclosing any information (including Confidential Information) to the extent necessary or desirable for, or in connection with, the exercise of any licence granted under clause 56 (*Intellectual Property Rights*) of the Project Agreement.



15.2 Confidential Information and disclosure by Project Co and the D&C Subcontractor Parties

- (a) **(Confidentiality obligation):** Subject to clause 15.2(b), Project Co and the D&C Subcontractor Parties must treat as secret and confidential all Confidential Information in connection with this Deed and any other State Project Document.
- (b) **(Disclosure of Confidential Information):** Without limiting Project Co's and the D&C Subcontractor's obligations under clause 15.2(a) and subject to clause 15.2(c), Project Co and the D&C Subcontractor Parties may each disclose Confidential Information to:
 - (1) its Associates to the extent necessary for the purpose of undertaking the Project;
 - (2) a Rail Franchisee to the extent necessary for the purpose of undertaking the Project and to comply with its obligations in respect of the Rail Franchisee Cooperation Agreements and the Rail Franchisee Arrangements; or
 - (3) any Financier, prospective financier or equity investor of the Project, subject to the State having been provided necessary information in respect of the proposed parties and having carried out any Probity Investigation that the State considers necessary.
- (c) **(Confidentiality deed):** Before disclosing any Confidential Information, Project Co or the D&C Subcontractor Party (whichever is disclosing the Confidential Information) must ensure that the person to whom the information is disclosed:
 - (1) except to the extent the person to whom information is disclosed is a Rail Franchisee Interface Party, enters into a confidentiality deed with Project Co or the D&C Subcontractor Party (whichever is disclosing the Confidential Information) on terms reasonably acceptable to the State; and
 - (2) to the extent the person to whom information is disclosed is a Rail Franchisee Interface Party, the Rail Franchisee Interface Party agrees to comply with its confidentiality obligations under the relevant Rail Franchisee Cooperation Agreement.

15.3 Disclosure by the D&C Subcontractor

- (a) **(The D&C Subcontractor's disclosure obligations):** Subject to clause 15.3(b), the D&C Subcontractor Parties must:
 - (1) not make any public disclosures, announcements or statements in relation to the Project or the State's or any of the State's Associates' involvement in the Project without the State's prior consent;
 - (2) comply with any terms and conditions the State imposes and must use all reasonable endeavours to agree with the State the wording and timing of all public disclosures, announcements or statements by it or any of its Associates relating to the Project or the State's or any of the State's Associates' involvement in the Project before the relevant disclosure, announcement or statement is made; and
 - (3) as soon as practicable, give to the State a copy of any public disclosure, announcement or statement agreed to or approved by the State in accordance with this clause 15.3(a) or for which the State's



consent or approval was not required in accordance with clause 15.3(b).

- (b) **(Permitted disclosure):** For the purposes of clause 15.3(a), the D&C Subcontractor Parties will not be required to obtain the State's consent or approval to the extent that any disclosure, announcement or statement is:
- (1) required by Law, provided that it:
 - (A) notifies the State of the requirement to make that disclosure; and
 - (B) takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;
 - (2) required to obtain legal or other advice from its advisers;
 - (3) required to be made to a court in the course of proceedings to which any D&C Subcontractor Party is a party; or
 - (4) required by a relevant stock exchange, subject to:
 - (A) such disclosure, announcement or statement not referring to the State's or any of its Associates' involvement in the Project; and
 - (B) the D&C Subcontractor Parties having used all reasonable endeavours to obtain the State's consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant stock exchange; or
 - (5) a disclosure by:
 - (A) the Train Franchisee Interface Party made in accordance with clause 21.3(c) of the Train Franchisee Cooperation Agreement; or
 - (B) the Tram Franchisee Interface Party made in accordance with clause 16.3(c) of the Tram Franchisee Cooperation Agreement.

16 Return of documents

Each D&C Subcontractor Party must return to the State copies of all plans, drawings, specifications and other like documents which come into its possession for the purpose of the D&C Subcontractor Documents or this Deed at the expiration of the D&C Subcontractor Documents.

17 Miscellaneous

17.1 Governing Law and jurisdiction

- (a) **(Governing Law):** This Deed is governed by, and must be construed according to, the Laws of Victoria, Australia.



- (b) (**Jurisdiction**): Without limiting clauses 9 to 10, each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Deed.

17.2 Entire agreement

To the extent permitted by Law and in relation to its subject matter, this Deed:

- (a) (**entire understanding**): embodies the entire understanding of the parties and constitutes the entire terms agreed by the parties; and
- (b) (**prior agreements**): supersedes any prior agreement of the parties.

17.3 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to the parties) required by Law or reasonably requested by another party to give effect to this Deed.

17.4 Survival of certain provisions

- (a) (**Surviving clauses**): All provisions of this Deed which, expressly or by implication from their nature, are intended to survive the rescission, termination or expiration of this Deed will survive the rescission, termination or expiration of this Deed, including any provisions in connection with:
 - (1) the State's rights to set-off and recover money;
 - (2) confidentiality or privacy;
 - (3) Intellectual Property Rights;
 - (4) any obligation to make any information and records available to the State;
 - (5) any indemnity or financial security given in accordance with this Deed;
 - (6) any right or obligation arising on termination of this Deed; or
 - (7) any limitation of liability.
- (b) (**Interpretation**): No provision of this Deed which is expressed to survive the rescission, termination or expiration of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the rescission, termination or expiration of this Deed.
- (c) (**Survival of rights and obligations**): No right or obligation of any party will merge on completion of any transaction under this Deed. All rights and obligations in accordance with this Deed survive the execution and delivery of any transfer or other document which implements any transaction in accordance with this Deed.

17.5 Waiver

- (a) (**Writing**): A waiver given by a party in accordance with this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) (**No waiver**): A failure to, a delay in or the partial exercise or enforcement of a right provided by Law or in accordance with this Deed by a party does not



preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or in accordance with this Deed.

- (c) **(No waiver of another breach)**: No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

17.6 Consents, approvals and directions

- (a) **(State)**: A consent or approval required in accordance with this Deed from the State may be given or withheld, or may be given subject to any conditions, as the State thinks fit, unless this Deed expressly provides otherwise.
- (b) **(Project Co or D&C Subcontractor Party)**: A consent or approval required in accordance with this Deed from Project Co or a D&C Subcontractor Party may not be unreasonably withheld or delayed, unless this Deed expressly provides otherwise.

17.7 Amendments

Except as otherwise expressly provided in this Deed, this Deed may only be varied by a deed executed by or on behalf of each party.

17.8 Expenses

Except as otherwise expressly provided in this Deed (or as between the State and Project Co in the Project Agreement), each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

17.9 Severance

If, at any time, a provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) **(under this Deed)**: any other provision of this Deed; or
- (b) **(under another jurisdiction)**: that provision under the Law of any other jurisdiction.

17.10 Counterparts

This Deed may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same deed.

17.11 Moratorium legislation

To the fullest extent permitted by Law, the provisions of all Laws which operate to lessen or affect in favour of a party other than the State any obligation under this Deed, or to prejudicially affect the exercise by the State of any right, power or remedy under this Deed or otherwise, are expressly waived.



17.12 Proportionate liability

- (a) **(Excluded operation of Wrongs Act):** The operation of Part IVAA of the *Wrongs Act 1958* (Vic) is excluded in relation to all and any rights, obligations or liabilities of any party under this Deed whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) **(Rights, obligations and liabilities):** Without limiting clause 17.12(a), the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Deed and not otherwise, whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

17.13 Indemnity held on trust

- (a) **(Benefit of indemnities):** The State holds on trust for its Associates the benefit of:
 - (1) each indemnity and release given by Project Co or the D&C Subcontractor Parties under this Deed in favour of the State's Associates; and
 - (2) each right in this Deed to the extent that such right is expressly provided to be for the benefit of the State or State's Associates.
- (b) **(Project Co and D&C Subcontractor acknowledgement):** Each of Project Co and the D&C Subcontractor Parties acknowledge the existence of such trusts and consent to:
 - (1) the State exercising rights in relation to, or otherwise enforcing such indemnities, releases and rights on behalf of its Associates; and
 - (2) the State's Associates exercising rights in relation to, or otherwise enforcing the indemnities, releases and those rights as if they were a party to this Deed.
- (c) **(Consent not required):** The parties agree that the State does not require the consent of its Associates to amend or waive any provision of any Project Document.

17.14 Assignment

Except as expressly contemplated by this Deed, none of Project Co or the D&C Subcontractor Parties may assign or transfer any of its rights or obligations under this Deed or a D&C Subcontractor Document.

17.15 Set off

Without limiting the State's rights under the Project Agreement, all moneys which the State may pay or incur and for which Project Co is liable under the terms of the Project Agreement or in respect of which it is under this Deed liable to make reimbursement to or indemnify the State:

- (a) may be deducted by the State from all moneys due, becoming due, or to become due from it to Project Co under the Project Agreement; or
- (b) may be recovered from Project Co by action at Law or otherwise.



17.16 Limitation of Liability

The D&C Subcontractor Parties' maximum aggregate Liability to Project Co, the State, any other party to a Project Document, and any person to whom a D&C Subcontractor Document is novated or assigned in accordance with the terms of this Deed, will not exceed the D&C Subcontractor Parties' maximum aggregate Liability under each relevant D&C Subcontractor Document.



Signing page

Executed as a deed

State

Signed sealed and delivered by
**the Honourable Jacinta Allan
MP, in her capacity as the
Minister for Public Transport,
on behalf of the Crown in right
of the State of Victoria** in the
presence of

sign here ► [not disclosed] _____
Witness

[not disclosed] _____
Signature of Minister

print name [not disclosed] _____

Project Co

CY Partner 1

Signed sealed and delivered for
[not disclosed]
by its attorneys

sign here ► [not disclosed] _____
Attorney

[not disclosed] _____
Attorney

print name [not disclosed] _____

[not disclosed] _____

in the presence of

sign here ► [not disclosed] _____
Witness

[not disclosed] _____
Witness

print name [not disclosed] _____

[not disclosed] _____



CY Partner 2

Signed sealed and delivered for
[not disclosed]
by its attorney

in the presence of

sign here ▶ [not disclosed]
Attorney

sign here ▶ [not disclosed]
Witness

print name [not disclosed]

print name [not disclosed]

CY Partner 3

Signed sealed and delivered for
[not disclosed]
by its attorney

in the presence of

sign here ▶ [not disclosed]
Attorney

sign here ▶ [not disclosed]
Witness

print name [not disclosed]

print name [not disclosed]

CY Partner 4

Signed sealed and delivered for
[not disclosed]
by its attorney

in the presence of

sign here ▶ [not disclosed]
Attorney

sign here ▶ [not disclosed]
Witness

print name [not disclosed]

print name [not disclosed]



D&C Subcontractor

Signed, sealed and delivered for Bouygues Construction Australia Pty Limited ABN 37 144 013 801 by its attorney in the presence of

[not disclosed]

Signature of witness

[not disclosed]

Signature of attorney

[not disclosed]

Name of witness (print)

[not disclosed]

Name of attorney (print)

Signed, sealed and delivered for Lendlease Engineering Pty Ltd ABN 40 000 201 516 by its attorney in the presence of

[not disclosed]

Signature of witness

[not disclosed]

Signature of attorney

[not disclosed]

Name of witness (print)

[not disclosed]

Name of attorney (print)

[not disclosed]

Signature of witness

[not disclosed]

Signature of attorney

[not disclosed]

Name of witness (print)

[not disclosed]

Name of attorney (print)

Signed, sealed and delivered for John Holland Pty Ltd ABN 11 004 282 268 by its attorney in the presence of

[not disclosed]

Signature of witness

[not disclosed]

Signature of attorney

[not disclosed]

Name of witness (print)

[not disclosed]

Name of attorney (print)



Parent Guarantors

Signed, sealed and delivered for Bouygues Construction S.A. by Phillipe BONNAVE, Chief Executive Officer in the presence of

[not disclosed]
Signature of witness

[not disclosed]
Signature of [not disclosed]

[not disclosed] Control, Compliance
Name of witness (print)

Signed, sealed and delivered for Lendlease Construction Australia Holdings Pty Limited ABN 50 147 880 966 by its attorneys in the presence of

sign here ► [not disclosed]
Witness

[not disclosed]
Attorney

print name [not disclosed]

[not disclosed]

sign here ► [not disclosed]
Witness

[not disclosed]
Attorney

print name [not disclosed]

[not disclosed]

Signed, sealed and delivered for CCCC International Holding Limited by its attorney in the presence of

[not disclosed]
Signature of witness

[not disclosed]
Signature of attorney

[not disclosed]
Name of witness (print)

[not disclosed]
Name of attorney (print)



HERBERT
SMITH
FREEHILLS

Deed

Metro Tunnel
Tunnel and Stations PPP

Maintenance Subcontractor Direct Deed

The Minister for Public Transport on behalf of the
Crown in right of the State of Victoria

Cross Yarra Partnership

John Holland Pty Ltd

CCCC International Holding Limited



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Signing page **43**

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Maintenance Subcontractor Direct Deed

Date ►

Between the parties

State The Minister for Public Transport on behalf of the Crown in right of the State of Victoria

Project Co 1 [not disclosed];
2 [not disclosed];
3 [not disclosed]; and
4 [not disclosed],
(together, **Cross Yarra Partnership**) (ABN 57 956 065 885) of Level 8, 136 Exhibition Street, Melbourne, VIC 3000, Australia.

Maintenance Subcontractor John Holland Pty Ltd
ACN 004 282 268 of Level 3 / 65 Pirrama Road, Pyrmont, NSW, 2009

Parent Guarantor CCCC International Holding Limited
Company registration number 248473 of Room 2805, Convention Plaza Office Tower 1, Harbour Road, Wanchai, Hong Kong

Recitals

- 1 The background to the Project is set out in the Project Agreement.
- 2 Project Co and the Maintenance Subcontractor are or will become parties to the Subcontract.
- 3 The Maintenance Subcontractor has agreed to grant to the State certain rights in relation to the Subcontract.
- 4 Project Co and the Parent Guarantor are or will become parties to the Parent Guarantee.
- 5 The Parent Guarantor has agreed to grant the State certain rights in relation to the Parent Guarantee.

This deed witnesses as follows:



1 Defined terms and interpretation

1.1 Project Agreement definitions

Unless otherwise expressly defined, expressions used in this Deed have the meanings given to them in or for the purposes of the Project Agreement.

1.2 Definitions

In this Deed, unless the context requires otherwise:

| Term | Meaning |
|--|--|
| Additional Obligor | means a company or other entity which is wholly owned by the State. |
| Additional Obligor Step-In Notice | has the meaning given in clause 7.1(a)(4). |
| Additional Obligor Step-Out Date | has the meaning given in clause 7.3(d). |
| Agreed Amount | has the meaning given in clause 13(b)(1). |
| Assumption Date | has the meaning given in clause 7.3(a). |
| Cost | has the meaning given in clause 13(g). |
| Deed | means this deed and includes all Schedules, Exhibits, Attachments and Annexures to it. |
| Default Event | means any: <ol style="list-style-type: none">1 breach by Project Co of any of its obligations under a Maintenance Subcontractor Document; or2 other event or circumstance, which alone or with the giving of notice or passage of time or both, would entitle the Maintenance Subcontractor Party to terminate, rescind, accept the repudiation of, or suspend any or all of its obligations under, the Maintenance Subcontractor Documents. |



| Term | Meaning |
|--|--|
| Default Event Notice | has the meaning given in clause 6.2(a). |
| Disputing Parties | has the meaning given in clause 9.1(a). |
| Maintenance Subcontract | means the document entitled 'Maintenance Subcontract' dated on or about the date of this Deed between Project Co and the Maintenance Subcontractor. |
| Maintenance Subcontractor Associate | means any: <ol style="list-style-type: none">1 Maintenance Subcontractor Relevant Person in respect of the Maintenance Subcontractor only (excluding the Project Co Representative); and2 officer, agent, adviser, consultant, contractor or employee of the Maintenance Subcontractor. |
| Maintenance Subcontractor Consent Deed | means the document entitled 'Maintenance consent deed' dated on or about the date of this Deed between Project Co, the Maintenance Subcontractor Parties and the Security Trustee. |
| Maintenance Subcontractor Document | means: <ol style="list-style-type: none">1 in respect of the Maintenance Subcontractor, the Subcontract; and2 in respect of the Parent Guarantor, the Parent Guarantee. |
| Maintenance Subcontractor Parties | means: <ol style="list-style-type: none">1 the Maintenance Subcontractor; and2 the Parent Guarantor, and Maintenance Subcontractor Party means each of them. |
| Maintenance Subcontractor Relevant Person | means: <ol style="list-style-type: none">1 a director or secretary of a Maintenance Subcontractor Party; or2 any officer or employee, consultant, contractor or agent of a Maintenance Subcontractor Party who:<ol style="list-style-type: none">a has the ability to exercise influence or control in relation to the Maintenance Subcontractor Party, or in matters relating to the Project;b works in any role in connection with the Project Activities, including undertaking any task for the purpose of a Maintenance Subcontractor Document or this Deed; or |



| Term | Meaning |
|--|---|
| | <p>c has access to Confidential Information in connection with the Project.</p> |
| Maintenance Subcontractor Statement | has the meaning given in clause 6.4. |
| Material Adverse Effect | means a material adverse effect on: <ol style="list-style-type: none">1 the ability of each of Project Co or a Maintenance Subcontractor Party to perform and observe their respective obligations under any Project Document to which it is a party; or2 the rights of the State under any State Project Document, or the ability or capacity of the State to exercise its rights or perform its obligations under a State Project Document. |
| Novation Notice | has the meaning given in clause 8.1(a). |
| Novation Notice Date | means: <ol style="list-style-type: none">1 in relation to clause 8.3, the later of the date of the Novation Notice and the date each of the Maintenance Subcontractor Parties consents or is deemed (in accordance with clause 8.3(d)) to have consented to the novation; and2 otherwise, the date of the Novation Notice. |
| Parent Guarantee | means the document dated on or about the date of this Deed entitled 'Performance Guarantee' between Project Co and the Parent Guarantor. |
| Project Agreement | means the document entitled 'Project Agreement' between the State and Project Co dated on or about the date of this Deed. |
| Project Co's Rights | has the meaning given in clause 7.3(b)(1)(A). |
| Receiver | means a receiver or receiver and manager appointed by the State under the State Security. |
| Recipient | has the meaning given in clause 13(b)(2). |
| Representative | has the meaning given in clause 9.2(a). |



| Term | Meaning |
|------------------------------|---|
| Revenue | has the meaning given in clause 13(f). |
| State Cure Notice | has the meaning given in clause 6.2(c). |
| Statement Beneficiary | means the State, an Additional Obligor or Receiver appointed under clause 7. |
| Step-In Period | has the meaning given in clause 7.1(b). |
| Step-In Right | has the meaning given in clause 7.1(a). |
| Substitute Party | has the meaning given in clause 8.1(a). |
| Supplier | has the meaning given in clause 13(b). |
| Termination Notice | means a notice issued by the Maintenance Subcontractor of its intention to: <ol style="list-style-type: none">1 suspend performance of any or all of its obligations in accordance with the Maintenance Subcontract; or2 terminate the Maintenance Subcontract, as a result of a Default Event. |

1.3 Interpretation

In this Deed:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa and a word indicating a gender includes every other gender;
- (c) **(references)**: a reference to:
- (1) a party, clause, Schedule, Exhibit, or Annexure is a reference to a party, clause, Schedule, Exhibit or Annexure of or to this Deed; and
 - (2) a section is a reference to a section of a Schedule;
- (d) **(Deed as amended)**: a reference to this Deed or to any other deed, agreement, document or instrument includes a reference to this Deed or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;



- (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **(‘includes’)**: ‘includes’ will be read as if followed by the phrase ‘(without limitation)’;
- (j) **(‘or’)**: the meaning of ‘or’ will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) **(‘\$’)**: a reference to ‘\$’, AUD or dollar is to Australian currency;
- (m) **(time)**: a reference to time is a reference to time in Melbourne, Australia;
- (n) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (o) **(obligations and liabilities)**: a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (p) **(‘may’)**: the term ‘may’, when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;
- (q) **(construction)**: where there is a reference to an Authority, institute or association or other body referred to in this Deed which:
 - (1) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or
 - (2) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (r) **(remedy)**: the use of the words ‘remedy’ or ‘cure’ or any form of such words in this Deed means that the event to be remedied or cured must be remedied or cured or its effects overcome; and
- (s) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.



1.4 Priority of documents

To the extent of any inconsistency, ambiguity or discrepancy between this Deed and a Maintenance Subcontractor Document, this Deed prevails.

1.5 State Project Documents

Each of the Maintenance Subcontractor Parties acknowledges that it has received a copy of the Project Agreement, the State Security and the Finance Direct Deed.

1.6 Inconsistency

Where there is an inconsistency, ambiguity or discrepancy between this Deed and any other State Project Document, then the order of precedence in clause 2.3 of the Project Agreement applies.

1.7 Business Day

If the day on or by which anything is to be done in accordance with this Deed is not a Business Day, that thing must be done no later than the next Business Day.

1.8 Prior approval or consent

Where the Maintenance Subcontractor Parties are required by this Deed to obtain the State's consent or approval to an action, document or thing, unless otherwise expressly stated, that consent or approval must be obtained prior to the actions, document or thing occurring or coming into effect.

1.9 Action without delay

Unless there is a provision in this Deed which specifies a period of time in which something must be done by the parties, all things must be done without undue delay.

1.10 Provisions limiting or excluding Liability, rights or obligations

- (a) **(No limit)**: A right of the State or any obligation of the Maintenance Subcontractor Parties or Project Co under this Deed will not limit or exclude any other right of the State or obligation of the Maintenance Subcontractor Parties or Project Co under this Deed unless expressly stated.
- (b) **(Permitted by Law)**: Any provision of this Deed which seeks, either expressly or by implication, to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.

1.11 Relationship of the parties

Unless otherwise expressly provided, this Deed does not:

- (a) **(no additional relationship)**: create a partnership, joint venture, fiduciary, employment or agency relationship between the parties; or
- (b) **(no good faith)**: impose any duty of good faith on the State.



1.12 Approvals, directions and notices in writing

Unless otherwise expressly provided in this Deed or agreed between the parties, all approvals, consents, directions, requirements, requests, claims, notices, agreements and demands given or required to be given under this Deed must be given in writing.

1.13 State's rights and obligations

- (a) **(Acknowledgement)**: The parties acknowledge the substance, operation and potential effect and consequences of clause 2.13 of the Project Agreement in relation to this Deed.
- (b) **(No Claim)**: Subject to clause 1.13(c), Project Co and the Maintenance Subcontractor Parties will not be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its executive or statutory rights or duties.
- (c) **(Liability for breach)**: Clauses 1.13(a) and 1.13(b) do not limit any Liability which the State would have had to Project Co or the Maintenance Subcontractor Parties under any State Project Document as a result of a breach by the State of a term of any State Project Document but for these clauses.

1.14 Reasonable endeavours of State

Any statement in this Deed providing that the State will use or exercise 'reasonable endeavours' or 'act reasonably' in relation to an outcome, means that the State:

- (a) **(relevant steps)**: will take steps to bring about the relevant outcome so far as it is reasonably able to do so, having regard to its resources and other responsibilities;
- (b) **(no guarantee)**: cannot guarantee the relevant outcome; and
- (c) **(no obligation)**: is not required to:
 - (1) exercise a right of any Government Party, or to influence, over-ride, interfere with or direct any other Government Party in the proper exercise and performance of its legal, executive or statutory rights and duties and functions;
 - (2) exercise a power or discretion in a manner that the State regards as not in the public interest;
 - (3) develop or implement new policy;
 - (4) procure legislation; or
 - (5) act in any way that the State regards as not in the public interest.

2 Conditions precedent

The satisfaction or waiver of the Conditions Precedent in accordance with clause 3 of the Project Agreement, is a condition precedent to the coming into operation of this Deed (other than this clause 2 and clauses 1.1 to 1.3, 1.7, 1.8, 1.11, 1.12, 1.13, 1.14, 4, 9, 10, 12, 14, 15 and 17).

3 Acknowledgments

3.1 By the Maintenance Subcontractor Parties concerning the State Security

The Maintenance Subcontractor Parties each acknowledge and agree:

- (a) **(grant of security by Project Co)**: that Project Co may give a security interest in the form of the State Security in favour of the State over all assets and undertakings of Project Co including Project Co's right, title and interest under the Maintenance Subcontractor Documents or assign Project Co's right, title and interest under the Maintenance Subcontractor Documents to the State by way of security, and the Maintenance Subcontractor Parties each consent to the State Security and any such assignment;
- (b) **(exercise of rights)**: to the State's rights under the State Security including the appointment by Project Co of the State as attorney of Project Co to do, perform and exercise all things, acts and rights under the Maintenance Subcontractor Documents on behalf of and for the account of Project Co;
- (c) **(no Default Event)**: that the grant of, or exercise by the State of its rights under, the State Security will not itself contravene, or constitute a Default Event under, a Maintenance Subcontractor Document or entitle a Maintenance Subcontractor Party to exercise any right (including termination) under it;
- (d) **(Liabilities and obligations)**: that nothing in the State Security will cause the State or State Associate to assume any Liabilities or obligations under a Maintenance Subcontractor Document except as may result from its own acts or omissions in exercising rights or in performing or failing to perform obligations under a Maintenance Subcontractor Document as envisaged by this Deed;
- (e) **(notice of any other assignment)**: that with the exception of the security interests under the Finance Documents, it has not received notice of any other assignment or charge by Project Co of any right, title, interest in or benefit of Project Co under the Maintenance Subcontractor Documents; and
- (f) **(set off)**: that as of the date of this Deed, it has no knowledge of any right of set off or counterclaim which it may have against Project Co so as to diminish any money payable by it to Project Co under a Maintenance Subcontractor Document, except only where the right of set off or counterclaim is contained within the Maintenance Subcontractor Document.

3.2 By the Maintenance Subcontractor Parties concerning the State's rights

- (a) **(State's rights)**: The Maintenance Subcontractor Parties each acknowledge the State's rights under clauses 2.13, 16.3, 25, 28.5, 35, 41, 44, 45 and 62.2 of the Project Agreement and the other relevant clauses listed in clause 13.3(c) of the Project Agreement.
- (b) **(Facilitation of rights)**: The Maintenance Subcontractor must exercise its rights under the Maintenance Subcontract in a way that facilitates the effective exercise by the State of the rights referred to in clause 3.2(a) and will on reasonable notice permit the State or a State Associate to have access to, and take copies of, the records, reports, documents and other papers to which the State is entitled to have access in accordance with the State's rights referred to in clause 3.2(a).



- (c) **(Continued performance)**: During the period in which the State is exercising a right referred to in clause 3.2(a), the State may, in accordance with the Project Agreement and the Subcontract, require the suspension or the continuation of performance by the Maintenance Subcontractor of its obligations under the Subcontract, and if it does so, the Maintenance Subcontractor will comply with this requirement (but without limiting the Maintenance Subcontractor's rights under clause 6) and with all reasonable directions of the State in relation to the performance of the Maintenance Subcontract by the Maintenance Subcontractor during such period.
- (d) **(State not liable)**: The requirement of the State that the Maintenance Subcontractor suspend or continue to perform its obligations under the Maintenance Subcontract and the giving of any direction under clause 3.2(c) by the State will not be construed as an assumption by the State of any obligations of the Maintenance Subcontractor under the Subcontract.
- (e) **(Subcontracting)**: The Maintenance Subcontractor will not subcontract any of its obligations under the Maintenance Subcontract without the prior consent of the State, where so required in accordance with clause 13 of the Project Agreement.
- (f) **(Probity Investigations)**: Without limiting clauses 3.2(a) to (e), the Maintenance Subcontractor Parties each acknowledge and agree that:
- (1) in accordance with clauses 13 and 62.2 of the Project Agreement, from time to time, the State may or may require Project Co to conduct Probity Investigations of;
 - (A) the Maintenance Subcontractor Parties;
 - (B) Maintenance Subcontractor Relevant Persons; or
 - (C) other persons in relation to any further subcontracting by the Maintenance Subcontractor of any of its obligations under the Subcontract;
 - (2) on request of the State, it will procure the consent of each Maintenance Subcontractor Relevant Person:
 - (A) to any Probity Investigation; and
 - (B) to the extent that the State is entitled to do so under the Project Agreement, to such other probity and security investigations that the State may require; and
 - (3) it:
 - (A) will not appoint, or retain the appointment of; and
 - (B) will ensure that no other person appoints, or retains the appointment of,

a person to the position of a Maintenance Subcontractor Relevant Person in relation to the management or performance of the Maintenance Subcontract without the State's approval which may be withdrawn at any time including following a Probity Investigation and other such investigations that the State may require under clauses 13 and 62.2 of the Project Agreement.

3.3 By Project Co

Project Co is bound by, and must cooperate in the implementation of, this Deed. It acknowledges that this Deed is intended to benefit only the Maintenance Subcontractor



Parties and the State, and does not in any way affect any obligation or right of Project Co under the Maintenance Subcontractor Documents or under any Project Document except as expressly set out herein.

3.4 Information

Project Co and the Maintenance Subcontractor Parties each acknowledge and agree that:

- (a) **(information purpose):** any information, data and documents provided by the State or a State Associate:
 - (1) are provided for information purposes only and all of the State's or a State Associates' Intellectual Property Rights therein remain the property of the State or the State Associate (as the case may be); and
 - (2) do not form part of this Deed or constitute an invitation, offer or recommendation by or on behalf of the State or a State Associate;
- (b) **(no Liability):** to the extent permitted by Law, none of the State or the State Associates will have any Liability to the Maintenance Subcontractor Parties or any Maintenance Subcontractor Associate, nor will a Maintenance Subcontractor Party or any Maintenance Subcontractor Associate be entitled to make any Claim against the State, or seek, pursue or obtain an indemnity against or contribution to Liability from the State or a State Associate arising in connection with:
 - (1) the provision of, or purported reliance upon, or use of, any information, data and documents referred to in clause 3.4(a) by a Maintenance Subcontractor Party or any other person to whom such information is disclosed by a Maintenance Subcontractor Party, a Maintenance Subcontractor Associate, or any person on behalf of a Maintenance Subcontractor Party or any Maintenance Subcontractor Associate;
 - (2) any reference to the State in a Maintenance Subcontractor Document; or
 - (3) any review of, comments upon, acceptance, approval or certification of the form or substance of a Maintenance Subcontractor Document by the State.

3.5 Maintenance Subcontract not to affect State rights

Project Co and the Maintenance Subcontractor Parties each acknowledge and agree that:

- (a) **(rights not affected):** where the Maintenance Subcontract is expressed in the Maintenance Subcontract to have a right (or possible right) to compensation or relief which is dependent on or determined by reference to the Project Agreement or an equivalent or similar right of Project Co:
 - (1) this does not of itself expand Project Co's rights, or the State's Liability, under the Project Agreement to include the compensation or relief to which the Maintenance Subcontractor is or may become entitled under the Subcontract; and
 - (2) Project Co's rights, and the State's Liability, under the Project Agreement will be determined solely in accordance with the terms of the Project Agreement;



- (b) **(risk of discrepancy)**: as between the State (on the one hand) and Project Co and the Maintenance Subcontractor Parties (on the other hand), Project Co and the Maintenance Subcontractor Parties accept and will bear the risk of any inconsistency, ambiguity or discrepancy between the terms of the Maintenance Subcontract and the Project Agreement; and
- (c) **(dealing directly with State)**: notwithstanding anything to the contrary in the Subcontract, no Maintenance Subcontractor Party has any right to deal directly with the State or participate in any meeting, consultation or process (including negotiation or dispute resolution) unless:
 - (1) expressly provided to the contrary in the Project Agreement or this Deed; or
 - (2) the State consents.

4 Representations and warranties by the Maintenance Subcontractor Parties

Each Maintenance Subcontractor Party represents and warrants for the benefit of the State that:

- (a) **(power to execute)**: it has the power to execute, deliver and carry out its obligations under this Deed, the Maintenance Subcontractor Documents, and each other Project Document to which it is a party and all necessary action has been taken to authorise that execution, delivery and performance;
- (b) **(legality)**: the execution, delivery and performance of this Deed, the Maintenance Subcontractor Documents, and each other Project Document to which it is a party does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;
- (c) **(validity)**: this Deed, the Maintenance Subcontractor Documents, and each other Project Document to which it is a party constitutes a valid and legally binding obligation on it in accordance with its terms;
- (d) **(registration)**: it is duly registered, properly constituted and remains in existence;
- (e) **(no trust relationship)**: except as stated in this Deed, it is not the trustee or responsible entity of any trust nor does it hold any property subject to or impressed by any trust in relation to this Project;
- (f) **(information true and correct)**: all information provided by it to the State is true and correct to the best of its knowledge and belief (having undertaken enquiries reasonably expected of a skilled professional carrying out the obligations of the Maintenance Subcontractor under the Subcontract) as at the date on which it is provided and no Maintenance Subcontractor Party is aware of any material facts or circumstances that have not been disclosed to the State and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this Deed or to consent to the entry into the Subcontract;
- (g) **(litigation)**: no Claim against it is current or pending or (to its knowledge) is threatened, which will or is likely to have a material adverse effect upon it or its ability to perform its financial and other obligations under this Deed, the Maintenance Subcontractor Documents, or any other Project Document to which it is a party;



- (h) **(Insolvency Event)**: no Insolvency Event has occurred in respect of it;
- (i) **(accounts)**: in respect of its accounts:
 - (1) its most recent consolidated audited (if the requirement for auditing is applicable) accounts give a true and fair view of its and its subsidiaries' state of affairs as at the date to which they relate and the results of its and its subsidiaries' operations for the accounting period ended on such date;
 - (2) there has been no material adverse change in its or its subsidiaries' state of affairs since such date; and
 - (3) such accounts have been prepared in accordance with the Corporations Act and accounting principles and practices generally accepted in Australia consistently applied, except to the extent of departures from such principles and practices disclosed in such accounts;
- (j) **(no default)**:
 - (1) no default has occurred under any document or agreement binding on it or its assets which relates to financial indebtedness; and
 - (2) nothing else has occurred,which, with the giving of notice or lapse of time, constitute an event of default, cancellation, prepayment event (pursuant to a bona fide right to exercise prepayment) or similar event (whatever called) under any such document or agreement, would have a Material Adverse Effect;
- (k) **(no immunity)**: neither it nor any of its assets enjoys any immunity from set off, suit or execution; and
- (l) **(own investigations)**: in entering into this Deed, the Maintenance Subcontractor Documents to which it is a party, and any other Project Document to which it is a party it relied upon its own investigations and has not relied upon any representation or warranty about its subject matter by the State, Project Co or any other person unless in respect of Project Co or any other person, other than the State or any of its Associates, it is expressly permitted to do so in accordance with a Project Document to which it is a party.

5 Undertakings of the Maintenance Subcontractor Parties

5.1 Undertakings

The Maintenance Subcontractor Parties each undertake to the State as follows:

- (a) **(notification of Default Event)**: in the case of the Maintenance Subcontractor, it will notify the State of any Default Event promptly after it gives a Termination Notice in respect of that Default Event in accordance with the Maintenance Subcontract;
- (b) **(documents in relation to Default Event)**: in the case of the Maintenance Subcontractor, it will promptly give the State a copy of all documents issued by the Maintenance Subcontractor to Project Co in relation to a Default Event;
- (c) **(no amendment without consent)**: it will not:
 - (1) make or permit any amendment, replacement of, or addition to;



- (2) subject to clause 6.2, terminate, surrender, rescind, or accept repudiation of;
 - (3) except in accordance with this Deed, permit the novation, assignment or substitution of any party's rights, obligations, or interest in; or
 - (4) allow any express waiver of its material rights and obligations under, a Maintenance Subcontractor Document without the consent of the State, provided that the State will not withhold its consent where the State has given, or is required to give, an equivalent consent under the Project Agreement;
- (d) **(deed of accession)**: it will not novate, assign or substitute any of its rights, obligations or interest in a Maintenance Subcontractor Document without first procuring that the proposed novatee, assignee or substitute executes a deed in favour of the State (in form and substance approved by the State) pursuant to which the novatee, assignee or substitute agrees to accept and be bound by this Deed as if it were the Maintenance Subcontractor or the Parent Guarantor (as the case may be);
- (e) **(attend meetings and inspections)**: it will (when reasonably requested by the State):
- (1) attend meetings with the State or any of its Associates;
 - (2) provide the State, any of its Associates and other authorised personnel (including the Independent Reviewer) with:
 - (A) in the case of the Maintenance Subcontractor, full access to the Site to the extent provided in the Project Agreement and to the extent that the Maintenance Subcontractor has access or is granted access under the Subcontract; and
 - (B) any other information, records or documents that the State, any of its Associates (acting reasonably) or the Independent Reviewer require in relation to the carrying out of the performance of the obligations under or compliance with the Maintenance Subcontract or any information required by the State to comply with requests from the Victorian Auditor-General; and
 - (3) in the case of the Maintenance Subcontractor, to the extent provided in the Project Agreement, permit the State and any of its Associates to attend all tests and inspections to be carried out by the Maintenance Subcontractor in connection with the Project; and
- (f) **(access to records)**: in the case of the Maintenance Subcontractor, at the request of the State (acting reasonably), the Maintenance Subcontractor will:
- (1) permit the State and any of its Associates to inspect all records, reports, plans, programs, specifications, and technical documents prepared or kept by the Maintenance Subcontractor in relation to the performance of its obligations under the Maintenance Subcontract or otherwise relating to the Project; and
 - (2) supply the State and any of its Associates with a copy of any such report or document which they may require from time to time.



5.2 State access to Site

When entering the Site in accordance with clause 5.1(e)(2)(A), the State agrees to comply with, and ensure that its Associates and the authorised personnel comply with, clause 16.3 (*State's right to enter, inspect and test*) of the Project Agreement.

5.3 Appointment of Maintenance Subcontractor as principal contractor

On the Date of Final Acceptance, to the extent "construction work" within the meaning of regulation 5.12 of the OHS Regulations is carried out in connection with the Maintenance Activities:

- (a) **(appointment)**: the State appoints the Maintenance Subcontractor as Principal Contractor for all works undertaken and activities carried out during the Maintenance Phase until the end of the Term in connection with the Maintenance Services and the Maintained Assets and authorises the Maintenance Subcontractor to manage or control the Licensed Maintenance Areas to the extent necessary to discharge the duties of a Principal Contractor under the OHS Legislation;
- (b) **(acceptance of appointment)**: the Maintenance Subcontractor accepts the appointment by the State as Principal Contractor, and agrees:
 - (1) to comply with all the obligations of; and
 - (2) to manage or control the Licensed Maintenance Areas to the extent necessary to discharge its duties as,
a Principal Contractor under the OHS Legislation; and
- (c) **(Revised appointment)**: the Maintenance Subcontractor accepts any revised appointment as Principal Contractor that may be necessary as a result of a Change in Mandatory Requirements the subject of a Modification Order.

5.4 New WHS Regulations appointment

If the New WHS Regulations are enacted in Victoria and supersede the OHS Regulations and the State determines that it is necessary to appoint a Principal Contractor for any of the Relevant Infrastructure, the Site or the Project Activities in accordance with the New WHS Regulations, then:

- (a) **(appointment)**: the State appoints the Maintenance Subcontractor as Principal Contractor for all works undertaken and activities carried out during the Maintenance Phase until the end of the Term in connection with the Maintenance Services and the Maintained Assets and authorises the Maintenance Subcontractor to manage or control the Licensed Maintenance Areas to the extent necessary to discharge the duties of a Principal Contractor under the WHS Regulations;
- (b) **(acceptance of appointment)**: the Maintenance Subcontractor accepts the appointment by the State as Principal Contractor, and agrees:
 - (1) to comply with all the obligations of; and
 - (2) to manage or control the Licensed Maintenance Areas to the extent necessary to discharge its duties as,
a Principal Contractor under the WHS Regulations; and



- (c) **(Revised appointment)**: the Maintenance Subcontractor accepts any revised appointment as Principal Contractor that may be necessary as a result of a Change in Mandatory Requirements the subject of a Modification Order.

6 Right to cure before termination of the Subcontract

6.1 State's cure rights

- (a) **(Provide State with notices)**: The Maintenance Subcontractor must give the State:
- (1) Default Event Notices; and
 - (2) State Cure Notices,
- as required by clause 6.2.
- (b) **(State Cure Notice)**: On receiving a State Cure Notice, and subject to the Finance Direct Deed, the State may (but is not obliged to) take steps to:
- (1) remedy, or procure the remedy of, that Default Event; or
 - (2) if the Default Event is not capable of remedy, commence and continue to perform the obligations of Project Co under the Subcontract.

6.2 Termination or suspension with cause

The Maintenance Subcontractor may only exercise a right under the Maintenance Subcontract to terminate, rescind, accept the repudiation of, or (subject to clause 6.3) suspend the performance of any or all of its obligations under the Maintenance Subcontract if:

- (a) **(prior notice)**: the Maintenance Subcontractor has given to the State prior notice setting out details of the Default Event giving rise to that proposed exercise in accordance with clause 6.4 (**Default Event Notice**);
- (b) **(expiration of remedy period)** any remedy period available to the Financiers in respect of the Default Event under the Maintenance Subcontractor Consent Deed has expired without a remedy being achieved;
- (c) **(State cure notice)**: the Maintenance Subcontractor has given notice to the State (**State Cure Notice**) confirming that any remedy period available to the Financiers in respect of the Default Event under the Maintenance Subcontractor Consent Deed has expired without a remedy being achieved; and
- (d) **(Default Event remedy)**: where:
- (1) the Default Event is capable of remedy within 20 Business Days after the date on which the State received the State Cure Notice, the Default Event has not been remedied within that 20 Business Day period;
 - (2) the Default Event is capable of remedy within a period longer than 20 Business Days after the date on which the State received the State Cure Notice, the State (or an Additional Obligor or Receiver appointed under clause 7) has not commenced remedying the Default Event within that 20 Business Day period or, having commenced remedying, has not continued to diligently pursue that remedy;

- (3) the Default Event is not capable of remedy and the Default Event Notice contains a claim for reasonable compensation for the Default Event, Project Co or the State (or another person on behalf of either of them) has not paid or otherwise provided that compensation to the Maintenance Subcontractor:
 - (A) to the extent that the relevant amount of compensation has been referred to dispute resolution under clauses 9 to 10, within 20 Business Days after that dispute is resolved; or
 - (B) otherwise within 20 Business Days after the date on which the State received the State Cure Notice;
- (4) the Default Event is not capable of remedy and the Default Event Notice does not contain a claim for reasonable compensation for the Default Event, the State (or an Additional Obligor or Receiver appointed under clause 7) does not commence and continue to perform Project Co's obligations under the Maintenance Subcontract within 20 Business Days after the date on which the State received the State Cure Notice; or
- (5) the State notifies the Maintenance Subcontractor that it elects not to remedy, or procure the remedy of, the Default Event.

6.3 Early suspension of Maintenance Subcontractor's obligations

If:

- (a) **(right to suspend)**: the Maintenance Subcontractor, but for the operation of clause 6.2, would have a right to suspend the performance of its obligations under the Subcontract;
 - (b) **(State Cure Notice)**: the Maintenance Subcontractor has issued a State Cure Notice to the State with respect to that Default Event;
 - (c) **(dispute, non-payment or expired period)**: either:
 - (1) the State has not undertaken to pay to the Maintenance Subcontractor the amounts payable under the Maintenance Subcontract within 10 Business Days of:
 - (A) subject to clause 6.3(c)(2), the date of receipt of the State Cure Notice; or
 - (B) if the State refers the amounts in the Default Event Notice to dispute resolution under clauses 9 to 10, the dispute being determined; or
 - (2) without limiting clause 6.2(d), the State has undertaken to pay the Maintenance Subcontractor amounts payable under the Maintenance Subcontract for a stated period and that period has expired without the State paying such amounts or without that period being extended by the State (acting reasonably); and
 - (d) **(not remedied)**: the Default Event has not otherwise been remedied,
- then the Maintenance Subcontractor may suspend performance of its obligations under the Subcontract.



6.4 Maintenance Subcontractor Statements

As part of any Default Event Notice, the Maintenance Subcontractor must include a statement of:

- (a) **(all amounts due and payable)**: all amounts due and payable to the Maintenance Subcontractor under the Maintenance Subcontract on or before the date of the Default Event Notice but remaining unpaid at such date;
- (b) **(Claim)**: the nature and, to the best of the Maintenance Subcontractor's knowledge and belief, the amount of any Claim asserted by the Maintenance Subcontractor arising in connection with the Maintenance Subcontract against Project Co; and
- (c) **(Intention to terminate)**: where the Maintenance Subcontractor intends to terminate the Maintenance Subcontract due to a default or breach of condition of a non-financial nature or intends to claim damages or to seek some other form of relief:
 - (1) the provisions of the Maintenance Subcontract alleged to have been breached or not fulfilled;
 - (2) sufficient information to enable the State to identify the material facts;
 - (3) the steps reasonably required to remedy the Default Event (if reasonably capable of remedy);
 - (4) the time within which the specified steps can reasonably be expected to be taken;
 - (5) if applicable, the amount of damages claimed and the manner in which they have been calculated; and
 - (6) if applicable, the other relief to be sought,

(being the **Maintenance Subcontractor Statement**).

6.5 Warranty of accuracy and waiver

The Maintenance Subcontractor:

- (a) **(warranty)**: warrants to the State that each Maintenance Subcontractor Statement will, subject to unintended error which the Maintenance Subcontractor agrees to rectify, be a true, complete and accurate statement of the amounts or other relief to which the Maintenance Subcontractor considers itself entitled; and
- (b) **(waiver)**: waives and abandons all Claims then known or which ought reasonably to have been known to the Maintenance Subcontractor arising in connection with the Maintenance Subcontract prior to the date of the Default Event Notice other than the claims disclosed in the Maintenance Subcontractor Statement.

6.6 Verification of Maintenance Subcontractor Statements

The State may appoint one or more independent chartered accountants, technical advisers or other appropriately qualified persons to verify (at the cost of Project Co) a Maintenance Subcontractor Statement, and the Maintenance Subcontractor must, subject to such persons executing an appropriate confidentiality agreement as the Maintenance Subcontractor may reasonably request, permit such persons to have access to and to make copies of all records, documents, data and accounting and other information not



subject to legal (including, without limitation, solicitor and own client) and other professional privilege which is reasonably required with a view to confirming the accuracy and completeness of such Maintenance Subcontractor Statement.

6.7 Maintenance Subcontractor Statements to be conclusive evidence

- (a) **(Reliance)**: Each Statement Beneficiary is entitled to rely on a Maintenance Subcontractor Statement for the purpose of determining the extent of the matters occurring prior to a Default Event which are required to be remedied and the requirements to effect the remedy of that Default Event by a Statement Beneficiary.
- (b) **(Conclusive evidence)**: A Maintenance Subcontractor Statement will, to the extent provided for in clause 6.4 and 6.5, be conclusive evidence in favour of any Statement Beneficiary that the Maintenance Subcontractor has waived and abandoned all Claims then known or which ought reasonably to have been known to the Maintenance Subcontractor arising in connection with the Maintenance Subcontract prior to the date of the Default Event Notice other than the Claims disclosed in the Maintenance Subcontractor Statement.
- (c) **(Claims against Project Co)**: Clauses 6.5(b), 6.7(a) and 6.7(b) are without prejudice to the rights of the Maintenance Subcontractor to pursue any Claims against Project Co following the end of the Step-In Period or termination of the Subcontract.
- (d) **(Disputes)**: For the avoidance of doubt, a Maintenance Subcontractor Statement will not prevent any Statement Beneficiary from disputing the amount of any Claim or other relief sought by the Maintenance Subcontractor or the existence of any default by Project Co under the Subcontract. In the case of any such dispute:
 - (1) the time periods set out in clause 6.2(d) will continue to apply to those amounts and obligations (if any) which are not in dispute;
 - (2) the dispute must be referred to dispute resolution under clauses 9 to 10; and
 - (3) during the period of dispute resolution, all parties must continue to perform their obligations under this Deed and the Project Documents.

7 Step-In by the State

7.1 Step-In Right

- (a) **(Exercise)**: Following receipt of a State Cure Notice or if the State is entitled to exercise any of the rights referred to in clause 3.2 or otherwise as permitted under any Project Document, the State may:
 - (1) if permitted under the State Security and the Finance Direct Deed, appoint a Receiver over Project Co or any or all of its assets (including the Maintenance Subcontractor Documents);
 - (2) itself enter into possession of any or all of the assets of Project Co;
 - (3) take such other action as it is permitted to take under the terms of the Project Documents; or



- (4) by notice to the Maintenance Subcontractor (**Additional Obligor Step-In Notice**), procure that an Additional Obligor assumes jointly and severally with Project Co all of Project Co's rights and obligations under the Maintenance Subcontractor Documents,
- (each a **Step-In Right**).
- (b) (**Step-In Period**): The period from the date on which the Maintenance Subcontractor receives notice of the exercise of any Step-In Right to the earliest of:
- (1) the Additional Obligor Step-Out Date;
 - (2) the date on which the Maintenance Subcontractor terminates the Subcontract;
 - (3) the date of any transfer under clause 8;
 - (4) the date which the State has notified the Maintenance Subcontractor will be the date that the State ceases to exercise its Step-In Rights; and
 - (5) any other date on which the State ceases to continue to exercise its Step-In Rights,
- is the **Step-In Period**.
- (c) (**Acknowledgment**): The Maintenance Subcontractor Parties each acknowledge that the exercise by the State of a Step-In Right in the manner contemplated by this Deed will not of itself contravene the Maintenance Subcontractor Documents, or constitute a Default Event under the Maintenance Subcontract or entitle a Maintenance Subcontractor Party to exercise any right (including termination) under a Maintenance Subcontractor Document.

7.2 Step-In by the State

- (a) (**Rights**): Subject to the Finance Direct Deed, the State may at any time during a Step-In Period, exercise all or any of its rights and carry out all or any of the obligations of Project Co in connection with the Maintenance Subcontractor Documents, as if it were Project Co to the exclusion of Project Co.
- (b) (**No Liability**): Project Co and the Maintenance Subcontractor Parties each agree that, subject to clause 7.3(b):
- (1) none of the State or its Associates will have any Liability; and
 - (2) none of Project Co or the Maintenance Subcontractor Parties will be entitled to make, continue or enforce any Claim against the State or any of its Associates,

arising in connection with the Maintenance Subcontractor Documents or this Deed by reason only of the State or any of its Associates exercising any of Project Co's rights, or performing any of Project Co's obligations under the Maintenance Subcontractor Documents other than, and then only to the extent of, Liability for fraudulent, reckless, unlawful or malicious acts or omissions, or wilful misconduct of the State or any State Associate.

7.3 Step-In using Additional Obligor

- (a) (**Assumption Date**): If clause 7.1(a)(4) applies, the Additional Obligor will become a party to the Maintenance Subcontractor Documents on the date on which the Additional Obligor Step-In Notice is given to the Maintenance



Subcontractor or such later date as the Maintenance Subcontractor and the State may agree (**Assumption Date**).

- (b) (**Rights and obligations of Additional Obligor**): During a Step-In Period in respect of which the State has exercised a Step-In Right under clause 7.1(a)(4):
- (1) subject to clause 7.3(b)(2), the Additional Obligor and Project Co will be jointly and severally:
 - (A) entitled to exercise the rights of Project Co under the Maintenance Subcontractor Documents (excluding any accrued rights of Project Co in respect of any damage, loss, cost, charge, expense, outgoing or payment to the extent that the rights arose prior to the Assumption Date) (**Project Co's Rights**); and
 - (B) liable for the performance or non-performance of all Project Co's obligations under the Maintenance Subcontractor Documents arising on or after the Assumption Date except as released in accordance with clause 7.3(e);
 - (2) as between Project Co, the Maintenance Subcontractor Parties and the Additional Obligor, only the Additional Obligor is authorised to deal with the Maintenance Subcontractor Parties and to exercise Project Co's Rights;
 - (3) Project Co acknowledges that it will be legally bound by all the acts and omissions of the Additional Obligor in so dealing with the Maintenance Subcontractor Parties and in exercising Project Co's Rights;
 - (4) the Additional Obligor will be bound by any earlier decision, directions, approvals, notices or consents given or made prior to the Assumption Date;
 - (5) clause 14 will apply to the Maintenance Subcontractor Parties and the Additional Obligor as if the address and email address of the Additional Obligor (as notified to the Maintenance Subcontractor Parties and Project Co) were set out in addition to those of Project Co; and
 - (6) the Maintenance Subcontractor Parties will owe their respective obligations under the Maintenance Subcontractor Documents to Project Co and the Additional Obligor jointly but the performance by a Maintenance Subcontractor Party in favour of either Project Co or the Additional Obligor will be a good discharge of the relevant obligations under the Maintenance Subcontractor Documents.
- (c) (**No Liability**): Without prejudice to the Maintenance Subcontractor's rights under clauses 6.2 and 6.3, the Additional Obligor will have no obligation to, and no Liability in respect of, remedying any default or breach of Project Co under the Maintenance Subcontractor Documents arising prior to the Assumption Date.
- (d) (**Additional Obligor Step-Out Date**): The Additional Obligor may at any time give the Maintenance Subcontractor notice terminating the Additional Obligor's rights and obligations under the Maintenance Subcontractor Documents (without affecting the continuation of Project Co's obligations or liabilities towards the Maintenance Subcontractor Parties under the Maintenance Subcontractor Documents). Such notice must specify the date on which it takes effect, which must be:



- (1) at least 30 days after the date of the notice; or
 - (2) if a Novation Notice has been given, the Novation Notice Date,
(Additional Obligor Step-Out Date).
- (e) **(Release)**: On and from the Additional Obligor Step-Out Date, as between the Maintenance Subcontractor Parties and the Additional Obligor only, each of the Maintenance Subcontractor Parties and the Additional Obligor will be released from all obligations under the Maintenance Subcontractor Documents (except for those obligations owed to each other which have arisen during the relevant Step-In Period), whether or not a Claim has been made in respect of those obligations or they have not fallen due to be performed or have not been performed. For the avoidance of doubt, on and from the Additional Obligor Step-Out Date, the Maintenance Subcontractor Parties will continue to owe their obligations under the Maintenance Subcontractor Documents to:
- (1) Project Co; or
 - (2) if a Novation Notice has been given, to the Substitute Party.

7.4 Indemnity

Project Co must indemnify the State, its Associates and any Additional Obligor against any Claim or Liability (including any Claim made by, or Liability to, a third party) the State, any of its Associates or any Additional Obligor suffers or incurs arising in connection with taking any action under clause 7.2 or clause 7.3, except to the extent that such Claim or Liability is caused or contributed to by any of the events set out in clause 42.11 (*Limits on Project Co liability to indemnify and release*) of the Project Agreement.

8 State's option to novate to the State or third party

8.1 Option

- (a) **(Novation Notice)**: The State may require a novation of the Maintenance Subcontractor Documents upon the termination of the Project Agreement by giving a notice (**Novation Notice**) to the Maintenance Subcontractor Parties. The Novation Notice must specify the person to whom the State intends to novate the Maintenance Subcontractor Documents whether this be the State or another person (**Substitute Party**).
- (b) **(Maintenance Subcontractor's obligations to continue)**: If the State issues a Novation Notice then (without prejudice to the Maintenance Subcontractor's rights under clauses 6.2 and 6.3) the Maintenance Subcontractor Parties, until the Novation Notice Date, must continue to perform their respective obligations under the Maintenance Subcontractor Documents.
- (c) **(Maintenance Subcontractor to continue work)**: If the Maintenance Subcontractor has exercised any rights it has to suspend the performance of any of its obligations under the Subcontract, the Maintenance Subcontractor must recommence performance of those obligations from the Novation Notice Date or the date on which the cause of the suspension is remedied (whichever is the earlier).
- (d) **(Novation Notice not a Default Event)**: The Maintenance Subcontractor Parties each acknowledge that the giving of a Novation Notice by the State will not of itself contravene, or constitute a Default Event under, a Maintenance

Subcontractor Document, or entitle the Maintenance Subcontractor Party to exercise any power (including termination) under it.

8.2 Novation to Substitute Party

- (a) **(Effect of novation):** Subject to clause 8.3, with effect from the Novation Notice Date:
- (1) the Substitute Party will assume (and if the Substitute Party is not the State, the State will procure that the Substitute Party assumes):
 - (A) any obligation of Project Co under the Maintenance Subcontract arising before the Novation Notice Date insofar as it relates to the payment of an amount of money that:
 - 1) is due and payable under the terms of the Subcontract; and
 - 2) is not the subject of a dispute under the Maintenance Subcontract (or is the subject of a dispute under the Maintenance Subcontract in which case the Substitute Party will, on the determination of such dispute, assume such obligations in accordance with that determination); and
 - (B) the obligations of Project Co under the Maintenance Subcontractor Documents arising on and from the Novation Notice Date (including obligations in relation to the payment of amounts which become due and payable in respect of work performed before the Novation Notice Date) subject to any amendments to the Maintenance Subcontractor Documents agreed in accordance with clause 8.2(a)(6);
 - (2) without prejudice to any then accrued rights against Project Co (other than termination), any Maintenance Subcontractor's right to suspend under the Maintenance Subcontract which exists at the Novation Notice Date will be of no further effect;
 - (3) subject to any amendments agreed to the Maintenance Subcontractor Documents in accordance with clause 8.2(a)(6), the Substitute Party will have all the rights of Project Co under the Maintenance Subcontractor Documents (excluding any accrued rights of Project Co in respect of any damage, loss, cost, charge, expense, outgoing or payment to the extent that those rights arose prior to the Novation Notice Date and are the subject of any unresolved dispute referred to in clause 8.2(a)(1)(A)2));
 - (4) subject to clause 8.2(a)(3) and any amendments agreed to the Maintenance Subcontractor Documents in accordance with clause 8.2(a)(6), the Maintenance Subcontractor Parties will:
 - (A) be bound by and must comply with the provisions of the Maintenance Subcontractor Documents as if the Substitute Party were Project Co; and
 - (B) be entitled to any extensions of time and other entitlements which accrued to the Maintenance Subcontractor prior to the Novation Notice Date;

- (5) Project Co is released from all of its obligations and Liabilities under the Maintenance Subcontractor Documents, excluding any accrued obligations or Liabilities of Project Co to the extent that those accrued obligations or Liabilities:
 - (A) arose in connection with events occurring prior to the Novation Notice Date; and
 - (B) are not obligations and Liabilities assumed by the Substitute Party under clause 8.2(a)(1);
- (6) the Maintenance Subcontractor Parties and the Substitute Party will promptly negotiate in good faith, any amendments to the Maintenance Subcontractor Documents that are necessary to reflect the termination of the Project Agreement; and
- (7) for the avoidance of doubt, any caps on Liability in the Maintenance Subcontractor Documents will continue to apply, but so that any Liability of the Maintenance Subcontractor Parties incurred to Project Co prior to the Novation Notice Date is taken into account in respect of any ongoing Liability of the Maintenance Subcontractor Parties to the Substitute Party.
- (b) **(No set off):** Neither Maintenance Subcontractor Party is entitled to exercise any right of set off, deduction, abatement or counterclaim against the Substitute Party if, and to the extent that, such right arose prior to the Novation Notice Date.
- (c) **(Novation Deed):** Subject to clause 8.3(b), Project Co, the Maintenance Subcontractor Parties and the Substitute Party must enter into an agreement in form and substance reasonably requested by the Substitute Party reflecting the novation of the Maintenance Subcontractor Documents as contemplated in clause 8.2(a) and take such other action as is required to vest in the Substitute Party full legal and equitable title to any retention account, bank guarantee, performance bond, letter of credit or other security held by Project Co to secure the obligations of a Maintenance Subcontractor Party under the Maintenance Subcontractor Document.
- (d) **(Attorney):** For valuable consideration, Project Co and the Maintenance Subcontractor Parties each irrevocably appoint the State, on its behalf and in its name or otherwise, as its attorney to do anything which Project Co or a Maintenance Subcontractor Party is obliged to do (but has not done within 5 Business Days of request) under clause 8.2(c). Each of Project Co and the Maintenance Subcontractor Parties ratifies and confirms and agrees to ratify and confirm whatever any such attorney lawfully does in the exercise of the power of attorney in this clause 8.2(d).

8.3 Novation to a Substitute Party other than the State

- (a) **(Information to be provided by the State):** If the State gives a Novation Notice that states that Project Co must novate the Maintenance Subcontract Documents to a Substitute Party other than the State or a State Associate, the State must, at the time it gives the Novation Notice, provide to the Maintenance Subcontractor Parties the following particulars of the Substitute Party:
 - (1) its name, place of incorporation and identity of shareholder(s) (including, unless a shareholder is listed on a securities exchange, the ultimate shareholders);
 - (2) if available, its most recent published audited accounts; and



- (3) sufficient particulars of the finance available to the Substitute Party to enable each Maintenance Subcontractor Party to decide whether to grant its consent to the Substitute Party.
- (b) **(Consent by the Maintenance Subcontractor):** A novation to, and the giving of a Novation Notice with respect to, a Substitute Party other than the State or a State Associate in accordance with this clause 8 will only be effective, and the Maintenance Subcontractor Parties will only be required to enter into a novation agreement under clause 8.2(c), if the Maintenance Subcontractor Parties each consent to that novation (such consent not to be unreasonably withheld or delayed) or are deemed to have consented in accordance with clause 8.3(d).
- (c) **(Further information):** The State must as soon as practicable supply the Maintenance Subcontractor Parties with such additional information to that provided under clause 8.3(a) as the Maintenance Subcontractor Parties each reasonably require to enable it to decide whether to grant consent under clause 8.3(b), and the Maintenance Subcontractor Parties must each consider such information expeditiously and inform the State promptly if it reasonably requires further information.
- (d) **(Deemed consent):** The Maintenance Subcontractor Parties' consent to the novation will be deemed to be given if the Maintenance Subcontractor Parties have not notified the State under clause 8.3(e)(2) within 15 Business Days of the later of:
- (1) the receipt of the Novation Notice; and
 - (2) the receipt of the State's response to the Maintenance Subcontractor Parties' request for information under clause 8.3(c).
- (e) **(Unreasonably withholding consent):** A Maintenance Subcontractor Party is not entitled to refuse consent to the novation unless:
- (1) the grounds for refusal are reasonable and are based on:
 - (A) the proposed novation deed referred to in clause 8.2(c) for the Substitute Party to assume the rights and obligations of Project Co under the Maintenance Subcontractor Documents not being effective to substitute the Substitute Party for Project Co;
 - (B) the Substitute Party not having the legal capacity, power and authorisation to become a party to and perform the obligations of Project Co in accordance with the Maintenance Subcontractor Documents including any necessary authorisations and consents;
 - (C) the technical competence or financial standing of the Substitute Party being insufficient for it to meet the obligations of Project Co in accordance with the Maintenance Subcontractor Documents; or
 - (D) a Maintenance Subcontractor Party being placed in breach of any Laws by the proposed novation; and
 - (2) it has notified the State of such reasons.
- (f) **(If the Maintenance Subcontractor withholds consent):** If either Maintenance Subcontractor Party withholds its consent to a Novation Notice under this clause 8.3, this will not prejudice the ability of the State to give one or more subsequent Novation Notices, and information under clause 8.3(a), containing changed particulars relating to the same Substitute Party or particulars relating to another Substitute Party.

8.4 Accrued obligations and liabilities

Clause 8.2 does not operate to:

- (a) **(State not to assume)**: require the State to assume any obligations or Liabilities arising from, or which are required to be performed in connection with the Maintenance Subcontractor Documents prior to the Novation Notice Date unless expressly required to do so in clause 8.2; or
- (b) **(Release Project Co)**: release Project Co from such obligations or Liabilities unless expressly provided for in clause 8.2.

9 Dispute Resolution

9.1 Procedure for resolving disputes

- (a) **(Disputes to be resolved)**: Any dispute arising under this Deed must be resolved by the parties to that dispute (**Disputing Parties**) in accordance with clause 9 and clause 10.
- (b) **(Procedure)**: The procedure that is to be followed to resolve a dispute is as follows:
 - (1) firstly, the dispute must be the subject of negotiation as required by clause 9.2;
 - (2) secondly, if the dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 9.2(c)(1) the Disputing Parties may agree that the dispute will be referred to an expert for determination in accordance with clauses 9.4 to 9.9 or to arbitration under clause 10; and
 - (3) thirdly, if:
 - (A) the dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 9.2(c)(1) and irrespective of whether the Disputing Parties failed to meet as required by that clause or whether having so met the Disputing Parties failed to agree whether the Dispute should be referred to an expert or to arbitration within 20 Business Days after the expiration of the period for negotiation referred to in clause 9.2(c)(1);
 - (B) the dispute has been referred to expert determination and a determination is not made by the expert within 30 days after the expert's acceptance of appointment; or
 - (C) the dispute is referred to expert determination and a notice of dissatisfaction is given in accordance with clause 9.6(a),
 - (4) then the dispute must be referred to arbitration in accordance with clause 10.

9.2 Negotiation

- (a) **(Notification)**: If a dispute arises then a party may give notice to each other Disputing Party requesting that the dispute be referred for resolution by



negotiation between the Chief Executive Officers (or equivalent) of the Disputing Parties (**Representatives**).

- (b) **(Contents of Notice)**: A notice under clause 9.2(a) must:
 - (1) state that it is a notice under this clause 9; and
 - (2) include or be accompanied by particulars of the matters which are the subject of the dispute.
- (c) **(Attempt to resolve Dispute)**: If a dispute is referred for resolution by negotiation under clause 9.2(a), then:
 - (1) the Representatives must meet and attempt in good faith to resolve the dispute (in whole or in part) within 10 Business Days of the date on which the notice under clause 9.2(a) is received (or such later date as the Disputing Parties may agree); and
 - (2) any agreement reached between the Representatives will be reduced to writing, signed by or on behalf of each Disputing Party and will be contractually binding on the Disputing Parties.

9.3 Expert determination

If:

- (a) **(dispute unresolved by Representatives)**: a dispute which has been referred to the Representatives for negotiation in accordance with clause 9.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 9.2(c)(1); and
- (b) **(referral to expert)**: the Disputing Parties agree within 20 Business Days after the expiration of the period for negotiation referred to in clause 9.2(c)(1), that the dispute be referred to an expert for determination,

then those parts of the dispute which remain unresolved will be referred to an expert for determination under clauses 9.4 to 9.9. For the avoidance of doubt, a dispute may only be referred to an expert for determination by agreement of the Disputing Parties.

9.4 Selection of expert

- (a) **(Exchange of lists of 3 preferred experts)**: Within 7 Business Days after the date on which the Disputing Parties agree to refer a dispute to an expert for determination under clause 9.3, the Disputing Parties must exchange lists of 3 persons (in order of preference) who, if appointed, would satisfy the requirements of clause 9.4(d), from whom the expert is to be chosen.
- (b) **(Appointment of person who appears on both lists)**: Any person who appears on the list of all Disputing Parties exchanged under clause 9.4(a) will be appointed as the expert to determine a dispute and if more than one person appears on the list of all Disputing Parties, the person given the highest order of priority by the party who gave the notice under clause 9.2(a) will be appointed.
- (c) **(Appointment if no person appears on both lists)**: If no person appears on the list of all the Disputing Parties, the party which gave the notice under clause 9.2(a) must procure:
 - (1) the president (or the senior non-executive officer, howsoever described) of the institute or governing body for the technical or professional discipline the subject of the relevant dispute to nominate the expert, having regard to, but not being bound by, those persons proposed by the Disputing Parties under clause 9.4(a); or



- (2) if there is no governing body for the technical or professional discipline the subject of the relevant dispute or the Disputing Parties cannot agree the technical or professional discipline relevant to the dispute or such governing body advises that it will not nominate an expert, the Australian Centre for International Commercial Arbitration to nominate a person to act as the expert, having regard to, but not being bound by, those persons proposed by the Disputing Parties under clause 9.4(a),
- within 7 Business Days of the exchange of notices under clause 9.4(a).
- (d) **(Appropriate skills):** It is the intention of the parties that the expert appointed to determine a dispute will be an independent person with appropriate skills having regard to the nature of the matters in dispute.
- (e) **(No entitlement to challenge appointment):** No Disputing Party will be entitled to challenge the appointment of an expert under this clause 9.4 on the basis that the expert does not satisfy the requirements of clause 9.4(d).
- (f) **(Not an arbitration agreement):** Any agreement for expert determination under this Deed will not constitute an arbitration agreement for the purposes of the *Commercial Arbitration Act 2011 (Vic)*.
- (g) **(Agreement):** Once an expert is appointed, the Disputing Parties must enter into an agreement with the expert on the terms of the Expert Determination Agreement or such other reasonable terms as the expert may require.

9.5 Rules of expert determination

The expert determination process will be administered, and the expert will be required to act, under the terms of the Expert Determination Agreement.

9.6 Expert finding

- (a) **(Notification):** The determination of the expert must be in writing and will be final and binding on the Disputing Parties unless, within 10 Business Days of receipt of the determination, a Disputing Party gives notice to each other Disputing Party of its dissatisfaction and intention to refer the matter to arbitration in accordance with clause 10.
- (b) **(Amendment to determination):** Upon submission by any Disputing Party, the expert may amend the determination to correct:
- (1) a clerical mistake;
 - (2) an error from an accidental slip or omission;
 - (3) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
 - (4) a defect in form.

9.7 Liability of expert

- (a) **(Liability of expert):** The Disputing Parties agree:
- (1) that the expert will not be Liable in connection with the expert determination, except in the case of fraud on the part of the expert; and



- (2) to indemnify the expert against any Claim or Liability in connection with the expert determination, except in the case of fraud on the part of the expert, in which case a Claim may be made against him or her by any person who is a party to the dispute.
- (b) **(Engagement)**: The Disputing Parties will jointly engage the expert services in connection with the expert determination proceedings and each Disputing Party will seek a separate Tax Invoice equal to its share of the cost of the expert.

9.8 Costs

The Disputing Parties must:

- (a) **(own costs)**: bear their own costs in connection with the expert determination proceedings; and
- (b) **(engagement)**: pay an equal portion of the costs of the expert.

9.9 Proportionate Liability

To the extent permitted by Law, the Expert will have no power to apply or to have regard to the provisions of any proportionate liability legislation which might in the absence of this clause 9.9, have applied to any dispute referred to the Expert in accordance with this clause 9.

10 Arbitration

10.1 Reference to Arbitration

- (a) **(Dispute)**: If:
 - (1) a dispute:
 - (A) which has been referred to the Disputing Parties' Representatives for negotiation in accordance with clause 9.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 9.2(c)(1); and
 - (B) the Disputing Parties do not agree to refer the dispute to an expert for determination; or
 - (2) in the case of a dispute which the Disputing Parties agree to refer to expert determination under clause 9.3:
 - (A) a determination is not made within 30 days of the expert's acceptance of the appointment; or
 - (B) a notice of dissatisfaction is given in accordance with clause 9.6(a),then any Disputing Party may notify the other Disputing Parties that it requires the dispute to be referred to arbitration.
- (b) **(Referral)**: Upon receipt by a Disputing Party of a notice under clause 10.1(a), the dispute will be referred to arbitration.



10.2 Arbitration

- (a) **(ACICA Rules):** Arbitration in accordance with this clause 10 will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Rules) as current at the date the Dispute is referred to arbitration and as otherwise set out in this clause 10 with this clause 10 having priority to the extent of any inconsistency.
- (b) **(Seat):** The seat of the arbitration will be Melbourne, Victoria.
- (c) **(Language):** The language of the arbitration will be English.

10.3 Appointment of arbitrator

The parties will endeavour to agree on the arbitrator or arbitrators (if the parties agree to appoint three arbitrators), but if no such agreement is reached within 14 Business Days of the dispute being referred to arbitration in accordance with clause 10.1(b), the arbitrator or arbitrators will be appointed in accordance with the ACICA Rules.

10.4 General Principles for conduct of arbitration

- (a) **(Conduct of arbitration):** The Disputing Parties agree that:
 - (1) they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any dispute;
 - (2) any arbitration conducted in accordance with this clause 10 will not necessarily mimic court proceedings of the seat of the arbitration or the place where hearings take place (if different), and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and
 - (3) in conducting the arbitration, the arbitrator must take into account the matters set out in clauses 10.4(a)(1) and 10.4(a)(2).
- (b) **(Evidence in writing):** All evidence in chief must be in writing unless otherwise ordered by the arbitrator.
- (c) **(Evidence and discovery):** The rules for evidence and discovery will be the IBA Rules on the Taking of Evidence in International Arbitration current at the date of arbitration (or if there are no current rules, the most recent version of those rules).
- (d) **(Oral hearing):** The oral hearing must be conducted as follows:
 - (1) any oral hearing must take place in Melbourne, Victoria and all outstanding issues must be addressed at the oral hearing;
 - (2) the date and duration of the oral hearing must be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in clause 10.4(a) when determining the duration of the oral hearing;
 - (3) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
 - (4) the oral hearing must be conducted on a stop clock basis with the effect that the time available to the Disputing Parties must be split equally between the Disputing Parties so that each party has the same time to conduct its case unless, in the opinion of the arbitrator,



such a split would breach the rules of natural justice or is otherwise unfair to one of the Disputing Parties;

- (5) not less than 28 days prior to the date fixed for oral hearing each of the Disputing Parties must give notice of those witnesses (both factual and expert) of each other Disputing Party that it wishes to attend the hearing for cross examination;
 - (6) in exceptional circumstances the arbitrator may amend the date of hearing and extend the time for the oral hearing set in accordance with clause 10.4(d)(2);
 - (7) a Disputing Party will not be bound to accept the written evidence of a witness submitted on behalf of an opposing Disputing Party which is not challenged in cross examination; and
 - (8) each Disputing Party is expected to put its case on significant issues in cross examination of a relevant witness called by the other Disputing Party or, where it seeks to challenge the evidence of a witness not called for cross-examination by reference to other evidence, to identify that evidence in its written opening submissions so that the other Disputing Party may know the nature of and basis for the challenge to the witness' written evidence.
- (e) **(Experts):** Unless otherwise ordered each Disputing Party may only rely upon one expert witness in connection with any recognised area of specialisation.

10.5 Proportional liability

To the extent permitted by Law, the arbitrator will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this clause 10.5, have applied to any dispute referred to arbitration in accordance with this clause 10.

10.6 Extension of ambit of arbitration proceedings

- (a) **(Extending Disputes):** Where:
- (1) a dispute between the Disputing Parties to this Deed is referred to arbitration in accordance with this clause 10; and
 - (2) there is some other dispute also between the Disputing Parties to and in accordance with this Deed (whenever occurring),
- the arbitrator may, upon application being made to the arbitrator by one or more of the Disputing Parties at any time before a final award is made in relation to the first-mentioned dispute, make an order directing that the arbitration be extended so as to include the other dispute.
- (b) **(Arbitrator's order):** An arbitrator may make an order in accordance with clause 10.6(a) on such terms and conditions (if any) as the arbitrator thinks fit.

10.7 Award final and binding

- (a) **(Final and binding):** Subject to clause 10.7(b), any award will be final and binding on the Disputing Parties.
- (b) **(Appeal):** Each Disputing Party consents to any appeal to a court where that appeal is made under the *Commercial Arbitration Act 2011* (Vic) on a question



of law arising in connection with an arbitral award made in accordance with this clause 10.

10.8 Continue to perform

Notwithstanding the existence of a dispute, each Disputing Party must continue to carry out its obligations in accordance with this Deed.

10.9 Governing law of arbitration agreement

The Law governing this arbitration agreement is the law of Victoria, Australia.

10.10 Interlocutory relief

Clause 9 and clause 10 do not prevent a Disputing Party from seeking urgent interlocutory relief from a court of competent jurisdiction where, in that Disputing Party's reasonable opinion, that action is necessary to protect that Disputing Party's rights.

11 Termination of this Deed

- (a) **(Satisfaction of obligations under the Subcontract):** This Deed will terminate upon the performance and satisfaction of all of the obligations under the Maintenance Subcontractor Documents.
- (b) **(Does not affect rights of parties):** The termination of this Deed does not affect the rights of any party which have accrued to that party before the date of termination.

12 Insurances

- (a) **(Insurances):** Notwithstanding anything else contained in the Maintenance Subcontractor Documents or this Deed, the Maintenance Subcontractor will:
 - (1) take out all insurances as are required to be taken out by it under the Subcontract; and
 - (2) otherwise comply with all of its obligations in relation to insurance in the Subcontract.
- (b) **(Not to prejudice):** Project Co and the Maintenance Subcontractor must each ensure that it does not do or omit to do anything or does not permit anything to be done or omitted to be done whereby any insurance policy required under the Maintenance Subcontract may be prejudiced.
- (c) **(Void or Voidable):** If any default occurs by the Maintenance Subcontractor in effecting or maintaining such insurance policy or if any such insurance policy becomes void or voidable, the State may (but is not obliged to) effect or maintain that Insurance policy at the cost of the Maintenance Subcontractor or, failing it, Project Co.
- (d) **(State to be covered):** If required by the Project Agreement, in respect of any insurance contract entered into by the Maintenance Subcontractor as contemplated by clause 12(a), the Maintenance Subcontractor must ensure that



the State and the State's Associates are specified as a person to whom the insurance cover provided by that contract extends.

- (e) **(All documents, evidence and information)**: Project Co and the Maintenance Subcontractor must each do all things necessary and provide all documents, evidence and information necessary to enable the State to collect or recover any moneys due or to become due to the State in respect of any insurance policy required under the Maintenance Subcontract at the cost of the Maintenance Subcontractor or, failing it, Project Co.
- (f) **(Cancellation, lapse or material change)**: Without prejudice to clauses 12(a) to 12(e), neither Project Co nor the Maintenance Subcontractor will cause or take any steps to bring about the cancellation, lapse, material change, reduction or any rescinding of any such insurance policy unless it has first obtained the consent of the State.
- (g) **(Notify the State)**: Project Co and the Maintenance Subcontractor must each immediately notify the State of any cancellation, lapse, material change, reduction, or any rescinding of any such insurance policy, and of the occurrence of any event giving rise to any claim under any such insurance policy in respect of the Project.
- (h) **(Several obligations)**: Notwithstanding clause 1.3(o), but subject to the obligations of Project Co under the terms of the Project Agreement, the obligations of Project Co and the Maintenance Subcontractor in this clause 12 are several.

13 Goods and Services Tax (GST)

- (a) **(GST exclusive amounts)**: Unless otherwise expressly stated, all amounts referred to in this Deed, the Maintenance Subcontractor Documents, or any Project Document are exclusive of GST.
- (b) **(GST payable by Supplier)**: If GST becomes payable on any Taxable Supply made by a party (**Supplier**) under or in connection with this Deed:
 - (1) any amount payable or consideration to be provided in accordance with any other provision of this Deed for that supply (**Agreed Amount**) is exclusive of GST;
 - (2) an additional amount will be payable by the party which is the recipient of the Taxable Supply (**Recipient**), equal to the amount of GST payable on that Taxable Supply as calculated by the Supplier in accordance with the GST Law, payable at the same time and in the same manner as for the Agreed Amount; and
 - (3) the Supplier will provide a Tax Invoice to the Recipient in connection with that supply, either at the time expressly set out in any other provision of this Deed or no later than the time at which the Agreed Amount for that Taxable Supply is to be provided in accordance with this Deed. The Recipient is not obliged to pay any amount in accordance with this clause 13(b) unless and until a Tax Invoice is received by the Recipient in connection with the Taxable Supply except where the Recipient is required to issue the Tax Invoice.
- (c) **(Variation in GST payable)**: If for any reason, the GST payable by the Supplier in connection with a supply it makes under or in connection with this Deed (incorporating any increasing adjustments or decreasing adjustments relating to



that supply) varies from the additional amount it received from the Recipient under clause 13(b) in connection with that supply, the Supplier will provide a refund or credit to, or will be entitled to receive from, the Recipient (as appropriate) the amount of this variation. Where an adjustment event occurs in relation to a supply and except where the Recipient is required to issue the Adjustment Note:

- (1) the Supplier will issue an Adjustment Note to the Recipient in connection with that supply within 14 days after becoming aware of that adjustment event occurring; and
 - (2) no additional amount will be payable by the Recipient unless and until an Adjustment Note is received by the Recipient.
- (d) **(GST ceasing to be payable):** No amount is payable by a party in accordance with clause 13(b) or 13(c) to the extent that the GST to which the amount relates has ceased to be payable by or refundable to the Supplier by the Commissioner of Taxation under the GST Law.
- (e) **(Expert determination):** If the Recipient is dissatisfied with any calculation to be made by the Supplier in accordance with this clause 13 the Recipient may, at its own expense and after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the President of the Institute of Chartered Accountants for expert determination, which will be final and binding on all parties (except in the case of manifest error on the face of the expert determination). The expert will act as an expert and not as an arbitrator and must take into account the terms of this Deed, the matters required to be taken into account by the Supplier in accordance with this clause 13 and any other matter considered by the expert to be relevant to the determination. The parties release the expert from any liability in acting as an expert, except in the case of fraud on the part of the expert.
- (f) **(Revenue net of GST):** Any reference in this Deed to price, value, sales, revenue, profit or a similar amount (**Revenue**) is a reference to the GST exclusive component of that Revenue, unless the contrary intention is expressed.
- (g) **(Cost net of GST):** Any reference in this Deed to cost, expense, liability or other similar amount (**Cost**) of a party is a reference to that Cost reduced by the Input Tax Credits to which the party is entitled in respect of such Cost, unless the contrary intention is expressed.
- (h) **(General obligation):** Each party agrees to do all things, including providing Tax Invoices and other documentation, that may be necessary or desirable to enable or assist the other party in determining its GST payable on any supply made by that other party in connection with this Deed, or any input tax credits, adjustments or refunds in relation to any amount of GST paid or payable in connection with any supply made in connection with this Deed.
- (i) **(GST Groups):** For the purposes of this Deed, a reference to GST payable on a Taxable Supply made by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member and a reference to an input tax credit entitlement of a party includes any corresponding input tax credit entitlement of the representative member of any GST group of which that party is a member.
- (j) **(Project Agreement to prevail):** If clause 59 (*Taxes*) of the Project Agreement would apply in respect of a Taxable Supply to which this clause 13 also applies then clause 59 (*Taxes*) of the Project Agreement will apply in respect of that supply and the provisions of this clause 13 (but for this clause 13(j)) will not apply.



- (k) **(Definitions):** In this clause 13 unless otherwise defined in this Deed, terms used have the meanings given to them in the GST Law.

14 Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Deed:

- (a) **(in writing):** must be in writing;
- (b) **(addressed):** must be addressed as set out below (or as otherwise notified by that party to each other party from time to time);

State:

Attention: [not disclosed]
 Address: [not disclosed]
 Email: [not disclosed]

Project Co:

Attention: [not disclosed] Address: [not disclosed]
 Email: [not disclosed]

Maintenance Subcontractor:

Attention: [not disclosed]
 Address: [not disclosed]
 Email: [not disclosed]

Parent Guarantor:

Attention: [not disclosed]
 Address: [not disclosed]
 Email: [not disclosed]

- (c) **(signed):** must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(form of delivery):** must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by the parties) to the email address of the addressee set out in clause 14(b); and
- (e) **(taken to be received):** are taken to be received by the addressee at the address set out in clause 14(b):
 - (1) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00am on the next Business Day;
 - (2) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and
 - (3) in the case of email, the first to occur of:

- (A) receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
- (B) the time that the communication enters an information system which is under the control of the addressee; or
- (C) the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00am on the next Business Day.

15 Confidential Information and disclosure

15.1 Confidential Information and disclosure by the State

The Maintenance Subcontractor Parties acknowledge and agree that:

- (a) **(Public Disclosure Obligations):** the State or any Authority may disclose any information in connection with the Project (including any Confidential Information) in accordance with its Public Disclosure Obligations and the Maintenance Subcontractor Parties must use all reasonable endeavours to assist the State or an Authority in meeting its Public Disclosure Obligations;
- (b) **(Other purposes):** the State or any Authority may disclose any information in connection with the Project (including any Confidential Information) in connection with:
 - (1) any Re-franchising; and
 - (2) the requirements of the State Project Documents (including any tender process required to be conducted under the Termination Payments Schedule, or Change Compensation Principles);
- (c) **(State's rights):** subject to clause 15.1(d), in meeting its Public Disclosure Obligations or as otherwise considered necessary by the State, the State may publish, disclose or make generally available each Project Document on a Victorian Government website;
- (d) **(Commercially sensitive information):** the State will not publish, disclose or otherwise make generally available the information which is specified in the Confidential Information Schedule (including the Financial Model), except if required to do so to comply with the Public Disclosure Obligations or as required under clause 15.1(b); and
- (e) **(Exercise of licence):** nothing in this Deed prevents the State and any sublicensees using or disclosing any information (including Confidential Information) to the extent necessary or desirable for, or in connection with, the exercise of any licence granted under clause 56 (*Intellectual Property Rights*) of the Project Agreement.



15.2 Confidential Information and disclosure by Project Co and the Maintenance Subcontractor Parties

- (a) **(Confidentiality obligation):** Subject to clause 15.2(b), Project Co and the Maintenance Subcontractor Parties must treat as secret and confidential all Confidential Information in connection with this Deed and any other State Project Document.
- (b) **(Disclosure of Confidential Information):** Without limiting Project Co's and the Maintenance Subcontractor's obligations under clause 15.2(a) and subject to clause 15.2(c), Project Co and the Maintenance Subcontractor Parties may each disclose Confidential Information to:
- (1) its Associates to the extent necessary for the purpose of undertaking the Project;
 - (2) a Rail Franchisee to the extent necessary for the purpose of undertaking the Project and to comply with its obligations in respect of the Rail Franchisee Cooperation Agreements and the Rail Franchisee Arrangements; or
 - (3) any Financier, prospective financier or equity investor of the Project, subject to the State having been provided necessary information in respect of the proposed parties and having carried out any Probity Investigation that the State considers necessary.
- (c) **(Confidentiality deed):** Before disclosing any Confidential Information, Project Co or the Maintenance Subcontractor Party (whichever is disclosing the Confidential Information) must ensure that the person to whom the information is disclosed:
- (1) except to the extent the person to whom information is disclosed is a Rail Franchisee Interface Party, enters into a confidentiality deed with Project Co or the Maintenance Subcontractor Party (whichever is disclosing the Confidential Information) on terms reasonably acceptable to the State; and
 - (2) to the extent the person to whom information is disclosed is a Rail Franchisee Interface Party, the Rail Franchisee Interface Party agrees to comply with its confidentiality obligations under the relevant Rail Franchisee Cooperation Agreement.

15.3 Disclosure by the Maintenance Subcontractor

- (a) **(The Maintenance Subcontractor's disclosure obligations):** Subject to clause 15.3(b), the Maintenance Subcontractor Parties must:
- (1) not make any public disclosures, announcements or statements in relation to the Project or the State's or any of the State's Associates' involvement in the Project without the State's prior consent;
 - (2) comply with any terms and conditions the State imposes and must use all reasonable endeavours to agree with the State the wording and timing of all public disclosures, announcements or statements by it or any of its Associates relating to the Project or the State's or any of the State's Associates' involvement in the Project before the relevant disclosure, announcement or statement is made; and
 - (3) as soon as practicable, give to the State a copy of any public disclosure, announcement or statement agreed to or approved by the



State in accordance with this clause 15.3(a) or for which the State's consent or approval was not required in accordance with clause 15.3(b).

- (b) **(Permitted disclosure):** For the purposes of clause 15.3(a), the Maintenance Subcontractor Parties will not be required to obtain the State's consent or approval to the extent that any disclosure, announcement or statement is:
- (1) required by Law, provided that it:
 - (A) notifies the State of the requirement to make that disclosure; and
 - (B) takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;
 - (2) required to obtain legal or other advice from its advisers;
 - (3) required to be made to a court in the course of proceedings to which any Maintenance Subcontractor Party is a party; or
 - (4) required by a relevant stock exchange, subject to:
 - (A) such disclosure, announcement or statement not referring to the State's or any of its Associates' involvement in the Project; and
 - (B) the Maintenance Subcontractor Parties having used all reasonable endeavours to obtain the State's consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant stock exchange; or
 - (5) a disclosure by:
 - (A) the Train Franchisee Interface Party made in accordance with clause 21.3(c) of the Train Franchisee Cooperation Agreement; or
 - (B) the Tram Franchisee Interface Party made in accordance with clause 16.3(c) of the Tram Franchisee Cooperation Agreement.

16 Return of documents

Each Maintenance Subcontractor Party must return to the State copies of all plans, drawings, specifications and other like documents which come into its possession for the purpose of the Maintenance Subcontractor Documents or this Deed at the expiration of the Maintenance Subcontractor Documents.

17 Miscellaneous

17.1 Governing Law and jurisdiction

- (a) **(Governing Law):** This Deed is governed by, and must be construed according to, the Laws of Victoria, Australia.



- (b) (**Jurisdiction**): Without limiting clauses 9 to 10, each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Deed.

17.2 Entire agreement

To the extent permitted by Law and in relation to its subject matter, this Deed:

- (a) (**entire understanding**): embodies the entire understanding of the parties and constitutes the entire terms agreed by the parties; and
- (b) (**prior agreements**): supersedes any prior agreement of the parties.

17.3 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to the parties) required by Law or reasonably requested by another party to give effect to this Deed.

17.4 Survival of certain provisions

- (a) (**Surviving clauses**): All provisions of this Deed which, expressly or by implication from their nature, are intended to survive the rescission, termination or expiration of this Deed will survive the rescission, termination or expiration of this Deed, including any provisions in connection with:
 - (1) the State's rights to set-off and recover money;
 - (2) confidentiality or privacy;
 - (3) Intellectual Property Rights;
 - (4) any obligation to make any information and records available to the State;
 - (5) any indemnity or financial security given in accordance with this Deed;
 - (6) any right or obligation arising on termination of this Deed; or
 - (7) any limitation of liability.
- (b) (**Interpretation**): No provision of this Deed which is expressed to survive the rescission, termination or expiration of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the rescission, termination or expiration of this Deed.
- (c) (**Survival of rights and obligations**): No right or obligation of any party will merge on completion of any transaction under this Deed. All rights and obligations in accordance with this Deed survive the execution and delivery of any transfer or other document which implements any transaction in accordance with this Deed.

17.5 Waiver

- (a) (**Writing**): A waiver given by a party in accordance with this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) (**No waiver**): A failure to, a delay in or the partial exercise or enforcement of a right provided by Law or in accordance with this Deed by a party does not



preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or in accordance with this Deed.

- (c) **(No waiver of another breach)**: No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

17.6 Consents, approvals and directions

- (a) **(State)**: A consent or approval required in accordance with this Deed from the State may be given or withheld, or may be given subject to any conditions, as the State thinks fit, unless this Deed expressly provides otherwise.
- (b) **(Project Co or Maintenance Subcontractor Party)**: A consent or approval required in accordance with this Deed from Project Co or a Maintenance Subcontractor Party may not be unreasonably withheld or delayed, unless this Deed expressly provides otherwise.

17.7 Amendments

Except as otherwise expressly provided in this Deed, this Deed may only be varied by a deed executed by or on behalf of each party.

17.8 Expenses

Except as otherwise expressly provided in this Deed (or as between the State and Project Co in the Project Agreement), each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

17.9 Severance

If, at any time, a provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) **(under this Deed)**: any other provision of this Deed; or
- (b) **(under another jurisdiction)**: that provision under the Law of any other jurisdiction.

17.10 Counterparts

This Deed may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same deed.

17.11 Moratorium legislation

To the fullest extent permitted by Law, the provisions of all Laws which operate to lessen or affect in favour of a party other than the State any obligation under this Deed, or to prejudicially affect the exercise by the State of any right, power or remedy under this Deed or otherwise, are expressly waived.



17.12 Proportionate liability

- (a) **(Excluded operation of Wrongs Act):** The operation of Part IVAA of the *Wrongs Act 1958* (Vic) is excluded in relation to all and any rights, obligations or liabilities of any party under this Deed whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) **(Rights, obligations and liabilities):** Without limiting clause 17.12(a), the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Deed and not otherwise, whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

17.13 Indemnity held on trust

- (a) **(Benefit of indemnities):** The State holds on trust for its Associates the benefit of:
 - (1) each indemnity and release given by Project Co or the Maintenance Subcontractor Parties under this Deed in favour of the State's Associates; and
 - (2) each right in this Deed to the extent that such right is expressly provided to be for the benefit of the State or State's Associates.
- (b) **(Project Co and Maintenance Subcontractor acknowledgement):** Each of Project Co and the Maintenance Subcontractor Parties acknowledge the existence of such trusts and consent to:
 - (1) the State exercising rights in relation to, or otherwise enforcing such indemnities, releases and rights on behalf of its Associates; and
 - (2) the State's Associates exercising rights in relation to, or otherwise enforcing the indemnities, releases and those rights as if they were a party to this Deed.
- (c) **(Consent not required):** The parties agree that the State does not require the consent of its Associates to amend or waive any provision of any Project Document.

17.14 Assignment

Except as expressly contemplated by this Deed, none of Project Co or the Maintenance Subcontractor Parties may assign or transfer any of its rights or obligations under this Deed or a Maintenance Subcontractor Document.

17.15 Set off

Without limiting the State's rights under the Project Agreement, all moneys which the State may pay or incur and for which Project Co is liable under the terms of the Project Agreement or in respect of which it is under this Deed liable to make reimbursement to or indemnify the State:

- (a) may be deducted by the State from all moneys due, becoming due, or to become due from it to Project Co under the Project Agreement; or
- (b) may be recovered from Project Co by action at Law or otherwise.



17.16 Limitation of Liability

The Maintenance Subcontractor Parties' maximum aggregate Liability to Project Co, the State, any other party to a Project Document, and any person to whom a Maintenance Subcontractor Document is novated or assigned in accordance with the terms of this Deed, will not exceed the Maintenance Subcontractor Parties' maximum aggregate Liability under each relevant Maintenance Subcontractor Document.



Signing page

Executed as a deed

State

Signed sealed and delivered by
**the Honourable Jacinta Allan
MP, in her capacity as the
Minister for Public Transport,
on behalf of the Crown in right
of the State of Victoria** in the
presence of

sign here ► [not disclosed] _____
Witness

[not disclosed] _____
Signature of Minister

print name [not disclosed] _____

Project Co

CY Partner 1

Signed sealed and delivered for
[not disclosed]
by its attorneys

sign here ► [not disclosed] _____
Attorney

[not disclosed] _____
Attorney

print name [not disclosed] _____

[not disclosed] _____

in the presence of

sign here ► [not disclosed] _____
Witness

[not disclosed] _____
Witness

print name [not disclosed] _____

[not disclosed] _____



CY Partner 2

Signed sealed and delivered for
[not disclosed]
by its attorney

in the presence of

sign here ▶ [not disclosed]
Attorney

sign here ▶ [not disclosed]
Witness

print name [not disclosed]

print name [not disclosed]

CY Partner 3

Signed sealed and delivered for
[not disclosed]
by its attorney

in the presence of

sign here ▶ [not disclosed]
Attorney

sign here ▶ [not disclosed]
Witness

print name [not disclosed]

print name [not disclosed]

CY Partner 4

Signed sealed and delivered for
[not disclosed]
by its attorney

in the presence of

sign here ▶ [not disclosed]
Attorney

sign here ▶ [not disclosed]
Witness

print name [not disclosed]

print name [not disclosed]



Maintenance Subcontractor

**Signed, sealed and delivered for John Holland
Pty Ltd ACN 004 282 268** by its attorney in the
presence of

[not disclosed]

Signature of witness

[not disclosed]

Signature of attorney

[not disclosed]

Name of witness (print)

[not disclosed]

Name of attorney (print)



Parent Guarantor

**Signed, sealed and delivered for CCCC
International Holding Limited** by its attorney in
the presence of

[not disclosed]

Signature of witness

[not disclosed]

Signature of attorney

[not disclosed]

Name of witness (print)

[not disclosed]

Name of attorney (print)



HERBERT
SMITH
FREEHILLS

Metro Tunnel
Tunnel and Stations PPP

Construction Licence

The Minister for Public Transport on behalf of the
Crown in right of the State of Victoria

Cross Yarra Partnership



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Construction Licence

Date ►

Between the parties

| | |
|-------|---|
| State | The Minister for Public Transport on behalf of the Crown in right of the State of Victoria |
|-------|---|

| | |
|------------|---|
| Project Co | <ol style="list-style-type: none">1 [not disclosed];2 [not disclosed];3 [not disclosed]; and4 [not disclosed], <p>(together, Cross Yarra Partnership) (ABN 57 956 065 885) of Level 8, 136 Exhibition Street, Melbourne, VIC 3000, Australia.</p> |
|------------|---|

| | |
|----------|--|
| Recitals | <ol style="list-style-type: none">1 The background to the Project is set out in the Project Agreement.2 As part of the development and implementation of the Project, the State has agreed to grant, and Project Co has agreed to accept, a licence in respect of the Licensed Construction Areas on the terms and conditions contained in this Licence.3 The State has the power to grant this Licence under:<ul style="list-style-type: none">• section 173 of the Relevant Legislation;• section 75 of the <i>Land Acquisition and Compensation Act 1986</i> (Vic) as it has effect pursuant to section 119 of the Relevant Legislation; or• otherwise. |
|----------|--|

This agreement witnesses as follows:



1 Definitions and interpretation

1.1 Project Agreement definitions

Unless otherwise expressly defined, expressions used in this Licence have the meanings given to them in the Project Agreement.

1.2 Definitions

In this Licence, unless the context otherwise requires:

| Term | Meaning |
|--|--|
| Access Licence (Chep) | the licence entitled 'Access licence' between VicTrack (as head lessor), Chep (as licensor) and the Secretary (as licensee), a draft of which was provided to Project Co on 8 December 2017. |
| Access Licence (Secretary) | the licence entitled 'Access licence' between the Secretary (as licensor) and Chep (as licensee), a draft of which was provided to Project Co on 8 December 2017. |
| Amended Licensed Construction Area Plan | has the meaning given in clause 4.1(b)(1). |
| Arden Access Licences | means: <ol style="list-style-type: none">1 the Access Licence (Chep); and2 the Access Licence Secretary. |
| Authority | means any government or governmental, semi-governmental or local government authority, local council, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality or any person having jurisdiction over the Licensed Construction Areas, Project Co, the State or any of them or anything in relation to any of them. |
| Chep | means Chep Pallectron Solutions Pty Ltd (ACN 161 486 960). |
| City Ford Lease | the lease entitled 'Ground Lease, 734 Elizabeth Street, Melbourne' between the University and the Secretary, a draft of which was provided to Project Co on 15 November 2017. |
| Federation Square Lease | the lease between Fed Square Pty Ltd and the Secretary, a draft of which was provided to Project Co on 15 November 2017. |



| Term | Meaning |
|--|---|
| Hand-back Works | has the meaning given in the Hand-back Works Deed. |
| Hand-back Works Deed | the document entitled 'Hand-back Works Deed' between the University and MMRA dated March 2017, as amended by the document entitled 'Letter of Agreement – Variation of Hand-back Works Deed', a draft of which was provided to Project Co on 12 December 2017. |
| LACA | the <i>Land Acquisition and Compensation Act 1986</i> (Vic). |
| Licence | means this construction licence and includes all Schedules, Exhibits, Attachments and Annexures to it. |
| Licence Commencement Date | means the later of the date: <ol style="list-style-type: none">1 of Financial Close; or2 on which the first parcel of land comprising the Licensed Construction Areas is required to be made available to Project Co in accordance with the Land Availability Plans. |
| Licence Fee | means [not disclosed]. |
| Licensed Construction Area Plan | has the meaning given in clause 4.1 and includes any Amended Licensed Construction Area Plan. |
| Licensed Construction Areas | means that part of the subdivided stratum (limited in height and depth) which is: <ol style="list-style-type: none">1 included in the Land Availability Plans; and2 identified in the Licensed Construction Area Plan. |
| Permitted Use | means: <ol style="list-style-type: none">1 the performance of the D&C Activities and the Final Acceptance Works in accordance with the Project Agreement and this Licence;2 the storage and location of any equipment, vehicles and machinery necessary for the carrying out of the D&C Activities and the Final Acceptance Works, unless otherwise specified by the State;3 the exercise by Project Co of its rights and the compliance by Project Co with its obligations under the Project Agreement, to the extent to which they relate to the Licensed Construction |



| Term | Meaning |
|------------------------------------|--|
| | Areas; and 4 any other purpose agreed by the State. |
| Project Agreement | the document entitled "Project Agreement" between the State and Project Co dated on or about the date of this Licence. |
| Requirement | includes any requirement, notice, order, demand, direction, recommendation, request, stipulation or similar notification received from or given by any Authority or pursuant to any Law whether in writing or otherwise and notwithstanding to whom such a Requirement is addressed or directed. |
| Secretary | the Secretary to the Department of Economic Development, Jobs, Transport and Resources on behalf of the Crown in the right of the State of Victoria. |
| Shrine Licence | the licence granted under section 17B of the <i>Crown (Reserves) Act 1978</i> (Vic) dated 18 October 2016 between the Shrine Licensor and the Secretary. |
| Shrine Licensed Area | the area referred to in the Shrine Licence as the 'licensed premises'. |
| Shrine Licensor | the Shrine of Remembrance trustees appointed pursuant to section 3 of the <i>Shrine of Remembrance Act 1978</i> (Vic). |
| Temporary Works Area (Chep) | has the meaning given to 'Temporary Works Area' in the Access Licence (Chep). |
| Term | the term of this Licence as described in clause 6. |
| VicTrack General Licence | the document titled 'Melbourne Metro Rail Project – Licence For Access to and Use of Unleased VicTrack Land for the Purposes of the Project' dated 15 September 2016 between VicTrack and the Secretary. |
| University | the University of Melbourne (ABN 84 002 705 224). |



1.3 Interpretation

In this Licence:

- (a) (**headings**): headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;
- and unless the context otherwise requires:
- (b) (**count and gender**): a word importing the singular includes the plural and vice versa and a word indicating a gender includes every other gender;
 - (c) (**references**): a reference to:
 - (1) a party, clause, Schedule, Exhibit, Attachment or Annexure is a reference to a party, clause, Schedule, Exhibit, Attachment or Annexure of or to this Licence; and
 - (2) a section is a reference to a section of a Schedule;
 - (d) (**document as amended**): a reference to this Licence or to any other deed, agreement, document or instrument includes a reference to this Licence or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
 - (e) (**party**): a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
 - (f) (**person**): a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
 - (g) (**legislation**): a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
 - (h) (**definitions**): if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
 - (i) (**"includes"**): "includes" will be read as if followed by the phrase "(without limitation)";
 - (j) (**"or"**): the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
 - (k) (**information**): a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
 - (l) (**"\$"**): a reference to "\$", "AUD" or "dollar" is to Australian currency;
 - (m) (**time**): a reference to time is a reference to time in Melbourne, Australia;
 - (n) (**rights**): a reference to a right includes any benefit, remedy, function, duty, obligation, Liability, interest, entitlement, title, discretion, authority or power;
 - (o) (**obligations and liabilities**): a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;



- (p) (“**may**”): the term “may”, when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;
- (q) (**construction**): where there is a reference to an Authority, institute or association or other body referred to in this Licence which:
 - (1) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Licence is deemed to refer to that other entity; or
 - (2) ceases to exist, this Licence is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (r) (“**remedy**”): the use of the word “remedy” or any form of it in this Licence means that the event to be remedied must be remedied or its effects overcome; and
- (s) (**contra proferentem rule not to apply**): each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

1.4 Inconsistency

Where there is an inconsistency, ambiguity, or discrepancy between this Licence and any other State Project Document, then the order of precedence in clause 2.3 (*Inconsistency between State Project Documents*) of the Project Agreement applies.

1.5 Business Day

If the day on or by which anything is to be done in accordance with this Licence is not a Business Day, that thing must be done no later than the next Business Day.

1.6 Provisions limiting or excluding liability, rights or obligations

- (a) A right of the State or an obligation of Project Co under this Licence will not limit or exclude any other right of the State or obligation of Project Co under this Licence unless expressly stated.
- (b) Any provision of this Licence which seeks, either expressly or by implication, to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.

1.7 Approvals, directions and notices in writing

Unless otherwise expressly provided in this Licence or agreed between the parties, all approvals, consents, directions, requirements, requests, claims, notices, agreements and demands given or required to be given under this Licence must be given in writing.

1.8 Prior approval or consent

Where Project Co is required by this Licence to obtain the State’s consent or approval to an action, document or thing, unless otherwise expressly stated, that consent or approval must be obtained prior to the actions, document or thing occurring or coming into effect.



1.9 Action without delay

Unless there is a provision in this Licence which specifies a period of time in which something must be done by the parties, all things must be done without undue delay.

1.10 Relationship of the parties

Unless otherwise expressly provided, nothing in this Licence:

- (a) **(no additional relationship)**: creates a partnership, joint venture, fiduciary, employment or agency relationship between the parties; or
- (b) **(no good faith)**: imposes any duty of good faith on the State.

1.11 State's rights and obligations

- (a) **(Acknowledgement)**: The parties acknowledge the substance, operation and potential effect and consequences of clause 2.13 (*State's executive rights and duties*) of the Project Agreement in relation to this Licence.
- (b) **(No Claim)**: Subject to clause 1.11(c), Project Co will not be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its statutory or executive rights or duties.
- (c) **(Liability for breach)**: Clauses 1.11(a) and 1.11(b) do not limit any Liability which the State would have to Project Co under this Licence as a result of a breach by the State of a term of this Licence but for these clauses.

1.12 Reasonable endeavours of the State

Any statement in this Licence providing that the State will use or exercise "reasonable endeavours" or "act reasonably" in relation to an outcome, means that the State:

- (a) **(relevant steps)**: will take steps to bring about the relevant outcome so far as it is reasonably able to do so, having regard to its resources and other responsibilities;
- (b) **(no guarantee)**: cannot guarantee the relevant outcome; and
- (c) **(no obligation)**: is not required to:
 - (1) exercise a right of any Government Party, or to influence, over-ride, interfere with or direct any other Government Party in the proper exercise and performance of its legal, statutory or executive duties and functions;
 - (2) exercise a power or discretion in a manner that the State regards as not in the public interest;
 - (3) develop or implement new policy;
 - (4) procure legislation; or
 - (5) act in any way that the State regards as not in the public interest.

1.13 Cost of carrying out obligations

Each party must carry out its obligations under this Licence at its own cost, unless expressly provided otherwise.



2 Delegation

2.1 Right to delegate

Project Co acknowledges that the State may exercise any right, statutory or otherwise, it has to appoint a person as a delegate to perform any of its rights under this Licence.

2.2 Notice of delegation

The State will give Project Co notice of:

- (a) **(delegate)**: any delegate so appointed, setting out the delegated rights and including a copy of the relevant instrument of appointment; and
- (b) **(revocation or change)**: any revocation or change of any delegation contemplated by clause 2.3.

2.3 Revocation or amendment of delegation

Any such delegation may be revoked, changed, delegated, limited or made subject to such conditions as the State determines from time to time.

2.4 No limitation of obligations

The appointment of a delegate to perform some or all of the rights of the State under this Licence does not limit the rights or obligations of the State under this Licence.

3 Negation of representations and warranties

The State makes no representations (express or implied) and gives no warranties (express or implied):

- (a) **(suitability of purposes)**: that the Licensed Construction Areas or any other land is now or will remain suitable or adequate for all or any of the purposes contemplated by this Licence or in the Project Agreement; and
- (b) **(Project Agreement representations)**: as to the matters specified in clause 50.1 (*No representations from the State*) of the Project Agreement,

and all warranties (if any) and representations (if any) implied by Law, are to the extent permitted by Law, expressly negated.

4 Grant of Licence

4.1 Licensed Construction Areas

- (a) **(Licensed Construction Areas at the Licence Commencement Date)**: At the Licence Commencement Date, the Licensed Construction Areas will, for the purposes of this Licence, be comprised of the land identified in the plan set out in Attachment 1 (**Licensed Construction Area Plan**).



- (b) **(Amendment of the Licensed Construction Areas):** If, at any time during the Term, the parties to this Licence wish to vary, for the purposes of this Licence, the land which comprises the Licensed Construction Areas or the land identified in the Land Availability Plans are varied in accordance with clause 6.3 (*Adjustment of Land Availability Plans*) of the Project Agreement, then:
- (1) the State must prepare and provide Project Co with an amended version of the Licensed Construction Area Plan (**Amended Licensed Construction Area Plan**), which identifies any amendments to Licensed Construction Areas; and
 - (2) both parties must sign the Amended Licensed Construction Area Plan as an acknowledgement of their agreement to the variation of the Licensed Construction Areas,
- and from the date on which the Amended Licensed Construction Area Plan has been signed by both parties:
- (3) the Amended Licensed Construction Area Plan will be deemed to have replaced the Licensed Construction Area Plan; and
 - (4) the Licensed Construction Areas will, for the purposes of this Licence, be deemed to be the areas shown on the Amended Licensed Construction Area Plan.

4.2 Licence over the Licensed Construction Areas

- (a) **(Grant of licence):** The State grants to Project Co for the Term a non-exclusive licence to use the Licensed Construction Areas for the Permitted Use on the terms of this Licence and the Project Agreement.
- (b) **(Period):** Project Co must only remain on the Licensed Construction Areas for the minimum period as is reasonably necessary for the Permitted Use.
- (c) **(Sub-licence):** Project Co may sub-licence all or part of the Licensed Construction Areas with the consent of the State, such consent not to be unreasonably withheld.

4.3 Nature of interest

- (a) **(Nature of interest):** Project Co acknowledges and agrees that:
 - (1) the rights conferred on Project Co by this Licence rest in contract only and do not confer a proprietary interest on Project Co; and
 - (2) its rights and obligations arising out of or in relation to the Licensed Construction Areas are as set out in the Project Agreement.
- (b) **(Ownership and access)** Without limiting the generality of clause 4.3(a), Project Co acknowledges and agrees that:
 - (1) ownership and control of the Licensed Construction Areas remains vested in the relevant owner of the land at all times;
 - (2) this Licence does not grant Project Co ownership, control or legal entitlement to exclusive possession of the Licensed Construction Areas nor does it extend to Project Co an entitlement to rents or profits in respect of the Licensed Construction Areas;
 - (3) Project Co and any of its Associates can access the Licensed Construction Areas only for the Permitted Use; and



- (4) Project Co may not construct any permanent works on the 'Temporary Land' (as described in the Land Availability Plans Schedule).

4.4 Responsibility of Project Co

Project Co acknowledges and agrees that it has the same responsibilities to third parties in connection with persons, property and all other aspects of the Licensed Construction Areas which it would have if it held the freehold title to the Licensed Construction Areas.

4.5 Liability

The parties acknowledge and agree that Project Co is required to indemnify the State under clause 42 (*Risk and Liability*) of the Project Agreement in connection with its use and occupation of the Licensed Construction Areas.

4.6 Conditions on licence

Project Co acknowledges that to the extent that land access has been procured pursuant to a temporary occupation under section 75 of the *Land Acquisition and Compensation Act 1986* (Vic) (**LACA**) as it has effect pursuant to section 119 of the *Major Transport Projects Facilitation Act 2009* (Vic) (**MTPF Act**):

- (a) Project Co must:
- (1) not use the land for any purpose other than as permitted in section 75(2) of the LACA;
 - (2) comply with the obligations in relation to occupation of land in section 76 of the LACA; and
 - (3) to the extent that the landowner or occupier requires separation of the land, comply with the requirements in section 79 of the LACA; and
- (b) where the State is required to serve notice pursuant to section 75(3) of the LACA to procure land access, Project Co must give plans which meet the requirements for issuing a notice to occupy land under section 75 of the LACA in accordance with:
- (1) the time for delivery of 'Plans' in clause 6.3(h) of the Project Agreement (*Adjustment of Land Availability Plans*);
 - (2) the Land Availability Plans; and
 - (3) the Steps Plan Schedule to the Project Agreement.

5 Payments

5.1 Licence Fee

Project Co must pay the Licence Fee to the State, if demanded by the State.

5.2 Utilities

The parties acknowledge and agree that the rights and obligations of Project Co in relation to Utilities are set out in the Project Agreement, including clause 16.5 (*Utilities*) of the Project Agreement.



5.3 Payment by the State

If Project Co defaults in the payment of any of the costs or charges referred to in clause 5.2, the State may (without limiting any other rights and remedies of the State) pay the costs or charges, and any amount paid by the State will be a debt due and payable from Project Co to the State.

6 Term of Licence

This Licence takes effect on the Licence Commencement Date and continues until the earlier of:

- (a) the termination of the Project Agreement; and
- (b) the Date of Final Acceptance.

7 Approval to demolish structures, etc

Except where specified or required under the PS&TR, Project Co must submit to the State for approval (with such approval not to be unreasonably withheld by the State), prior to submitting to the responsible authority under any relevant planning scheme (if required), any proposal to demolish any structure or building in, on, under or over the Licensed Construction Areas.

8 Stakeholder requirements

8.1 VicTrack General Licence

- (a) **(Acknowledgement):** Project Co acknowledges that it has received a copy of the VicTrack General Licence.
- (b) **(use of Licensed Construction Area):** Project Co must, and must ensure that its Associates:
 - (1) except as required by Law, do not do, or omit to do anything which may cause the Secretary to breach the VicTrack General Licence; and
 - (2) in using or occupying the Licensed Construction Area, or performing the D&C Activities and the Final Acceptance Works, do all things required to be done by the Secretary pursuant to the VicTrack General Licence, and carry out all of the Secretary's obligations under the VicTrack General Licence, except for the Secretary's obligations under clauses 3(d), 3(e), 8(a), 8(b) and 9 of the VicTrack General Licence.

8.2 Shrine Licence

- (a) **(Acknowledgement):** Project Co acknowledges that it has received a copy of the Shrine Licence.



- (b) **(Use of Shrine Licenced Area):** Project Co must, and must ensure that its Associates, except as required by Law, do not do, or omit to do anything which may cause the Secretary to breach the Shrine Licence.
- (c) **(Approvals):** Project Co must:
 - (1) undertake all fire protection works on the Shrine Licenced Area required by Law to the satisfaction of the Shrine Licensor and the responsible fire Authority pursuant to clause 2.6 of the Shrine Licence; and
 - (2) not erect or permit the erection of any permanent improvement on the Shrine Licenced Area without the Shrine Licensor's written approval pursuant to clause 3.8 of the Shrine Licence.
- (d) **(Shrine-specific obligations):** Project Co must perform the obligations of the Secretary under Special Conditions 1 to 17 of the Shrine Licence in respect of the Shrine Licenced Area, except for Special Conditions 6(a) and 6(b).

8.3 Federation Square Lease

- (a) **(Acknowledgement):** Project Co acknowledges that it has received a copy of the Federation Square Lease.
- (b) **(Use of Federation Square Land):** On and from execution of the Federation Square Lease, Project Co must, and must ensure that its Associates, except as required by Law, do not do, or omit to do anything which may cause the Secretary to breach the Federation Square Lease.

8.4 City Ford Lease

- (a) **(Acknowledgement):** Project Co acknowledges that it has received a copy of the City Ford Lease.
- (c) **(Use of City Ford Premises):** On and from execution of the City Ford Lease, Project Co must, and must ensure that its Associates, except as required by Law, do not do, or omit to do anything which may cause the Secretary to breach the City Ford Lease.
- (d) **(University access requirements):** Project Co acknowledges the University's right of access under clause 2.1 and 2.2 of the City Ford Lease and must reasonably facilitate the University's exercise of its right of access.
- (e) **(City Ford Lease-specific obligations):** Project Co must perform the obligations of the Secretary under clause 6.2(a), 6.3(b), 6.4 and 11.1 of the City Ford Lease.

8.5 Hand-back Works Deed

- (a) **(Acknowledgement):** Project Co acknowledges that it has received a copy of the Hand-back Works Deed.
- (b) **(No breach of Hand-back Works Deed):** On and from execution of the Hand-back Works Deed, Project Co must, and must ensure that its Associates, except as required by Law, do not do, or omit to do anything which may cause MMRA to breach the Hand-back Works Deed.
- (c) **(Hand-back Works obligations):** Project Co must:



- (1) provide notice to MMRA no later than 40 days' prior to the commencement of the Hand-back Works;
- (2) engage and consult with the University and consider the comments of the University in accordance with clause 5.1(b) of the Hand-back Works Deed;
- (3) provide information to the University as required under clause 5.2 of the Hand-back Works Deed; and
- (4) perform the obligation of MMRA under clause 9.1 of the Handback Works Deed.

8.6 Arden Access Licences

- (a) **(Acknowledgement)**: Project Co acknowledges that it has received copies of the Arden Access Licences.
- (b) **(No breach of Access Licences)**: On and from execution of the Arden Access Licences, Project Co must, and must ensure that its Associates, except as required by Law, do not do, or omit to do anything which may cause the Secretary to breach the Arden Access Licences.
- (c) **(Access Licence (Secretary) obligations)**: Project Co must perform the obligation of the Secretary under clause 4(c) of the Access Licence (Secretary).
- (d) **(Access Licence (Chep) obligations)**: Project Co must:
 - (1) act in conjunction with the Secretary and Chep to agree in good faith any other measures with respect to the Temporary Works Area (Chep) under clause 3(b)(3) of the Access Licence (Chep); and
 - (2) perform the obligations of the Secretary under clause 3(b)(2), 5.2, 6(a)-(c), 6(f), 6(j), 8(c) and Attachment 1(c)-(e) of the Access Licence (Chep).

9 Harm minimisation

Project Co must:

- (a) **(use of Licensed Construction Area)**: in using or occupying the Licensed Construction Area; and
- (b) **(performing D&C Activities and the Final Acceptance Works)**: except to the extent necessary to undertake the D&C Activities and the Final Acceptance Works, and otherwise to comply with its obligations under the Project Agreement,

cause as little harm and inconvenience and do as little damage as reasonably possible to the Licensed Construction Areas (and any adjacent area) and any improvement or foliage on the Licensed Construction Areas or any adjacent area (including any Relevant Utility Infrastructure).

10 Removal of materials and make good

Without limiting its obligations under the Project Agreement:



- (a) **(during Term)**: during the Term, as soon as practicable after completion of any Project Activities on any part of the Licensed Construction Areas; and
- (b) **(prior to Term ending)**: prior to the end of the Term,
Project Co must:
 - (c) **(removal of equipment)**: remove all plant, equipment, machinery, facilities and vehicles (except to the extent they form part of the Relevant Infrastructure);
 - (d) **(clean and safe condition)**: ensure that the relevant part of the Licensed Construction Areas is left in a clean and safe condition;
 - (e) **(removal of rubbish)**: ensure that all waste, rubbish, debris and redundant materials are removed promptly from the Licensed Construction Areas in accordance with Best D&C Practices;
 - (f) **(public use and occupation)**: without limiting clause 10(d), ensure that any relevant part of the Licensed Construction Areas which will become open to the public is safe for public use and occupation; and
 - (g) **(damage)**: except to the extent necessary to comply with its obligations under the Project Agreement (including where specified or required under the PS&TR), make good all damage caused by Project Co's use and occupation of the Licensed Construction Areas.

11 Maintenance and repair

11.1 Maintenance

Project Co, at its cost, during the Term and any extension or holding over must keep and maintain the Licensed Construction Areas in accordance with the Project Agreement.

11.2 State's right of access

Without limitation to any rights of access in the Project Agreement, the State and any officer, agent, adviser, consultant, contractor or employee of the State may at all reasonable times enter the Licensed Construction Areas (with or without vehicles and equipment), including to:

- (a) **(investigations)**: make reasonable investigations as the State, any officer, agent, adviser, consultant, contractor or employee of the State or those authorised by the State deem necessary for the purpose of ascertaining whether or not there has been any breach of any of the terms, covenants or conditions expressed or implied in this Licence;
- (b) **(compliance)**: carry out any maintenance, repairs, alterations, additions or other work necessary to comply with the State's obligations under this Licence, at Law or in respect of the exercise by the State of any statutory functions;
- (c) **(Project Co repairs)**: carry out any maintenance, repairs, alterations, additions or other work which the State elects to do but which Project Co is required or liable to do under this Licence by any Law or by any Requirement but fails to do so within the time specified or otherwise allowed for that work to be done; or
- (d) **(other powers)**: exercise any other powers and rights of the State under this Licence or the Project Agreement.



12 GST

- (a) **(Supply)**: If GST is or will be or is purported to be payable on the supply of any good, service or thing (a **Supply**) by either party under this Licence, to the extent the consideration otherwise provided for that Supply is not stated to include an amount in respect of GST on that Supply, the party receiving the Supply must pay to the party making the Supply on demand a sum equal to any GST payable by the supplier in respect of that Supply.
- (b) **(Reimbursement)**: To the extent that one party is required to reimburse the other party for costs incurred by the other party, those costs do not include any amount in respect of GST for which the other party is entitled to claim an input tax credit.
- (c) **(Valid tax invoice)**: A party's obligation to pay an amount under clause 12(a) is subject to a valid tax invoice being delivered to that party.
- (d) **(Licence Fee)**: The Licence Fee under this Licence is exclusive of GST.
- (e) **(Project Agreement to prevail)**: If clause 59 (*Taxes*) of the Project Agreement would apply in connection with a Taxable Supply to which this clause 12 also applies then clause 59 (*Taxes*) of the Project Agreement will apply in connection with that supply and the provisions of this clause 12 (but for this clause 12(e)) will not apply.
- (f) **(Definitions)**: In this clause 12, unless otherwise defined in this Licence, terms used have the meanings given to them in the GST Law.

13 Dispute Resolution and Arbitration

If any dispute or difference of opinion arises between the parties under this Licence, each party may refer any such matter for resolution in accordance with this clause 13 and the dispute or difference of opinion must be resolved in the same manner that disputes or differences of opinion under the Project Agreement are resolved. Accordingly, the provisions of clauses 46 (*Dispute Resolution*) and 47 (*Arbitration*) of the Project Agreement are incorporated into this Licence but as if:

- (a) the only persons party to the Project Agreement, and the only persons party to the relevant dispute or difference of opinion, are the parties to the relevant dispute; and
- (b) the only matters for expert determination under those provisions are the matters referred for expert determination under this Licence.

14 Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) under or in connection with this Licence:

- (a) **(in writing)**: must be in writing;
- (b) **(addressees)**: must be addressed as set out below (or as otherwise notified by that party to each other party from time to time);



State

Attention: [not disclosed]

Address: [not disclosed]

Email: [not disclosed]

Project Co

Attention: [not disclosed]

Address: [not disclosed]

Email: [not disclosed]

- (c) **(signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(form of delivery)**: must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by both parties) to the email address of the addressee set out in clause 14(b); and
- (e) **(taken to be received)**: are taken to be received by the addressee at the address set out in clause 14(b):
 - (1) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
 - (2) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and
 - (3) in the case of email, the first to occur of:
 - (A) receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - (B) the time that the communication enters an information system which is under the control of the addressee; or
 - (C) the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day.

15 Representations and Warranties

15.1 State's representations and warranties

The State represents and warrants for the benefit of Project Co that:



- (a) **(power to execute)**: it has the power to execute, deliver and carry out its obligations under this Licence and all necessary action has been taken to authorise that execution, delivery and performance;
- (b) **(binding obligation)**: this Licence constitutes a valid and legally binding obligation on it in accordance with its terms; and
- (c) **(no violation of any Law)**: the execution, delivery and performance of this Licence does not violate any Law to which the State is subject.

15.2 Project Co's representations and warranties

Project Co represents and warrants for the benefit of the State that:

- (a) **(power to execute)**: it has the power to execute, deliver and carry out its obligations under this Licence and all necessary action has been taken to authorise that execution, delivery and performance;
- (b) **(no violation of any Law)**: the execution, delivery and performance of this Licence does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;
- (c) **(binding obligation)**: this Licence constitutes a valid and legally binding obligation on it in accordance with its terms; and
- (d) **(duly registered)**: it is duly registered, properly constituted and remains in existence.

16 Miscellaneous

16.1 Governing Law and jurisdiction

- (a) **(Governing Law)**: This Licence is governed by, and must be construed according to, the Laws of Victoria, Australia.
- (b) **(Jurisdiction)**: Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Licence.

16.2 Entire agreement

To the extent permitted by Law, in relation to its subject matter, this Licence and the other State Project Documents:

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

16.3 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to that party) required by Law or reasonably requested by another party to give effect to this Licence.



16.4 Surviving provisions

- (a) **(Survival):** All provisions of this Licence which, expressly or by implication from their nature, are intended to survive the rescission, termination or expiration of this Licence will survive the rescission, termination or expiration of this Licence.
- (b) **(Interpretation):** No provision of this Licence which is expressed to survive the termination of this Licence will prevent any other provision of this Licence, as a matter of interpretation, also surviving the termination of this Licence.

16.5 Waiver

- (a) **(Writing):** A waiver given by a party in accordance with this Licence is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver):** A failure to, a delay in or the partial exercise or enforcement of a right, power or remedy provided by Law or in accordance with this Licence by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or in accordance with this Licence.
- (c) **(No waiver of another breach):** No waiver of a breach of a term of this Licence operates as a waiver of another breach of that term or of a breach of any other term of this Licence.

16.6 Consents, approvals and directions

- (a) **(State):** A consent or approval required in accordance with this Licence from the State may be given or withheld, or may be given subject to any conditions, as the State (in its absolute discretion) thinks fit, unless this Licence expressly provides otherwise.
- (b) **(Project Co):** A consent or approval required under this Licence from Project Co may not be unreasonably withheld, unless this Licence expressly provides otherwise.

16.7 Amendments

Except as otherwise expressly provided in this Licence, this Licence may only be varied by a deed executed by or on behalf of each party.

16.8 Severance

If, at any time, a provision of this Licence is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this Licence; or
- (b) that provision under the Law of any other jurisdiction.

16.9 Counterparts

This Licence may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the agreement of each party who



has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same agreement.

16.10 Moratorium

To the extent permitted by Law, the application to this Licence or to any party of any Law or any requirement or any moratorium having the effect of extending or reducing the Term, reducing or postponing the payment of the Licence Fee or any part of it or otherwise affecting the operation of the terms of this Licence or its application to any party is excluded and negated.

16.11 Proportionate liability

- (a) **(Exclusion of Wrongs Act):** The operation of Part IVAA of the *Wrongs Act 1958* (Vic) is excluded in relation to all and any rights, obligations or liabilities of either party under this Licence whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) **(Rights, obligations and liabilities):** Without limiting clause 16.11(a), the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Licence and not otherwise, whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

16.12 No merger

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this Licence. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

16.13 No representation or reliance

- (a) **(No representation):** Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Licence, except for representations or inducements expressly set out in this Licence.
- (b) **(No reliance):** Each party acknowledges and confirms that it does not enter into this Licence in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Licence.



Signing page

Executed as an agreement

State

Executed by **the Honourable
Jacinta Allan MP, in her
capacity as the Minister for
Public Transport,
on behalf of the Crown in right
of the State of Victoria** in the
presence of

sign here ► [not disclosed]
Witness

[not disclosed]
Signature of Minister

print name [not disclosed]



CY Partner 1

Signed for
[not disclosed]
by its attorneys

sign here ▶ [not disclosed]
Attorney

[not disclosed]
Attorney

print name [not disclosed]

[not disclosed]

in the presence of

sign here ▶ [not disclosed]
Witness

[not disclosed]
Witness

print name [not disclosed]

[not disclosed]

CY Partner 2

Signed for
[not disclosed]
by its attorney

in the presence of

sign here ▶ [not disclosed]
Attorney

sign here ▶ [not disclosed]
Witness

print name [not disclosed]

print name [not disclosed]

CY Partner 3

Signed for
[not disclosed]
by its attorney

in the presence of

sign here ▶ [not disclosed]
Attorney

sign here ▶ [not disclosed]
Witness

print name [not disclosed]

print name [not disclosed]



CY Partner 4

Signed for
[not disclosed]
by its attorney

in the presence of

sign here ▶ [not disclosed]
Attorney

sign here ▶ [not disclosed]
Witness

print name [not disclosed]

print name [not disclosed]



Attachment 1

Licensed Construction Area Plan

| Land (refer to Plans in Land Availability Plans Schedule) | | Source of land access rights |
|--|---|-------------------------------------|
| Arden Government Land (VicTrack) | The land shown hatched pink including that land hatched pink and shaded blue, orange and brown and marked A1 on Project Drawing Number with reference [TAS-CYP-PW-00-DRG-XLP-MMN-003610.Rev G.1 and labelled Arden Sheet] (excluding the land shown shaded blue and pink) | VicTrack General Licence |

Metro Tunnel - State Interface Agreement

The Minister for Public Transport of the State of Victoria on behalf of the
Crown in Right of the State of Victoria
State

CityLink Melbourne Limited ABN 65 070 810 678

and

Transurban Infrastructure Management Limited (as trustee of the CityLink
Trust) ABN 27 098 147 678
each a CityLink Party and together the CityLink Parties

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Our reference 332/16013/80172016

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State Interface Agreement

Date

Parties **The Minister for Public Transport of the State of Victoria on behalf of the Crown in Right of the State of Victoria (State)**

and

CityLink Melbourne Limited (ABN 65 070 810 678) (**Company**); and

Transurban Infrastructure Management Limited (as trustee of the CityLink Trust) (ABN 27 098 147 678) (**Trustee**)

(each a **CityLink Party** and together the **CityLink Parties**)

Background

- A. The State and the CityLink Parties are party to the Concession Deed.
- B. The State and MMR Project Co will enter into the Metro Tunnel Agreement for the design, construction, operation and maintenance of the Metro Tunnel on or about the date of this Agreement.
- C. The Metro Tunnel involves construction works in the vicinity of CityLink.
- D. The State, the CityLink Parties and MMR Project Co will enter into the Direct Interface Agreement on or about the date of this Agreement addressing matters relevant to all three parties arising out of the interface between the Metro Tunnel and CityLink.
- E. Under this Agreement, the Parties agree:
 - (a) a process for the CityLink Parties to input into the design development process for the MMR Interface Works and to receive relevant documentation regarding the construction methodology of the MMR Interface Works;
 - (b) the terms on which the CityLink Parties will surrender the CityLink Leased Area below CityLink, to the extent necessary to accommodate the Metro Tunnel; and
 - (c) other matters relating to the Direct Interface Agreement and the interface between the Metro Tunnel and CityLink.

Operative provisions

1. Conditions precedent

1.1 Specific

Subject to clauses 1.2 and 1.4, it is a condition precedent to the operation of this Agreement that the Direct Interface Agreement has been executed by all parties to it and all conditions precedent to the operation of the Direct Interface Agreement (other than those that relate to the coming into operation of this Agreement) have been satisfied or waived.

1.2 Notice of satisfaction

The State must notify the CityLink Parties when either the State considers that the conditions outlined in clause 1.1 have been satisfied or the State has waived its right to require satisfaction of those conditions. Similarly, the Company must notify the State when it either considers that the conditions outlined in clause 1.1 have been satisfied or the Company has waived its right to require satisfaction of those conditions.

1.3 Operative date

Subject to clause 1.4, this Agreement takes effect on the date on which the last notice given under clause 1.2 is given.

1.4 Day One Clauses

The Day One Clauses become operative on, and take effect from, the date of this Agreement.

1.5 Expiry Date

This Agreement terminates upon termination of the Direct Interface Agreement.

2. Meetings between State and CityLink Parties

- (a) The State may invite the CityLink Parties or any of their Associates to attend meetings with any of the State, the State's Associates, MMR Project Co or MMR Project Co's Associates to discuss issues arising in relation to the Metro Tunnel and the interface with CityLink.
- (b) The CityLink Parties may request meetings with the State, the State's Associates, MMR Project Co or MMR Project Co's Associates, to discuss issues arising in relation to the Metro Tunnel and the interface with CityLink.
- (c) Nothing which occurs at a meeting between the State and the CityLink Parties may be relied on unless subsequently confirmed in writing by both Parties.

3. Nature of the Metro Tunnel Works

3.1 No commitment that works will proceed

Notwithstanding any other provision of this Agreement or the Direct Interface Agreement, the CityLink Parties acknowledge and agree that:

- (a) the State does not make any commitment to the CityLink Parties that the Metro Tunnel will proceed; and
- (b) nothing in this Agreement will require the State to carry out the Metro Tunnel.

3.2 No restriction on changes to scope of Metro Tunnel

The CityLink Parties acknowledge and agree that nothing in this Agreement or the Direct Interface Agreement limits or fetters the State's rights, at any time, to make or accept changes to the scope of the Metro Tunnel.

4. Design Development Process

- (a) The State must procure that the CityLink Parties are provided with the Design Documentation.
- (b) Within [not disclosed] Business Days after receiving any Design Documentation, the CityLink Parties may provide the State with comments on the Design Documentation in the context of the interface between the Metro Tunnel and CityLink.
- (c) The State must:
 - (i) consider any comments provided in accordance with clause 4(b) by the CityLink Parties;
 - (ii) to the extent the State considers appropriate (acting reasonably), provide the CityLink Parties' comments to MMR Project Co for consideration;
 - (iii) provide the CityLink Parties with an explanation as to why any comments provided by the CityLink Parties in accordance with clause 4(b) have not been passed on to MMR Project Co (if applicable); and
 - (iv) procure that the CityLink Parties are provided with a written response from MMR Project Co in relation to any comments that the State has passed on to MMR Project Co under clause 4(c)(ii).
- (d) The State acknowledges and agrees that:
 - (i) neither the CityLink Parties nor any of their Associates assume a duty or owe a duty to the State, MMR Project Co or any of their Associates to review the Design Documentation or to make any comments regarding the Design Documentation;
 - (ii) the CityLink Parties and their Associates assume no liability in reviewing or commenting on, or failing to review or comment on the Design Documentation; and
 - (iii) any review or comment on, or failure to review or comment on, the Design Documentation by the CityLink Parties and their Associates will not limit or otherwise affect any rights or obligations of the CityLink Parties to provide further comments and input under this Agreement or the Direct Interface Agreement.

5. Construction Methodology

- (a) The State will procure that the CityLink Parties are provided with documentation in relation to the construction methodology for the Metro Tunnel (including changes to the construction methodology), to the extent relevant to the MMR Interface Works or CityLink.
- (b) Within [not disclosed] Business Days after receiving any documentation in relation to construction methodology, the CityLink Parties may provide the State with

comments on the construction methodology in the context of the interface between the Metro Tunnel and CityLink.

- (c) The State must:
 - (i) consider any comments provided in accordance with clause 5(b) by the CityLink Parties;
 - (ii) to the extent the State considers appropriate (acting reasonably), provide the CityLink Parties' comments to MMR Project Co for consideration;
 - (iii) provide the CityLink Parties with an explanation as to why any comments provided by the CityLink Parties in accordance with clause 5(b) have not been passed on to MMR Project Co (if applicable); and
 - (iv) procure that the CityLink Parties are provided with a written response from MMR Project Co in relation to any comments that the State has passed on to MMR Project Co under clause 5(c)(ii).
- (d) The State acknowledges and agrees that:
 - (i) neither the CityLink Parties nor any of their Associates assume a duty or owe a duty to the State, MMR Project Co or any of their Associates to review documentation in relation to the construction methodology for the Metro Tunnel or to make any comments regarding the same;
 - (ii) the CityLink Parties and their Associates assume no liability in reviewing or commenting on, or failing to review or comment on documentation in relation to the construction methodology for the Metro Tunnel; and
 - (iii) any review or comment on, or failure to review or comment on, the documentation in relation to the construction methodology for the Metro Tunnel by the CityLink Parties and their Associates will not limit or otherwise affect any rights or obligations of the CityLink Parties to provide further comments and input under this Agreement or the Direct Interface Agreement.

6. Modifications

- (a) The State must procure that the CityLink Parties are provided with the Modification Documentation.
- (b) Within [not disclosed] Business Days after receiving any Modification Documentation, the CityLink Parties may provide the State with comments on the Modification Documentation in the context of the interface between the Metro Tunnel and CityLink.
- (c) The State must:
 - (i) consider any comments provided in accordance with clause 6(b) by the CityLink Parties;
 - (ii) to the extent the State considers appropriate (acting reasonably), provide the CityLink Parties' comments to MMR Project Co for consideration;
 - (iii) provide the CityLink Parties with an explanation as to why any comments provided by the CityLink Parties in accordance with clause 6(b) have not been passed on to MMR Project Co (if applicable); and

- (iv) procure that the CityLink Parties are provided with a written response from MMR Project Co in relation to any comments that the State has passed on to MMR Project Co under clause 6(c)(ii).
- (d) The State acknowledges and agrees that:
 - (i) neither the CityLink Parties nor any of their Associates assume a duty or owe a duty to the State, MMR Project Co or any of their Associates to review the Modification Documentation or to make any comments regarding the Modification Documentation;
 - (ii) the CityLink Parties and their Associates assume no liability in reviewing or commenting on, or failing to review or comment on the Modification Documentation; and
 - (iii) any review or comment on, or failure to review or comment on, the Modification Documentation by the CityLink Parties and their Associates will not limit or otherwise affect any rights or obligations of the CityLink Parties to provide further comments and input under this Agreement or the Direct Interface Agreement.

7. Surrender of CityLink Leased Area

- (a) The CityLink Parties agree to surrender the Surrendered CityLink Leased Area as soon as practicable after the date of this Agreement at no cost to the State.
- (b) For the purposes of giving effect to clause 7, the parties agree to enter into a deed of partial surrender substantially in the form of Schedule 2.
- (c) The State will bear:
 - (i) the CityLink Parties' reasonable costs (including the costs of engaging external service providers) in negotiating and documenting any necessary changes to the relevant Leases associated with the partial surrender;
 - (ii) any stamp duty costs associated with the partial surrender; and
 - (iii) responsibility for making registrations (or amendments to registrations) for the relevant Leases associated with the partial surrender.
- (d) The parties acknowledge and agree that if at any time prior to the expiry of this Agreement, the State reasonably considers that any additional parts of the CityLink Leased Area are required to be surrendered in order to accommodate the Metro Tunnel and are not reasonably required by the CityLink Parties in order to operate and maintain CityLink, the CityLink Parties will surrender that CityLink Leased Area at no cost to the State and the processes set out in clauses 7(b) and 7(c) will apply to the further surrender.
- (e) To the extent that MMR Interface Works commence on the CityLink Leased Area that will be or has been surrendered under clause 7(a) or clause 7(d) (**Surrendered Area**) prior to the date on which the surrender takes effect (**Surrender Date**), with effect from the date that the MMR Interface Works commence on the Surrendered Area (**Works Commencement Date**):
 - (i) the State releases the CityLink Parties from:
 - A. the CityLink Parties' obligations under the relevant Leases in relation to the Surrendered Area; and

- B. all liability, loss, costs and expenses (including legal fees, costs and disbursements) that the State may have or claim to have or but for this release might have had against the CityLink Parties (including any of which the State is not aware of or could not have been aware at the date of this Agreement) arising from or incurred in connection with the relevant Leases in relation to the Surrendered Area,

arising on or after the Works Commencement Date, provided that nothing in this clause is a waiver of any breach of the relevant Leases by the CityLink Parties or of any obligation of the CityLink Parties under the relevant Leases required to be performed before the Works Commencement Date (even if the State does not discover the breach or make a claim in connection with the breach until after the Works Commencement Date); and

- (ii) the CityLink Parties agree to the State accessing the Surrendered Area to carry out the MMR Interface Works and release the State from:

- A. the State's obligations under the relevant Leases in relation to the Surrendered Area; and

- B. all liability, loss, costs and expenses (including legal fees, costs and disbursements) that the CityLink Parties may have or claim to have or but for this release might have had against the State (including any of which the CityLink Parties are not aware of or could not have been aware at the date of this Agreement) arising from or incurred in connection with the relevant Leases in relation to the Surrendered Area,

arising on or after the Works Commencement Date, provided that nothing in this clause:

- C. is a waiver of any breach of the relevant Leases by the State;
- D. is a waiver of any obligation of the State under the relevant Leases required to be performed before the Works Commencement Date (even if the CityLink Parties do not discover the breach or make a claim in connection with the breach until after the Works Commencement Date); or
- E. limits any indemnity given by the State under this Agreement or the Concession Deed, to the extent a Claim under such indemnity relates to MMR Interface Works undertaken on the Surrendered Area.

8. Interaction of this Agreement with Direct Interface Agreement

8.1 Indemnity under Direct Interface Agreement

- (a) Subject to clauses 8.1(b) to 8.1(e), the State must indemnify the CityLink Parties and their Associates from and against the Indemnified Loss.
- (b) The CityLink Parties must, to the extent reasonably possible, mitigate the Indemnified Loss.
- (c) The State's liability under clause 8.1(a) will be reduced to the extent the CityLink Parties wrongfully, negligently, unlawfully or recklessly cause or contribute to the act, omission, event or thing causing or giving rise to the Indemnified Loss.

- (d) The CityLink Parties will not be entitled to claim the Indemnified Loss from the State to the extent that they have recovered any amounts from MMR Project Co in respect of the Indemnified Loss.
- (e) The CityLink Parties will not be entitled to claim the Indemnified Loss from the State unless:
 - (i) they have used their best endeavours to recover the Indemnified Loss from MMR Project Co pursuant to the Direct Interface Agreement; and
 - (ii) notwithstanding clause 8.1(e)(i), they have not been able to recover the Indemnified Loss from MMR Project Co within [not disclosed] months from the date the CityLink Parties demand payment of the Indemnified Loss from MMR Project Co.
- (f) If, following recovery by the CityLink Parties from the State pursuant to the indemnity in clause 8.1(a), the CityLink Parties recover any Indemnified Loss from MMR Project Co, the CityLink Parties shall pay the amount recovered from MMR Project Co (less the reasonable external costs incurred by the CityLink Parties in recovering that amount to the extent that those costs have not already been recovered from the State) to the State within [not disclosed] days of receiving the amount from MMR Project Co.

8.2 Payment of Access Fees

- (a) Where any:
 - (i) Access Fees:
 - A. are due and payable by MMR Project Co to the CityLink Parties under the Direct Interface Agreement; and
 - B. remain unpaid by MMR Project Co by the date that is 3 months after the date that the Access Fees became due and payable,
 - (ii) fees in respect of additional access required by the Conditions Consultant and agreed in accordance with the terms of its engagement remain unpaid by MMR Project Co 3 months after the date that those fees became due and payable,

(Overdue Access Fees), the CityLink Parties may provide the State with a notice entitled "Overdue Access Fee Notice".
- (b) Within [not disclosed] Business Days after receiving the CityLink Parties' notice under clause 8.2(a), the State must either pay, or procure that MMR Project Co pays, to the CityLink Parties:
 - (i) the Overdue Access Fees; and
 - (ii) any interest in respect of the Overdue Access Fees that has accrued in accordance with the Direct Interface Agreement.

9. Interaction of this Agreement with Concession Deed

- (a) The State:

- (i) consents to the closure of CityLink for the purposes of clause 9.4(b) of the Concession Deed to the extent that this Agreement or the Direct Interface Agreement requires the CityLink Parties to do so;
 - (ii) consents to the use of CityLink under clause 9.4(c) of the Concession Deed for the purposes set out in this Agreement or the State Interface Agreement; and
 - (iii) indemnifies and holds harmless the CityLink Parties in respect of any stamp duties and other Taxes and fees levied or payable in respect of the surrender of land under clause 7.
- (b) The indemnities granted under this Agreement do not apply to, and the CityLink Parties will make no Claim against the State or its Associates under this Agreement in respect of, any losses or liabilities in relation to which the CityLink Parties have an entitlement to Claim against the State under any indemnity provided by the State under the Concession Deed.

10. Use and disclosure of CityLink Parties' Confidential Information

10.1 Use of CityLink Parties' Confidential Information

- (a) The Parties acknowledge that the State is bound by confidentiality obligations (subject to stated exceptions) pursuant to clause 19.3 of the Concession Deed and for the purposes of that clause the CityLink Parties' Information will be deemed to be "supplied in connection with the Project Documents".
- (b) Each CityLink Party consents (including for the purposes of clause 19.3 of the Concession Deed) to the State disclosing the CityLink Parties' Information in accordance with this clause 10.1.
- (c) Without limiting clause 19.3 of the Concession Deed, the State may disclose the whole or any part of the CityLink Parties' Information to:
 - (i) the State's Associates;
 - (ii) MMR Project Co; or
 - (iii) MMR Project Co's Associates,
 for the purposes of the Metro Tunnel (in this clause 10, the **Permitted Purpose**).
- (d) To the extent the State discloses the CityLink Parties' Confidential Information under clause 10.1(c), the State will procure that any person to whom the CityLink Parties' Confidential Information is disclosed will:
 - (i) keep confidential that CityLink Parties' Confidential Information (subject to disclosure permitted under clause 10.1(d)(iii) or 10.4);
 - (ii) not copy or duplicate (or allow the copying or duplication of) the CityLink Parties' Confidential Information except for the Permitted Purpose or for the purposes of the disclosure of the CityLink Parties' Confidential Information provided for in clause 10.1(d)(iii), and will not use or disclose that CityLink Parties' Confidential Information where the State would not be permitted to use or disclose that CityLink Parties' Confidential Information; and

- (iii) only disclose the CityLink Parties' Confidential Information to persons who:
 - A. are required to know (and only to the extent of each requirement) the CityLink Parties' Confidential Information for the Permitted Purpose; and
 - B. are aware that that CityLink Parties' Confidential Information must be kept confidential and may only be used for the Permitted Purpose.

10.2 Recipient obligations

The State must:

- (a) ensure, at all times, that each person to whom CityLink Parties' Confidential Information has been disclosed under clause 10.1 complies with the requirements of clauses 10 and 11 (other than clause 11.3) as though they were the State;
- (b) notify the CityLink Parties immediately if it becomes aware of a suspected or actual breach of this clause 10 or any unauthorised disclosure, copying or use of CityLink Parties Confidential Information;
- (c) immediately take all reasonable steps to prevent or stop any such suspected or actual breach or unauthorised disclosure or use; and
- (d) provide all reasonable assistance requested by the CityLink Parties from time to time regarding enforcement of its rights in respect of any such suspected or actual breach or unauthorised disclosure or use (including, but not limited to, assisting the CityLink Parties in commencing, conducting and settling enforcement proceedings).

10.3 Exclusion from obligation of confidentiality

The obligations of confidentiality under this clause 10 do not apply to a person to whom the State has disclosed the CityLink Parties' Confidential Information under clause 10.1(c) to the extent that the obligations apply to information that:

- (a) prior to the date of this Agreement was rightfully known to and in the possession or control of that person and not subject to an obligation of confidentiality on that person;
- (b) the CityLink Parties have consented in writing to being disclosed, provided that any such disclosure may only be made in accordance with the terms and conditions (if any) of that consent; or
- (c) subject to clause 10.4, that person is required by Law or the binding requirement of a recognised stock exchange to disclose.

10.4 Disclosure required by Law

If a person to whom the State has disclosed the CityLink Parties' Confidential Information under clause 10.1(c) is required by Law or the binding requirement of a recognised stock exchange to disclose any of the CityLink Parties Confidential Information, the State must procure that that person is required to:

- (a) immediately give notice to the CityLink Parties setting out full details of the circumstances of the proposed use or disclosure and the relevant information proposed to be used or disclosed; and

- (b) to the extent permitted by law, give the CityLink Parties a reasonable opportunity to challenge in a court of law or other appropriate forum whether the proposed disclosure is in accordance with clause 10.3(c).

10.5 Security

The State must procure that each person to whom the State has disclosed the CityLink Parties' Confidential Information under clause 10.1(c):

- (a) establishes and maintains effective security measures to safeguard the CityLink Parties' Confidential Information from access or use not authorised by this Agreement;
- (b) subject to the terms of this Agreement, keeps the CityLink Parties' Confidential Information under the control of that person; and
- (c) establishes and maintains effective and auditable procedures for ensuring compliance with its obligations under this clause 10.

10.6 Confidentiality obligations continue after assignment or termination

The obligations of confidentiality under this clause 10 continue to apply after assignment, transfer or termination of the right to hold CityLink Parties' Confidential Information under this Agreement.

11. Disclaimer and exclusion of Liability (CityLink Parties)

11.1 CityLink Parties' Information

Subject to the parties' rights and obligations under the Project Documents, the State acknowledges and agrees that:

- (a) the CityLink Parties' Information, and all Intellectual Property Rights in the CityLink Parties' Information, will remain the property of the CityLink Parties or any of their Associates (as the case may be);
- (b) neither the CityLink Parties, their Associates (other than the Conditions Consultant in accordance with the terms of its engagement as contemplated by the Direct Interface Agreement) nor any other person acting on behalf of or associated with any of them has verified, or has any obligation to verify the accuracy, reliability or completeness of the CityLink Parties' Information;
- (c) neither the CityLink Parties, their Associates (other than the Conditions Consultant in accordance with the terms of its engagement as contemplated by the Direct Interface Agreement) nor any other person acting on behalf of or associated with any of them has made any representation or warranty either express or implied as to the accuracy, reliability or completeness of the CityLink Parties' Information;
- (d) neither the CityLink Parties nor any of their Associates is under any obligation to update the whole or any part of the CityLink Parties' Information, however the CityLink Parties or any of their Associates may do so at their sole discretion;
- (e) none of the State, MMR Project Co or any of their respective Associates are entitled to rely on the whole or any part of the CityLink Parties' Information, other than the reports produced by the Conditions Consultant in accordance with the terms of its engagement as contemplated by the Direct Interface Agreement; and
- (f) the acknowledgements under this clause 11.1 are in addition to and, to the extent not inconsistent, do not replace the terms and conditions already agreed to or

accepted by the State or its Associates when receiving the CityLink Parties' Information.

11.2 No enquiry

The State and the CityLink Parties acknowledge that the CityLink Parties' Information has been or will be given in good faith and that the CityLink Parties have no knowledge that the CityLink Parties' Information is misleading or deceptive. The State and the CityLink Parties agree, however, that the CityLink Parties and each of their Associates (other than the Conditions Consultant in accordance with the terms of its engagement as contemplated by the Direct Interface Agreement) have no obligation to make enquiries to verify that CityLink Parties' Information.

11.3 Indemnity

The State indemnifies the CityLink Parties for any loss suffered by the CityLink Parties and their Associates and against any Liability to any person by way of indemnity against, or contribution to the liability of that person, arising out of, or in respect of, or in connection with any reliance, including any reliance by a third party, on the whole or any part of the CityLink Parties' Information.

11.4 No claim

The State acknowledges and agrees that none of the CityLink Parties, any of their Associates or any person acting on behalf of, or associated with any of them, other than the Conditions Consultant in accordance with the terms of its engagement as contemplated by the Direct Interface Agreement, will have any Liability, and the State and its Associates will not be entitled to make, continue or enforce any Claim against, or seek, pursue or obtain an indemnity against liability from, the CityLink Parties, their Associates, or any person acting on behalf of or associated with any of them, other than the Conditions Consultant in accordance with the terms of its engagement as contemplated by the Direct Interface Agreement, arising out of, in respect of or in connection with:

- (a) reliance by the State, MMR Project Co or their respective Associates on the whole or any part of the CityLink Parties' Information; or
- (b) the accuracy, reliability or completeness of the CityLink Parties' Information.

11.5 Permitted Use

The State must only use the CityLink Parties' Information for the purposes of the Metro Tunnel.

12. Use and disclosure of State Confidential Information by the CityLink Parties

12.1 Use of State Confidential Information

Each CityLink Party agrees on its own behalf to, and agrees to procure that each of its Associates who has access to State Confidential Information, will:

- (a) not use the State Confidential Information for any purpose whatsoever except the permitted purpose of:
 - (i) participating in the processes set out in this Agreement; or
 - (ii) participating in discussions with the State, Project Co and any of their Associates concerning the Metro Tunnel in accordance with this Agreement,

(in this clause 12, **Permitted Purpose**);

- (b) keep confidential all State Confidential Information (subject to disclosure permitted under clause 12.2 or 12.4); and
- (c) not copy or duplicate (or allow the copying or duplication of) any State Confidential Information except for the Permitted Purpose or for the purposes of the disclosure of State Confidential Information provided for in clause 12.2 or 12.4.

12.2 Disclosure of State Confidential Information

The CityLink Parties may only disclose, and will procure that each of its Associates will only disclose, State Confidential Information to:

- (a) Recipients approved by the State;
- (b) any Recipient who:
 - (i) is required to know (and only to the extent of each requirement) the State Confidential Information for the Permitted Purpose; and
 - (ii) is aware that the State Confidential Information must be kept confidential and may only be used for the Permitted Purpose; or
- (c) the Premier, the Treasurer, the Minister for Roads or the Minister for Public Transport, VicRoads or their staff.

12.3 Recipient obligations

Each CityLink Party must:

- (a) ensure, at all times, that each person to whom State Confidential Information has been disclosed under clause 12.2(a) or 12.2(b) complies with clauses 12 and 13 (other than clause 13.3) as though they were a CityLink Party;
- (b) notify the State immediately if it becomes aware of a suspected or actual breach of this clause 12 or any unauthorised disclosure, copying or use of State Confidential Information;
- (c) immediately take all reasonable steps to prevent or stop any such suspected or actual breach or unauthorised disclosure, copying or use; and
- (d) provide all reasonable assistance requested by the State from time to time regarding enforcement of the enforcement of its rights in respect of any such suspected or actual breach or unauthorised disclosure, copying or use (including, but not limited to, assisting the State in commencing, conducting and settling enforcement proceedings).

12.4 Exclusion from obligation of confidentiality

The obligations of confidentiality under this clause 12 do not apply to a Recipient to the extent that the obligations apply to information that:

- (a) prior to the date of this Agreement was rightfully known to and in the possession or control of that Recipient and not subject to an obligation of confidentiality on that Recipient;

- (b) the State has consented in writing to being disclosed, provided that any such disclosure may only be made in accordance with the terms and conditions (if any) of that consent; or
- (c) subject to clause 12.5, that Recipient is required by Law or the binding requirement of a recognised stock exchange to disclose.

12.5 Disclosure required by Law

If a Recipient is required by Law or the binding requirement of a recognised stock exchange to disclose any of the State Confidential Information, the CityLink Parties must procure that that person is required to:

- (a) immediately give notice to the State setting out full details of the circumstances of the proposed use or disclosure and the relevant information proposed to be used or disclosed; and
- (b) to the extent permitted by law, give the State a reasonable opportunity to challenge in a court of law or other appropriate forum whether the proposed disclosure is in accordance with clause 12.4(c).

12.6 Security

The CityLink Parties must procure that each Recipient:

- (a) establishes and maintains effective security measures to safeguard State Confidential Information from access or use not authorised by this Agreement;
- (b) subject to the terms of this Agreement, keeps State Confidential Information under each Recipient's control; and
- (c) establishes and maintains effective and auditable procedures for ensuring compliance with this clause 12.

12.7 State's right to terminate holding of State Confidential Information

- (a) The State may terminate the entitlement of each Recipient to hold State Confidential Information at any time with immediate effect, by giving written notice to that effect to the CityLink Parties.
- (b) On termination of the entitlement of a Recipient to hold State Confidential Information under clause 12.7(a), without limiting the other rights of the State, the right of each Recipient to use State Confidential Information ceases and each CityLink Party must immediately procure that, except to the extent prohibited by Law from doing so, such State Confidential Information is, at the State's option:
 - (i) returned to the State;
 - (ii) destroyed and that destruction certified to the State;
 - (iii) destroyed and a representative of the State is permitted to witness that destruction; or
 - (iv) dealt with in some other manner nominated by the State and reasonably acceptable to the CityLink Parties.
- (c) The obligations under clause 12.7(b) do not extend to State Confidential Information incorporated into board papers and associated documents, retained for

corporate governance purposes or as part of the professional duties of advisors or forming part of information technology backup.

- (d) Termination of the entitlement to hold State Confidential Information pursuant to this clause 12.7 does not affect any accrued rights or remedies the State may have.

12.8 Confidentiality obligations continue after assignment or termination

The obligations of confidentiality under this clause 12 continue to apply after assignment, transfer or termination of the right to hold State Confidential Information under this Agreement.

13. Disclaimer and exclusion of Liability (State)

13.1 State Confidential Information

Subject to the parties' rights and obligations under the Project Documents, the CityLink Parties acknowledge and agree that:

- (a) the State Confidential Information, and all Intellectual Property Rights in the State Confidential Information, will remain the property of the State or any of its Associates (as the case may be);
- (b) neither the State, its Associates (other than the Conditions Consultant in accordance with the terms of its engagement as contemplated by the Direct Interface Agreement) nor any other person acting on behalf of or associated with any of them has verified, or has any obligation to verify the accuracy, reliability or completeness of the State Confidential Information;
- (c) neither the State, its Associates (other than the Conditions Consultant in accordance with the terms of its engagement as contemplated by the Direct Interface Agreement) nor any other person acting on behalf of or associated with any of them has made any representation or warranty either express or implied as to the accuracy, reliability or completeness of the State Confidential Information;
- (d) neither the State nor any of its Associates is under any obligation to update the whole or any part of the State Confidential Information, however the State or any of its Associates may do so at its sole discretion;
- (e) neither the CityLink Parties or any of their Associates are entitled to rely on the whole or any part of the State Confidential Information, other than the reports produced by the Conditions Consultant in accordance with the terms of its engagement as contemplated by the Direct Interface Agreement; and
- (f) the acknowledgements under this clause 13.1 are in addition to and, to the extent not inconsistent, do not replace the terms and conditions already agreed to or accepted by the CityLink Parties or their Associates when receiving the State Confidential Information.

13.2 No enquiry

The State and the CityLink Parties acknowledge that the State Confidential Information has been or will be given in good faith and that the State has no knowledge that the State Confidential Information is misleading or deceptive. The State and the CityLink Parties agree, however, that the State and its Associates (other than the Conditions Consultant in accordance with the terms of its engagement as contemplated by the Direct Interface Agreement) have no obligation to make enquiries to verify that State Confidential Information.

13.3 Indemnity

The CityLink Parties indemnify the State for any loss suffered by the State and its Associates and against any Liability to any person by way of indemnity against, or contribution to the liability of that person, arising out of, or in respect of, or in connection with any reliance, including any reliance by a third party, on the whole or any part of the State Confidential Information.

13.4 No claim

The CityLink Parties acknowledge and agree that none of the State, any of its Associates or any person acting on behalf of, or associated with any of them, other than the Conditions Consultant in accordance with the terms of its engagement as contemplated by the Direct Interface Agreement, will have any Liability, and the CityLink Parties and their Associates will not be entitled to make, continue or enforce any Claim against, or seek, pursue or obtain an indemnity against liability from, the State, its Associates, or any person acting on behalf of or associated with any of them, other than the Conditions Consultant in accordance with the terms of its engagement as contemplated by the Direct Interface Agreement, arising out of, in respect of or in connection with:

- (a) reliance by the CityLink Parties or their Associates on the whole or any part of the State Confidential Information; or
- (b) the accuracy, reliability or completeness of the State Confidential Information.

13.5 Permitted Use

The CityLink Parties must only use the State Confidential Information for the purposes of complying with their obligations under the Project Documents.

14. Interface indemnity

- (a) Subject to clauses 14(b), 14(e) and 14(f), the State must indemnify the CityLink Parties:
 - (i) in respect of:
 - A. other than any loss the subject of clause 14(a)(i)B, loss or damage (whether total or partial) to:
 - 1) CityLink (including structural failures in CityLink); or
 - 2) any property, including any real or personal property, of the CityLink Parties; and
 - B. revenue losses resulting from any loss of use (whether total or partial) of CityLink,

caused by the Metro Tunnel Works; and
 - (ii) in respect of any third party Claim brought against a CityLink Party arising out of the loss or damage referred to in clause 14(a)(i)A (**Third Party Claim**), to the extent that loss or damage was caused by the State or its Associates carrying out the Metro Tunnel Works.
- (b) The CityLink Parties must:

- (i) promptly notify the State of any occurrence that may give rise to a Third Party Claim; and
 - (ii) keep the State informed of subsequent developments concerning the occurrence under clause 14(b)(i) and the Third Party Claim.
- (c) The State's liability to indemnify the CityLink parties in accordance with this Agreement will be reduced to the extent that any such Claim or Liability is caused or contributed to by the CityLink Parties or its Associates, including by:
- (i) any breach by the CityLink Parties of this Agreement or the Direct Interface Agreement;
 - (ii) a fraudulent, reckless, negligent, unlawful or malicious act or omission of the CityLink Parties or any of their Associates; or
 - (iii) a failure by the CityLink Parties to use all reasonable endeavours to mitigate the extent or consequences of that Claim or Liability.
- (d) For the purposes of clause 14(a)(i)B, loss of use of CityLink includes:
- (i) any reduction in the speed limit on;
 - (ii) any change to the configuration or number of available lanes on; or
 - (iii) any restriction on the categories or types of vehicles that are able to use, CityLink (or part thereof).
- (e) The State's maximum liability to the CityLink Parties under clause 14(a)(i)B for any loss of use in respect of, caused by, or arising out of each Occurrence, is limited to the Interface Liability Cap.
- (f) The indemnity granted under this clause 14 does not apply to, and the CityLink Parties will make no Claim under this clause 14 in respect of:
- (i) the Indemnified Loss; or
 - (ii) [not disclosed].

15. Dispute resolution

15.1 Procedure for resolving disputes

- (a) **(Resolution procedure):** Any dispute between the parties arising in connection with this Agreement (including questions concerning this Agreement's existence, meaning or validity) **(Dispute)** must be resolved in accordance with this clause 15 and clause 16.
- (b) **(Procedure):** The procedure that is to be followed to resolve a Dispute is as follows:
 - (i) firstly, the Dispute must be the subject of negotiation as required by clause 15.2;
 - (ii) secondly, if the Dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 15.2(c)(i) the parties may agree that the Dispute will be referred to an expert for

determination under clauses 15.3 to 15.9 or to arbitration under clause 16;

- (iii) thirdly, if:
 - A. the Dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 15.2(c)(i) and irrespective of whether the parties failed to meet as required by that clause or whether having so met the parties fail to agree whether the Dispute should be referred to an expert or to arbitration within [not disclosed] after the expiration of the period for negotiation referred to in clause 15.2(c)(i);
 - B. the Dispute has been referred to expert determination and a determination is not made by the expert within [not disclosed] after the expert's acceptance of appointment; or
 - C. the Dispute is referred to expert determination and a notice of dissatisfaction is given under clause 15.6(a),

then the Dispute must be referred to arbitration under clause 16.

15.2 Negotiation

- (a) **(Notification)**: If a Dispute arises then a party may give notice to the other party requesting that the Dispute be referred for resolution by negotiation between the Chief Executive Officer of the Melbourne Metro Rail Authority (State) and the Group General Manager - Victoria, Transurban (CityLink Parties).
- (b) **(Contents of Notice)**: A notice under clause 15.2(a) must:
 - (i) state that it is a notice under this clause 15.2; and
 - (ii) include or be accompanied by particulars of the matters which are the subject of the Dispute.
- (c) **(Attempt to resolve Dispute)**: If a Dispute is referred for resolution by negotiation under clause 15.2(a), then:
 - (i) the representatives must meet and attempt in good faith to resolve the Dispute (in whole or in part) within [not disclosed] of the date on which the notice under clause 15.2(a) is received (or such later date as the parties may agree); and
 - (ii) any agreement reached between the representatives will be reduced to writing, signed by or on behalf of each party and will be contractually binding on the parties.

15.3 Expert determination

- (a) If:
 - (i) **(dispute unresolved by Representatives)**: a Dispute which has been referred to the representatives for negotiation in accordance with clause 15.2(c)(i) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 15.2(c)(i); and

- (ii) **(referral to expert)**: the parties agree within [not disclosed] after the expiration of the period for negotiation referred to in clause 15.2(c)(i), that the Dispute be referred to an expert for determination,

then those parts of the Dispute which remain unresolved will be referred to an expert for determination under clauses 15.4 to 15.8.

- (b) For the avoidance of doubt, a Dispute may only be referred to an expert for determination by agreement of the parties.

15.4 Selection of expert

- (a) **(Exchange of lists of 3 preferred experts)**: Within [not disclosed] after the date on which the parties agree to refer a Dispute to an expert for determination under clause 15.3 the parties must exchange lists of 3 persons (in order of preference) who, if appointed, would satisfy the requirements of clause 15.4(d), from whom the expert is to be chosen.
- (b) **(Appointment of person who appears on both lists)**: Any person that appears on both lists under clause 15.4(a) will be appointed as the expert to determine a Dispute and if more than one person appears on both lists the person given the highest order of priority by the party that gave the notice under clause 15.2(a) will be appointed.
- (c) **(Appointment if no person appears on both lists)**: If no person appears on all lists, the party which gave the notice under clause 15.2(a) must procure:
 - (i) the president (or the senior non-executive officer, howsoever described) of the institute or governing body for the technical or professional discipline the subject of the relevant Dispute to nominate the expert, having regard to, but not being bound by, those persons proposed by the parties under clause 15.4(a); or
 - (ii) if there is no governing body for the technical or professional discipline the subject of the relevant Dispute or such governing body advises that it will not nominate an expert, the Australian Centre for International Commercial Arbitration to nominate a person to act as the expert, having regard to, but not being bound by, those persons proposed by the parties under clause 15.4(a),

within [not disclosed] of the exchange of notices under clause 15.4(a).
- (d) **(Appropriate skills)**: It is the intention of the parties that the expert appointed to determine a Dispute will be an independent person with appropriate skills having regard to the nature of the matters in dispute.
- (e) **(No entitlement to challenge appointment)**: Neither party will be entitled to challenge the appointment of an expert under this clause 15.4 on the basis that the expert does not satisfy the requirements of clause 15.4(d).
- (f) **(Not an arbitration agreement)**: Any agreement for expert determination under this Agreement will not constitute an arbitration agreement for the purposes of the *Commercial Arbitration Act 2011* (Vic).
- (g) **(Agreement)**: Once an expert is appointed, the parties must enter into an agreement with the expert on such reasonable terms as the expert may require.

15.5 Rules of expert determination

The expert determination process will be administered, and the expert will be required to act, under the terms agreed pursuant to clause 15.4(g).

15.6 Expert finding

- (a) **(Notification):** The determination of the expert must be in writing and will be final and binding on the parties unless, within [not disclosed] of receipt of the determination, a party gives notice to the other party or parties of its dissatisfaction and intention to refer the matter to arbitration in accordance with clause 16.
- (b) **(Amendment to determination):** Upon submission by any party, the expert may amend the determination to correct:
 - (i) a clerical mistake;
 - (ii) an error from an accidental slip or omission;
 - (iii) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
 - (iv) a defect in form.

15.7 Liability of expert

- (a) **(Liability of expert):** The parties agree:
 - (i) that the expert will not be liable in connection with the expert determination, except in the case of fraud on the part of the expert; and
 - (ii) to indemnify the expert against any Claim or Liability in connection with the expert determination, except in the case of fraud on the part of the expert, in which case a Claim may be made against him or her by any person who is party to the Dispute.
- (b) **(Engagement):** The parties will jointly engage the expert services in connection with the expert determination proceedings and each party will seek a separate Tax Invoice equal to its share of the costs of the expert.

15.8 Costs

The parties must:

- (a) bear their own costs in connection with the expert determination proceedings; and
- (b) pay an equal portion of the costs of the expert.

15.9 Proportionate Liability

To the extent permitted by Law, the expert will have no power to apply or to have regard to the provisions of any proportionate liability legislation which might in the absence of this clause 15.9, have applied to any dispute referred to the expert in accordance with this clause 15.

16. Arbitration

16.1 Reference to Arbitration

- (a) **(Dispute):** If:
- (i) a Dispute:
 - A. which has been referred to the parties' representatives for negotiation in accordance with clause 15.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 15.2(c)(i); and
 - B. the parties do not agree to refer the Dispute to an expert for determination; or
 - (ii) in the case of a Dispute which the parties agree to refer to expert determination under clause 15.3:
 - A. a determination is not made within [not disclosed] of the expert's acceptance of the appointment; or
 - B. a notice of dissatisfaction is given in accordance with clause 15.6,
- then a party may notify the other party that it requires the Dispute to be referred to arbitration.
- (b) **(Referral):** Upon receipt by the other party of a notice under clause 16.1(a), the Dispute will be referred to arbitration.

16.2 Arbitration

- (a) **(ACICA Rules):** Arbitration in accordance with this clause 16 will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Rules) as current at the date the Dispute is referred to arbitration and as otherwise set out in this clause 16 with this clause 16 having priority to the extent of any inconsistency.
- (b) **(Seat):** The seat of the arbitration will be Melbourne, Victoria.
- (c) **(Language):** The language of the arbitration will be English.

16.3 Appointment of arbitrator

The parties will endeavour to agree on the arbitrator or arbitrators (if the parties agree to appoint 3 arbitrators), but if no such agreement is reached within [not disclosed] of the Dispute being referred to arbitration in accordance with clause 16.1(b), the arbitrator or arbitrators will be appointed in accordance with the ACICA Rules.

16.4 General Principles for conduct of arbitration

- (a) **(Conduct of arbitration):** The parties agree that:
- (i) they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;
 - (ii) any arbitration conducted in accordance with this clause 16 will not necessarily mimic court proceedings of the seat of the arbitration or the

place where hearings take place (if different), and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and

- (iii) in conducting the arbitration, the arbitrator must take into account the matters set out in clauses 16.4(a)(i) and 16.4(a)(ii).
- (b) **(Evidence in writing):** All evidence in chief must be in writing unless otherwise ordered by the arbitrator.
- (c) **(Evidence and discovery):** The rules for evidence and discovery will be the IBA Rules on the Taking of Evidence in International Arbitration current at the date of arbitration (or if there are no current rules, the most recent version of those rules).
- (d) **(Oral hearing):** The oral hearing must be conducted as follows:
 - (i) any oral hearing must take place in Melbourne, Victoria and all outstanding issues must be addressed at the oral hearing;
 - (ii) the date and duration of the oral hearing must be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in clause 16.4(a) when determining the duration of the oral hearing;
 - (iii) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
 - (iv) the oral hearing must be conducted on a stop clock basis with the effect that the time available to the parties must be split equally between the parties so that each party has the same time to conduct its case unless, in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the parties;
 - (v) not less than [not disclosed] prior to the date fixed for oral hearing each party must give notice of those witnesses (both factual and expert) of the other party that it wishes to attend the hearing for cross examination;
 - (vi) in exceptional circumstances the arbitrator may amend the date of hearing and extend the time for the oral hearing set in accordance with clause 16.4(d)(ii);
 - (vii) a party will not be bound to accept the written evidence of a witness submitted on behalf of the opposing party which is not challenged in cross examination; and
 - (viii) each party is expected to put its case on significant issues in cross examination of a relevant witness called by the opposing party or, where it seeks to challenge the evidence of a witness not called for cross-examination by reference to other evidence, to identify that evidence in its written opening submissions so that the opposing party may know the nature of and basis for the challenge to the witness' written evidence.
- (e) **(Experts):** Unless otherwise ordered, each party may only rely upon one expert witness in connection with any recognised area of specialisation.

16.5 Proportionate liability

To the extent permitted by Law, the arbitrator will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this clause 16.5, have applied to any dispute referred to arbitration in accordance with this clause 16.

16.6 Extension of ambit of arbitration proceedings

- (a) **(Extending Disputes):** Where:
- (i) a Dispute is referred to arbitration in accordance with this clause 16; and
 - (ii) there is some other Dispute also between the parties (whenever occurring),
- the arbitrator may, upon application being made to the arbitrator by one or more parties at any time before a final award is made in relation to the first-mentioned Dispute, make an order directing that the arbitration be extended so as to include the other Dispute.
- (b) **(Arbitrator's order):** An arbitrator may make an order in accordance with clause 16.6(a) on such terms and conditions (if any) as the arbitrator thinks fit.

16.7 Award final and binding

- (a) **(Final and binding):** Subject to clause 16.7(b), any award will be final and binding on the parties.
- (b) **(Appeal):** Each party consents to any appeal to a court where that appeal is made under the *Commercial Arbitration Act 2011* (Vic) on a question of law arising in connection with an arbitral award made in accordance with this clause 16.

16.8 Continue to perform

Notwithstanding the existence of a Dispute, each party must continue to carry out its obligations in accordance with this Agreement.

16.9 Governing law of arbitration agreement

The Law governing this arbitration agreement is the law of Victoria, Australia.

17. Notices

17.1 General

Subject to clause 17.2, any notice, demand, consent or other communication (**Notice**) must be, if in writing, signed by or on behalf of the sender, addressed to the intended recipient and:

- (a) delivered; or
- (b) sent by prepaid express post,

to that recipient's address specified in clause 17.4 or the last address notified by that recipient to the sender.

17.2 Notices sent by email

A Notice may also be sent by email if:

- (a) the email includes the words "Notice under the State Interface Agreement" in the subject line of the email; and
- (b) the Notice is:

- (i) authorised by the sender in accordance with a procedure agreed between the parties; and
- (ii) sent to the email address specified in clause 17.4 or the email address last notified by the intended recipient to the sender.

17.3 Time of receipt

A Notice given to a person in accordance with this clause is treated as having been given and received:

- (a) in the case of delivery in person, when delivered to the intended recipient or their premises;
- (b) in the case of delivery by prepaid post, on the third Business Day after the date of posting (if posted to an address in the same country) or on the fifth Business Day after the date of posting (if posted to an address in another country); or
- (c) in the case of delivery by email, the first to occur of:
 - (i) receipt by the sender of any email acknowledgment from the intended recipient's information system showing that the Notice has been delivered to the email address of that recipient;
 - (ii) the time that the Notice enters an information system which is under the control of the intended recipient; and
 - (iii) the time that the Notice is first opened or read by an employee or officer of the intended recipient,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent or at later than 4.00pm (local time) on a Business Day, the Notice will be taken to have been duly given or made at the start of business on the next Business Day in that place.

17.4 Address for Notices

The address and email address of each party is:

- (a) the address and email address set out below; or
- (b) where the intended recipient notifies the sender of another address or email address, the last address or number so notified by that recipient to the sender.

CITYLINK PARTIES

Attention: [not disclosed]

Address: [not disclosed]

Email: [not disclosed]

STATE

Attention: [not disclosed]

Address: [not disclosed]

Email: [not disclosed]

18. Delegation

18.1 Right to delegate

Each CityLink Party acknowledges that the State may exercise any right, statutory or otherwise, it has to appoint a person as a delegate to perform any of its functions, rights and powers under this Agreement.

18.2 Notice of delegation

The State will give the CityLink Parties written notice of any delegate so appointed, setting out the delegated functions, rights and powers and including a copy of the relevant instrument of appointment.

18.3 Revocation or amendment of delegation

Any such delegation may be revoked, changed, delegated, limited or made subject to such conditions as the State determines from time to time. The State will give the CityLink Parties written notice of any such revocation, amendment or other action.

18.4 No limitation of State obligations

The appointment of a delegate to perform some or all of the functions, rights and powers of the State under this Agreement will not limit or affect the State's obligations or liability under this Agreement.

19. CityLink Parties' Representative

- (a) As at the date of this Agreement, the CityLink Parties' Representative is [not disclosed].
- (b) The CityLink Parties' Representative may perform any of the CityLink Parties' functions, rights and powers under this Agreement. The appointment of the CityLink Parties' Representative does not otherwise limit or affect:
 - (i) the CityLink Parties' obligations or liability under this Agreement; or
 - (ii) the CityLink Parties' right to exercise any of its functions, rights or powers under this Agreement.
- (c) The CityLink Parties' Representative may delegate any of its functions, rights or powers under this Agreement to a nominee, by written notice to the State.

20. Survival

The Parties acknowledge and agree that, without limiting any clause which, by its nature, is intended to survive termination or expiration of this Agreement, this clause and clauses 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 21 and 23 survive termination or expiration of this Agreement.

21. General Provisions

21.1 No partnership or joint venture

Except as expressly provided in this Agreement, nothing contained or implied in this Agreement will:

- (a) constitute or be deemed to constitute a party as a partner, joint venturer, agent or legal representative of any other party for any purpose; or
- (b) create or be deemed to create any partnership, joint venture, agency or trust between the parties or any of them.

21.2 Waiver

Subject to the express provisions of this Agreement, if the State or one of its Associates fails or delays in exercising or enforcing any right or remedy under this Agreement, it will not preclude or amount to a waiver of any further exercise or enforcement of that right or remedy or of any other right or remedy under this Agreement or provided by Law.

21.3 Cost of performing obligations

A party who has an obligation to do anything under this Agreement must perform that obligation at its own cost, unless a provision of this Agreement expressly provides otherwise.

21.4 Entire Agreement

This Agreement, the Direct Interface Agreement and the Project Documents contains the entire agreement of the parties with respect to the matters contemplated in this Agreement.

21.5 Successors

This Agreement shall be binding upon each CityLink Party and its successors and assigns and shall enure to the benefit of the State, its successors and assigns.

21.6 Further assurance

Each party must sign, execute, deliver and do all such acts and things as may reasonably be required of it to carry out and give full effect to this Agreement and the rights and obligations of the parties to them.

21.7 Counterparts

This Agreement may be executed in any number of counterparts and all counterparts taken together will constitute one and the same instrument.

21.8 Governing Law and jurisdiction

- (a) This Agreement will be governed by and construed in accordance with the laws of Victoria.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of Victoria.

21.9 No limitation of Concession Deed

The State and the CityLink Parties acknowledge and agree that nothing in this Agreement limits or otherwise affects the State's or a CityLink Party's rights and obligations under the Concession Deed except to the extent expressly set out in this Agreement.

22. GST

- (a) **(GST exclusive amounts):** Unless otherwise expressly stated, all amounts referred to in this Agreement are exclusive of GST.

- (b) **(GST payable by Supplier):** If GST becomes payable on any Taxable Supply made by a party (**Supplier**) under or in connection with this Agreement:
- (i) any amount payable or consideration to be provided in accordance with any other provision of this Agreement for that supply (**Agreed Amount**) is exclusive of GST;
 - (ii) an additional amount will be payable by the party which is the recipient of the Taxable Supply (**Recipient**), equal to the amount of GST payable on that Taxable Supply as calculated by the Supplier in accordance with the GST Law, which will be payable at the same time and in the same manner as for the Agreed Amount; and
 - (iii) the Supplier will provide a Tax Invoice to the Recipient in connection with that supply, either at the time expressly set out in any other provision of this Agreement or no later than the time at which the Agreed Amount for that Taxable Supply is to be provided in accordance with this Agreement. The Recipient is not obliged to pay any amount in accordance with this clause 22(b) unless and until a Tax Invoice is received by the Recipient in connection with the Taxable Supply except where the Recipient is required to issue the Tax Invoice.
- (c) **(Variation in GST payable):** If for any reason, the GST payable by the Supplier in connection with a supply it makes under or in connection with this Agreement (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it received from the Recipient under clause 22(b) in connection with that supply, the Supplier will provide a refund or credit to, or will be entitled to receive from, the Recipient (as appropriate) the amount of this variation. Where an adjustment event occurs in relation to a supply and except where the Recipient is required to issue the Adjustment Note:
- (i) the Supplier will issue an Adjustment Note to the Recipient in connection with that supply within [not disclosed] days after becoming aware of that adjustment event occurring; and
 - (ii) no additional amount will be payable by the Recipient unless and until an Adjustment Note is received by the Recipient.
- (d) **(GST ceasing to be payable):** No amount is payable by a party in accordance with clause 22(b) or 22(c) to the extent that the GST to which the amount relates has ceased to be payable by or refundable to the Supplier by the Commissioner of Taxation under the GST Law.
- (e) **(Expert Determination):** If the Recipient is dissatisfied with any calculation to be made by the Supplier in accordance with this clause 22 the Recipient may, at its own expense and after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the President of the Institute of Chartered Accountants for expert determination, which will be final and binding on all parties (except in the case of manifest error). The expert will act as an expert and not as an arbitrator and must take into account the terms of this Agreement, the matters required to be taken into account by the Supplier in accordance with this clause 22 and any other matter considered by the expert to be relevant to the determination. The parties release the expert from any liability in acting as an expert, except in the case of fraud on the part of the expert.
- (f) **(Revenue net of GST):** Any reference in this Agreement to price, value, sales, revenue, profit or a similar amount (**Revenue**), is a reference to the GST exclusive component of that Revenue, unless the contrary intention is expressed.

- (g) **(Cost net of GST):** Any reference in this Agreement to cost, expense, liability or other similar amount (**Cost**) of a party, is a reference to that Cost reduced by the Input Tax Credits to which the party is entitled in respect of such Cost, unless the contrary intention is expressed.
- (h) **(Recipient Supply):** To the extent that the consideration provided for the Supplier's taxable supply to which clause 22(b) applies is a taxable supply made by the Recipient (**Recipient Supply**), then:
- (i) the additional amount for GST that would otherwise be payable by the Recipient to the Supplier in accordance with clause 22(b)(ii) shall be reduced by the amount of GST payable by the Recipient on the Recipient Supply; and
 - (ii) the Recipient must issue to the Supplier a tax invoice for any Recipient Supply at the same time that the Supplier is required to issue a tax invoice to the Recipient for the Supplier's corresponding taxable supply pursuant to clause 22(b)(iii).
- (i) **(General obligation):** Each party agrees to do all things, including providing Tax Invoices and other documentation, that may be necessary or desirable to enable or assist the other party in determining its GST payable on any supply made by that other party in connection with this Agreement, or any Input Tax Credits, adjustments or refunds in relation to any amount of GST paid or payable in connection with any supply made in connection with this Agreement.
- (j) **(GST Groups):** For the purposes of this Agreement, a reference to GST payable on a Taxable Supply made by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member and a reference to an Input Tax Credit entitlement of a party includes any corresponding Input Tax Credit entitlement of the representative member of any GST group of which that party is a member, and if a party to this Agreement makes a Taxable Supply by virtue of entering into or performing this Agreement and the 'recipient' of that Taxable Supply (within the meaning of the GST Act) is an Associate of another party to this Agreement, that other party to this Agreement will be obliged either to pay the amount referred to in clause 22(b)(ii) or procure that the actual recipient pays the relevant amount, and the payer of that amount shall be the 'Recipient' for the purposes of this clause 22 in relation to the relevant Taxable Supply.
- (k) **(Definitions):** In this clause 22 unless otherwise defined in this Agreement, terms used have the meanings given to them in the GST Law.

23. Definitions and interpretation

23.1 Definitions

In this Agreement:

CityLink Parties' Confidential Information means any CityLink Parties' Information which is specifically identified by the CityLink Parties to be confidential or which is supplied in circumstances clearly indicative of its confidential nature, but excludes:

- (a) information which was in the public domain before the date of this Agreement; or
- (b) information which comes into the public domain after the date of this Agreement, except through disclosure by the State or the State's Associates in contravention of this Deed or any other obligations of confidence.

CityLink Parties' Information means all information (whether or not in tangible or electronic form) disclosed by or on behalf of the CityLink Parties or their Associates to the State in accordance with this Agreement or the Direct Interface Agreement and, for the avoidance of doubt, includes any reports produced by the Conditions Consultant in accordance with the terms of its engagement as contemplated by the Direct Interface Agreement.

Claim means any claim, action, demand, suit or proceeding (including by way of contribution or indemnity) made in connection with this Agreement, at contract or at Law or for specific performance, restitution, payment of money (including damages) or any other form of relief.

Day One Clauses means clauses 1, 2, 3, 15, 16, 17, 18, 19, 21 and 23 of this Agreement.

Design Documentation means the design documentation for the MMR Interface Works that is relevant to the interface with CityLink, at preliminary and detailed design stages.

Direct Interface Agreement means the interface agreement entitled "Metro Tunnel - CityLink Direct Interface Agreement" between the State, CityLink Parties and MMR Project Co dated on or about the date of this Agreement.

Indemnified Loss has the meaning given in the Direct Interface Agreement.

Interface Liability Cap means the sum of \$[not disclosed].

MMR Interface Works means the works MMR Project Co is required to design and construct in accordance with the Metro Tunnel Agreement within the direct vicinity of the CityLink Leased Area, including any necessary defect rectification works.

Modification Documentation means any order, proposal or quote (with commercial information redacted) made or prepared by the State or MMR Project Co to modify or vary the Design Documentation or construction methodology for the Metro Tunnel (provided or required to be provided under clauses 4 or 5), or the MMR Interface Works the subject thereof.

Occurrence means an event including continuous or repeated exposure to conditions that results in:

- (a) physical loss or destruction of or damage to tangible property including the loss of use thereof (total or partial), or any consequential loss resulting therefrom; or
- (b) total or partial interruption of or interference with or loss of use of or deprivation of premises, property, services, facilities, trade or vehicular or pedestrian traffic.

Recipient means each CityLink Party and each Associate of a CityLink Party.

State Confidential Information means the following, whether or not in tangible or electronic form (however disclosed):

- (a) all information directly or indirectly disclosed by or on behalf of the State, the State's Associates, MMR Project Co or its Associates to the CityLink Parties or their Associates, whether before or after execution of this Agreement which is connected directly or indirectly with the Metro Tunnel or the involvement of a person with the Metro Tunnel including, for the avoidance of doubt, the reports produced by the Conditions Consultant;
- (b) all material disclosed in presentations by or on behalf of the State, the State's Associates, MMR Project Co or its Associates in connection with the Metro Tunnel;
- (c) all notes, data and other records based on, referring to or incorporating any information referred to in paragraphs (a) to (b); and

- (d) all copies of the information and those notes, data and other records referred to in any of paragraphs (a) to (c),

but excludes:

- (e) information which was in the public domain before the date of this Agreement; or
- (f) information which comes into the public domain after the date of this Agreement, except through disclosure by the CityLink Parties or any of their Associates in contravention of this Agreement or any other obligations of confidence.

Surrendered CityLink Leased Area means the CityLink Leased Area identified in Schedule 1.

23.2 Direct Interface Agreement

Subject to clause 23.1, terms which have a defined or special meaning in the Direct Interface Agreement have that meaning in this Agreement.

23.3 Concession Deed definitions

Subject to clause 23.1 and 23.2, terms which have a defined or special meaning in the Concession Deed have that meaning in this Agreement.

23.4 Interpretation

Unless expressed to the contrary, in this Agreement:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) "includes" means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
- (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any statute, regulation, by-law or guideline or to any provision of any statute, regulation, by-law or guideline include any modification or re-enactment of, or any provision substituted for, and (in the case of a statute) all statutory and subordinate instruments issued under, such statute, regulation, by-law or guideline or such provision;
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (v) a right includes a benefit, remedy, discretion or power;

- (vi) time is to local time in Melbourne;
 - (vii) "\$" or "dollars" is a reference to Australian currency and all references to dollar amounts are exclusive of GST;
 - (viii) "financial year" means a period of 12 calendar months ending on 30 June;
 - (ix) "quarter" means a period of three calendar months ending on the last day of September, December, March or June;
 - (x) "land" includes interests in land;
 - (xi) an asset includes any real or personal, present or future, tangible or intangible, property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived, from the property or asset;
 - (xii) an amount for which a person is contingently liable includes an amount that that person may become actually or contingently liable to pay if a contingency occurs, whether or not that liability actually arises;
 - (xiii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
 - (xiv) writing includes any mode of representing or reproducing words in tangible and permanently visible form;
 - (xv) this Agreement includes all schedules, annexures and exhibits to it;
 - (xvi) a clause, schedule, annexure or exhibit is a reference to a clause, schedule, annexure or exhibit, as the case may be, of this Agreement; and
 - (xvii) a notice, notification, consent, agreement, disclosure, evidence or approval or any variation of those words are references to a notice, notification, consent, agreement, disclosure, evidence or approval or any variation of those words, in writing;
- (g) where an obligation or liability is imposed on a party under this Agreement, that obligation or liability is not to be limited or affected by an obligation or liability imposed in another provision of this Agreement unless expressly stated;
- (h) where a right or remedy is conferred on a party under this Agreement, that right or remedy is in addition to, and not in substitution of, any other right or remedy conferred on that party under this Agreement or otherwise according to law;
- (i) a reference to a right, obligation or liability of any two or more persons confers that right, or imposes that obligation or liability, as the case may be, jointly and severally;
- (j) the term "may" when used in the context of a power or right exercisable by a party means that the party can exercise that right or power in its absolute and unfettered discretion and that party has no obligation to any other party to this Agreement to do so;
- (k) where, under this Agreement, the State has a discretion to give, withhold, make, not make, exercise or not exercise any action, approval, consent or decision that discretion is absolute and unfettered, except to the extent this Agreement provides otherwise;

- (l) if the date on or by which any act must be done under this Agreement is not a Business Day, the act must be done on or by the next Business Day; and
- (m) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

23.5 Headings

In this Agreement, headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation.

23.6 Representations and Warranties

Insofar as:

- (a) a party has, under a Project Document, made a representation or warranty in favour of another party or other parties; and
- (b) the representation or warranty relates to:
 - (i) the party's power to, or actions authorising the party to, enter into, execute, deliver or perform a (or any) Project Document; or
 - (ii) the capacity in which the party enters into a (or any) Project Document,

then the party (in the case of the Trustee, both in its own capacity and in its capacity as trustee of the Asset Trust) repeats that representation and warranty:

- (c) in favour of the party or parties in whose favour it was initially made;
- (d) as at the date of this Agreement and as at the date this Agreement becomes operative under clause 1.3; and
- (e) as if the representation and warranty also related to this Agreement and the Direct Interface Agreement.

23.7 Trustee's limitation of liability

- (a) The Trustee enters into this Agreement only in its capacity as trustee of the CityLink Trust and in no other capacity and references to the Trustee in this Agreement are references to it only in this capacity. A liability arising under or in connection with this Agreement is limited to and can be enforced against the Trustee only to the extent which it can be satisfied out of the property of the CityLink Trust out of which the Trustee is actually indemnified for the liability. This limitation of the Trustee's liability applies despite any other provision of this Agreement and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Agreement.
- (b) The State may not sue the Trustee in any capacity other than as trustee of the CityLink Trust, including seeking the appointment of a receiver (except in relation to property of the CityLink Trust), a liquidator, an administrator or any similar person to the Trustee or prove in any liquidation, administration or arrangement of or affecting the Trustee (except in relation to the property of the CityLink Trust).
- (c) The provisions of this clause 23.7 do not apply to any obligation or liability of the Trustee to the extent that it is not satisfied because under the trust deed for the CityLink Trust or by operation of law there is a reduction in the extent of the Trustee's indemnification out of the assets of the CityLink Trust, as a result of the Trustee's fraud, negligence or breach of trust.

- (d) No attorney, agent or receiver or manager appointed in accordance with this Agreement has authority to act on behalf of the Trustee in a way which exposes the Trustee to any personal liability and no act or omission of any such person will be considered fraud, negligence or breach of trust of the Trustee for the purpose of clause 23.7(c).
- (e) The Trustee is not obliged to do or refrain from doing anything under this Agreement (including incur any liability) unless the Trustee's liability is limited in a manner satisfactory to the Trustee in its absolute discretion.

23.8 Several obligations

- (a) The obligations of the Company and the Trustee under this Agreement are several.
- (b) Without limitation to their respective obligations or to the extent of their respective liability under this Agreement, an obligation which is expressed to bind both the Company and the Trustee is deemed to be a several reference to:
 - (i) the Trustee in relation to the Trust Road, the Trust Land, the Trust Leases and the Trust Concurrent Leases or (insofar as the obligation does not relate to land) the specified obligation as it relates to the Trustee in each case (as the case may be); and
 - (ii) the Company in relation to the Company Road, the Company Land and each Company Lease or (insofar as the obligation does not relate to land) the specified obligation as it relates to the Company in each case (as the case may be) including the obligation to operate and maintain CityLink.

23.9 Benefits held on trust

- (a) The State holds on trust for its Associates the benefit of:
 - (i) each indemnity, promise and release given by the CityLink Parties under this Agreement in favour of the State's Associates; and
 - (ii) each right in this Agreement to the extent that such right is expressly stated to be for the benefit of the State's Associates.
- (b) The CityLink Parties acknowledge the existence of such trusts and consent to:
 - (i) the State exercising rights in relation to, or otherwise enforcing such indemnities, releases and rights on behalf of its Associates; and
 - (ii) the State's Associates exercising rights in relation to, or otherwise enforcing the indemnities, promises, releases and those rights as if they were a party to this Agreement.
- (c) The parties agree that the State does not require the consent of any State Associate to amend or waive any provision of this Agreement.

Execution page

Executed as a deed

Executed by the Honourable Jacinta Allan MP, in her capacity as Minister for Public Transport, on behalf of the Crown in Right of the State of Victoria in the presence of: [not disclosed]

[not disclosed]

Signature of witness [not disclosed]

Signature

Full name of witness

EXECUTED for and on behalf of CITYLINK MELBOURNE LIMITED ABN 65 070 810 678 in accordance with section 127(1) of the Corporations Act (Cth) 2001:

[not disclosed]

[not disclosed]

Signature of director

Signature of director/secretary

[not disclosed]

[not disclosed]

Name of director

Name of director/secretary

EXECUTED for and on behalf of TRANSURBAN INFRASTRUCTURE MANAGEMENT LIMITED (AS TRUSTEE OF THE CITYLINK TRUST) ABN 27 098 147 678 in accordance with section 127(1) of the Corporations Act (Cth) 2001:

[not disclosed]

[not disclosed]

Signature of director

Signature of director/secretary

[not disclosed]

[not disclosed]

Name of director

Name of director/secretary

Schedule 1 - Surrendered CityLink Leased Area

Schedule 2 - Deed of Partial Surrender

Deed of partial surrender of lease (Company Lease)

The Minister for Roads and Road Safety for and on behalf of the Crown in
right of the State of Victoria
State

[Insert] (ACN [insert])
Lessee

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Deed dated

Parties The Minister for Roads and Road Safety for and on behalf of the Crown in right of the State of Victoria (**State**)

[insert] ACN [insert] of [not disclosed] (**Lessee**)

Background

- A. The State leases the Land to the Lessee under the Lease.
- B. The Lessee wishes to surrender the Surrendered Area on and from the Surrender Date.
- C. Section 60(1)(c) of the *Melbourne City Link Act 1995* (Vic) provides that the Governor in Council, on behalf of the State may, on the recommendation of the Minister for Roads and Road Safety (being the Minister administering the MCL Act) (**Minister**), ratify or give effect to any partial surrender of the Lease by the Lessee.
- D. The Minister enters into this deed with the Lessee on behalf of the State and will make a recommendation to the Governor in Council to ratify the partial surrender of the Lease insofar as it relates to the Surrendered Area.
- E. The State will accept the surrender of the Surrendered Area on and from the Surrender Date, subject to this deed.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this deed:

Concession Deed means the deed entitled "Agreement for the Melbourne City Link" made with effect as at and from 20 October 1995, as amended and varied from time to time.

Land has the meaning given to that term in the Lease.

Lease means registered Crown Lease Volume [insert] Folio [insert] between the State and the Lessee dated [insert].

MCL Act means the *Melbourne City Link Act 1995* (Vic).

Rent means the rent payable under the Lease.

Surrender Date means the date on which the Governor in Council, acting under section 60(1)(c) of the MCL Act, ratifies the partial surrender of the Lease insofar as it relates to the Surrendered Area.

Surrender Form means any such form or document as required by Land Victoria to enable registration of the surrender of the Surrendered Area.

Surrendered Area means so much of the Land that is comprised of Crown Allotments [insert] as shown on OP [insert] (a copy of which is attached at Attachment A).

1.2 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation;
- and unless the context indicates a contrary intention:
- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
 - (c) "**person**" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
 - (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
 - (e) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
 - (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
 - (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
 - (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
 - (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
 - (j) "**includes**" in any form is not a word of limitation; and
 - (k) a reference to "\$" or "**dollar**" is to Australian currency.

2. Surrender, acceptance and election

2.1 Surrender and acceptance

Subject to this deed, with effect from and including the Surrender Date:

- (a) the Lessee surrenders to the State all of the Lessee's right, title, estate and interest in the Surrendered Area granted under the Lease; and
- (b) if the Lessee has complied with the Lessee's obligations under clause 3.1 and 3.2(a) by the Surrender Date, the State:
 - (i) accepts that surrender; and
 - (ii) will procure that the Governor in Council ratifies the surrender of the Surrendered Area in accordance with section 60(1)(c) of the MCL Act.

2.2 State's rights

If the Lessee does not comply with the Lessee's obligations under clause 3 after written notice from the State and a reasonable amount of time to rectify the non-compliance, the State may

take action against the Lessee to remedy the Lessee's default under this deed and the costs of doing so will be a debt due from the Lessee to the State payable on demand.

3. Surrender process

3.1 Possession of Surrendered Area

On or before the Surrender Date, the Lessee must vacate and yield up the Surrendered Area:

- (a) in good and substantial order and condition; and
- (b) in the state of repair and operating condition required by the Lease and the Concession Deed.

3.2 Documents

- (a) On or before the Surrender Date, the Lessee must provide to the State:
 - (i) a release of any encumbrance over the Lessee's interest in the Surrendered Area;
 - (ii) the consent of any mortgagee and the holder of any charge over the Lease to the surrender of the Surrendered Area; and
 - (iii) a discharge of any caveat the Lessee has lodged to protect its interest under or in connection with the Lease in respect of the Surrendered Area.
- (b) The Lessee must provide to the State:
 - (i) the Surrender Form signed by the Lessee within [not disclosed] Business Days after the date on which the State delivers to the Lessee the Surrender Form; and
 - (ii) any document requested by the State which the State reasonably requires to perfect the surrender of the Surrendered Area.

3.3 State's obligations

- (a) Within a reasonable time after the parties have executed this deed, the State must make a request and submit a recommendation to the Governor in Council seeking ratification of the partial surrender of the Lease insofar as it relates to the Surrendered Area in accordance with section 60(1)(c) of the MCL Act.
- (b) Subject to the Lessee's compliance with clause 3.2(b) and ratification by the Governor in Council of the partial surrender of the Lease in accordance with clause 3.3(a), within a reasonable time after the occurrence of the following events, whichever occurs last:
 - (i) the receipt of:
 - A. the Surrender Form signed by the Lessee; and
 - B. any documents the State has requested pursuant to clause 3.2(b)(ii); and
 - (ii) the date of ratification by the Governor in Council of the partial surrender of the Lease,

the State must execute the Surrender Form (if required), stamp the Surrender Form (if required), and lodge the Surrender Form for registration at Land Victoria.

3.4 Rent

The parties agree that there will be no adjustment to the Rent on account of the surrender effected by this deed.

3.5 Ratification of surrender

The parties acknowledge that surrender of the Surrendered Area will not take effect unless and until the surrender is ratified by the Governor in Council under section 60(1)(c) of the MCL Act.

4. Obligations until surrender

The State's execution of this deed is not a waiver of any breach of the Lease by the Lessee, or of any obligation on the Lessee under the Lease required to be performed, on or before the Surrender Date and, despite this deed:

- (a) the State and the Lessee continue to be bound by the Lease in respect of the Surrendered Area up to and including the Surrender Date; and
- (b) the Lessee remains liable to the State for any breach of the Lease by the Lessee and for any obligation of the Lessee under the Lease required to be performed on or before the Surrender Date even if the State does not discover a breach or make a claim in connection with a breach until after the Surrender Date.

5. Lessee's representation and warranty

The Lessee represents and warrants to the State that any person having any right, title or interest whatsoever in the Surrendered Area or in any fixture, fitting or item in the Surrendered Area on or prior to the Surrender Date will cease to have such right, title or interest on the Surrender Date.

6. Releases and indemnity

6.1 State releases

Subject to clause 4, and with effect from the date after but not including the Surrender Date, the State releases the Lessee from:

- (a) the Lessee's obligations under the Lease in relation to the Surrendered Area; and
- (b) all liability, loss, costs and expenses (including legal fees, costs and disbursements) that the State may have or claim to have or but for this release might have had against the Lessee (including any of which the State is not aware of or could not have been aware at the date of this deed) arising from or incurred in connection with:
 - (i) the Lease in relation to the Surrendered Area; and
 - (ii) the State's decision to enter into this deed,

arising after the Surrender Date, provided that nothing in this deed is a waiver of any breach of the Lease by the Lessee or of any obligation of the Lessee under the Lease required to be performed on or before the Surrender Date in relation to the Surrendered Area (even if the

State does not discover the breach or make a claim in connection with the breach until after the Surrender Date).

6.2 Lessee releases

With effect from the date after but not including the Surrender Date, the Lessee releases the State from:

- (a) the State's obligations under the Lease in relation to the Surrendered Area; and
- (b) all liability, loss, costs and expenses (including legal fees, costs and disbursements) that the Lessee may have or claim to have or but for this release might have had against the State arising from or incurred in connection with:
 - (i) the Lease in relation to the Surrendered Area; and
 - (ii) the Lessee's decision to enter into this deed,

arising after the Surrender Date, provided that nothing in this deed:

- (c) is a waiver of any breach of the Lease by the State;
- (d) is a waiver of any obligation of the State under the Lease required to be performed on or before the Surrender Date in relation to the Surrendered Area (even if the Lessee does not discover the breach or make a claim in connection with the breach until after the Surrender Date); or
- (e) limits any indemnity given by the State under this Deed, the State Interface Agreement, or the Concession Deed, to the extent a Claim under such indemnity relates to MMR Interface Works undertaken on the Surrendered Area.

In this clause 6.2, State Interface Agreement means the agreement titled " Metro Tunnel - State Interface Agreement" between the State and the Company and the Trustee (each as defined in the Concession Deed) dated on or about 14 December 2017.

6.3 Bar to proceedings

Either party may plead this deed as a complete defence to any proceedings arising from or in connection with the matters the subject of the release in clauses 6.1 and/or 6.2 (as applicable).

6.4 Indemnities

Each party is liable for and indemnifies the other party against all liability, loss, costs and expenses (including legal fees, costs and disbursements on the higher of a full indemnity basis and a solicitor and own client basis, determined without taxation, assessment, or similar process and whether incurred by or awarded against the relevant party) arising from or incurred in connection with:

- (a) a party's default under this deed; or
- (b) the matters the subject of the release in clauses 6.1 and 6.2 (as applicable).

6.5 Provisions of Lease in full force

The State and the Lessee acknowledge and agree that each provision of the Lease remains in full force and effect in accordance with its terms, except to the extent that it applies to the Surrendered Area after the Surrender Date.

7. General

7.1 Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this deed:

- (a) must be in writing;
- (b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

State

Name: [not disclosed]
Address: [not disclosed]
Email: [\[not disclosed\]](#)

Lessee

Name: [insert]
Address: [not disclosed]
Email: [insert]

- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (d) must be delivered by hand or posted by prepaid post to the address, or sent by email to the email address, of the addressee, in accordance with clause 7.1(b); and
- (e) is taken to be received by the addressee:
 - (i) (in the case of prepaid express post sent to an address in the same country) on the [not disclosed] day after the date of posting;
 - (ii) (in the case of prepaid post sent to an address in another country) on the [not disclosed] day after the date of posting by airmail;
 - (iii) (in the case of delivery by hand) on delivery; and
 - (iv) (in the case of email) on the first to occur of:
 - A. receipt by the sender of any email acknowledgment from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - B. the time that the communication enters an information system which is under the control of the addressee; or
 - C. the time that the communication is first opened or read by the addressee,

but if the communication is taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day ("working day" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered).

7.2 Governing law

This deed is governed by and must be construed according to the law applying in Victoria.

7.3 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 7.3(a).

7.4 Amendments

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

7.5 Waiver

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

7.6 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this deed.

7.7 Consents

A consent required under this deed from a party may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless this deed expressly provides otherwise.

7.8 Counterparts

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

7.9 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed.

- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this deed.

7.10 Stamp duties and registration fees

- (a) The Lessee:
 - (i) must pay on time all stamp duties and registration fees and (to the extent the Lessee's act or omission has contributed to the same) any related fines and penalties in respect of this deed, and each transaction effected by or made under this deed;
 - (ii) indemnifies the State against any liability arising from failure to comply with clause 7.10(a)(i); and
 - (iii) is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause.
- (b) The State indemnifies the Lessee against any stamp duty paid by the Lessee pursuant to clause 7.10(a) (other than to the extent that the Lessee has retained any proceeds of any refund due in respect of stamp duty paid under clause 7.10(a)).

7.11 Entire agreement

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

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

7.12 Indemnities

- (a) Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this deed.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this deed.
- (c) A party must pay on demand any amount it must pay under an indemnity in this deed.

8. GST

8.1 Definitions and interpretation

In this clause 8:

Agreed Price means the amount the Recipient is required to pay under any provision of this deed (except this clause 8) for a supply;

Recipient means a party who provides or is liable to provide consideration under this deed for a supply; and

Supplier means a party who makes a supply whether as agent or otherwise,

and unless the context indicates a contrary intention:

- (a) a reference to a supply is to a supply under this deed;
- (b) a reference to GST payable by the Supplier includes any GST payable by the representative member of any GST group of which the Supplier is a member; and
- (c) words and phrases used that are also used in the A New Tax System (Goods and Services Tax) Act 1999 have the same meaning as in that Act.

8.2 Payment

Despite the other provisions of this deed, if the Supplier is or becomes liable to pay GST in respect of any supply:

- (a) the Agreed Price for that supply is exclusive of GST;
- (b) the Recipient must pay an additional amount for GST, as reasonably calculated by the Supplier, at the same time and in the same way as the Recipient must pay the Agreed Price; and
- (c) the Supplier must issue a tax invoice to the Recipient in respect of that supply within [not disclosed] days after the Supplier receives a payment in respect of that supply.

8.3 Reimbursement

Subject to clause 8.2, if the Recipient must reimburse the Supplier for any amount paid by the Supplier to a third person, the Recipient must reimburse the Supplier that amount less the amount of any input tax credits the Supplier is entitled to in respect of any acquisition to which that amount relates.

8.4 Variation

If the amount the Supplier recovers from the Recipient on account of GST on a supply differs for any reason from the amount of GST paid or payable by the Supplier on that supply, then the Recipient must pay to the Supplier on demand (or the Supplier must credit the Recipient with) the amount of that difference. If any adjustment event occurs in relation to a supply, the Supplier must give the Recipient an adjustment note within [not disclosed] days after the date of the adjustment event.

8.5 Penalties

If the Recipient does not comply with its obligations under this deed or with its obligations under the GST law in connection with this deed and because of this the Supplier becomes subject to penalties or interest for late payment of GST, then the Recipient must pay the Supplier on demand an amount equal to the amount of the penalties and interest.

Executed as a deed.

The **Hon Luke Donnellan MP** in his capacity as Minister for Roads and Road Safety for and on behalf of the Crown in right of the State of Victoria:

Signature of witness

Signature of Minister

Full name of witness

Executed by **[insert] ACN [insert]** in accordance with section 127 of the *Corporations Act 2001* (Cth) by or in the presence of:

Signature of Secretary/other Director

Signature of Director

Name of Secretary/other Director in full

Name of Director in full

Annexure A - Plan of Surrendered Area

Metro Tunnel - CityLink Direct Interface Agreement

The Minister for Public Transport of the State of Victoria on behalf of the
Crown in Right of the State of Victoria
State

CityLink Melbourne Limited ABN 65 070 810 678

and

Transurban Infrastructure Management Limited (as trustee of the CityLink
Trust) ABN 27 098 147 678
each a CityLink Party and together the CityLink Parties

Cross Yarra Partnership
MMR Project Co

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Direct Interface Agreement

Date

Parties

The Minister for Public Transport of the State of Victoria on behalf of the Crown in Right of the State of Victoria (State)

and

CityLink Melbourne Limited (ABN 65 070 810 678) (**Company**); and

Transurban Infrastructure Management Limited (as trustee of the CityLink Trust) (ABN 27 098 147 678) (**Trustee**)

(each a **CityLink Party** and together the **CityLink Parties**)

and

[not disclosed];

[not disclosed];

[not disclosed]; and

[not disclosed],

(together, **Cross Yarra Partnership**) of Level 8, 136 Exhibition Street, Melbourne, VIC 3000, Australia (**MMR Project Co**)

Background

- A. The State and the CityLink Parties are party to the Concession Deed.
 - B. The State and MMR Project Co will enter into the Metro Tunnel Agreement for the design, construction, operation and maintenance of the Metro Tunnel on or about the date of this Agreement.
 - C. The Metro Tunnel involves construction works in the vicinity of CityLink.
 - D. Under this Agreement, the parties agree:
 - (a) a framework for any access required to the CityLink Tunnels and Other CityLink Areas for the Permitted Purpose;
 - (b) the terms on which the CityLink Parties and MMR Project Co will coordinate groundwater management during construction of the Metro Tunnel;
 - (c) to engage an independent consultant for the continued assessment and reporting in relation to groundwater and the condition of relevant sections of the CityLink Leased Area during construction of the Metro Tunnel; and
 - (d) other ancillary matters in relation to the construction interface between the Metro Tunnel and CityLink.
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Operative provisions

1. Conditions precedent and Term

1.1 Specific

Subject to clauses 1.2 and 1.4, it is a condition precedent to the operation of this Agreement that:

- (a) the Metro Tunnel Agreement has been executed by all parties to it and all conditions precedent to the operation of the Metro Tunnel Agreement have been satisfied or waived; and
- (b) the State Interface Agreement has been executed by all parties to it and all conditions precedent to the operation of the State Interface Agreement (other than those that relate to the coming into operation of this Agreement) have been satisfied or waived.

1.2 Notice of satisfaction

The State must notify the CityLink Parties and MMR Project Co when either the State considers that the conditions outlined in clause 1.1 have been satisfied or the State has waived its right to require satisfaction of those conditions. Similarly, the Company must notify the State and MMR Project Co when it either considers that the condition outlined in clause 1.1(b) has been satisfied or the Company has waived its right to require satisfaction of that condition.

1.3 Operative date

Subject to clause 1.4, this Agreement takes effect on the date on which the last notice given under clause 1.2 is given.

1.4 Day One Clauses

The Day One Clauses become operative on, and take effect from, the date of this Agreement.

1.5 Expiry Date

- (a) This Agreement terminates upon the Date of Final Acceptance or any earlier date:
 - (i) which all parties agree in writing;
 - (ii) on which the State Interface Agreement is terminated; or
 - (iii) on which the Metro Tunnel Agreement is terminated.
- (b) MMR Project Co must notify the CityLink Parties in writing of the Date of Final Acceptance within 3 Business Days of the Date of Final Acceptance.

2. Cooperation

The parties agree to cooperate and coordinate in relation to the interface between the Metro Tunnel and CityLink in accordance with the terms of this Agreement.

3. Access

3.1 Minimising disruption to CityLink and coordination of works

- (a) Unless the CityLink Parties agree otherwise (in their absolute discretion), MMR Project Co may only issue an Access Proposal in accordance with clause 3.2 in respect of access to the CityLink Tunnels where the access proposed:
 - (i) is a Low Impact Lane Closure;
 - (ii) will take place during a planned CityLink Tunnel closure by the CityLink Parties; or
 - (iii) does not require any lane closures in the CityLink Tunnel.
- (b) As soon as reasonably practicable:
 - (i) after the date of this Agreement, and once every calendar quarter thereafter, the CityLink Parties must provide the State and MMR Project Co with a forward looking twelve month program of planned CityLink Tunnel closures (**CityLink Tunnel Closure Program**). The CityLink Parties must provide the State and MMR Project Co with any updates to the previously submitted CityLink Tunnel Closure Program as soon as reasonably practicable and, subject to clause 4.7(a), must provide the State and MMR Project Co with not less than [not disclosed] Business Days' notice of any cancellation or re-scheduling of a planned CityLink Tunnel closure; and
 - (ii) after the receipt of each CityLink Tunnel Closure Program under clause 3.1(b)(i), MMR Project Co must provide the CityLink Parties with a forward looking twelve month program of any planned access required to the CityLink Tunnels and any construction activities for the Metro Tunnel within, or in the vicinity of, the CityLink Leased Area (**Metro CityLink Works Program**). MMR Project Co must provide the CityLink Parties with any updates to the previously submitted Metro CityLink Works Program as soon as reasonably practicable.

3.2 Access Proposals and Access Arrangements

- (a) Where MMR Project Co requires access to the CityLink Tunnels or Other CityLink Areas for the Permitted Purpose, MMR Project Co must provide the State and the CityLink Parties with an Access Proposal as early as reasonably practicable and in any event no less than [not disclosed] Business Days prior to the proposed date of access.
- (b) The CityLink Parties may provide the State and MMR Project Co with reasonable comments on, including any reasonable amendments to, any Access Proposal within [not disclosed] Business Days after receiving the Access Proposal. Such comments or amendments will be deemed to be reasonable to the extent they relate to:
 - (i) the obligations set out in clause 3.1(a);
 - (ii) the requirements of an Access Proposal set out in the definition of Access Proposal in this Agreement;
 - (iii) avoiding closures which may impact on any major public event; or
 - (iv) conflicts with existing planned operation, maintenance or repair activities of the CityLink Parties.

- (c) MMR Project Co must amend an Access Proposal to address any reasonable comments or amendments provided by the CityLink Parties in accordance with clause 3.2(b) and re-submit the proposal to the State and the CityLink Parties, in which case clause 3.2(b) and this clause 3.2(c) will re-apply to the amended Access Proposal as though it were being submitted for the first time.
- (d) An Access Proposal will become an Access Arrangement upon either:
 - (i) the expiration of the period referred to in clause 3.2(b), where no comments or amendments are provided by the CityLink Parties within that period; or
 - (ii) the CityLink Parties confirming acceptance of the Access Proposal.
- (e) Subject to clause 4.7, each CityLink Party agrees to provide (and will ensure that its Associates provide) MMR Project Co with access to the CityLink Tunnels and Other CityLink Areas for the Permitted Purpose in accordance with any Access Arrangement.
- (f) MMR Project Co must not access the CityLink Leased Area other than:
 - (i) for the Permitted Purpose; and
 - (ii) in accordance with an Access Arrangement, including in accordance with the duration, location and timing (including start and finish times) of the access set out in the relevant Access Arrangement.
- (g) MMR Project Co must provide the CityLink Parties with at least 24 hours' written notice prior to accessing the CityLink Tunnels in accordance with an Access Arrangement.

3.3 Risk of loss or damage

- (a) Subject to clauses 3.3(b) to 3.3(f) and clause 4.5, MMR Project Co must indemnify the CityLink Parties and their Associates from and against any Liability (including any loss of toll revenue) suffered or incurred by the CityLink Parties or their Associates and any Claim against the CityLink Parties or their Associates, in respect of:
 - (i) any injury to, or illness, disease or death of, persons;
 - (ii) the loss of, loss of use of (whether total or partial), or destruction of or damage to, any real or personal property (including CityLink), including any loss of toll revenue; or
 - (iii) any third party claims brought against the CityLink Parties or any of their Associates,
 caused by or arising out of or in connection with:
 - (iv) any act or omission of MMR Project Co or its Associates (including, for the avoidance of doubt, the Conditions Consultant) when accessing the CityLink Leased Area; or
 - (v) a breach of clause 3.2(f)(i),
 (the **Indemnified Loss**).
- (b) Any toll revenue loss forming part of the Indemnified Loss that:

- (i) occurs in respect of the CityLink Tunnels; and
 - (ii) is not a Tolling System Toll Revenue Loss,
- will be calculated on the basis of Schedule 2.
- (c) The CityLink Parties must, to the extent reasonably possible, mitigate the Indemnified Loss.
 - (d) MMR Project Co's liability under clause 3.3(a) will be reduced to the extent the CityLink Parties wrongfully, negligently, unlawfully or recklessly cause or contribute to the act, omission, event or thing causing or giving rise to the Indemnified Loss.
 - (e) The indemnity under clause 3.3(a) does not apply in respect of loss of use of CityLink including toll revenue losses arising solely by virtue of:
 - (i) MMR Project Co accessing the CityLink Tunnels in accordance with an Access Arrangement and otherwise in accordance with this Agreement; or
 - (ii) any Unplanned Access or Additional Access, for which Access Fees are payable in accordance with clause 4.
 - (f) The CityLink Parties will not be entitled to claim the Indemnified Loss from MMR Project Co to the extent that they have recovered any amounts from the Conditions Consultant in respect of the Indemnified Loss. The CityLink Parties must use reasonable endeavours to recover the Indemnified Loss from the Conditions Consultant (where such loss was caused by, arose out of, or was in connection with any act or omission of the Conditions Consultant) prior to bringing any claim for that Indemnified Loss against MMR Project Co, provided that the CityLink Parties will be deemed to have used reasonable endeavours where they have sought to recover the Indemnified Loss from the Conditions Consultant for a period of at least three months from the date it was suffered or incurred (which may or may not include commencing court proceedings).

3.4 MMR Project Co's obligations

- (a) In accessing the CityLink Leased Area or in carrying out any Metro Tunnel Works within, or in the vicinity of, the CityLink Leased Area, MMR Project Co must minimise any interference with, or disruption to:
 - (i) the activities associated with the operation, maintenance and repair of CityLink (including any contractors engaged by the CityLink Parties undertaking any works, operations or maintenance activities on CityLink); and
 - (ii) the users of CityLink.
- (b) In accessing the CityLink Leased Area, MMR Project Co must comply with any reasonable occupational health and safety requirements of the CityLink Parties as notified by the CityLink Parties to MMR Project Co prior to accessing CityLink.
- (c) In accessing the CityLink Leased Area, MMR Project Co must not interfere with, obstruct, damage or destroy any property belonging to the CityLink Parties on, in the vicinity of the CityLink Leased Area other than in accordance with its rights and obligations under this Agreement.
- (d) MMR Project Co must ensure that its Associates comply with the requirements of this clause 3.4.

3.5 Traffic Management

- (a) MMR Project Co will be responsible for all Traffic Management when accessing the CityLink Tunnels in accordance with an Access Arrangement (including the costs associated with the Traffic Management), except for any Traffic Management associated with the closures required for a planned CityLink Tunnel closure referred to in clause 3.1(a)(ii).
- (b) Where MMR Project Co is responsible for Traffic Management in accordance with this Agreement, MMR Project Co must use a contractor who is approved by the CityLink Parties for the provision of such traffic management services. A list of approved contractors as at the date of this Agreement is set out in Schedule 4.

4. Payment of Access Fees

4.1 Access Fees

- (a) MMR Project Co must pay the CityLink Parties, in accordance with this clause 4, the Access Fees in respect of:
 - (i) any Unplanned Access; and
 - (ii) any Additional Access.
- (b) Access Fees will be calculated in accordance with Schedule 2.

4.2 Records and procedures

- (a) MMR Project Co must keep accurate detailed records of its access to the CityLink Tunnels and Other CityLink Areas, including the start and finish times of such access.
- (b) MMR Project Co must implement procedures to ensure the accuracy of the records described in clause 4.2(a) to the reasonable satisfaction of the CityLink Parties.
- (c) MMR Project Co acknowledges that the properly maintained and recorded in good faith:
 - (i) video records, CCTV records and Control Centre records of the CityLink Parties or TransLink Operations Pty Limited (ABN 28 069 691 514) (or any successor appointed by the CityLink Parties and notified to the State and MMR Project Co);
 - (ii) maintenance records of the CityLink Parties or Lend Lease Services Pty Limited (ABN 87 081 540 847) (or any successor appointed by the CityLink Parties and notified to the State and MMR Project Co); and
 - (iii) records of personnel of the CityLink Parties allocated to the Metro Tunnel Works,will be conclusive evidence for the purposes of assessing the times at which MMR Project Co accesses the CityLink Tunnels and Other CityLink Areas.
- (d) MMR Project Co acknowledges and agrees that for the purposes of measuring and assessing the duration of any access under this Agreement, the duration of any access will include the implementation and removal of traffic management.

4.3 CityLink Access Report

- (a) Within [not disclosed] Business Days after the end of any month during which MMR Project Co accesses the CityLink Tunnels or Other CityLink Areas, MMR Project Co must provide the CityLink Parties with an access report which includes:
- (i) a copy of the records described in clause 4.2(a) relevant to the preceding month;
 - (ii) a reconciliation of the records described in clause 4.3(a)(i) against the access provided for in all Access Arrangements; and
 - (iii) the total Access Fees payable by MMR Project Co for access to the CityLink Tunnels in respect of that month, together with all relevant supporting calculations and documentation,
- (CityLink Access Report).**
- (b) MMR Project Co must provide any additional information or documentation reasonably requested by the CityLink Parties to enable the CityLink Parties to verify the contents of the CityLink Access Report.

4.4 Payment of Access Fees and disputes

- (a) Within [not disclosed] Business Days after MMR Project Co provides the CityLink Parties with a CityLink Access Report, MMR Project Co must pay the CityLink Parties the Access Fees set out in that CityLink Access Report.
- (b) Without limiting clause 4.4(a), within [not disclosed] Business Days after receiving a CityLink Access Report, the CityLink Parties may issue MMR Project Co with a notice providing details of any disputed aspect of that report. For the avoidance of doubt, clause 4.2(c) applies where any disputed aspect of a CityLink Access Report relates to the times at which access by MMR Project Co started and finished.
- (c) Except for any Claim the subject of a notice under clause 4.4(b) and subject to clause 4.5(c) and the payment of any Access Fees due and payable in respect of the Access Fees set out in the relevant CityLink Access Report, at the expiration of [not disclosed] Business Days after receiving a CityLink Access Report, the CityLink Parties release MMR Project Co and the State from any Claim in relation to any Access Fees in respect of the month to which that CityLink Access Report relates.
- (d) Within [not disclosed] Business Days after the CityLink Parties issue a notice to MMR Project Co under clause 4.4(b), the parties will meet and seek to agree any disputed aspect of the relevant CityLink Access Report.
- (e) If the parties are unable to resolve a disputed aspect of a CityLink Access Report within the [not disclosed] Business Day period referred to in clause 4.4(d), the dispute will be resolved in accordance with clause 7.
- (f) Within [not disclosed] Business Days after a disputed aspect of a CityLink Access Report is resolved or determined under clauses 4.4(d) or 4.4(e), MMR Project Co must pay the CityLink Parties any outstanding Access Fees resolved or determined (including interest in accordance with clause 4.4(g)).
- (g) If any money due from MMR Project Co to the CityLink Parties remains unpaid after the date on which it should have been paid, interest at the Default Rate is payable on the money from the day after it should have been paid up to and including the date on which the money is paid.
- (h) If MMR Project Co fails to pay to the CityLink Parties:

- (i) the Access Fees set out in a CityLink Access Report within the period set out in clause 4.4(a); or
- (ii) any outstanding Access Fees resolved or determined under clauses 4.4(d) or 4.4(e) within the period set out in clause 4.4(f),

the CityLink Parties will be entitled to deny any request for access and may vary, suspend or cancel any access granted to MMR Project Co until such time as MMR Project Co pays the amounts referred to in clauses 4.4(h)(i) and 4.4(h)(ii) plus interest in accordance with clause 4.4(g) to the CityLink Parties in full.

4.5 Sole and exclusive remedy

- (a) Subject to clause 4.5(b), the CityLink Parties:
 - (i) agree that the amounts payable by MMR Project Co in accordance with clause 4.4 are the CityLink Parties' and their Associates' sole and exclusive entitlement to claim payment from MMR Project Co in respect of loss of use of CityLink including tolling revenue losses incurred by the CityLink Parties or their Associates solely by virtue of any Unplanned Access or any Additional Access (as applicable); and
 - (ii) subject to the payment of any Access Fees due and payable, release MMR Project Co and the State from any Claim for loss of use of CityLink including tolling revenue losses incurred by the CityLink Parties solely by virtue of any:
 - A. Unplanned Access or any Additional Access; or
 - B. other access to the CityLink Tunnels in accordance with an Access Arrangement and otherwise in accordance with this Agreement,
 (as applicable).
- (b) Clause 4.5(a) does not limit the rights of the CityLink Parties in relation to any Liability (including any loss of toll revenue) suffered or incurred by the CityLink Parties or their Associates and any Claim against the CityLink Parties or their Associates in respect of:
 - (i) any failure by MMR Project Co to pay the Access Fees to the CityLink Parties in accordance with this Agreement;
 - (ii) any operational costs solely by virtue of any Unplanned Access; or
 - (iii) any amounts for which MMR Project Co would otherwise be liable for under clause 3.3 other than for loss of use of CityLink.
- (c) MMR Project Co must indemnify the CityLink Parties against any Liability incurred, or Claim, arising out of or in connection with:
 - (i) in the event a court determines that MMR Project Co's liability for Access Fees (or any part of them) under this Agreement are deemed to be or become void, voidable or unenforceable in any way so as to disentitle the CityLink Parties from claiming those Access Fees (or any part of them), the CityLink Parties' tolling revenue losses arising out of the access in respect of which the Access Fees (or any part of them) were determined to be void, voidable or unenforceable (capped at the liability which MMR Project Co would have had under this Agreement if the Access Fees had not been void, voidable or unenforceable); and

- (ii) expenses incurred by the CityLink Parties in defending any claims that MMR Project Co's liability for the Access Fees (or any part of them) under this Agreement are void, voidable or unenforceable in any way.

4.6 Amounts not penal

- (a) MMR Project Co agrees that:
 - (i) the amounts payable by MMR Project Co to the CityLink Parties in accordance with this clause 4 or clause 3.3 (where applicable) have been calculated and agreed between the parties to represent the CityLink Parties' fee for providing MMR Project Co with access to the CityLink Tunnels;
 - (ii) it will not bring any Claim against the CityLink Parties that the amounts payable by MMR Project Co to the CityLink Parties in accordance with this clause 4 or clause 3.3 (where applicable) are a penalty or are otherwise not enforceable; and
 - (iii) it entered into the obligation to pay the amounts payable in accordance with this clause 4 or clause 3.3 (where applicable) with the intention that it is a legally binding, valid and enforceable contractual provision in accordance with its terms.
- (b) MMR Project Co and the CityLink Parties acknowledge and agree that they are parties contracting at arm's length, have equal bargaining power, possess extensive commercial experience and expertise and are being advised by their own legal, accounting, technical, financial, economic and other commercial professionals in relation to their rights and obligations pursuant to this Agreement.

4.7 CityLink Parties' right to vary, suspend or cancel access

- (a) Without limiting the CityLink Parties' rights to suspend MMR Project Co's access in accordance with clause 4.4(h), MMR Project Co's access to the CityLink Tunnels and Other CityLink Areas remains at all times subject to the CityLink Parties right to take action (acting reasonably) that is necessary (considering the circumstances, including the status of CityLink as a critical infrastructure asset and the CityLink Parties' responsibilities as the manager and operator of CityLink):
 - (i) to respond to a risk to the health and safety of users of CityLink, the employees, agents, consultants and contractors of the CityLink Parties or the general public;
 - (ii) to respond to any abnormal event outside the reasonable control of the CityLink Parties which:
 - A. is likely to prevent CityLink or any part of it from being open to the public for the safe and continuous passage of vehicles; or
 - B. otherwise requires an urgent response to provide access to emergency services or traffic control;
 - (iii) to prevent or minimise loss or damage to any property of the CityLink Parties which would have an immediate impact, or is already having an impact, on the operation of the CityLink roadway or electronic systems (including the tolling system);
 - (iv) as a result of the proper exercise by the CityLink Parties of their statutory obligations under the *Melbourne City Link Act 1995* (Vic) or the *Road Management Act 2004* (Vic);

- (v) to prevent any untolled use of CityLink that is not provided for in an Access Arrangement;
- (vi) to enable the CityLink Parties to perform unplanned critical maintenance; or
- (vii) to enable the CityLink Parties to comply with any law,

and the CityLink Parties' may deny any request for access and may vary, suspend or cancel any access granted to MMR Project Co to the extent required to enable the CityLink Parties to carry out such action.

- (b) The CityLink Parties may exercise their rights under clause 4.7(a) immediately upon becoming aware that such action is reasonably necessary and without providing prior notice to MMR Project Co, however:
 - (i) the CityLink Parties will, if time permits, give MMR Project Co and the State prior written notice of the intention to take such action; and
 - (ii) the CityLink Parties will not be entitled to Access Fees to the extent that MMR Project Co is not permitted access to the CityLink Tunnels.
- (c) Following the exercise by the CityLink Parties of their rights under clause 4.7(a), the CityLink Parties must provide written notice to MMR Project Co and the State specifying why the CityLink Parties took that action.
- (d) MMR Project Co must co-operate with the CityLink Parties to enable them to manage any event or circumstance described in clause 4.7(a).
- (e) Where MMR Project Co's access to the CityLink Tunnels or Other CityLink Areas is interrupted by the CityLink Parties exercising their rights under clause 4.7(a), the CityLink Parties must:
 - (i) take all reasonable steps to minimise the extent of the interruption to that access; and
 - (ii) facilitate the granting of access to MMR Project Co in accordance with this Agreement as soon as reasonably practicable after the interruption to MMR Project Co's access has ceased.

5. Provision of information

The CityLink Parties agree to provide the State and MMR Project Co with the following items within [not disclosed] Business Days of a request by the State or MMR Project Co, to the extent that the items exist at the time of the request:

- (a) baseline monitoring data; and
- (b) any other ongoing monitoring data (other than that prepared by the Conditions Consultant),

relating to the Relevant CityLink Assets.

6. Construction

6.1 Condition assessment and reporting during construction

As soon as reasonably practicable after the date of this Agreement, the parties will jointly engage Golder Associates Pty Ltd (**Conditions Consultant**) to undertake quarterly condition

assessments, monitoring and reporting in respect of the CityLink Tunnels and groundwater pursuant to a services agreement in the form attached at Schedule 1.

6.2 Groundwater management during construction

- (a) The CityLink Parties and MMR Project Co:
 - (i) have agreed a set of principles in respect of the management of groundwater during the construction phase of the Metro Tunnel, as set out in Schedule 5 (Groundwater Management Principles); and
 - (ii) must comply with the Groundwater Management Principles, as amended from time to time in accordance with clause 6.2(b), for the duration of the term of this Agreement.
- (b) The parties acknowledge the operational nature of the Groundwater Management Principles and the parties acknowledge and agree that the Groundwater Management Principles may be updated by all parties agreeing in writing to the updated version.

6.3 Incident Notification

- (a) MMR Project Co must immediately notify the State and the CityLink Parties of any event or incident in connection with the Metro Tunnel Works which may interfere with, threaten or is likely to have an effect on:
 - (i) the use of CityLink;
 - (ii) the safe operation of CityLink;
 - (iii) the operational capacity or efficiency of CityLink; or
 - (iv) the future use, safe operation or operational capacity of CityLink.
- (b) MMR Project Co must co-operate with the State and the CityLink Parties and take such action as is necessary to avert any danger and ameliorate any risk from the event or incident.

7. Dispute resolution

7.1 Procedure for resolving disputes

- (a) **(Resolution procedure):** Any dispute between:
 - (i) the CityLink Parties; and
 - (ii) MMR Project Co or the State and MMR Project Co,arising in connection with this Agreement (including questions concerning this Agreement's existence, meaning or validity) (**Dispute**) must be resolved in accordance with this clause 7 and clause 8.
- (b) **(References to party or parties):** In this clause 7 and clause 8, references to "party" or "parties" will be interpreted as a reference to a party or the parties to the Dispute.
- (c) **(Other disputes):** Any dispute between:

- (i) MMR Project Co and the State, which does not involve the CityLink Parties, will be resolved according to the Metro Tunnel Agreement; and
 - (ii) the CityLink Parties and the State, which does not involve MMR Project Co, will be resolved according to the State Interface Agreement.
- (d) **(Procedure):** The procedure that is to be followed to resolve a Dispute is as follows:
- (i) firstly, the Dispute must be the subject of negotiation as required by clause 7.2;
 - (ii) secondly, if the Dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 7.2(c)(i) the parties may agree that the Dispute will be referred to an expert for determination under clauses 7.3 to 7.9 or to arbitration under clause 8; and
 - (iii) thirdly, if:
 - A. the Dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 7.2(c)(i) and irrespective of whether the parties failed to meet as required by that clause or whether having so met the parties fail to agree whether the Dispute should be referred to an expert or to arbitration within [not disclosed] after the expiration of the period for negotiation referred to in clause 7.2(c)(i);
 - B. the Dispute has been referred to expert determination and a determination is not made by the expert within [not disclosed] after the expert's acceptance of appointment; or
 - C. the Dispute is referred to expert determination and a notice of dissatisfaction is given under clause 7.6(a),
 then the Dispute must be referred to arbitration under clause 8.

7.2 Negotiation

- (a) **(Notification):** If a Dispute arises then a party may give notice to the other party or parties requesting that the Dispute be referred for resolution by negotiation between the Chief Executive Officers (or equivalent) of the parties.
- (b) **(Contents of Notice):** A notice under clause 7.2(a) must:
 - (i) state that it is a notice under this clause 7; and
 - (ii) include or be accompanied by particulars of the matters which are the subject of the Dispute.
- (c) **(Attempt to resolve Dispute):** If a Dispute is referred for resolution by negotiation under clause 7.2(a), then:
 - (i) the representatives must meet and attempt in good faith to resolve the Dispute (in whole or in part) within [not disclosed] of the date on which the notice under clause 7.2(a) is received (or such later date as the parties may agree); and

- (ii) any agreement reached between the representatives will be reduced to writing, signed by or on behalf of each party and will be contractually binding on the parties.

7.3 Expert determination

- (a) If:
 - (i) **(dispute unresolved by Representatives)**: a Dispute which has been referred to the representatives for negotiation in accordance with clause 7.2(c)(i) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 7.2(c)(i); and
 - (ii) **(referral to expert)**: the parties agree within [not disclosed] after the expiration of the period for negotiation referred to in clause 7.2(c)(i), that the Dispute be referred to an expert for determination,then those parts of the Dispute which remain unresolved will be referred to an expert for determination under clauses 7.4 to 7.8.
- (b) For the avoidance of doubt, a Dispute may only be referred to an expert for determination by agreement of the parties.

7.4 Selection of expert

- (a) **(Exchange of lists of 3 preferred experts)**: Within [not disclosed] after the date on which the parties agree to refer a Dispute to an expert for determination under clause 7.3 the parties must exchange lists of 3 persons (in order of preference) who, if appointed, would satisfy the requirements of clause 7.4(d), from whom the expert is to be chosen.
- (b) **(Appointment of person who appears on both lists)**: Any person that appears on all lists under clause 7.4(a) will be appointed as the expert to determine a Dispute and if more than one person appears on all lists the person given the highest order of priority by the party that gave the notice under clause 7.2(a) will be appointed.
- (c) **(Appointment if no person appears on both lists)**: If no person appears on all lists, the party which gave the notice under clause 7.2(a) must procure:
 - (i) the president (or the senior non-executive officer, howsoever described) of the institute or governing body for the technical or professional discipline the subject of the relevant Dispute to nominate the expert, having regard to, but not being bound by, those persons proposed by the parties under clause 7.4(a); or
 - (ii) if there is no governing body for the technical or professional discipline the subject of the relevant Dispute or such governing body advises that it will not nominate an expert, the Australian Centre for International Commercial Arbitration to nominate a person to act as the expert, having regard to, but not being bound by, those persons proposed by the parties under clause 7.4(a),within [not disclosed] of the exchange of notices under clause 7.4(a).
- (d) **(Appropriate skills)**: It is the intention of the parties that the expert appointed to determine a Dispute will be an independent person with appropriate skills having regard to the nature of the matters in dispute.

- (e) **(No entitlement to challenge appointment):** No party will be entitled to challenge the appointment of an expert under this clause 7.4 on the basis that the expert does not satisfy the requirements of clause 7.4(d).
- (f) **(Not an arbitration agreement):** Any agreement for expert determination under this Agreement will not constitute an arbitration agreement for the purposes of the *Commercial Arbitration Act 2011* (Vic).
- (g) **(Agreement):** Once an expert is appointed, the parties must enter into an agreement with the expert on such reasonable terms as the expert may require.

7.5 Rules of expert determination

The expert determination process will be administered, and the expert will be required to act, under the terms agreed pursuant to clause 7.4(g).

7.6 Expert finding

- (a) **(Notification):** The determination of the expert must be in writing and will be final and binding on the parties unless, within [not disclosed] of receipt of the determination, a party gives notice to the other party or parties of its dissatisfaction and intention to refer the matter to arbitration in accordance with clause 7.
- (b) **(Amendment to determination):** Upon submission by any party, the expert may amend the determination to correct:
 - (i) a clerical mistake;
 - (ii) an error from an accidental slip or omission;
 - (iii) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
 - (iv) a defect in form.

7.7 Liability of expert

- (a) **(Liability of expert):** The parties agree:
 - (i) that the expert will not be liable in connection with the expert determination, except in the case of fraud on the part of the expert; and
 - (ii) to indemnify the expert against any Claim or Liability in connection with the expert determination, except in the case of fraud on the part of the expert, in which case a Claim may be made against him or her by any person who is party to the Dispute.
- (b) **(Engagement):** The parties will jointly engage the expert services in connection with the expert determination proceedings and each party will seek a separate Tax Invoice equal to its share of the costs of the expert.

7.8 Costs

The parties must:

- (a) bear their own costs in connection with the expert determination proceedings; and
- (b) pay an equal portion of the costs of the expert.

7.9 Proportionate Liability

To the extent permitted by Law, the expert will have no power to apply or to have regard to the provisions of any proportionate liability legislation which might in the absence of this clause 7.9, have applied to any dispute referred to the expert in accordance with this clause 8.

8. Arbitration

8.1 Reference to Arbitration

(a) **(Dispute):** If:

(i) a Dispute:

- A. which has been referred to the parties' representatives for negotiation in accordance with clause 7.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 7.2(c)(i); and
- B. the parties do not agree to refer the Dispute to an expert for determination; or

(ii) in the case of a Dispute which the parties agree to refer to expert determination under clause 7.3:

- A. a determination is not made within [not disclosed] of the expert's acceptance of the appointment; or
- B. a notice of dissatisfaction is given in accordance with clause 7.6,

then a party may notify the other party or parties that it requires the Dispute to be referred to arbitration.

(b) **(Referral):** Upon receipt by the other party or parties (as applicable) of a notice under clause 8.1(a), the Dispute will be referred to arbitration.

8.2 Arbitration

(a) **(ACICA Rules):** Arbitration in accordance with this clause 8 will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Rules) as current at the date the Dispute is referred to arbitration and as otherwise set out in this clause 8 with this clause 8 having priority to the extent of any inconsistency.

(b) **(Seat):** The seat of the arbitration will be Melbourne, Victoria.

(c) **(Language):** The language of the arbitration will be English.

8.3 Appointment of arbitrator

The parties will endeavour to agree on the arbitrator or arbitrators (if the parties agree to appoint 3 arbitrators), but if no such agreement is reached within [not disclosed] of the Dispute being referred to arbitration in accordance with clause 8.1(b), the arbitrator or arbitrators will be appointed in accordance with the ACICA Rules.

8.4 General Principles for conduct of arbitration

(a) **(Conduct of arbitration):** The parties agree that:

- (i) they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;
 - (ii) any arbitration conducted in accordance with this clause 8 will not necessarily mimic court proceedings of the seat of the arbitration or the place where hearings take place (if different), and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and
 - (iii) in conducting the arbitration, the arbitrator must take into account the matters set out in clauses 8.4(a)(i) and 8.4(a)(ii).
- (b) **(Evidence in writing):** All evidence in chief must be in writing unless otherwise ordered by the arbitrator.
- (c) **(Evidence and discovery):** The rules for evidence and discovery will be the IBA Rules on the Taking of Evidence in International Arbitration current at the date of arbitration (or if there are no current rules, the most recent version of those rules).
- (d) **(Oral hearing):** The oral hearing must be conducted as follows:
- (i) any oral hearing must take place in Melbourne, Victoria and all outstanding issues must be addressed at the oral hearing;
 - (ii) the date and duration of the oral hearing must be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in clause 8.4(a) when determining the duration of the oral hearing;
 - (iii) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
 - (iv) the oral hearing must be conducted on a stop clock basis with the effect that the time available to the parties must be split equally between the parties so that each party has the same time to conduct its case unless, in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the parties;
 - (v) not less than [not disclosed] prior to the date fixed for oral hearing each party must give notice of those witnesses (both factual and expert) of the other party or parties that it wishes to attend the hearing for cross examination;
 - (vi) in exceptional circumstances the arbitrator may amend the date of hearing and extend the time for the oral hearing set in accordance with clause 8.4(d)(ii);
 - (vii) a party will not be bound to accept the written evidence of a witness submitted on behalf of the opposing party which is not challenged in cross examination; and
 - (viii) each party is expected to put its case on significant issues in cross examination of a relevant witness called by the opposing party or parties or, where it seeks to challenge the evidence of a witness not called for cross-examination by reference to other evidence, to identify that evidence in its written opening submissions so that the opposing party or parties may know the nature of and basis for the challenge to the witness' written evidence.

- (e) **(Experts):** Unless otherwise ordered, each party may only rely upon one expert witness in connection with any recognised area of specialisation.

8.5 Proportionate liability

To the extent permitted by Law, the arbitrator will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this clause 8.5, have applied to any dispute referred to arbitration in accordance with this clause 8.

8.6 Extension of ambit of arbitration proceedings

- (a) **(Extending Disputes):** Where:

- (i) a Dispute is referred to arbitration in accordance with this clause 8; and
- (ii) there is some other Dispute also between the parties (whenever occurring),

the arbitrator may, upon application being made to the arbitrator by one or more parties at any time before a final award is made in relation to the first-mentioned Dispute, make an order directing that the arbitration be extended so as to include the other Dispute.

- (b) **(Arbitrator's order):** An arbitrator may make an order in accordance with clause 8.6(a) on such terms and conditions (if any) as the arbitrator thinks fit.

8.7 Award final and binding

- (a) **(Final and binding):** Subject to clause 8.7(b), any award will be final and binding on the parties.
- (b) **(Appeal):** Each party consents to any appeal to a court where that appeal is made under the *Commercial Arbitration Act 2011* (Vic) on a question of law arising in connection with an arbitral award made in accordance with this clause 8.

8.8 Continue to perform

Notwithstanding the existence of a Dispute, each party must continue to carry out its obligations in accordance with this Agreement.

8.9 Governing law of arbitration agreement

The Law governing this arbitration agreement is the law of Victoria, Australia.

9. Confidentiality

9.1 Confidential Information and disclosure by MMR Project Co and the CityLink Parties

Subject to clauses 9.2 and 9.3, as between MMR Project Co and the CityLink Parties, MMR Project Co and the CityLink Parties must treat as secret and confidential all information in connection with this Agreement.

9.2 Disclosure by MMR Project Co

MMR Project Co will not be in breach of clause 9.1 to the extent that any disclosure is:

- (a) required by Law, provided that it:

- (i) notifies the other party of the requirement to make that disclosure;
 - (ii) takes all reasonable steps to minimise the extent of the disclosure; and
 - (iii) takes all reasonable steps to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;
- (b) required to obtain legal or other advice from its advisers, provided those advisers agree to maintain the confidentiality of the information;
- (c) required to be made to a court in the course of proceedings to which MMR Project Co is a party;
- (d) required by a relevant stock exchange, subject to:
- (i) such disclosure, announcement or statement not referring to the other party's involvement in the Metro Tunnel; and
 - (ii) MMR Project Co having used all reasonable endeavours to obtain the other party's consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant stock exchange;
- (e) to the State or the State's Associates who require such information to enable them to properly carry out their duties or in connection with any legitimate State purpose or process, provided that any disclosure to the State by MMR Project Co in accordance with this clause 9.2(e) shall be deemed to be confidential information of the CityLink Parties and subject to any restrictions on confidential information, and the use of confidential information, under the State Interface Agreement;
- (f) to MMR Project Co's Associates who require such information to enable them to properly carry out their duties, provided those Associates agree to maintain the confidentiality of the information;
- (g) to any prospective or current financier or equity investor of MMR Project Co or their Associates, provided those financiers or equity investors agree to maintain the confidentiality of the information; or
- (h) to any rating agency (including Standard and Poor's (Australia) Pty Limited and Moody's Investors Service, Inc) and any insurer to the extent necessary in connection with the Metro Tunnel, provided those rating agencies and insurers agree to maintain the confidentiality of the information,

and MMR Project Co acknowledges and agrees that it will be responsible for any subsequent disclosures of the relevant information of each person to whom information has been disclosed under clauses 9.2(b), 9.2(f), 9.2(g) or 9.2(h).

9.3 Disclosure by the CityLink Parties

The CityLink Parties will not be in breach of clause 9.1 to the extent that any disclosure is:

- (a) required by Law, provided that it:
 - (i) notifies the other party of the requirement to make that disclosure;
 - (ii) takes all reasonable steps to minimise the extent of the disclosure; and
 - (iii) takes all reasonable steps to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;

- (b) required to obtain legal or other advice from its advisers, provided those advisers agree to maintain the confidentiality of the information;
- (c) required to be made to a court in the course of proceedings to which the CityLink Parties are a party;
- (d) required by a relevant stock exchange, subject to:
 - (i) such disclosure, announcement or statement not referring to the other party's involvement in the Metro Tunnel; and
 - (ii) the CityLink Parties having used all reasonable endeavours to obtain the other party's consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant stock exchange;
- (e) to the State or the State's Associates who require such information to enable them to properly carry out their duties or in connection with any legitimate State purpose or process;
- (f) to the CityLink Parties' Associates who require such information to enable them to properly carry out their duties, provided those Associates agree to maintain the confidentiality of the information;
- (g) to any prospective or current financier or equity investor of the CityLink Parties or their Associates, provided those financiers or equity investors agree to maintain the confidentiality of the information; or
- (h) to any rating agency (including Standard and Poor's (Australia) Pty Limited and Moody's Investors Service, Inc) and any insurer to the extent necessary in connection with CityLink, provided those rating agencies and insurers agree to maintain the confidentiality of the information,

and the CityLink Parties acknowledge and agree that they will be responsible for any subsequent disclosures of the relevant information of each person to whom information has been disclosed under clauses 9.3(b), 9.3(f), 9.3(g) or 9.3(h).

10. Disclaimer and exclusion of Liability (CityLink Parties)

10.1 CityLink Parties' Information

- (a) MMR Project Co acknowledges and agrees that:
 - (i) the CityLink Parties' Information, and all Intellectual Property Rights in the CityLink Parties' Information, will remain the property of the CityLink Parties or any of their Associates (as the case may be);
 - (ii) neither the CityLink Parties, their Associates (other than the Conditions Consultant in accordance with the terms of its engagement as contemplated by clause 6.1) nor any other person acting on behalf of or associated with any of them has verified, or has any obligation to verify the accuracy, reliability or completeness of the CityLink Parties' Information;
 - (iii) neither the CityLink Parties, their Associates (other than the Conditions Consultant in accordance with the terms of its engagement as contemplated by clause 6.1) nor any other person acting on behalf of or associated with any of them has made any representation or warranty either express or implied as to the accuracy, reliability or completeness of the CityLink Parties' Information;

- (iv) no statement, representation, term, warranty, condition, promise or undertaking made, given or agreed to by the CityLink Parties, their Associates (other than the Conditions Consultant in accordance with the terms of its engagement as contemplated by clause 6.1) or any person acting on behalf of or associated with any of them in any prior negotiation, arrangement, understanding or agreement in relation to the Metro Tunnel is of any effect except to the extent expressly set out or incorporated in this Agreement;
 - (v) neither the CityLink Parties nor any of their Associates is under any obligation to update the whole or any part of the CityLink Parties' Information, however the CityLink Parties or any of their Associates may do so at their sole discretion;
 - (vi) neither MMR Project Co nor any of their Associates are entitled to rely on the whole or any part of the CityLink Parties' Information, other than the reports produced by the Conditions Consultant in accordance with the terms of its engagement as contemplated by clause 6.1; and
 - (vii) the acknowledgements under this clause 10.1 are in addition to and, to the extent not inconsistent, do not replace the terms and conditions already agreed to or accepted by MMR Project Co or its Associates when receiving the CityLink Parties' Information.
- (b) The CityLink Parties must notify the State and MMR Project Co if they become aware of any inaccuracy, incompleteness or change in the whole or any part of the CityLink Parties' Information.

10.2 No enquiry

MMR Project Co and the CityLink Parties acknowledge that the CityLink Parties' Information has been or will be given in good faith and that the CityLink Parties have no knowledge that the CityLink Parties' Information is misleading or deceptive. MMR Project Co and the CityLink Parties agree, however, that the CityLink Parties and each of their Associates (other than the Conditions Consultant in accordance with the terms of its engagement as contemplated by clause 6.1) have no obligation to make enquiries to verify that CityLink Parties' Information.

10.3 Indemnity

MMR Project Co indemnifies the CityLink Parties for any loss suffered by the CityLink Parties and their Associates (other than the Conditions Consultant in respect of any information produced by it in accordance with Services Agreement) and against any Liability to any person by way of indemnity against, or contribution to the liability of that person, arising out of, or in respect of, or in connection with any reliance by MMR Project Co or its Associates, including any reliance by a third party to whom CityLink Parties' Information is disclosed by MMR Project Co or its Associates, on the whole or any part of the CityLink Parties' Information.

10.4 No claim

MMR Project Co acknowledges and agrees that none of the CityLink Parties, any of their Associates or any person acting on behalf of, or associated with any of them, other than the Conditions Consultant in accordance with the terms of its engagement as contemplated by clause 6.1, will have any Liability, and MMR Project Co and its Associates will not be entitled to make, continue or enforce any Claim against, or seek, pursue or obtain an indemnity against liability from, the CityLink Parties, their Associates, or any person acting on behalf of or associated with any of them, other than the Conditions Consultant in accordance with the terms of its engagement as contemplated by clause 6.1, arising out of, in respect of or in connection with:

- (a) reliance by MMR Project Co or its Associates on the whole or any part of the CityLink Parties' Information; or
- (b) the accuracy, reliability or completeness of the CityLink Parties' Information.

10.5 Permitted Use

The State and MMR Project Co must only use the CityLink Parties' Information for the Permitted Purpose.

11. Disclaimer and exclusion of Liability (MMR Project Co)

11.1 MMR Project Co's Information

- (a) The CityLink Parties acknowledge and agree that:
 - (i) MMR Project Co's Information, and all Intellectual Property Rights in MMR Project Co's Information, will remain the property of the MMR Project Co or any of its Associates (as the case may be);
 - (ii) no statement, representation, term, warranty, condition, promise or undertaking made, given or agreed to by MMR Project Co, its Associates (other than the Conditions Consultant in accordance with the terms of its engagement as contemplated by clause 6.1) or any person acting on behalf of or associated with any of them in any prior negotiation, arrangement, understanding or agreement in relation to the Metro Tunnel is of any effect except to the extent expressly set out or incorporated in this Agreement; and
 - (iii) the acknowledgements under this clause 11.1 are in addition to and, to the extent not inconsistent, do not replace the terms and conditions already agreed to or accepted by the CityLink Parties or their Associates when receiving MMR Project Co's Information.
- (b) MMR Project Co must notify the State and the CityLink Parties if it becomes aware of any inaccuracy, incompleteness or change in the whole or any part of MMR Project Co's Information.

11.2 Permitted Use

The CityLink Parties must only use MMR Project Co's Information for the purposes of carrying out its operation, maintenance and repair obligations in respect of CityLink.

12. Notices

12.1 General

Subject to clause 12.2, any notice, demand, consent or other communication (**Notice**) must be, if in writing, signed by or on behalf of the sender, addressed to the intended recipient and:

- (a) delivered; or
- (b) sent by prepaid express post;

to that recipient's address specified in clause 12.4 or the last address notified by that recipient to the sender.

12.2 Notices sent by email

A Notice may also be sent by email if:

- (a) the email includes the words "Notice under the Direct Interface Agreement" in the subject line of the email; and
- (b) the Notice is:
 - (i) authorised by the sender in accordance with a procedure agreed between the parties; and
 - (ii) sent to the email address specified in clause 12.4 or the email address last notified by the intended recipient to the sender.

12.3 Time of receipt

A Notice given to a person in accordance with this clause is treated as having been given and received:

- (a) in the case of delivery in person, when delivered to the intended recipient or their premises;
- (b) in the case of delivery by prepaid express post, on the third Business Day after the date of posting (if posted to an address in the same country) or on the fifth Business Day after the date of posting (if posted to an address in another country); or
- (c) in the case of delivery by email, the first to occur of:
 - (i) receipt by the sender of any email acknowledgment from the intended recipient's information system showing that the Notice has been delivered to the email address of that recipient;
 - (ii) the time that the Notice enters an information system which is under the control of the intended recipient; and
 - (iii) the time that the Notice is first opened or read by an employee or officer of the intended recipient,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent or at later than 4.00pm (local time) on a Business Day, the Notice will be taken to have been duly given or made at the start of business on the next Business Day in that place.

12.4 Address for Notices

The address and email address of each party is:

- (a) the address and email address set out below; or
- (b) where the intended recipient notifies the sender of another address or email address, the last address or number so notified by that recipient to the sender.

CITYLINK PARTIES

Attention: [not disclosed]

Address: [not disclosed]

Email: [not disclosed]

STATE

Attention: [not disclosed]

Address: [not disclosed]

Email: [not disclosed]

MMR PROJECT CO

Attention: [not disclosed]

Address: [not disclosed]

Email: [not disclosed]

13. Delegation

13.1 Right to delegate

Each CityLink Party and MMR Project Co acknowledges that the State may exercise any right, statutory or otherwise, it has to appoint a person as a delegate to perform any of its functions, rights and powers under this Agreement.

13.2 Notice of delegation

The State will give the CityLink Parties and MMR Project Co written notice of any delegate so appointed, setting out the delegated functions, rights and powers and including a copy of the relevant instrument of appointment.

13.3 Revocation or amendment of delegation

Any such delegation may be revoked, changed, delegated, limited or made subject to such conditions as the State determines from time to time. The State will give the CityLink Parties and MMR Project Co written notice of any such revocation, amendment or other action.

13.4 No limitation of State obligations

The appointment of a delegate to perform some or all of the functions, rights and powers of the State under this Agreement will not limit or affect the State's obligations or liability under this Agreement.

14. CityLink Parties' Representative

- (a) As at the date of this Agreement, the CityLink Parties' Representative [not disclosed] .
- (b) The CityLink Parties' Representative may perform any of the CityLink Parties' functions, rights and powers under this Agreement. The appointment of the CityLink Parties' Representative does not otherwise limit or affect:
 - (i) the CityLink Parties' obligations or liability under this Agreement; or
 - (ii) the CityLink Parties' right to exercise any of its functions, rights or powers under this Agreement.

- (c) The CityLink Parties' Representative may delegate any of its functions, rights or powers under this Agreement to a nominee, by written notice to the State and MMR Project Co.

15. Survival

The parties acknowledge and agree that, without limiting any clause which, by its nature, is intended to survive termination or expiration of this Agreement, this clause and clauses 3.3, 4.1 - 4.6, 7, 8, 9, 10, 11, 16, 18 and Schedule 2 survive termination or expiration of this Agreement.

16. General Provisions

16.1 No partnership or joint venture

Except as expressly provided in this Agreement, nothing contained or implied in this Agreement will:

- (a) constitute or be deemed to constitute a party as a partner, joint venturer, agent or legal representative of any other party for any purpose; or
- (b) create or be deemed to create any partnership, joint venture, agency or trust between the parties or any of them.

16.2 Waiver

Subject to the express provisions of this Agreement, if the State or one of its Associates fails or delays in exercising or enforcing any right or remedy under this Agreement, it will not preclude or amount to a waiver of any further exercise or enforcement of that right or remedy or of any other right or remedy under this Agreement or provided by law.

16.3 Cost of performing obligations

A party who has an obligation to do anything under this Agreement must perform that obligation at its own cost, unless a provision of this Agreement expressly provides otherwise.

16.4 Successors

This Agreement shall be binding upon each CityLink Party and its successors and assigns, MMR Project Co and its successors and assigns and shall enure to the benefit of the State, its successors and assigns.

16.5 Further assurance

Each party must sign, execute, deliver and do all such acts and things as may reasonably be required of it to carry out and give full effect to this Agreement and the rights and obligations of the parties to them.

16.6 Counterparts

This Agreement may be executed in any number of counterparts and all counterparts taken together will constitute one and the same instrument.

16.7 Governing Law and jurisdiction

- (a) This Agreement will be governed by and construed in accordance with the laws of Victoria.

- (b) The parties submit to the non-exclusive jurisdiction of the courts of Victoria.

16.8 No limitation of project agreements

- (a) The State and MMR Project Co acknowledge and agree that nothing in this Agreement limits or otherwise affects the State's or MMR Project Co's rights and obligations under the Metro Tunnel Agreement.
- (b) The State and the CityLink Parties acknowledge and agree that nothing in this Agreement limits or otherwise affects the State's or a CityLink Party's rights and obligations under the Concession Deed.

17. GST

- (a) **(GST exclusive amounts):** Unless otherwise expressly stated, all amounts referred to in this Agreement are exclusive of GST.
- (b) **(GST payable by Supplier):** If GST becomes payable on any Taxable Supply made by a party (**Supplier**) under or in connection with this Agreement:
 - (i) any amount payable or consideration to be provided in accordance with any other provision of this Agreement for that supply (**Agreed Amount**) is exclusive of GST;
 - (ii) an additional amount will be payable by the party which is the recipient of the Taxable Supply (**Recipient**), equal to the amount of GST payable on that Taxable Supply as calculated by the Supplier in accordance with the GST Law, which will be payable at the same time and in the same manner as for the Agreed Amount; and
 - (iii) the Supplier will provide a Tax Invoice to the Recipient in connection with that supply, either at the time expressly set out in any other provision of this Agreement or no later than the time at which the Agreed Amount for that Taxable Supply is to be provided in accordance with this Agreement. The Recipient is not obliged to pay any amount in accordance with this clause 17(b) unless and until a Tax Invoice is received by the Recipient in connection with the Taxable Supply except where the Recipient is required to issue the Tax Invoice.
- (c) **(Variation in GST payable):** If for any reason, the GST payable by the Supplier in connection with a supply it makes under or in connection with this Agreement (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it received from the Recipient under clause 17(b) in connection with that supply, the Supplier will provide a refund or credit to, or will be entitled to receive from, the Recipient (as appropriate) the amount of this variation. Where an adjustment event occurs in relation to a supply and except where the Recipient is required to issue the Adjustment Note:
 - (i) the Supplier will issue an Adjustment Note to the Recipient in connection with that supply within 14 days after becoming aware of that adjustment event occurring; and
 - (ii) no additional amount will be payable by the Recipient unless and until an Adjustment Note is received by the Recipient.
- (d) **(GST ceasing to be payable):** No amount is payable by a party in accordance with clause 17(b) or 17(c) to the extent that the GST to which the amount relates has ceased to be payable by or refundable to the Supplier by the Commissioner of Taxation under the GST Law.

- (e) **(Expert Determination):** If the Recipient is dissatisfied with any calculation to be made by the Supplier in accordance with this clause 17 the Recipient may, at its own expense and after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the President of the Institute of Chartered Accountants for expert determination, which will be final and binding on all parties (except in the case of manifest error). The expert will act as an expert and not as an arbitrator and must take into account the terms of this Agreement, the matters required to be taken into account by the Supplier in accordance with this clause 17 and any other matter considered by the expert to be relevant to the determination. The parties release the expert from any liability in acting as an expert, except in the case of fraud on the part of the expert.
- (f) **(Revenue net of GST):** Any reference in this Agreement to price, value, sales, revenue, profit or a similar amount (**Revenue**), is a reference to the GST exclusive component of that Revenue, unless the contrary intention is expressed.
- (g) **(Cost net of GST):** Any reference in this Agreement to cost, expense, liability or other similar amount (**Cost**) of a party, is a reference to that Cost reduced by the Input Tax Credits to which the party is entitled in respect of such Cost, unless the contrary intention is expressed.
- (h) **(Recipient Supply):** To the extent that the consideration provided for the Supplier's taxable supply to which clause 17(b) applies is a taxable supply made by the Recipient (**Recipient Supply**), then:
- (i) the additional amount for GST that would otherwise be payable by the Recipient to the Supplier in accordance with clause 17(b)(ii) shall be reduced by the amount of GST payable by the Recipient on the Recipient Supply; and
 - (ii) the Recipient must issue to the Supplier a tax invoice for any Recipient Supply at the same time that the Supplier is required to issue a tax invoice to the Recipient for the Supplier's corresponding taxable supply pursuant to clause 17(b)(iii).
- (i) **(General obligation):** Each party agrees to do all things, including providing Tax Invoices and other documentation, that may be necessary or desirable to enable or assist the other party in determining its GST payable on any supply made by that other party in connection with this Agreement, or any Input Tax Credits, adjustments or refunds in relation to any amount of GST paid or payable in connection with any supply made in connection with this Agreement.
- (j) **(GST Groups):** For the purposes of this Agreement, a reference to GST payable on a Taxable Supply made by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member and a reference to an Input Tax Credit entitlement of a party includes any corresponding Input Tax Credit entitlement of the representative member of any GST group of which that party is a member, and if a party to this Agreement makes a Taxable Supply by virtue of entering into or performing this Agreement and the 'recipient' of that Taxable Supply (within the meaning of the GST Act) is an Associate of another party to this Agreement, that other party to this Agreement will be obliged either to pay the amount referred to in clause 17(b)(ii) or procure that the actual recipient pays the relevant amount, and the payer of that amount shall be the 'Recipient' for the purposes of this clause 17 in relation to the relevant Taxable Supply.
- (k) **(Definitions):** In this clause 17 unless otherwise defined in this Agreement, terms used have the meanings given to them in the GST Law.

18. Definitions and interpretation

18.1 Definitions

In this Agreement:

Access Arrangement has the meaning given in clause 3.2(d).

Access Fees means the fees payable in accordance with clause 4.

Access Proposal means a proposal for access to the CityLink Tunnels or Other CityLink Areas which:

- (a) (where access is required to the Other CityLink Areas), sets out:
 - (i) details of the scope, duration, location, timing and other aspects of the required access;
 - (ii) the reasons why the access is required (including details of the work to be performed and the major plant and equipment to be used);
 - (iii) a specific program showing the tasks to be performed;
- (b) (where access is required to the CityLink Tunnels) sets out:
 - (i) details of the scope, duration, location, timing and other aspects of the required access, including whether the access proposed:
 - A. is a Low Impact Lane Closure and, if so, identifies the number, type, duration, location and timing (including start and finish times) of the Low Impact Lane Closure; or
 - B. will take place during a planned CityLink Tunnel closure by the CityLink Parties;
 - (ii) the reasons why the access is required (including details of the work to be performed and the major plant and equipment to be used);
 - (iii) a specific program showing the tasks to be performed; and
 - (iv) any proposed messaging for any variable message signs;
- (c) (where access is required to the CityLink Tunnels) where the access is not taking place during a planned CityLink Tunnel closure by the CityLink Parties:
 - (i) contains a worksite traffic management plan which:
 - A. provides an overview for the management of traffic during the proposed access period;
 - B. demonstrates the traffic staging methodology;
 - C. contains worksite safety management plan risk assessments in accordance with the Worksite Safety - Traffic Management Code of Practice;
 - D. contains a schedule of work events expected to impact on traffic including an outline of proposals for any closure or other activity and proposed timeframes;

- E. contains procedures and responsibilities for:
 - 1) reviewing and updating the worksite traffic management plan; and
 - 2) independent road safety audits;
- F. contains drawings showing all proposed staging together with the measures to adequately control traffic, including details of barriers and associated widths of no go zones and lane widths and any proposed signing and pavement markings, including any changes to the existing signing and/or pavement markings;
- G. details any proposed modifications to the existing freeway management system and on-road services including but not limited to traffic signals and traffic signal phasing, help phones, incident detection loops, control boxes and closed circuit television;
- H. provides details and copies of any required notification, including the submission of any major traffic control items proposed or affected, which require installation, removal and/or alteration;
- I. details arrangements for the provision of temporary low clearance warning gauges (if applicable);
- J. lists all relevant contacts including emergency services and other relevant authorities and procedures to ensure after hours attendance at the site in the event of an emergency;
- K. details emergency procedures for access to the site in event of incidents; and
- L. includes detailed drawings identifying the nature and location of all temporary measures contemplated including linemarking, traffic barriers and signs and any temporarily relocated services or intelligent transport system devices;
 - (ii) includes a communications plan setting out the public notifications and advertising MMR Project Co proposes to undertake (including the content of such notifications and advertising); and
 - (iii) provides the results of a road safety audit procured by MMR Project Co in relation to the plan, and describes the actions that MMR Project Co will take in response to the issues identified during the road safety audit;
- (d) includes the names and contact information of a representative from MMR Project Co; and
- (e) contains safe work method statements.

ACICA Rules means the arbitration rules of the Australian Centre for International Commercial Arbitration.

Additional Access means any access to the CityLink Tunnels in accordance with an Access Arrangement where such access:

- (a) is not during a Low Impact Lane Closure; or

- (b) does not take place during a planned CityLink Tunnel closure by the CityLink Parties.

Associate means:

- (a) in the case of the State:
- (i) the Secretary;
 - (ii) MMRA;
 - (iii) PTV;
 - (iv) VicTrack;
 - (v) VicRoads; and
 - (vi) and any officer, employee, agent, contractor, consultant or adviser of the State or a party listed in paragraphs (a)(i) to (a)(v),
- each acting in connection with the Project, but excludes:
- (vii) any person to whom the State delegates a right, power, function or duty in accordance with this Agreement;
 - (viii) MMR Project Co and its Associates; and
 - (ix) the CityLink Parties and their Associates;
- (b) in the case of the CityLink Parties:
- (i) any Related Body Corporate of a CityLink Party and any officer, employee, agent, nominee or licensee of a CityLink Party or a Related Body Corporate of a CityLink Party; and
 - (ii) any contractor, consultant or advisor engaged by a CityLink Party or a Related Body Corporate of a CityLink Party; and
- (c) in the case of MMR Project Co:
- (i) any Related Body Corporate of MMR Project Co and any officer, employee, agent, nominee or licensee of MMR Project Co or a Related Body Corporate of MMR Project Co; and
 - (ii) any contractor, consultant or advisor engaged by MMR Project Co or a Related Body Corporate of MMR Project Co.

Authority means any government or any governmental, semi-governmental or local government authority, local council, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality and any person having jurisdiction over any part of the Metro Tunnel or the CityLink Tunnels.

Bank Bill Rate means, in a period:

- (a) the rate (expressed as a yield per centum per annum to maturity rounded upwards to 2 decimal places) which is the buying rate for bank accepted Bills quoted at approximately 10.10am (Melbourne time) on page 'BBSY' of the Reuters Monitor System on that day, having a term closest to that period; or

- (b) if that rate is no longer available or if, in the reasonable opinion of the State, that rate becomes an inappropriate rate to benchmark the Bank Bill Rate for the purposes of this Agreement or becomes incapable of application, the Bank Bill Rate means the rate reasonably determined by the State to be the appropriate equivalent rate, having regard to prevailing market conditions.

Bill has the same meaning as 'bill of exchange' in the *Bills of Exchange Act 1909* (Cth) (but does not include a cheque or payment order) and a reference to the drawing or acceptance of, or other dealing with, a Bill is to be interpreted in accordance with that Act.

Business Day means a day which is not a Saturday, Sunday or public holiday in Melbourne.

CityLink means the land declared under section 61 of the *Melbourne City Link Act 1995* (Vic) to be a road and includes any part of that road.

CityLink Leased Area means the land leased to the CityLink Parties under section 60 of the *Melbourne City Link Act 1995* (Vic).

CityLink Parties' Information means all information (whether or not in tangible or electronic form) disclosed by or on behalf of the CityLink Parties or their Associates to MMR Project Co or any of its Associates in accordance with this Agreement and, for the avoidance of doubt, includes any reports produced by the Conditions Consultant in accordance with the terms of its engagement as contemplated by clause 6.1.

CityLink Parties' Representative means any person which the CityLink Parties notify the State and MMR Project Co from time to time is the CityLink Parties' Representative.

CityLink Tunnel Closure Program has the meaning given in clause 3.1(b)(i).

CityLink Tunnels means the tunnels forming part of CityLink known as the Domain tunnel and the Burnley tunnel.

Claim means any claim, action, demand, suit or proceeding (including by way of contribution or indemnity) made in connection with this Agreement or at Law or for specific performance, restitution, payment of money (including damages) or any other form of relief.

Concession Deed means the deed entitled the "Agreement for the Melbourne CityLink" between the State and the CityLink Parties, made with effect as at and from 20 October 1995.

Conditions Consultant has the meaning given in clause 6.1.

Control Centre means the CityLink Parties' control centre used for the day-to-day operational control of CityLink.

Date of Final Acceptance means the date on which train services commence for the Metro Tunnel.

Day One Clauses means clauses 1, 2, 7, 8, 9, 10, 11, 12, 13, 14, 16 and 18.

Default Rate means [not disclosed]% per annum above the Bank Bill Rate.

Dispute has the meaning given in clause 7.1(a).

GST Law means the *A New Tax System (Goods and Services Tax) Act 1999*.

Intellectual Property Rights includes any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future, including rights of any kind in:

- (a) inventions, discoveries and novel designs, whether or not registered or registrable as patents, innovation patents or designs, including developments or improvements of equipment, technology, processes, methods or techniques;
- (b) literary works, dramatic works, musical works, artistic works, cinematograph films, television broadcasts, sound broadcasts, published editions of works and any other subject matter in which copyright (including future copyright and rights in the nature of or analogous to copyright) may, or may upon creation of the subject matter, subsist anywhere in the world;
- (c) registered and unregistered trade marks and service marks, including goodwill in the business concerned in the relevant goods and/or services;
- (d) trade, business or company names;
- (e) internet domain names; and
- (f) proprietary rights under the Circuit Layouts Act 1989 (Cth),

whether created or in existence before or after the date of this Agreement.

Law means those principles of common law and equity established by decisions of courts, all other statutes, regulations, by laws, ordinances and subordinate legislation of the Commonwealth or the State.

Liability means any debt, obligation, Claim, action, cost, (including legal costs, deductibles or increased premiums), expense, loss (whether direct or indirect), damage, compensation, charge or liability of any kind (including fines or penalties), whether it is:

- (a) actual, prospective or contingent; or
- (b) currently ascertainable or not,

and whether under this Agreement or arising at Law.

Low Impact Lane Closure means a closure described Schedule 3.

Metro CityLink Works Program has the meaning given in clause 3.1(b)(ii).

Metro Tunnel means the twin nine-kilometre rail tunnels from Kensington to South Yarra and five underground Stations, as part of the new Sunbury to Cranbourne / Pakenham line including all enabling and complementary works or services associated with them.

Metro Tunnel Agreement means the agreement to be entered into between the State and MMR Project Co for the design, construction, operation and maintenance of the Metro Tunnel.

Metro Tunnel Works means the works being designed and constructed in respect of the Metro Tunnel under the Metro Tunnel Agreement by MMR Project Co.

MMR Project Co's Information means all information (whether or not in tangible or electronic form) disclosed by or on behalf of MMR Project Co or its Associates to the CityLink Parties or any of their Associates in accordance with this Agreement and, for the avoidance of doubt, includes any reports produced by the Conditions Consultant in accordance with the terms of its engagement as contemplated by clause 6.1.

Other CityLink Areas means the parts of the CityLink Leased Area to which MMR Project Co may access in accordance with an Access Arrangement, being the CityLink Leased Area other than:

- (a) the CityLink Tunnels; and

- (b) any other part of the CityLink Leased Area which comprises a road.

Party means:

- (a) the State;
- (b) the CityLink Parties; and
- (c) MMR Project Co,

and **Parties** will mean all of such entities.

Permitted Purpose means the design, supply, construction, installation, production, commissioning and completion of the Metro Tunnel and all ancillary purposes including investigation and monitoring.

Public Holiday means a public holiday for Melbourne pursuant to the *Public Holidays Act 1993* (Vic).

Relevant CityLink Assets means the relevant assets operated or maintained by the CityLink Parties which may be affected by the Works, and includes:

- (a) relevant sections of the Burnley and Domain Tunnels described in Schedule 8 to the Services Agreement;
- (b) the elevated structure near Dynon Road described in Schedule 8 to the Services Agreement;
- (c) the groundwater management system in the vicinity of the Metro Tunnel Works; and
- (d) any other CityLink assets in the vicinity of the Metro Tunnel Works or that has an interface with the Metro Tunnel Works.

Services Agreement means the services agreement to be entered into by the CityLink Parties, MMR Project Co, the State and the Conditions Consultant pursuant to clause 6.1 in the form set out in Schedule 1.

State Interface Agreement means the interface agreement so entitled between the CityLink Parties and the State dated on or about the date of this Agreement.

Tax Invoice has the meaning given in the GST Law.

Tolling System Toll Revenue Loss means toll revenue losses arising from the prevention of, or interruption to, the operation of the CityLink tolling system (including any inability of the CityLink Parties to levy or collect tolls in respect of use of CityLink).

Traffic Management means the control, direction and protection of all traffic in any way affected by the access to the CityLink Tunnels in accordance with this Agreement.

Unplanned Access means access to the CityLink Tunnels by MMR Project Co or its Associates which is not in accordance with an Access Arrangement, including in accordance with the duration, location and timing (including start and finish times) of the access set out in the relevant Access Arrangement.

Worksite Safety - Traffic Management Code of Practice means the code of practice titled "Worksite Safety - Traffic Management" made under Division 1 of Part 4 of the *Road Management Act 2004* (Vic).

18.2 Interpretation

Unless expressed to the contrary, in this Agreement:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) “includes” means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person’s legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any statute, regulation, by-law or guideline or to any provision of any statute, regulation, by-law or guideline include any modification or re-enactment of, or any provision substituted for, and (in the case of a statute) all statutory and subordinate instruments issued under, such statute, regulation, by-law or guideline or such provision;
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (v) a right includes a benefit, remedy, discretion or power;
 - (vi) time is to local time in Melbourne;
 - (vii) “\$” or “dollars” is a reference to Australian currency and all references to dollar amounts are exclusive of GST;
 - (viii) “financial year” means a period of 12 calendar months ending on 30 June;
 - (ix) “quarter” means a period of three calendar months ending on the last day of September, December, March or June;
 - (x) “land” includes interests in land;
 - (xi) an asset includes any real or personal, present or future, tangible or intangible, property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived, from the property or asset;
 - (xii) an amount for which a person is contingently liable includes an amount that that person may become actually or contingently liable to pay if a contingency occurs, whether or not that liability actually arises;
 - (xiii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;

- (xiv) writing includes any mode of representing or reproducing words in tangible and permanently visible form;
- (xv) this Agreement includes all schedules, annexures and exhibits to it;
- (xvi) a clause, schedule, annexure or exhibit is a reference to a clause, schedule, annexure or exhibit, as the case may be, of this Agreement;
- (xvii) a notice, notification, consent, agreement, disclosure, evidence or approval or any variation of those words are references to a notice, notification, consent, agreement, disclosure, evidence or approval or any variation of those words, in writing; and
- (xviii) "loss of use" of CityLink includes:
 - A. any reduction in the speed limit on; or
 - B. any change to the configuration or number of available lanes on,
 CityLink (or part thereof) at any time;
- (g) where an obligation or liability is imposed on a party under this Agreement, that obligation or liability is not to be limited or affected by an obligation or liability imposed in another provision of this Agreement unless expressly stated;
- (h) where a right or remedy is conferred on a party under this Agreement, that right or remedy is in addition to, and not in substitution of, any other right or remedy conferred on that party under this Agreement or otherwise according to law;
- (i) a reference to a right, obligation or liability of any two or more persons confers that right, or imposes that obligation or liability, as the case may be, jointly and severally;
- (j) the term "may" when used in the context of a power or right exercisable by a party means that the party can exercise that right or power in its absolute and unfettered discretion and that party has no obligation to any other party to this Agreement to do so;
- (k) where, under this Agreement, the State has a discretion to give, withhold, make, not make, exercise or not exercise any action, approval, consent or decision that discretion is absolute and unfettered, except to the extent this Agreement provides otherwise;
- (l) if the date on or by which any act must be done under this Agreement is not a Business Day, the act must be done on or by the next Business Day; and
- (m) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

18.3 Headings

In this Agreement, headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation.

18.4 Trustee's limitation of liability

- (a) The Trustee enters into this Agreement only in its capacity as trustee of the CityLink Trust and in no other capacity and references to the Trustee in this Agreement are references to it only in this capacity. A liability arising under or in connection with this Agreement is limited to and can be enforced against the Trustee only to the

extent which it can be satisfied out of the property of the CityLink Trust out of which the Trustee is actually indemnified for the liability. This limitation of the Trustee's liability applies despite any other provision of this Agreement and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Agreement.

- (b) Neither the State nor MMR Project Co may sue the Trustee in any capacity other than as trustee of the CityLink Trust, including seeking the appointment of a receiver (except in relation to property of the CityLink Trust), a liquidator, an administrator or any similar person to the Trustee or prove in any liquidation, administration or arrangement of or affecting the Trustee (except in relation to the property of the CityLink Trust).
- (c) The provisions of this clause 18.4 do not apply to any obligation or liability of the Trustee to the extent that it is not satisfied because under the trust deed for the CityLink Trust or by operation of law there is a reduction in the extent of the Trustee's indemnification out of the assets of the CityLink Trust, as a result of the Trustee's fraud, negligence or breach of trust.
- (d) No attorney, agent or receiver or manager appointed in accordance with this Agreement has authority to act on behalf of the Trustee in a way which exposes the Trustee to any personal liability and no act or omission of any such person will be considered fraud, negligence or breach of trust of the Trustee for the purpose of clause 18.4(c).
- (e) The Trustee is not obliged to do or refrain from doing anything under this Agreement (including incur any liability) unless the Trustee's liability is limited in a manner satisfactory to the Trustee in its absolute discretion.

18.5 Several obligations

- (a) The obligations of the Company and the Trustee under this Agreement are several.
- (b) Without limitation to their respective obligations or to the extent of their respective liability under this Agreement, an obligation which is expressed to bind both the Company and the Trustee is deemed to be a several reference to:
 - (i) the Trustee in relation to the Trust Road, the Trust Land, the Trust Leases and the Trust Concurrent Leases or (insofar as the obligation does not relate to land) the specified obligation as it relates to the Trustee in each case (as the case may be); and
 - (ii) the Company in relation to the Company Road, the Company Land and each Company Lease or (insofar as the obligation does not relate to land) the specified obligation as it relates to the Company in each case (as the case may be) including the obligation to operate and maintain CityLink.
- (c) In this clause 18.5, the terms "Trust Road", "Trust Land", "Trust Leases", "Trust Concurrent Leases", "Company Road", "Company Land" and "Company Lease" have the meanings given in the Concession Deed.

Schedule 1 - Form of Services Agreement

Schedule 2 - Access Fees

- (a) The Access Fees are based on the location, timing and duration of the Unplanned Access or Additional Access (as applicable).
- (b) All Access Fees are calculated at a rate per hour or part thereof. For example, a 1 hour 5 minute Unplanned Access would be treated as a 2 hour Unplanned Access.
- (c) The below Access Fees are for the financial year 2017 - 2018. Each financial year thereafter, the Access Fees will be increased by a factor of [not disclosed] in respect of the previous financial year's Access Fees.

| MMRP Direct Interface Agreement Access Fees | | | | | | | |
|---|-------------------|-------------------|-------------------|------------------|-------------------|------------------|-------------------|
| Weekday - Burnley | | Weekend - Burnley | | Weekday - Domain | | Weekend - Domain | |
| [not disclosed] | \$(not disclosed) | [not disclosed] | \$(not disclosed) | [not disclosed] | \$(not disclosed) | [not disclosed] | \$(not disclosed) |
| [not disclosed] | \$(not disclosed) | [not disclosed] | \$(not disclosed) | [not disclosed] | \$(not disclosed) | [not disclosed] | \$(not disclosed) |
| [not disclosed] | \$(not disclosed) | [not disclosed] | \$(not disclosed) | [not disclosed] | \$(not disclosed) | [not disclosed] | \$(not disclosed) |
| [not disclosed] | \$(not disclosed) | [not disclosed] | \$(not disclosed) | [not disclosed] | \$(not disclosed) | [not disclosed] | \$(not disclosed) |

Schedule 3 - Low Impact Lane Closures

| Number of lanes closed | Domain Tunnel (allowed times) | | Burnley Tunnel (allowed times) | |
|------------------------|--------------------------------|---------------------------------|--------------------------------|---------------------------------|
| | Sunday night to Thursday night | Friday night and Saturday night | Sunday night to Thursday night | Friday night and Saturday night |
| 1 lane closure | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |
| 2 lane closure | [not disclosed] | [not disclosed] | [not disclosed] | [not disclosed] |

Schedule 4 - Approved Traffic Management Contractors

- (a) [not disclosed]
- (b) [not disclosed]; and
- (c) [not disclosed].

Execution page

Executed as a deed

Executed by the [not disclosed] , **in her capacity as Minister for Public Transport, on behalf of the Crown in Right of the State of Victoria** in the presence of:
[not disclosed]

[not disclosed]

Signature of witness
[not disclosed]

Signature

Full name of witness

EXECUTED for and on behalf of **CITYLINK MELBOURNE LIMITED ABN 65 070 810 678** in accordance with section 127(1) of the *Corporations Act (Cth) 2001*:

[not disclosed]

[not disclosed]

.....
Signature of director

.....
Signature of director/secretary

[not disclosed]

[not disclosed]

.....
Name of director

.....
Name of director/secretary

EXECUTED for and on behalf of **TRANSURBAN INFRASTRUCTURE MANAGEMENT LIMITED (AS TRUSTEE OF THE CITYLINK TRUST) ABN 27 098 147 678** in accordance with section 127(1) of the *Corporations Act (Cth) 2001*:

[not disclosed]

[not disclosed]

.....
Signature of director

.....
Signature of director/secretary

[not disclosed]

[not disclosed]

.....
Name of director

.....
Name of director/secretary

CY Partner 1

Signed sealed and delivered for
[not disclosed]
by its attorneys

sign here ► [not disclosed] [not disclosed]
Attorney Attorney

print name [not disclosed] [not disclosed]

in the presence of

sign here ► [not disclosed] [not disclosed]
Witness Witness

print name [not disclosed] [not disclosed]

CY Partner 2

Signed sealed and delivered for
[not disclosed]
by its attorney

in the presence of

sign here ▶ [not disclosed]
Attorney

sign here ▶ [not disclosed]
Witness

print name [not disclosed]

print name [not disclosed]

CY Partner 3

Signed sealed and delivered for
[not disclosed]
by its attorney

in the presence of

sign here ▶ [not disclosed]
Attorney

sign here ▶ [not disclosed]
Witness

print name [not disclosed]

print name [not disclosed]

CY Partner 4

Signed sealed and delivered for
[not disclosed]
by its attorney

in the presence of

sign here ▶ [not disclosed]
Attorney

sign here ▶ [not disclosed]
Witness

print name [not disclosed]

print name [not disclosed]



HERBERT
SMITH
FREEHILLS

Deed

Preferred bidder phase
CYP

Metro Tunnel
Tunnel and Stations PPP

Advanced Works Deed

Coordinator-General of the Major Transport
Infrastructure Program, a duly authorised officer of
the Melbourne Metro Rail Authority, for and on
behalf of the Crown in Right of the State of Victoria

D&C Subcontractor



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Advanced Works Deed

Date ►

Between the parties

State **Coordinator-General of the Major Transport Infrastructure Program, a duly authorised officer of the Melbourne Metro Rail Authority, for and on behalf of the Crown in Right of the State of Victoria**

of 121 Exhibition Street, Melbourne VIC 3000.

D&C Subcontractor The unincorporated joint venture comprising:

- 1 **Lendlease Engineering Pty Limited** (ABN 40 000 201 516) of Level 14, Tower Three, International Towers Sydney, Exchange Place, 300 Barangaroo Avenue, Barangaroo NSW 2000;
- 2 **John Holland Pty Ltd** (ABN 11 004 282 268) of Level 3, 65 Pirrama Road, Pyrmont NSW 2009; and
- 3 **Bouygues Construction Australia Pty Ltd** (ABN 37 144 013 801) of Level 8, 77 Pacific Highway, North Sydney NSW 2060.

Recitals

- 1 The State has conducted a public tender process and has selected the CYP Consortium as the preferred tenderer for the Project.
- 2 The CYP Consortium and the D&C Subcontractor understand the importance to the State of maintaining efficiencies in the D&C Program and otherwise in achieving Acceptance in accordance with the State Project Documents as early as possible.
- 3 The parties have agreed that from the Commencement Date and during the Preferred Respondent Stage, the D&C Subcontractor will perform the AW Activities.
- 4 This Deed records the agreement between the State and the D&C Subcontractor pursuant to which the D&C Subcontractor will perform the AW Activities.

The parties agree as follows:

1 Definitions and interpretation

1.1 Project Agreement definitions

Unless otherwise expressly defined under clause 1.2, or modified in accordance with clause 2.2, expressions used in this Deed have the meaning given to them in the Draft Project Agreement.

1.2 Definitions

The meanings of the terms used in this Deed are set out below.

| Term | Meaning |
|--|---|
| Accelerated Design Review Process | means the process set out in Schedule 7 and which applies to the review of 'Accelerated Design Packages' set out in Schedule 2. |
| Accrued Payments | means the aggregate amount of the AW Fee that: <ol style="list-style-type: none"> 1 would be claimable under the terms of this Deed if the D&C Subcontractor was entitled to submit a Monthly Statement on; or 2 is otherwise due and payable to the D&C Subcontractor under this Deed which remains unpaid as at, the date of termination of this Deed. |
| Aggregate Monthly Amount | means, for a given month, the amount set out for that month in the column entitled "Aggregate Monthly Amount" in the Projected Budget. |
| Associate or Associates | means: <ol style="list-style-type: none"> 1 in relation to a person, any officer, agent, adviser, consultant, contractor or employee of that person (to the extent acting in that capacity); 2 in the case of the State, does not include the D&C Subcontractor or any of its Associates; and 3 in the case of the D&C Subcontractor, includes: <ol style="list-style-type: none"> a) the D&C Subcontractor Representative set out in clause 15; b) any Subcontractor and their respective officers, agents, advisers, consultants, contractors and employees; <p>each acting in connection with the Project, but does not include Project Co or any of its Associates, the Maintenance Subcontractor or any of its Associates, the State or any of its Associates, the Rail Franchisees (including in their capacities as Rail Franchisee Interface Parties), the CityLink Manager, the Metro Tunnel Package Contractors, the Independent Reviewer, the Sub-Independent Reviewer, the Financiers' Certifier, CBD</p> |



| Term | Meaning |
|------------------------------|---|
| | North OSD Developer or any of its Associates, CBD South OSD Developer or any of its Associates, the Commercial Opportunities Subcontractors, any Handover Reviewer, the Early Works Managing Contractor or any Escrow Agent. |
| AW Activities | means all of the things, including the activities described in Schedule 2, which the D&C Subcontractor must carry out or do: <ol style="list-style-type: none">1 in connection with the AW Works; or2 to otherwise comply with its obligations under this Deed. |
| AW Activities Program | means the program set out in Schedule 3. |
| AW Cap | means the Aggregate Monthly Amount (as applicable), minus the aggregate of all previous amounts certified as payable to the D&C Subcontractor in a Payment Certificate or paid in accordance with clause 9.3(b). |
| AW Fee | means the aggregate of each "Monthly Amount" as set out in the Projected Budget. |
| AW Performance Bond | means the Performance Bond provided by the D&C Subcontractor in accordance with clause 12.1. |
| AW Works | means the physical things and works which the D&C Subcontractor must design, supply, construct, install, produce, commission or complete pursuant to this Deed. |
| AW Site | means the land to which the D&C Subcontractor is given access under clause 5.1. |
| Capella Capital | means Capella Management Services (ACN 127 727 842) of Level 14, Tower Three, International Towers Sydney, Exchange Place, 300 Barangaroo Avenue, Barangaroo NSW 2000. |
| Certifier | means the State. |
| Commencement Date | means the date upon which the last of the Conditions Precedent is satisfied or waived, as set out in the written confirmation issued under clause 4.2(b). |

| Term | Meaning |
|--------------------------------------|--|
| CYP Consortium | <p>means:</p> <ol style="list-style-type: none"> 1 Capella Capital Pty Limited (ACN 127 727 771) as agent for the Capella Capital Partnership (ABN 68 720 326 224) and financial adviser; and 2 the industrial sponsors being; <ol style="list-style-type: none"> a. John Holland Group Pty Ltd (ACN 37 050 242 147) as equity provider, D&C Subcontractor and Maintenance Subcontractor; b. Bouygues Construction Australia Pty Ltd (ABN 37 144 013 801) as equity provider and D&C Subcontractor; and c. Lendlease Engineering Pty Limited (ACN 000 201 516) as D&C Subcontractor. |
| D&C Subcontract | <p>means the agreement between Project Co and the D&C Subcontractor to carry out the D&C Activities and the Final Acceptance Works and any other contract between Project Co and a Subcontractor to carry out the D&C Activities or the Final Acceptance Works.</p> |
| Deed | <p>means this deed and includes all Schedules, Exhibits, Attachments and Annexures to it.</p> |
| Draft Project Agreement | <p>means the document entitled 'Metro Tunnel - Project Agreement' as described in Exhibit 1.</p> |
| Draft PS&TR | <p>means the project scope and technical requirements described in Exhibit 1, including all appendixes, annexures, attachments and exhibits to it.</p> |
| Encumbrance | <p>means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off or any other security agreement or arrangement in favour of any person and includes any Security Interest.</p> |
| Executed Project Agreement | <p>means the document entitled 'Metro Tunnel - Project Agreement' as executed by the State and Project Co in respect of the Project.</p> |
| Financial Close Longstop Date | <p>means 28 February 2018.</p> |



| Term | Meaning |
|--|--|
| First Tax Invoice | means the tax invoice to be submitted by the D&C Subcontractor to the State in accordance with clause 9.3(a). |
| General Liability Cap | means [not disclosed]. |
| Heritage Bond | means a 'Heritage Bond' under the Draft Project Agreement and the bank guarantee given in favour of the Heritage Council of Victoria (ABN 87 967 501 33) pursuant to the Heritage Permit No. P26851 to be granted under section 74 of the <i>Heritage Act 1995</i> , in respect of the removal of the substation and all associated infrastructure and the reinstatement of the Edmund Herring Oval, the liability for which is [not disclosed]. |
| Independent Reviewer | means the independent reviewer appointed under the Independent Reviewer Deed of Appointment (Advanced Works). |
| Independent Reviewer Deed of Appointment (Advanced Works) | means the document entitled 'Independent Reviewer Deed of Appointment (Advanced Works)' between the State, the D&C Subcontractor and others, entered into in respect of the AW Activities. |
| Key Personnel | means the key personnel set out in Schedule 2 (including the employees of Capella Capital). |
| Key Plant and Equipment | means: <ol style="list-style-type: none">1 tunnel boring machines;2 segment moulds and associated carousel equipment for the tunnel segment manufacturing facility;3 tram rail, turnouts and switches required for tram diversions at Domain; and4 piling and diaphragm wall equipment procured outside Australia. |
| Liability | means any debt, obligation, claim, action, cost, (including legal costs, deductibles or increased premiums), expense, loss (whether direct or indirect), damage, compensation, charge or liability of any kind (including fines or penalties), whether it is: <ol style="list-style-type: none">1 actual, prospective or contingent; or2 currently ascertainable or not, and whether under this Deed or arising at Law. |



| Term | Meaning |
|--|---|
| Monthly Statement | has the meaning given in clause 9.4. |
| Package Contractor | has the meaning given to 'Metro Tunnel Package Contractor' in the Draft Project Agreement and includes respondents shortlisted for the role of any Metro Tunnel Package Contractor. |
| Payment Certificate | has the meaning given in clause 9.5(a). |
| Performance Bond | means a bank guarantee which: <ol style="list-style-type: none">1 is in the form set out in Schedule 6;2 is unconditional, irrevocable and payable on demand;3 is issued by a bank that is the holder of a current licence issued by APRA and has the Required Rating; and4 specifies a location within Melbourne where demand is to be given and payment made, without further confirmation from the issuer, on any Business Day. |
| Preferred Respondent Process Letter | means the letter from the State to the CYP Consortium dated 17 July 2017. |
| Preferred Respondent Stage | means the period commencing on the appointment by the State of the CYP Consortium as the preferred tenderer for the Project and ending on the earlier of the termination of such appointment or Financial Close. |
| Project Co | means the Cross Yarra Partnership, being the special purpose entity to be established by the Equity Investors pursuant to the partnership deed for the purposes of entering into the Project Documents and delivering the Project. |
| Projected Budget | means the budget set out in Schedule 4. |
| Proposal | means the CYP Consortium proposal in respect of the Project submitted to the State on 6 April 2017 in response to the RFP and as amended in response to the Structured Clarification Process Brief. |
| Required Rating | means a credit rating of at least [not disclosed] by Standard and Poor's (Australia) Pty Limited or [not disclosed] by Moody's Investors Service, Inc. |



| Term | Meaning |
|---|---|
| RFP | means the Request for Proposal prepared by MMRA and issued to Shortlisted Respondents on 21 September 2016. |
| RFP Terms and Conditions | means the terms and conditions contained in Appendix C of Volume 1 (Project Overview & General Requirements), Part A (General Information & Instructions to Shortlisted Respondents) of the RFP issued in respect of the Project, as supplemented by the Preferred Respondent Process Letter. |
| Security Interest | has the meaning given to that term in section 12 of the <i>Personal Property Securities Act 2009</i> (Cth). |
| Security of Payment Act | means the <i>Building and Construction Industry Security of Payment Act 2002</i> (Vic). |
| Shortlisted Respondents | means the respondents who were selected by MMRA to submit a proposal for the Project in response to the RFP. |
| Structured Clarification Process Brief | means the document entitled 'Structured Clarification Process Brief' prepared by MMRA and issued to Shortlisted Respondents on 8 May 2017. |

2 Purpose of Deed and relationship with Project Agreement

2.1 Purpose of Deed

The purpose of this Deed is to:

- (a) allow the D&C Subcontractor to commence and perform certain activities during the Preferred Respondent Stage, including the development of certain Design Packages for the Project; and
- (b) provide a framework for the provision of key personnel to provide certain activities during the Preferred Respondent Stage (including key personnel from Capella Capital and the CYP Consortium), notwithstanding neither Capella Capital nor the CYP Consortium are parties to this Deed.

2.1A Status of Draft Project Agreement

The parties acknowledge and agree that:

- (a) the Draft Project Agreement contains proposed terms and the Proposal contains departures relating to the Draft Project Agreement that have not been finalised as at the date of this Deed; and

- (b) subject to the Preferred Respondent Process Letter and the RFP Terms and Conditions, neither party is prejudiced by the terms of the Draft Project Agreement when finalising the Executed Project Agreement.

2.2 Project Agreement provisions

- (a) The following clauses of the Draft Project Agreement, as amended by clause 2.2(b), *mutatis mutandis* form part of this Deed as if incorporated in full:
- (1) clause 2.1 (Interpretation);
 - (2) clause 2.6 (Business Day);
 - (3) clause 2.8 (Approvals, directions and notices in writing);
 - (4) clause 2.9 (Prior approval or consent);
 - (5) clause 2.10 (Action without delay);
 - (6) clause 2.11 (Provisions limiting or excluding Liability, rights or obligations);
 - (7) clause 2.12 (Relationship of the parties);
 - (8) clause 2.13 (State's executive rights and duties);
 - (9) clause 2.16 (No State liability for review);
 - (10) clause 5 (Overarching obligations) [except for clause 5.2];
 - (11) clause 8 (Approvals);
 - (12) clause 11.8 (Determinations of Independent Reviewer);
 - (13) clause 11.9 (Replacement of Independent Reviewer);
 - (14) clause 11.10 (Proof Engineer);
 - (15) clause 13 (Subcontracting and third party arrangements);
 - (16) clause 15 (Health and safety);
 - (17) clause 16 (Site issues);
 - (18) clause 42.1 to 42.6 (inclusive), 42.11 and 42.15;
 - (19) clause 46 (Dispute Resolution);
 - (20) clause 50 (Project Co to inform itself);
 - (21) clause 56 (Intellectual Property Rights);
 - (22) clause 57 (Confidential Information and disclosure);
 - (23) clause 58 (Privacy);
 - (24) clause 59 (Taxes);
 - (25) clause 62 (Probity Events and Probity Investigations);
 - (26) clause 63.1 (Notices);
 - (27) clause 64 (Miscellaneous), except for clauses 64.2 and 64.4;
 - (28) Schedule 7 (Review Procedures); and
 - (29) Schedule 12 (Intellectual Property).
- (b) To the extent that clauses of the Draft Project Agreement are incorporated into this Deed:



- (1) the word “party” means the State or the D&C Subcontractor as the context permits;
 - (2) all references to “Project Co”, “Group Member” or “Consortium Member” must be read as a reference to “the D&C Subcontractor”;
 - (3) the term “the Project” includes the performance of the AW Activities under this Deed;
 - (4) all references to “State Project Documents” must be read as a reference to this Deed and any other document the State informs the D&C Subcontractor in writing is a State Project Document for the purposes of this Deed;
 - (5) all references to “Project Documents” must be read as a reference to this Deed and any other document the State informs the D&C Subcontractor in writing is a Project Document for the purposes of this Deed;
 - (6) in respect of clause 42.15(d)(1)(B) of the Draft Project Agreement, references to “Insurances” must be read as references to insurances required under this Deed. All other references to “Insurances” must be disregarded;
 - (7) all references to “Project Activities”, “D&C Activities” or the “Works” must be read as references to AW Activities;
 - (8) all references to “Relevant Infrastructure” must be read as references to any works performed as part of the AW Activities;
 - (9) all references to the “Site” must be read as references to the AW Site;
 - (10) all references to the “State Representative” must be read as references to the State Representative as defined in clause 15(b) of this Deed;
 - (11) all references to “D&C Phase” and “Term” must be read as references to the term of this Deed;
 - (12) all references to the “PS&TR” must be read as references to the Draft PS&TR;
 - (13) in respect of clause 15 of the Draft Project Agreement:
 - (A) in clauses 15.2(a) and 15.3(a), references to “Financial Close” must be read as references to the date on which this Deed commences under clause 4.1(a) and references to the “Expiry Date” and the “Date of Provisional Acceptance” must be read as references to the date of termination of this Deed; and
 - (B) in clause 15.3, references to the “Licensed Construction Areas” must be read as references to the AW Site;
 - (14) all references to the “Construction Areas” must be read as references to the AW Site; and
 - (15) in respect of clause 63.1 of the Draft Project Agreement, the reference to item 17 of the Contract Particulars will be replaced with the representatives of each of the parties specified in clause 15 of this Deed.
- (c) Notwithstanding this clause 2.2, neither party will be entitled to rely on the execution of this Deed by the other party as approval of the whole, or any provision of, the Draft Project Agreement.



2.3 No commitment

The D&C Subcontractor acknowledges and agrees that nothing in this Deed obliges the State to proceed with, or engage the CYP Consortium or the D&C Subcontractor or any part of the CYP Consortium to perform any further part of, the Project.

2.4 Variation

The parties may at any time during the term of this Deed agree in writing to:

- (a) amend the scope of the AW Activities and the AW Activities Program; and
- (b) if the scope of the AW Activities and the AW Activities Program is amended in accordance with clause 2.4(a), make proportionate amendments to the AW Cap and Projected Budget.

2.5 Joint and several liability

If the D&C Subcontractor comprises more than one person:

- (a) the obligations of those persons are joint and several;
- (b) the State may proceed against any or all of them for any failure of the D&C Subcontractor to comply with any obligation in accordance with this Deed or otherwise; and
- (c) any payment by the State under this Agreement to any account nominated in writing by the D&C Subcontractor, or failing such nomination, to any one or more persons constituting the D&C Subcontractor, will be deemed to be payment to all persons constituting the D&C Subcontractor.

3 Commencement and term

3.1 Commencement and termination

- (a) This Deed will commence on the Commencement Date.
- (b) This Deed terminates on the earlier of:
 - (1) Financial Close, in which case clause 3.2 will apply;
 - (2) the Financial Close Longstop Date, unless a request is made by the State under clause 3.3(d) and pursuant to that request the parties have agreed to extend the term of this Deed; or
 - (3) 7 days from the date of written notice given to the D&C Subcontractor from the State terminating this Deed for the State's convenience, unless otherwise agreed between the parties.

3.2 The occurrence of Financial Close

Upon the occurrence of Financial Close:

- (a) the AW Activities performed under this Deed:
 - (1) for the purposes of the Executed Project Agreement form part of the Works to be delivered by Project Co under the Executed Project

- Agreement, on the terms set out in the Executed Project Agreement;
and
- (2) for the purposes of the D&C Subcontract form part of the “works” as defined under the D&C Subcontract, on the terms set out in the D&C Subcontract;
- (b) this Deed is automatically terminated without the need for any party to give written notice and is of no further force or effect; and
 - (c) the D&C Subcontractor and the State will have no Claim against each other in relation to any matter arising under or in connection with this Deed, including in connection with the AW Works or the AW Activities.

3.3 Failure to achieve Financial Close

- (a) Subject to clause 3.3(d), if this Deed is terminated or otherwise comes to an end other than in accordance with clause 3.1(b)(1):
 - (1) the D&C Subcontractor must:
 - (A) immediately cease performing the AW Activities under this Deed, except to the extent any work is required to make the AW Activities safe (which must be carried out as expeditiously as possible);
 - (B) provide to the State all deliverables and documentation prepared under this Deed (including design documents, supply agreements and approvals);
 - (C) procure that any contract entered into between it, or a member of the CYP Consortium, and a supplier of Key Plant and Equipment, contains a provision that expressly enables the novation of that contract to the State if this Deed is terminated or comes to an end other than in accordance with clause 3.1(b)(1), and the State has been provided with an executed copy of such contract demonstrating compliance with this clause 3.3(a)(1)(C);
 - (D) deliver any plant, equipment or materials, including the Key Plant and Equipment, purchased as part of the AW Activities or reasonably ordered by the D&C Subcontractor to perform the AW Activities, to the State free of any Encumbrance in accordance with clause 3.3(a)(1)(E), subject to the State having made or being required to make payment to the D&C Subcontractor in respect of such items. Where the D&C Subcontractor has paid a deposit or progress payment and does not have title to the plant, equipment or materials, the D&C Subcontractor must transfer the benefit of the subcontract or supply agreement to the State in accordance with clause 3.3(a)(1)(C);
 - (E) do all things necessary to ensure that the State has title in any plant, equipment, documentation and materials referred to in clause 3.3(a)(1)(B) and 3.3(a)(1)(D) (or the benefit of the relevant agreement, where the D&C Subcontractor has paid a deposit and does not have title to the plant, equipment or materials), including without limitation novating or assigning any contracts with suppliers or consultants

- relevant to the plant, equipment or materials, including the Key Plant and Equipment, as soon as practicable;
- (F) do all things necessary (including executing any documentation) to ensure that all Intellectual Property Rights are licensed to the State or its nominee in the manner required by section 3(d) of Schedule 12 to the Draft Project Agreement;
 - (G) do all things necessary to ensure that the D&C Subcontractor's rights and obligations under the lease of 80 Collins Street, Melbourne entered into by the D&C Subcontractor are novated to the State or its nominee; and
 - (H) do all things necessary to ensure that the D&C Subcontractor's rights under any subcontracts entered into by the D&C Subcontractor in respect of the AW Activities are assigned or otherwise transferred to the State or its nominee;
- (2) the D&C Subcontractor will have no Claim against the State in relation to any matter arising under or in connection with this Deed, including in connection with the AW Activities, other than in accordance with clauses 3.3(a)(4) and 3.3(b);
 - (3) the following clauses of this Deed survive the termination of this Deed:
 - (A) clauses 2.2(a)(1), 2.2(a)(2), 2.2(a)(18) to 2.2(a)(22) (Project Agreement provisions);
 - (B) clause 3.3 (Failure to achieve Financial Close);
 - (C) clause 9 (Payment for AW Activities), to the extent applicable to the Monthly Statement referred to in clause 3.3(a)(4);
 - (D) clause 13 (Insurance); and
 - (E) clause 16 (D&C Subcontractor Liability);
 - (4) subject to clause 3.3(b), the D&C Subcontractor will be entitled to claim its Accrued Payments from the State by submitting a Monthly Statement within 21 Business Days of the date of termination;
 - (5) the State must accept the novation of each subcontract referred to in clauses 3.3(a)(1)(D) and 3.3(a)(1)(E) and the lease of 80 Collins Street, Melbourne referred to in clause 3.3(a)(1)(G); and
 - (6) the State must provide a replacement Heritage Bond in favour of the relevant Heritage Bond Beneficiary, in the form and for the amount of the Heritage Bond it is replacing.
- (b) The D&C Subcontractor's entitlement to make a Claim under clause 3.3(a)(4) is subject to the following conditions precedent:
- (1) the D&C Subcontractor can reasonably demonstrate that the D&C Subcontractor diligently pursued the achievement of Financial Close up until the date of termination of this Deed;
 - (2) for the purposes of termination under clause 3.1(b)(2), such failure to achieve Financial Close by the Financial Close Longstop Date was not caused or contributed to by the D&C Subcontractor failing to act in good faith; and



- (3) the D&C Subcontractor has otherwise complied with its obligations under clause 3.3(a)(1).
- (c) The D&C Subcontractor may include in its Claim under clause 3.3(a)(4), and the State must pay to the D&C Subcontractor:
 - (1) the D&C Subcontractor's actual costs reasonably incurred in making the AW Activities safe in accordance with clause 3.3(a)(1)(A), provided such costs are:
 - (A) notified by the D&C Subcontractor to the State prior to being incurred; and
 - (B) approved by the State (such approval not to be unreasonably withheld); and
 - (2) subject to clauses 3.3(a)(5) and the D&C Subcontractor's compliance with clauses 3.3(a)(1)(C) to 3.3(a)(1)(E), any unavoidable break costs payable by the D&C Subcontractor to third parties under any supply agreements for Key Plant and Equipment which have been entered into by the D&C Subcontractor as part of the AW Activities.
- (d) Notwithstanding clause 3.3(a), the State may request in writing that the D&C Subcontractor continue to perform all or part of the AW Activities under this Deed, and the parties must use all reasonable endeavours to negotiate the terms of any continued performance.

4 Conditions Precedent

4.1 Commencement

- (a) This Deed will not commence until each of the Conditions Precedent has been satisfied (or waived in accordance with clause 4.3), except for the provisions contained in clause 1, 2.2(a)(1), 2.2(a)(2), 2.2(a)(19), 2.2(a)(22), 2.2(a)(23), 2.2(a)(25), 2.2(a)(26) and 2.2(a)(27), 3.1(b), this clause 4, 14 and 16 which will commence on the date of this Deed.
- (b) The D&C Subcontractor agrees to deliver to the State:
 - (1) a debt commitment letter in respect of the Project, updated as required from the debt commitment letter to the State on 6 April 2017 in response to the RFP;
 - (2) the AW Performance Bond;
 - (3) evidence satisfactory to the State confirming that the D&C Subcontractor-procured insurances required under clause 13(a)(2) are in place; and
 - (4) a fully executed letter of equity commitment in the form of Schedule 8, **(Conditions Precedent)**.

4.2 Satisfaction of Conditions Precedent

- (a) The D&C Subcontractor must satisfy each Condition Precedent and must notify the State as such Conditions Precedent are satisfied.
- (b) When the last of the Conditions Precedent to be satisfied has been satisfied or waived, the State Representative must confirm in writing that all of the

Conditions Precedent have been satisfied or waived and the date upon which the last of the Conditions Precedent was satisfied or waived.

4.3 Waiver of Conditions Precedent

A Condition Precedent is only waived where the State gives notice of the waiver of the Condition Precedent to the D&C Subcontractor.

5 Land access and Environmental Issues

5.1 Land Access

In the event Financial Close does not occur by 22 December 2017, unless otherwise agreed between the parties:

- (a) the State will procure (on an exclusive temporary occupation basis) access to any area of land required by the D&C Subcontractor for the purpose of the D&C Subcontractor undertaking the relevant AW Activities associated with site establishment works, in accordance with the AW Activities Program; and
- (b) the State will procure that MMRA will facilitate discussion between the D&C Subcontractor and relevant road management and public transport authorities for the purpose of agreeing appropriate access and occupation arrangements for St Kilda Road Stage 1 Tram Diversion and will recommend the exercise of its project delivery powers under the *Major Transport Project Facilitation Act 2009* in accordance with MMRA's internal policies, if required. The D&C Subcontractor will remain responsible for other approvals and consents for such works.

5.2 Environmental Issues

The D&C Subcontractor must:

- (a) during any period where the D&C Subcontractor is entitled to use or occupy the AW Site, not use it such that:
 - (1) any spoil, Industrial Waste or Hazardous Substance is abandoned or dumped on the AW Site;
 - (2) any Industrial Waste or Hazardous Substance is handled, disposed of, disturbed, discharged or released in a manner which is likely to cause or contribute to an Environmental Hazard; or
 - (3) any other substance is handled, disposed of, disturbed, discharged, released, deposited to, or emanated from, the AW Site such that a state of Contamination occurs other than as permitted by Law or an Approval,by the D&C Subcontractor or any of its Associates;
- (b) at all times when carrying out the AW Activities on the AW Site do so:
 - (1) in an environmentally responsible manner; and
 - (2) in accordance with Best Industry Practices,so as to protect the Environment and take all reasonable and practicable measures to prevent or minimise adverse impacts on the Environment;



- (c) manage and be responsible for the handling and proper disposal or removal of all waste, rubbish, debris, redundant materials, spoil and Industrial Waste produced by the D&C Subcontractor or its Associates in carrying out the AW Activities in accordance with Best Industry Practices, all relevant Approvals and the Draft Project Agreement;
- (d) comply with all directions by the State regarding the removal from the AW Site and disposal of any Industrial Waste or Hazardous Substance produced by the D&C Subcontractor or its Associates in carrying out the AW Activities; and
- (e) not cause or contribute to any Pollution or Contamination when carrying out the AW Activities on the AW Site.

5.3 Contamination

The D&C Subcontractor must Remediate, to the standard required by and in accordance with, the Law and the Environmental Requirements, any Contamination which is caused or contributed to by the D&C Subcontractor in the carrying out of the AW Activities on the AW Site.

5.4 Heritage Bonds

- (a) The D&C Subcontractor acknowledges and agrees that Project Co's obligations under the PS&TR includes the reinstatement of certain items of heritage significance.
- (b) Within 14 Business Days of the Commencement Date, the D&C Subcontractor must provide:
 - (1) to each Heritage Bond Beneficiary, the relevant Heritage Bond; and
 - (2) to the State, a copy of the relevant Heritage Bond.
- (c) The D&C Subcontractor must monitor the credit rating of the current issuer of each Heritage Bond.
- (d) If at any time an issuer of a Heritage Bond provided by the D&C Subcontractor in accordance with this Deed:
 - (1) ceases to have the Required Rating or ceases to have a current licence issued by the Australian Prudential Regulation Authority (or both); or
 - (2) ceases to have the Required Rating or ceases to have a current licence issued by the Australian Prudential Regulation Authority (or both) and at that time three out of the four Major Australian Banks do not have the Required Rating,the D&C Subcontractor must:
 - (3) if clause 5.4(d)(1) applies, provide a replacement Heritage Bond which meets the Required Rating and the other requirements of this Deed; or
 - (4) if clause 5.4(d)(2) applies, provide a replacement Heritage Bond which is from an issuer which has a rating equal to or higher than the second highest rated Major Australian Bank and otherwise complies with the requirements of this Deed,within 15 Business Days after the date of such event occurring.
- (e) Where clause 5.4(d)(4) applies, the D&C Subcontractor must monitor the credit rating of the Major Australian Banks and provide a replacement Heritage Bond



from an issuer which has the Required Rating, within 30 Business Days after any three of the Major Australian Banks regains a rating equal to or greater than the Required Rating.

- (f) Subject to clause 5.4(g), the D&C Subcontractor may, at any time, provide to a Heritage Bond Beneficiary a replacement Heritage Bond for any one or more Heritage Bonds in circumstances where the D&C Subcontractor wishes to change the identity of the issuer of the Heritage Bond.
- (g) Any replacement Heritage Bond must comply in all respects with the requirements of this Deed.
- (h) The D&C Subcontractor must give the relevant Heritage Bond Beneficiary and the State at least 10 Business Days' prior notice of the time when it proposes to provide a replacement Heritage Bond.
- (i) The D&C Subcontractor must, no later than 50 Business Days before the expiry of a Heritage Bond provide a replacement Heritage Bond in favour of the relevant Heritage Bond Beneficiary, in the form and for the amount of the Heritage Bond it is replacing and which otherwise complies in all respects with the requirements of this Deed.
- (j) The D&C Subcontractor must repeat compliance with clause 5.4(i) at all times until the earlier of the Date of Handback of the Returned Works to which the relevant Heritage Bond relates.

6 Interim arrangements between the parties

6.1 Acknowledgements

The parties acknowledge that as at the Commencement Date:

- (a) the State and Project Co will not have appointed the Independent Reviewer for the Project. Clause 6.2 applies until the appointment of the Independent Reviewer;
- (b) the CYP Consortium and the Package Contractors will not have entered into the Coordination and Interface Deed Poll. Clause 6.4 applies until execution of the Coordination and Interface Deed Poll;
- (c) the Joint Coordination Committee and the JCC Systems Integration Team will not have been established. Clause 6.5 applies until the Joint Coordination Committee and the JCC Systems Integration Team have been established; and
- (d) the CYP Consortium and each of the Tram Franchisee Interface Party and the Train Franchisee Interface Party will not have entered into the Rail Franchisee Cooperation Agreements. Clause 6.6 applies until execution of the Rail Franchisee Cooperation Agreements.

6.2 Period prior to appointment of the Independent Reviewer

Prior to the appointment of the Independent Reviewer in accordance with the Independent Reviewer Deed of Appointment (Advanced Works):

- (a) the parties agree to work together collaboratively and proactively in respect of the AW Activities and the AW Activities Program;
- (b) the parties will meet regularly, or when reasonably requested by the State, to:

- (1) make arrangements for procuring relevant third party stakeholders (including those contemplated by clause 19.1(b) of the Draft Project Agreement and any others nominated by either the State or the D&C Subcontractor (each acting reasonably)); and
 - (2) agree detailed timetables for the conduct of meetings, presentations and any agreed design review processes.
- (c) The D&C Subcontractor must procure that the CYP Consortium attends meetings under this clause 6.2 when reasonably requested by the State.

6.3 Period following appointment of the Independent Reviewer

- (a) The parties acknowledge and agree:
- (1) to use their best endeavours to appoint the Independent Reviewer on or before 22 September 2017; and
 - (2) in the event that the Independent Reviewer is not appointed on or before 22 September 2017, the State will perform the services of the Independent Reviewer consistent with, and until appointment of the Independent Reviewer under, the Independent Reviewer Deed of Appointment (Advanced Works), and any such services undertaken by the State will be deemed to have been undertaken by the Independent Reviewer for the purposes of this Deed and the Executed Project Agreement.
- (b) The D&C Subcontractor will be entitled to submit:
- (1) the Design Packages listed in Schedule 2 as Accelerated Design Packages (**Accelerated Design Packages**) in accordance with the Accelerated Design Review Process; and
 - (2) any other Design Packages in accordance with the terms of the Draft Project Agreement,
- for review and certification by the Independent Reviewer (or the State in accordance with clause 6.3(a)(2)).
- (c) Each Design Package that is certified and any services undertaken by the Independent Reviewer under this Deed will be deemed to have been certified or undertaken under the Executed Project Agreement (once Financial Close is achieved).

6.4 Period prior to execution of the Coordination and Interface Deed Poll

Prior to execution of the Coordination and Interface Deed Poll:

- (a) the parties agree to work together collaboratively and proactively with the Package Contractors; and
- (b) the parties will attend and participate in technical working groups and meetings with the Package Contractors where requested and the D&C Subcontractor must procure such meetings when requested by the State.

6.5 Period prior to establishment of Joint Coordination Committee

Prior to the establishment of the Joint Coordination Committee and the JCC Systems Integration Team:



- (a) the parties agree to work together collaboratively and proactively with the parties that are anticipated to be members of the Joint Coordination Committee, as notified by the State to the D&C Subcontractor; and
- (b) the parties will attend and participate in technical working groups and meetings with the parties that are anticipated to be members of the Joint Coordination Committee where requested.

6.6 Period prior to execution of the Rail Franchisee Cooperation Agreements

Prior to the execution of the Rail Franchisee Cooperation Agreements the D&C Subcontractor agrees to take into account any reasonable comments of the Rail Franchisees where relevant and to address such comments to the reasonable satisfaction of the Rail Franchisees.

7 Carrying out the AW Activities

7.1 Progress

The D&C Subcontractor must diligently progress the carrying out of the AW Activities in accordance with the Draft PS&TR.

7.2 Fit for purpose

The D&C Subcontractor must carry out the AW Activities so that, on the date of termination or expiry of this Deed, the AW Activities are fit for the intended purposes, functions, uses and requirements as specified in or reasonably inferred from this Deed :

- (a) taking into account the completeness of the AW Activities on the date of termination or expiry; and
- (b) provided those intended purposes, functions, uses and requirements are carried out in the manner contemplated by the design for the AW Activities.

7.3 Accelerated Design Packages

To the extent that the AW Activities include Accelerated Design Packages, the parties agree to comply with the Accelerated Design Review Process, which applies exclusively to the Accelerated Design Packages.

7.4 AW Activities Program

- (a) The parties acknowledge and agree that:
 - (1) the attachment of the AW Activities Program does not impose any obligation on the D&C Subcontractor; and
 - (2) the AW Activities Program sets out works and services beyond the scope of the AW Activities set out in Schedule 2.
- (b) The D&C Subcontractor must give notice to the State:
 - (1) immediately upon becoming aware of any proposed or likely material departure from the AW Activities Program; and

- (2) in any event before materially departing from the AW Activities Program.

8 Progress and Reporting

- (a) The D&C Subcontractor must provide the State with a monthly report on the progress, value and status of the performance of the AW Activities in accordance with clause 8(b).
- (b) Reports provided to the State under clause 8(a) must be reasonably detailed and include:
 - (1) details of the AW Activities performed;
 - (2) the status of the AW Activities Program;
 - (3) value of the AW Activities completed and forecast against the Projected Budget; and
 - (4) any other information reasonably requested by the State.
- (c) The D&C Subcontractor must attend and present at progress meetings regarding the AW Activities as reasonably requested by the State.
- (d) Meetings requested by the State under clause 8(c) must be attended by representatives of the D&C Subcontractor who have:
 - (1) the knowledge and authority to respond to queries raised by the State's Representative and to propose solutions to those queries; and
 - (2) the authority to make decisions which are binding on the D&C Subcontractor.

9 Payment for AW Activities

9.1 The State's payment obligation

- (a) The State must pay the D&C Subcontractor the AW Fee in accordance with this Deed.
- (b) The AW Fee is payable to the D&C Subcontractor in respect of the execution of the AW Activities and all obligations that are performed by the D&C Subcontractor in accordance with this Deed.
- (c) Payments in respect of the AW Fee made in accordance with this clause 9:
 - (1) must not exceed the AW Cap for the relevant month, and the D&C Subcontractor has no entitlement to claim any amounts in connection with this Deed, whether through a progress payment claim pursuant to this clause 9 or otherwise, in excess of the AW Cap for the relevant month;
 - (2) include all of the D&C Subcontractor's costs, expenses, margin and overhead that it may incur in executing the AW Activities and its other obligations under the this Deed; and
 - (3) are exclusive of GST.



9.2 State approval

- (a) Subject to the termination arrangements in clause 3 and this clause 9.2, the D&C Subcontractor has no entitlement to claim any amounts in connection with this Deed, whether through a Monthly Statement pursuant to this clause 9 or otherwise, in excess of the Monthly Aggregate Amount for the month of November (as set out in the Projected Budget) without the prior written approval of the State.
- (b) Notwithstanding clause 9.2(a), the D&C Subcontractor will be under no obligation to continue to perform all or part of the AW Activities under this Deed after 30 November 2017 until the date on which such approval under clause 9.2(a) is notified by the State.
- (c) The parties acknowledge and agree the following:
 - (1) they are working towards achieving Financial Close in respect of the Project on or before 15 December 2017;
 - (2) without limiting the termination arrangements in clause 3, if the D&C Subcontractor does not receive the approval contemplated by clause 9.2(a) from the State on or before 30 November 2017 (and which approval must cover amounts in the Projected Budget for the period which reflects the then current anticipated date for Financial Close):
 - (A) except to the extent any breach by the D&C Contractor of a material obligation caused the delay, the State will pay the D&C Subcontractor for any holding costs (including the cost of personnel, consultants and office premises) being the costs incurred in respect of the AW Activities arising from the D&C Subcontractor suspending all or part of the AW Activities due to the delay in receiving the above approval, but capped at [not disclosed] per [not disclosed], such amounts to be claimed (including reasonable supporting documentation) 5 Business Days before the end of each calendar month and paid by the State within 15 Business Days of receiving both a claim and a Tax Invoice; and
 - (B) any delay in receiving the above approval may delay the Project and may impact on the D&C Subcontract Price, and the parties will in good faith discuss any reasonable cost and time adjustments (if any) that may need to be reflected in the Executed Project Agreement as a result.

9.3 First Tax Invoice

- (a) Within 3 Business Days after the Commencement Date, the D&C Subcontractor may submit a First Tax Invoice in a form acceptable to the State and in the amount of [not disclosed] and which will not be subject to the requirements of clauses 9.4 to 9.7.
- (b) The State must pay the D&C Subcontractor the amount of the First Tax Invoice within 3 Business Days following the submission of a First Tax Invoice in accordance with clause 9.3(a).

9.4 Statutory declaration with Monthly Statements

- (a) By the date that is 5 Business Days before the end of each calendar month, the D&C Subcontractor must submit to the Certifier:



- (1) a monthly statement in the form agreed between the D&C Subcontractor and the State (acting reasonably) (**Monthly Statement**);
 - (2) written confirmation from the D&C Subcontractor that no wages are due and owing by the D&C Subcontractor in respect of the AW Activities for the period to which the previous Monthly Statement relates; and
 - (3) a statutory declaration which:
 - (A) states that all amounts due and payable by the D&C Subcontractor to any Subcontractors in respect of the period which is the subject of the previous Monthly Statement, which are not in dispute, have been paid by the D&C Subcontractor; or
 - (B) where an amount has not been paid, states the reasons for such non-payment together with supporting documentation.
- (b) The Monthly Statement must include the following information:
- (1) a breakdown of the value of the AW Activities performed under this Deed, showing separately the value of the AW Activities performed:
 - (A) since the date this Deed commenced; and
 - (B) since the last Monthly Statement submitted by the D&C Subcontractor,up to and including the date of the Monthly Statement, and as against the AW Cap;
 - (2) the amount previously paid to the D&C Subcontractor in respect of the performance of the AW Activities under this Deed and the corresponding net amount that may still be claimed in accordance with the AW Cap; and
 - (3) the value of any items of Key Plant and Equipment for which payment is claimed in the relevant month in accordance with clause 10, including:
 - (A) a description of, and the amount claimed for, each item;
 - (B) the information required by clause 10; and
 - (C) details of any item for which payment has previously been claimed.
- (c) The Certifier may require the D&C Subcontractor to provide further information in a Monthly Statement if, in its reasonable opinion, the information provided is not adequate for payment to be authorised.

9.5 Payment Certificates

- (a) Within 5 Business Days after receipt of a Monthly Statement which complies with the requirements of clause 9.4 and in respect of which the D&C Subcontractor is not required to provide further information pursuant to clause 9.4(c), the Certifier must issue a Payment Certificate to the D&C Subcontractor identifying the Monthly Statement to which it relates and certifying:
 - (1) the amount payable by the State to the D&C Subcontractor in respect of that Monthly Statement, which must not exceed the AW Cap for the



relevant month, on account of the AW Activities which were performed in the month to which the Monthly Statement relates; and

- (2) any amounts claimed that are not payable by the State to the D&C Subcontractor, including reasons why those amounts are not payable,

(Payment Certificate).

- (b) The D&C Subcontractor must issue the State with a Tax Invoice for an amount equal to the amount certified in the Payment Certificate as due to (or an invoice setting out the amount due from) the D&C Subcontractor, and any other documentation relating to that Payment Certificate necessary for the State to be able to claim any applicable GST or have payment of any GST recognised under the GST Law, within 3 Business Days after the Payment Certificate is issued under clause 9.5(a), but in any case no later than the last day of the month in which the relevant Payment Certificate is issued, in order to ensure that timing differences in relation to GST are minimised.
- (c) The State has no liability in respect of GST under a Payment Certificate until the D&C Subcontractor has issued a Tax Invoice and any other documentation in accordance with clause 9.5(b).

9.6 Payment

- (a) Within 10 Business Days after the provision by the D&C Subcontractor of both a Monthly Statement and a Tax Invoice in accordance with clause 9.5(b), the State must pay the D&C Subcontractor the amount stated as payable in the referable Payment Certificate.
- (b) Any Payment Certificate or payment under this clause 9.6 is on account only and will not constitute evidence of approval or acceptance of the work the subject of the Payment Certificate or payment.
- (c) The Certifier may at any time amend or modify any Payment Certificate to correct any error or miscalculation in any previous Payment Certificate, provided that the Certifier provides the D&C Subcontractor and the State (if applicable) with written reasons for any amendment or modification of the Payment Certificate.
- (d) The D&C Subcontractor acknowledges and agrees that, if Financial Close occurs within the month when the Monthly Statement is issued:
 - (1) payment for the referable month will be made on Financial Close pursuant to the Financial Close Adjustment Protocol; and
 - (2) the State's obligation to pay the D&C Subcontractor, in accordance with this clause 9, is deemed to be met.

9.7 Payment Certificate adjustments

The Certifier must not certify an amount payable by the State in excess of, and the State will only be obliged to pay the D&C Subcontractor the lesser of:

- (a) the amount, which when added to all previous amounts paid in respect of the AW Fee, equals the Aggregate Monthly Amount for the relevant month plus any amount claimable under clause 3.3(c); and
- (b) the amount certified by the Certifier under clause 9.5(a) as being payable by the State on that date.

10 Payment for Key Plant and Equipment

- (a) The D&C Subcontractor is only entitled to submit a Monthly Statement which seeks payment in respect of an item of Key Plant and Equipment where:
- (1) the contract entered into between the D&C Subcontractor, or a member of the CYP Consortium, and the supplier of the Key Plant and Equipment contains a provision that enables the novation of such contract to the State if this Deed is terminated or otherwise comes to an end other than in accordance with clause 3.1(b)(1);
 - (2) the State has been provided with an executed copy of such contract and is satisfied that the condition precedent in clause 10(a)(1) is satisfied; and
 - (3) either:
 - (A) the value of the Key Plant and Equipment claimed in all Monthly Statements does not exceed in aggregate [not disclosed]; or
 - (B) the value of the Key Plant and Equipment claimed in all Monthly Statements exceeds in aggregate [not disclosed] and the D&C Subcontractor has delivered to the State a Performance Bond with a face value equal to the aggregate value of all such Key Plant and Equipment which at the date of the relevant Monthly Statement exceeds [not disclosed].
- (b) The State must return to the D&C Subcontractor any Performance Bond provided under clause 10(a)(3)(B) on the earlier of:
- (1) to the extent that:
 - (A) the D&C Subcontractor has granted a separate security interest over each item of Key Plant and Equipment in favour of the State; and
 - (B) the D&C Subcontractor has done all things the State considers necessary to ensure that the State's Security Interests in the Key Plant and Equipment are enforceable, perfected, effective and take priority over all other Security Interests, including executing and procuring any relevant secured parties execute a deed of priority to give the State's Security Interest first ranking priority over the Key Plant and Equipment,delivery of the Key Plant and Equipment to the AW Site;
 - (2) Financial Close; and
 - (3) subject to compliance with clause 3.3(a)(1), the termination or expiry of this Deed other than in accordance with clause 3.1(b)(1).

11 Security of payment

- (a) This clause 11 applies only if the Security of Payment Act applies to this Deed.
- (b) The parties agree that for the purposes of the Security of Payment Act:



- (1) the date prescribed by clause 9.4(a) is, for the purposes of section 9(2) of the Security of Payment Act, the 'reference date';
- (2) a reference to:
 - (A) a Monthly Statement issued under clause 9.4 is a reference to a "payment claim"; and
 - (B) a Payment Certificate issued under clause 9.5 is a reference to a "payment schedule";as those terms are used in the Security of Payment Act;
 - (C) a payment claim submitted to the Certifier pursuant to clause 9.4 is received by the Certifier as agent of the State;
 - (D) unless otherwise notified to the D&C Subcontractor by the State in writing, the Certifier will issue Payment Certificates and carry out all other functions of the State under the Security of Payment Act as the agent of the State.
- (c) The Certifier must ensure that the Payment Certificate satisfies the requirements of a payment schedule as defined in the Security of Payment Act;
- (d) A failure by the Certifier to set out in a payment schedule an amount which the State is entitled to retain, deduct, withhold or set off from the amount which would otherwise be payable to the D&C Subcontractor by the State or its Associates will not prejudice the State's right to subsequently exercise that right to retain, deduct, withhold or set off.
- (e) For the purpose of section 12 of the Security of Payment Act a progress payment is due and payable in accordance with clause 9.6.
- (f) Nothing in this clause 11 will preclude any party from disputing any amounts that are certified by the Certifier as due from one party to the other.
- (g) If the D&C Subcontractor makes an adjudication application under the Security of Payment Act, the authorised nominating authorities for the purpose of section 18(3)(b) of the Security of Payment Act will be the Resolution Institute (Victorian Chapter), Rialto Adjudications Pty Ltd and Adjudicate Today Pty Limited.
- (h) The D&C Subcontractor shall:
 - (1) ensure that a copy of any written communication it delivers or arranges to deliver to a Subcontractor regarding adjudication, review adjudication, or a payment dispute under the Security of Payment Act is provided to the State at the same time;
 - (2) promptly and without delay give the State a copy of any written communication regarding adjudication or review adjudication under the Security of Payment Act, which the D&C Subcontractor receives from a Subcontractor; and
 - (3) require each Subcontractor promptly and without delay, to give the State a copy of any written communication regarding adjudication or review adjudication under the Security of Payment Act, which the Subcontractor receives from another party.
- (i) The State may in its absolute discretion (including where the State becomes aware that a Subcontractor is entitled to suspend work which forms part of work under this Deed pursuant to the Security of Payment Act) pay out of any monies due or to become due to the D&C Subcontractor any monies owing by the D&C Subcontractor to a Subcontractor in relation to the execution of work under this Deed.



12 AW Performance Bond

12.1 Provision of AW Performance Bond

- (a) On the Commencement Date, the D&C Subcontractor must provide to the State the AW Performance Bond, comprising one or more Performance Bonds:
 - (1) with a face value equal to [not disclosed];
 - (2) which must expire no earlier than 30 Business Days after the Financial Close Longstop Date; and
 - (3) in favour of the State.
- (b) If Financial Close has not been achieved by 30 November 2017, then within a further 5 Business Days, the D&C Subcontractor must provide to the State additional performance bonding comprising one or more Performance Bonds:
 - (1) with a face value equal to [not disclosed];
 - (2) which must expire no earlier than 30 Business Days after the Financial Close Longstop Date; and
 - (3) in favour of the State.

12.2 Release

Subject to the State's right to draw down on the AW Performance Bond, the State must release the AW Performance Bond on the earlier of:

- (a) 10 Business Days after Financial Close; and
- (b) 20 Business Days after the date of termination of the Deed other than in accordance with clause 3.1(b)(1), subject to any rights the State may have under this Deed to call on the AW Performance Bond in respect of events prior to or resulting in the termination of this Deed.

12.3 Replacement following change in Required Rating

- (a) The D&C Subcontractor must monitor the credit rating of the current issuer of each Performance Bond.
- (b) If at any time an issuer of a Performance Bond provided by the D&C Subcontractor in accordance with this Deed:
 - (1) ceases to have the Required Rating or ceases to have a current licence issued by APRA (or both); or
 - (2) ceases to have the Required Rating or ceases to have a current licence issued by APRA (or both) and at that time three out of the four Major Australian Banks do not have the Required Rating,the D&C Subcontractor must:
 - (3) if clause 12.3(b)(1) applies, provide a replacement Performance Bond which meets the Required Rating and the other requirements of this Deed; or
 - (4) if clause 12.3(b)(2) applies, provide a replacement Performance Bond which is from an issuer which has a rating equal to or higher than the second highest rated Major Australian Bank and otherwise complies with the requirements of this Deed,



within 15 Business Days after the date of such event occurring.

- (c) On receipt of the replacement Performance Bond in accordance with clause 12.3(b), the State must return the applicable Performance Bond in exchange for the replacement Performance Bond.
- (d) Where clause 12.3(b)(4) applies, the D&C Subcontractor must monitor the credit rating of the Major Australian Banks and provide a replacement Performance Bond from an issuer which has the Required Rating, within 30 Business Days after any three of the Major Australian Banks regains a rating equal to or greater than the Required Rating.

12.4 No injunction

The D&C Subcontractor must not take any steps to injunct or otherwise restrain:

- (a) the issuer of the AW Performance Bond from paying the State pursuant to the AW Performance Bond;
- (b) the State from making a demand under the AW Performance Bond or receiving payment under the AW Performance Bond in accordance with this Deed; or
- (c) the State from using the proceeds of the AW Performance Bond in accordance with this Deed.

12.5 Recourse

The State may draw down on all or part of the AW Performance Bond:

- (a) to satisfy any amount which is due and payable by the D&C Subcontractor to the State which has not been paid within 5 Business Days of receipt of a demand;
- (b) if the D&C Subcontractor is in breach of this Deed, provided such breach remains unremedied 5 Business Days or more after the date of written notice from the State;
- (c) if an Insolvency Event occurs in respect of the D&C Subcontractor;
- (d) if the State becomes entitled to exercise a right under this Deed in respect of any failure by the D&C Subcontractor to perform its obligations under this Deed, including on termination of this Deed; or
- (e) if the D&C Subcontractor has failed to provide or replace any AW Performance Bond when required under this Deed.

12.6 Interest and no trust

- (a) The State is not obliged to pay the D&C Subcontractor interest on the AW Performance Bond or the proceeds of the AW Performance Bond.
- (b) If the State draws down on the AW Performance Bond, the proceeds received are not held on trust for the D&C Subcontractor.

13 Insurance

- (a) Each party will procure and maintain the following insurance policies during the term of this Deed:



(1) State-procured insurances:

| Insurance | Minimum Requirements |
|---|----------------------|
| Public and Products Liability insurance | [not disclosed] |
| Contract works insurance | [not disclosed] |

(2) D&C Subcontractor-procured insurances:

| Insurance | Minimum Requirements | | |
|----------------------------------|---|---|-------------------------|
| | Bouygues Construction Australia Pty Ltd | Lendlease Engineering Pty Limited | John Holland Pty Ltd |
| Professional Indemnity insurance | [not disclosed] | [not disclosed] | [not disclosed] |
| plant and equipment insurance | [not disclosed] | [not disclosed] | [not disclosed] |
| Workers Compensation insurance | [not disclosed] | [not disclosed] | [not disclosed] |
| motor vehicle insurance | [not disclosed] | [not disclosed] | [not disclosed] |

(b) The State acknowledges and agrees that, subject to clause 13(c), the D&C Subcontractor may satisfy the requirements of clause 13(a) of this Deed by having corporate insurance policies, described in clause 13(a)(2), in place.

(c) If:

- (1) the D&C Subcontractor provides any of the insurances required under clause 13(a)(2) by having corporate insurance policies in place pursuant to clause 13(b); and
- (2) the amount available for recovery under the relevant type of insurance pursuant to clause 13(b) is at any time less than the sum required to be insured under clause 13(a),



- the D&C Subcontractor must immediately procure additional insurance to cover the difference.
- (d) The D&C Subcontractor must:
- (1) not discontinue or cancel any insurance required under clause 13(a)(2), or allow any such insurance to lapse, where this would result in the relevant insurance not meeting the requirements of this Deed, without the prior approval of the State;
 - (2) not do, or permit, or omit to do, anything which prejudices any insurance required under clause 13(a)(2);
 - (3) promptly rectify anything which might, if not rectified, prejudice any insurance required under clause 13(a)(2); and
 - (4) comply at all times with the terms of any insurance required under clause 13(a)(2).
- (e) The D&C Subcontractor is not relieved from and remains fully responsible for its obligations in accordance with this Deed regardless of whether the insurances required under clause 13(a)(2) respond or fail to respond to any Claim and regardless of the reason why any such insurance responds or fails to respond.
- (f) The State must ensure that the State-procured insurances required by clause 13(a) name the D&C Subcontractor, Capella Capital and their Associates (as applicable) as insured parties.

14 Representations and warranties

14.1 State's representations and warranties

The State represents and warrants for the benefit of the D&C Subcontractor that:

- (a) the State has:
- (1) the power to execute this Deed and does so through the Coordinator-General of the Major Transport Infrastructure Program for and on behalf of the Crown in right of the State of Victoria; and
 - (2) the power to deliver and carry out its obligations under this Deed, and all necessary action has been taken to authorise that execution, delivery and performance;
- (b) this Deed constitutes a valid and legally binding obligation on it in accordance with its terms; and
- (c) the execution, delivery and performance of this Deed does not violate any Law to which the State is subject.

14.2 D&C Subcontractor's representations and warranties

The D&C Subcontractor represents and warrants for the benefit of the State that:

- (a) it has the power to execute, deliver and perform its obligations under this Deed;
- (b) the execution, delivery and performance of this Deed does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets; and



- (c) this Deed constitutes a valid and legally binding obligation on it in accordance with its terms.

14.3 Repetition of representation and warranties

Each representation and warranty given by the D&C Subcontractor under this Deed:

- (a) is made on the Commencement Date; and
- (b) will be deemed to be repeated each day during the period from the Commencement Date until the date of termination of this Deed,

with reference to the facts and circumstances then subsisting.

15 Representatives

- (a) The D&C Subcontractor appoints the person set out in Schedule 1 as its representative for the purposes of this Deed (the **D&C Subcontractor Representative**).
- (b) The State appoints the person set out in Schedule 1 as its representative for the purposes of this Deed (the **State Representative**).
- (c) Each party must promptly notify the other of any change to their representative.

16 D&C Subcontractor Liability

16.1 Damage to third party property

- (a) The D&C Subcontractor must not interfere with, obstruct, damage or destroy any property on, in or in the vicinity of the AW Site other than in accordance with its obligations under this Deed.
- (b) If the D&C Subcontractor breaches clause 16.1(a), it must:
 - (1) promptly repair any such obstruction, damage or destruction; and
 - (2) reasonably compensate the affected person for any loss suffered in connection with such interference, obstruction, damage or destruction (where the D&C Subcontractor has a legal liability to do so).
- (c) The D&C Subcontractor's obligation to compensate a Metro Tunnel Package Contractor under clause 16.1(b) will be reduced to the extent that the Metro Tunnel Package Contractor is actually indemnified under any Insurance required to be effected and maintained under this Deed.

16.2 Indemnity for D&C Subcontractor breach

The D&C Subcontractor must indemnify the State and its Associates against any Claim or Liability in connection with any breach by the D&C Subcontractor or any of its Associates under this Deed.

16.3 General indemnity

- (a) The D&C Subcontractor must indemnify:



- (1) the State and its Associates against any Claim or Liability arising in connection with loss or damage to or of the Relevant Infrastructure; and
- (2) the State and its Associates in respect of:
 - (A) loss or damage to or of (whether total or partial) any real or personal property including property belonging to the State and its Associates that is not Relevant Infrastructure;
 - (B) loss of use of (whether total or partial) any real or personal property including property belonging to the State and its Associates that is not Relevant Infrastructure;
 - (C) any injury to, illness or death of, persons; and
 - (D) any Claims brought against the State or any of its Associates by a third party,

arising in connection with any act or omission of the D&C Subcontractor or its Associates, in connection with the performance of the AW Activities pursuant to this Deed.

- (b) The indemnity in clause 16.3(a)(2)(D) will not apply to the extent the act or omission is an act or omission of the D&C Subcontractor or any of its Associates which is authorised or permitted under this Deed.
- (c) The D&C Subcontractor's Liability under clause 16.3(a)(2)(A) (to the extent the Liability is for loss of use arising out of the loss or damage) and clause 16.3(a)(2)(B) will be limited to the greater of insurance proceeds:
 - (1) payable to the D&C Subcontractor under any insurance which is required to be effected and maintained under this Deed for such loss of use in respect of the event or circumstances giving rise to the loss of use; and
 - (2) which would have been payable to the D&C Subcontractor under any insurance which is required to be effected and maintained under this Deed for such loss of use, in respect of the event or circumstances giving rise to the loss of use but for a failure by the D&C Subcontractor to comply with this Deed or a failure by the D&C Subcontractor, Capella Capital or any of their Associates to comply with the terms of those insurances.

16.4 Release

The D&C Subcontractor releases, and must procure that each of its Associates releases, each of the parties indemnified by the D&C Subcontractor in accordance with clause 16.3 from any Claim or Liability for loss, damage, death, illness or injury to the extent caused or contributed to by any of the AW Activities or any act or omission of the D&C Subcontractor or any of its Associates in connection with the performance of the AW Activities pursuant to this Deed.

16.5 Limits on D&C Subcontractor liability

- (a) Subject to clause 16.5(b), the D&C Subcontractor's maximum aggregate Liability to the State or any of its Associates (or any party who has the benefit of an indemnity or other promise given by the D&C Subcontractor arising under or in connection with this Deed) in connection with the AW Activities or this Deed:
 - (1) in contract;



- (2) in tort (including negligence);
- (3) under any statute (to the extent it is possible to exclude such Liability);
and
- (4) otherwise at Law,

and irrespective of how it arises, is limited in aggregate to the General Liability Cap.

- (b) The General Liability Cap does not apply to exclude or limit the Liability of the D&C Subcontractor to the extent it:
- (1) is an insured Liability in accordance with an insurance required under this Deed, in respect of an amount equal to any insurance proceeds payable to the D&C Subcontractor;
 - (2) is a Liability which would have been paid or payable under an insurance required under this Deed but for:
 - (A) a failure by the D&C Subcontractor to comply with this Deed;
 - (B) a failure by the D&C Subcontractor or any of its Associates to claim under the relevant insurances; or
 - (C) a failure by the D&C Subcontractor or any of its Associates to comply with the terms of the relevant insurance (including the claims procedure under the relevant insurance),up to the limits of indemnity required by this Deed;
 - (3) is Liability arising from:
 - (A) any third party property loss or damage; or
 - (B) any injury to, disease or death of a person,caused or contributed to by the D&C Subcontractor or any of its Associates;
 - (4) is Liability arising from criminal acts, fraud or wilful misconduct on the part of the D&C Subcontractor or any of its Associates;
 - (5) arises out of or is a Liability that cannot be limited or excluded at Law;
 - (6) is a Liability arising from breach by the D&C Subcontractor of the D&C Subcontractor's obligations under clauses 56 or 57 of the Draft Project Agreement as it forms part of this Deed;
 - (7) Liability for any deductible or any additional cost or expense payable under any insurances with respect to, connected with, caused by or arising out of any breach of this Deed or the relevant insurances by the D&C Subcontractor or any of its Associates;
 - (8) is any statutory fine or civil penalty arising from any breach of Law by the D&C Subcontractor or any of its Associates; and
 - (9) arises out of the abandonment of the whole or a substantial part of the AW Activities by the D&C Subcontractor or its Associates,
- and these amounts are not included in assessing the D&C Subcontractor's Liability for the purposes of clause 16.5(a).



16.6 Third party claim under indemnity

If a Claim is made by a third party against the State or any of its Associates or an Indemnified Person in respect of which the D&C Subcontractor is required to indemnify in accordance with this Deed, to the extent that the State's insurers in connection with such a Claim agree, the State must:

- (a) do all things reasonably required by the D&C Subcontractor in negotiating, defending or otherwise taking action or proceedings in respect of that Claim; and
- (b) not settle that Claim with the claimant without the D&C Subcontractor's involvement in and agreement to any such settlement.

16.7 Continuing obligation

- (a) Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the parties.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity under this Deed.

16.8 Responsibility as if owner

The D&C Subcontractor acknowledges and agrees that it has responsibilities to third parties in connection with persons, property and other aspects of the Project under the other provisions of this Deed which may be the same as it would have if it held the freehold title to the AW Site.

17 No assignment

The D&C Subcontractor must not, without the State's prior written approval, assign, novate, charge or encumber this Deed or any part of it or any right, benefit, money or interest under this Deed.

18 Entire agreement

To the extent permitted by Law and in relation to its subject matter, this Deed:

- (a) embodies the entire understanding of the parties and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior agreement of the parties, including any prior correspondence in connection with the subject matter, and:
 - (1) the letter dated 1 September 2017 from [not disclosed] to [not disclosed] and [not disclosed] in respect of the lease 80 Collins Street North Tower, Melbourne; and
 - (2) the letter dated 7 September 2017 from [not disclosed] to [not disclosed] in respect of the CBD North Design Works.



Schedule 1

Notice details

| | |
|----------------------|-----------------|
| State Representative | [not disclosed] |
| Address | [not disclosed] |
| Attention | [not disclosed] |
| Phone | [not disclosed] |
| Email | [not disclosed] |

| | |
|-------------------------------------|-----------------|
| D&C Subcontractor Representative | [not disclosed] |
| Address | [not disclosed] |
| Attention | [not disclosed] |
| Phone | [not disclosed] |
| Mobile | [not disclosed] |
| Email | [not disclosed] |



Schedule 2

AW Activities

Refer to separate document.

AW Activities

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Attachment 1

AW Activities Scope

Attachment 2

Design Packages

Attachment 3

Management Plans

Attachment 4

Geotechnical and Hydrogeological Scope

1 Overview

1.1 Purpose

Without limiting the D&C Subcontractor's obligations under this Deed, this Schedule 2 sets out the things, in addition to the requirements in this Deed, which the D&C Subcontractor must do in carrying out the AW Activities.

1.2 Defined Terms

Except where expressly stated in this Schedule, all capitalised terms set out in clause 1.2 of this Deed have the same meaning when used in this Schedule and its Attachments.

2 Summary of the AW Activities

Attachment 1 to this Schedule contains an overview of the activities to be performed by the D&C Subcontractor as part of the AW Activities. Set out below is a description of the activity type and the corresponding reference in Attachment 1.

| Activity Type | Attachment 1 References |
|--|--------------------------------|
| Activities associated with Key Approvals and Development Plans | 1.1 – 1.3.4 |
| Activities associated with Design Packages and Accelerated Design Packages | 2.1 – 2.9 |
| Activities associated with preparation of Management Plans | 3.1 – 3.2 |
| Systems Engineering and Systems Assurance | 4.1 – 4.6 |
| Accreditation | 5.1 – 5.2 |
| Procurement of Key Plant and Equipment and associated activities | 6.1 – 6.2.6 |
| Community and Stakeholder Engagement | 7.1 – 7.2 |

| | |
|--|-------------|
| Insurances and Bonds | 8.1 – 8.3 |
| Project Office Accommodation | 9.1 – 9.3 |
| Geotechnical and Hydrogeology Services | 10.1 – 10.3 |
| Preparation for Construction | 11.1 – 11.6 |
| Demolition | 12.1 – 12.2 |
| Utility Relocation (including Asset owner approval and construction) | 13 |
| Project and Construction Management Resources of D&C Subcontractor | 14.1 – 14.9 |
| Project Co Costs – Key Personnel | 15 |
| Design of a combined groundwater contamination mitigation system, for the CUB plume, | 16 |

3 Clarifications to Scope of AW Activities

3.1 Activities associated with Design Packages

The D&C Subcontractor must perform the activities associated with the Design Packages and the Accelerated Design Packages set out in items 2.3 to 2.9 of Attachment 1 in accordance with Attachment 2.

3.2 Activities associated with preparation of Management Plans

The D&C Subcontractor must perform the activities associated with the preparation of Management Plans set out in item 3.1 of Attachment 1 in accordance with Attachment 3.

3.3 Geotechnical and Hydrogeological Services

- (a) The D&C Subcontractor must perform the geotechnical and hydrogeological services set out in items 10.1 to 10.3 of Attachment 1.
- (b) Attachment 4 provides indicative summary of the scope of geotechnical and hydrogeological activities to be undertaken on site.

- (c) The indicative apportionment of costs assigned, by precinct, for the performance of geotechnical and hydrogeological services set out in items 10.1 to 10.3 of Attachment 1 is as follows:

| Precinct | Percentage |
|--|-------------------|
| Western Portal | [not disclosed] |
| Western Portal to Arden Station | [not disclosed] |
| Arden Station | [not disclosed] |
| Arden Station to Parkville Station | [not disclosed] |
| Parkville Station | [not disclosed] |
| Parkville Station to CBD North Station | [not disclosed] |
| CBD North Station | [not disclosed] |
| Mined Tunnel (CBD North to CBD South) | [not disclosed] |
| CBD South Station | [not disclosed] |
| CBD South Station to Domain Station | [not disclosed] |
| Domain Station | [not disclosed] |
| Domain Station to Eastern Portal | [not disclosed] |
| Eastern Portal | [not disclosed] |

3.4 Tunnel Boring Machines

The D&C Subcontractor will procure tunnel boring machines (**TBMs**) as set out in item 6.2.1 of Attachment 1 and pursuant to the following clarifications:

- (a) four tunnel boring machines (**TBMs**) are to be procured;
- (b) the total cost of the TBMs is anticipated to be in the order of [not disclosed];

- (c) the D&C Subcontractor is preparing full tender documents to go to market which is expected to occur by late September to early October 2017;
- (d) the cost as set out in scope item 6.2.1 of Attachment 1 is approximately [not disclosed] of the total value of the TBMs plus engineering costs; and
- (e) the overall period for manufacture and shipping of the TBMs is anticipated to be approximately 14 to 16 months.

4 Key Personnel

The Key Personnel to be provided by Capella Capital under scope item 15 of Attachment 1 are as follows:

| Title | Name |
|---|-----------------|
| CYP COO (to be engaged by Capella Capital and seconded to D&C Subcontractor) | [not disclosed] |
| CYP CEO (to be engaged by Capella Capital and seconded to D&C Subcontractor) | [not disclosed] |
| CYP Strategic Communications Manager (to be engaged by Capella Capital and seconded to D&C Subcontractor) | [not disclosed] |
| CYP Stakeholder management team (to be engaged by Capella Capital and seconded to D&C Subcontractor) : | [not disclosed] |
| CYP Commercial Director | [not disclosed] |

Attachment 1

AW Activities Scope

Refer to separate document.

| Ref | WBS | Activity | Total | 1 | | 2 | | 3 | | 4 | | 5 | | 6 | | 7 | |
|----------|-------------------|--|-------|-------------|------|----------------|------|--------------|------|---------------|------|---------------|------|--------------|------|---------------|------|
| | | | | August 2017 | % | September 2017 | % | October 2017 | % | November 2017 | % | December 2017 | % | January 2018 | % | February 2018 | |
| | | | \$ | | | | | | | | | | | | | | |
| 1 | | Activities associated with Key Approvals and Development Plans | | | | | | | | | | | | | | | |
| 1.1 | | Preparation of plans, surveys and other like documents to assist the State in the procurement of Planning Scheme Amendment No 2 (as defined in the Draft Project Agreement) and the amendment to the current Project Area in accordance with the requirements of the Relevant Legislation including in each case with respect to the locations referenced in Section 1.1.1 and 1.1.2.. | | | | | | | | | | | | | | | |
| 1.1.1 | 12 and 12.5.1 | Tunnel - Parkville to CBD North | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ - |
| 1.1.2 | 12 and 12.5.1 | Stations CBD North & CBD South | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ - |
| 1.2 | 12 and 12.5.1 | The finalisation of the draft Development Plans for the Stations for submission by the State to the Minister for Planning. | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ - |
| 1.3 | | Preparation of all documents and information necessary to prepare the plans and seek the approvals identified in Sections 1.3.1 to 1.3.4 below (as applicable) in accordance with the requirements of the Key Approvals (as defined in the Draft Project Agreement): | \$ - | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - |
| 1.3.1 | | Utility relocation approvals: Note: These works have been omitted from the AW Activities on the understanding that these works will be undertaken by the Early Works Managing Contractor under the Early Works Agreement | \$ - | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - |
| 1.3.2 | | Demolition approvals Note: These works have been omitted from the AW Activities on the understanding that these works will be undertaken by the Early Works Managing Contractor under the Early Works Agreement | \$ - | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - |
| 1.3.3 | 10 | EMS, CEMP, SEIPs and Urban Design Management Plan | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ - |
| 1.3.4 | 10 | Heritage Permits & Consents | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ - |
| | | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - |
| 2 | | Activities associated with Design Packages and Accelerated Design Packages | \$ - | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - |
| 2.1 | | Finalisation of Consultancy Services Agreements for the key design and associated consultants identified in Sections 2.2 to 2.4 below. | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ - |
| 2.2 | N/A | Procurement process for engagement of the Proof Engineer | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ |
| 2.3 | 10 | Procurement process for engagement of the Independent Environmental Auditor | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ |
| 2.4 | 10 | Procurement process for engagement of the Independent Safety Auditor | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ |
| 2.5 | 12.5.1 | Undertaking feature/cadastral surveys and preparation of documents concerning same | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ |
| 2.6 | 12.5.1 | Undertaking dilapidation surveys | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ - |
| 2.7 | 12.5.1 and 12.1.1 | Mobilisation activities in preparation for commencement of activities set out in Section 2.8 | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ - |
| 2.8 | 12.5.1 | Conduct of the Accelerated Design Review Process and design review process under Schedule 25 of the Project Agreement as set out in and in accordance with Schedule 7 including preparation of the Standard Design Packages and Accelerated Design Packages as set out in Attachment 1 | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ |
| 2.9 | 12.5.1 | Engagement of Building Surveyor and management of Protection Works process | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ |
| | | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - |
| 3 | | Activities associated with preparation of Management Plans | \$ - | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - |
| 3.1 | 10 | Preparation and finalisation of Key Management Plans that are required to be submitted to State prior to Financial Close as set out in Attachment 2 (excluding Systems Engineering) | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ - |
| 3.2 | 10 | Preparation of plans for the Franchisee Cooperation Agreement | inc | | | | | | | | | | | | | | \$ - |
| 4 | | Systems Engineering and Systems Assurance | \$ - | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - |
| 4.1 | 10 | Development of Systems Engineering Management Plans. | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ - |
| 4.2 | 10 | Development of Systems Requirements Specification. | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ |
| 4.3 | 10 | Development of System Architecture Specification. | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ |
| 4.4 | 10 | Development of Sub-Systems Requirements Specification. | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ |
| 4.5 | 10 and 12.5.1 | Preparation and applications for MTM Waivers | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ |
| 4.6 | 10 | Development of and applying for Type Approvals | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ |
| | | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - |
| 5 | | Accreditation | \$ - | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - | | \$ - |
| 5.1 | 10 | Development and submission of Application for Variation to Accreditation (Rail) to support Design and Construction – including the development and issue of a project specific Rail Safety Management Plan. | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ |
| 5.2 | 10 | Finalisation and implementation of Tram Accreditation strategy. | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ | | \$ |

| Ref | WBS | Activity | Total | 1 | | 2 | | 3 | | 4 | | 5 | | 6 | | 7 | |
|--|-------------------|--|-------|------|-------------|------|----------------|------|--------------|------|---------------|------|---------------|------|--------------|------|---------------|
| | | | | % | August 2017 | % | September 2017 | % | October 2017 | % | November 2017 | % | December 2017 | % | January 2018 | % | February 2018 |
| 6 Procurement | | | | | | | | | | | | | | | | | |
| 6.1 | 12 | Development of procurement subcontract templates | | | | | | | | | | | | | | | |
| 6.2 | | Procurement of long lead items of Plant and Equipment identified in Section 6.2.1 to 6.2.5 below. | | | | | | | | | | | | | | | |
| 6.2.1 | 2.1.1 | Tunnel boring machines (x 4) | | | | | | | | | | | | | | | |
| 6.2.2 | 2.1.1 | Procurement of 2nd Hand Road headers and ancillary equipment | | | | | | | | | | | | | | | |
| 6.2.2 | 2.1.1 | Segment moulds and factory carousel equipment for the Tunnel Segment Facility; | | | | | | | | | | | | | | | |
| 6.2.3 | 2.1.1 | Tram turnouts and switches required for the tram diversions at Domain | | | | | | | | | | | | | | | |
| 6.2.4 | 3.1.6 | Piling equipment | | | | | | | | | | | | | | | |
| 6.2.5 | 3.1.6 | Diaphragm Wall equipment | | | | | | | | | | | | | | | |
| 6.2.6 | 7.1.13 | Supply of tram rail - long order | | | | | | | | | | | | | | | |
| 7 Community and Stakeholder Engagement | | | | | | | | | | | | | | | | | |
| 7.1 | 10 and 11 | Undertaking of consultation and engagement in accordance with the requirements of the PS&TR and the Proposal, including in accordance with the requirements of the Key Approvals | | | | | | | | | | | | | | | |
| 7.2 | 10 | Development of Digital Platform | | | | | | | | | | | | | | | |
| 8 Insurances and Bonds | | | | | | | | | | | | | | | | | |
| 8.1 | 12 | Provision of security in accordance with operative clauses of the Deed. | | | | | | | | | | | | | | | |
| 8.2 | 12 | Provision of corporate insurances as per operative clauses of the Deed. | | | | | | | | | | | | | | | |
| 8.3 | 12 | Heritage/Tree/Fountain Bonds | | | | | | | | | | | | | | | |
| 8.4 | | | | | | | | | | | | | | | | | |
| 9 Project Office Accomodation | | | | | | | | | | | | | | | | | |
| 9.1 | 12.1.1 and 12.2.1 | Office lease, outgoings and running costs | | | | | | | | | | | | | | | |
| 9.2 | 12.1.1 | Development of IT/BIM Systems | | | | | | | | | | | | | | | |
| 9.2 | 12.2.1 | 80 Collins Street - Pay holding Deposit on lease | | | | | | | | | | | | | | | |
| 10 Geotechnical and Hydrogeology Services | | | | | | | | | | | | | | | | | |
| 10.1 | 12.5.1 | Development of Site Investigation and Monitoring Program, Field Program Management, Data Reduction and Factual Reporting | | | | | | | | | | | | | | | |
| 10.2 | 12.5.1 | Conduct of Site investigations, Groundwater well installation and testing | | | | | | | | | | | | | | | |
| 10.3 | 12.5.1 | Conduct of Geotechnical and hydrogeological interpretation and reporting | | | | | | | | | | | | | | | |
| 11 Preparation for Construction | | | | | | | | | | | | | | | | | |
| 11.1 | 12.1.1 | Planning for and establishment of site compounds, perimeter fencing and hoarding (including design, approval and establishing) | | | | | | | | | | | | | | | |
| 11.2 | 12.1.1 | Traffic Survey and Data Collection | | | | | | | | | | | | | | | |
| 11.3 | | Conduct of Baseline monitoring and testing (All sites) in respect of the items listed in Sections 11.3.1 to 11.5. | | | | | | | | | | | | | | | |
| 11.3.1 | 12.5.1 | Ground Water | | | | | | | | | | | | | | | |
| 11.3.2 | 12.5.1 | Noise and Vibration | | | | | | | | | | | | | | | |
| 11.3.3 | 12.5.1 | Air Quality | | | | | | | | | | | | | | | |
| 11.3.4 | 12.5.1 | Contamination | | | | | | | | | | | | | | | |
| 11.4 | 12.5.1 | EMI/EMC Design and monitoring | | | | | | | | | | | | | | | |
| 11.5 | 12.5.1 | Traffic management - planning | | | | | | | | | | | | | | | |
| 11.6 | 7.1.13 | Construction of Stage 1A Domain Tram Diversion (excl. cost of rail covered in 6.2.6 above) incl. traffic management | | | | | | | | | | | | | | | |
| 12 Demolition | | | | | | | | | | | | | | | | | |
| 12.1 | | Note: Demolition works (CBD North) -> These works have been omitted from the AW Activities on the understanding that these works will be undertaken by the Early Works Managing Contractor (EWMC) under the Early Works Agreement and paid for by the State. | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |
| 12.2 | | Note: Demolition works (CBD South) These works have been omitted from the AW Activities on the understanding that these works will be undertaken by the EWMC under the Early Works Agreement and paid for by the State | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |
| | | | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |

| Ref | WBS | Activity | Total | 1 | | 2 | | 3 | | 4 | | 5 | | 6 | | 7 | |
|------|-----|---|-------|---|-------------|---|----------------|---|--------------|---|---------------|---|---------------|---|--------------|---|---------------|
| | | | | % | August 2017 | % | September 2017 | % | October 2017 | % | November 2017 | % | December 2017 | % | January 2018 | % | February 2018 |
| | | | \$ | | | | | | | | | | | | | | |
| 13 | | Utility Relocation (including Asset owner approval & construction): Note: These works have been omitted from the AW Activities on the understanding that these works will be undertaken by the EWMC under the Early Works Agreement. | | | | | | | | | | | | | | | |
| 14 | | Project/Construction Management Resources of D&C Subcontractor | | | | | | | | | | | | | | | |
| 14.1 | 12 | Project Management | | | | | | | | | | | | | | | |
| 14.2 | 12 | Design management and Approvals management | | | | | | | | | | | | | | | |
| 14.3 | 12 | Approvals/Land Management/Environmental | | | | | | | | | | | | | | | |
| 14.4 | 12 | Procurement | | | | | | | | | | | | | | | |
| 14.5 | 12 | Controls | | | | | | | | | | | | | | | |
| 14.6 | 12 | Safety | | | | | | | | | | | | | | | |
| 14.7 | 12 | Commercial/Legal Management | | | | | | | | | | | | | | | |
| 14.8 | 12 | Interface with Maintenance Subcontractor | | | | | | | | | | | | | | | |
| 14.9 | 12 | IMEP | | | | | | | | | | | | | | | |
| 15 | | Project Co Costs - Key Personnel to be provided by Capella Capital as set out in Section B of Schedule 2 | | | | | | | | | | | | | | | |
| 16 | | Design of a groundwater contamination mitigation system, for the CUB plume, that incorporates the combined requirements for the PPP Works and the Early Works activities at CBD North and undertake ongoing assessment and potential refinement of the temporary works design associated with the Franklin Street East and A'Beckett shafts, specifically relating to interpretation of ground conditions | | | | | | | | | | | | | | | |
| | | Total | | | | | | | | | | | | | | | |



Attachment 2

Design Packages

Refer to separate document.

| Design (Accelerated) ~60 in total | Package Content | Technical Inputs | Stakeholder Involvement | | | | | | | | | |
|--|--|--|-------------------------|-------------------------|-------------------------|-------------------------|-------------------------|-------------------------|---------------------------|----------|-------------------------|--|
| | | | MMRA | Rail Systems Alliance | Train Franchisee Party | Tram Franchisee Party | CityLink Manager | HCMT contractor | Metropolitan Fire Brigade | VicRoads | Relevant LGA | |
| Project Wide | | | | | | | | | | | | |
| Design Basis Reports | | | | | | | | | | | | |
| Project Wide - Basis of Design Report (Acc.Report) TAS-HWW-PW-00-PKG-AGE-500) | Design report including stakeholder and spatial inputs. | Spatial and structural inputs to summarise the basis of design. | Yes | Yes, where appropriate. | Yes, where appropriate. | Yes, where appropriate. | Yes, where appropriate. | Yes, where appropriate. | Yes, where appropriate. | No | Yes, where appropriate. | |
| Project Wide - Groundwater Control Measures Design Basis Report (Acc. Report) (TAS-COF-PW-00-PKG-CGT-121) | Hydrogeological Modelling Report Draft | Geotechnical / Hydrogeological Factual Reports. | Yes | No | No | No | No | No | No | No | No | |
| Project Wide - Primary Support Mined Caverns, Tunnels and Adits Design Basis Report (Acc.Report) (TAS-NOM-PW-00-PKG-STU-700) | Short Report. | Geotechnical Factual Reports. | Yes | No | No | No | No | No | No | No | No | |
| Western Portal | | | | | | | | | | | | |
| Preparatory Works | | | | | | | | | | | | |
| Temporary Works Site Establishment (Accelerated Design) (TAS-CYP-WP-00-PKG-CTW-111) | Short design report including sketches / drawings where required. | Spatial requirements. | Yes | No | No | No | No | No | No | No | Yes | |
| Temporary Works Service Relocations (Accelerated Design) (TAS-CYP-WP-00-PKG-CTW-112) | Short design report. Utility Adjustment Drawings. | Spatial and Asset Authority requirements. | Yes | No | No | No | No | No | Yes (fire water) | Yes | Yes | |
| Temporary Works Transport Modelling (Accelerated Design) (TAS-CYP-WP-00-PKG-XTE-211) | Short design report / memo. | Stakeholder requirements (VicRoads, LGA). | Yes | No | No | No | No | No | No | Yes | Yes | |
| Temporary Works Transport Design (Accelerated Design) (TAS-CYP-WP-00-PKG-CTW-113) | Short design report / memo. Staging and TTM signs, lines and civil works drawings. | Stakeholder requirements (VicRoads, LGA) and relevant standards. | Yes | No | No | No | No | No | No | Yes | Yes | |
| Architectural | | | | | | | | | | | | |
| Architectural - General Arrangements - Space Proofing (Acc. Design) (TAS-HWW-WP-00-PKG-AGE-560) | Design report including stakeholder and spatial inputs. General Arrangement and Section Drawings. Draft Development Application Plans. | Pedestrian Modelling and LOS, Circulation, Human Factors, VT; F&LS concept; TVS concept; M&E and Traction Power spatial inputs; RSA requirements including Room Schedules; Rail Alignment and P-way spatial inputs; initial blast and security assessment. | Yes | Yes, where appropriate. | Yes, where appropriate. | Yes, where appropriate. | No | Yes, where appropriate. | Yes, where appropriate. | No | Yes, where appropriate. | |
| Structure | | | | | | | | | | | | |
| Geotechnical Design Advice (Accelerated Design) (TAS-AAW-WP-00-PKG-CGT-301) | GIR Draft. Hydrogeological Interpretative Note. Contaminated Land Assessment Interpretative Note; - prepared specifically for this package and used as Appendices to the Structure - Early Works package. | Geotechnical Factual Reports. | Yes | No | No | No | No | No | No | No | No | |
| Arden | | | | | | | | | | | | |
| Preparatory Works | | | | | | | | | | | | |
| Temporary Works Site Establishment (Accelerated Design) (TAS-CYP-AR-00-PKG-CTW-121) | Short design report including sketches / drawings where required. | Spatial requirements. | Yes | No | No | No | No | No | No | No | Yes | |
| Temporary Works Service Relocations (Accelerated Design) (TAS-CYP-AR-00-PKG-CTW-122) | Short design report. Utility Adjustment Drawings. | Spatial and Asset Authority requirements. | Yes | No | No | No | No | No | Yes (fire water) | Yes | Yes | |
| Temporary Works Transport Modelling (Accelerated Design) (TAS-CYP-AR-00-PKG-XTE-221) | Short design report / memo. | Stakeholder requirements (VicRoads, LGA). | Yes | No | No | No | No | No | No | Yes | Yes | |
| Temporary Works Transport Design (Accelerated Design) (TAS-CYP-AR-00-PKG-CTW-123) | Short design report / memo. Staging and TTM signs, lines and civil works drawings. | Stakeholder requirements (VicRoads, LGA) and relevant standards. | Yes | No | No | No | No | No | No | Yes | Yes | |
| Architectural | | | | | | | | | | | | |
| Architectural - General Arrangements - Space Proofing (Acc Design) (TAS-HWW-AR-00-PKG-AGE-510) | Design report including stakeholder and spatial inputs. General Arrangement and Section Drawings. Draft Development Application Plans. | Pedestrian Modelling and LOS, Circulation, Human Factors, VT; F&LS concept; TVS concept; M&E and Traction Power spatial inputs; RSA requirements including Room Schedules; Rail Alignment and P-way spatial inputs; initial blast and security assessment. | Yes | Yes, where appropriate. | Yes, where appropriate. | No | No | Yes, where appropriate. | Yes, where appropriate. | No | Yes, where appropriate. | |
| Structure | | | | | | | | | | | | |

| Design (Accelerated) ~60 in total | Package Content | Technical Inputs | Stakeholder Involvement | | | | | | | | | |
|--|--|--|-------------------------|-------------------------|--|-------------------------|-------------------------|-------------------------|---------------------------|-------------------------|--------------|-------------------------|
| | | | MMRA | Rail Systems Alliance | Train Franchisee Party | Tram Franchisee Party | CityLink Manager | HCMT contractor | Metropolitan Fire Brigade | VicRoads | Relevant LGA | |
| Geotechnical Design Advice (Accelerated Design) (TAS-AAW-AR-00-PKG-CGT-401) | GIR Draft. Hydrogeological Interpretative Note. Contaminated Land Assessment Interpretative Note; - prepared specifically for this package and used as Appendices to the Structure - Early Works package. | Geotechnical Factual Reports. | Yes | No | No | No | No | No | No | No | No | No |
| Structure - Early Works - (Piling, Excavate & Prop) (Accelerated Design) (TAS-AAW-AR-00-PKG-SGE-412) | Design report. General Arrangement, Typical Detail, Structural Detail, Sequence / Enabling and Set-Out Drawings. | Load inputs; spatial requirements; structural specifications; water-proofing; E&B details. | Yes | No | No (OR Yes - limited to direct relevance to piling only) | No | No | No | No | No | No | No |
| Parkville | | | | | | | | | | | | |
| Preparatory Works | | | | | | | | | | | | |
| Temporary Works Site Establishment (Accelerated Design) (TAS-CYP-PV-00-PKG-CTW-131) | Short design report including sketches / drawings where required. | Spatial requirements. | Yes | No | No | No | No | No | No | No | No | Yes |
| Temporary Works Service Relocations (Accelerated Design) (TAS-CYP-PV-00-PKG-CTW-132) | Short design report. Utility Adjustment Drawings. | Spatial and Asset Authority requirements. | Yes | No | No | No | No | No | Yes (fire water) | Yes | Yes | Yes |
| Temporary Works Transport Modelling (Accelerated Design) (TAS-CYP-PV-00-PKG-XTE-231) | Short design report / memo. | Stakeholder requirements (VicRoads, LGA). | Yes | No | No | No | No | No | No | Yes | Yes | Yes |
| Temporary Works Transport Design (Accelerated Design) (TAS-CYP-PV-00-PKG-CTW-133) | Short design report / memo. Staging and TTM signs, lines and civil works drawings. | Stakeholder requirements (VicRoads, LGA) and relevant standards. | Yes | No | No | No | No | No | No | Yes | Yes | Yes |
| Architectural | | | | | | | | | | | | |
| Architectural - General Arrangements - Space Proofing (Acc. Design) (TAS-HWW-PV-00-PKG-AGE-520) | Design report including stakeholder and spatial inputs. General Arrangement and Section Drawings. Draft Development Application Plans. | Pedestrian Modelling and LOS, Circulation, Human Factors, VT; F&LS concept; TVS concept; M&E and Traction Power spatial inputs; RSA requirements including Room Schedules; Rail Alignment and P-way spatial inputs; initial blast and security assessment. | Yes | Yes, where appropriate. | Yes, where appropriate. | Yes, where appropriate. | Yes, where appropriate. | Yes, where appropriate. | Yes, where appropriate. | Yes, where appropriate. | No | Yes, where appropriate. |
| Structure | | | | | | | | | | | | |
| Geotechnical Design Advice (Accelerated Design) (TAS-AAW-PV-00-PKG-CGT-501) | GIR Draft. Hydrogeological Interpretative Note. Contaminated Land Assessment Interpretative Note; - prepared specifically for this package and used as Appendices to the Structure - Early Works package. | Geotechnical Factual Reports. | Yes | No | No | No | No | No | No | No | No | No |
| Structure - Early Works - East (Piling, Excavate & Prop) (Acc Design) (TAS-AAW-PV-00-PKG-SGE-522) | Design report. General Arrangement, Typical Detail, Structural Detail, Sequence / Enabling and Set-Out Drawings. | Load inputs; spatial requirements; structural specifications; water-proofing; E&B details. | Yes | No | No (OR Yes - limited to direct relevance to piling only) | No | No | No | No | No | No | No |
| Structure - Early Works - West (Piling, Excavate & Prop) (Acc. Design) (TAS-AAW-PV-00-PKG-SGE-512) | Design report. General Arrangement, Typical Detail, Structural Detail, Sequence / Enabling and Set-Out Drawings. | Load inputs; spatial requirements; structural specifications; water-proofing; E&B details. | Yes | No | No (OR Yes - limited to direct relevance to piling only) | No | No | No | No | No | No | No |
| CBD North | | | | | | | | | | | | |
| Preparatory Works | | | | | | | | | | | | |
| Temporary Works Site Establishment (Accelerated Design) (TAS-CYP-CN-00-PKG-CTW-141) | Short design report including sketches / drawings where required. | Spatial requirements. | Yes | No | No | No | No | No | No | No | No | Yes |
| Temporary Works Service Relocations (Accelerated Design) (TAS-CYP-CN-00-PKG-CTW-142) | Short design report. Utility Adjustment Drawings. | Spatial and Asset Authority requirements. | Yes | No | No | No | No | No | Yes (fire water) | Yes | Yes | Yes |

| Design (Accelerated) ~60 in total | Package Content | Technical Inputs | Stakeholder Involvement | | | | | | | | | |
|--|---|--|-------------------------|-------------------------|--|-------------------------|-------------------------|-------------------------|---------------------------|-------------------------|--------------|-------------------------|
| | | | MMRA | Rail Systems Alliance | Train Franchisee Party | Tram Franchisee Party | CityLink Manager | HCMT contractor | Metropolitan Fire Brigade | VicRoads | Relevant LGA | |
| Temporary Works Transport Modelling (Accelerated Design) (TAS-CYP-CN-00-PKG-XTE-241) | Short design report / memo. | Stakeholder requirements (VicRoads, LGA). | Yes | No | No | No | No | No | No | No | Yes | Yes |
| Temporary Works Transport Design (Accelerated Design) (TAS-CYP-CN-00-PKG-CTW-143) | Short design report / memo. Staging and TTM signs, lines and civil works drawings. | Stakeholder requirements (VicRoads, LGA) and relevant standards. | Yes | No | No | No | No | No | No | No | Yes | Yes |
| Architectural | | | | | | | | | | | | |
| Architectural - General Arrangements - Space Proofing (Acc. Design) (TAS-HWW-CN-00-PKG-AGE-530) | Design report including stakeholder and spatial inputs. General Arrangement and Section Drawings. Draft Development Application Plans. | Pedestrian Modelling and LOS, Circulation, Human Factors, VT; F&LS concept; TVS concept; M&E and Traction Power spatial inputs; RSA requirements including Room Schedules; Rail Alignment and P-way spatial inputs; initial blast and security assessment. | Yes | Yes, where appropriate. | Yes, where appropriate. | Yes, where appropriate. | Yes, where appropriate. | Yes, where appropriate. | Yes, where appropriate. | Yes, where appropriate. | No | Yes, where appropriate. |
| Mined Adits, Cavern and Tunnels | | | | | | | | | | | | |
| Franklin St Passenger Adit (Accelerated Design) (TAS-NOM-CN-00-PKG-STU-730) | Design report including stakeholder and spatial inputs. General Arrangement and Section Drawings. Draft Development Application Plans. | Pedestrian Modelling and LOS, Circulation, Human Factors, VT; F&LS concept; TVS concept; M&E and Traction Power spatial inputs; RSA requirements including Room Schedules; Rail Alignment and P-way spatial inputs; initial blast and security assessment. | Yes | Yes, where appropriate. | Yes, where appropriate. | Yes, where appropriate. | Yes, where appropriate. | Yes, where appropriate. | Yes, where appropriate. | Yes, where appropriate. | No | Yes, where appropriate. |
| A'Beckett St Passenger Adit (Accelerated Design) (TAS-NOM-CN-00-PKG-STU-731) | Design report including stakeholder and spatial inputs. General Arrangement and Section Drawings. Draft Development Application Plans. | Pedestrian Modelling and LOS, Circulation, Human Factors, VT; F&LS concept; TVS concept; M&E and Traction Power spatial inputs; RSA requirements including Room Schedules; Rail Alignment and P-way spatial inputs; initial blast and security assessment. | Yes | Yes, where appropriate. | Yes, where appropriate. | Yes, where appropriate. | Yes, where appropriate. | Yes, where appropriate. | Yes, where appropriate. | Yes, where appropriate. | No | Yes, where appropriate. |
| Structure | | | | | | | | | | | | |
| Geotechnical Design Advice (Accelerated Design) (TAS-AAW-CN-00-PKG-CGT-601) | GIR Draft. Hydrogeological Interpretative Note. Contaminated Land Assessment Interpretative Note; - prepared specifically for this package and used as Appendices to the Structure - Early Works package. | Geotechnical Factual Reports. | Yes | No | No | No | No | No | No | No | No | No |
| Structure - Early Works - Franklin East (Piling, Exc.&Prop) (Acc. Design)(TAS-AAW-CN-00-PKG-SGE-622) | Design report. General Arrangement, Typical Detail, Structural Detail, Sequence / Enabling and Set-Out Drawings. | Load inputs; spatial requirements; structural specifications; water-proofing; E&B details. | Yes | No | No (OR Yes - limited to direct relevance to piling only) | No | No | No | No | No | No | No |
| Structure - Early Works - Franklin West (Piling, Exc.&Prop) (Acc. Design)(TAS-AAW-CN-00-PKG-SGE-612) | Design report. General Arrangement, Typical Detail, Structural Detail, Sequence / Enabling and Set-Out Drawings. | Load inputs; spatial requirements; structural specifications; water-proofing; E&B details. | Yes | No | No (OR Yes - limited to direct relevance to piling only) | No | No | No | No | No | No | No |
| Structure - Early Works - A'Beckett St (Piling, Exc.&Prop) (Acc. Design)(TAS-AAW-CN-00-PKG-SGE-632) | Design report. General Arrangement, Typical Detail, Structural Detail, Sequence / Enabling and Set-Out Drawings. | Load inputs; spatial requirements; structural specifications; water-proofing; E&B details. | Yes | No | No (OR Yes - limited to direct relevance to piling only) | No | No | No | No | No | No | No |
| Structure - Early Works - OSD Latrobe St (Piling, Exc.& Prop) (Acc. Design)(TAS-AAW-CN-00-PKG-SGE-642) | Design report. General Arrangement, Typical Detail, Structural Detail, Sequence / Enabling and Set-Out Drawings. | Load inputs; spatial requirements; structural specifications; water-proofing; E&B details. | Yes | No | No (OR Yes - limited to direct relevance to piling only) | No | No | No | No | No | No | No |
| CBD South | | | | | | | | | | | | |

| Design (Accelerated) ~60 in total | Package Content | Technical Inputs | Stakeholder Involvement | | | | | | | | | |
|---|--|--|-------------------------|-------------------------|--|-------------------------|-------------------------|-------------------------|---------------------------|-------------------------|--------------|-------------------------|
| | | | MMRA | Rail Systems Alliance | Train Franchisee Party | Tram Franchisee Party | CityLink Manager | HCMT contractor | Metropolitan Fire Brigade | VicRoads | Relevant LGA | |
| Preparatory Works | | | | | | | | | | | | |
| Temporary Works Site Establishment (Accelerated Design) (TAS-CYP-CS-00-PKG-CTW-151) | Short design report including sketches / drawings where required. | Spatial requirements. | Yes | No | No | No | No | No | No | No | No | Yes |
| Temporary Works Service Relocations (Accelerated Design) (TAS-CYP-CS-00-PKG-CTW-152) | Short design report. Utility Adjustment Drawings. | Spatial and Asset Authority requirements. | Yes | No | No | No | No | No | No | Yes (fire water) | Yes | Yes |
| Temporary Works Transport Modelling (Accelerated Design) (TAS-CYP-CS-00-PKG-XTE-251) | Short design report / memo. | Stakeholder requirements (VicRoads, LGA). | Yes | No | No | No | No | No | No | No | Yes | Yes |
| Temporary Works Transport Design (Accelerated Design) (TAS-CYP-CS-00-PKG-CTW-153) | Short design report / memo. Staging and TTM signs, lines and civil works drawings. | Stakeholder requirements (VicRoads, LGA) and relevant standards. | Yes | No | No | No | No | No | No | No | Yes | Yes |
| Architectural | | | | | | | | | | | | |
| Architectural - General Arrangements - Space Proofing (Acc. Design) (TAS-HWW-CS-00-PKG-AGE-540) | Design report including stakeholder and spatial inputs. General Arrangement and Section Drawings. Draft Development Application Plans. | Pedestrian Modelling and LOS, Circulation, Human Factors, VT; F&LS concept; TVS concept; M&E and Traction Power spatial inputs; RSA requirements including Room Schedules; Rail Alignment and P-way spatial inputs; initial blast and security assessment. | Yes | Yes, where appropriate. | Yes, where appropriate. | Yes, where appropriate. | Yes, where appropriate. | Yes, where appropriate. | Yes, where appropriate. | Yes, where appropriate. | No | Yes, where appropriate. |
| Structure | | | | | | | | | | | | |
| Geotechnical Design Advice (Accelerated Design) (TAS-AAW-CS-00-PKG-CGT-701) | GIR Draft. Hydrogeological Interpretative Note. Contaminated Land Assessment Interpretative Note; - prepared specifically for this package and used as Appendices to the Structure - Early Works package. | Geotechnical Factual Reports. | Yes | No | No | No | No | No | No | No | No | No |
| Structure - Early Works - City Square (Piling, Exc&Prop) (Acc, Design) (TAS-AAW-CS-00-PKG-SGE-732) | Design report. General Arrangement, Typical Detail, Structural Detail, Sequence / Enabling and Set-Out Drawings. | Load inputs; spatial requirements; structural specifications; water-proofing; E&B details. | Yes | No | No (OR Yes - limited to direct relevance to piling only) | No | No | No | No | No | No | No |
| Structure - Early Works - Fed Square (Piling, Exc&Prop) (Acc. Design) (TAS-AAW-CS-00-PKG-SGE-742) | Design report. General Arrangement, Typical Detail, Structural Detail, Sequence / Enabling and Set-Out Drawings. | Load inputs; spatial requirements; structural specifications; water-proofing; E&B details. | Yes | No | No (OR Yes - limited to direct relevance to piling only) | No | No | No | No | No | No | No |
| Structure - Early Works - OSD Flinders St (Piling, Exc&Prop) (Acc Design) (TAS-AAW-CS-00-PKG-SGE-722) | Design report. General Arrangement, Typical Detail, Structural Detail, Sequence / Enabling and Set-Out Drawings. | Load inputs; spatial requirements; structural specifications; water-proofing; E&B details. | Yes | No | No (OR Yes - limited to direct relevance to piling only) | No | No | No | No | No | No | No |
| Domain | | | | | | | | | | | | |
| Preparatory Works | | | | | | | | | | | | |
| Temporary Works Site Establishment (Accelerated Design) (TAS-CYP-DM-00-PKG-CTW-161) | Short design report including sketches / drawings where required. | Spatial requirements. | Yes | No | No | No | No | No | No | No | No | Yes |
| Temporary Works Service Relocations (Accelerated Design) (TAS-CYP-DM-00-PKG-CTW-162) | Short design report. Utility Adjustment Drawings. | Spatial and Asset Authority requirements. | Yes | No | No | No | No | No | No | Yes (fire water) | Yes | Yes |
| Temporary Works Road Design (Stage 1) (Accelerated Design) (TAS-AAW-DM-00-PKG-CRD-802) | Short design report / memo. Staging and TTM signs, lines and civil works drawings. | Stakeholder requirements (VicRoads, LGA) and relevant standards. | Yes | No | No | No | No | No | No | No | Yes | Yes |
| Temporary Works Tram Design (Stage 1) (Accelerated Design) (TAS-AAW-DM-00-PKG-TGE-812) | Short design report including drawings where required. | Civil design inputs. | Yes | No | No | Yes | No | No | No | No | No | No |
| Temporary Works Drainage Design (Stage 1) (Accelerated Design) (TAS-AAW-DM-00-PKG-CDR-822) | Short design report including drawings where required. | Temporary works civil design inputs. | Yes | No | No | No | No | No | No | No | No | Yes |
| Architectural | | | | | | | | | | | | |

| Design (Accelerated) ~60 in total | Package Content | Technical Inputs | Stakeholder Involvement | | | | | | | | |
|---|--|--|-------------------------|-------------------------|--|-------------------------|-------------------------|-------------------------|---------------------------|----------|-------------------------|
| | | | MMRA | Rail Systems Alliance | Train Franchisee Party | Tram Franchisee Party | CityLink Manager | HCMT contractor | Metropolitan Fire Brigade | VicRoads | Relevant LGA |
| Architectural - General Arrangements - Space Proofing (Acc. Design) (TAS-HWW-DM-00-PKG-AGE-550) | Design report including stakeholder and spatial inputs. General Arrangement and Section Drawings. Draft Development Application Plans. | Pedestrian Modelling and LOS, Circulation, Human Factors, VT; F&LS concept; TVS concept; M&E and Traction Power spatial inputs; RSA requirements including Room Schedules; Rail Alignment and P-way spatial inputs; initial blast and security assessment. | Yes | Yes, where appropriate. | Yes, where appropriate. | Yes, where appropriate. | Yes, where appropriate. | Yes, where appropriate. | Yes, where appropriate. | No | Yes, where appropriate. |
| Structure | | | | | | | | | | | |
| Geotechnical Design Advice (Accelerated Design) (TAS-AAW-DM-00-PKG-CGT-801) | GIR Draft. Hydrogeological Interpretative Note. Contaminated Land Assessment Interpretative Note; - prepared specifically for this package and used as Appendices to the Structure - Early Works package. | Geotechnical Factual Reports. | Yes | No | No | No | No | No | No | No | No |
| Structure - Early Works - Stage 1 (Piling, Roof, Exc&Prop) (Acc Design) (TAS-AAW-DM-00-PKG-SGE-812) | Design report. General Arrangement, Typical Detail, Structural Detail, Sequence / Enabling and Set-Out Drawings. | Load inputs; spatial requirements; structural specifications; water-proofing; E&B details. | Yes | No | No (OR Yes - limited to direct relevance to piling only) | No | No | No | No | No | No |
| Structure - Early Works - Stage 2 (Piling, Exc&Prop) (Acc Design) (TAS-AAW-DM-00-PKG-SGE-821) | Design report. General Arrangement, Typical Detail, Structural Detail, Sequence / Enabling and Set-Out Drawings. | Load inputs; spatial requirements; structural specifications; water-proofing; E&B details. | Yes | No | No (OR Yes - limited to direct relevance to piling only) | No | No | No | No | No | No |
| Eastern Portal | | | | | | | | | | | |
| Preparatory Works | | | | | | | | | | | |
| Temporary Works Site Establishment (Accelerated Design) (TAS-CYP-EP-00-PKG-CTW-171) | Short design report including sketches / drawings where required. | Spatial requirements. | Yes | No | No | No | No | No | No | No | Yes |
| Temporary Works Service Relocations (Accelerated Design) (TAS-CYP-EP-00-PKG-CTW-172) | Short design report. Utility Adjustment Drawings. | Spatial and Asset Authority requirements. | Yes | No | No | No | No | No | Yes (fire water) | Yes | Yes |
| Temporary Works Transport Modelling (Accelerated Design) (TAS-CYP-EP-00-PKG-XTE-271) | Short design report / memo. | Stakeholder requirements (VicRoads, LGA). | Yes | No | No | No | No | No | No | Yes | Yes |
| Temporary Works Transport Design (Accelerated Design) (TAS-CYP-EP-00-PKG-CTW-173) | Short design report / memo. Staging and TTM signs, lines and civil works drawings. | Stakeholder requirements (VicRoads, LGA) and relevant standards. | Yes | No | No | No | No | No | No | Yes | Yes |
| Architectural | | | | | | | | | | | |
| Architectural - General Arrangements - Space Proofing (Acc. Design) (TAS-HWW-EP-00-PKG-AGE-570) | Design report including stakeholder and spatial inputs. General Arrangement and Section Drawings. Draft Development Application Plans. | Pedestrian Modelling and LOS, Circulation, Human Factors, VT; F&LS concept; TVS concept; M&E and Traction Power spatial inputs; RSA requirements including Room Schedules; Rail Alignment and P-way spatial inputs; initial blast and security assessment. | Yes | Yes, where appropriate. | Yes, where appropriate. | Yes, where appropriate. | Yes, where appropriate. | Yes, where appropriate. | Yes, where appropriate. | No | Yes, where appropriate. |
| Structure | | | | | | | | | | | |
| Geotechnical Design Advice (Accelerated Design) (TAS-AAW-EP-00-PKG-CGT-901) | GIR Draft. Hydrogeological Interpretative Note. Contaminated Land Assessment Interpretative Note; - prepared specifically for this package and used as Appendices to the Structure - Early Works package. | Geotechnical Factual Reports. | Yes | No | No | No | No | No | No | No | No |
| Design (Standard) ~60 in total | | | | | | | | | | | |
| | | | | | | | | | | | |
| Geotechnical Interpretive Report | | | | | | | | | | | |

| Design (Accelerated) ~60 in total | Package Content | Technical Inputs | Stakeholder Involvement | | | | | | | | |
|--|--|--|-------------------------|-----------------------|------------------------|-----------------------|------------------|------------------|---------------------------|----------|--------------|
| | | | MMRA | Rail Systems Alliance | Train Franchisee Party | Tram Franchisee Party | CityLink Manager | HCMIT contractor | Metropolitan Fire Brigade | VicRoads | Relevant LGA |
| Project Wide - Geotechnical Investigative Report (TAS-COF-PW-00-PKG-CGT-110) | Factual report including borehole and testing information and site plans. | Factual geotechnical and hydrogeological inputs. | Yes | No | No | No | No | No | No | No | No |
| Project Wide - Groundwater Modelling (TAS-COF-PW-00-PKG-CGT-120) | Hydrogeological interpretative modelling and assessment. | Factual geotechnical and hydrogeological inputs. | Yes | No | No | No | Yes | No | No | No | No |
| Western Portal - GIR (TAS-COF-WP-00-PKG-CGT-310) | | | | | | | | | | | |
| Arden - GIR (TAS-COF-AR-00-PKG-CGT-410) | Report including design parameters and factual data assessment. Section drawings and sketches where appropriate. | Factual geotechnical and hydrogeological inputs. | Yes | No | No | No | No | No | No | No | No |
| Parkville - GIR (TAS-COF-PV-00-PKG-CGT-510) | Report including design parameters and factual data assessment. Section drawings and sketches where appropriate. | Factual geotechnical and hydrogeological inputs. | Yes | No | No | No | No | No | No | No | No |
| CBD North - GIR (TAS-COF-CN-00-PKG-CGT-610) | Report including design parameters and factual data assessment. Section drawings and sketches where appropriate. | Factual geotechnical and hydrogeological inputs. | Yes | No | No | No | No | No | No | No | No |
| CBD South - GIR (TAS-COF-CS-00-PKG-CGT-710) | Report including design parameters and factual data assessment. Section drawings and sketches where appropriate. | Factual geotechnical and hydrogeological inputs. | Yes | No | No | No | No | No | No | No | No |
| Domain - GIR (TAS-COF-DM-00-PKG-CGT-810) | Report including design parameters and factual data assessment. Section drawings and sketches where appropriate. | Factual geotechnical and hydrogeological inputs. | Yes | No | No | No | No | No | No | No | No |
| Eastern Portal - GIR (TAS-COF-EP-00-PKG-CGT-910) | | | | | | | | | | | |
| TBM Tunnels Western portal to CBDN - GIR (TAS-COF-TW00-PKG-CGT-TBC) | Report including design parameters and factual data assessment. Section drawings and sketches where appropriate. | Factual geotechnical and hydrogeological inputs. | Yes | No | No | No | No | No | No | No | No |
| TBM Tunnels Southern Portal to CBDS - GIR (TAS-COF-TW00-PKG-CGT-TBC) | Report including design parameters and factual data assessment. Section drawings and sketches where appropriate. | Factual geotechnical and hydrogeological inputs. | Yes | No | No | No | No | No | No | No | No |
| Mined Tunnels GIR (TAS-COF-TW00-PKG-CGT-220) | Report including design parameters and factual data assessment. Section drawings and sketches where appropriate. | Factual geotechnical and hydrogeological inputs. | Yes | No | No | No | No | No | No | No | No |
| Cross Passages - GIR (TAS-COF-TW00-PKG-CGT-230) | | | | | | | | | | | |
| Project Wide | | | | | | | | | | | |
| Design Basis Reports | | | | | | | | | | | |
| Structure | | | | | | | | | | | |
| Project Wide - Durability (TAS-AAW-PW-00-PKG-XDU-102) | Project wide durability assessment and design reviews to confirm: exposure environments, element design lives, minimum materials performance requirements to achieve durability objectives. Definition of strategies for design, construction and maintenance to ensure durability objectives are achieved. The assessments are expected to apply to the station structures and associated civil works above and below ground and the underground tunnel structures including TBM tunnels, cross passages, mined caverns and adits, station boxes and shafts and portals. Guidance is expected to apply to broader materials selection across the project Guidance is expected to apply to broader materials selection across the project (for MEP etc. as applicable) | Ground and groundwater testing information. | Yes | Yes | Yes | No | No | No | No | No | No |

| Design (Accelerated) ~60 in total | Package Content | Technical Inputs | Stakeholder Involvement | | | | | | | | |
|---|---|------------------|-------------------------|-----------------------|------------------------|-----------------------|------------------|-----------------|---------------------------|----------|--------------|
| | | | MMRA | Rail Systems Alliance | Train Franchisee Party | Tram Franchisee Party | CityLink Manager | HCMT contractor | Metropolitan Fire Brigade | VicRoads | Relevant LGA |
| Project Wide - Acoustics and Vibration - Groundborne Report (TAS-AAW-PW-00-PKG-XAV-102) | Prediction and assessment of operational ground borne noise and vibration from underground railway operations. Analysis of track mitigation options, recommendations for control to achieve EPR and PSTR requirements. | | Yes | Yes | Yes | No | Yes | No | No | No | Yes |
| Project Wide - Security Risk Assessment (TAS-AAW-PW-00-PKG-XSC-101) | The Security Risk Assessment (SRA) is a project wide package that reviews the existing SRA from MMRA and updates the measures that are managing the risks. At each stage the SRA is reviewed with the security stakeholders at MMRA as well as other key state and government parties. | | Yes | No | Yes | No | No | No | No | No | No |
| Project Wide - Security Strategy Report | The Security Strategy Report is a project wide package that links the Security Risk Assessment to the decisions agreed within that assessment process and how they are to be documented and implemented in the project. | | Yes | No | Yes | No | No | No | No | No | No |
| Project Wide - Blast Assessment | The project wide blast assessment details the strategy and design requirements to manage the blast threats detailed within the SRA. This will involved dynamic analysis of the station and tunnel structures as well as advice on fit out measures (glazing, partitioning etc.) and well as hostile vehicle mitigation around the station perimeters. | | Yes | No | Yes | No | No | No | No | No | No |
| Project Wide - Sustainability (TAS-AAW-PW-00-PKG-XSU-101) | | | Yes | No | Yes | No | No | No | No | No | No |
| Project Wide - Pedestrian Modelling (TAS-AAW-PW-00-PKG-XPM-102) | Basis of Design report that details all of the modelling inputs, assumptions, techniques, parameters to be adopted for modelling each of the stations. | | Yes | No | Yes | No | No | No | No | No | No |
| Mechanical and Electrical | | | | | | | | | | | |
| Project Wide - Fire and Life Safety Brief (TAS-AAW-PW-00-PKG-XFS-112) | The fire engineering brief (FEB) sets out the fire and life safety requirements for the project and identifies the basis on which analysis of the fire safety systems are to be assessed. The FEB is the principal document for communicating and reaching consensus with relevant Authorities and stakeholders relating to: fire safety objectives, operating concepts, acceptance criteria, analysis methodologies, trial designs, occupant characteristics and occupant loads, design fires. A preliminary version of the FEB will be delivered at the SDR; an approved version of the FEB will be provided as part of the Interim Design Documentation. | | Yes | Yes | Yes | No | No | No | Yes | No | Yes |

| Design (Accelerated) ~60 in total | Package Content | Technical Inputs | Stakeholder Involvement | | | | | | | | |
|--|---|------------------|-------------------------|-----------------------|-------------------------|-------------------------|-------------------------|-----------------|---------------------------|----------|--------------|
| | | | MMRA | Rail Systems Alliance | Train Franchisee Party | Tram Franchisee Party | CityLink Manager | HCMT contractor | Metropolitan Fire Brigade | VicRoads | Relevant LGA |
| Project Wide - Fire and Life Safety Report (TAS-AAW-PW-00-PKG-XFS-111) | The fire engineering report (FER) documents the fire safety design for all areas of the project. The FER record key project/system descriptions, fire safety features, analysis outcomes, and demonstration of the performance of the station and tunnel fire safety system trial designs. The FER will also serve to provide verification of satisfaction of agreed acceptance criteria and verification of compliance against the project technical requirements. The FER will serve as the principal instrument to reach stakeholder agreement and approvals in principle on the fire safety design. The FER shall record fire safety objectives, fire safety measures and system descriptions, identified fire hazards, (analysed) performance of the design fire safety measures, design scenarios, key design assumptions, analysis input, assessment outcomes, assessment of suitability of design, and records of stakeholder engagement. The FER will be submitted at the PDR, as part of the Certified Design Documentation, and as part of the IFC Design Documentation. | | Yes | Yes | Yes | No | No | No | Yes | No | Yes |
| Civils | | | | | | | | | | | |
| Project Wide - Civil - Geotechnical Design Basis (TAS-AAW-PW-00-PKG-CGT-102) | Design Basis supporting the geotechnical design of retaining walls and foundations | | Yes | No | No | No | No | No | No | No | No |
| Project Wide - Civil - Ground Movement Impact Assessment (TAS-AAW-PW-00-PKG-CGT-101) | Report on ground movement assessment including ground movement contours, articulation of impact on buildings/infrastructure, trigger levels | | Yes | No | Yes, where appropriate. | Yes, where appropriate. | Yes, where appropriate. | No | No | No | Yes |
| Project Wide - Civil - Instrumentation and Monitoring Plan (TAS-AAW-PW-00-PKG-CGT-103) | Scope of instrumentation and monitoring requirements | | Yes | No | No | No | No | No | No | No | Yes |
| Project Wide - Civil - Rail Alignment (TAS-AAW-PW-00-PKG-CRA-102) | Developed in accordance with the Tunnel Alignment Gradients , curves and ride quality in accordance with MMRA, RTO and MTM standards Approval of departure from MTM standards - waivers positioning of stations (Parkville and CBD North) | | Yes | Yes | Yes | No | No | Yes | No | No | No |
| Project Wide - Civil - Rail Trackform (TAS-AAW-PW-00-PKG-CTF-101) | Addresses:- Rail tunnel set out during areas of applied cant Rail Type construction tolerances Trackform details Specifications of floating track slab bearings Rail lubrication requirements as specified | | Yes | Yes | Yes | No | No | Yes | No | No | No |

| Design (Accelerated) ~60 in total | Package Content | Technical Inputs | Stakeholder Involvement | | | | | | | | | |
|--|---|------------------|-------------------------|-----------------------|------------------------|-----------------------|------------------|-----------------|---------------------------|----------|--------------|----------------------------|
| | | | MMRA | Rail Systems Alliance | Train Franchisee Party | Tram Franchisee Party | CityLink Manager | HCMT contractor | Metropolitan Fire Brigade | VicRoads | Relevant LGA | |
| Project Wide - Traffic Engineering - Design Basis Report (TAS-AAW-PW-00-PKG-XTE-111) | Design note detailing performance of design against PS&TR and relevant standards for legacy surface transport elements. Translates outcomes of traffic modelling report into proposed road cross sections. To form part of the road & surface works design report | | Yes | No | No | No | No | No | No | No | Yes | Yes |
| Project Wide - Transport Modelling - Methodology Report (Stage 1) (TAS-AAW-PW-00-PKG-XTM-101) | Modelling note detailing a review of the existing traffic modelling undertaken by MMRA/AJM Recommendation regarding utilisation of existing models or requirement to develop new models. | | Yes | No | No | No | No | No | No | No | Yes | Yes |
| Project Wide - Civil - Road Design (TAS-AAW-PW-00-PKG-CRD-111) | Road Design Basis Report for all precincts. The package includes road geometry, pavement, signs and line marking. Urban Design to document public realm features. | | Yes | No | No | No | No | No | No | No | Yes | Yes |
| Project Wide - Civil - Tram Design (TAS-AAW-PW-00-PKG-TGE-111) | Tram Design Basis Report for all precincts. | | Yes | No | No | Yes | No | No | No | No | No | No |
| Project Wide - Civil - Stormwater Drainage (TAS-AAW-PW-00-PKG-CDR-111) | Stormwater Design Basis Report for all precincts. The package includes pit and pipe network and civil design elements of WSUD (Urban Design to document public realm WSUD elements). | | Yes | No | No | No | No | No | No | No | Yes | Yes |
| Project Wide - Civil - Stormwater Flood Impact Assessment Arden and Wetsern Portal(TAS-AAW-PW-00-PKG-CDR-121) | Flood impact assessment and treatment for Arden and Western Portal. This package is for these river affected stations. Primary output is the flood level for station entrances. | | Yes | No | No | No | No | No | No | No | Yes | Yes, plus Melbourne Water. |
| Project Wide - Civil - Stormwater Flood Impact Assessment Parkville, CBD North, CBD South, Domain and Eastern Portal | Flood impact assessment and treatment for Parkville, CBD North, CBD South, Domain and Eastern Portal. This package is for these stormwater flooding affected stations (non-river event). Primary output is the flood level for station entrances. | | Yes | No | No | No | No | No | No | No | Yes | Yes, plus Melbourne Water. |
| Project Wide - Civil - Street Lighting (TAS-AAW-PW-00-PKG-CLDT-111) | Lighting Design Basis Report for all precincts. The package is for the road surface lighting and excludes lighting associated with the public realm: refer to iMEP / architectural for lighting these areas. | | Yes | No | No | No | No | No | No | No | Yes | Yes |
| Project Wide - Civil - Utilites (TAS-AAW-PW-00-PKG-CUT-111) | Utilities Design Basis Report for all precincts. | | Yes | No | No | No | No | No | No | No | No | Yes |
| Project Wide - Traffic Engineering - Bicycle Parking Study (TAS-AAW-PW-00-PKG-XTE-100) | Outlines methodology and analysis in determination of the number of bicycle spaces | | Yes | No | No | No | No | No | No | No | No | Yes |
| Design Specifications / Standard Drawings | | | | | | | | | | | | |
| Mined Adits, Cavern and Tunnels | | | | | | | | | | | | |
| Project Wide - Primary Support Standard Drawings (TAS-HWW-PW-00-PKG-STU-702) | Standard drawings for primary support for mined caverns, tunnels and adits | | Yes | No | No | No | No | No | No | No | No | No |
| Structure | | | | | | | | | | | | |
| Project Wide - Geotechnical Specifications (TAS-HWW-PW-00-PKG-CGT-151) | Specification. | | Yes | No | No | No | No | No | No | No | No | No |
| Project Wide - Structures Specifications (TAS-HWW-PW-00-PKG-SGE-151) | Specification. | | Yes | No | No | No | No | No | No | No | No | No |

| Design (Accelerated) ~60 in total | Package Content | Technical Inputs | Stakeholder Involvement | | | | | | | | |
|--|---|------------------|-------------------------|-----------------------|------------------------|-----------------------|------------------|-----------------|---------------------------|----------|--------------|
| | | | MMRA | Rail Systems Alliance | Train Franchisee Party | Tram Franchisee Party | CityLink Manager | HCMT contractor | Metropolitan Fire Brigade | VicRoads | Relevant LGA |
| Project Wide - Internal and Surface Structures Typical Details (TAS-HWW-PW-00-PKG-SGE-100) | Primary station support structure typical details including: - Base slab - shaft perimeter lining walls - Main internal floor and roof slabs - Columns and other main load-bearing walls/elements - Station-specific waterproofing and other primary structure details - Above-ground service buildings including station maintenance access and egress | | Yes | No | No | No | No | No | No | No | No |
| Project Wide - Tunnels Specifications (TAS-HWW-PW-00-PKG-STU-151) | Specification. | | Yes | No | No | No | No | No | No | No | No |
| Mechanical and Electrical | | | | | | | | | | | |
| Project Wide - Building Services Specifications (TAS-HWW-PW-00-PKG-BSG-151) | Specification. | | Yes | Yes | Yes | No | No | No | No | No | No |
| Project Wide - Electrical Network Specifications (TAS-HWW-PW-00-PKG-EGE-151) | Specification. | | Yes | Yes | Yes | No | No | Yes | No | No | No |
| Project Wide - Vertical Transportation Specifications (TAS-HWW-PW-00-PKG-XVT-151) | Specification. | | Yes | Yes | Yes | No | No | No | No | No | No |
| Civils | | | | | | | | | | | |
| Project Wide - Civil Specifications (TAS-HWW-PW-00-PKG-CGE-101) | Specification. | | Yes | No | No | No | No | No | No | Yes | Yes |
| Project Wide - Rail Specifications (TAS-HWW-PW-00-PKG-CRA-151) | Specification. | | Yes | Yes | Yes | No | No | Yes | No | No | No |
| Design Packages | | | | | | | | | | | |
| Mechanical and Electrical | | | | | | | | | | | |
| Project Wide - Control Systems | Project wide control system design including software and hardware associated with: BMS, HVCS, TVCS, Fire System, interfaces to RSA Systems (OCS, CMS, Security, ICT etc.) and specifications. | | Yes | Yes | Yes | No | No | Yes | No | No | No |
| Project Wide - Tunnel Ventilation | Report documenting the concept for the tunnel ventilation system including the strategy, equipment sizing and requirements, acoustic and power requirements. The report lays out the basis for the Tunnel Ventilation space proofing in the stations | | Yes | Yes | Yes | No | No | Yes | No | No | No |
| Project Wide - EMI (TAS-AAW-PW-00-PKG-EGE-101) | Project wide EMI Strategies including: Background monitoring, Sensitive receiver evaluation, stakeholder negotiation, field strength modelling, system interfaces for mitigation. | | Yes | Yes | Yes | No | No | Yes | No | No | No |
| Project Wide - Electrical HV (TAS-AAW-PW-00-PKG-EHV-101) | Project wide HV network including: 66kV ISS, 22kV Station Network, 22kV Traction Power Network, Incoming power supply, emergency supply integration (if required), Overall HV schematic, ISS HV assets, Project MD, Fault level study, PF Correction, protection scheme, Earthing, CSR through ISS/stations/tunnels, HVCS interfaces, RSA Interfaces and specifications. | | Yes | Yes | Yes | No | No | Yes | No | No | No |
| Project Wide - Overhead Line (TAS-AAW-PW-00-PKG-EOH-101) | Project Wide OHLE including: ROCB, Sectioning Strategy, Station OHLE Equipment, Portal interfaces, interface with earthing and bonding, interfaces with HVCS, interfaces with HCMT and specifications. | | Yes | Yes | Yes | No | No | Yes | No | No | No |

| Design (Accelerated) ~60 in total | Package Content | Technical Inputs | Stakeholder Involvement | | | | | | | | |
|---|--|------------------|-------------------------|-----------------------|------------------------|-----------------------|------------------|-----------------|---------------------------|----------|--------------|
| | | | MMRA | Rail Systems Alliance | Train Franchisee Party | Tram Franchisee Party | CityLink Manager | HCMT contractor | Metropolitan Fire Brigade | VicRoads | Relevant LGA |
| Project Wide - Electrical Traction Power (TAS-AAW-PW-00-PKG-ETP-101) | Project Wide Traction Power System Including: Overall Supply strategy, Interfaces with station Traction Power Substations, Project wide traction power protection scheme, interfaces with HVCS, Interfaces with project wide HV system, Interfaces with emergency supply and specifications. | | Yes | Yes | Yes | No | No | Yes | No | No | No |
| Western Portal | | | | | | | | | | | |
| Structure | | | | | | | | | | | |
| Structure - General Arrangement (TAS-AAW-AR-00-PKG-SGE-312) | General arrangement drawings and loading drawings. | | Yes | No | No | No | No | No | No | No | No |
| Land Planning | | | | | | | | | | | |
| Land Planning - Development Plan | Development plan drawings. | | Yes | No | No | No | No | No | No | No | Yes |
| Arden | | | | | | | | | | | |
| Structure | | | | | | | | | | | |
| Structure - General Arrangement (TAS-AAW-AR-00-PKG-SGE-402) | General arrangement drawings and loading drawings. | | Yes | No | No | No | No | No | No | No | No |
| Land Planning | | | | | | | | | | | |
| Land Planning - Development Plan | Development plan drawings. | | Yes | No | No | No | No | No | No | No | Yes |
| Parkville | | | | | | | | | | | |
| Structure | | | | | | | | | | | |
| Structure - General Arrangement (TAS-AAW-PV-00-PKG-SGE-562) | General arrangement drawings and loading drawings | | Yes | No | No | No | No | No | No | No | No |
| Land Planning | | | | | | | | | | | |
| Land Planning - Development Plan | Development plan drawings. | | Yes | No | No | No | No | No | No | No | Yes |
| CBD North | | | | | | | | | | | |
| Structure | | | | | | | | | | | |
| Structure - General Arrangement - Franklin St West (TAS-AAW-CN-00-PKG-SGE-602) | General arrangement drawings and loading drawings | | Yes | No | No | No | No | No | No | No | No |
| Structure - General Arrangement - A'Beckett St (TAS-AAW-CN-00-PKG-SGE-672) | General arrangement drawings and loading drawings | | Yes | No | No | No | No | No | No | No | No |
| Structure - General Arrangement - OSD Latrobe St (TAS-AAW-CN-00-PKG-SGE-682) | General arrangement drawings and loading drawings | | Yes | No | No | No | No | No | No | No | No |
| Structure - General Arrangement - Franklin St East (TAS-AAW-CN-00-PKG-SGE-662) | General arrangement drawings and loading drawings | | Yes | No | No | No | No | No | No | No | No |
| Land Planning | | | | | | | | | | | |
| Land Planning - Development Plan | Development plan drawings. | | Yes | No | No | No | No | No | No | No | Yes |
| CBD South | | | | | | | | | | | |
| Structure | | | | | | | | | | | |
| Structure - General Arrangement - City Square (TAS-AAW-CS-00-PKG-SGE-712) | General arrangement drawings and loading drawings | | Yes | No | No | No | No | No | No | No | No |
| Structure - General Arrangement - Federation Square (TAS-AAW-CS-00-PKG-SGE-702) | General arrangement drawings and loading drawings | | Yes | No | No | No | No | No | No | No | No |
| Structure - General Arrangement - OSD Flinders St (TAS-AAW-CS-00-PKG-SGE-734) | General arrangement drawings and loading drawings | | Yes | No | No | No | No | No | No | No | No |
| Land Planning | | | | | | | | | | | |
| Land Planning - Development Plan | Development plan drawings. | | Yes | No | No | No | No | No | No | No | Yes |
| Domain | | | | | | | | | | | |
| Structure | | | | | | | | | | | |
| Structure - General Arrangement (TAS-AAW-DM-00-PKG-SGE-802) | General arrangement drawings and loading drawings | | Yes | No | No | No | No | No | No | No | No |
| Land Planning | | | | | | | | | | | |
| Land Planning - Development Plan | Development plan drawings. | | Yes | No | No | No | No | No | No | No | Yes |
| Eastern Portal | | | | | | | | | | | |
| Structure | | | | | | | | | | | |

| Design (Accelerated) ~60 in total | Package Content | Technical Inputs | Stakeholder Involvement | | | | | | | | |
|---|---|------------------|-------------------------|-----------------------|------------------------|-----------------------|------------------|-----------------|---------------------------|----------|--------------|
| | | | MMRA | Rail Systems Alliance | Train Franchisee Party | Tram Franchisee Party | CityLink Manager | HCMT contractor | Metropolitan Fire Brigade | VicRoads | Relevant LGA |
| Structure - General Arrangement (TAS-AAW-DM-00-PKG-SGE-902) | General arrangement drawings and loading drawings | | Yes | No | No | No | No | No | No | No | No |
| Land Planning | | | | | | | | | | | |
| Land Planning - Development Plan | Development plan drawings. | | Yes | No | No | No | No | No | No | No | Yes |

Attachment 3

Management Plans

Refer to separate document.

Melbourne Metro Tunnel and Stations Tender

| Activity ID | Activity Name | % of Overall Plans | Value as % | % Completed to Date | Value to Date |
|---------------------------------|---|--------------------|------------|---------------------|---------------|
| D&C Management Plans | | | | | |
| A1100 | Strategic Management Plan - Prepare & Submit | | | | |
| A1110 | Project Management Plan - Prepare & Submit | | | | |
| A1120 | Quality Management Plan - Prepare & Submit | | | | |
| A1130 | Risk Management Plan - Prepare & Submit | | | | |
| A1140 | PPP Interface Management Plan - Prepare & Submit | | | | |
| A1170 | Industrial Relations Management Plan - Prepare & Submit | | | | |
| A1180 | Information Management Plan - Prepare & Submit | | | | |
| A1190 | Digital Engineering Management Plan - Prepare & Submit | | | | |
| A1210 | Configuration Management Plan - Prepare & Submit | | | | |
| A1220 | Requirements Management Plan - Prepare & Submit | | | | |
| A1260 | Construction Environmental Management Plan - Prepare & Submit - Refer separate item 1.3.3 | | | | |
| A1270 | Site Environment Implementation Plan- Prepare & Submit - refer separate item 1.3.3 | | | | |
| A1290 | Communications and Stakeholder Engagement Management Plan - Prepare & Submit | | | | |
| A1300 | Health and Safety Management Plan - Prepare & Submit | | | | |
| A1310 | Emergency Response and Incident Management Plan - Prepare & Submit | | | | |
| MP 02000 | Design Management Plan | | | | |
| A1340 | Transport Management Plan - Prepare & Submit | | | | |
| A1350 | Traffic Management Plan - Prepare & Submit | | | | |
| A1370 | Construction Management Plan - Prepare & Submit | | | | |
| A1390 | Noise and Vibration Management Plan - Prepare & Submit | | | | |
| A1400 | Spoil Management Plan - Prepare & Submit | | | | |
| A1410 | Monitoring Management Plan - Prepare & Submit | | | | |
| A1460 | Rail Safety Accreditation Plan - Prepare & Submit | | | | |
| A1360 | Worksite Traffic Management Plan - Prepare & Submit | | | | |
| A1420 | Demolition Management Plan - Prepare & Submit (Note: Extent and scope dependant on the extent of works to be undertaken by the Early Works Management Contractor) | | | | |

Attachment 4

Geotechnical and Hydrogeological Scope

Refer to separate document.

| Project precinct | Activity | Item type | Borehole type | Indicative quantity | Purpose |
|--|-------------------|----------------------------|-------------------|---------------------|---|
| Arden Station | Drilling | Recharge well | Recharge | 12 | Mitigate settlement and contamination related groundwater drawdown impacts |
| Arden Station | Drilling | Backup recharge well | Recharge | 12 | Back up recharge wells (allows for primary well failure, maintenance and additional system capacity) |
| Arden Station | Drilling | Monitoring well | Monitoring | 6 | Groundwater quality assessment |
| Arden Station | Drilling | Monitoring well | Monitoring | 20 | Monitoring of mitigation system performance |
| Arden Station | Drilling | Monitoring well | Monitoring | 6 | Targeted monitoring during recharge tests |
| Arden Station | Drilling | Pressure relief well | Pressure relief | 17 | Mitigate excavation floor heave |
| Arden Station to Parkville Station | Drilling | Geotechnical | Vertical geotech | 7 | Fill gap in existing information |
| Arden Station to Parkville Station | Drilling | Monitoring well | Monitoring | 3 | Groundwater quality assessment |
| Arden Station to Parkville Station | Drilling | Monitoring well | Monitoring | 5 | Cross passage seepage assessment |
| CBD North Station | Drilling | Geotechnical | Inclined geotech | 6 | Assessment of CBD North geological structures |
| CBD North Station | Drilling | Monitoring well | Monitoring | 6 | Groundwater quality assessment |
| CBD North Station | Drilling | Monitoring well | Monitoring | 5 | Monitor CUB plume mitigation |
| CBD North Station | Drilling | Recharge well | Recharge | 80 | Control groundwater drawdown propagation to the north of the station to mitigate groundwater contamination migration specifically associated with the former CUB site. Multiple small diameter wells |
| CBD North Station | PRB establishment | Permeable reactive barrier | NA | | Treatment of organic contaminants in groundwater (specifically associated with the former CUB site) |
| Mined Tunnel (CBD North to CBD South) | Drilling | Geotechnical | Vertical geotech | 2 | Fill gap in existing information including in-situ rock stress |
| Mined Tunnel (CBD North to CBD South) | Drilling | Recharge well | Recharge | 6 | Mitigate contamination related groundwater drawdown impacts |
| Mined Tunnel (CBD North to CBD South) | Drilling | Backup recharge well | Recharge | 6 | Back up recharge wells (allows for primary well failure, maintenance and additional system capacity) |
| Mined Tunnel (CBD North to CBD South) | Drilling | Monitoring well | Monitoring | 17 | Assess groundwater response to construction activities and establish baseline groundwater monitoring network to refine understanding of groundwater contamination risks. |
| Mined Tunnel (CBD North to CBD South) | Drilling | Monitoring well | Monitoring | 3 | Cross passage seepage assessment |
| CBD South Station | Drilling | Recharge well | Recharge | 8 | Mitigate settlement (primary focus) and contamination (secondary focus) related groundwater drawdown impacts |
| CBD South Station | Drilling | Backup recharge well | Recharge | 8 | Back up recharge wells (allows for primary well failure, maintenance and additional system capacity) |
| CBD South Station | Drilling | Test well | Extraction | 1 | Target potential high permeability feature to inform understanding of groundwater response to dewatering and inform development of mitigation strategy. Convert to recharge well for construction mitigation. |
| CBD South Station | Drilling | Geotechnical | Vertical geotech | 3 | Gap proposed by structure |
| CBD South Station | Drilling | Monitoring well | Monitoring | 18 | Assess recharge system performance, inform system refinement and assess departure from modelling predictions |
| CBD South Station to Domain Station | Drilling | Monitoring well | Monitoring | 8 | Further assess extent of compressible soils |
| CBD South Station to Domain Station | Drilling | Monitoring well | Monitoring | 6 | Groundwater quality assessment |
| CBD South Station to Domain Station | Drilling | Monitoring well | Monitoring | 5 | Cross passage seepage assessment |
| CBD South Station to Domain Station | Drilling | Geotechnical | Vertical geotech | 4 | Fill gap in existing information |
| Domain Station | Drilling | Recharge well | Recharge | 15 | Mitigate settlement and contamination related groundwater drawdown impacts. Multiple small diameter wells |
| Domain Station | Drilling | Backup recharge well | Recharge | 15 | Back up recharge wells (allows for primary well failure, maintenance and additional system capacity) |
| Domain Station | Drilling | Geotechnical | Vertical geotech | 2 | Fill gap in existing information |
| Domain Station | Drilling | Monitoring well | Monitoring | 5 | Groundwater quality assessment |
| Domain Station to Eastern Portal | Drilling | Monitoring well | Monitoring | 7 | Groundwater quality assessment |
| Domain Station to Eastern Portal | Drilling | Monitoring well | Monitoring | 6 | Cross passage seepage assessment |
| Domain Station to Eastern Portal | Drilling | Geotechnical | Vertical geotech | 5 | Fill gap in existing information |
| Eastern Portal | Drilling | Recharge well | Recharge | 4 | Mitigate (primarily) contamination related groundwater drawdown impacts |
| Eastern Portal | Drilling | Backup recharge well | Recharge | 4 | Back up recharge wells (allows for primary well failure, maintenance and additional system capacity) |
| Eastern Portal | Drilling | Monitoring well | Monitoring | 3 | Assess recharge system performance |
| Parkville Station | Drilling | Recharge well | Recharge | 6 | Mitigate (primarily) contamination related groundwater drawdown impacts. Multiple small diameter wells |
| Parkville Station | Drilling | Backup recharge well | Recharge | 6 | Back up recharge wells (allows for primary well failure, maintenance and additional system capacity) |
| Parkville Station | Drilling | Test well | Extraction | 1 | Assess groundwater response to dewatering and inform mitigation design development |
| Parkville Station | Drilling | Geotechnical | Vertical geotech | 1 | Fill gap in existing information |
| Parkville Station | Drilling | Monitoring well | Monitoring | 14 | Groundwater quality assessment, baseline groundwater levels and mitigation system performance monitoring |
| Parkville Station to CBD North Station | Drilling | Monitoring well | Monitoring | 3 | Assess recharge system performance |
| Parkville Station to CBD North Station | Drilling | Monitoring well | Monitoring | 9 | Groundwater quality assessment |
| Parkville Station to CBD North Station | Drilling | Monitoring well | Monitoring | 3 | Groundwater quality assessment |
| Parkville Station to CBD North Station | Drilling | Geotechnical | Vertical geotech | 5 | Fill gap in existing information |
| Western Portal | Drilling | Recharge well | Recharge | 4 | Mitigate settlement and contamination related groundwater drawdown impacts |
| Western Portal | Drilling | Backup recharge well | Recharge | 4 | Back up recharge wells (allows for primary well failure, maintenance and additional system capacity) |
| Western Portal | Drilling | Geotechnical | Vertical geotech | 1 | Fill gap in existing information |
| Western Portal to Arden Station | Drilling | Monitoring well | Monitoring | 6 | Further assess extent of compressible soils |
| Western Portal to Arden Station | Drilling | Geotechnical | Vertical geotech | 6 | Fill gap in existing information |
| Western Portal to Arden Station | Drilling | Monitoring well | Monitoring | 4 | Cross passage seepage assessment |
| Western Portal to Arden Station | Drilling | Monitoring well | Monitoring | 11 | Groundwater quality assessment, groundwater-water surface interaction assessment, monitor recharge system performance |
| Western Portal to Arden Station | Drilling | Probe | Membrane Interfac | 6 | Assess presence of methane and H2S gas |



Schedule 3

AW Activities Program

Refer to separate document.

Response to Clarifications - Criterion G, Rev 6 DRAFT Advanced Works Program - Detailed



| Activity ID | Activity Name | Remaining Duration | Start | Finish | Gantt Chart Timeline | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|--------------------|-------------|-------------|--|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
| | | | | | 03 | 10 | 17 | 24 | 31 | 07 | 14 | 21 | 28 | 04 | 11 | 18 | 25 | 02 | 09 | 16 | 23 | 30 | 06 | 13 | 20 | 27 | 04 | 11 | 18 | 25 | 01 | 08 | 15 | 22 | 29 | 05 | 12 | 19 | 26 | 02 | 09 | 16 | 23 | 30 | 06 | 13 | 20 | 27 | 04 | 11 | 18 | 25 | 01 | 08 | 15 | 22 |
| Response to Clarifications - Criterion G, Rev 6 | | | | | [Gantt Chart: 437 days remaining, 06-Apr-17 A to 13-Apr-19] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Tunnels & Stations Design & Construction (D&C) Phase | | | | | [Gantt Chart: 437 days remaining, 06-Apr-17 A to 13-Apr-19] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Management | | | | | [Gantt Chart: 175 days remaining, 06-Apr-17 A to 27-Mar-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Project Delivery | | | | | [Gantt Chart: 61 days remaining, 16-Jul-17 A to 17-Nov-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.10000 | Preferred Respondent Selected | 0 | 16-Jul-17 A | 16-Jul-17 A | [Milestone: Preferred Respondent Selected] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.10010 | Advanced Works Agreement Signed | 0 | 16-Jul-17 A | 22-Aug-17 | [Milestone: Advanced Works Agreement Signed] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.10050 | Contract Close | 0 | 10-Nov-17 | 10-Nov-17 | [Milestone: Contract Close] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.11000 | Financial Close | 0 | 17-Nov-17 | 17-Nov-17 | [Milestone: Financial Close] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Commercial | | | | | [Gantt Chart: 83 days remaining, 17-Jul-17 to 10-Nov-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Advanced Works Agreement | | | | | [Gantt Chart: 27 days remaining, 17-Jul-17 to 22-Aug-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.11100 | Advanced Works Agreement - MMRA Issue Draft Contract Documentation | 5 | 17-Jul-17 | 21-Jul-17 | [Task: Advanced Works Agreement - MMRA Issue Draft Contract Documentation] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.11110 | Advanced Works Agreement - CYP Review Draft Contract Documentation and Respond to MMRA | 10 | 24-Jul-17 | 04-Aug-17 | [Task: Advanced Works Agreement - CYP Review Draft Contract Documentation and Respond to MMRA] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.11120 | Advanced Works Agreement - CYP and MMRA Contract Negotiations | 5 | 07-Aug-17 | 11-Aug-17 | [Task: Advanced Works Agreement - CYP and MMRA Contract Negotiations] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.11130 | Advanced Works Agreement - MMRA Issue Final Contract Documentation | 1 | 14-Aug-17 | 14-Aug-17 | [Task: Advanced Works Agreement - MMRA Issue Final Contract Documentation] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.11140 | Advanced Works Agreement - CYP Review Final Contract Documentation and Respond to MMRA | 2 | 15-Aug-17 | 16-Aug-17 | [Task: Advanced Works Agreement - CYP Review Final Contract Documentation and Respond to MMRA] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.11150 | Advanced Works Agreement - Close Out Remaining Issues and Approve Contract Documentation | 4 | 17-Aug-17 | 22-Aug-17 | [Task: Advanced Works Agreement - Close Out Remaining Issues and Approve Contract Documentation] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.11160 | Advanced Works Agreement - Agreement Executed | 0 | 22-Aug-17 | 22-Aug-17 | [Milestone: Advanced Works Agreement - Agreement Executed] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Early Works Management | | | | | [Gantt Chart: 27 days remaining, 17-Jul-17 to 22-Aug-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Contractor Novation | | | | | [Gantt Chart: 5 days remaining, 17-Jul-17 to 21-Jul-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.11200 | EWMC Novation - MMRA Issue Draft Contract Documentation | 5 | 17-Jul-17 | 21-Jul-17 | [Task: EWMC Novation - MMRA Issue Draft Contract Documentation] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.11210 | EWMC Novation - CYP Review Draft Contract Documentation and Respond to MMRA | 10 | 24-Jul-17 | 04-Aug-17 | [Task: EWMC Novation - CYP Review Draft Contract Documentation and Respond to MMRA] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.11220 | EWMC Novation - CYP and MMRA Contract Negotiations | 5 | 07-Aug-17 | 11-Aug-17 | [Task: EWMC Novation - CYP and MMRA Contract Negotiations] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.11230 | EWMC Novation - MMRA Issue Final Contract Documentation | 1 | 14-Aug-17 | 14-Aug-17 | [Task: EWMC Novation - MMRA Issue Final Contract Documentation] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.11240 | EWMC Novation - CYP Review Final Contract Documentation and Respond to MMRA | 2 | 15-Aug-17 | 16-Aug-17 | [Task: EWMC Novation - CYP Review Final Contract Documentation and Respond to MMRA] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.11250 | EWMC Novation - Close Out Remaining Issues and Approve Contract Documentation | 4 | 17-Aug-17 | 22-Aug-17 | [Task: EWMC Novation - Close Out Remaining Issues and Approve Contract Documentation] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.11260 | EWMC Novation - Agreement Executed | 0 | 22-Aug-17 | 22-Aug-17 | [Milestone: EWMC Novation - Agreement Executed] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Contract Close (and Financial Close) | | | | | [Gantt Chart: 83 days remaining, 17-Jul-17 to 10-Nov-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Project Agreement and Schedules | | | | | [Gantt Chart: 83 days remaining, 17-Jul-17 to 10-Nov-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.10900 | Project Agreement - Agree contract with Project Co | 55 | 17-Jul-17 | 02-Oct-17 | [Task: Project Agreement - Agree contract with Project Co] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.10960 | Project Agreement - Finalise Contract Close and Financial Close Activities | 60 | 17-Aug-17 | 10-Nov-17 | [Task: Project Agreement - Finalise Contract Close and Financial Close Activities] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.10940 | Project Agreement - D&C Steering Committee to provide insurance required | 30 | 21-Aug-17 | 02-Oct-17 | [Task: Project Agreement - D&C Steering Committee to provide insurance required] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.10910 | Project Agreement - JV Partners to provide satisfactory legal advice to Project Co | 10 | 18-Sep-17 | 02-Oct-17 | [Task: Project Agreement - JV Partners to provide satisfactory legal advice to Project Co] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.10920 | Project Agreement - D&C Steering Committee to provide evidence of any accreditation required for Rail (Tram) Safety | 0 | 02-Oct-17 | 02-Oct-17 | [Milestone: Project Agreement - D&C Steering Committee to provide evidence of any accreditation required for Rail (Tram) Safety] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.10970 | Project Agreement - D&C Steering Committee to provide evidence of Performance Bond | 0 | 10-Nov-17 | 10-Nov-17 | [Milestone: Project Agreement - D&C Steering Committee to provide evidence of Performance Bond] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| D&C Subcontract, Maintenance Subcontract, Key Subcontract Interface Deed | | | | | [Gantt Chart: 53 days remaining, 17-Jul-17 to 27-Sep-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.18040 | Subcontracts and Interface deed agreed by Project Co and Subcontractors | 39 | 17-Jul-17 | 07-Sep-17 | [Task: Subcontracts and Interface deed agreed by Project Co and Subcontractors] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.18050 | State Review and Comment on Subcontracts and Interface Deed | 6 | 08-Sep-17 | 15-Sep-17 | [Task: State Review and Comment on Subcontracts and Interface Deed] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.18060 | Subcontracts and Interface Deed Finalised | 8 | 18-Sep-17 | 27-Sep-17 | [Task: Subcontracts and Interface Deed Finalised] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Critical Interface Milestones | | | | | [Gantt Chart: 50 days remaining, 17-Jul-17 to 22-Sep-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.18070 | Detail IDS and Finalise Critical Interface Milestones Dates with RSA | 30 | 17-Jul-17 | 25-Aug-17 | [Task: Detail IDS and Finalise Critical Interface Milestones Dates with RSA] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.18080 | Detail IDS and Finalise Critical Interface Milestones Dates with RIA | 50 | 17-Jul-17 | 22-Sep-17 | [Task: Detail IDS and Finalise Critical Interface Milestones Dates with RIA] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MMRA Issue Register Items | | | | | [Gantt Chart: 83 days remaining, 17-Jul-17 to 10-Nov-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| A21530 | Close out MMRA Issues Register Items | 50 | 17-Jul-17 | 22-Sep-17 | [Task: Close out MMRA Issues Register Items] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Architecture and Urban Design | | | | | [Gantt Chart: 73 days remaining, 31-Jul-17 to 10-Nov-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Line Wide Elements (Work Stream 1) | | | | | [Gantt Chart: 24 days remaining, 31-Jul-17 to 31-Aug-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.18100 | Architecture - Line Wide Elements - Review Existing Design (Discuss Opportunities) | 10 | 31-Jul-17 | 11-Aug-17 | [Task: Architecture - Line Wide Elements - Review Existing Design (Discuss Opportunities)] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.18110 | Architecture - Line Wide Elements - Review Pedestrian Modelling Feedback and Advise Impacts | 8 | 02-Aug-17 | 11-Aug-17 | [Task: Architecture - Line Wide Elements - Review Pedestrian Modelling Feedback and Advise Impacts] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.18120 | Architecture - Line Wide Elements - Incorporate Value Engineering and Post Q&A Commitments | 8 | 02-Aug-17 | 11-Aug-17 | [Task: Architecture - Line Wide Elements - Incorporate Value Engineering and Post Q&A Commitments] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.18130 | Architecture - Line Wide Elements - Review and Incorporate MMRA Planning and Technical Feedback | 8 | 02-Aug-17 | 11-Aug-17 | [Task: Architecture - Line Wide Elements - Review and Incorporate MMRA Planning and Technical Feedback] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.18140 | Architecture - Line Wide Elements - Review / Workshop / Incorporate Stakeholder Comments and Advise Impacts | 8 | 02-Aug-17 | 11-Aug-17 | [Task: Architecture - Line Wide Elements - Review / Workshop / Incorporate Stakeholder Comments and Advise Impacts] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.18150 | Architecture - Line Wide Elements - Workshop Refinements (Structure, MEP, Rail Systems) | 5 | 07-Aug-17 | 11-Aug-17 | [Task: Architecture - Line Wide Elements - Workshop Refinements (Structure, MEP, Rail Systems)] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.18160 | Architecture - Line Wide Elements - Present to MMRA & OVGA & Relevant Council | 0 | 15-Aug-17 | 15-Aug-17 | [Milestone: Architecture - Line Wide Elements - Present to MMRA & OVGA & Relevant Council] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.18170 | Architecture - Line Wide Elements - Consolidate Feedback and Update Accordingly | 11 | 16-Aug-17 | 30-Aug-17 | [Task: Architecture - Line Wide Elements - Consolidate Feedback and Update Accordingly] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.18180 | Architecture - Line Wide Elements - Cost Plan Review and Advise Steering Co. | 5 | 24-Aug-17 | 30-Aug-17 | [Task: Architecture - Line Wide Elements - Cost Plan Review and Advise Steering Co.] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.18190 | Architecture - Line Wide Elements - Final Presentation to MMRA & OVGA & Relevant Council | 0 | 31-Aug-17 | 31-Aug-17 | [Milestone: Architecture - Line Wide Elements - Final Presentation to MMRA & OVGA & Relevant Council] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| CBD North and Public Domain (Work Stream 2) | | | | | [Gantt Chart: 27 days remaining, 31-Jul-17 to 05-Sep-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.18200 | Architecture - CBD North & Public Domain - Review Existing Design (Discuss Opportunities) | 10 | 31-Jul-17 | 11-Aug-17 | [Task: Architecture - CBD North & Public Domain - Review Existing Design (Discuss Opportunities)] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.18210 | Architecture - CBD North & Public Domain - Review Pedestrian Modelling Feedback and Advise Impacts | 5 | 07-Aug-17 | 11-Aug-17 | [Task: Architecture - CBD North & Public Domain - Review Pedestrian Modelling Feedback and Advise Impacts] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.18220 | Architecture - CBD North & Public Domain - Incorporate Value Engineering and Post Q&A Commitments | 5 | 07-Aug-17 | 11-Aug-17 | [Task: Architecture - CBD North & Public Domain - Incorporate Value Engineering and Post Q&A Commitments] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.18230 | Architecture - CBD North & Public Domain - Review and Incorporate MMRA Planning and Technical Feedback | 5 | 07-Aug-17 | 11-Aug-17 | [Task: Architecture - CBD North & Public Domain - Review and Incorporate MMRA Planning and Technical Feedback] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.18240 | Architecture - CBD North & Public Domain - Review / Workshop / Incorporate Stakeholder Comments and Advise In | 5 | 07-Aug-17 | 11-Aug-17 | [Task: Architecture - CBD North & Public Domain - Review / Workshop / Incorporate Stakeholder Comments and Advise In] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.18250 | Architecture - CBD North & Public Domain - Workshop Refinements (Structure, MEP, Rail Systems) | 5 | 07-Aug-17 | 11-Aug-17 | [Task: Architecture - CBD North & Public Domain - Workshop Refinements (Structure, MEP, Rail Systems)] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.18260 | Architecture - CBD North & Public Domain - Present to MMRA & OVGA & Relevant Council | 0 | 17-Aug-17 | 17-Aug-17 | [Milestone: Architecture - CBD North & Public Domain - Present to MMRA & OVGA & Relevant Council] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.18270 | Architecture - CBD North & Public Domain - Consolidate Feedback and Update Accordingly | 9 | 18-Aug-17 | 30-Aug-17 | [Task: Architecture - CBD North & Public Domain - Consolidate Feedback and Update Accordingly] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.18280 | Architecture - CBD North & Public Domain - Cost Plan Review and Advise Steering Co. | 5 | 28-Aug-17 | 01-Sep-17 | [Task: Architecture - CBD North & Public Domain - Cost Plan Review and Advise Steering Co.] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.18290 | Architecture - CBD North & Public Domain - Final Presentation to MMRA & OVGA & Relevant Council | 0 | 05-Sep-17 | 05-Sep-17 | [Milestone: Architecture - CBD North & Public Domain - Final Presentation to MMRA & OVGA & Relevant Council] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| CBD South and Public Domain (Work Stream 3) | | | | | [Gantt Chart: 28 days remaining, 01-Aug-17 to 07-Sep-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.18300 | Architecture - CBD South & Public Domain - Review Existing Design (Discuss Opportunities) | 14 | 01-Aug-17 | 18-Aug-17 | [Task: Architecture - CBD South & Public Domain - Review Existing Design (Discuss Opportunities)] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.18310 | Architecture - CBD South & Public Domain - Review Pedestrian Modelling Feedback and Advise Impacts | 10 | 07-Aug-17 | 18-Aug-17 | [Task: Architecture - CBD South & Public Domain - Review Pedestrian Modelling Feedback and Advise Impacts] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MNG.FC.18320 | Architecture - CBD South & Public Domain - Incorporate Value Engineering and Post Q&A Commitments | 10 | 07-Aug-17 | 18-Aug-17 | [Task: Architecture - CBD South & Public Domain - Incorporate Value Engineering and Post Q&A Commitments] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

█ Actual Work █ Critical Remaining Work
█ Remaining Work ◆ Milestone

| Date | Revision | Checked | Approved |
|-----------|--|---------|----------|
| 04-Aug-17 | Response to Clarifications Criterion G, Rev 6_W... | MP | |

Response to Clarifications - Criterion G, Rev 6 DRAFT Advanced Works Program - Detailed



| Activity ID | Activity Name | Remaining Duration | Start | Finish | Gantt Chart (Timeline) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|--|---|--------------------|-------------|-------------|---|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
| | | | | | 03 | 10 | 17 | 24 | 31 | 07 | 14 | 21 | 28 | 04 | 11 | 18 | 25 | 02 | 09 | 16 | 23 | 30 | 06 | 13 | 20 | 27 | 04 | 11 | 18 | 25 | 01 | 08 | 15 | 22 | 29 | 05 | 12 | 19 | 26 | 02 | 09 | 16 | 23 | 30 | 06 | 13 | 20 | 27 | 04 | 11 | 18 | 25 | 01 | 08 | 15 | 22 |
| A-A1410 | Electro Magnetic Compatibility Management Plan - Approval | 20 | 08-Nov-17 | 05-Dec-17 | [Gantt bar: 08-Nov-17 to 05-Dec-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Transport Management Plans | | | | | [Summary bar: 14-Aug-17 to 05-Dec-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Plan Preparation & Submission | | | | | [Summary bar: 14-Aug-17 to 09-Oct-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| A1340 | Transport Management Plan - Prepare & Submit | 40 | 14-Aug-17 | 09-Oct-17 | [Gantt bar: 14-Aug-17 to 09-Oct-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| A1350 | Traffic Management Plan - Prepare & Submit | 40 | 14-Aug-17 | 09-Oct-17 | [Gantt bar: 14-Aug-17 to 09-Oct-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| A1360 | Worksite Traffic Management Plan (required 30 business days prior to commencement of Works) - Prepare & Sub | 20 | 14-Aug-17 | 08-Sep-17 | [Gantt bar: 14-Aug-17 to 08-Sep-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Plan Approval | | | | | [Summary bar: 11-Sep-17 to 05-Dec-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| A-A1420 | Worksite Traffic Management Plan (required 30 business days prior to commencement of Works) - Approval | 20 | 11-Sep-17 | 09-Oct-17 | [Gantt bar: 11-Sep-17 to 09-Oct-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| A-A1180 | Transport Management Plan - Approval | 40 | 10-Oct-17 | 05-Dec-17 | [Gantt bar: 10-Oct-17 to 05-Dec-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| A-A1190 | Traffic Management Plan - Approval | 40 | 10-Oct-17 | 05-Dec-17 | [Gantt bar: 10-Oct-17 to 05-Dec-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Construction Management Plans | | | | | [Summary bar: 06-Apr-17 A to 29-Jan-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Plan Preparation & Submission | | | | | [Summary bar: 06-Apr-17 A to 15-Dec-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| A1380 | Mobilisation Management Plan - Full Draft Submitted as part of Proposal | 0 | 06-Apr-17 A | 06-Apr-17 A | [Gantt bar: 06-Apr-17 A to 06-Apr-17 A] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| A1370 | Construction Management Plan - Prepare & Submit | 50 | 14-Aug-17 | 23-Oct-17 | [Gantt bar: 14-Aug-17 to 23-Oct-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| A1390 | Noise and Vibration Management Plan - Prepare & Submit | 60 | 14-Aug-17 | 06-Nov-17 | [Gantt bar: 14-Aug-17 to 06-Nov-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| A1400 | Spoil Management Plan - Prepare & Submit | 60 | 14-Aug-17 | 06-Nov-17 | [Gantt bar: 14-Aug-17 to 06-Nov-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| A1410 | Monitoring Management Plan - Prepare & Submit | 50 | 14-Aug-17 | 23-Oct-17 | [Gantt bar: 14-Aug-17 to 23-Oct-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| A1420 | Demolition Management Plan - Prepare & Submit | 10 | 04-Dec-17 | 15-Dec-17 | [Gantt bar: 04-Dec-17 to 15-Dec-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| A1430 | Rail Access Management Plan - Prepare & Submit | 10 | 04-Dec-17 | 15-Dec-17 | [Gantt bar: 04-Dec-17 to 15-Dec-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Plan Approval | | | | | [Summary bar: 17-Jul-17 to 29-Jan-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| A-A1500 | Mobilisation Management Plan - Approval | 20 | 17-Jul-17 | 11-Aug-17 | [Gantt bar: 17-Jul-17 to 11-Aug-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| A-A1200 | Construction Management Plan - Approval | 40 | 24-Oct-17 | 19-Dec-17 | [Gantt bar: 24-Oct-17 to 19-Dec-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| A-A1230 | Monitoring Management Plan - Approval | 40 | 24-Oct-17 | 19-Dec-17 | [Gantt bar: 24-Oct-17 to 19-Dec-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| A-A1210 | Noise and Vibration Management Plan - Approval | 40 | 08-Nov-17 | 16-Jan-18 | [Gantt bar: 08-Nov-17 to 16-Jan-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| A-A1220 | Spoil Management Plan - Approval | 40 | 08-Nov-17 | 16-Jan-18 | [Gantt bar: 08-Nov-17 to 16-Jan-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| A-A1430 | Demolition Management Plan - Approval | 20 | 18-Dec-17 | 29-Jan-18 | [Gantt bar: 18-Dec-17 to 29-Jan-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| A-A1440 | Rail Access Management Plan - Approval | 20 | 18-Dec-17 | 29-Jan-18 | [Gantt bar: 18-Dec-17 to 29-Jan-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Rail Safety Accreditation Plan | | | | | [Summary bar: 14-Aug-17 to 05-Dec-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Plan Preparation & Submission | | | | | [Summary bar: 14-Aug-17 to 09-Oct-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| A1460 | Rail Safety Accreditation Plan - Prepare & Submit | 40 | 14-Aug-17 | 09-Oct-17 | [Gantt bar: 14-Aug-17 to 09-Oct-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Plan Approval | | | | | [Summary bar: 10-Oct-17 to 05-Dec-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| A-A1240 | Rail Safety Accreditation Plan - Approval | 40 | 10-Oct-17 | 05-Dec-17 | [Gantt bar: 10-Oct-17 to 05-Dec-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Security Management Plans | | | | | [Summary bar: 14-Aug-17 to 09-Oct-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Plan Preparation & Submission | | | | | [Summary bar: 14-Aug-17 to 08-Sep-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| A2060 | Emergency Risk Management Plan - Prepare & Submit | 20 | 14-Aug-17 | 08-Sep-17 | [Gantt bar: 14-Aug-17 to 08-Sep-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| A2070 | Information Security System Management Plan - Prepare & Submit | 20 | 14-Aug-17 | 08-Sep-17 | [Gantt bar: 14-Aug-17 to 08-Sep-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| A2080 | Security Risk Plan - Prepare & Submit | 20 | 14-Aug-17 | 08-Sep-17 | [Gantt bar: 14-Aug-17 to 08-Sep-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Plan Approval | | | | | [Summary bar: 11-Sep-17 to 09-Oct-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| A-A1470 | Emergency Risk Management Plan - Approval | 20 | 11-Sep-17 | 09-Oct-17 | [Gantt bar: 11-Sep-17 to 09-Oct-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| A-A1480 | Information Security System Management Plan - Approval | 20 | 11-Sep-17 | 09-Oct-17 | [Gantt bar: 11-Sep-17 to 09-Oct-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| A-A1490 | Security Risk Plan - Approval | 20 | 11-Sep-17 | 09-Oct-17 | [Gantt bar: 11-Sep-17 to 09-Oct-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Systems Engineering | | | | | [Summary bar: 23-Aug-17 to 30-Jan-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| SE Gates | | | | | [Summary bar: 30-Jan-18 to 30-Jan-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MM.SE.5930 | SDR Gate | 0 | 30-Jan-18 | 30-Jan-18 | [Milestone: 30-Jan-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| SE Gate Reviews | | | | | [Summary bar: 08-Dec-17 to 30-Jan-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Review Criteria | | | | | [Summary bar: 08-Dec-17 to 08-Jan-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MM.SE.1540 | Define Review Criteria for SDR | 6 | 08-Dec-17 | 15-Dec-17 | [Gantt bar: 08-Dec-17 to 15-Dec-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MM.SE.1541 | Define Review Criteria for PDR | 6 | 18-Dec-17 | 08-Jan-18 | [Gantt bar: 18-Dec-17 to 08-Jan-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| System Reviews | | | | | [Summary bar: 08-Jan-18 to 30-Jan-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MM.SE.5600 | Perform System Definition Review | 15 | 08-Jan-18 | 30-Jan-18 | [Gantt bar: 08-Jan-18 to 30-Jan-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Management Plans | | | | | [Summary bar: 02-Nov-17 to 15-Dec-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Management Plans - Initial Submissions at FC | | | | | [Summary bar: 02-Nov-17 to 24-Nov-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MM.SE.1810 | Configuration Management Plan (FC for SDR) | 16 | 02-Nov-17 | 24-Nov-17 | [Gantt bar: 02-Nov-17 to 24-Nov-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MM.SE.1820 | PPP Interface Management Plan (FC for SDR) | 16 | 02-Nov-17 | 24-Nov-17 | [Gantt bar: 02-Nov-17 to 24-Nov-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MM.SE.1840 | System Assurance Management Plan (FC for SDR) | 16 | 02-Nov-17 | 24-Nov-17 | [Gantt bar: 02-Nov-17 to 24-Nov-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MM.SE.1870 | Systems Engineering Management Plan (FC for SDR) | 16 | 02-Nov-17 | 24-Nov-17 | [Gantt bar: 02-Nov-17 to 24-Nov-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MM.SE.1890 | Requirements Management Plan (FC for SDR) | 16 | 02-Nov-17 | 24-Nov-17 | [Gantt bar: 02-Nov-17 to 24-Nov-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Management Plans - Initial Submissions after FC | | | | | [Summary bar: 24-Nov-17 to 15-Dec-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MM.SE.1790 | System Safety Management Plan (FC+20 for SDR) | 16 | 24-Nov-17 | 15-Dec-17 | [Gantt bar: 24-Nov-17 to 15-Dec-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MM.SE.1800 | Human Factors Management Plan (FC+20 for SDR) | 16 | 24-Nov-17 | 15-Dec-17 | [Gantt bar: 24-Nov-17 to 15-Dec-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MM.SE.1830 | RAM Management Plan (FC+20 for SDR) | 16 | 24-Nov-17 | 15-Dec-17 | [Gantt bar: 24-Nov-17 to 15-Dec-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MM.SE.1850 | Verification and Validation Management Plan (FC+20 for SDR) | 16 | 24-Nov-17 | 15-Dec-17 | [Gantt bar: 24-Nov-17 to 15-Dec-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MM.SE.1880 | System Integration Management Plan (FC+20 for SDR) | 16 | 24-Nov-17 | 15-Dec-17 | [Gantt bar: 24-Nov-17 to 15-Dec-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Requirements Specifications | | | | | [Summary bar: 23-Aug-17 to 08-Jan-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| System Requirements Specification SRS-S0-Tunnels and Stations | | | | | [Summary bar: 23-Aug-17 to 01-Dec-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MM.SE.1520 | System Requirements Specification SRS-S0-Tunnels and Stations (FC) | 61 | 23-Aug-17 | 17-Nov-17 | [Gantt bar: 23-Aug-17 to 17-Nov-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MM.SE.5090 | System Requirements Specification SRS-S0-Tunnels and Stations (SDR) | 10 | 20-Nov-17 | 01-Dec-17 | [Gantt bar: 20-Nov-17 to 01-Dec-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| System Architecture Specification SAS-S0-Tunnels and Stations | | | | | [Summary bar: 23-Aug-17 to 01-Dec-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MM.SE.1510 | System Architecture Specification SAS-S0-Tunnels and Stations (FC) | 46 | 23-Aug-17 | 26-Oct-17 | [Gantt bar: 23-Aug-17 to 26-Oct-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

█ Actual Work █ Critical Remaining Work
█ Remaining Work ◆ Milestone

| Date | Revision | Checked | Approved |
|-----------|--|---------|----------|
| 04-Aug-17 | Response to Clarifications Criterion G, Rev 6_W... | MP | |

Response to Clarifications - Criterion G, Rev 6 DRAFT Advanced Works Program - Detailed



| Activity ID | Activity Name | Remaining Duration | Start | Finish | July 2017 | | | | | | | August 2017 | | | | | | | September 2017 | | | | | | | October 2017 | | | | | | | November 2017 | | | | | | | December 2017 | | | | | | | January 2018 | | | | | | | February 2018 | | | | | | | March 2018 | | | | | | |
|--|---|--------------------|-----------|-----------|---|----|----|----|----|----|----|-------------|----|----|----|----|----|----|----------------|----|----|----|----|----|----|--------------|----|----|----|----|----|----|---------------|----|----|----|----|----|----|---------------|----|----|----|----|--|--|--|--|--|--|--|--|--|---------------|--|--|--|--|--|--|------------|--|--|--|--|--|--|
| | | | | | 03 | 10 | 17 | 24 | 31 | 07 | 14 | 21 | 28 | 04 | 11 | 18 | 25 | 02 | 09 | 16 | 23 | 30 | 06 | 13 | 20 | 27 | 04 | 11 | 18 | 25 | 01 | 08 | 15 | 22 | 29 | 05 | 12 | 19 | 26 | 02 | 09 | 16 | 23 | 30 | | | | | | | | | | | | | | | | | | | | | | | |
| A20740 | Establish Safety Interface and Design Authority Agreements for Working Under Existing Yarra Trams Accreditation | 100 | 23-Aug-17 | 16-Jan-18 | [Gantt bar from 23-Aug-17 to 16-Jan-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Establish Safety Interface and Design Authority Agreements for Working Under Existing Yarra Trams Accreditation Executed | | | | | | | | | | | | | | | | | | | | |
| A20750 | Safety Interface and Design Authority Agreements for Working Under Existing Yarra Trams Accreditation Executed | 0 | 23-Aug-17 | 16-Jan-18 | [Gantt bar from 23-Aug-17 to 16-Jan-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | ◆ Safety Interface and Design Authority Agreements for Working Under Existing Yarra Trams Accreditation Executed | | | | | | | | | | | | | | | | | | | | |
| PWD.DG.00000 | Mobilise Design Team | 20 | 23-Aug-17 | 19-Sep-17 | [Gantt bar from 23-Aug-17 to 19-Sep-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Mobilise Design Team | | | | | | | | | | | | | | | | | | | | |
| Design Basis Reports | | 200 | 20-Sep-17 | 20-Jul-18 | [Gantt bar from 20-Sep-17 to 20-Jul-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Architectural | | 80 | 20-Sep-17 | 25-Jan-18 | [Gantt bar from 20-Sep-17 to 25-Jan-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Project Wide - Basis of Design Report (Acc.Report) TAS-HWW-PW-00-PKG-AGE-500 | | 80 | 20-Sep-17 | 25-Jan-18 | [Gantt bar from 20-Sep-17 to 25-Jan-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| PWD AD 00050 | Project Wide - Basis of Design - Prepare Certified Design Documentation and Undertake Internal Review | 40 | 20-Sep-17 | 16-Nov-17 | [Gantt bar from 20-Sep-17 to 16-Nov-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Project Wide - Basis of Design - Prepare Certified Design Documentation and Undertake Internal Review | | | | | | | | | | | | | | | | | | | | |
| PWD AD 00060 | Project Wide - Basis of Design - External Review of Certified Design Documentation (State/Stakeholder/IR) | 10 | 17-Nov-17 | 30-Nov-17 | [Gantt bar from 17-Nov-17 to 30-Nov-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Project Wide - Basis of Design - External Review of Certified Design Documentation (State/Stakeholder/IR) | | | | | | | | | | | | | | | | | | | | |
| PWD AD 00070 | Project Wide - Basis of Design - Independent Review of Certified Design Documentations and Action Comments | 30 | 01-Dec-17 | 25-Jan-18 | [Gantt bar from 01-Dec-17 to 25-Jan-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Project Wide - Basis of Design - Independent Review of Certified Design Documentations and Action Comments | | | | | | | | | | | | | | | | | | | | |
| PWD AD 00090 | Project Wide - Basis of Design - Issue FC Design Documentation | 0 | 25-Jan-18 | 25-Jan-18 | [Gantt bar from 25-Jan-18 to 25-Jan-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | ◆ Project Wide - Basis of Design - Issue FC Design Documentation | | | | | | | | | | | | | | | | | | | | |
| Geotechnical | | 175 | 20-Sep-17 | 15-Jun-18 | [Gantt bar from 20-Sep-17 to 15-Jun-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Project Wide - Groundwater Control Measures (Acc. Report) (TAS-COF-PW-00-PKG-CGT-121) | | 60 | 20-Sep-17 | 14-Dec-17 | [Gantt bar from 20-Sep-17 to 14-Dec-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| PWD DG 60050 | Project Wide - Groundwater Control - Prepare Certified Design Documentation and Undertake Internal Review | 20 | 20-Sep-17 | 18-Oct-17 | [Gantt bar from 20-Sep-17 to 18-Oct-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Project Wide - Groundwater Control - Prepare Certified Design Documentation and Undertake Internal Review | | | | | | | | | | | | | | | | | | | | |
| PWD DG 60060 | Project Wide - Groundwater Control - External Review of Certified Design Documentation (State/Stakeholder/IR) | 10 | 19-Oct-17 | 01-Nov-17 | [Gantt bar from 19-Oct-17 to 01-Nov-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Project Wide - Groundwater Control - External Review of Certified Design Documentation (State/Stakeholder/IR) | | | | | | | | | | | | | | | | | | | | |
| PWD DG 60070 | Project Wide - Groundwater Control - Independent Review of Certified Design Documentations and Action Comments | 30 | 02-Nov-17 | 14-Dec-17 | [Gantt bar from 02-Nov-17 to 14-Dec-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Project Wide - Groundwater Control - Independent Review of Certified Design Documentations and Action Comments | | | | | | | | | | | | | | | | | | | | |
| PWD DG 60090 | Project Wide - Groundwater Control - Issue IFC Design Documentation | 0 | 14-Dec-17 | 14-Dec-17 | [Gantt bar from 14-Dec-17 to 14-Dec-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | ◆ Project Wide - Groundwater Control - Issue IFC Design Documentation | | | | | | | | | | | | | | | | | | | | |
| Project Wide - Geotechnical Investigative Report (TAS-COF-PW-00-PKG-CGT-110) | | 115 | 20-Sep-17 | 19-Mar-18 | [Gantt bar from 20-Sep-17 to 19-Mar-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| PWD DR.31410 | Project Wide - Geotechnical Investigative Report - Prepare Draft Report and Undertake Internal Review | 20 | 20-Sep-17 | 18-Oct-17 | [Gantt bar from 20-Sep-17 to 18-Oct-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Project Wide - Geotechnical Investigative Report - Prepare Draft Report and Undertake Internal Review | | | | | | | | | | | | | | | | | | | | |
| PWD DR.31420 | Project Wide - Geotechnical Investigative Report - Independent Review of Draft Report and Action Comments | 10 | 19-Oct-17 | 01-Nov-17 | [Gantt bar from 19-Oct-17 to 01-Nov-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Project Wide - Geotechnical Investigative Report - Independent Review of Draft Report and Action Comments | | | | | | | | | | | | | | | | | | | | |
| PWD DR.31430 | Project Wide - Geotechnical Investigative Report - Prepare Final Report and Undertake Internal Review | 30 | 02-Nov-17 | 14-Dec-17 | [Gantt bar from 02-Nov-17 to 14-Dec-17] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Project Wide - Geotechnical Investigative Report - Prepare Final Report and Undertake Internal Review | | | | | | | | | | | | | | | | | | | | |
| PWD DR.31440 | Project Wide - Geotechnical Investigative Report - External Review of Final Report | 20 | 15-Dec-17 | 25-Jan-18 | [Gantt bar from 15-Dec-17 to 25-Jan-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Project Wide - Geotechnical Investigative Report - External Review of Final Report | | | | | | | | | | | | | | | | | | | | |
| PWD DR.31450 | Project Wide - Geotechnical Investigative Report - Independent Review of Final Report and Action Comments | 35 | 29-Jan-18 | 19-Mar-18 | [Gantt bar from 29-Jan-18 to 19-Mar-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Project Wide - Geotechnical Investigative Report - Independent Review of Final Report and Action Comments | | | | | | | | | | | | | | | | | | | | |
| PWD DR.31490 | Project Wide - Geotechnical Investigative Report - Issue IFC Final Report | 0 | 19-Mar-18 | 19-Mar-18 | [Gantt bar from 19-Mar-18 to 19-Mar-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | ◆ Project Wide - Geotechnical Investigative Report - Issue IFC Final Report | | | | | | | | | | | | | | | | | | | | |
| Project Wide - Groundwater Modelling (TAS-COF-PW-00-PKG-CGT-120) | | 115 | 15-Dec-17 | 15-Jun-18 | [Gantt bar from 15-Dec-17 to 15-Jun-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| PWD DG 60110 | Project Wide - Groundwater Modelling - Prepare Draft Report and Undertake Internal Review | 20 | 15-Dec-17 | 25-Jan-18 | [Gantt bar from 15-Dec-17 to 25-Jan-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Project Wide - Groundwater Modelling - Prepare Draft Report and Undertake Internal Review | | | | | | | | | | | | | | | | | | | | |
| PWD DG 60120 | Project Wide - Groundwater Modelling - Independent Review of Draft Report and Action Comments | 10 | 29-Jan-18 | 09-Feb-18 | [Gantt bar from 29-Jan-18 to 09-Feb-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Project Wide - Groundwater Modelling - Independent Review of Draft Report and Action Comments | | | | | | | | | | | | | | | | | | | | |
| PWD DG 60130 | Project Wide - Groundwater Modelling - Prepare Final Report and Undertake Internal Review | 30 | 12-Feb-18 | 26-Mar-18 | [Gantt bar from 12-Feb-18 to 26-Mar-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Project Wide - Groundwater Modelling - Prepare Final Report and Undertake Internal Review | | | | | | | | | | | | | | | | | | | | |
| PWD DG 60140 | Project Wide - Groundwater Modelling - External Review of Final Report | 20 | 27-Mar-18 | 26-Apr-18 | [Gantt bar from 27-Mar-18 to 26-Apr-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Project Wide - Groundwater Modelling - External Review of Final Report | | | | | | | | | | | | | | | | | | | | |
| PWD DG 60150 | Project Wide - Groundwater Modelling - Independent Review of Final Report and Action Comments | 35 | 27-Apr-18 | 15-Jun-18 | [Gantt bar from 27-Apr-18 to 15-Jun-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Project Wide - Groundwater Modelling - Independent Review of Final Report and Action Comments | | | | | | | | | | | | | | | | | | | | |
| PWD DG 60190 | Project Wide - Groundwater Modelling - Issue IFC Final Report | 0 | 15-Jun-18 | 15-Jun-18 | [Gantt bar from 15-Jun-18 to 15-Jun-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | ◆ Project Wide - Groundwater Modelling - Issue IFC Final Report | | | | | | | | | | | | | | | | | | | | |
| Western Portal - Geotechnical Interpretation (TAS-COF-WP-00-PKG-CGT-310) | | 115 | 15-Dec-17 | 15-Jun-18 | [Gantt bar from 15-Dec-17 to 15-Jun-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| WPT DG 60210 | Western Portal - Geotechnical Interpretation Report - Prepare Draft Report and Undertake Internal Review | 20 | 15-Dec-17 | 25-Jan-18 | [Gantt bar from 15-Dec-17 to 25-Jan-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Western Portal - Geotechnical Interpretation Report - Prepare Draft Report and Undertake Internal Review | | | | | | | | | | | | | | | | | | | | |
| WPT DG 60220 | Western Portal - Geotechnical Interpretation Report - Independent Review of Draft Report and Action Comments | 10 | 29-Jan-18 | 09-Feb-18 | [Gantt bar from 29-Jan-18 to 09-Feb-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Western Portal - Geotechnical Interpretation Report - Independent Review of Draft Report and Action Comments | | | | | | | | | | | | | | | | | | | | |
| WPT DG 60230 | Western Portal - Geotechnical Interpretation Report - Prepare Final Report and Undertake Internal Review | 30 | 12-Feb-18 | 26-Mar-18 | [Gantt bar from 12-Feb-18 to 26-Mar-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Western Portal - Geotechnical Interpretation Report - Prepare Final Report and Undertake Internal Review | | | | | | | | | | | | | | | | | | | | |
| WPT DG 60240 | Western Portal - Geotechnical Interpretation Report - External Review of Final Report | 20 | 27-Mar-18 | 26-Apr-18 | [Gantt bar from 27-Mar-18 to 26-Apr-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Western Portal - Geotechnical Interpretation Report - External Review of Final Report | | | | | | | | | | | | | | | | | | | | |
| WPT DG 60250 | Western Portal - Geotechnical Interpretation Report - Independent Review of Final Report and Action Comments | 35 | 27-Apr-18 | 15-Jun-18 | [Gantt bar from 27-Apr-18 to 15-Jun-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Western Portal - Geotechnical Interpretation Report - Independent Review of Final Report and Action Comments | | | | | | | | | | | | | | | | | | | | |
| WPT DG 60290 | Western Portal - Geotechnical Interpretation Report - Issue IFC Final Report | 0 | 15-Jun-18 | 15-Jun-18 | [Gantt bar from 15-Jun-18 to 15-Jun-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | ◆ Western Portal - Geotechnical Interpretation Report - Issue IFC Final Report | | | | | | | | | | | | | | | | | | | | |
| Arden - Geotechnical Interpretation (TAS-COF-AR-00-PKG-CGT-410) | | 115 | 15-Dec-17 | 15-Jun-18 | [Gantt bar from 15-Dec-17 to 15-Jun-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| ARD DG 60210 | Arden - Geotechnical Interpretation Report - Prepare Draft Report and Undertake Internal Review | 20 | 15-Dec-17 | 25-Jan-18 | [Gantt bar from 15-Dec-17 to 25-Jan-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Arden - Geotechnical Interpretation Report - Prepare Draft Report and Undertake Internal Review | | | | | | | | | | | | | | | | | | | | |
| ARD DG 60220 | Arden - Geotechnical Interpretation Report - Independent Review of Draft Report and Action Comments | 10 | 29-Jan-18 | 09-Feb-18 | [Gantt bar from 29-Jan-18 to 09-Feb-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Arden - Geotechnical Interpretation Report - Independent Review of Draft Report and Action Comments | | | | | | | | | | | | | | | | | | | | |
| ARD DG 60230 | Arden - Geotechnical Interpretation Report - Prepare Final Report and Undertake Internal Review | 30 | 12-Feb-18 | 26-Mar-18 | [Gantt bar from 12-Feb-18 to 26-Mar-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Arden - Geotechnical Interpretation Report - Prepare Final Report and Undertake Internal Review | | | | | | | | | | | | | | | | | | | | |
| ARD DG 60240 | Arden - Geotechnical Interpretation Report - External Review of Final Report | 20 | 27-Mar-18 | 26-Apr-18 | [Gantt bar from 27-Mar-18 to 26-Apr-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Arden - Geotechnical Interpretation Report - External Review of Final Report | | | | | | | | | | | | | | | | | | | | |
| ARD DG 60250 | Arden - Geotechnical Interpretation Report - Independent Review of Final Report and Action Comments | 35 | 27-Apr-18 | 15-Jun-18 | [Gantt bar from 27-Apr-18 to 15-Jun-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Arden - Geotechnical Interpretation Report - Independent Review of Final Report and Action Comments | | | | | | | | | | | | | | | | | | | | |
| ARD DG 60290 | Arden - Geotechnical Interpretation Report - Issue IFC Final Report | 0 | 15-Jun-18 | 15-Jun-18 | [Gantt bar from 15-Jun-18 to 15-Jun-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | ◆ Arden - Geotechnical Interpretation Report - Issue IFC Final Report | | | | | | | | | | | | | | | | | | | | |
| Parkville - Geotechnical Interpretation (TAS-COF-PV-00-PKG-CGT-510) | | 115 | 15-Dec-17 | 15-Jun-18 | [Gantt bar from 15-Dec-17 to 15-Jun-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| PRK DG 60210 | Parkville - Geotechnical Interpretation Report - Prepare Draft Report and Undertake Internal Review | 20 | 15-Dec-17 | 25-Jan-18 | [Gantt bar from 15-Dec-17 to 25-Jan-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Parkville - Geotechnical Interpretation Report - Prepare Draft Report and Undertake Internal Review | | | | | | | | | | | | | | | | | | | | |
| PRK DG 60220 | Parkville - Geotechnical Interpretation Report - Independent Review of Draft Report and Action Comments | 10 | 29-Jan-18 | 09-Feb-18 | [Gantt bar from 29-Jan-18 to 09-Feb-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Parkville - Geotechnical Interpretation Report - Independent Review of Draft Report and Action Comments | | | | | | | | | | | | | | | | | | | | |
| PRK DG 60230 | Parkville - Geotechnical Interpretation Report - Prepare Final Report and Undertake Internal Review | 30 | 12-Feb-18 | 26-Mar-18 | [Gantt bar from 12-Feb-18 to 26-Mar-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Parkville - Geotechnical Interpretation Report - Prepare Final Report and Undertake Internal Review | | | | | | | | | | | | | | | | | | | | |
| PRK DG 60240 | Parkville - Geotechnical Interpretation Report - External Review of Final Report | 20 | 27-Mar-18 | 26-Apr-18 | [Gantt bar from 27-Mar-18 to 26-Apr-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Parkville - Geotechnical Interpretation Report - External Review of Final Report | | | | | | | | | | | | | | | | | | | | |
| PRK DG 60250 | Parkville - Geotechnical Interpretation Report - Independent Review of Final Report and Action Comments | 35 | 27-Apr-18 | 15-Jun-18 | [Gantt bar from 27-Apr-18 to 15-Jun-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Parkville - Geotechnical Interpretation Report - Independent Review of Final Report and Action Comments | | | | | | | | | | | | | | | | | | | | |
| PRK DG 60290 | Parkville - Geotechnical Interpretation Report - Issue IFC Final Report | 0 | 15-Jun-18 | 15-Jun-18 | [Gantt bar from 15-Jun-18 to 15-Jun-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | ◆ Parkville - Geotechnical Interpretation Report - Issue IFC Final Report | | | | | | | | | | | | | | | | | | | | |
| CBD North - Geotechnical Interpretation (TAS-COF-CN-00-PKG-CGT-610) | | 115 | 15-Dec-17 | 15-Jun-18 | [Gantt bar from 15-Dec-17 to 15-Jun-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| NTH.DG.60210 | CBD North - Geotechnical Interpretation Report - Prepare Draft Report and Undertake Internal Review | 20 | 15-Dec-17 | 25-Jan-18 | [Gantt bar from 15-Dec-17 to 25-Jan-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | CBD North - Geotechnical Interpretation Report - Prepare Draft Report and Undertake Internal Review | | | | | | | | | | | | | | | | | | | | |
| NTH.DG.60220 | CBD North - Geotechnical Interpretation Report - Independent Review of Draft Report and Action Comments | 10 | 29-Jan-18 | 09-Feb-18 | [Gantt bar from 29-Jan-18 to 09-Feb-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | CBD North - Geotechnical Interpretation Report - Independent Review of Draft Report and Action Comments | | | | | | | | | | | | | | | | | | | | |
| NTH.DG.60230 | CBD North - Geotechnical Interpretation Report - Prepare Final Report and Undertake Internal Review | 30 | 12-Feb-18 | 26-Mar-18 | [Gantt bar from 12-Feb-18 to 26-Mar-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | CBD North - Geotechnical Interpretation Report - Prepare Final Report and Undertake Internal Review | | | | | | | | | | | | | | | | | | | | |
| NTH.DG.60240 | CBD North - Geotechnical Interpretation Report - External Review of Final Report | 20 | 27-Mar-18 | 26-Apr-18 | [Gantt bar from 27-Mar-18 to 26-Apr-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | CBD North - Geotechnical Interpretation Report - External Review of Final Report | | | | | | | | | | | | | | | | | | | | |
| NTH.DG.60250 | CBD North - Geotechnical Interpretation Report - Independent Review of Final Report and Action Comments | 35 | 27-Apr-18 | 15-Jun-18 | [Gantt bar from 27-Apr-18 to 15-Jun-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | CBD North - Geotechnical Interpretation Report - Independent Review of Final Report and Action Comments | | | | | | | | | | | | | | | | | | | | |
| NTH.DG.60290 | CBD North - Geotechnical Interpretation Report - Issue IFC Final Report | 0 | 15-Jun-18 | 15-Jun-18 | [Gantt bar from 15-Jun-18 to 15-Jun-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | ◆ CBD North - Geotechnical Interpretation Report - Issue IFC Final Report | | | | | | | | | | | | | | | | | | | | |
| CBD South - Geotechnical Interpretation (TAS-COF-CS-00-PKG-CGT-710) | | 115 | 15-Dec-17 | 15-Jun-18 | [Gantt bar from 15-Dec-17 to 15-Jun-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| STH DG 60210 | CBD South - Geotechnical Interpretation Report - Prepare Draft Report and Undertake Internal Review | 20 | 15-Dec-17 | 25-Jan-18 | [Gantt bar from 15-Dec-17 to 25-Jan-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | CBD South - Geotechnical Interpretation Report - Prepare Draft Report and Undertake Internal Review | | | | | | | | | | | | | | | | | | | | |
| STH DG 60220 | CBD South - Geotechnical Interpretation Report - Independent Review of Draft Report and Action Comments | 10 | 29-Jan-18 | 09-Feb-18 | [Gantt bar from 29-Jan-18 to 09-Feb-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | CBD South - Geotechnical Interpretation Report - Independent Review of Draft Report and Action Comments | | | | | | | | | | | | | | | | | | | | |
| STH DG 60230 | CBD South - Geotechnical Interpretation Report - Prepare Final Report and Undertake Internal Review | 30 | 12-Feb-18 | 26-Mar-18 | [Gantt bar from 12-Feb-18 to 26-Mar-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | CBD South - Geotechnical Interpretation Report - Prepare Final Report and Undertake Internal Review | | | | | | | | | | | | | | | | | | | | |
| STH DG 60240 | CBD South - Geotechnical Interpretation Report - External Review of Final Report | 20 | 27-Mar-18 | 26-Apr-18 | [Gantt bar from 27-Mar-18 to 26-Apr-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | CBD South - Geotechnical Interpretation Report - External Review of Final Report | | | | | | | | | | | | | | | | | | | | |
| STH DG 60250 | CBD South - Geotechnical Interpretation Report - Independent Review of Final Report and Action Comments | 35 | 27-Apr-18 | 15-Jun-18 | [Gantt bar from 27-Apr-18 to 15-Jun-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | CBD South - Geotechnical Interpretation Report - Independent Review of Final Report and Action Comments | | | | | | | | | | | | | | | | | | | | |
| STH DG 60290 | CBD South - Geotechnical Interpretation Report - Issue IFC Final Report | 0 | 15-Jun-18 | 15-Jun-18 | [Gantt bar from 15-Jun-18 to 15-Jun-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | ◆ CBD South - Geotechnical Interpretation Report - Issue IFC Final Report | | | | | | | | | | | | | | | | | | | | |
| Domain - Geotechnical Interpretation (TAS-COF-DM-00-PKG-CGT-810) | | 115 | 15-Dec-17 | 15-Jun-18 | [Gantt bar from 15-Dec-17 to 15-Jun-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| DOM DG 60210 | Domain - Geotechnical Interpretation Report - Prepare Draft Report and Undertake Internal Review | 20 | 15-Dec-17 | 25-Jan-18 | [Gantt bar from 15-Dec-17 to 25-Jan-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Domain - Geotechnical Interpretation Report - Prepare Draft Report and Undertake Internal Review | | | | | | | | | | | | | | | | | | | | |
| DOM DG 60220 | Domain - Geotechnical Interpretation Report - Independent Review of Draft Report and Action Comments | 10 | 29-Jan-18 | 09-Feb-18 | [Gantt bar from 29-Jan-18 to 09-Feb-18] | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | Domain - Geotechnical Interpretation Report - Independent Review of Draft Report and Action Comments | | | | | | | | | | | | | | | | | | | | |

█ Actual Work █ Critical Remaining Work
█ Remaining Work ◆ Milestone

| Date | Revision | Checked | Approved |
|-----------|--|---------|----------|
| 04-Aug-17 | Response to Clarifications Criterion G, Rev 6_W... | MP | |



Schedule 4

Projected Budget

| Month | Period | Monthly Amount | Aggregate Monthly Amount |
|--------------|----------------|-----------------------|---------------------------------|
| 1 | August 2017 | [not disclosed] | [not disclosed] |
| 2 | September 2017 | [not disclosed] | [not disclosed] |
| 3 | October 2017 | [not disclosed] | [not disclosed] |
| 4 | November 2017 | [not disclosed] | [not disclosed] |
| 5 | December 2017 | [not disclosed] | [not disclosed] |
| 6 | January 2018 | [not disclosed] | [not disclosed] |
| 7 | February 2018 | [not disclosed] | [not disclosed] |
| | Total | [not disclosed] | |



HERBERT
SMITH
FREEHILLS

Schedule 5

Not used



Schedule 6

Form of Performance Bond

Performance Bond

Each Performance Bond must meet the requirements set out in this Schedule unless the State, in its discretion, agrees otherwise.

Form of Bond

- TO:** Coordinator-General of the Major Transport Infrastructure Program, a duly authorised officer of the Melbourne Metro Rail Authority, for and on behalf of the Crown in Right of the State of Victoria (the **State**),
(the **Principal**)
- FOR:** The unincorporated joint venture comprising Lendlease Engineering Pty Limited (ACN 000 201 516), John Holland Pty Limited (ABN 11 004 282 268) and Bouygues Construction Australia Pty Ltd (ABN 37 144 013 801) (the **D&C Subcontractor**),
[insert] (the **Customer**)
- DATE:** [insert]

This bond relates to the advanced works deed between the State and the D&C Subcontractor dated [insert date] (**Advanced Works Deed**) to, among other things, perform the AW Activities as defined in the Advanced Works Deed.

At the request of the Customer and in respect of the Customer and the D&C Subcontractor's obligations under the Advanced Works Deed, [Name of Issuer] [ABN #] of [#] (the **Issuer**) unconditionally and irrevocably undertakes to pay to the Principal, on written demand by the Principal, any sum or sums which may from time to time be demanded by the Principal to a maximum aggregate sum of A\$[insert] million (**Maximum Aggregate Sum**).

Payment or payments under this undertaking must be made by the Issuer to the Principal:

1. without reference to the Customer or D&C Subcontractor, any other person (other than the Issuer) or the Advanced Works Deed;
2. without enquiring into the performance or non-performance of the Advanced Works Deed;
3. despite any notice by the Customer or D&C Subcontractor or any other person to the Issuer not to pay the whole or any part of the Maximum Aggregate Sum;



4. despite anything which but for this provision may operate to release, prejudicially affect or discharge or in any way relieve the Issuer from any obligation including, without limitation:
 - (a) any variation or alteration to any contract between either Principal and the Customer or D&C Subcontractor and the Advanced Works Deed; or
 - (b) the grant to any person of any time, waiver or other indulgence, or the discharge or release of any person; and
5. to the account of the Principal as follows:

Bank Account Name: [not disclosed]

Bank Name: [not disclosed]

BSB Number: [not disclosed]

Account Number: [not disclosed]

If, at any time, the Issuer receives more than one demand and the total of the demands exceeds the Maximum Aggregate Sum (taking into account amounts previously paid under this bond), the Issuer has absolute discretion in respect of which demand or demands it will pay.

This undertaking expires on the earlier of:

1. **[insert date]**;
2. the date the Principal notifies the Issuer in writing that this undertaking is no longer required; or
3. the date the Issuer has paid the Maximum Aggregate Sum to the Principal.

The Issuer will have no liability in respect of any claim under this undertaking after the date upon which this undertaking expires.

[To be retained only where required by the issuer] However, the Issuer may at any time without being required to do so pay to the Principal the Maximum Aggregate Sum less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the Principal and thereupon the liability of the Issuer hereunder shall immediately cease.

The Principal may not assign or otherwise transfer its rights under this undertaking without the written consent of the Customer and the Issuer.

A demand issued under this bond may be made on any Business Day to the Issuer at any branch of the Issuer in Melbourne. The Issuer agrees that payment or payments due to the Principal will be payable to the credit of the Principal's bank account referred to in Item 5 above in same day funds on the same Business Day (being a day on which banks are customarily open for business in Melbourne but not a Saturday or Sunday) as the written demand is made, unless the demand is made after 12.00pm Melbourne time, in which case the payment must be made by 3.00pm Melbourne on the next Business Day.

This undertaking is governed by and construed in accordance with the laws of Victoria.

Executed and delivered as a deed.

Each attorney executing this deed states that [he/she] has no notice of revocation or suspension of [his/her] power of attorney.



HERBERT
SMITH
FREEHILLS

[Insert execution clause of Issuer]



Schedule 7

Accelerated Design Review Process

Refer to separate document.

**MELBOURNE METRO TUNNELS AND STATIONS
ACCELERATED DESIGN PACKAGES SUBMISSION REQUIREMENTS
SCHEDULE 7 - ATTACHMENT 1
FOR ENABLING OF PILING WORKS & PRIMARY EXCAVATION SUPPORT WORKS
AND CBD STATION ADIT EXCAVATION**

| Proposed combination of Interim and Certified Design Package requirements from Volume 2, Part C, Section 7 | Application to accelerated design package |
|---|--|
| 1.1 Design Documentation - Accelerated Design Packages | - |
| 1.1.1 General | - |
| 1.1.1.1 For each Accelerated Design Package, Project Co must submit: | - |
| (a) Certified Design Documentation; and | Noted |
| (b) IFC Design Documentation; | Noted |
| to the State and the Independent Reviewer for review in accordance with the Design Review Schedule. | - |
| 1.1.2 Certified Design Documentation must include: | - |
| 1.1.2.1 A design report which: | - |
| (a) identifies the Design Package(s) to which the Certified Design Documentation relates, including any Design Packages that have been issued for Preparatory Works; | Included |
| (b) identifies the aspects of the Design Management Plan to which the Certified Design Documentation relates; | Included |
| (c) identifies all Reference Documents used in the preparation of the Certified Design Documentation; | Included |
| (d) demonstrates that all relevant performance requirements including constructability, maintenance and operations requirements have been met and integrated into the Certified Design Documentation; | Included |

| Proposed combination of Interim and Certified Design Package requirements from Volume 2, Part C, Section 7 | Application to accelerated design package |
|--|--|
| (e) documents any changes to the Technical Solution and the justification for such changes; | Included |
| (f) confirms that any changes to the Technical Solution have been dealt with in accordance with the Design Review Schedule; | Included |
| (g) defines the land boundaries of each Returned Asset to which the Certified Design Documentation relates; | Included |
| (h) identifies all key decisions made in the design development to date; | Included |
| (i) provides results of any additional modelling, investigations or testing; | Included |
| (j) provides evidence that comments on the Certified Design Documentation were sought from members of the AW Stakeholder Group and the Maintenance Subcontractor and how these comments have been addressed in the AW Documentation; | Included |
| (k) provides written confirmation from the urban and landscape designer that the Certified Design Documentation meets the intent of the urban and landscape design; | Included |
| (l) identifies any relevant Certified Design Documentation for Preparatory Works; | Included |
| (m) to the extent relevant to the Design Package, demonstrates that the Certified Design Documentation is in accordance with the requirements of the approved FEB/FER; | FEB will be prepared but FEB/FER will not be approved; the report appendix will comprise a technical note describing the impact, if any, of the FEB/FER on the design element. |
| (n) provides evidence of any required Approvals that have been obtained; | Included |

| Proposed combination of Interim and Certified Design Package requirements from Volume 2, Part C, Section 7 | Application to accelerated design package |
|--|--|
| (o) includes, as appendices to the certified design report (where relevant to the Design Package): | See below. |
| (1) a report documenting the outcome of the Critical Design Review conducted by Project Co in accordance with section 1.1.6; | Included - this Stage gate review will cover all of the requirements of the PDR and the CDR. |
| (2) a report and accompanying drawings identifying proposed protection zones around new surface infrastructure; | Not required for piling and adit excavation works. |
| (3) the approved FEB/FER; | FEB will be prepared but FEB/FER will not be approved; this appendix will comprise a technical note describing the impact, if any, of the FEB/FER on the design element. |
| (4) a strategy that demonstrates how Rail Network Emergency Response Vehicles (RNERVs) will be capable of being deployed to facilitate intervention at all locations within the tunnels; | Included |
| (5) any relevant tunnel ventilation documentation as set out in section 7.13.3; | Concept design report will be completed; included in spaceproofing of station as a reference document. |
| (6) a report documenting the outcomes of a formal SiD assessment as described in section 7.14; | Included and addressed for the specific elements under consideration. |
| (7) a report documenting the outcomes of a formal Security Risk Assessment as described in section 7.15; | Included - will be a reference document. |

| Proposed combination of Interim and Certified Design Package requirements from Volume 2, Part C, Section 7 | Application to accelerated design package |
|---|---|
| (8) a Security Strategy Report as described in section 7.16; | Draft document will be under preparation; this appendix will comprise a technical note describing the impact, if any, of the Security Strategy on the design element. |
| (9) a Blast Assessment Report as described in section 7.17; | Draft document will be under preparation; this appendix will comprise a technical note describing the impact, if any, of the Blast Assessment on the design element. |
| (10) a Sustainable Design Report as described in section 7.18; | Draft document will be under preparation; this appendix will comprise a technical note describing the inclusion of sustainability requirements within the design element. |
| (11) an assessment on deficiency and vehicle curving to demonstrate that potential flange contact on curves has been minimised; | Not required for piling and adit excavation works; this will be addressed in the rail alignment report prepared as a reference document. |
| (12) a wheel/rail interface study as set out in PS&TR Part B, section 5.1.4 (b)(vi); | Not required for piling and adit excavation works. |
| (13) a 'Train Protection Risk Report' that addresses: | Not required for piling and adit excavation works. |
| (i)derailment risk within the tunnels; and | - |

| Proposed combination of Interim and Certified Design Package requirements from Volume 2, Part C, Section 7 | Application to accelerated design package |
|---|--|
| (ii) collision risk, | - |
| for all rolling stock (including maintenance) in the Tunnel; | - |
| (14) a Transport Design Report and Transport Modelling Report as described in sections 9.2.3 and 9.2.4; | Not required for piling and adit excavation works |
| (15) if relevant, a road safety audit report including all dispositions to the audit recommendations and an explanation as to the manner in which those dispositions have been addressed; | Not required for piling and adit excavation works |
| (16) a flood impact assessment and treatment strategy for any Design Package that could affect patterns of stormwater drainage; | Not required for piling and adit excavation works |
| (17) all relevant geotechnical and hydrogeological information and the results of any analysis required for the design, including: | - |
| (i) any Durability Assessment required by section 7.10; | Draft document will be under preparation; this appendix will comprise a technical note based on the draft describing the durability assessment requirements. |
| (ii) the Geotechnical Interpretive Report, Hydrogeological Interpretive Report and Contaminated Land Assessment Interpretive Report described in section 7.11; | Draft documents will be under preparation; this appendix will comprise a technical note based on the drafts. |
| (iii) any assessment of tunnel, embankment or excavation stability; | Included |
| (iv) any assessment of ground water settlements and ground water movements, including movement of known contaminants; | Included |

| Proposed combination of Interim and Certified Design Package requirements from Volume 2, Part C, Section 7 | Application to accelerated design package |
|---|--|
| (v) predicted settlement extents and any treatments and monitoring controls required to achieve the requirements of the State Project Documents; | Included |
| (vi) any assessment of the capacity of recommended foundations for structures; and | Included |
| (vii) details of the geotechnical and hydrogeological parameters employed in the design together with details of the sensitivity analysis conducted for all elements in contact with the ground; | Included |
| (18) construction sequence drawings which show key steps in the construction of the element being considered; | Included |
| (19) a noise and vibration impact assessment and mitigation strategy for any Design Package that could affect sensitive receivers identified in the EES; | Included for construction stage works where relevant, eg., Parkville piling. |
| (20) in addition to item 17(iv) above and Part B, section 5.2.5, a detailed hydrogeological model showing where works are proposed below the water table at CBD South, Arden, Domain and the Western Portal or where the works include drained temporary works. Hydrogeological modelling is to include mitigated, unmitigated, construction phase and operational phase scenarios; | Included |
| (21) waterproofing design details including interface treatments at connections between like and/or differing waterproofing systems and at geometric interfaces; | Not required for piling and adit excavation works which are the subject of the submission; however, the proposed waterproofing system for the following works will be described. |

| Proposed combination of Interim and Certified Design Package requirements from Volume 2, Part C, Section 7 | Application to accelerated design package |
|--|--|
| (22) reinforcement layouts including bar sizes, layers of reinforcement, and connection details (laps, couplers, welds etc.) where the Design Package includes reinforced concrete elements; | Included |
| (23) an AGI file of design lix levels for all locations; | Not required for piling and adit excavation works |
| (24) a contingency plan to replace or augment the baseplate hold down bolts in the event of unexpected failure | Not required for piling and adit excavation works. |
| (25) a decommissioning and disposal plane for the proposed trackform; and | Not required for piling and adit excavation works. |
| (26) a Station Planning and Passenger Modelling Report which must include, as a minimum: | Included - will be referenced to this report. |
| (i) details of the proposed modelling approach used including clear identification of and justification for the parameters and assumptions adopted, including those set out in the PS&TR. Where variations to any data or parameters set out in the PS&TR have been proposed, justification must also be provided; | - |
| (ii) maps of station average Levels of Service in accordance with the requirements in section 7.4 of Part B, and calculated in accordance with Appendix C7 which states that the area must be calculated to exclude intervals with zero pedestrian flow; and | - |
| (iii) journey times for average, minimum and maximum journey times from platform to street for each walk route (i.e. exit), for each modelled scenario and time period at each station | - |
| | - |

| Proposed combination of Interim and Certified Design Package requirements from Volume 2, Part C, Section 7 | Application to accelerated design package |
|---|--|
| 1.1.2.2 all necessary drawings, reports and specifications bound separately for each Design Package to which the Certified Design Documentation relates, including: | Included |
| (a) demonstration that the relevant elements of the Maintained Assets are wholly contained within the Licensed Construction Area; | Included |
| (b) a schedule of Assets, Asset Components and Asset Sub-Components to which the report and layout drawings relate, showing the location of each Asset; | Included |
| (c) a list of the applicable Reference Documents and any additions to the requirements in the Reference Documents; and | Included |
| (d) a list of interface design requirements and inclusions from key stakeholders, RSA and other relevant interfaces; and | Included |
| 1.1.2.3 any other information required by the State Project Documents. | - |
| | - |
| 1.1.3 IFC Design Documentation must include: | - |
| 1.1.3.1 all items required to be submitted as Certified Design Documentation up revised to 'Issued for Construction'; | Included |
| 1.1.3.2 a report documenting the outcome of the Issued for Construction Review conducted by Project Co in accordance with section 1.1.6; | Included |
| 1.1.3.3 and amendments to the approved FER; and | Included - referenced to the technical note contained within the appendix. |
| 1.1.3.4 evidence of the Independent Reviewer's certification of the Certified Design Documentation in accordance with the Design Review Schedule. | Included |

Schedule 8

Equity commitment letter

Refer to separate document.

20 September 2017

██████████
Transaction Director
Tunnel and Stations PPP
Melbourne Metro Rail Authority
Department of Economic Development, Jobs, Transport and Resources
Level 11, 121 Exhibition Street
Melbourne Vic 3000

Dear ██████████

Metro Tunnel (Tunnel and Stations PPP): Commitment to Advanced Works PA Provisions

1. The Coordinator-General of the Major Transport Infrastructure Program for and on behalf of the Crown in the Right of the State of Victoria (**State**) and the D&C Subcontractor for the Cross Yarra Partnership Consortium (comprising Lendlease Engineering Pty Limited, John Holland Pty Ltd and Bouygues Construction Australia Pty Ltd) (**D&C Subcontractor**) propose to enter into a deed on or about 20 September 2017 pursuant to which the D&C Subcontractor will commence certain activities in respect of the Metro Tunnel (Tunnel and Stations PPP) Project (**Advanced Works Deed**) prior to contractual and financial close of the Project Agreement.
2. The Advanced Works Deed contemplates the Project Agreement being prepared so as to include or reference (including by doing so in the terms of the 'Funds Flow Statement' referred to in the Finance Documents and the Financial Close Adjustment Protocol (as defined in the Project Agreement)):
 - a) a proposed new clause 3.7 (the proposed form of which is set out in Exhibit 1 of the Advanced Works Deed); and
 - b) a "Funds Flow Statement" which reflect the principles in respect of payments in connection with the Advanced Works set out in Exhibit 1 of the Advanced Works Deed,

(Advanced Works PA Provisions).
3. The Advanced Works Deed contemplates the D&C Subcontract being prepared so as to include a proposed new clause 3.7 (the proposed form of which is set out in Exhibit 2 of the Advanced Works Deed),
(Advanced Works D&C Provisions).
4. Cross Yarra Partnership Pty Limited (ACN 617 097 711) (**Cross Yarra Partnership**) and each of:
 - a) Lendlease Infrastructure Investments Pty Limited;
 - b) John Holland Group Pty Ltd;
 - c) Bouygues Construction Australia Pty Ltd; and
 - d) John Laing Investments Limited,confirm for the benefit of the State and MMRA the following:
 - e) they have reviewed the Advanced Works PA Provisions;
 - f) on the basis of the Advanced Works D&C Provisions being incorporated into the D&C Subcontract they agree to the incorporation of the Advanced Works PA Provisions into the Project Agreement; and
 - g) Project Co will be bound by the Advanced Works PA Provisions in accordance with the terms of the Project Agreement.
5. Unless the context otherwise requires, expressions used in this letter have the meaning given to them in the Request for Proposal.



CROSS YARRA
PARTNERSHIP

EXECUTED on the _____ day of _____ 2017

Executed by Cross Yarra Partnership Pty Limited (ACN 617 097 711) in accordance with section 127 of the *Corporations Act 2001*(Cth):

sign here ► _____
Company Secretary/Director

sign here ► _____
Director

print name _____

print name _____



Lendlease Infrastructure Investments Pty Limited (ACN 137 452 567) as equity provider to the Cross Yarra Partnership acknowledges and accepts the terms of the letter above dated September 2017.

Signed by
**Lendlease Infrastructure
Investments Pty Limited**
by

sign here ► _____
Company Secretary/Director

sign here ► _____
Director

print name _____

print name _____



John Holland Group Pty Ltd (ACN 050 242 147) as equity provider to the Cross Yarra Partnership acknowledges and accepts the terms of the letter above dated September 2017.

Signed by
John Holland Group Pty Ltd
by

sign here ► _____ *sign here* ► _____
Company Secretary/Director Director

print name _____ *print name* _____



Bouygues Construction Australia Pty Ltd (ACN 144 013 801) as equity provider to the Cross Yarra Partnership acknowledges and accepts the terms of the letter above dated September 2017.

Signed by
**Bouygues Construction
Australia Pty Ltd**
by

sign here ► _____
Company Secretary/Director

sign here ► _____
Director

print name _____

print name _____



John Laing Investments Limited (UK company number 780225) as equity provider to the Cross Yarra Partnership acknowledges and accepts the terms of the letter above dated September 2017.

Signed for
John Laing Investments Limited
by its attorney

in the presence of

sign here ► _____
Attorney

sign here ► _____
Witness

print name _____

print name _____



Signing page

Executed as a deed

State

Signed sealed and delivered by
**Coordinator-General of the
Major Transport Infrastructure
Program, a duly authorised
officer of the Melbourne Metro
Rail Authority, for and on behalf
of the Crown in Right of the
State of Victoria**

in the presence of

sign here ► [not disclosed] _____
Authorised signatory

sign here ► [not disclosed] _____
Witness

print name [not disclosed] _____

print name [not disclosed] _____

D&C Subcontractor

Signed sealed and delivered for
**John Holland Pty Ltd (ABN 11
004 282 268)**
by its attorney

in the presence of

sign here ► [not disclosed] _____
Attorney

sign here ► [not disclosed] _____
Witness

print name [not disclosed] _____

print name [not disclosed] _____



D&C Subcontractor

Signed sealed and delivered for
**Lendlease Engineering Pty
Limited (ABN 40 000 201 516)**
by its attorney

in the presence of

sign here ▶ [not disclosed] _____
Attorney

sign here ▶ [not disclosed] _____
Witness

print name [not disclosed] _____

print name [not disclosed] _____

D&C Subcontractor

Signed sealed and delivered for
**Bouygues Construction
Australia Pty Ltd (ABN 37 144
013 801)**
by its attorney

in the presence of

sign here ▶ [not disclosed] _____
Attorney

sign here ▶ [not disclosed] _____
Witness

print name [not disclosed] _____

print name [not disclosed] _____



Draft Project Agreement including PS&TR

2 Project Agreement

For the purposes of this Deed the Draft Project Agreement is the version of the Project Agreement marked 'preferred bidder phase CYP' issued by the State on 20 July 2017, provided that Schedule 25 and Part 28 (Independent Reviewer's Certificate of Certified Design) of Schedule 8 to that document are replaced with the versions of Schedule 25 and Part 28 of Schedule 8 attached to this Exhibit 1.

The parties agree that the Executed Project Agreement will include the following clause 3.7:

- (a) The parties acknowledge and agree that the Advanced Works Activities form part of the Works to be delivered by Project Co under this Agreement.
- (b) The parties acknowledge that the Advanced Works Activities:
 - (1) are subsumed within the scope of the D&C Subcontract; and
 - (2) form part of the "Works" as defined under the D&C Subcontract.
- (c) Project Co:
 - (1) acknowledges that the Advanced Works Deed has been terminated in accordance with its terms;
 - (2) accepts all Liabilities of the D&C Subcontractor accrued under or in connection with the Advanced Works Deed as such Liabilities existed immediately prior to termination of the Advanced Works Deed, as if Project Co had originally been named in the Advanced Works Deed as a party instead of the D&C Subcontractor;
 - (3) agrees that any obligation or Liability of the State, including in respect of payment, arising under or in connection with the Advanced Works Deed is satisfied and discharged by the State at the time of Financial Close; and
 - (4) agrees that Project Co has no Claim against the State in relation to any matter arising under or in connection with the Advanced Works Deed.

The parties agree that the principles in respect of the Advanced Works for incorporation into the Funds Flow Statement are as follows:

Upon the occurrence of Financial Close:

- (a) Project Co will pay to the State the sum of:
 - (1) all amounts paid to the D&C Subcontractor under the Advanced Works Deed including the AW Fee; and
 - (2) [not disclosed] of the Independent Reviewer's costs and expenses incurred pursuant to the Independent Reviewer Deed of Appointment (Advanced Works) including the Independent Reviewer's professional

fees and any costs incurred in exercising or purporting to perform its obligations under the Independent Reviewer Deed of Appointment (Advanced Works); and

- (b) Project Co will pay to the D&C Subcontractor the sum of:
- (1) any amounts certified under the D&C Subcontract as amounts that would have been payable under the terms of the Advanced Works Deed if the D&C Subcontractor was entitled to submit a Monthly Statement (as that term is defined in the Advanced Works Deed) on Financial Close; and
 - (2) any amounts otherwise due and payable to the D&C Subcontractor under the Advanced Works Deed that have not been paid by the State by Financial Close.

3 PS&TR

- (a) As at the date of this Deed, the Draft PS&TR comprises the PS&TR Version 6 issued by the State acknowledging section (b) to (e) inclusive below.
- (b) The parties have identified a number of proposed amendments to the PS&TR Version 6 including:
- (1) the departures identified in List A in the document titled "TAS – PS&TR Departures – List A (resolved) [CYP response 14 Sep 17]" reissued by the State on 14 September 2017 (**Resolved Departures**); and
 - (2) the departures identified in List B in the document titled "TAS – PS&TR Departures – List B (unresolved) [CYP response 14 Sep 17]" reissued by the State on 14 September 2017 (**Unresolved Items**).
- (c) The parties will use their best endeavours to resolve the Unresolved Items prior to 30 September 2017 (failing which the State Representative and the D&C Subcontractor Representative must meet and agree a further timetable for expediting their resolution).
- (d) The parties agree that:
- (1) the Resolved Departures; and
 - (2) the Unresolved Items, as and when they are agreed (and become resolved) between the parties,
- will be incorporated into the PS&TR in accordance with and subject to the change control process. Upon notification by the State of completion of the change control process, the updated version of the PS&TR (which will be labelled Version 7) will become the "Draft PS&TR" for the purpose of this Deed.
- (e) The parties agree that:
- (1) the Independent Reviewer will be provided with details of the Resolved Departures and Unresolved Items;
 - (2) the D&C Subcontractor is entitled to (and it will be documented in the Independent Reviewer's Deed of Appointment (Advanced Works) that the D&C Subcontractor is entitled to) proceed at its risk, subject to section (e)(3), with the AW Activities (including any design works), based on the Draft PS&TR as if amended by the Unresolved Items in

the manner proposed by the D&C Subcontractor and the Resolved Departures, as the D&C Subcontractor considers appropriate, pending incorporation in accordance with paragraph (d) once and if agreed;
and

- (3) the D&C Subcontractor must include in any Design Documentation issued to the Independent Reviewer for review a summary of any Unresolved Items and Resolved Departures that have been incorporated into the Design Documentation.

Part 28

Independent Reviewer's Certificate of Certified Design

Metro Tunnel – Tunnel and Stations PPP

To: [], on behalf of the Crown in right of the State of Victoria (**State**)
and [] (**Project Co**)

From: [] (**Independent Reviewer**)

1 In accordance with section 2.8(c)(1) of Schedule 25 (*Design Review*) to the Project Agreement entered into between the State and Project Co dated **[insert]** (**Agreement**), I hereby certify the Certified Design Documentation submitted pursuant to section 2.8(c) of Schedule 25 to the Agreement on **[insert date of submission]** except as set out below.

The following parts of the Certified Design Documentation are excluded from this Certificate of Certified Design:

(a) **[insert]**.

[Alternative: In accordance with section 14(a) of Schedule 7 (*Accelerated Design Review Process*) to the Advanced Works Deed entered into between the State and the D&C Subcontractor dated **[insert]** (**Agreement**), I hereby certify the Certified Design Documentation submitted pursuant to section 14 of Schedule 7 to the Agreement on **[insert date of submission]** except as set out below.

The following parts of the Certified Design Documentation are excluded from this Certificate of Certified Design:

(a) **[insert].**

2 The Design Stage(s) to which this certificate applies is/are as follows:

(a) **[insert]**.

3 Terms defined in the Agreement have the same meaning in this certificate.

Signed for and on behalf of
[insert name and address of Project Co]

Date



Schedule 25

Design Review Schedule

1 Definitions

Unless otherwise expressly defined, expressions used in this Schedule have the meanings given to them in or for the purposes of the Agreement.

In this Schedule:

| Term | Meaning |
|--|--|
| Accelerated Design Package | means a Design Package described as such in Attachment 1. |
| Accelerated Design Review Process | means Schedule 7 of the Advanced Works Deed. |
| Address | <p>means:</p> <ol style="list-style-type: none">1 in relation to a non-compliance with the requirements of this Agreement, amend the relevant Design Documentation to resolve the non-compliance;2 in relation to a potential non-compliance with the requirements of this Agreement:<ol style="list-style-type: none">a amend the relevant Design Documentation to resolve the potential non-compliance; orb explain why Project Co does not consider that an amendment is required to the relevant Design Documentation to resolve the potential non-compliance; and3 in relation to a comment which is not a non-compliance or a potential non-compliance with the requirements of this Agreement:<ol style="list-style-type: none">a amend the relevant Design Documentation in response to the comment; orb explain why Project Co does not consider that an amendment should be made to the relevant Design Documentation in response to the comment,<p>noting that Project Co is not required to amend the relevant Design Documentation where the comment does not relate to a non-compliance or potential non-compliance with the requirements of this Agreement.</p> |



| Term | Meaning |
|---|--|
| Certified Design | means, for each Design Package, the stage during which Project Co prepares and submits to the Independent Reviewer the Certified Design Documentation. |
| Certified Design Documentation | means the Design Documentation described in section 7.5.3 of the Design Requirements Section. |
| Design Development Coordinator | means the person identified as such in item 5 of the Contract Particulars subject to replacement in accordance with clause 13.1 of the Agreement. |
| Design Development Presentations | means the presentations conducted by Project Co during the Design Development Process in accordance with the D&C Program and the Design Management Plan. |
| Design Management Plan | means the plan of that name setting out the process for managing the Design Development Process to be prepared by Project Co and containing the information and documentation required by the Agreement (including section 5 of this Schedule), as further developed, reviewed, amended and updated from time to time by Project Co in accordance with the terms of the Agreement. |
| Design Package | means a design package as set out in the Design Management Plan. |
| Design Requirements Section | means section 7 of Part C of the PS&TR. |
| Design Stage | means: <ol style="list-style-type: none">1 Interim Design;2 Certified Design; or3 IFC Design. |
| IFC Design Documentation | has the meaning given in the Agreement. |
| Interim Design | means, for each Design Package, the stage during which Project Co prepares and submits to the Independent Reviewer the Interim Design Documentation. |
| Interim Design | means the Design Documentation described in section 7.5.2 of the Design |



| Term | Meaning |
|---|---|
| Documentation | Requirements Section. |
| Issued For Construction (IFC) Design | means, for each Design Package, the stage during which Project Co prepares and submits to the Independent Reviewer the IFC Design Documentation. |
| Review Period | means: 1 in the case of Interim Design Documentation, 5 Business Days; and 2 in the case of Certified Design Documentation, 10 Business Days. |
| Stakeholder Groups | means those groups established in accordance with section 6.1. |

2 Design Development Process

2.1 General

- (a) **(Design Development Process):** The Design Development Process is the process by which Project Co progressively develops the design of the Project Assets and includes all other tasks identified in this Schedule and the Agreement (including the Design Requirements Section) as forming part of the Design Development Process.
- (b) **(Design Packages):** To facilitate the conduct of the Design Development Process, the design work for the Project Assets has been divided into Design Packages as set out in the Design Management Plan.
- (c) **(Design Stages):** The Design Documentation for each Design Package is divided into three Design Stages consisting of:
 - (1) Interim Design;
 - (2) Certified Design; and
 - (3) IFC Design.
- (d) Not used.
- (e) **(Copies to State and stakeholders):** At the same time Project Co submits:
 - (1) any Design Documentation to the Independent Reviewer, a copy must also be provided to the State; and
 - (2) any IFC Design Documentation to the Independent Reviewer, a copy must also be provided to any relevant stakeholders.



- (f) **(Further information):** If required by the Independent Reviewer or the State, the appropriate design personnel (including the Proof Engineer), must be made available to:
 - (1) explain any Design Documentation; and
 - (2) provide such information regarding any Design Documentation as the Independent Reviewer or the State reasonably requests.
- (g) **(Relevant stakeholders):** For the purpose of this Schedule a relevant stakeholder is a member of a Stakeholder Group (including any stakeholder nominated by the State under section 6.1(b) at any time).

2.2 Design Development Coordinator obligations

Project Co must ensure that the Design Development Coordinator:

- (a) convenes and manages meetings with the Independent Reviewer, the State and any relevant stakeholders in respect of the design of the Project Assets;
- (b) convenes and manages all Design Development Presentations;
- (c) manages the submission of the Design Documentation in accordance with this Schedule;
- (d) reviews all of the Design Documentation prior to submission to the Independent Reviewer and ensures that the Design Documentation:
 - (1) is complete, co-ordinated and of a high quality capable of review by the Independent Reviewer in accordance with this Schedule (including ensuring that all Stakeholder Groups' input in respect of the Project Assets is considered); and
 - (2) where required by this Schedule, is updated to reflect and incorporate Stakeholder Groups' input in respect of the Project Assets; and
- (e) otherwise consults with the Independent Reviewer, the State and all relevant stakeholders throughout the Design Development Process as required by the Agreement,

in accordance with this section 2.2, the Design Management Plan, the D&C Program and the remainder of this Schedule.

2.3 Sequence, concurrency and overlap of Design Packages

- (a) Project Co must complete and submit the Design Packages for review by the Independent Reviewer in accordance with the Design Management Plan, the D&C Program and this Schedule.
- (b) Project Co must not submit Design Documentation in respect of a Design Package to the Independent Reviewer for review unless:
 - (1) Project Co has prepared all the Design Documentation in respect of that Design Stage in accordance with the Agreement;
 - (2) without limiting section 2.3(b)(1), Project Co has conducted all design verification activities, risk assessments, risk workshops, stakeholder consultation and all other activities in respect of that Design Stage required by the Design Requirements Section, this Schedule and the Agreement, including the activities referred to in section 2.7; and
 - (3) for Design Stages other than Interim Design:



- (A) Project Co has submitted all Design Documentation relating to the relevant Design Package and Design Stage for the previous Design Stage in accordance with this Schedule;
- (B) the Review Period has expired for the previous Design Stage; and
- (C) subject to section 2.9(b), if the Independent Reviewer has provided comments on the Design Documentation for a previous Design Stage, Project Co has complied with its obligations under this Schedule in connection with such comments (including, if necessary, to Address particular comments or to resubmit Design Documentation).

2.4 Project Co must not proceed with additional Design Packages

- (a) Project Co may divide the design work for the Project Assets into additional Design Packages beyond those specified in the Design Management Plan subject to receiving the State's prior written approval to do so (such approval not to be unreasonably withheld).
- (b) Project Co must submit the following information to the State as part of a request for approval to divide the design work for the Project Assets into additional Design Packages:
 - (1) details of the reasoning for additional Design Packages; and
 - (2) such other information concerning the proposed Design Package reasonably requested by the State.

2.5 Timing for submission of Design Documentation

Project Co:

- (a) must, for each Design Package, submit the complete set of Design Documentation for each Design Stage to the Independent Reviewer in accordance with:
 - (1) the Agreement, including this Schedule and the Design Requirements Section;
 - (2) the Design Management Plan; and
 - (3) the timing set out in the D&C Program;
- (b) must, for each Design Package, submit the Design Documentation for each Design Stage as one complete package of information and not as individual documents, except where:
 - (1) Project Co is required to revise one or more items of the Design Documentation to Address the Independent Reviewer's comments, in which case it may resubmit such documents individually; or
 - (2) the State directs otherwise (acting reasonably) in respect of a Design Package, in which case Project Co must submit such documents as directed;
- (c) acknowledges that the Review Period commences upon receipt by the Independent Reviewer of all of the Design Documentation comprising a Design Package for the relevant Design Stage which complies with the requirements of the Agreement and which is submitted in accordance with section 2.8(a) or section 2.8(c) (as applicable);



- (d) must submit Design Packages at a rate which provides the Independent Reviewer with a reasonable opportunity to review the submitted Design Documentation in accordance with this Schedule;
- (e) must not, unless otherwise approved in writing by the State, or where to do so would be consistent with the timing for submitting the relevant Design Packages as set out in the D&C Program, simultaneously have more than the greater of:
 - (1) subject to section 2.5(e)(2), [Note: insert number to be discussed and agreed prior to Financial Close and prior to that date the AW Design Documentation (as defined in the Accelerated Design Review Process) will be submitted in accordance with section 17 of the Accelerated Design Review Process]; and
 - (2) such other number agreed in writing between the State and Project Co,
Design Packages for a Design Stage submitted to the Independent Reviewer for review; and
- (f) must submit other additional information reasonably requested by the Independent Reviewer or the State to the Independent Reviewer for review in accordance with this Schedule (with a copy provided to the State).

2.6 Form of Design Documentation

- (a) Project Co must ensure that each of the items of Design Documentation contain or identify the following information (unless otherwise agreed by the State):
 - (1) the Design Package to which the Design Documentation relates;
 - (2) the Design Stage to which the Design Documentation relates;
 - (3) details of any Modifications that have arisen during the Design Development Process (including any that have arisen from directions given by the State under section 2.2(d)); and
 - (4) any other information reasonably requested by the Independent Reviewer or the State.
- (b) Without limiting section 2.6(a), the Design Documentation must include:
 - (1) in the case of the Interim Design Documentation, the information required by section 7.5.2 of the Design Requirements Section;
 - (2) in the case of the Certified Design Documentation, the information required by section 7.5.3 of the Design Requirements Section;
 - (3) in the case of the IFC Design Documentation, the information required by section 7.5.4 of the Design Requirements Section; and
 - (4) any certificates required by the Agreement (including the Design Requirements Section and the Schedule of Certificates and Notices).
- (c) Project Co must highlight all amendments to the Design Documentation and in doing so show all changes to the Design Documentation from those submitted for the previous Design Stage, or in respect of the first Design Stage, from the Technical Solution.



2.7 State and stakeholder review of Interim Design Documentation and Certified Design Documentation

- (a) **(Review of Interim Design):** In respect of the Interim Design Documentation for each Design Package, Project Co must, provided that it has first completed design verification in accordance with section 7.7 of the Design Requirements Section:
- (1) issue the Interim Design Documentation for that Design Package to the Independent Reviewer, the State and all relevant stakeholders (including the Rail Franchisee and the Rail Systems Alliance and Rail Infrastructure Alliance in accordance with the Coordination and Interface Deed Poll); and
 - (2) allow the Independent Reviewer, the State and the relevant stakeholders a period of 20 Business Days to provide any comments in respect of the Interim Design Documentation.
- (b) **(Review and consolidation of comments on Interim Design):** Project Co must:
- (1) review any comments in respect of the Interim Design Documentation received from the Independent Reviewer, the State or any relevant stakeholders within the 20 Business Day period referred to in section 2.7(a)(2);
 - (2) prepare a consolidated list of the comments; and
 - (3) include the consolidated list of comments in the design report required by section 7.5.2.1 of the Design Requirements Section to be included with the submission of the Interim Design Documentation pursuant to section 2.8(a), together with a description of how these comments have been Addressed.
- (c) **(Review of Certified Design):** In respect of the Certified Design Documentation for each Design Package, Project Co must, provided that it has first completed design verification in accordance with section 7.7 of the Design Requirements Section:
- (1) issue the Certified Design Documentation for that Design Package to the Independent Reviewer, the State and all relevant stakeholders (including the Rail Franchisee and the Rail Systems Alliance and Rail Infrastructure Alliance in accordance with the Coordination and Interface Deed Poll); and
 - (2) allow the Independent Reviewer, the State and the relevant stakeholders a period of 15 Business Days to provide any comments in respect of the Certified Design Documentation.
- (d) **(Review and consolidation of comments on Certified Design):** Project Co must:
- (1) review any comments in respect of the Certified Design Documentation received from the Independent Reviewer, the State or any relevant stakeholders within the relevant period referred to in section 2.7(c)(2);
 - (2) prepare a consolidated list of the comments; and
 - (3) include the consolidated list of comments in the design report required by section 7.5.3.1 of the Design Requirements Section to be included with the submission of the Certified Design Documentation pursuant



to section 2.8(c), together with a description of how these comments have been Addressed.

2.8 Review of Interim Design Documentation and Certified Design Documentation by Independent Reviewer

- (a) **(Review of Interim Design Documentation):** Project Co must submit the Interim Design Documentation for a Design Package to the Independent Reviewer for review in accordance with section 2.5 and following completion of the activities referred to in sections 2.7(a) and 2.7(b) in relation to that Interim Design Documentation. The Independent Reviewer, within the Review Period for Interim Design Documentation, must:
- (1) review the Interim Design Documentation (taking into account any comments from the State and relevant stakeholders included in the design report submitted with the Design Documentation); and
 - (2) notify Project Co:
 - (A) that it may proceed to develop and submit Certified Design Documentation for review by the Independent Reviewer; or
 - (B) of any actual non-compliances and potential non-compliances with the requirements of the Agreement, together with detailed reasons, and whether:
 - (i) the actual non-compliances and, where the Interim Design Documentation relates to Temporary Works only, any potential non-compliances, must be Addressed by Project Co before Project Co may proceed to develop and submit Certified Design Documentation for review by the Independent Reviewer; or
 - (ii) the actual non-compliances and, where the Interim Design Documentation relates to Temporary Works only, any potential non-compliances, must be Addressed by Project Co as part of the submission of Design Documentation for Certified Design.
- (b) **(Response to Interim Design Documentation):** If, in respect of Interim Design Documentation, the Independent Reviewer does not within the Review Period notify Project Co of any actual or potential non-compliances with the requirements of the Agreement which must be Addressed by Project Co in accordance with section 2.8(a)(2)(B)(i), Project Co may proceed to develop and submit Certified Design Documentation for review by the Independent Reviewer.
- (c) **(Review of Certified Design Documentation):** Project Co must submit the Certified Design Documentation for a Design Package to the Independent Reviewer for review in accordance with section 2.5 and following completion of the activities referred to in sections 2.7(c) and 2.7(d) in relation to that Certified Design Documentation. The Independent Reviewer, within the Review Period for Certified Design Documentation, must review the Certified Design Documentation (taking into account any comments from the State and relevant stakeholders included in the design report submitted with the Design Documentation) and:



- (1) subject to section 2.8(c)(2)(B), to the extent the Independent Reviewer considers that all or part of the Design Documentation complies with the requirements of the Agreement, certify the complying parts of the Design Documentation by:
 - (A) including a notation on each document forming part of the complying Design Documentation; and
 - (B) providing to Project Co and the State a certificate in the form set out in the Schedule of Certificates and Notices; and
- (2) to the extent the Independent Reviewer considers that all or part of the Design Documentation:
 - (A) contains actual non-compliances with the requirements of the Agreement; or
 - (B) insofar as the Design Documentation relates to Temporary Works, contains potential non-compliances with the requirements of the Agreement,

notify Project Co of those actual non-compliances and potential non-compliances with the requirements of the Agreement, together with detailed reasons, which must be Addressed by Project Co before Project Co may proceed to develop and issue IFC Design Documentation for that part of the Design Package.

- (d) **(Response to Certified Design Documentation):** If, in respect of Certified Design Documentation, the Independent Reviewer does not within the Review Period either:
 - (1) certify all or part of the Design Documentation; or
 - (2) notify Project Co of any actual or potential non-compliances with the requirements of the Agreement which must be Addressed by Project Co in accordance with section 2.8(c)(2),

Project Co may, subject to section 2.9, proceed to develop and issue IFC Design Documentation.

- (e) **(Non-compliances):** If:
 - (1) the Independent Reviewer notifies Project Co under section 2.8(a)(2)(B)(i) or section 2.8(c)(2) that any Design Documentation contains an actual or potential non-compliance with the requirements of the Agreement which must be Addressed by Project Co before Project Co may proceed to submit Certified Design Documentation or develop and issue IFC Design Documentation (as applicable); or
 - (2) the Independent Reviewer notifies Project Co under section 2.8(a)(2)(B)(ii) of any actual non-compliances and potential non-compliances with the requirements of the Agreement which must be Addressed by Project Co as part of the submission of Design Documentation for Certified Design,

then:

- (3) the Independent Reviewer must:
 - (A) identify the relevant requirements or provisions of the Agreement with which it considers that the Design Documentation does not comply or potentially does not comply; and



- (B) provide such detail as is reasonably necessary to substantiate why it considers that the Design Documentation does not comply or potentially does not comply with those requirements or provisions; and
- (4) Project Co must:
 - (A) where section 2.8(e)(1) applies:
 - (i) amend all relevant parts of the Design Documentation as necessary to Address the non-compliance notified by the Independent Reviewer and re-submit the amended elements in accordance with section 2.5; and
 - (ii) the process in section 2.8(a) or section 2.8(c) (as applicable) will be reapplied to the amended parts of the Design Documentation; or
 - (B) where section 2.8(e)(2) applies, amend all relevant parts of the Design Documentation as necessary to Address the non-compliance notified by the Independent Reviewer as part of submission of Design Documentation for Certified Design.

2.9 Issue of IFC Design

- (a) The IFC Design Documentation for each Design Package must be developed and issued to the State, the Independent Reviewer and the relevant stakeholders together with all information required by this Schedule to be included with the issue of the IFC Design Documentation and each drawing issued as part of IFC Design Documentation must be clearly marked as “Issued for Construction”.
- (b) Where:
 - (1) the Certified Design Documentation has been submitted for review in accordance with section 2.8;
 - (2) the Independent Reviewer has been given the required number of days to review the Certified Design Documentation; and
 - (3) the Independent Reviewer has not within the Review Period either:
 - (A) certified all or part of the Design Documentation; or
 - (B) notified Project Co of any non-compliances which must be Addressed by Project Co before Project Co may proceed to develop and issue IFC Design Documentation in accordance with section 2.8(c)(2),

Project Co may issue IFC Design Documentation for that Design Package and use the IFC Design Documentation for construction purposes at Project Co’s own risk, including risks associated with:

- (4) proceeding with such construction; and
- (5) the risk that the relevant Design Documentation is subsequently not certified by the Independent Reviewer and the Independent Reviewer notifies Project Co of any actual or potential non-compliances with the requirements of the Agreement and section 2.9(c) applies.



- (c) If Project Co has used the IFC Design Documentation for construction purposes in accordance with section 2.9(b) and the Independent Reviewer subsequently notifies Project Co of any actual non-compliances or where the IFC Design Documentation relates to Temporary Works only, any potential non-compliances with the requirements of the Agreement:
- (1) Project Co must immediately cease any construction work being carried out in accordance with the relevant non-compliant element of the IFC Design Documentation but Project Co may commence or continue construction in accordance with any element of the IFC Design Documentation that the Independent Reviewer has not identified as being non-compliant with the Agreement;
 - (2) section 2.8(c) will apply in relation to the non-compliant element of the Design Documentation; and
 - (3) Project Co must rectify any construction work carried out in accordance with the relevant non-compliant element of the Design Documentation so that such construction work complies with the requirements of the Agreement.
- (d) Without limiting section 2.9(b), where all or any part of the Certified Design Documentation is certified, Project Co may proceed to develop and issue IFC Design Documentation for those certified parts of a Design Package.

2.10 Changes to the Technical Solution

- (a) The process of developing the design from the Technical Solution to the IFC Design Documentation may result in changes to the Technical Solution.
- (b) Subject to clause 8(b), changes to the Technical Solution must not be made unless:
- (1) the change:
 - (A) is notified to the Independent Reviewer; and
 - (B) is necessary to comply with the Agreement; or
 - (2) it is demonstrated to the satisfaction of the Independent Reviewer that the change:
 - (A) is minor;
 - (B) is consistent with the design intent in the Technical Solution, otherwise complies with the Agreement and the PS&TR; and
 - (C) does not result in a lessening of any requirement, standard, level of service or scope for any work set out in the Technical Solution (including any reduction in capacity, durability, maintainability, Design Life, quality aesthetics of visual features, whole of life performance, functional performance, environmental protection, sustainability, safety, security, community amenity or benefits, or Customer benefits).
- (c) Any change to the Technical Solution which is not a change of the kind described in section 2.10(b)(2) may only be made if the change is agreed by the State.



3 Accelerated Design Packages

Other than to the extent set out in the Accelerated Design Review Process:

- (a) the requirements of this Schedule do not apply; and
- (b) the Accelerated Design Review Process continues to apply, to Design Documentation for the Accelerated Design Packages.

4 Initial Design Meeting

As soon as possible and no later than 10 Business Days after Financial Close, Project Co must coordinate and attend an initial design meeting with the Independent Reviewer and the State to:

- (a) commence planning of the Design Development Process; and
- (b) discuss the Design Management Plan.

5 Design Management Plan

5.1 Further updates to Design Management Plan

- (a) Project Co must:
 - (1) submit an updated Design Management Plan or a discrete component of the Design Management Plan (as applicable):
 - (A) if reasonably requested by the State or the Independent Reviewer to do so; and
 - (B) otherwise as it considers necessary to reflect any changes to the nature or the status of the Works; and
 - (2) submit any revisions, modifications or updated versions of the Design Management Plan to the State and the Independent Reviewer for review in accordance with the Review Procedures.
- (b) In so far as there is any inconsistency between the Design Management Plan and the Agreement, the requirements of the Agreement will prevail.

5.2 Changes to Design Management Plan

- (a) Project Co must make changes to the Design Management Plan that are reasonably directed by the State.
- (b) Without limiting section 5.2(a), Project Co must make changes to the Design Management Plan that are reasonably directed by the State if the State reasonably forms the view that the approved Design Management Plan does not:
 - (1) adequately reflect or take into account the scope of the Design Development Process;



- (2) adequately take into account the requirements of the Stakeholder Groups in respect of the Project Assets;
- (3) effectively or reliably result in the production of Design Documentation that comply with the requirements of the Agreement; or
- (4) allow the Independent Reviewer sufficient time in which to receive and review the Design Documentation in accordance with the Review Procedures.

6 Stakeholder Groups' involvement in the Design Development Process

6.1 Establishment of Stakeholder Groups

- (a) **(Nomination of members)**: Project Co must nominate members of the Stakeholder Groups in its Communications and Stakeholder Engagement Management Plan submitted to the Independent Reviewer for review in accordance with the Review Procedures.
- (b) **(State nomination)**: The State may nominate additional members of any Stakeholder Groups at any time and in its sole and absolute discretion.
- (c) **(Representatives)**: Stakeholder Groups may be formed for various Design Packages and must include representatives of the State and the Independent Reviewer and those stakeholders as nominated by Project Co in the Community and Stakeholder Engagement Management Plan and may include representatives of Returned Asset Owners and representatives from local government.

6.2 Management of the Stakeholder Group process

Project Co must manage and document the entire Stakeholder Group process, including by:

- (a) liaising with the State and the Independent Reviewer with respect to coordinating Stakeholder Group meetings so they may be conducted on days and at times that typically enable the Stakeholder Group members to attend the meetings;
- (b) providing the State, the Independent Reviewer and any Stakeholder Group members with at least 10 Business Days' notice of the date, time and location of the meeting;
- (c) prior to each Stakeholder Group meeting, preparing and distributing an agenda and all relevant design documentation and notes to all invitees;
- (d) after each Stakeholder Group meeting, preparing minutes which at a minimum include details of:
 - (1) the date and time of the meeting;
 - (2) persons in attendance and absentee Stakeholder Group members;
 - (3) items discussed at the meeting (including details of any drawing numbers discussed); and
 - (4) proposed outcomes of the meetings;



- (e) providing copies of the proposed minutes of the Stakeholder Group meetings to the invitees, the Independent Reviewer and the State within 3 Business Days of the meeting;
- (f) incorporating any changes or amendments to the proposed minutes of the Stakeholder Group meetings (including with respect to the proposed outcome of the meetings) reasonably requested by the State; and
- (g) creating electronic files for the Stakeholder Group (including agendas, design documentation, minutes any marked up or annotated drawings) so as to facilitate easy access to such information.

6.3 Project Co acknowledgement

- (a) **(No Claim):** Project Co acknowledges and agrees that it is not entitled to make any Claim against the State for Liabilities incurred by Project Co arising out of or in connection with the conduct of the Stakeholder Group meetings, including the time taken to arrange each of the Stakeholder Group meetings and the number and duration of each of the Stakeholder Group meetings.
- (b) **(No Modification):** Project Co acknowledges and agrees that the Stakeholder Group meetings and process of themselves cannot constitute a Modification or be deemed to constitute a State direction to request a Modification Quote. Any Modification requested by the State will be undertaken in accordance with clause 38 of the Agreement.

7 Design Development Presentations

7.1 Purpose of Design Development Presentations

The purpose of the Design Development Presentations is to:

- (a) visually demonstrate the design of the Project Assets (including the progressive development of the design of the Project Assets);
- (b) if requested by the State or the Independent Reviewer, present and explain mock ups (including full scale or scale mock ups) of different components of the Project Assets;
- (c) identify key elevations and sections;
- (d) demonstrate how the design of the Project Assets complements and is otherwise consistent with the purposes of the Project;
- (e) provide updated animations of the Project Assets;
- (f) provide updated sample boards;
- (g) demonstrate that the design is such that the Project Assets are consistent with the design requirements set out in the PS&TR and will satisfy the FFP Warranty; and
- (h) address specific issues otherwise identified by the State or the Independent Reviewer (acting reasonably).



7.2 Frequency, notice and attendance at Design Development Presentations

Project Co must:

- (a) undertake the Design Development Presentations generally in accordance with the D&C Program and otherwise at the request of the Independent Reviewer or the State (acting reasonably) and must give the Independent Reviewer, the State and other proposed attendees approved by the State 10 Business Days' notice of the conduct of a Design Development Presentation;
- (b) ensure that, as a minimum, the relevant Key Subcontractors and the lead designers attend such Design Development Presentations to provide explanations concerning the design and any other relevant supporting information; and
- (c) provide any additional Design Development Presentations requested by the Independent Reviewer or the State (acting reasonably).

8 IFC Design Documentation

- (a) Project Co must only use the IFC Design Documentation for the purposes of construction of the Project Assets.
- (b) Project Co must not amend the IFC Design Documentation that has been reviewed by the Independent Reviewer in accordance with this Schedule unless Project Co has satisfied any requirements set out in the Agreement in relation to the proposed amendment and the proposed amendment has been submitted to the Independent Reviewer for review in accordance with this Schedule.

9 Mock ups and material samples

- (a) As part of the Design Development Process, Project Co must prepare and submit to the Independent Reviewer the project specific material samples and mock ups required by section 7.6 of the Design Requirements Section.
- (b) All material sample and mock up submissions must be accompanied by any information required by section 7.6 of the Design Requirements Section.
- (c) [Not used].
- (d) Project Co must provide the State and the Independent Reviewer with at least 4 weeks' prior notice of the submission of any material samples or mock ups.
- (e) The Independent Reviewer, within 6 weeks of the date of submission of any material sample or mock up, will:
 - (1) review the material sample or mock up; and
 - (2) either:
 - (A) certify the material sample or mock up, in which case Project Co may, subject to the Independent Reviewer certifying any Certified Design Documentation relevant to the material sample or mock up, proceed to construct the Works to which the material sample or mock up relates; or



- (B) notify Project Co of any actual non-compliances with the requirements of the Agreement, together with detailed reasons, which must be Addressed by Project Co before Project Co may proceed to construction of the Works to which the material sample or mock up relates.



HERBERT
SMITH
FREEHILLS

Attachment 1

Accelerated Design Packages

Refer to separate document.

Exhibit 2

D&C Subcontract

The parties agree that the D&C Subcontract will include the following clause 3.7:

- (a) The parties acknowledge and agree that the Advanced Works Activities form part of the Works to be delivered by the D&C Subcontractor under this Agreement.
- (b) The D&C Subcontractor:
 - (1) acknowledges that the Advanced Works Deed has been terminated in accordance with its terms;
 - (2) agrees that all Liabilities accrued by it under or in connection with the Advanced Works Deed will be treated as if such Advanced Works Activities had been performed by the D&C Subcontractor under this Agreement;
 - (3) agrees that any obligation or Liability of the State, including in respect of payment, arising under or in connection with the Advanced Works Deed is satisfied and discharged by the State at the time of Financial Close; and
 - (4) agrees, subject to any Claim for payment under clause 3.7(c) (or equivalent provision), that the D&C Subcontractor has no Claim against Project Co or the State in relation to any matter arising under or in connection with the Advanced Works Deed.

In addition to the above, the D&C Subcontract will include provisions that provide for:

- (c) the Day 1 Payment including the payment of any amounts which would be payable under the terms of the Advanced Works Deed if the D&C Subcontractor was entitled to submit a Monthly Statement (as that term is defined in the Advanced Works Deed) on Financial Close and any amounts otherwise due and payable to the D&C Subcontractor under the Advanced Works Deed that have not been paid by the State by Financial Close; and
- (d) any further consequential amendments required to give effect to paragraph (b) including certification and payment of such amounts within 2 Business Days of Financial Close.