Execution Version

OSAR Western Package - Project Deed

Minister for Roads and Road Safety on behalf of the Crown in right of the State of Victoria
(**State**)

Netflow OSARS (Western) Pty Ltd as trustee for Netflow OSARS (Western) Unit Trust for and on behalf of the Netflow OSARS (Western) Partnership and Cintra OSARS (Western) Pty Ltd as trustee for Cintra OSARS (Western) Unit Trust for and on behalf of the Netflow OSARS (Western) Partnership
(**Project Co**)

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CONTENTS

1. Definitions 1
2. General rules of interpretation 70
3. Conditions Precedent 79
4. Term 82
5. Overarching obligations of Project Co 82
6. Approvals 87
7. Parties and personnel 90
8. Independent Reviewer 98
9. Subcontracting and third party arrangements 102
10. Project and Site Information 109
11. The Site 111
12. Utilities 117
13. Land 118
14. Occupations 123
15. State access and Project monitoring 123
16. Workplace health and safety and Quality Assurance 129
17. Project Plans and Reports and Notices 133
18. Title and Ownership 134
19. Interface requirements 135
20. Development Phase Obligations 141
21. [Not used] 142
22. [Not used] 142
23. [Not used] 142
24. Commercial Acceptance and Milestone Completion 143
25. Final Acceptance 149
26. Time 152
27. Defects 162
28. Maintenance Phase Obligations 166
29. WGT Heavy Haulage Routes and Dynon Road Bridge Rehabilitation Works 170
30. [Not used] 171
31. [Not used] 171
32. Intervening Events 171
33. Options in relation to Option Receivables 176
34. Payments and Abatements 178
35. Modifications 184
36. Change in Law and Change in Policy 195
37. Refinancing 196
38. Suspension and Step-In by the State 199

39. Probity Events and Probity Investigations 203
40. Commercial Opportunities 204
41. Securitised Licence Structure 205
42. Damage 208
43. Indemnities and limits of liabilities 211
44. Insurance 219
45. Major Default 232
46. Termination 238
47. Expiry obligations 241
48. Dispute Resolution procedure 253
49. Expert determination 254
50. Arbitration 257
51. Corporate representations, warranties and obligations 261
52. Assignment and change in control 264
53. Financial Model 269
54. Accounts 272
55. Confidential Information and privacy 274
56. Intellectual Property 278
57. [Not used] 279
58. Local Jobs First - Victorian Industry Participation Policy 279
59. Major Projects Skills Guarantee 283
60. Other State Policies 287
61. Taxes 287
62. Notices and bar to Claims 291
63. Miscellaneous 293

Schedules

Schedule 1 — Contract Particulars

Schedule 2 — Conditions Precedent Schedule

Schedule 3 — Payment Schedule

Schedule 4 — Review Procedures

Schedule 5 — Change Compensation Principles Schedule

Schedule 6 — Termination Payments Schedule

Schedule 7 — Form of Subcontractor Direct Deed

Schedule 8 — Expert Determination Agreement

Schedule 9 — Schedule of Certificates and Notices

Schedule 10 — Insurance Schedule

Schedule 11 — Commercially Sensitive Information Schedule

Schedule 12 — Finance Documents Schedule

Schedule 13 — Equity Documents Schedule

Schedule 14 — Ownership Schedule

Schedule 15 — Permitted Share Capital Dealing Schedule

Schedule 16 — Indexes Schedule

Schedule 17 — Financial Close Adjustment Protocol

Schedule 18 — Intellectual Property Schedule

Schedule 19 — Not Used

Schedule 20 — VIPP Schedule

Schedule 21 — Major Projects Skills Guarantee Compliance Plan

Schedule 22 — Site Access and Tenure Schedule

Schedule 23 — Augmentation Process Schedule

Schedule 24 — Project Scope and Delivery Requirements

Schedule 25 — Additional Assets

Schedule 26 — Occupations

Schedule 27 — Required Road Management Powers

Schedule 28 — Third Party Agreements

Schedule 29 — WGT-OSAR Interface Site

Schedule 30 — Option Amount Financial Model Protocol

Schedule 31 — WGT Direct Interface Agreement

Annexures

Annexure A — Concept Design

Attachments

Attachment 1 — [Not used]

Attachment 2 — State Approvals

Project Deed

Date

Parties

Minister for Roads and Road Safety on behalf of the Crown in right of the State of Victoria (**State**)

Netflow OSARS (Western) Pty Ltd (ACN 618 025 077) as trustee for Netflow OSARS (Western) Unit Trust (ABN 29 194 973 252) for and on behalf of the Netflow OSARS (Western) Partnership and Cintra OSARS (Western) Pty Ltd (ACN 622 593 524) as trustee for Cintra OSARS (Western) Unit Trust (ABN 24 736 096 154) for and on behalf of the Netflow OSARS (Western) Partnership (**Project Co**)

Background

A. The State has conducted a public tender process and has selected Project Co as the successful tenderer for the Project.

B. This Deed sets out the terms on which:

(a) Project Co agrees to finance and deliver the Project;

(b) Finance Co has agreed to provide financing to the Project and will do so by, amongst other things, entry into the Finance Documents and the Receivables Purchase Deed;

(c) Project Co agrees to progressively undertake the Works and carry out the other Project Activities in consideration of the payment by the State to Project Co of the Construction Payment and the Service Payments;

(d) the State agrees to pay the Service Payments to Project Co; and

(e) the risks associated with the Project are allocated between the State and Project Co.

Operative provisions

PART A - INTERPRETATION

1. Definitions

In this Deed, unless the context otherwise requires:

Abatement has the meaning given in the Payment Schedule.

Abatement Event has the meaning given in the Payment Schedule.

Abatement Year means:

(a) for the first Abatement Year, the period commencing on the Maintenance Phase (Full) Commencement Date and ending on the next 30 June (**First 30 June**) provided however if that period is less than 6 months, that first Abatement Year will end on the first anniversary of that First 30 June. For example, if the Maintenance Phase (Full) commences on 1 May 2020, the first Abatement Year will end on 30 June 2021 and be a period of 14 months;

(b) subject to paragraph (c), each subsequent 12 month period during the Maintenance Phase (Full) commencing on 1 July and ending on 30 June; and

(c) for the final Abatement Year, the period from the end of the last full Abatement Year (as defined in paragraph (b)) to the Expiry Date (**Last 30 June**) provided however if that period is less than 6 months, the final Abatement year will commence 12 months prior to the Last 30 June and that additional 12 month period will be excluded from paragraph (b). For example, if the Maintenance Phase (Full) ends on 1 November 2040, the final Abatement Year will commence on 1 July 2039 and be a period of 16 months.

Aboriginal Cultural Heritage has the meaning given in the *Aboriginal Heritage Act 2006* (Vic).

Aboriginal Participation Requirements means the requirement that at least 2.5% of the Project Co Development Phase Workforce or Project Co Maintenance Phase Workforce (as applicable) will be Aboriginal Persons undertaking Development Activities (in the case of the Project Co Development Phase Workforce) and Services (in the case of the Project Co Maintenance Phase Workforce) in Victoria, calculated as an Annualised Employee Equivalent against the Project Co Development Phase Workforce or Project Co Maintenance Phase Workforce (as applicable).

Aboriginal Persons means persons who:

(a) are descended from an Australian Aboriginal or Torres Strait Islander;

(b) identify as an Australian Aboriginal or Torres Strait Islander; and

(c) are accepted as an Australian Aboriginal or Torres Strait Islander by an Australian Aboriginal or Torres Strait Island community (as applicable).

Aboriginal Persons Employment Adjustment has the meaning given in Schedule 3.

Acceptance means:

(a) Commercial Acceptance; and

(b) Final Acceptance,

(or the relevant one of these as the case may be).

Actual Debt means the aggregate indebtedness of Group Members under the Finance Documents, excluding any indebtedness to Related Bodies Corporate that is in the nature of, or identified in the Financial Model as being, Equity Funding.

Actual Equity Disclosure means the calculations and related inputs used by Project Co to determine the Actual Equity IRR which have been prepared in good faith and with due care and diligence having regard to all relevant facts and circumstances.

Actual Equity Disclosure Date means, in each Operating Year, the day that is 20 Business Days after the end of the Financial Year.

Actual Equity IRR means the internal rate of return to providers of Equity Funding, calculated on a normal and pre-investor tax basis using:

(a) all contributions of Equity Funding and their respective actual contribution dates, irrespective of whether those contributions were anticipated in the Financial Model;

(b) all Distributions up to the relevant Actual Equity Disclosure Date; and

(c) all Distributions forecast in the Financial Model to be provided after the relevant Actual Equity Disclosure Date.

Additional Assets has the meaning given in Schedule 25.

Additional Purchase Date has the meaning given in the Receivables Purchase Deed.

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

Adjustment Note has the meaning given in the GST Law.

Adjustment Threshold Commercial Vehicle Volume means:

(a) as at the date of this Deed, the forecast Commercial Vehicle traffic volumes as set out in the table in Section 1 of Annexure B to Schedule 5; or

(b) at any time after a Commercial Vehicle Volume Change has occurred, the applicable Base Case Commercial Vehicle Volumes set out in a Modification Order issued by the State under clause 35.16(e) (or determined by expert determination in accordance with clause 48.1(d)(i)) in relation to that Commercial Vehicle Volume Change).

Agreed Amount has the meaning given in clause 61.1(c)(i).

Agreed Occupation has the meaning given to the term 'Occupation' in the Rail Interface Deed.

Amended Remediation Plan has the meaning given in clause 26.4(i).

Amendment has the meaning given in clause 52.1(a).

Annualised Employee Equivalent (AEE) means the figure calculated by dividing the total number of ordinary working hours that an employee worked and was paid for over the reporting period by the total number of fulltime ordinary working hours paid per annum summed over the reporting period. The employee's working hours include paid leave (e.g. sick leave, paternity leave, recreation leave, long service leave etc.) but not unpaid leave.

Apprentice means a person who:

(a) an employer has undertaken to train under a Training Contract; and

(b) is registered with the Victorian Registration and Qualifications Authority.

Approval means:

(a) each State Approval required for the purpose of the Project; and

(b) any other licence, permit, authorisation, consent, assessment, approval, determination, certificate, accreditation, registration, clearance, permission or the like which must be obtained or satisfied (as the case may be) in connection with the Project.

Approved Lane Access Schedule means the Approved Lane Access Schedule for Development Activities, or the Approved Lane Access Schedule for Maintenance Activities (as the case may be).

Approved Lane Access Schedule for Development Activities has the meaning given in the PSDR.

Approved Lane Access Schedule for Maintenance Activities has the meaning given in the PSDR.

APR Monitoring Table has the meaning given in clause 58.3(b)(i)(iA).

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

As-Built Records means the as-built information required to be provided in relation to the Works in accordance with section 10 of Part F6 of the PSDR.

Asset Condition (Initial) means the performance requirements set out in section 8.2 of Part F7 of the PSDR (as applicable).

Asset Condition (Full) means the performance requirements set out in section 8.3 of Part F7 of the PSDR (as applicable).

Asset Condition Survey means each survey of the Maintained Assets undertaken in accordance with clause 15.4(a).

Asset Management System means the system of that name described in Part D of the PSDR.

Asset Management Plan means the Project Plan of that name.

Associate means, in relation to a person, any officer, agent, adviser, consultant, contractor or employee of that person.

Augmentation has the meaning given in the Augmentation Process Schedule.

Augmentation Process Deed has the meaning given in the Augmentation Process Schedule.

Augmentation Process Schedule means Schedule 23.

Authority means:

(a) any government;

(b) any governmental, semi-governmental or local government authority, local council, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality, or any other person of a like nature; or

(c) any person having jurisdiction or control over, or ownership of, any Utility Infrastructure which is the subject of any construction, modification, removal or relocation within the Project Area as a consequence of the Works or a Modification.

Average Actual Commercial Vehicle Volume means the sum of the average two way Business Day traffic volume for Commercial Vehicles at each Location for any whole month of March which is measured by a Traffic Monitoring Device..

Bank Bill Rate in respect of a period means:

(a) the rate (expressed as a yield per centum per annum to maturity rounded upwards to two decimal places) which is the buying rate for bank accepted Bills quoted on page "BBSY" of the Reuters monitor system at approximately 10:10am (Melbourne

time) on the first day of the relevant period for which the rate is sought, having a term closest to that period; or

(b) if that rate is no longer available or if, in the reasonable opinion of the State Representative, that rate becomes an inappropriate rate to benchmark the Overdue Rate for the purposes of this Deed or becomes incapable of application, the Bank Bill Rate means the rate reasonably determined by the State Representative to be the appropriate equivalent rate, having regard to prevailing market conditions.

Bank Lenders means Financiers that have provided financing pursuant to the Syndicated Facilities Agreement.

Base Case Commercial Vehicle Volume means at any time after a Commercial Vehicle Volume Change has occurred:

(a) the forecast sum of the average two way Business Day traffic volume for Commercial Vehicles at each Location for each whole month of March during the Revised Forecast Period as agreed or determined in accordance with this Deed; plus

(b) [not disclosed]% of the amount of Commercial Vehicles identified in paragraph (a) of this definition.

Base Case Floating Rate Debt has the meaning given in the Payment Schedule.

Base Case Floating Rate Interest Payment has the meaning given in the Payment Schedule.

Base Case Interest Rate has the meaning given in the Payment Schedule.

Base Cost has the meaning given in the Change Compensation Principles.

Best Development Practices means design, supply, construction, installation, commissioning and repair practices which are carried out:

(a) with the standard of skill, care and diligence which may reasonably be expected of a prudent, experienced and competent person carrying out design, supply, construction, installation, commissioning and repair work similar to the Development Activities in Australia;

(b) in a manner safe to all people and the Environment;

(c) with the intent of ensuring reliable long term, safe and efficient operation of the Project Assets;

(d) by prudent, experienced, competent and trained personnel utilising high quality and safe and proper equipment, tools, procedures and industry standards;

(e) with an adequate number of personnel, materials, resources and supplies;

(f) using suitable, new and high quality fixtures, fittings, finishes and materials which are free from defects and appropriate for the environment in which they are intended to be used under:

(i) normal conditions; and

(ii) abnormal conditions that would be anticipated by a prudent, experienced and competent person carrying out design, supply, construction,

installation, commissioning and repair work similar to the Development Activities in Australia; and

(g) in a manner which, at all relevant times, remains consistent with applicable Victorian road network standards and is in accordance with the PSDR and the Network Rules.

Best Industry Practices means Best Development Practices and Best Maintenance Practices (or either as the context requires).

Best Maintenance Practices means maintenance practices and other practices in respect of services similar to the Services, which are carried out:

(a) with the standard of skill, care and diligence which may reasonably be expected of a prudent, experienced and competent person carrying out services similar to the Services in respect of assets similar to the Maintained Assets in Australia;

(b) in a manner safe to all people and the Environment;

(c) with the intent of ensuring reliable, long term, safe and efficient operation of the Maintained Assets;

(d) by prudent, experienced, competent and trained personnel utilising high quality, safe and proper equipment, tools, procedures and industry standards;

(e) with an adequate number of personnel, materials, resources and supplies;

(f) using suitable, new and high quality fixtures, fittings, finishes and materials which are free from defects and appropriate for the environment in which they are intended to be used under:

(i) normal conditions; and

(ii) abnormal conditions that would be anticipated by a prudent, experienced and competent person carrying out services similar to the Services in respect of assets similar to the Maintained Assets in Australia,

and with a design life equal to or greater than the items being repaired or replaced;

(g) in a manner which, at all relevant times, remains consistent with applicable Victorian road network standards and is in accordance with the PSDR and the Network Rules.

Bid Construction Traffic Management Plan means Project Co's Construction Traffic Management Plan, the initial version of which is as set out in Part K of the PSDR.

Bid Initial Phase Program means Project Co's program for the Development Activities as at the date of this Deed, the initial version of which is as set out in Part K of the PSDR.

Bid Project Plans means Project Co's initial plans for the Project as at the date of this Deed, which are as set out in Part K of the PSDR.

Bill has the same meaning as "bill of exchange" in the *Bills of Exchange Act 1909* (Cth) (but does not include a cheque or payment order) and a reference to the drawing or acceptance of, or other dealing with, a Bill is to be interpreted in accordance with that Act.

Blue Shaded Area has the meaning given to it in paragraph (a) of the definition of Project Area.

Bridge Deck Site means the airspace from and above the upper boundary shown in the cross-section drawing set out in in the WGT-OSAR Interface Site Schedule.

Business As Usual Work means Site Interface Works or Proximate Interface Works undertaken regularly by an Interface Party as part of its run of the mill, day to day works, services, activities or functions which ought to have been reasonably foreseeable as at the date of this Deed by a person in the position of Project Co exercising Best Industry Practice.

Business Day means a day in Melbourne that is not:

(a) a Saturday or Sunday; or

(b) a public holiday for Melbourne pursuant to the *Public Holidays Act 1993* (Vic).

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

Capital Payment Threshold Amount means the amount identified as Capital Payment Threshold in the Model Output Schedule being the net present value of the total capital payment components of the Service Payments in the Financial Close Financial Model at Financial Close, and if the Financial Close Model is updated in accordance with clause 53, the amount being the net present value of the total capital payment components of the Service Payments in the Financial Model.

Certificate of Commercial Acceptance means a certificate substantially in the form required by the Schedule of Certificates and Notices certifying that Commercial Acceptance has been achieved.

Certificate of Final Acceptance means a certificate substantially in the form required by the Schedule of Certificates and Notices certifying that Final Acceptance has been achieved.

Certificate of Maintenance Commencement means a certificate substantially in the form required by the Schedule of Certificates and Notices certifying that Maintenance Commencement has been achieved.

Certificate of Milestone Completion means a certificate substantially in the form required by the Schedule of Certificates and Notices certifying that Milestone Completion in relation to a Milestone has been achieved.

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

Change Compensation Principles means Schedule 5.

Change in Control means if, at any time, any person (whether alone or together with any Associate or Associates) ceases to or commences to, directly or indirectly have Control of an Entity provided that (for the avoidance of doubt) a partner in a partnership will be deemed to not be an Associate of any other partner of that partnership for the purpose of this definition. For the purposes of this definition, **Associate** or **Associates** has the meaning given in the Corporations Act and includes a person deemed to be an associate of a designated body (within the meaning of section 12 of the Corporations Act).

Change in Law means any one or more of the following that occurs after the date of this Deed:

(a) a change in, or repeal of, an existing Law;

(b) the enactment or judicial determination of a new Law; or

(c) a change in the way a Law is applied or interpreted as a result of a decision of a court of competent jurisdiction,

but does not include:

(d) a State Approval Event;

(e) any of the events referred to in paragraphs (a) to (c) above which:

(i) had been published in the Commonwealth of Australia Gazette or the Victorian Government Gazette, as the case may be by way of a bill, draft bill or draft statutory instrument or had been otherwise specifically referred to publicly prior to the date of this Deed;

(ii) is contained or referred to in the PSDR or the Concept Design or a Project Document or in any Project Information existing prior to the date of this Deed;

(iii) a party performing activities similar to the Project Activities in accordance with Best Industry Practices would have reasonably foreseen or anticipated prior to the date of this Deed;

(iv) is substantially the same as a Law in force prior to the date of this Deed;

(v) is substantially the same as any other requirement with which Project Co is required to comply under the State Project Documents; or

(vi) results from or is in response to any Project Co Act or Omission;

(f) any of the events referred to in paragraphs (a) to (c) relating to:

(i) Taxes including the *Income Tax Assessment Act 1936* (Cth), the *Income Tax Assessment Act 1997* (Cth) and the GST Law;

(ii) Part IVAA (Proportionate Liability) of the *Wrongs Act 1958* (Vic) or its application which limits or eliminates the impact of that Part or any legal risk allocation under clause 2.20, whether or not it has any application; or

(iii) tolling or toll pricing on part or all of the Victorian road network;

(g) any increase in the charge percentage for an employer to avoid liability under the *Superannuation Guarantee (Charge) Act 1992* (Cth) (including as introduced under the *Superannuation Guarantee (Administration) Amendment Act 2012* (Cth));

(h) any new Approval or change in an existing Approval due to the design of the Project Asset or Project Co's delivery methodology for the Project except where any such design or delivery methodology is necessary to satisfy Project Co's obligations under the State Project Documents;

(i) the designation of the Project Assets or any part of the Project Assets as vital critical infrastructure by order of the Governor in Council in accordance with section 74E of the *Emergency Management Act 2013* (Vic);

(j) a declaration made under section 26 of the *Terrorism (Community Protection) Act 2003* (Vic) in connection with the Project;

(k) the enactment or judicial determination of a new Law or any repeal or change in any existing Law relating to the matters (if any) specified in the Contract Particulars; or

(l) a Change in Policy.

Change in Policy means any one or more of the following that occurs after the date of this Deed:

(a) the introduction of a new Standard;

(b) a change in a Standard; or

(c) reclassification of a Road or any other change to a Road management category under the Road Management Plan,

but does not include:

(d) any of the events referred to in paragraphs (a) or (b) above:

(i) of which the State has expressly notified Project Co prior to the date of this Deed;

(ii) which was contained or referred to in the PSDR or the Concept Design or a Project Document or in any Project Information existing prior to the date of this Deed;

(iii) which a party performing activities similar to the Project Activities in accordance with Best Industry Practices would have reasonably foreseen or anticipated prior to the date of this Deed;

(iv) which is substantially the same as a Standard in force prior to the date of this Deed;

(v) which is substantially the same as any other requirement with which Project Co is required to comply under the State Project Documents;

(vi) which results from or is in response to any Project Co Act or Omission; or

(vii) to enable more efficient usage of the Project Assets; or

(e) the amendment to the Operational Responsibility (CoP) which came into effect on 30 May 2017.

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

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

Cintra Holding Trust means the Cintra OSARS (Western) Holding Unit Trust as constituted under the Cintra Holding Trust Deed.

Cintra Holding Trust Deed means the trust deed dated 1 November 2017 executed by Cintra OSARS (Western) Holdings Pty Ltd.

Cintra Trust Deed means the trust deed dated 1 November 2017 executed by the Cintra Trustee.

Cintra Trustee means Cintra OSARS (Western) Pty Ltd.

Claim means any claim, action, demand, suit or proceeding (including by way of contribution or indemnity) made:

(a) under any State Project Document, at Law or for specific performance, restitution, payment of amounts (including damages), an extension of time or any other form of relief; and

(b) in connection with the Project.

Code of Maintenance Standards means the code of maintenance standards to be prepared, amended and updated by Project Co in accordance with the Project Plans in section 2.3 of Part F1 and section 7 of Part F7 of the PSDR.

Commercial Acceptance means the stage when:

(a) the Works are complete, other than the Remaining Works and Commercial Acceptance Outstanding Items;

(b) Project Co has done everything which this Deed requires Project Co to do prior to or as a condition precedent to Commercial Acceptance other than any Commercial Acceptance Outstanding Item;

(c) all Returned Assets to be completed, other than the Remaining Works and Commercial Acceptance Outstanding Items, have been completed in accordance with clause 24.5(c) and all Returned Assets to be completed have been handed back to the relevant Returned Asset Owner.

Commercial Acceptance Outstanding Item means any act, matter, state of affairs or thing that is required under this Deed to have been performed, achieved, undertaken, provided or completed by Project Co as at Commercial Acceptance but which:

(a) is a Minor Defect; or

(b) the Independent Reviewer determines or the State and Project Co agree, is not required to be performed, achieved, undertaken, provided or completed by Project Co as at Commercial Acceptance.

Commercial Vehicle means any vehicle described in the Austroads Vehicles Classifications 3 to 12 inclusive as at the date of this Deed.

Commercial Vehicle Volume Change will occur if:

(a) the Average Actual Commercial Vehicle Volume for any three consecutive whole months of March (each of which occurs after the Maintenance Phase (Full) Commencement Date) exceeds the then current Adjustment Threshold Commercial Vehicle Volumes for those corresponding whole months of March; and

(b) the excess described in paragraph (a) of this definition directly causes a material increase in each of:

(i) the scope of the Services; and

(ii) the resources required for, and the Maintenance Base Costs of performing, the Services, that Project Co has allowed for in the Financial Model.

Commercially Sensitive Information means:

(a) the information listed in the Commercially Sensitive Information Schedule; and

(b) the Finance Documents, other than the Finance Direct Deed.

Commercially Sensitive Information Schedule means Schedule 11.

Communications and Community Engagement Representative means the person identified in section 2 of Part G of the PSDR.

Communications and Community Relations Plans means the Project Plan of that name for both of the Initial Phase and the Maintenance Phase (Full).

Compensable Change in Mandatory Requirements has the meaning given in clause 36.2(a).

Compensable Extension Event means the occurrence of any of the following events after the date of this Deed:

(a) breach by the State of any State Project Document;

(b) an act or omission of the State when acting in connection with the Project, or any State Associate, in each case other than any such act or omission which:

(i) is a Permitted Act;

(ii) is contemplated by clause 7.1 where the Authority is acting in accordance with its statutory powers; or

(iii) forms part of any Interface Works;

(c) provided that Project Co has complied with its obligations under clause 19.2, any Proximate Interface Works but only to the extent that:

(i) those Proximate Interface Works are not part of the relevant Interface Party's Business As Usual Work;

(ii) the nature or extent of the Proximate Interface Works or the impact of those Proximate Interface Works on the Project Activities were not otherwise reasonably foreseeable as at the date of this Deed by a person in the position of Project Co at that time exercising Best Industry Practices; and

(iii) those Proximate Interface Works are performed in a manner which is inconsistent with the performance standards and practices that would reasonably be expected of a prudent, experienced and competent person undertaking works, services, activities or functions similar to the relevant Proximate Interface Works;

(d) provided that Project Co has complied with its obligations under clause 19.2, any Site Interface Works, but only to the extent that:

(i) those Site Interface Works are not part of the relevant Interface Party's Business As Usual Work; and

(ii) the nature or extent of those Site Interface Works or the impact of those Site Interface Works on the Project Activities were not otherwise reasonably foreseeable as at the date of this Deed by a person in the position of Project Co at that time exercising Best Industry Practices;

(e) cessation or suspension of any part of the Development Activities because of:

(i) a Commonwealth or State direction;

(ii) an order of a court or tribunal of competent jurisdiction; or

(iii) a requirement of Law,

in connection with a Heritage Claim or Native Title Claim (as the case may be);

(f) a material change to the way in which the Development Activities are carried out because of:

(i) a Commonwealth or State direction;

(ii) an order of a court or tribunal of competent jurisdiction; or

(iii) a requirement of Law,

in connection with a Heritage Claim or Native Title Claim (as the case may be) unless any such change is the subject of a Modification Order under clause 35;

(g) Industrial Action which:

(i) only occurs at or in the direct vicinity of the Project Area; and

(ii) is the direct result of an act or omission of the State when acting in connection with the Project or a State Associate, in each case other than any such act or omission which:

A. is a Permitted Act;

B. is undertaken as part of any Interface Works; or

C. is contemplated by clause 7.1 where the Authority is acting in accordance with its statutory powers;

(h) a Compensable Extension Event under clause 38.1(b)(i);

(i) a Compensable Extension Event under clause 38.5(b)(i);

(j) a WGT Failure Event (Dohertys Road Bridge Works);

(k) a WGT Failure Event (Other Interface Sites);

(l) an MTM Failure Event; or

(m) any other event expressly stated to be a Compensable Extension Event in this Deed.

Compensable Intervening Event means the occurrence of any of the following events after the date of this Deed:

(a) breach by the State of any State Project Document;

(b) a fraudulent, reckless, unlawful or malicious act or omission of the State when acting in connection with the Project or any State Associate;

(c) cessation or suspension of any part of the Services because of:

(i) a Commonwealth or State direction;

(ii) an order of a court or tribunal of competent jurisdiction; or

(iii) a requirement of Law,

in connection with a Heritage Claim or Native Title Claim (as the case may be);

(d) a material change to the way in which the Services are carried out because of:

(i) a Commonwealth or State direction;

(ii) an order of a court or tribunal of competent jurisdiction; or

(iii) a requirement of Law,

in connection with a Heritage Claim or Native Title Claim (as the case may be) unless any such change is the subject of a Modification Order under clause 35;

(e) Industrial Action which:

(i) only occurs at or in the direct vicinity of the Project Area; and

(ii) is the direct result of an act or omission of the State when acting in connection with the Project or any State Associate, in each case other than any such act or omissions which:

A. is a Permitted Act;

B. is undertaken as part of any Interface Works; or

C. is contemplated by clause 7.1 where the Authority is acting in accordance with its statutory powers;

(f) provided that Project Co has complied with its obligations under clause 19.2, any Proximate Interface Works but only to the extent that:

(i) those Proximate Interface Works are not part of the relevant Interface Party's Business As Usual Work;

(ii) the nature or extent of the Proximate Interface Works or the impact of those Proximate Interface Works on the Project Activities were not otherwise reasonably foreseeable as at the date of this Deed by a person in the position of Project Co at that time exercising Best Industry Practices; and

(iii) those Proximate Interface Works are performed in a manner which is inconsistent with the performance standards and practices that would reasonably be expected of a prudent, experienced and competent person undertaking works, services, activities or functions similar to the relevant Proximate Interface Works;

(g) provided that Project Co has complied with its obligations under clause 19.2, any Site Interface Works, but only to the extent that:

(i) those Site Interface Works are not part of the relevant Interface Party's Business As Usual Work; and

(ii) the nature or extent of those Site Interface Works or the impact of those Site Interface Works on the Project Activities were not otherwise

reasonably foreseeable as at the date of this Deed by a person in the position of Project Co at that time exercising Best Industry Practices;

(h) Project Co not having the Required Road Management Powers for the purpose of performing the Services by the commencement of the Maintenance Phase (Initial) or subsequently ceasing to have those Required Road Management Powers for the purpose of performing the Services, except to the extent that Project Co's failure to have, or its reasons for ceasing to have, those Required Road Management Powers are caused or contributed to by Project Co or any Project Co Associate; or

(i) any other event expressly stated to be a Compensable Intervening Event under this Deed.

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

Concept Design means the design contained in Annexure A, as amended in accordance with the Design Appendix.

Concurrent Delay has the meaning given in clause 26.14(a).

Condition Precedent means each condition precedent identified as such in the Conditions Precedent Schedule.

Condition Precedent Deadline has the meaning given in clause 3.2(b).

Condition Review Date has the meaning given in clause 47.6(a), or such date as adjusted under clause 47.7(a)(i).

Conditions Precedent Schedule means Schedule 2.

Confidential Information has the meaning given in clause 55.2.

Consortium means:

(a) the Project Entities;

(b) the D&C Contractor up to the expiry of the last defects liability period under the D&C Contract;

(c) the Services Contractor;

(d) any Parent Guarantor of the D&C Contractor for so long as the D&C Contractor is a member of the Consortium; and

(e) any Parent Guarantor of the Services Contractor,

and **Consortium Member** means any of them.

Construction Documentation has the meaning given to that term in section 2.2(a) of Part F6 of the PSDR.

Construction Environmental Management Plan means the Project Plan of that name.

Construction Management Plan means the Project Plan of that name.

Construction Payment means each payment to be made in accordance with clause 41.1 by the State to Project Co of an amount equal to the corresponding Receivables Purchase Payment payable by Finance Co to the State under the Receivables Purchase Deed.

Construction Payment Date means with respect to a Construction Payment, the date that the corresponding Receivables Purchase Payment payable by the Finance Co to the State is required to be made under the Receivables Purchase Deed.

Construction Price means the price to be paid by the State to Project Co in accordance with clause 41.1, being the sum of the Construction Payments, which must equal the aggregate of the amount of the Receivables Purchase Price for the Initial Receivables calculated under the Receivables Purchase Deed.

Contamination means a condition of land, air, soil, water including groundwater resulting from past or present Pollution.

Contamination Compensation Event has the meaning given in clause 11.7.

Contamination Notice means a notice, order or direction given, or purporting to have been given, under the *Environment Protection Act 1970* (Vic) or any other Law which requires a person to take measures to remove, disperse, abate, destroy, dispose of, neutralise, remediate, treat, contain or otherwise test, monitor or assess any Contamination in, on, under or emanating from the Project Area, or any other land in the direct vicinity of the Project Area used or occupied by Project Co or any Project Co Associate for the Project.

Contestable Items means goods or services the subject of this Deed for which there are competitive international suppliers and Australian and New Zealand suppliers as identified in the LIDP and set out in the VIPP Schedule.

Contract Close Financial Model means Project Co's financial model as at the date of this Deed that formed part of Project Co's Proposal.

Contract Particulars means Schedule 1.

Contract Works Insurance (Advance Loss of Profits) has the meaning given in the Insurance Schedule.

Contract Works Insurance (Material Damage) has the meaning given in the Insurance Schedule.

Control means:

(a) control of, or having the capacity to control the composition of the board or partnership committee (or if the Entity is a trust, the appointment or choice of the trustee of that trust), or decision making, directly or indirectly, in relation to the financial and operating policies;

(b) being in a position to cast, or control the casting of, more than [not disclosed]% of the maximum number of votes that may be cast at a general meeting, a meeting of the partners (or if the Entity is a trust, a meeting of unitholders) or similar;

(c) having a relevant interest (as defined in section 608 of the Corporations Act but as if a reference in that section to "securities" were a reference to Securities as defined in this Deed) in more than [not disclosed]% of the Securities; or

(d) having a relevant interest (as defined in Section 608 of the Corporations Act amended to replace each reference to 'security' in that definition with the word 'unit') in more than [not disclosed]% of the units,

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

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

(a) controls (within the meaning of section 50AA of the Corporations Act) the trust or managed investment scheme (either directly or through one or more intermediary entities or trusts);

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

(c) holds more than one half of the units in the trust or managed investment scheme.

Coordinating Road Authority has the meaning given to the term "coordinating road authority" in the Road Management Act.

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

Cost for the purposes of clause 61, has the meaning given in clause 61.1(h).

Creditable Acquisition, for the purposes of clause 61, has the meaning given in the GST Act.

Cure means to cure or redress the relevant event, matter, thing or issue or overcome its consequences so that there ceases to be any continuing detrimental effect of that potential or actual event, matter, thing or issue or its consequences in each case in accordance with any applicable requirements under the relevant Project Document and so that the State and the State Associates are in the position they would have been in had the relevant event, matter, thing or issue not taken place.

Cure Program has the meaning given in clause 45.4(a).

D&C Contract means the agreement between Project Co and the D&C Contractor to carry out all, or substantially all, of the Development Activities.

D&C Contractor means:

(a) as at the date of this Deed, the party listed as such in the Contract Particulars; and

(b) any person who in addition or substitution is engaged by Project Co to carry out all, or substantially all, of the Development Activities.

D&C Contractor and Services Contractor Interface Deed has the meaning given in the D&C Contract.

D&C Contractor Consent Deed means the document entitled "OSAR Western Package - D&C Contractor Consent Deed" between the D&C Contractor, the Parent Guarantor of the D&C Contractor, Project Co, the Security Trustee and others.

D&C Contractor Construction Bond has the meaning given in clause 20.4.

D&C Contractor Construction Bond Amount means the amount set out in the Contract Particulars.

D&C Contractor DLP Bond Amount means the amount set out in the Contract Particulars.

D&C Contractor Direct Deed means the document entitled "OSAR Western Package - D&C Contractor Direct Deed" between the State, Project Co, the D&C Contractor and the Parent Guarantor of the D&C Contractor.

Data Room means any data room operated by or on behalf of the State and accessible by Project Co containing information relevant to the Project and which may be wholly or in part be in the form of web-based portal or other online facility for gaining access to information.

Date for Acceptance means:

(a) the Date for Commercial Acceptance; and

(b) the Date for Final Acceptance,

(or the relevant one of these as the case may be).

Date for Commercial Acceptance means the date specified as such in the Contract Particulars, as adjusted (if at all) under this Deed.

Date for Final Acceptance means the date specified as such in the Contract Particulars, as adjusted (if at all) under this Deed..

Date for Maintenance Commencement means the date specified as such in the Contract Particulars, which is not subject to adjustment under this Deed.

Date of Acceptance means:

(a) the Date of Commercial Acceptance;

(b) the Date of Final Acceptance; and

(c) the Date of Milestone Completion,

(or the relevant one of these as the case may be).

Date of Commercial Acceptance means the date upon which the Independent Reviewer signs the Certificate of Commercial Acceptance.

Date of Final Acceptance means the date upon which the Independent Reviewer signs the Certificate of Final Acceptance.

Date of Milestone Completion means, in respect of a Milestone, the date upon which the Independent Reviewer signs the relevant Certificate of Milestone Completion.

Date of Returned Asset Acceptance has the meaning given in clause 24.4(k).

Day 1 Uninsurable Risk means any:

(a) war, civil war, rebellion, revolution, military usurped power or mutiny, military insurrection, military commotion or other civil commotion;

(b) chemical, nuclear or biological contamination;

(c) ionising radiation or contamination by radioactivity; or

(d) terrorist act occurring on the Project Area (except to the extent coverage is provided for a declared terrorist incident by operation of the *Terrorism Insurance Act 2003* (Cth)),

save to the extent caused or contributed to by Project Co or any Project Co Associate.

Deed has the meaning given in clause 2.2.

Default means any failure by a Project Entity to comply with any obligation of that Project Entity under any State Project Document, but excludes any Abatement Event, Major Default or Default Termination Event.

Default Notice has the meaning given in clause 45.2(a).

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

(a) (**abandonment**): Project Co wholly or substantially abandons all or any part of the Project Activities;

(b) (**Group Member Insolvency Event**): an Insolvency Event occurs in relation to a Group Member;

(c) (**Key Subcontractor or Parent Guarantor Insolvency Event**): an Insolvency Event occurs in relation to:

(i) the D&C Contractor or the Parent Guarantor of the D&C Contractor, prior to the expiry of the last defects liability period under the D&C Contract; or

(ii) subject to paragraph (c)(i), any other Consortium Member (other than Project Co or a Group Member),

and that D&C Contractor, Parent Guarantor of the D&C Contractor or other Consortium Member (as applicable) is not replaced within [not disclosed] of the Insolvency Event by a person that is approved by the State;

(d) (**assignment, transfer or disposal**): Project Co assigns, transfers or otherwise disposes of any of its right, title or interest in or under any Project Document, the whole or any part of the Project Area or the Project Assets other than in accordance with the requirements of this Deed;

(e) (**Share Capital Dealing**): a Share Capital Dealing (which is not a Permitted Share Capital Dealing) occurs in respect of a Project Entity other than in accordance with clause 52.4;

(f) (**unremedied Major Default**): a Major Default is capable, or deemed to be capable, of Cure and Project Co fails to Cure the Major Default within the time set out in the Major Default Notice (as amended under clause 45.3(d), determined in accordance with clause 45.3(g) or extended under clause 45.4(e) (as applicable));

(g) (**Major Default not capable of Cure**): a Major Default is not capable of Cure and Project Co fails to diligently comply with any reasonable requirements of the State to overcome the consequences of the Major Default within the time stated in the Major Default Notice (as amended under clause 45.3(d), determined in accordance with clause 45.3(g) or extended under clause 45.4(e) (as applicable));

(h) (**Default Termination Abatement Events**): where Abatement Events have occurred (other than the Aboriginal Persons Employment Adjustment and Local Content Requirements Adjustment) whether or not Project Co has actually been Abated and, under the Payment Schedule:

(i) the State is entitled to deduct greater than [not disclosed]% of the aggregate Service Payments (excluding Lifecycle Payments and Abatements) that would have been payable in any one Abatement Year (or a prorata amount for part of an Abatement Year or an Abatement Year which is greater than [not disclosed]); or

(ii) the State is entitled to deduct greater than [not disclosed]% of the aggregate Service Payments (excluding Lifecycle Payments and Abatements) that would have been payable in any two Abatement Years (or a prorata amount for an Abatement Year where that two Abatement Year period includes part of an Abatement Year or an Abatement Year which is greater than [not disclosed]); or

(i) (**multiple Major Defaults**): the occurrence of three or more Major Defaults in any Abatement Year (whether or not they have been cured by Project Co);

(j) (**failure to vacate the Dohertys Road Bridge Works Site**): subject to clause 13.7(f), Project Co fails to vacate the Dohertys Road Bridge Works Site by the Vacate Date in accordance with clause 13.7(e); or

(k) (**deemed Default Termination Event**): any other event which is deemed to be a Default Termination Event under this Deed.

Defect means:

(a) any defect, fault or omission (including shrinkage, expansion, fading or settlement) in the Project Assets except to the extent:

(i) such defect, fault or omission is within tolerances (if any) set out in the PSDR or the Concept Design; or

(ii) such shrinkage, expansion, fading or settlement is within tolerances expected of an asset of the same type, nature and quality as the relevant Project Asset and does not amount to a breach of the FFP Warranty; ; and

(b) any other aspect of the Project Assets which is not in accordance with the requirements of this Deed,

including those which are in existence before the date of this Deed, but excludes damage to the Project Assets.

Defects Liability Period means in respect of each Returned Asset, the relevant period referred to in clause 27.2(a), as extended in accordance with clause 27.2(b).

Defects Retention Amount has the meaning given in clause 27.1(i)(iii)(A).

Deferred Equity Contribution and Subscription Deed has the meaning given to it in the Equity Documents Schedule.

Design Appendix means Part F5 of the PSDR.

Design Development Coordinator means the person appointed by Project Co as the Design Development Coordinator in accordance with clause 7.4(a) or clause 7.4(b) (as applicable).

Design Development Process has the meaning given in clause 20.2(b).

Design Documentation means all deliverables in respect of the design of the Project Assets (including all draft and final design standards, design reports, durability reports, drawings, specifications, manuals, designs, models, samples, patterns and calculations) in computer readable or written forms, or stored by any other means, which Project Co or any Project Co Associate creates, develops or produces or are required to, or must necessarily, create, develop or produce in carrying out the Development Activities.

Design Requirements means requirements for the design of the Project Assets set out in:

(a) the PSDR;

(b) the Concept Design; and

(c) the remainder of this Deed.

Designated Investor means an investor described as such in the Contract Particulars.

Development Activities means all work, things and tasks which Project Co is, or may be, required to carry out:

(a) in connection with the Works; or

(b) to otherwise comply with its obligations under or in connection with the State Project Documents during the relevant Development Phase in relation to the Development Phase Area,

and the rectification of Defects applicable to that work, things and tasks, but excludes the Services.

Development Phase means for each separate part of the Project Area upon which Development Activities are being carried out during the Initial Phase, the period which begins on the date on which those Development Activities commence on that separate area and ends on the date on which those Development Activities cease on that separate area.

Development Phase Area means each separate part of the Project Area upon which Development Activities are being carried out during the Initial Phase, but only for the period of its relevant Development Phase.

Development Phase Project Plans means each of the plans identified as such in section 2.2 of Part F1 of the PSDR and, to the extent that they apply to Development Activities, the plans identified in section 2.4 of Part F1 of the PSDR.

Development Phase Reports means each of the reports to be prepared, provided and updated by Project Co in connection with the Initial Phase or the Works in accordance with Part B section 3(c)(iii)(A), Part B section 3(c)(iii)(B), Part B section 10(d) (settlement report only), Part E section 2(g), Part E section 5.1(b), Part F1 section 1.2(h), Part F3 section 2, Part F4 section 2(b), Part F5 section 2.2(a)(i), Part F5 section 2.3(a)(i), Part F5 section 2.3(a)(ii), Part F5 section 2.7(a)(i), Part F6 section 4.2, Part F6 section 6.7, Part F6 section 8.3(c) to (e), Part F6 section 8.4(a)(iii), Part F6 section 13.7, Part G section 3(b)(i)(C) and Part G section 5(b) of the PSDR.

Development Phase Site means:

(a) the relevant Development Phase Area; and

(b) all other areas upon which the Development Activities are being carried out or any materials in connection with the Development Activities that are being prepared or stored for the purpose of the Development Activities during the relevant Development Phase.

Development Traffic Management Working Group has the meaning given in the PSDR.

Direct Deed means each of:

(a) the D&C Contractor Direct Deed;

(b) the Services Contractor Direct Deed; and

(c) any other Subcontractor Direct Deed required by the State in accordance with the requirements of this Deed.

Direct Interface Deed means:

(a) any agreement or deed that Project Co is required by the State to enter or does enter into with a Direct Interface Party in respect of Interface Works under which Project Co has recourse against the Direct Interface Party in respect of acts or omissions of the Direct Interface Party in carrying out the Interface Works; and

(b) the WGT Direct Interface Agreement.

Direct Interface Party means WGT Project Co.

Direct Interface Works means works, services, activities or functions:

(a) in connection with the Project Assets;

(b) otherwise in connection with the Project Activities; or

(c) on, in, under, over or in the direct vicinity of the Project Area,

which are undertaken by a Direct Interface Party during the Term simultaneously with Project Co's performance of the Project Activities and are the subject of a Direct Interface Deed.

Dispute has the meaning given in clause 48.1.

Distribution means, without double counting, any:

(a) dividend, return of capital, or other distribution or payment (in cash or in kind) in connection with the share capital, units or partnership interest of a Group Member or shareholder loans (or other loans in the nature of Equity Funding) to, or for the benefit of, a Group Member;

(b) release by a Group Member of any actual or contingent liability of a Project Entity or any Equity Investor (or any Related Body Corporate or Related Trust Entity of an Equity Investor); or

(c) payment, loan or transfer of any assets or provision of any other benefit by a Group Member to any Equity Investor (or any Related Body Corporate or Related Trust Entity of any Equity Investor) which is not on arm's length commercial terms.

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

Dohertys Road Bridge Works has the meaning given in the PSDR.

Dohertys Road Bridge Works Completion Date means the date specified as such in the Contract Particulars, as adjusted (if at all), under this Deed.

Dohertys Road Bridge Works Site means the area shaded green on the drawing entitled 'Interface Site' set out in the WGT-OSAR Interface Site Schedule.

Dynon Road Bridge means the bridge over the Maribyrnong River being structure number SN6192.

Dynon Road Bridge Date for Completion means 31 October 2023, as adjusted in accordance with clause 29(a).

Dynon Road Bridge Rehabilitation Works means the bridge rehabilitation works described in section 3.1 of Part H8 of the PSDR.

Easements means those easements, restrictions on use, covenants, agreements, or other similar arrangements together with any leases, sub-leases, licences, rights or privileges in each case as are granted at the date of this Deed.

Emergency means any event which:

(a) involves serious personal injury, death or significant damage to or destruction of the Project Assets or other property in connection with the Project;

(b) poses a serious risk to:

(i) the public interest;

(ii) the health or safety of any person;

(iii) the Environment;

(iv) the Project Area;

(v) the structural integrity of any part of the Project Assets; or

(vi) Operations,

or poses a serious risk of damaging or destroying the Project Assets or any other property;

(c) requires an urgent response to prevent any occurrence which could:

(i) cause personal injury or significant damage to or destruction of the Project Assets or other property;

(ii) compromise the health or safety of any person or property; or

(iii) have a significant impact on Operations; or

(d) prevents the Project Assets or any part of them being open to the public for the safe, efficient and continuous passage of vehicles, other than where this is planned in accordance with any agreed procedures referred to in this Deed.

Emergency Event means an unanticipated event as a result of which a section of track which was the subject of an Agreed Occupation is unavoidably required:

(a) to ensure the safety of rail operations or the Rail Infrastructure; or

(b) as a result of the redeployment of major rail resources to other sites to ensure the safety of rail operations or the Rail Infrastructure.

Encumbrance has the meaning given in the State Security.

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

Employee has the meaning given in clause 16.1(a)(i).

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

Environment means the physical factors of the surroundings of humans and other life forms, including the land, soil, plants, habitat, waters, atmosphere, climate, sounds, odours, tastes, biodiversity and the Site's social and aesthetic characteristics.

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

Environmental Management Plan means the Construction Environmental Management Plan, the Maintenance Environmental Management Plan and the Sustainability Management Plan (or the relevant one of these as the case may be).

Environmental Representative means the person appointed by Project Co as the Environmental Representative under clause 7.4(b).

Environmental Requirements means all:

(a) Laws relating to the Environment and, if the Law is an Approval, the conditions and requirements of any Approval relating to the Environment; and

(b) environmental safeguards and measures necessary to protect the Environment and avoid, reduce, minimise or mitigate the environmental impacts of the Project Activities, including those identified in this Deed, any other Project Document or otherwise required by Best Industry Practices.

Equity Documents means each of the documents listed in the Equity Documents Schedule.

Equity Documents Schedule means Schedule 13.

Equity Funding means, at any time, equity capital to be or which has been contributed to any Group Member by way of subscription for shares or units or by way of shareholder or unitholder loans, in each case, as set out in the Financial Model.

Equity Investor means:

(a) a person identified as such in the Ownership Schedule; and

(b) each person who has provided or has agreed to provide:

(i) Equity Funding at the times and in the amounts set out in the Financial Model (whether by way of subscription for units or shares or provision of unitholder or shareholder loans); or

(ii) any other equity, financial arrangement, security or option issued by or provided to a Group Member which does not constitute a Refinancing.

Equity IRR means the internal rate of return to providers of Equity Funding as set out in the Financial Close Financial Model or in the Financial Model (as the case may be). The internal rate of return is calculated on a nominal and pre-investor tax basis, using the dates for contributions of Equity Funding specified in the Financial Close Financial Model or in the Financial Model (as the case may be).

Excess Traffic means, where a Commercial Vehicle Volume Change has occurred, the Commercial Vehicles in excess of the Adjustment Threshold Commercial Vehicle Volumes

(which applies immediately before that Commercial Vehicle Volume Change occurred) over the Revised Forecast Period calculated as the absolute value of the difference between:

(a) the Base Case Commercial Vehicle Volume set out in the Modification Order issued by the State under clause 35.16(e) (or determined by expert determination in accordance with clause 48.1(d)(i)) in relation to that Commercial Vehicle Volume Change); and

(b) the Adjustment Threshold Commercial Vehicle Volumes which apply immediately before that Commercial Vehicle Volume Change occurred,

in each case over the Revised Forecast Period.

Excluded Asset means:

(a) street lighting, intelligent transport systems and traffic signals (including at road intersections, pedestrian crossings and fire wig wags);

(b) flashing pedestrian crossings, electronic speed limit signs, CCTV cameras, webcams, variable message signs, ramp metering including ramp control 1 (RC1), ramp control 2 (RC2), ramp control 3 (RC3), fairway electronic signs, electronic height detection systems, electronic hazard signs, electronic speed advisory signs, electronic freeway condition signs, electronic overhead lanes and trip information signs (freeway only); and

(c) assets for which road management functions have been transferred from VicRoads to Melbourne City Council under an arrangement made under section 15 of the Road Management Act dated on or about 15 September 2005, and any variation or replacement of that arrangement,

excluding any Returned Asset.

Excluded Asset (Additional) has the meaning given to it in section 2(m)(iii) of Schedule 25.

Existing Structural Asset has the meaning given to it in the PSDR.

Expert Determination Agreement means Schedule 8.

Expiry Date has the meaning given in clause 4.2.

Explanation has the meaning given in clause 26.4(d)(i).

Extension Event means the occurrence of any of the following events after the date of this Deed:

(a) a Compensable Extension Event;

(b) any Direct Interface Works (excluding any Direct Interface Works performed by WGT Project Co or a WGT Project Co Associate);

(c) a Force Majeure Event; or

(d) a WGT Failure Event (Hyde Street Bridge Works).

Facility Agent means the "Agent" as defined in the Syndicated Facilities Agreement.

FFP Warranty means each and all of the warranties given in clause 5.5.

Final Acceptance means the stage when:

(a) the balance of the Works not completed as part of Commercial Acceptance have been completed, including completing all Remaining Works and Commercial Acceptance Outstanding Items:

(i) specified in the Certificate of Commercial Acceptance;

(ii) notified by Project Co to the State in accordance with clause 27.1(d) prior to the Date of Final Acceptance; or

(iii) notified by the State to Project Co in accordance with clause 27.1(e) prior to the Date of Final Acceptance; and

(b) Project Co has done everything which this Deed requires Project Co to do prior to or as a condition precedent to Final Acceptance.

Final Expiry Date means the date which is the 20th anniversary of the earlier of the Date for Commercial Acceptance and the Date of Commercial Acceptance.

Final Refurbishment Works has the meaning given in clause 47.6(c)(i).

Finance Co means Netflow OSARS (Western) Finance Pty Ltd.

Finance Direct Deed means the document entitled "OSAR Western Package - Finance Direct Deed" between the State, Project Co, Finance Co and the Security Trustee on behalf of the Financiers.

Finance Documents means:

(a) each of the documents listed in the Finance Documents Schedule;

(b) any document entered into in relation to a Refinancing of the Actual Debt approved by the State under clause 37; and

(c) any other document which the parties agree is a Finance Document for the purposes of this Deed.

Finance Documents Schedule means Schedule 12.

Finance Hold Co means Netflow OSARS (Western) Finance Holdings Pty Ltd.

Financial Close means the date on which the last Condition Precedent to be satisfied, has been satisfied (or waived under clause 3.3(b)).

Financial Close Adjustment Protocol means Schedule 17.

Financial Close Financial Model means the Contract Close Financial Model as updated and audited in accordance with the Financial Close Adjustment Protocol under clause 3.5(a).

Financial Model means the Financial Close Financial Model updated from time to time in accordance with clause 53.

Financial Year means each 12 Month period commencing on 1 July and ending on 30 June.

Financiers' Certifier means the Financiers' Certifier under and as defined in the D&C Contract which as at the date of this Deed is the party set out in the Contract Particulars.

Financiers means the providers of any financing facilities, financial arrangements or accommodation to, or purchasers of any notes issued by, a Group Member under the Finance Documents (other than Finance Documents solely between Group Members) from time to time and may, where the context permits, include any agent or trustee of such Financiers.

Fit For Purpose means fit for its intended purposes, functions and uses as specified in, or reasonably inferred from, the PSDR or any other parts of this Deed.

Fixtures has the meaning given in clause 18.1.

Floating Rate Component means each amount calculated in accordance with section 8 of the Payment Schedule.

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

Forecast Maintenance and Refurbishment Plan has the meaning given in the PSDR.

Force Majeure Event means:

(a) the occurrence of any of the following events after the date of this Deed:

(i) earthquake, natural disaster, bushfire, landslide, seismic activity, tsunami or mudslide;

(ii) winds:

A. during the Initial Phase, and during the Maintenance Phase but only in respect of the Works and the Development Activities, producing sustained surface winds in excess of 118 km/h and gusts in excess of 165 km/h, as recorded by the Bureau of Meteorology, Melbourne; or

B. during the Maintenance Phase (other than in respect of the Works and Development Activities), producing sustained surface winds in excess of 118 km/h and gusts in excess of 225 km/h, as recorded by the Bureau of Meteorology, Melbourne;

(iii) a flood which might, at the date of this Deed, be expected to occur no more frequently than once in every 100 years;

(iv) fire, explosion or flood caused by events referred to in paragraph (i); or

(v) a Day 1 Uninsurable Risk,

which:

(vi) occurs at or in the direct vicinity of the Project Area;

(vii) was not caused by Project Co or any Project Co Associate or the State, any State Associate or any Interface Party; and

(viii) prevents (which, if the event is an Intervening Event, will include preventing the relevant party from being able to perform its obligations under this Deed within the timeframes (if any) specified in this Deed):

A. Project Co from carrying out all or a material part of the Project Activities; or

B. the State from carrying out all or a material part of its obligations,

under the State Project Documents (as the case may be);

(b) a Force Majeure Event under clause 38.1(b)(ii); or

(c) a Force Majeure Event under clause 38.5(c).

Force Majeure Termination Event means a Force Majeure Event which prevents:

(a) Project Co from carrying out all or a material part of the Project Activities; or

(b) the State from carrying out all or a material part of its obligations under the State Project Documents,

for a continuous period exceeding 180 consecutive days, or any other event expressly deemed to be a Force Majeure Termination Event in this Deed, unless the State has directed Project Co to repair or rebuild the Project Assets in accordance with clause 42.2(b).

Franchisee (Metro) means a franchisee for the Melbourne Metro rail network (or part thereof) that is the counterparty to a Franchise Agreement (Metro), including any entity that enters into a new, replacement or additional Franchise Agreement (Metro) for the Melbourne Metro rail network during the Term. As at Financial Close, this is Metro Trains Melbourne Pty Ltd ACN 136 429 948.

Franchisee (Regional) means a franchisee for the Victorian regional rail network (or part thereof) that is the counterparty to a Franchise Agreement (Regional) including any entity that enters into a new, replacement or additional Franchise Agreement (Regional) for the Victorian regional rail network during the Term. As at Financial Close, this is V/Line Pty Ltd ACN 087 425 269.

Franchise Agreement (Metro) means an agreement for the operation of railway passenger services on the Melbourne Metro rail network (or part thereof), including any new, replacement or additional agreement entered into with a Franchisee (Metro) during the Term. As at Financial Close, this is the agreement between the Public Transport Development Authority and Metro Trains Melbourne Pty Ltd entitled 'Franchise Agreement — Train' dated 31 August 2009, as amended from time to time.

Franchise Agreement (Regional) means an agreement for the operation of railway passenger services on the Victorian regional rail network (or part thereof), including any new, replacement or additional agreement entered into with a Franchisee (Regional) during the Term. As at Financial Close, this is the Public Transport Development Authority and V/Line Pty Ltd entitled 'Franchise Agreement — V/Line' dated 1 July 2003, as amended from time to time.

Franchisee (Metro) Works means the works to be carried out by, or on behalf of, the Franchisee (Metro) on Rail Infrastructure, including the provision of personnel by the Franchisee (Metro), as required, to enable those works to be performed.

Franchisee (Regional) Works means the works to be carried out by, or on behalf of, the Franchisee (Regional) on Rail Infrastructure, including the provision of personnel by the Franchisee (Regional) as required, to enable those works to be performed.

Freeway has the meaning given to the word "freeway" in the Road Management Act.

General Change in Law means a Change in Law that is not a Project Specific Change in Law.

Government Party means the State or any Authority of the State.

Group means each Project Entity, each Trustee, each Trust, each Holding Entity, Finance Hold Co and any wholly owned subsidiary of any of them, and **Group Member** means any of them.

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

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

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

GST Law has the meaning given in the GST Act.

Handover means the stage where Project Co has satisfied all requirements of this Deed that Project Co is required to satisfy prior to the handover of the Project Assets at the Expiry Date.

Handover Bond has the meaning given in clause 47.9(a)(ii).

Handover Condition has the meaning given in clause 47.3.

Handover Escrow Account has the meaning given in clause 47.9(a)(i).

Handover Management Sub-Plan means the sub-plan to the Asset Management Plan of that name referred to in section 2.3(j)(iii) of Part F1 of the PSDR.

Handover Reviewer has the meaning given in clause 47.5(a).

Hazardous Substance has the meaning given in clause 11.1(a)(i).

Heritage Claim means a claim made in connection with a requirement under any Law for the protection, preservation or removal of any Artefact.

Hired Moveable Assets means any Moveable Asset referred to in paragraph (b) of the definition of Moveable Assets which is hired, leased or licensed by Project Co (or a Key Subcontractor) in accordance with clause 18.2(e)(i) and:

(a) to which Project Co has not acquired title; or

(b) which are subject to or have been procured or title has been acquired under a hire purchase agreement or finance lease.

Holding Entity means in the case of:

(a) Project Co, each Netflow OSARS Hold Co; and

(b) each Trustee and each Trust, the Netflow OSARS Hold Co which directly or indirectly holds all of the issued shares or units in that Trustee or Trust, as set out in the Ownership Schedule.

Hyde Street Bridge Works means the bridge rehabilitation works set out in section 1.9 of Part H8 (Bridge Rehabilitation Works) of the PSDR.

Hyde Street Bridge Works Completion Date means the date specified as such in the Contract Particulars, as adjusted (if at all), under this Deed.

Hyde Street Bridge Works Site means the area shaded orange on the drawing entitled 'Hyde Street Bridge Works Site' set out in the WGT-OSAR Interface Site Schedule.

Increased State Risk Allocation means any increase in the risks for the State in relation to, or in connection with, the Project as a result of entry into, or the State performing its obligations pursuant to, the Securitised Licence Structure.

Indemnified IP Person has the meaning given in clause 43.5(a)(i).

Independent Reviewer means the person appointed as the Independent Reviewer under the Independent Reviewer Deed of Appointment, or as replaced (if at all) under clause 8.4(a).

Independent Reviewer Deed of Appointment means the document entitled "OSAR Western Package - Independent Reviewer Deed of Appointment" between the State, Project Co and the Independent Reviewer.

Index means each Index set out in the Indexes Schedule.

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

Indexes Schedule means Schedule 16.

Indirect or Consequential Loss means:

(a) any loss of opportunity, profit, anticipated profit, business, business opportunities or revenue or any failure to realise anticipated savings; or

(b) fines and penalties payable under agreements other than the State Project Documents or a Key Subcontract.

Industrial Action means any action of the following kinds:

(a) a failure or refusal by any Project Co Associate or State Associate to attend for work;

(b) a failure or refusal to perform any work at all by any Project Co Associate or State Associate who attends for work; or

(c) any blockade or embargo by any Project Co Associate or of the State Associate

but does not include action of the type referred to in paragraphs (a), (b) or (c) by any person:

(d) that is authorised or agreed to by Project Co or any Project Co Associate, including on the basis the action is of a type reasonably contemplated by the employee's employment conditions; or

(e) if:

(i) the action was based on a reasonable concern by such person about an imminent risk to their health or safety; and

(ii) such person did not unreasonably fail to comply with a direction of Project Co or any Project Co Associate (as the case may be) to perform other available work, whether at the same or another workplace, that was safe and appropriate for such person to perform.

Industrial Special Risks/Business Interruption Insurance means the insurance policy for material damage and resultant business interruption occurring during the Maintenance Phase, referred to in section (a) of Part D of the Insurance Schedule.

Industry Capability Network (ICN) or **ICN** means Industry Capability Network (ICN) Victoria of [not disclosed] (ABN 20 007 058 120).

Information Management System or **IMS** has the meaning given in the PSDR.

Information Privacy Principles means the principles so identified and set out in the *Privacy and Data Protection Act 2014 (Vic)*.

Initial Capital Projects has the meaning given to it in the PSDR.

Initial Licence means the licence granted in accordance with clause 13.5.

Initial Licence Area means that part of the Project Area (which may be limited in height and depth):

(a) which is owned or controlled by the State or VicRoads; or

(b) in relation to which State or VicRoads is entitled to grant access to Project Co.

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

Initial Phase means the period commencing on Financial Close and ending on and including the Date of Commercial Acceptance.

Initial Phase Finance Amounts has the meaning given in the Change Compensation Principles.

Initial Phase Insurances (Project Co) means the Insurances referred to in Part A of the Insurance Schedule.

Initial Phase Insurances (State) means the Insurances (State) referred to in Part B of the Insurance Schedule.

Initial Phase Program means the Bid Initial Phase Program as updated in accordance with the requirements of this Deed or the Works.

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

Initial Rehabilitation Work has the meaning given to it in the PSDR.

Input Tax Credit has the meaning given by the GST Law.

Insolvency Event means the occurrence of any of the following events:

(a) in relation to an Entity:

(i) (**liquidator, administrator or receiver appointed**): a liquidator, provisional liquidator, administrator, trustee in bankruptcy, receiver or receiver and manager or similar officer is appointed in respect of the Entity or any asset of the Entity;

(ii) (**distress or execution**): a distress, attachment or other execution is levied or enforced upon or against any assets of the Entity and in the case of a writ of execution or other order or process requiring payment, it is not withdrawn or dismissed within 10 Business Days;

(iii) (**winding up**): an order is made for the administration, dissolution or winding up of the Entity, or an application to the courts is made (and is

not stayed or dismissed within 20 Business Days after being made), or a resolution is passed for the administration, dissolution or winding up of the Entity other than for the purposes of a Solvent reconstruction or amalgamation on terms approved by the State Representative;

(iv) (**cessation of business**): the Entity ceases, or threatens to cease, to carry on its business or payment of its debts generally, other than for the purposes of a Solvent reconstruction or amalgamation on terms approved by the State Representative;

(v) (**arrangement or compensation**): the Entity enters, or resolves to enter into any scheme of arrangement or composition with its creditors generally, or any class of its creditors, other than for the purposes of a Solvent reconstruction or amalgamation on terms approved by the State Representative;

(vi) (**inspector**): an inspector is appointed under any companies legislation to investigate all or any part of the affairs of the Entity in relation to a possible contravention by the Entity of that legislation and the appointment:

A. is not withdrawn within 10 Business Days; and

B. in the reasonable opinion of the State Representative, may have a material adverse effect;

(vii) (**insolvency**): the Entity is unable to pay its debts when they fall due, or is deemed unable to pay its debts under any applicable Law (other than as a result of a failure to pay a debt or claim which is the subject of a good faith dispute); or

(viii) (**deregistration**): for a registered corporation under the Corporations Act, a step taken under section 601AA, 601AB or 601AC of the Corporations Act to cancel its registration;

(b) in relation to a trust:

(i) (**application to court**): an application or order is sought or made (and is not stayed or dismissed within 20 Business Days after being sought or made) in any court for the property of the trust to be brought into court or administered by the court or brought under its control; or

(ii) (**assets insufficient**): the assets of the trust are not sufficient to satisfy the trustee's debts as and when they become due and payable in respect of which it has a right to be indemnified out of the assets of the trust; and

(c) in relation to an entity subject to the laws of any jurisdiction other than a jurisdiction in Australia, something having substantially similar effect to any of the things described in paragraphs (a) and (b) occurs in connection with that entity under the laws of that jurisdiction.

Insurance Failure Event means the extent to which an Insurance or Insurance (State) fails to respond in accordance with its terms (including where an Insolvency Event occurs in respect of the relevant insurer), to an event which was the subject of coverage under that Insurance or Insurance (State) (as applicable), other than where the failure to respond is a State Insurance Breach.

Insurance Proceeds Account means the account established and maintained in accordance with clause 44.10.

Insurance Schedule means Schedule 10.

Insurances means all of the insurances required to be effected and maintained by Project Co or any Project Co Associate under this Deed (or the relevant one of these as the case may be).

Insurances (State) means each of the Initial Phase Insurances (State) and the Maintenance Phase Insurances (State).

Insured means any person entitled to coverage under any of the Insurances or Insurances (State) as referred to in this Deed including, for the avoidance of doubt, any person to whom the benefit of coverage extends.

Insured Risk means any risk of loss, damage, liability or other detriment, which is the subject of cover, or is required to be covered, under an Insurance or Insurance (State) referred to in this Deed.

Intellectual Property Rights has the meaning given in the Intellectual Property Schedule.

Intellectual Property Schedule means Schedule 18.

Interest Period has the meaning given in the Payment Schedule.

Interface Party means each person that undertakes Interface Works excluding VicRoads or any Authority or any of its or their Associates undertaking works, services activities or functions which are contemplated by clause 7.1 where the Authority is acting in accordance with its statutory rights, powers, functions or duties.

Interface Works means Direct Interface Works, Site Interface Works and Proximate Interface Works, but excluding the Franchisee (Metro) Works, the Franchisee (Regional) Works and the VIVA Works.

Intervening Event means the occurrence of any of the following events during the Maintenance Phase:

(a) a Compensable Intervening Event;

(b) a Force Majeure Event;

(c) an Intervening Event under clause 38.1(b)(i);

(d) an Intervening Event under clause 38.5(b)(ii);

(e) any Direct Interface Work; or

(f) any other event expressly stated to be an Intervening Event under this Deed.

Investors Agreement means the investors agreement constituting the Netflow OSARS (Western) Partnership dated on or about 1 December 2017 between Cintra OSARS Western Ltd, Plenary Investments (Western OSARS) Pty Ltd and the Trustees.

Key Milestone Completion means Milestone Completion in relation to a Key Milestone.

Key Milestone Completion Date means:

(a) the Dohertys Road Bridge Works Completion Date; and

(b) the Hyde Street Bridge Works Completion Date.

Key Milestones means:

(a) the Dohertys Road Bridge Works; and

(b) the Hyde Street Bridge Works.

Key People means the Project Co Representative, the Other Representatives and any other people specified as Key People in the Contract Particulars.

Key Subcontract means any of the following:

(a) the D&C Contract;

(b) the Services Contract;

(c) any other Subcontract between Project Co and a Subcontractor to perform any of the Project Activities (excluding the Sub-Independent Reviewer Deed of Appointment); and

(d) any Subcontract in respect of the Project Activities referred to as such in the Contract Particulars,

as replaced under clauses 9.2 and 9.3.

Key Subcontractor means each of the counterparties to the Key Subcontracts, other than Project Co.

KPI Incident has the meaning given to it in the Payment Schedule.

Land Availability Plan means the land availability plans set out in Part J of the PSDR, as amended from time to time in accordance with clause 13.3.

Land Availability Date means, in respect of a parcel of land referred to in the Land Availability Plans, the date specified as the 'Land Availability Date' for that parcel of land in the Land Availability Plans.

Lane Access has the meaning given to it in the Payment Schedule.

Lane Access Adjustment has the meaning given to it in the Payment Schedule.

Lane Access Constraints has the meaning given in sections 5 and 6 of Part H18 to the PSDR.

Lane Closure means has the meaning given in the PSDR.

Lane Speed Reduction has the meaning given in the PSDR.

Law means:

(a) those principles of common law and equity established by decisions of courts;

(b) all legislation of the Commonwealth, the State or an Authority; and

(c) Approvals (including any conditions or requirements under them).

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

(a) actual, prospective or contingent; or

(b) currently ascertainable or not,

and whether under or in any way in connection with any of the Project Documents or arising at Law.

Licence Fee means each of the Initial Licence Fee and the Maintenance Phase Licence (Full) Fee.

Licence Fee Schedule has the meaning given in the Maintenance Phase Licence (Full).

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

LIDP Monitoring Table has the meaning given in clause 58.3(b)(i).

Lifecycle Payment means the amounts set out in the BLFCq of Table 7 of the Payment Schedule which is Indexed in accordance with the Payment Schedule.

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

Local Content Requirements has the meaning given in clause 58.1.

Local Contents Requirements Adjustment has the meaning given in Schedule 3.

Location means each of the places identified as a location in the table in Section 2 of Annexure B to Schedule 5 within the Project Area.

Maintained Assets means all assets which are used in, on, over or under the Maintenance Phase Area in respect of which Project Co is required to perform the Services during the Maintenance Phase, including:

(a) all of the assets in, on, under or over the land which forms the Project Area from time to time but only to the extent that VicRoads:

  (i) is the Responsible Road Authority or is required to perform the functions of the Responsible Road Authority for those assets as determined in accordance with the Road Management Act, the Road Management Plan or the Operational Responsibility (CoP); or

  (ii) would have been the Responsible Road Authority or been required to perform the functions of the Responsible Road Authority (as determined in accordance with the Road Management Act, the Road Management Plan or the Operational Responsibility (CoP)) if the Project Area had been declared as a road for which VicRoads would be the Responsible Road Authority pursuant to the Road Management Act;

(b) any Road Related Infrastructure directly related to any Road within the Project Area, including line marking and signs for which VicRoads is the Responsible Road Authority or for which VicRoads is required to perform the functions of the Responsible Road Authority as determined in accordance with the Road

Management Act, the Road Management Plan or the Operational Responsibility (CoP);

(c) any asset which is constructed, installed, repaired, remedied or replaced, in each case in, on, under or over a Development Phase Area (including as a result of any Modification or Augmentation) by or on behalf of Project Co pursuant to this Deed as part of a Development Phase but only after the relevant Development Phase in relation to that Development Phase Area has ended, but excluding any Returned Asset from the date on which it is returned to relevant Returned Asset Owner;

(d) any asset which is constructed, installed, repaired, remedied or replaced, in each case in, on, under or over the Maintenance Phase Area during the Maintenance Phase (including as a result of any Modification or Augmentation) by or on behalf of Project Co pursuant to this Deed as part of the Project Activities;

(e) notwithstanding anything else in this Deed, Additional Assets shall only be deemed to be Maintained Assets from the date on which Project Co receives the State Representative's notice under section 2(m) of Schedule 25 or, in the case of Category C Assets, from the date the State accepts a Modification Proposal under section 2(o) of Schedule 25; and

excluding:

(f) those assets within a Development Phase Area but only for the period of the relevant Development Phase;

(g) any Excluded Asset;

(h) any Excluded Asset (Additional) from the date on which Project Co receives the State Representative's notice issued under section 2(m) of Schedule 25; and

(i) any stratum of Freeway (or road operating as a freeway) over or under any Project Road (where the freeway and the Project Road are at different levels) which falls within the Project Area but not any other part of a Freeway (or road operating as a freeway) which is included in the Blue Shaded Area;

(j) the structural elements of any bridge over a Freeway (or road operating as a freeway) but not the non-structural maintenance of the bridge, which is deemed to form part of the Services, including by virtue of responsibilities detailed in sections 1 and 2 in Part H15 of the PSDR; and

(k) any Freeway bridge over a Project Road.

Maintenance Activities has the meaning given in section 5.2 of Part A of the PSDR.

Maintenance Commencement means the stage when the Transition Activities have been completed.

Maintenance Environmental Management Plan means the Project Plan of that name.

Maintenance Phase means for the Maintenance Phase Area the period beginning on the day after the last day of the Transition Phase and ending on the Expiry Date, but excludes the period when the Project Area becomes a Development Phase Area but only for the period of the relevant Development Phase.

Maintenance Phase Area means that part of the Project Area which is not a Development Phase Area.

Maintenance Phase (Full) means the period beginning on the Maintenance Phase (Full) Commencement Date and ending on the Expiry Date.

Maintenance Phase (Full) Commencement Date means the day after the end of the Maintenance Phase (Initial).

Maintenance Phase (Initial) means the period beginning on the day after the last day of the Transition Phase and ending on the Date of Commercial Acceptance.

Maintenance Phase Insurances (Project Co) means the Insurances referred to in Part C of the Insurance Schedule.

Maintenance Phase Insurances (State) means the Insurances (State) referred to in Part D of the Insurance Schedule.

Maintenance Phase Licence (Full) means the licence granted pursuant to clause 13.6.

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

Maintenance Phase Licence (Full) Fee A has the meaning given in the Receivables Purchase Deed.

Maintenance Phase Licence (Full) Fee B has the meaning given in the Receivables Purchase Deed.

Maintenance Phase Licence (Full) Modification Payment means an amount equal to the corresponding Receivables Purchase Price in respect of the Additional Receivables purchased by Finance Co from the State under the Receivables Purchase Deed resulting from a Change Compensation Event.

Maintenance Phase Licence Area means that part of the Project Area (which may be limited in height and depth):

(a) which is owned or controlled by the State or VicRoads; or

(b) in relation to which State or VicRoads is entitled to grant access to Project Co.

Maintenance Phase Management Plan has the meaning given in the PSDR.

Maintenance Phase Project Plans means each of the plans identified in 2.3 of Part F1 of the PSDR, and to the extent that they apply to Services, the plans identified in section 2.4 of Part F1 of the PSDR.

Maintenance Phase Reports means each of the reports to be prepared, provided and updated by Project Co in connection with the Services in accordance with Part B section 10(d) (settlement report only), Part C section 2.1(f), Part C section 3(b)(iv), Part D section 1(h), Part F7 section 4(b), Part F7 section 5.9, Part F7 section 10, Part F7 section 11(b), Part G section 5(b) and Part G section 8(b)(ii) of the PSDR.

Maintenance Phase Requirements means the requirements for the provision of the Services set out in the State Project Documents.

Maintenance Phase Site means:

(a) the Maintenance Phase Area; and

(b) all other areas upon which the Services are being carried out or materials in connection with the Services are being prepared or stored for the purpose of the Services during the Maintenance Phase.

Maintenance Year means:

(a) for the first Maintenance Year, the period commencing on the day after the end of the Transition Phase and ending on the next 30 June;

(b) subject to paragraph (c), each subsequent 12 Month period during the Maintenance Phase commencing on 1 July and ending on 30 June; and

(c) for the final Maintenance Year, the period from the end of the last full Maintenance Year (as defined in paragraph (b)) to the Expiry Date.

Major Default means the occurrence of any of the following events:

(a) (**late Commercial Acceptance**): Project Co fails to achieve Commercial Acceptance by the Date for Commercial Acceptance;

(b) (**late Final Acceptance**): Project Co fails to achieve Final Acceptance by the Date for Final Acceptance;

(c) (**Finance Documents**): any event that would restrict or cancel, or entitle a Financier to restrict or cancel, Project Co's ability to obtain or to have available finance or financial accommodation in accordance with the Finance Documents except to the extent that immediately after such restriction or cancellation, the finance or financial accommodation available to the Project Entities is greater than that required to enable the Project Entities to fully undertake the Project;

(d) (**fraud**): Project Co or a Project Co Associate engages in fraud, collusion or dishonest conduct in performing its obligations under the Project Documents;

(e) (**failure to provide Explanation or Remediation Plan**): Project Co fails to provide an Explanation or a Remediation Plan that complies with clause 26.4(f) (as applicable) within [not disclosed] after receipt of the Independent Reviewer's notice under clause 26.4(b):

(f) (**failure to provide a Remediation Plan**): Project Co fails to provide a Remediation Plan in accordance with clause 26.4(e)(ii) within [not disclosed] after receipt of the Independent Reviewer's notice under clause 26.4(e);

(g) (**failure to provide an Amended Remediation Plan**): Project Co fails to provide an Amended Remediation Plan in accordance with clause 26.4(i) within [not disclosed] after receipt of the Independent Reviewer's notice;

(h) (**Independent Reviewer notice**): the Independent Reviewer notifies the State and Project Co:

(i) under clause 26.4(k)(i)(A), that the Amended Remediation Plan does not satisfactorily address the requirements of clause 26.4(f);

(ii) under clause 26.4(k)(i)(B), that Project Co is not diligently pursuing or updating the Remediation Plan or Amended Remediation Plan (as applicable); or

(iii) under clause 26.4(k)(ii), that Project Co will not be able to achieve Commercial Acceptance by the date that is [not disclosed] after the Date for Commercial Acceptance;

(i) (**representations and warranties**): a representation or warranty given by Project Co under a State Project Document is found to be materially incorrect or materially misleading or a financial audit report discloses fraudulent, false, misleading or negligent reporting by Project Co in respect of any financial statements or invoices or other books or records of Project Co;

(j) (**subcontracting and Key People**): a breach by Project Co of any of its obligations under clause 7.5, 9.2, 9.3 or 9.4(b);

(k) (**Share Capital Dealing**): a Share Capital Dealing (which is not a Permitted Share Capital Dealing) occurs without the consent of the State in accordance with clause 52.4, other than in respect of a Project Entity;

(l) (**Probity Event**): failure of Project Co to take any action agreed by the parties in accordance with clause 39.2(b)(i) or if no agreement is reached as determined by the State in accordance with clause 39.2(c);

(m) (**Insurances**): a breach by Project Co of any its obligations under clauses 44.1, 44.2, 44.3(a)(i), 44.4, 44.6 or 44.14;

(n) (**Refinancing**): a failure by Project Co to inform or obtain the State's written consent (as the case may be) to a Refinancing or to distribute the State Share of Refinancing Gain in accordance with clause 37;

(o) (**Default not Cured**): a Default becomes a Major Default pursuant to clause 45.2(b));

(p) (**Local Content**): as at the Date of Commercial Acceptance, Project Co has not met the aggregate Local Content Requirements to the Date of Commercial Acceptance as determined in accordance with clause 58.4(a);

(q) (**Major Projects Skills Guarantee**): as at the Date of Commercial Acceptance, Project Co has not met the Major Projects Skills Guarantee as determined in accordance with clause 59.4(b);

(r) (**breach of Project Document**): a Project Entity breaches any of its obligations under any other Project Document (other than a breach of a State Project Document, Finance Document, Equity Document or if such breach of a Project Document is otherwise a Major Default or a Default Termination Event) and the breach:

(i) has or will have a material adverse effect on the Project Entity's ability to deliver the Project; and

(ii) is not in the process of being remedied by that Project Entity in accordance with the regime set out in the relevant Project Document;

(s) (**Major Default Abatement Event**): a Major Default Abatement Event occurs;

(t) (**Late Dohertys Road Bridge Works Completion**): Project Co fails to achieve Milestone Completion in respect of the Dohertys Road Bridge Works by the Dohertys Road Bridge Works Completion Date; or

(u) (**deemed Major Default**): any other event which is deemed to be a Major Default under this Deed.

Major Default Abatement Event means:

(a) there are Abatement Events (other than the Aboriginal Persons Employment Adjustment and Local Content Requirements Adjustment) whether or not Project Co has actually been abated and, under the Payment Schedule :

(i) the State is entitled to deduct greater than [not disclosed]% of the aggregate Service Payments (excluding Lifecycle Payments and Abatements) that would have been payable in any [not disclosed] consecutive Quarters during the Maintenance Phase (Full) (or a prorata amount for part of a Quarter);

(ii) the State is entitled to deduct greater than [not disclosed]% of the aggregate Service Payments (excluding Lifecycle Payments and Abatements) that would have been payable in any [not disclosed] consecutive Quarters during the Maintenance Phase (Full) (or a prorata amount for part of a Quarter);

(b) any KPI Incident identified in sections 4.1 or 4.2 of Table 6 in the Payment Schedule occurs in any [not disclosed] Abatement Years in any [not disclosed] consecutive Abatement Year periods during Maintenance Phase (Full);

(c) any KPI Incident identified in section 5.1 of Table 6 of the Payment Schedule in relation to any Existing Structural Asset exists for [not disclosed] in any rolling [not disclosed] period during the period commencing on the date of Financial Close and ending [not disclosed] after the Date of Commercial Acceptance; or

(d) any KPI Incident identified in section 5.1 of Table 6 of the Payment Schedule in relation to any Structural Asset exists for [not disclosed] in any rolling [not disclosed] period during the Maintenance Phase (Full) (provided however that where there is less than [not disclosed] remaining in the Maintenance Phase (Full), the [not disclosed] period will be reduced on a prorata basis for that part of the [not disclosed] period remaining).

Major Default Notice has the meaning given in clause 45.3(b).

Major Loss or Damage has the meaning given in clause 42.2(b)(i).

Major Projects Skills Guarantee means the Victorian Government policy applicable from 1 January 2016 entitled "Major Projects Skills Guarantee".

Major Projects Skills Guarantee Compliance Plan means the plan set out in Schedule 21.

Major Projects Skills Guarantee Final Report has the meaning given in clause 59.3(d)(ii).

Major Projects Skills Guarantee Performance Report has the meaning given in clause 59.3(a).

Maintenance Traffic Management Working Group has the meaning given in the PSDR.

Management Services means the management services to be undertaken by a Management Services Contractor for Project Co in respect of the Project, as more particularly described in a Management Services Contract.

Management Services Contract means an agreement between Project Co and a Management Services Contractor to carry out the Management Services.

Management Services Contractor means:

(a) as at the date of this Deed, each party listed as such in the Contract Particulars; and

(b) any person who in addition or substitution is engaged by Project Co to carry out the Management Services.

Marine Transit and Marine Transit (Delay in Start-Up) Insurance has the meaning given in the Insurance Schedule.

Material means tangible and intangible information, documents (including any document within the meaning of the *Evidence Act 2008* (Vic)), reports, software (including source and object code), inventions, discoveries, designs, innovations, technology, processes, methods, techniques, know-how, data and other materials in any media whatsoever.

Milestone means each milestone specified as such in Part H10 of the PSDR, including the Key Milestones.

Milestone Completion means in relation to each Milestone the stage when:

(a) the Milestone is complete except for Minor Defects;

(b) Project Co has done everything which this Deed requires Project Co to do prior to or as a condition precedent to achieving Milestone Completion for that Milestone; and

(c) the relevant Returned Assets to be completed as part of that Milestone have been completed in accordance with clause 24.4.

Milestone Date means the date specified as such for each Milestone (excluding the Key Milestones), in the Contract Particulars as adjusted (if at all) under this Deed.

Minor Damage is damage of a minor nature that does not impact the Project Activities or Operations and the estimated Base Cost of the repair or replacement of which does not exceed $[not disclosed] (Indexed).

Minor Defects means a Defect that:

(a) will not prevent the relevant Project Assets from complying with the relevant FFP Warranty;

(b) will not prevent Project Co from delivering the Services in accordance with the PSDR;

(c) will not adversely impact the Operations;

(d) the Independent Reviewer determines that Project Co has reasonable grounds for not promptly rectifying;

(e) can be rectified without adversely impacting the Operations or the performance of the Services; and

(f) will not adversely impact the performance of the Maintained Assets or the Returned Assets (as the case may be).

Minor Modification means a Modification the estimated Base Costs of which, if the Modification is in respect of:

(a) the Works, the Design Requirements or the Development Activities does not exceed $[not disclosed] (Indexed) and will not delay Acceptance; and

(b) in all other cases including the Maintained Assets, the Maintenance Phase Requirements or the Services, does not exceed $[not disclosed] (Indexed) and will not increase the recurrent costs of the Services,

and will not adversely impact the Operations or require any amendment to the FFP Warranty or any other warranty provided by Project Co under a State Project Document in respect of the Project Assets or the Services.

Minor Modification Proposal means a proposal for a Minor Modification entitled "Minor Modification Proposal" and prepared in accordance with the relevant requirements of the Change Compensation Principles.

Model Output Schedule means the work sheets in the Financial Model identified as the Model Output Schedule, a printout of which is signed or initialled by the State Representative and Project Co (amongst others), in respect of the Financial Close Financial Model, at Financial Close, and then on or before the date on which the Financial Model is updated in accordance with clause 53.

Model Variation Event has the meaning given in clause 53.3.

Modification means:

(a) during the Development Phase:

(i) any change (including any addition, decrease, omission, deletion, demolition or removal) to the Works or the Design Requirements; or

(ii) a change to the way in which the Development Activities are carried out from that set out in the relevant Project Plan;

(b) during the Maintenance Phase, a change (including any addition, decrease, omission, deletion, demolition or removal) to the Maintained Assets;

(c) after the date of this Deed, a change to the Maintenance Phase Requirements or the Services;

(d) a State Approval Event the subject of a Modification Proposal issued in accordance with clause 6.1(d);

(e) a Contamination Compensation Event the subject of a Modification Proposal issued in accordance with clause 11.7(a);

(f) a Compensable Change in Mandatory Requirements the subject of a Modification Proposal issued in accordance with clause 36.2(a); or

(g) that which is expressly stated to be a Modification under clause 42.4(a)(iii), clause 42.4(a)(iv) or clause 42.5(b),

but excluding,

(h) where any change referred to in paragraphs (a) to (c) is required to ensure that the Project Assets, the Development Activities or the Services (as the case may be) are otherwise in accordance with the requirements of this Deed;

(i) Augmentations; and

(j) Excluded Assets (Additional), or Third Party Works resulting in Additional Assets which are Category A Assets or Category B Assets in accordance with Schedule 25.

Modification Concurrent Delay has the meaning given in clause 35.7(d).

Modification Order means a Change Response entitled "Modification Order" issued under clause 35 and in accordance with the Change Compensation Principles.

Modification Proposal means a Change Notice entitled "Modification Proposal" submitted by Project Co in accordance with clause 35.2(a) or clause 35.2(b) (as applicable).

Modification Proposal Quote has the meaning given in clause 35.3(b)(ii).

Modification Request has the meaning given in clause 35.1(a).

Month means a calendar month.

Monthly Development Phase Progress Report means the Development Phase Report of that name.

Monthly Maintenance Phase Performance Report means the Maintenance Phase Report of that name.

Moral Rights has the meaning given in the Intellectual Property Schedule.

MOS_Option Sheet means the work sheet in the Financial Model identified as the Model Output Schedule governing, at the Option Repayment Date, the adjustments to the capital component of the Base Quarterly Service Payment as defined in Table 8 of Schedule 3, and the adjustments to the Licence Fees as defined in the Licence Fee Schedule.

Moveable Assets means:

(a) Maintained Assets;

(b) all other chattels:

(i) used by Project Co for the purpose of carrying out the Services and which are or will be permanently stored within the Operational Phase Area; or

(ii) which are included in the Asset Information System,

excluding Fixtures.

MTM Failure Event means, in circumstances where Project Co has complied with its obligations with respect to Rail Works (including in connection with the Rail Interface Deed under Schedule 28), the occurrence of any of the following events:

(a) (**cancellation of Agreed Occupation**): the Franchisee (Metro) cancels an Agreed Occupation (excluding any alteration or amendment to the Track Occupation Schedule under clauses 6.8, 6.14, 6.15 or 6.17 of the Rail Interface Deed);

(b) (**failure to provide personnel**): the Franchisee (Metro) fails to provide the personnel required to enable Rail Works to be performed during an Agreed Occupation, in breach of the Rail Interface Deed; or

(c) (**failure to undertake works**): the Franchisee (Metro) fails to undertake the Franchisee (Metro) Works in accordance with an agreed works schedule,

and the relevant event was not caused by:

(d) a Force Majeure Event;

(e) an Emergency Event; or

(f) a failure by Project Co to provide documents in accordance with, or to otherwise comply with, the Work Readiness Procedure.

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

Netflow Holding Trust means the Netflow OSARS (Western) Holding Unit Trust as constituted under the Netflow Holding Trust Deed.

Netflow Holding Trust Deed means the trust deed dated 1 November 2017 executed by Netflow OSARS (Western) Holdings Pty Ltd.

Netflow Trust Deed means the trust deed dated 1 November 2017 executed by the Netflow OSARS (Western) Holdings Pty Ltd.

Netflow OSARS (Western) Partnership means the Netflow OSARS (Western) Partnership comprised of the Trustees and constituted by the Investors Agreement.

Netflow OSARS Hold Co means each of:

(a) in respect of the Cintra Trustee, Cintra OSARS (Western) Holdings Pty Ltd as trustee of Cintra Holding Trust; and

(b) in respect of the Netflow Trustee, Netflow OSARS (Western) Holdings Pty Ltd as trustee of Netflow Holding Trust.

Netflow Trustee means Netflow OSARS (Western) Pty Ltd.

Network Rules means rules, methods and practices which ensure:

(a) that the road network operates as part of an integrated and sustainable transport system;

(b) the avoidance or minimisation of road safety hazards;

(c) the avoidance or minimisation of damage or disruption to infrastructure on roads;

(d) the avoidance or minimisation of disruption to traffic;

(e) the safe, efficient and continuous movement of traffic and operation of the roads;

(f) interference with road use is minimised; and

(g) the Lane Access Constraints are satisfied.

Nominated Additional Asset has the meaning given to it in section 2(m)(ii) of Schedule 25.

Non Contestable Utility Works means works performed under a Utility Agreement entered into with a Utility provider or a noiminated subcontractor of that Utility provider where the workforce of that Utility provider or a nominated subcontractor of that Utility provider will be included in the definitions of Project Co Development Phase Work Force, Project Co Maintenance Phase Workforce and Local Content Requirements.

Note and Guarantee Agreement means the agreement so titled dated on or about the date of this Deed between amongst others Project Co, Finance Co, Finance Hold Co and the Netflow OSARS Hold Co.

Notes means the notes issued pursuant to the Note and Guarantee Agreement.

Notified Significant Subcontractors means each Significant Subcontractor listed in Item 21A of Schedule 1.

Notional GST means, where, in relation to the Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations and the *National Taxation Reform (Consequential Provisions) Act 2000* (Vic) (**NTR Act)** or a direction given under section 5 of the NTR Act, the supplier is obliged to make voluntary or notional GST payments, in which case Notional GST means those voluntary or notional payments. For the avoidance of doubt, Notional GST amounts will be calculated as if the GST Act applies to the relevant supplies.

Obsolescence or **Obsolete** means, in respect of a Maintained Asset:

(a) the Maintained Asset is no longer:

(i) manufactured by its original manufacturer; or

(ii) supported by the original manufacturer;

(b) any spare or component part is no longer generally available;

(c) any consumable materials required to support the operation, maintenance, repair or overhaul of that Maintained Asset during the Term are no longer generally available; or

(d) if it is software, it is no longer supported by its supplier.

Obsolescence Plan has the meaning given in clause 28.5(a)(ii).

OHS Legislation means all Laws in connection with occupational health and safety including the *Occupational Health and Safety Act 2004* (Vic), the OHS Regulations, all other regulations made under the *Occupational Health and Safety Act 2004* (Vic) and any related codes of practice, guidelines and advisory standards applicable to the Project Activities.

OHS Regulations means the *Occupational Health and Safety Regulations 2017* (Vic).

Operating Year means:

(a) the period commencing on the Maintenance Phase (Full) Commencement Date and ending on the next 30 June;

(b) each successive period of 12 Months; and

(c) the period expiring on the Expiry Date and commencing on the preceding 1 July.

Operational Responsibility (CoP) means the Code of Practice for Operational Responsibility for Public Roads issued pursuant to the Road Management Act (as amended from time to time including the amendments which took effect on 30 May 2017).

Operations means the operation of any part or the whole of the Victorian road network.

Option Amount means the principal amount forecast in the Financial Model to be owing to the Bank Lenders on the Option Repayment Date.

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

Option Repayment Date means the Maturity Date (as defined under the Syndicated Facilities Agreement).

Original Date for Commercial Acceptance means the Date for Commercial Acceptance set out in the Contract Particulars.

Other Interface Sites means those parts of the Project Area (other than the Dohertys Road Bridge Works Site and the Hyde Street Road Bridge Works Site) in respect of which WGT Project Co is permitted to access and accesses in accordance with the WGT Direct Interface Agreement.

Other Principal Contractor has the meaning given in clause 16.2(f)(i)(A).

Other Representative has the meaning given in clause 7.4(a).

Outstanding Matters Report has the meaning given in clause 47.6(c) as updated in accordance with clause 47.6(d).

Overdue Rate means the sum of the Bank Bill Rate plus [not disclosed]% per annum.

Ownership Schedule means Schedule 14.

Parent Guarantee means each guarantee:

(a) given by a Parent Guarantor of the D&C Contractor to Project Co in connection with the obligations of the D&C Contractor to Project Co under the D&C Contract; and

(b) given by a Parent Guarantor of the Services Contractor to Project Co in connection with the obligations of the Services Contractor to Project Co under the Services Contract.

Parent Guarantor means each person giving a Parent Guarantee, which as at the date of this Deed means the persons listed as such in the Contract Particulars.

Payment Directions Deed means the deed so titled dated on or about the date of this Deed between the State, Project Co, Finance Co and the Facility Agent.

Payment Claim means a payment claim submitted by Project Co in accordance with clause 34.4(a) in the form identified by the State.

Payment Schedule means Schedule 3.

Payment Statement has the meaning given in clause 34.4(b).

Performance Audit Notice has the meaning given in clause 15.5(b).

Performance Auditor has the meaning given in clause 15.5(c)(i).

Performance Bond means a bank guarantee which:

(a) is unconditional, irrevocable and payable on demand;

(b) is issued by a financial institution that is the holder of a current licence issued by the Australian Prudential Regulation Authority and has the Required Rating;

(c) specifies a location in Melbourne (or such other place as the State may approve) where demand can be given and payment made, without further confirmation from the issuer, on any Business Day;

(d) is governed by and is to be construed according to the Laws applying in Victoria;

(e) is, if required, duly stamped; and

(f) is otherwise on terms and in a form acceptable to the State.

Performance Data has the meaning given in the Payment Schedule.

Permitted Act means an act or omission:

(a) permitted, authorised or required under a State Project Document; or

(b) required to comply with any Law or Standard.

Permitted Encumbrance has the meaning given in the State Security.

Permitted Share Capital Dealing means a Share Capital Dealing specified in the Permitted Share Capital Dealing Schedule.

Permitted Share Capital Dealing Schedule means Schedule 15.

Personal Information means any personal information, within the meaning given in the *Privacy Act 1988* (Cth).

Planned Lifecycle Activities means those activities set out in the Forecast Maintenance and Refurbishment Plan.

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

(a) unsafe or unfit for habitation or occupation by persons or animals;

(b) degraded in its capacity to support plant life;

(c) contaminated; or

(d) otherwise environmentally degraded.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Principal Contractor has the meaning given in the OHS Legislation.

Privacy Code has the meaning given in clause 55.5(a).

Probity Event means the occurrence of any of the following events:

(a) an event that relates to a Group Member, a Consortium Member or a Relevant Person which:

(i) has or may have a material adverse effect on, or on the perception of, the character, integrity or honesty of that Group Member, a Consortium Member or a Relevant Person; or

(ii) has or may have a material adverse effect on:

A. the public interest; or

B. public confidence in the Project;

(b) involves a failure of that Group Member, Consortium Member or Relevant Person (and for the purposes of clause 39.2 only, any Subcontractor) to achieve or maintain reasonable standards of ethical behaviour or other standards of conduct that would otherwise be expected of a party involved in a State government project, in the role in which that person is involved; or

(c) a conflict of interest involving a Group Member, Consortium Member, Relevant Person or Subcontractor (as applicable) which has or will have a material adverse effect on the ability of that Group Member, Consortium Member, Relevant Person or Subcontractor (as applicable) to carry out and observe its obligations in connection with the Project.

Probity Investigation has the meaning given in clause 39.1(a).

Project means the:

(a) carrying out of the Project Activities;

(b) financing of the Development Activities; and

(c) performance of all other obligations under or in connection with the Project Documents by any party to them.

Project Activities means the Transition Activities, Development Activities and the Services.

Project Area means:

(a) all of the area shaded in blue within the blue dotted boundary lines on the map titled "OSAR Western Package – Part of Project Area Map" provided in electronic form to Project Co on or before Financial Close (**Blue Shaded Area**);

(b) where the Blue Shaded Area intersects within a municipal road, that part of the area which is outside the Blue Shaded Area (bounded on one side by the edge of the Blue Shaded Area) for which VicRoads is responsible to perform the functions of the Responsible Road Authority up to the limit of VicRoads' responsibility, in each case as determined in accordance with the Road Management Act and the Operational Responsibility (CoP);

(c) any area on which any Road Related Infrastructure (including line marking and signs) is located, where that Road Related Infrastructure is directly related to any Road within the Blue Shaded Area and in relation to that Road Related Infrastructure:

(i) VicRoads is the Responsible Road Authority;

(ii) VicRoads is required to perform the functions of the Responsible Road Authority; or

(iii) VicRoads would be required to perform those functions if the area on which the Road Related Infrastructure is located was declared as a Road for which VicRoads would be the Responsible Road Authority,

in each case as determined in accordance with the Road Management Act, the Road Management Plan or the Operational Responsibility (CoP);

(d) any area on which there is a structure (and associated infrastructure) for which VicRoads is responsible (such as a bridge, retaining wall, drainage culvert, a pedestrian overpass or pedestrian underpass) in, on, under or over any Road within the Blue Shaded Area or the area identified in paragraph (b) of this definition, to the extent that those structures (and associated infrastructure) extend outside of those areas, the area on which those bridges, retaining walls, culverts and pedestrian thoroughfares are located outside of the Blue Shaded Area or the area identified in paragraph (b) of this definition will be deemed to be included in this definition;

(e) any area or Road which the State makes available (or procures another person to make available) to Project Co in accordance with clause 13.1 to 13.3 whether or not VicRoads is the Coordinating Road Authority or Responsible Road Authority for that area or Road at the time or for the period for which it is made available; and

(f) any other area or Road which the State specifies forms part of this definition (but excluding any area or Road which the State specifically excludes from this definition) in each case as a result of an Augmentation which has been agreed or a Modification for which the State has issued a Modification Order,

but in each case excluding any stratum of Freeway (or road operating as a freeway) over or under any Project Road (where the freeway and the Project Road are at different levels) which falls within the Project Area but not excluding any other part of a Freeway (or road operating as a freeway) which is included in the Blue Shaded Area.

Project Assets means:

(a) during the Initial Phase, the Works, the Maintained Assets and until the Date of Final Acceptance, the Remaining Works; and

(b) during the Maintenance Phase (Full):

(i) the Maintained Assets: and

(ii) until the Date of Final Acceptance, the Remaining Works .

Project Co means Netflow OSARS (Western) Pty Ltd as trustee for Netflow OSARS (Western) Unit Trust for and on behalf of the Netflow OSARS (Western) Partnership and Cintra OSARS (Western) Pty Ltd as trustee for Cintra OSARS (Western) Unit Trust for and on behalf of the Netflow OSARS (Western) Partnership.

Project Co Act or Omission means:

(a) a breach of a Project Document by Project Co or any Project Co Associate; or

(b) any other act or omission of Project Co or any Project Co Associate, other than to the extent any such act or omission is a Permitted Act.

Project Co Associate means each of the following persons:

(a) the Project Co Representative;

(b) each Group Member;

(c) each Consortium Member;

(d) each Equity Investor; and

(e) each Subcontractor,

and their respective Associates, each only where acting in connection with the Project, but does not include:

(f) the State or any State Associates; or

(g) the Independent Reviewer or the Handover Reviewer (acting in those capacities), or any of their respective Associates, acting in connection with the Project.

Project Co Development Phase Workforce means the workforce employed or otherwise engaged by:

(a) Project Co;

(b) any Key Subcontractor;

(c) any Significant Subcontractor; and

(d) any person who enters into a contract with any of the parties listed in paragraphs (a) to (c) in connection with the Project Activities,

undertaking all or any part of the Development Activities in Australia or New Zealand up to the Date of Commercial Acceptance and includes persons performing a head office, corporate or governance role to the extent such role is in connection with the Project, provided that:

(e) to the extent a person undertakes multiple roles in connection with the Project, that person may not be counted more than once; and

(f) where the Development Activities undertaken by any person in paragraph (d) above are Non Contestable Utility Works, the workforce of that person shall be subject to the Utilities Assumptions.

Project Co Maintenance Phase Workforce means the workforce employed or otherwise engaged by:

(a) Project Co;

(b) any Key Subcontractor;

(c) any Significant Subcontractor; and

(d) any person who enters into a contract with any of the parties listed in paragraphs (a) to (c) in connection with the Project Activities,

undertaking all or any part of the Services in Australia or New Zealand and includes persons performing a head office, corporate or governance role to the extent such role is in connection with the Project, provided that:

(e) to the extent a person undertakes multiple roles in connection with the Project, that person may not be counted more than once; and

(f) where the Services undertaken by any person in paragraph (d) above are Non Contestable Utility Works, the workforce of that person shall be subject to the Utilities Assumptions.

Project Co Material means:

(a) the Design Documentation;

(b) Construction Documentation;

(c) As-Built Records;

(d) the Project Plans;

(e) the Development Phase Reports;

(f) the Initial Phase Program;

(g) the Maintenance Phase Reports;

(h) any Material prepared or created by or on behalf of Project Co or any of its Associates in connection with any Approval;

(i) the Performance Data, the data and information from which the Performance Data is derived and Material related to the operation of the Payment Schedule;

(j) any Proponent Augmentation Material (as defined in the Augmentation Process Schedule); and

(k) all other Material which Project Co or any Project Co Associate:

(i) prepares or uses (or is required to prepare, use under a Project Document) in connection with the Project; or

(ii) provides (or is required to provide under a Project Document) to the State, any State Associate or the Independent Reviewer in connection with the Project,

but does not include software tools which are:

(l) used internally by Project Co or any Project Co Associate to create, but which are not incorporated into, the materials described in paragraphs (a) to (k); or

(m) generally commercially available.

Project Co Modification Proposal has the meaning given in clause 35.11(a).

Project Co Option Notification Date means the date which is 45 Business Days prior to the Option Repayment Date.

Project Co Representative means the person identified as such in the Contract Particulars.

Project Co's Proposal means the full proposal submitted by Project Co in response to the request for proposal issued by the State on 10 March 2017, as amended (if at all) prior to the date of this Deed.

Project Control Group means the group referred to in clause 7.7(a).

Project Debt means at any time the lesser of:

(a) the Actual Debt; and

(b) the amount forecast in the Financial Model to be owing to the Financiers,

at that time.

Project Documents means:

(a) this Deed;

(b) the Initial Licence;

(c) the Maintenance Phase Licence (Full);

(d) the Finance Direct Deed;

(e) the State Security;

(f) the D&C Contract;

(g) the Services Contract;

(h) the D&C Contractor Direct Deed;

(i) the Services Contractor Direct Deed;

(j) the D&C Contractor and Services Contractor Interface Deed;

(k) the Parent Guarantees;

(l) any other Key Subcontracts;

(m) the Significant Subcontracts;

(n) the Equity Documents;

(o) the Finance Documents;

(p) the D&C Contractor Construction Bond;

(q) each Direct Interface Deed;

(r) each Direct Deed;

(s) the Independent Reviewer Deed of Appointment;

(t) the Sub-Independent Reviewer Deed of Appointment;

(u) the Management Services Contract;

(v) the Proof Engineer Deed of Appointment;

(w) any Augmentation Documentation (as defined in the Augmentation Process Schedule);

(x) the Rail Interface Deed;

(y) the V/Line Project Agreement;

(z) the VIVA Recoverable Works Agreement; and

(aa) any other document the parties agree is a Project Document.

Project Efficiency Review has the meaning given in clause 28.3(a).

Project Entity means each of Project Co and Finance Co and **Project Entities** means either of them.

Project Improvement Report has the meaning given in clause 28.3(b).

Project Information means:

(a) the information set out in the Data Room;

(b) the Site Information Reports; and

(c) all Materials:

(i) issued or made available by or on behalf of the State or any State Associate to Project Co or any Project Co Associate in connection with the Project (whether prior to or after the date of this Deed); or

(ii) referred to, or incorporated by reference, in any material referred to in paragraph (c)(i),

but excludes:

(iii) this Deed or the Materials that form part of this Deed; or

(iv) the Materials which the State is expressly required by this Deed to provide to Project Co or any Project Co Associate.

Project Plan means each of the plans to be prepared, provided and updated by Project Co under section 2 of Part F1 of the PSDR.

Project Review Date has the meaning given in clause 28.3(a).

Project Road has the meaning given in the PSDR.

Project Scope and Delivery Requirements or **PSDR** means Schedule 24.

Project Specific Change in Law means a Change in Law which expressly and exclusively applies to:

(a) the Project Activities, the Project Assets or the Project Area;

(b) Project Co, but only in its capacity as the person contracting with the State to implement the Project;

(c) Project Co and other persons that are undertaking projects under the Partnerships Victoria framework, only as it applies to them in that capacity; or

(d) a change in the Road Management Act after the Date of this Deed which has the effect of modifying the scope or effect of any Required Road Management Powers.

Project Successor has the meaning given in clause 47.1.

Prolongation Costs has the meaning given in the Change Compensation Principles.

Property Committee has the meaning given in clause 13.1.

Proof Engineer has the meaning given in the D&C Contract.

Proof Engineer Deed of Appointment means the document entitled "OSAR Western Package - Proof Engineer Deed of Appointment" between Project Co, the D&C Contractor and the Proof Engineer.

Proximate Interface Works means works, services, activities or functions carried out by any of the following persons:

(a) the State or its Associates;

(b) any other person to whom the State delegates a right, power, function or duty in accordance with a State Project Document or that person's Associates, in each case, acting in accordance with the delegation; or

(c) [Not used],

and which are carried out:

(d) simultaneously with Project Co's performance of the Project Activities; and

(e) in the direct vicinity, but outside of the Project Area,

but excludes any Direct Interface Works, any Site Interface Works, the Franchisee (Metro) Works, the Franchisee (Regional) Works, the VIVA Works and any works, services, activities or functions undertaken by a Utility provider or any of its Associates in respect of Utility Infrastructure, or VicRoads or any of its Associates.

Public Disclosure Obligations has the meaning given in clause 55.1(a).

Quality Assurance System has the meaning given in clause 16.3.

Quarter means each 3 Month period commencing on a Quarterly Date, save that:

(aa) the first Quarter of the Transition Phase will be the period from Financial Close until the day before the first Quarterly Date during the Transition Phase;

(ab) the last Quarter of the Transition Phase will be the period from the last Quarterly Date during the Transition Phase to the Date for Maintenance Commencement;

(a) the first Quarter of the Maintenance Phase (Initial) will be the period from the day after the Date for Maintenance Commencement until the day before the first Quarterly Date during the Maintenance Phase (Initial);

(b) the last Quarter of the Maintenance Phase (Initial) will be the period from the last Quarterly Date during the Maintenance Phase (Initial) Phase to the date before the Maintenance Phase (Full) Commencement Date;

(c) the first Quarter of the Maintenance Phase (Full) will be the period from the Maintenance Phase (Full) Commencement Date until the day before the first Quarterly Date during the Maintenance Phase (Full); and

(d) the last Quarter of the Maintenance Phase (Full) will be the period from the last Quarterly Date during the Maintenance Phase (Full) to the Expiry Date,

unless terminated earlier, in which case the last Quarter will be the period from the last Quarterly Date immediately preceding the termination and the Expiry Date.

Quarterly Date means every 1 January, 1 April, 1 July and 1 October.

Rail Franchisees means:

(a) the Franchisee (Metro);

(b) the Franchisee (Regional); and

(c) KDR Victoria Pty Ltd ABN 42 138 066 074, in its capacity as the franchise operator of Melbourne's tram network, Yarra Trams.

Rail Infrastructure means the facilities that are necessary to enable a railway to operate and includes railway tracks and associated track structures, service roads, signalling systems, Rolling Stock control systems, communications systems, train control systems, data management systems, notices and signs, electrical power supply and electrical traction systems, associated buildings, workshops, depots, yards, plant, machinery and equipment, but does not include:

(a) Rolling Stock; or

(b) any facility or facility of a class, that is prescribed by the Rail Safety National Regulations not to be rail infrastructure.

Rail Interface Deed has the meaning given in Schedule 28.

Rail Interface Works means the works to be undertaken by Project Co on or in the direct vicinity of Rail Land.

Rail Land means all of the land:

(a) which VicTrack is, or is entitled to be, registered proprietor; and

(b) on which Rail Infrastructure is provided or operated by any 'Rail Transport Operator' within the meaning of the *Rail Safety National Law Application Act 2013* (Vic),

and on which Rail Interface Works are required to be carried out in connection with the Project.

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

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

Rail Works means:

(a) the Rail Interface Works;

(b) the Franchisee (Metro) Works; and

(c) the Franchisee (Regional) Works.

Rates means all municipal rates, water rates, sewerage rates, drainage rates and other rates payable to any Authority in connection with the Project Area, but does not include any portion of such rates as relates to the connection of the Project Area to Utilities or rates or charges for the use of Utilities.

Receivables has the meaning given in the Receivables Purchase Deed.

Receivables Purchase Deed means the deed so titled dated on or about the date of this Deed between the State, Project Co and Finance Co under which Finance Co will purchase the Licence Fees from the State.

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

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

Receivables Refund Payment has the meaning given to it in the Receivables Purchase Deed.

Recipient has the meaning given in clause 61.1(c)(ii).

Reference Documents has the meaning given in the PSDR.

Refinancing means:

(a) any amendment, novation, supplement or replacement of any Finance Document;

(b) the exercise of any right, or the grant of any waiver or consent, under any Finance Document;

(c) the disposition of any rights or interests in, or the creation of any rights of participation in connection with the Finance Documents or the creation or granting of any other form of benefit or interest in either the Finance Documents or the contracts, revenues or assets of the Group whether by way of security or otherwise;

(d) any new financing arrangements entered into by a Group Member which has the effect of restructuring the then current financing arrangements; or

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

which will or is likely to:

(f) give rise to a Refinancing Gain;

(g) change the type, amount, pricing, tenor, terms for payment or repayment, hedging or financial covenants of any financial accommodation connected with the Project; or

(h) adversely affect any of the State's rights, obligations or liabilities in accordance with the State Project Documents,

or any change in the timing or manner of payment of the Option Amount specified in clause 33(e) but does not include:

(i) entering into derivative transactions contemplated by the Finance Documents to be entered into on or before Financial Close;

(j) the syndication or subscription of any debt in accordance with the Finance Documents that is contemplated at Financial Close;

(k) the change in control or sell down of any bonds in an arm's length transaction at market value; or

(l) a prepayment of debt as a consequence of receipt of the Option Amount.

Refinancing Event means an event set out in paragraphs (a) to (e) of the definition of "Refinancing" and any change in the timing or manner of payment of the Option Amount, but expressly excludes an event set out in paragraphs (i) to (k) of the definition of Refinancing.

Refinancing Gain has the meaning given in clause 37.4(a).

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

Related Body Corporate has the meaning given in the Corporations Act.

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

(a) any Related Body Corporate of the trustee, manager or Responsible Entity;

(b) any other trustee, manager or Responsible Entity of the trust or managed investment scheme (or Related Body Corporate) of such entity; or

(c) any Controlling Unit Holder of the trust or managed investment scheme (or Related Body Corporate) of such an entity.

Relevant Person means each of the following persons:

(a) a director or secretary or partner representative of a Group Member; or

(b) any officer, employee, consultant, contractor, Subcontractor or agent of a Consortium Member who:

(i) has the ability to exercise influence or control over the decisions or actions of the Consortium Member in relation to the Consortium Member or in matters relating to the Project;

(ii) works in any role in connection with the Project, including undertaking any task for the purpose of this Deed; or

(iii) has, or will reasonably be expected to have, access to Personal Information held in connection with, the Project or Users.

Relevant Personal Property has the meaning given in clause 63.12(a)(i).

Relief Event means any event for which Project Co is entitled to bring a Claim against the State in connection with the Project.

Remaining Works means the Works described as such in the Remaining Works Schedule.

Remaining Works Schedule means Schedule 19.

Remediate or **Remediation** means to remove, disperse, abate, destroy, dispose of, neutralise, remediate, treat, cap, contain or otherwise test or assess (as applicable).

Remediation Plan has the meaning given in clause 26.4(d)(ii).

Repair and Reinstate Plan has the meaning given in clause 42.3(a)(i).

Representatives has the meaning given in clause 48.3(a).

Reputable Insurer has the meaning given in clause 44.3(a)(i).

Required Employee has the meaning given in clause 47.12(a)(i).

Required Rating means a credit rating of at least A- by Standard and Poor's (Australia) Pty Limited or A3 by Moody's Investors Service, Inc.

Required Road Management Powers means the legislative powers and functions under the Road Management Act to be delegated to Project Co in order for Project Co to perform the Services as identified in Schedule 27.

Responsible Entity has the meaning given in the Corporations Act.

Responsible Minister for VIPP means the Minister with responsibility for administering the *Victorian Industry Participation Policy Act 2003* (Vic).

Responsible Road Authority has the meaning given to the term "responsible road authority" in the Road Management Act.

Retention Amount has the meaning given in clause 25.2(a)(v).

Returned Asset means each part of the Works identified as such in section 5.1 of Part A of the PSDR that has been designed, constructed or maintained by Project Co during the relevant Development Phase and which will be progressively handed back to their respective Returned Asset Owners prior to Commercial Acceptance, including roads, kerbs, kerb & gutter, drainage pipes, drainage pits, culverts, manholes, bridges, retaining walls, street lighting, traffic signals, signage, footpaths, cycleways, landscaping (turfed areas, grassed areas, gardens and trees), bus stops, street furniture, paved areas, accommodation works, utility pits and conduits, water reticulation and sewerage reticulation but excludes the Maintained Assets.

Returned Asset Owner means in respect of each Returned Asset:

(a) each owner of that Returned Asset; and

(b) any entity entitled to exercise control of any component of that Returned Asset.

Returned Asset Acceptance means if Project Co has satisfied all requirements of this Deed and any relevant Direct Interface Deed that Project Co is required to satisfy before returning a Returned Asset to the relevant Returned Asset Owner.

Revenue for the purposes of clause 61, has the meaning given in clause 61.1(g).

Reviewing Party has the meaning given in the Change Compensation Principles.

Review Period has the meaning given in the Review Procedures.

Review Procedures means Schedule 4.

Revised Compliance Plan has the meaning given in clause 59.2(a)(i).

Revised Forecast Period means, in relation to a Commercial Vehicle Volume Change, the period from the end of the last whole month of March which triggered that Commercial Vehicle Volume Change and ending on the Final Expiry Date.

Revised LIDP has the meaning given in clause 58.2(a)(iv).

Road has the meaning given to the word "road" in the Road Management Act.

Road Management Act has the meaning given in clause 11.4(a).

Road Management Plan means the "road management plan" identified in Division 5 of Part 4 of the Road Management Act.

Road Related Infrastructure has the meaning given to the term "road related infrastructure" in the Road Management Act.

Rolling Stock means in accordance with section 3(1) of the *Rail Management Act 1996* (Vic), a vehicle that operates on or uses a railway track or tramway track, and includes a locomotive, carriage, rail car, rail motor, light rail vehicle, train, tram, light inspection vehicle, road/rail vehicle, trolley, wagon or monorail vehicle.

Savings has the meaning given in the Change Compensation Principles.

Schedule of Certificates and Notices means Schedule 9.

Securities means shares, units, interests in a partnership, and any other interests which would constitute "securities" as defined under the Corporations Act.

Securitised Licence Structure means the securitisation structure relating to the Licence Fees contained in clause 41 of this Deed, the Receivables Purchase Deed, the Initial Licence, the Maintenance Phase Licence (Full) and the Payment Directions Deed.

Security Interest has the meaning given to it in the Finance Direct Deed.

Security of Payment Act has the meaning given in clause 9.5(c)(i).

Security Trust and Intercreditor Deed means the document entitled “OSAR Western Package – Security Trust and Intercreditor Deed” dated on or about the date of this Deed between Project Co, the Financiers and the Security Trustee.

Security Trustee means at the date of this Deed, the party named as such in the Contract Particulars as replaced in accordance with the Security Trust and Intercreditor Deed and who is from time to time party to the Finance Direct Deed in that capacity.

Senior Representatives Group has the meaning given in clause 7.6(a).

Service Payment means the service payment payable to Project Co, Quarterly in accordance with clause 34.4 and calculated in accordance with the Payment Schedule.

Services means all work, things, services and tasks that Project Co is or may be required to perform during the Maintenance Phase to comply with its obligations in connection with the State Project Documents and any Modifications including the Maintenance Activities (as defined in the PSDR) but excluding the Development Activities.

Services Contract means the agreement between Project Co and the Services Contractor to perform all, or substantially all, of the Services.

Services Contractor means at the date of this Deed the person listed as such in the Contract Particulars and any person who in addition or substitution is engaged by Project Co to carry out all, or substantially all, of the Services.

Services Contractor Consent Deed means the document entitled "OSAR Western Package - Services Contractor Consent Deed" between Project Co, the Services Contractor, the Parent Guarantor of the Services Contractor and the Security Trustee and others.

Services Contractor Direct Deed means the document entitled "OSAR Western Package - Services Contractor Direct Deed" between the State, Project Co, the Services Contractor and the Parent Guarantor of the Services Contractor.

Share Capital Dealing has the meaning given in clause 52.4.

Significant Subcontract means any of the following:

(a) a Subcontract for all or part of the Project Activities:

(i) the value of the works under which exceeds $[not disclosed]; or

(ii) which, when aggregated with the value of the works under each other Subcontract for the Project Activities previously entered into by the same Subcontractor (or their Related Bodies Corporate), will result in the total value of those Subcontracts exceeding $[not disclosed];

(b) the contracts listed as such in the Contract Particulars; and

(c) any other contract that the parties agree from time to time is a Significant Subcontract,

other than a Key Subcontract.

Significant Subcontractor means each of the counterparties to the Significant Subcontracts other than Project Co or a Key Subcontractor.

Site means:

(a) in relation to the Initial Phase, the Development Phase Site and the Maintenance Phase Site; and

(b) in relation to the Maintenance Phase (Full), the Maintenance Phase Site.

Site Access and Interface Protocols means:

(a) in relation to each Development Phase Area but only for the relevant Development Phase, the Site Access and Interface Protocols as set out in the Construction Management Plan; and

(b) in relation to the Maintenance Phase, the Site Access and Interface Protocols as set out in the Maintenance Phase Management Plan.

Site Access and Tenure Schedule means Schedule 22.

Site Conditions means any physical conditions on, under, or over the surface, or in the direct vicinity of the Project Area and the Rail Land, including:

(a) (**water**): ground water, ground water hydrology, the existence of any wells and the effects of any de-watering;

(b) (**physical structures**): physical and structural conditions above, upon and below the ground including any infrastructure, partially completed structures, Artefacts or in-ground works;

(c) (**vegetation**): pastures, grasses or other vegetation on the Project Area;

(d) (**topography**): topography, ground surface and sub-surface conditions and geology including rock or other materials;

(e) (**climate**): climatic and weather conditions, rain, surface water run-off and drainage, water seepage, wind, wind-blown dust and sand seasons, mud and other effects of climatic and weather conditions;

(f) (**Contamination**): any Contamination;

(g) (**Pollution**): any Pollution;

(h) (**physical conditions**): all other physical conditions and characteristics on, under or over the surface, of or in the direct vicinity of the Project Area, which may affect the Project Activities; and

(i) (**easements**): all Easements over or in connection with the Project Area,

whether or not they were in existence or known to Project Co before the date of this Deed.

Site Information Report means each report identified as a Site Information Report in the Contract Particulars and any other report in respect of Site Conditions that is prepared by a person engaged by the State, VicRoads or a State Associate that is provided to or made available to Project Co or a Project Co Associate for the purposes of the Project.

Site Information Report Provider means any person that prepares a Site Information Report.

Site Interface Works means works, services, activities or functions which are carried out by any of the following persons:

(a) the State or its Associates;

(b) any other person to whom the State delegates a right, power, function or duty in accordance with a State Project Document or that person's Associates, in each case, acting in accordance with the delegation; or

(c) [Not used],

and which are carried out:

(d) simultaneously with Project Co's performance of the Project Activities; and

(e) on, in, under or over the Project Area (including where they also extend to outside of the Project Area) during the Term,

but excludes any Direct Interface Works any Proximate Interface Works, any Franchisee (Metro) Works, the Franchisee (Regional) Works, the VIVA Works and any Utility provider or any of its Associates undertaking works, services, activities or functions in respect of Utility Infrastructure, or VicRoads or any of its Associates.

Solvent has the meaning given in the Corporations Act.

Standards means:

(a) the standards, codes, specifications, policies and requirements set out in, or otherwise expressly referred to in, the PSDR or Concept Design (and includes the Reference Documents) and AS5100.2.2017 (Bridge design loads); and

(b) unless the State gives notice to Project Co that such policy, guideline, standard, procedure or requirement does not constitute a Standard for the purpose of this Deed, any other policy, guideline, standard, procedure or requirement with which Project Co:

(i) is expressly required by the terms of any State Project Document, by Law or by direction of the State to comply; or

(ii) should comply in accordance with Best Industry Practices,

in carrying out the Project Activities, provided such policy, guideline, standard, procedure or requirement is available to Project Co, is publicly available or otherwise would have been available to Project Co exercising Best Industry Practice,

but excludes all Laws and any conditions or requirements under them.

State means the Minister for Roads and Road Safety on behalf of the Crown in right of the State of Victoria. For the avoidance of doubt, VicRoads is not the State under or in connection with the State Project Documents.

State Approval means each of the Approvals set out in Attachment 2.

State Approval Event means:

(a) legal action being taken in connection with a State Approval;

(b) any review or revocation of, or change to, a State Approval; or

(c) any review or revocation of, or change to, an Approval (other than a State Approval) consequent on the circumstances specified in paragraphs (a) and (b),

but does not include:

(d) any event set out in paragraphs (a) to (c) that is due to a Project Co Act or Omission; and

(e) legal action being taken, or any review or revocation of, or change to:

(i) any further or secondary Approval that relates to or forms part of a State Approval (other than as contemplated in paragraph (c)) or any amendment to a State Approval of a type referred to in clause 6.1(b); or

(ii) a State Approval or any further or secondary Approval due to:

A. a Project Co Act or Omission;

B. a change to the design or delivery methodology in relation to the Project or the Project Assets; or

C. a failure by Project Co or any Project Co Associate to comply with any Law.

State Associate means each of the following persons:

(a) any Associate of the State;

(b) State Representative; and

(c) subject to paragraph (i), any other person to whom the State delegates a right, power, function or duty in accordance with a State Project Document,

and their respective Associates, each only when acting in connection with the Project, but does not include:

(d) Project Co or any Project Co Associate;

(e) any Interface Party when undertaking Interface Works;

(f) any Utility provider or any of its Associates acting in connection with the Project;

(g) the Independent Reviewer, the Handover Reviewer (acting in those capacities), or any of their respective Associates acting in connection with the Project;

(h) any Site Information Report Provider or any of its Associates acting in connection with the Project; or

(i) VicRoads or any employee of VicRoads, except to the extent an employee of VicRoads is a person to whom the State delegates a right, power, function or duty in accordance with a State Project Document.

State Audit has the meaning given in clause 15.3(a).

State Cure Notice has the meaning given in the D&C Contractor Direct Deed or the Services Contractor Direct Deed as applicable.

State Initiated Modification means a:

(a) Modification initiated by the State under clause 35.1 in respect of which the State issues a Modification Order;

(b) Modification the subject of a Modification Proposal in accordance with clause 35.2(b) in respect of which the State issues a Modification Order; and

(c) Modification in respect of which the State issues a Modification Order in accordance with clause 35.10(c)(i).

State Insurance Breach means the extent to which an Insurance or Insurance (State) fails to respond in accordance with its terms, to an event or risk which would otherwise have been the subject of coverage under that Insurance or Insurance (State) but for:

(a) a breach of:

(i) a State Project Document; or

(ii) the relevant Insurance or Insurance (State) policy,

by the State or a State Associate; or

(b) conduct of the State, a State Associate or VicRoads which is an exclusion under the relevant Insurance or Insurance (State).

State Insurance Event means each of the following events:

(a) at any time on or after the date on which Insurances (State) are required to be effected under this Deed, the Minister for Finance fails to give or maintain a direction under section 25A of the *Victorian Managed Insurance Authority Act 1996*

(Vic) to allow each of the parties expressed to be insured under the Insurances (State) to be insured under those policies, except to the extent such failure is caused or contributed to by any act or omission of Project Co or any of its Associates (other than any act or omission undertaken in accordance with the Project Documents or undertaken lawfully in connection with the performance of the Project Activities);

(b) the State ceases to be able to procure the Insurances (State) from VMIA; and

(c) VMIA ceases to be a statutory authority and, in its new corporate form, is not a Reputable Insurer.

State Insurance Uninsurable Event means an event:

(a) which gives rise to:

(i) loss or damage to the Maintained Assets; or

(ii) personal injury or property damage (other than loss or damage to the Maintained Assets) in connection with the Project Activities,

to which the Insurances (State) would have responded but for the occurrence of a State Insurance Event; and

(b) which occurs during the period commencing on the date the State Insurance Event occurs and ending on the date on which the method of redress agreed by the parties in accordance with clause 44.16(b)(ii) or determined in accordance with clauses 48 to 50 (as contemplated by clause 44.16(d)) takes effect.

State IP has the meaning given in the Intellectual Property Schedule.

State Modification Event has the meaning given in clause 35.7(d).

State Option Notification Date means the date which is 18 months prior to the Option Repayment Date.

State Project Documents means those Project Documents to which the State is a party.

State Representative means the person identified as such in the Contract Particulars.

State Security means the document entitled "OSAR Western Package - State Security" between the State, Project Co and Finance Co.

State Share of Refinancing Gain has the meaning given in clause 37.4(b).

Step-In Event has the meaning given in clause 38.2(a).

Structural Asset has the meaning given to it in the PSDR.

Subcontract means an agreement which:

(a) Project Co enters into with a Subcontractor; or

(b) a Subcontractor enters into with another Subcontractor,

in connection with the Project Activities.

Subcontractor means:

(a) any person who enters into a contract in connection with the Project Activities with Project Co or any Key Subcontractor or Significant Subcontractor (and includes the Key Subcontractors, Significant Subcontractors and Management Services Contractor); and

(b) for the purposes of:

(i) clauses 9.1, 9.2(a)(ii), 9.2(b), 9.5(b), 9.5(c), 9.5(d), 15.1 and 39;

(ii) sections 1.1(b)(i)(F), 1.1(b)(i)(I), 2.2(g)(x)(A), 2.3(a)(iii), 2.3(d)(iv)(D), 2.3(e)(viii) of Part F1 of the PSDR and section 6.2 of Part F6 of the PSDR;

(iii) all other Appendices of the PSDR, as specified in or reasonably inferred from, the PSDR; and

(iv) item H(C) of each of sections 3.2, 4, 5 and 6 of Schedule 6,

any person whose subcontract is in connection with the Project Activities and is in a chain of contracts where the ultimate contract is with Project Co or any Key Subcontractor or Significant Subcontractor (and includes the Key Subcontractors and Significant Subcontractors).

Subcontractor Direct Deed means the direct deed in the form set out in Schedule 7.

Subcontractor Termination Amount has the meaning given in clause 9.3(g).

Sub-Independent Reviewer means the person appointed as the Sub-Independent Reviewer under the Sub-Independent Reviewer Deed of Appointment.

Sub-Independent Reviewer Deed of Appointment means the document entitled "OSAR Western Package - Sub-Independent Reviewer Deed of Appointment" between Project Co, the D&C Contractor and the Independent Reviewer as the Sub-Independent Reviewer.

Submitted Document has the meaning given in section 1.1(a) of the Review Procedures.

Supplier, for the purposes of clause 61, has the meaning given in clause 61.1(c).

Supplier Code of Conduct means the document entitled "Procurement – Supplier Code of Conduct" issued by the State and, as at the date of this Deed, available at http://www.procurement.vic.gov.au/Suppliers/Supplier-Code-of-Conduct.

Sustainability Management Plan means the Project Plan of that name.

Syndicated Facilities Agreement means the agreement entitled “OSAR Western Package - Syndicated Facilities Agreement" dated on or about the date of this Deed.

Tax or **Taxes** means any present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature, imposed or levied by an Authority or the State, together with any interest, penalty, charge, fee or other amount imposed or made on, or in connection with, any of the foregoing, but excluding any Rates.

Tax Invoice has the meaning given in the GST Law.

Tax Period has the meaning given in the GST Act.

Taxable Supply has the meaning given in the GST Law, excluding sections 84-5 of the GST Act.

Temporary Works means the temporary physical works which Project Co must design, supply, construct, install, produce or complete for the purpose of carrying out the relevant Development Activities including access, ingress, egress and laydown requirements, but excluding the works which form part of the Maintained Assets or Returned Assets.

Term means the term of this Deed:

(a) commencing in accordance with clause 4.1; and

(b) ending on the Expiry Date.

Termination Payment means a termination payment calculated in accordance with the Termination Payments Schedule.

Termination Payments Schedule means Schedule 6.

Threshold Amount has the meaning given in clause 47.9(a).

Track Occupation Schedule has the meaning given to the term 'Occupation Schedule' in the Rail Interface Deed.

Traffic Management Strategy means the traffic management strategy described in section 1.1(b)(ii) of Part F1 of the PSDR.

Traffic Monitoring Device means a traffic monitoring device which complies with the requirements set out in section 5.1 of Part D of the PSDR.

Trainee means a person who:

(a) is employed under a Training Contract; and

(b) is registered with the Victorian Registration and Qualifications Authority,

but excludes an Apprentice.

Training Contract has the meaning given in the *Education and Training Reform Act 2006* (Vic).

Transition Phase means the period commencing on Financial Close and ending on Date for Maintenance Commencement.

Transition Activities means all work, things and tasks which Project Co is, or may be, required to carry out during the Transition Phase to comply with its obligations under or in connection with the State Project Documents including those activities which are required to be included in the Transition Plan.

Transition Plan means the plan of the same name identified in section 2.1 of Part F1 to the PSDR relating to the Transition Phase.

Trust means**:**

(a) the Netflow OSARS (Western) Unit Trust as constituted under the Netflow Trust Deed; and

(b) the Cintra OSARS (Western) Unit Trust as constituted under the Cintra Trust Deed.

Trust Deed means:

(a) the Netflow Trust Deed; and

(b) the Cintra Trust Deed.

Trustee means:

(a) the Netflow Trustee; and

(b) the Cintra Trustee.

Trustee's Indemnity means, in relation to a Trustee and a Trust, the present and future right and interest of the Trustee in respect of:

(a) the administration of that Trust;

(b) that Trustee's right of indemnity from the Trust Property of that Trust of from any beneficiary of that Trust; and

(c) the Trustee's Lien of that Trustee in respect of that Trust,

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

Trustee's Lien means, in relation to a Trustee and a Trust, any equitable lien or other security interest held by or granted to that Trustee securing the Trustee's Indemnity or any other present or future interest of that Trustee in respect of the Trust Property, the Trust or any beneficiary of that Trust.

Trust Property means all present and future undertaking, assets and rights of a Trust.

Uninsurable Risk means a risk that is required to be insured under this Deed and is insurable at the date of this Deed but during the Term:

(a) insurance becomes unavailable in the recognised international insurance market from Reputable Insurers in respect of that risk; or

(b) the insurance premium required to be paid to insure that risk with a Reputable Insurer, or the available terms and conditions of the relevant insurance, are such that the risk is no longer generally insured against in Australia or the United Kingdom by private sector providers of infrastructure similar to the Project Assets or activities similar to the Project Activities,

provided that the conditions referred to in paragraphs (a) and (b) have not come about due to any Project Co Act or Omission and provided however that paragraphs (a) and (b) will not apply to the extent that the Insurances (State) covers the risk for which that insurance has become unavailable or provides insurance for that risk.

Unplanned Lane Access has the meaning given in the PSDR.

User means any person who is entitled to use any part of the Project Assets.

Utilities Assumptions means for the purposes of Certification by the Independent Reviewer under clause 58.4(a) and clause 59.4(a), and the reporting requirements in clause 58.3 and clause 59.3, as applicable, the following predetermined values for Non Contestable Utility Works apply:

(a) for the purposes of clause 58.4(a)(i), Local Content Requirements, 87.5 percent of the Non Contestable Utilities Works workforce undertaking the Development Activities;

(b) for the purposes of clause 58.4(a)(ii), 2.5 percent of the Non Contestable Utilities Works workforce comprised of Aboriginal Persons undertaking Development Activities in Victoria; and

(c) for the purposes of clause 59.4(a), 10 percent of the total labour hours for the Non Contestable Utilities Works performed by Apprentices, Trainees and Engineering Cadets.

Utility means any utility service, including water, electricity, gas, telephone, drainage, sewerage, stormwater, communications and data services (including telephone, text message, facsimile and internet).

Utility Agreement means an agreement governing the rights and obligations of Project Co, the D&C Contractor or the Services Contractor (as applicable) and a Utility provider in relation to:

(a) the location of Utility Infrastructure owned, operated or controlled by the Utility provider within the Project Area; or

(b) Works that affect or may affect Utility Infrastructure owned, operated or controlled by the Utility provider located within the Project Area.

Utility Infrastructure means any part of the supply, distribution or reticulation network owned, operated or controlled by a Utility provider, including poles, pipes, pipeline, cables, wires, conduits, tunnels, aqueduct, electrical installation, telecommunications plant and water channel.

Vacate Date means 18 July 2019.

VicRoads means the Roads Corporation established under the *Transport Act 1983* (Vic) and continued under the *Transport Integration Act 2010* (Vic).

VicTrack means the statutory corporation established under section 8 of the *Rail Corporations Act 1996* (Vic) and continued under section 116 of the *Transport Integration Act 2010* (Vic).

Victorian Registration and Qualifications Authority means the statutory body established under Chapter 4 of the *Education and Training Reform Act 2006* (Vic) whose functions include the registration and regulation of apprenticeships and traineeships, and administering legislation including the *Education and Training Reform Act 2006 (Vic)* and the *Education and Training Reform Regulations 2007* (Vic).

VIPP means the Victorian Industry Participation Policy made pursuant to section 4 of the *Victorian Industry Participation Policy Act 2003* (Vic).

VIPP Schedule means Schedule 20.

VIVA Recoverable Works Agreement has the meaning given in Schedule 28.

VIVA Works means all works to be performed by Viva Energy Australia Pty Ltd and VicRoads under the VIVA Recoverable Works Agreement.

VMIA means the 'Victorian Managed Insurance Authority' established pursuant to the *Victorian Managed Insurance Authority Act 1996* (Vic).

Warranted Asset means any lighting, guard rails, wire rope, traffic signals and associated hardware each as referred to in Table B1 in Part B of the PSDR.

Warranted Life means, in respect of a Warranted Asset, the Design Life referred to for that Warranted Asset in Table B1 in Part B of the PSDR commencing on:

(a) if the Warranted Asset is a Returned Asset, the Date of Returned Asset Acceptance for that Returned Asset; or

(b) if the Warranted Asset is a Maintained Asset, the Date of Commercial Acceptance unless the Warranted Asset is replaced during the Maintenance Phase, in which case, the date that replacement has been completed.

Warranted Life Warranty has the meaning given to it in clause 28.6(a).

WGT Direct Interface Agreement means, subject to Schedule 31, the direct interface agreement between Project Co and WGT Project Co to be entered into in respect of the interface between the Project Activities and the Westgate Tunnel Project.

WGT D&C Subcontractor means the contractor appointed by the State to act as Principal Contractor in respect of the West Gate Tunnel Project which, as at the date of this Deed is CPB Contractors Pty Ltd (ACN 00 893 667) and John Holland Pty Ltd (ACN 004 282 268).

WGT Failure Event means each of:

(a) a WGT Failure Event (Dohertys Road Bridge Works);

(b) a WGT Failure Event (Hyde Street Bridge Works); and

(c) a WGT Failure Event (Other Interface Sites).

WGT Failure Event (Dohertys Road Bridge Works) means prior to the earlier of the Dohertys Road Bridge Works Completion Date and the Date of Milestone Completion in respect of the Dohertys Road Bridge Works:

(a) (**delay**): Project Co has been or will be delayed by an act or omission of WGT Project Co or a WGT Project Co Associate in a manner which will, or has, delayed Project Co in achieving Milestone Completion in respect of the Dohertys Road Bridge Works by the Dohertys Road Bridge Works Completion Date and:

(i) Project Co has not caused or contributed to the act or omission of WGT Project Co or a WGT Project Co Associate; and

(ii) the act or omission of WGT Project Co or a WGT Project Co Associate is not permitted or authorised under the WGT Direct Interface Agreement; or

(b) (**Costs**): Project Co is required to repair or reinstate the Dohertys Road Bridge Works due to loss or damage caused by WGT Project Co or a WGT Project Co Associate and:

(i) Project Co has suffered loss or damage; and

(ii) Project Co has otherwise complied with all of its obligations under the WGT Direct Interface Agreement and this Deed.

WGT Failure Event (Hyde Street Bridge Works) means prior to the earlier of the Hyde Street Bridge Works Completion Date and the Date of Milestone Completion in respect of the Hyde Street Bridge Works:

(a) (**delay**): Project Co has been or will be delayed by an act or omission of WGT Project Co or a WGT Project Co Associate in a manner which will, or has, delayed Project Co in achieving Milestone Completion in respect of the Hyde Street Bridge Works by the Hyde Street Bridge Works Completion Date and:

(i) Project Co has not caused or contributed to the act or omission of WGT Project Co or a WGT Project Co Associate; and

(ii) the act or omission of WGT Project Co or a WGT Project Co Associate is not permitted or authorised under the WGT Direct Interface Agreement; or

(b) (**Costs**): Project Co is required to repair or reinstate the Hyde Street Bridge Works due to loss or damage caused by WGT Project Co or a WGT Project Co Associate and:

(i) Project Co has suffered loss or damage; and

(ii) Project Co has otherwise complied with all of its obligations under the WGT Direct Interface Agreement and this Deed.

WGT Failure Event (Other Interface Sites) means prior to the earlier of the Milestone Date for a Milestone (other than the Key Milestones) and Milestone Completion in respect of a Milestone (other than the Key Milestones), in respect of the Other Interface Sites for and during which the D&C Contractor is the appointed Principal Contractor under the D&C Contractor Direct Deed, a failure by WGT Project Co to comply with the WGT-OSARs Site Access and Interface Protocols (as defined under the WGT Direct Interface Agreement), in respect of access to the Other Interface Sites, and Project Co has been or will be delayed in achieving Milestone Completion in respect of a Milestone (other than the Key Milestones) by the relevant Milestone Date.

WGT Heavy Haulage Routes means the Maintained Assets utilised as haulage routes for the purposes of the Westgate Tunnel Project and referred as such in Part H13 of the PSDR.

WGT Heavy Haulage Routes Date for Completion means 30 June 2023, as adjusted in accordance clause 29(a).

WGT-OSAR Interface Site Schedule means Schedule 29.

WGT Interface Site means the area shaded blue on the drawing entitled 'WGTP Site' set out in the WGT-OSAR Interface Site Schedule, excluding:

(a) the area shaded orange; and

(b) the airspace shaded yellow depicting the Bridge Deck Site.

WGT Interface Works means those works and other activities under the WGT Project Agreement that are to be carried out by WGT Project Co or a WGT Project Co Associate on the WGT Interface Site.

WGT Project Agreement means the agreement entitled 'West Gate Tunnel Project Agreement' between the State and WGT Project Co.

WGT Project Co means the contractor engaged by the State to deliver the Westgate Tunnel Project.

WGT Project Works has the meaning given in Schedule 25.

Wilful Misconduct means an act or failure to act that was intended to cause, or was in reckless disregard of or with wanton indifference to, any harmful consequences of the action or inaction.

Work Around has the meaning given in clause 32.7(a)(ii).

Working Group means:

(a) the Development Traffic Management Working Group;

(b) the Maintenance Traffic Management Working Group; and

(c) any other working group or liaison group that Project Co is required to establish under this Deed including the PSDR.

Works means all of the physical things and works which Project Co must design, manufacture, supply, construct, install, commission or complete in accordance with the requirements of this Deed in any Development Phase Area during the relevant Development Phase and otherwise to achieve Final Acceptance including as set out in section 5.1 of Part A of the PSDR and section 5.3 of Part A of the PSDR (but only to the extent related to those physical things and works) and includes:

(a) the Initial Capital Projects;

(b) Initial Rehabilitation Works;

(c) works related to the Returned Assets;

(d) the Remaining Works;

(e) Temporary Works related to those physical things and works; and

(f) Rail Interface Works,

and any Modifications and rectification of Defects in such physical things and works and which for the avoidance of doubt includes the Milestones.

Work Readiness Procedure has the meaning given in Schedule 28.

2. General rules of interpretation

2.1 Interpretation

In this Deed:

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

and unless the context otherwise requires:

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

(c) (**Deed and Schedule references**): a reference to:

(i) a party, clause, Schedule, Annexure, Appendix or Attachment is a reference to a party, clause, Schedule, Annexure, Appendix or Attachment of or to this Deed; and

(ii) a section is a reference to a section of the Schedule in which it is located,

unless expressly provided otherwise;

(d) (**Part**): a reference to a Part is a reference to a Part of the PSDR;

(e) (**document as amended**): a reference to a Project Document, or to any other deed, agreement, document or instrument means a reference to such Project Document, or other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;

(f) (**party**): a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;

(g) (**person**): a reference to a person includes an individual, the estate of an individual, a corporation, a body corporate, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership, an Entity and a trust (including a trustee);

(h) (**replacement person**): a reference to a person appointed under this Deed or any other Project Document includes that person's replacement or delegate appointed in accordance with this Deed or other Project Document (as applicable);

(i) (**legislation**): a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes:

(i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the legislation or delegated legislation; and

(ii) consolidations, amendments, re-enactments and replacements;

(j) (**Standards**): unless otherwise expressly stated, a reference to a Standard includes that Standard as amended or updated from time to time;

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

(l) (**"includes"**): "include", "includes" and "including" will be read as if followed by the phrase "(without limitation)";

(m) (**"or"**): the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;

(n) (**information**): a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;

(o) (**"$"**): a reference to "$", AUD or dollar is to Australian currency;

(p) (**Business Day**): if the day on or by which anything is to be done under this Deed is not a Business Day, that thing must be done no later than the next Business Day;

(q) (**time**): a reference to time is a reference to time in Melbourne, Victoria, Australia;

(r) (**rights**): a reference to a right includes any benefit, remedy, function, discretion, authority or power;

(s) (**obligations and liabilities**): a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;

(t) (**absolute discretion**): unless the State is expressly required under a State Project Document to act reasonably in exercising a power, right or remedy, the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;

(u) (**"may"**): without limiting clause 2.1(t), unless the State is expressly required under a State Project Document to act reasonably in exercising a power, right or remedy, the term "may", when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;

(v) (**Authorities**): where there is a reference to an Authority, institute, association or other body referred to in a State Project Document which:

(i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, that State Project Document is deemed to refer to that other entity; or

(ii) ceases to exist, that State Project Document is deemed to refer to the new entity (if any) which serves substantially the same purpose or object as the former entity; and

(w) (**contra proferentem rule not to apply**): each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

2.2 Composition of this Deed

(a) This Deed comprises:

(b) clauses 1 to 63;

(c) Schedules 1 to 31;

(d) Annexure A; and

(e) Attachments 1 - 2,

(the **Deed**).

2.3 Order of Precedence

(a) (**Order of precedence**): Subject to clause 2.3(b), the following order of precedence applies in the event of any inconsistency, ambiguity or discrepancy between the various documents comprising this Deed:

(i) clauses 1 to 63;

(ii) Schedules 1, 2, 3, 4, 5, 6, 9, 10, 11, 16, 18, 21, 22, 23, 25, 26, 27, 28, 29, 30 and 31;

(iii) the PSDR;

(iv) subject to clause 2.3(a)(ii), the remaining Schedules;

(v) the Concept Design;

(vi) the remaining Annexures (if any); and

(vii) Attachments 1 - 2.

(b) (**Higher or greater requirement**): To the extent that any part of this Deed, imposes on Project Co a higher or greater requirement, standard, quality, level of service, staffing level, quantum or scope than any other part of this Deed, unless the context otherwise expressly requires, that higher or greater requirement, standard, quality, level of service, staffing level, quantum or scope prevails.

2.4 Inconsistency between State Project Documents

If there is an inconsistency, ambiguity or discrepancy between this Deed and any other State Project Document, then the following order of precedence applies:

(a) the Finance Direct Deed;

(b) this Deed; and

(c) the remaining State Project Documents.

2.5 Inconsistency between this Deed and Project Plans

To the extent that any Project Plan imposes on Project Co a higher or greater requirement, standard, quality, level of service, staffing level, quantum or scope than any part of this Deed, unless the context otherwise expressly requires, that higher or greater requirement, standard, quality, level of service, staffing level, quantum or scope prevails.

2.6 Resolution of inconsistency, ambiguity or discrepancy

(a) (**Notification**): If either party identifies any inconsistency, ambiguity or discrepancy within or between any of the State Project Documents or between this Deed and the Project Plans, then that party must notify the other party of the inconsistency, ambiguity or discrepancy as soon as possible and, in any event, within 5 Business Days after becoming aware of the inconsistency, ambiguity or discrepancy.

(b) (**No further action**): If either party issues a notice in accordance with clause 2.6(a), Project Co must not take any further action in connection with the ambiguity, discrepancy or inconsistency until a notice is received from the State in accordance with clause 2.6(c) or, if no notice is received, for 5 Business Days after the date on which the State receives the notice issued by Project Co in accordance with clause 2.6(a).

(c) (**Resolution**): Within the Review Period, the State must direct Project Co as to how to resolve the inconsistency, ambiguity or discrepancy which is the subject of the notice under clause 2.6(a) as follows:

(i) in accordance with clauses 2.3 to 2.5 (as applicable);

(ii) if the relevant inconsistency, ambiguity or discrepancy cannot be resolved under clause 2.6(c)(i), in accordance with any process for resolving such inconsistencies, ambiguities and discrepancies contained in the relevant document; or

(iii) if the relevant inconsistency, ambiguity or discrepancy cannot be resolved under clauses 2.6(c)(i) or clause 2.6(c)(ii), the State must direct

Project Co to adopt the option the State requires Project Co to proceed with (which may be the higher or greater requirement, standard, quality, level of service, staffing level, quantum or scope).

2.7 Annexures

To the extent that the content of any Annexure seeks to impose any obligation on the State, Project Co will not be entitled to make any Claim against the State in respect of that obligation unless that same obligation is expressly imposed on the State in a clause or Schedule of this Deed.

2.8 Plans, Reports and Procedures

Without limiting clause 2.9, a reference to any Project Plan, Development Phase Report or Maintenance Phase Report or any other plan or report is a reference to that Project Plan, Development Phase Report or Maintenance Phase Report or other plan or report, as amended, revised or updated from time to time in accordance with this Deed.

2.9 Version of documents Project Co must comply with

If Project Co is required to comply with a document, plan, process, program, manual, sample, mock up, model, approval, condition or other like thing, and it or any update of it is required to be submitted for review in accordance with the Review Procedures or the PSDR, Project Co must comply with the version of the document, plan, process, program, manual, sample, mock up, model, approval, condition or other like thing that has been submitted, reviewed and amended (if applicable) in accordance with the Review Procedures or the PSDR (as applicable).

2.10 Prior approval or consent

If Project Co is required by a State Project Document to obtain the State's or the State Representative's consent or approval to an action, document or thing, unless otherwise expressly stated, that consent or approval must be obtained as a condition precedent to the action, document or thing occurring or coming into effect.

2.11 Action without delay

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

2.12 Provisions limiting or excluding Liability, rights or obligations

(a) (**No limitation**): A right or obligation of the State or Project Co under this Deed will not limit or exclude any other right or obligation of the State or Project Co under this Deed unless otherwise expressly stated.

(b) (**Limitation permitted by Law**): Any provision of this Deed which seeks, either expressly or by implication, to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.

2.13 Minimum requirement not sufficient

Project Co acknowledges and agrees that to the extent the PSDR specify a minimum requirement, the delivery of the Project Assets or performance of the Services in accordance with that minimum requirement may not, of itself, be sufficient to discharge Project Co's obligations under this Deed.

2.14 Relationship of the parties

Nothing in any Project Document:

(a) (**no additional relationship**): creates a partnership, joint venture, fiduciary, employment or agency relationship with the State; or

(b) (**no good faith**): imposes any duty of good faith on the State,

unless otherwise expressly stated.

2.15 State's executive rights, duties and functions

(a) (**State's own interests**): Unless otherwise expressly stated in the State Project Documents, nothing in the State Project Documents gives rise to any duty on the part of the State to consider interests other than its own interests when exercising any of its rights or carrying out any of its obligations under the State Project Documents.

(b) (**State's rights**): Notwithstanding anything expressly stated or implied in the State Project Documents to the contrary:

(i) the State is not obliged to exercise any executive or statutory right, duty, or function, or to influence, over-ride, interfere with or direct any other Government Party in the proper exercise and performance of any of its executive or statutory rights, duties or functions; and

(ii) nothing expressly stated or implied in the State Project Documents has the effect of constraining the State or placing any fetter on the State's discretion to exercise or not to exercise any of its executive or statutory rights, duties or functions.

(c) (**No Claim**): Subject to clause 2.15(d), Project Co will not be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise any of its executive or statutory rights, duties or functions.

(d) (**Liability for breach**): Clauses 2.15(a) to 2.15(c) do not limit any Liability which the State would have had to Project Co under any State Project Document as a result of:

(i) a breach by the State of a term of any State Project Document; or

(ii) an express entitlement of Project Co under any State Project Document,

but for these clauses.

2.16 Reasonable endeavours of State

Any statement in a State Project Document providing that the State or any officer, employee or agent of the State will or must use or exercise "reasonable endeavours", "act reasonably" or "act in good faith" in relation to an outcome, means that the State must take steps to bring about the relevant outcome so far as it is reasonably able to do so, having regard to its resources and other responsibilities but does not mean that the State or any officer, employee or agent of the State:

(a) (**no guarantee**): guarantees the relevant outcome will be brought about; or

(b) (**no obligation**): is required to:

(i) exercise a right of any Government Party, or to influence, over-ride, interfere with or direct any other Government Party in the proper exercise and performance of its legal, statutory or executive duties and functions;

(ii) exercise a power or discretion or otherwise act in a manner that the State regards as not in the public interest;

(iii) develop or implement new policy or a change in policy;

(iv) procure any new legislation or a change in legislation; or

(v) act in any way that the State regards as not in the public interest.

2.17 Indexation

(a) (**Indexed amounts**): All amounts required to be adjusted under this Deed by an Index will be Indexed in accordance with the Indexes Schedule.

(b) (**Changes to indexes**): Any changes to Indexes will be calculated in accordance with the Indexes Schedule.

2.18 Final and Binding

If a determination, decision, opinion or direction (including that of the Independent Reviewer) is said in this Deed to be "final and binding", neither party is entitled to challenge that determination, decision, opinion or direction on any basis other than that it is an indisputable error in complete disregard of the facts of the case, the applicable Law or credible evidence.

2.19 Power of attorney

Project Co irrevocably:

(a) (**appointment of attorney**): appoints the State, and the State's nominees from time to time, jointly and severally, as its attorney with full power and authority to:

(i) execute any agreement, deed or novation contemplated by clause 8.4(a), clause 46.7 and clause 47.2(a)(v), section 2.13 of the Intellectual Property Schedule or section 18.8(d) of the Augmentation Process Schedule;

(ii) exercise the State's rights in accordance with clause 38 or section 2.13 of the Intellectual Property Schedule; and

(iii) undertake Project Co's obligations in accordance with clause 46.7 or section 2.13 of the Intellectual Property Schedule; and

(b) (**ratification**): agrees to ratify and confirm whatever action is taken by the attorney appointed by Project Co under clause 2.19(a).

2.20 Proportionate liability

The operation of Part IVAA of the *Wrongs Act 1958* (Vic) is excluded in relation to all and any rights of either party under this Deed, whether such rights are sought to be enforced in contract, tort or otherwise.

2.21 The Netflow OSARS (Western) Partnership

(a) (**Jointly and severally**): The obligations, undertakings, representations, warranties, indemnities and Liability of Project Co under the Project Documents bind the Trustees jointly and severally as partners.

(b) (**Change in membership**): Without prejudice to anything else contained in this Deed or any other Project Document, if the membership of the Netflow OSARS (Western) Partnership changes from the Trustees for any reason whatsoever the Project Documents continue to bind each former partner and each current partner of the Netflow OSARS (Western) Partnership in respect of any accrued Liabilities that were incurred by Project Co during the period that the former partner was a member of the Netflow OSARS (Western) Partnership.

(c) (**Ceases business**): Without prejudice to anything else contained in this Deed or any other Project Document, if Project Co for any reason at any time ceases business, each Project Document continues to bind:

(i) the Trustees; and

(ii) any former partners of the Netflow OSARS (Western) Partnership in respect of any accrued Liabilities that were incurred by Project Co during the period that the former partner was a member of the Netflow OSARS (Western) Partnership.

2.22 Trustee's limitation of liability

(a) (**Capacity**): The parties acknowledge that the obligations of each Trustee under the Project Documents are incurred by it solely in its capacity as trustee of the relevant Trust other than where expressly provided otherwise, including as contemplated by clause 2.22(c)(i).

(b) (**Limited liability**): Subject to clause 2.22(c), each Trustee will:

(i) not be liable to pay or satisfy any of its obligations or liabilities under the Project Documents in relation to the relevant Trust out of any assets held by it personally;

(ii) only be liable to pay or satisfy any of its obligations or liabilities under the Project Documents in relation to the relevant Trust out of any assets of that Trust out of which it is actually indemnified;

(iii) not be liable to pay or satisfy any of its obligations or liabilities under the Project Documents in its personal capacity out of any asset held by it personally (other than out of the property the subject of the State Security); and

(iv) only be liable to pay or satisfy any of its obligations or liabilities under the Project Documents in its personal capacity out of the property the subject of the State Security held by it personally.

(c) (**Circumstances where a Trustee is personally liable**):

(i) Each Trustee will be personally liable under the Project Documents for any loss or damage which the State may suffer as a result of a breach of that Project Document by that Trustee where such breach is caused by:

(A) fraud of that Trustee;

(B) wilful default of that Trustee;

(C) that Trustee having committed a breach of trust;

(D) that Trustee having been negligent in the performance of its duties as trustee of the relevant Trust;

(E) a representation or warranty given by that Trustee under a Project Document in respect of itself (in any capacity) or the relevant Trust being untrue, incorrect or misleading when made or repeated; or

(F) a breach of any undertaking (other than an undertaking to pay) of that Trustee given under a Project Document.

(ii) The State may:

(A) do anything necessary to enforce its rights in connection with any representation or warranty (with respect to the relevant Trustee or the relevant Trust) or undertaking (other than an undertaking to pay) given by any Trustee under the Project Documents;

(B) do anything necessary to enforce its rights under each State Security;

(C) take proceedings to obtain an injunction or other order to restrain any breach of the Project Documents by any Trustee or declaratory relief or other similar judgment or order as to the obligations of any Trustee under the Project Documents; and

(D) prove in any insolvency proceedings in respect of any Trustee only in order to protect and enforce its rights in respect of the property of the relevant Trust and the Trustee's Indemnity.

(iii) Nothing in this clause 2.22 prevents the State obtaining any injunctive relief, order for specific performance, declaration or similar relief against any Trustee.

(d) (**Limited recourse**): The State must not, except to the extent a Trustee is personally liable under clause 2.22(c)(i) and subject to clause 2.22(c)(ii) and clause 2.22(e):

(i) bring any proceeding for the winding up or liquidation of a Trustee;

(ii) appoint, or seek the appointment of, a receiver or receiver and manager or other controller (as defined in the Corporations Act) to a Trustee or its assets or the assets of a Trust other than one appointed over any property secured by the State Security;

(iii) incur, or permit any receiver, receiver and manager appointed under a State Security, attorney appointed under a State Security or any other person to incur, any obligations binding on a Trustee unless the obligation is limited in accordance with this clause 2.22;

(iv) take any action to obtain a judgment against a Trustee or to enforce a judgment against a Trustee other than:

(A) a judgment required to prove the amount of any Secured Moneys (as defined in the State Security);

(B) a counterclaim in any proceedings commenced by a Trustee; or

(C) as permitted by clause 2.22(c)(ii); or

(v) levy or enforce a levy or distress or other execution upon or against any assets of a Trustee other than any property secured by the State Security or the assets of the relevant Trustee or Trust.

(e) (**No limitation on enforcement of security provided under the State Security**): This clause 2.22 does not limit or affect in any way the enforcement of the State Security and, for the avoidance of doubt, it is acknowledged and agreed by each Trustee (in its personal capacity and as trustee for the relevant Trust) that the security granted under the State Security by it constitutes a Security Interest over all of the Trust Property and all of its Trustee's Indemnity.

(f) (**Trustee as Partner**): A reference to a Trustee includes a reference to the relevant Partner as a partner in the Netflow OSARS (Western) Partnership.

PART B - PROJECT COMMENCEMENT AND TERM

3. Conditions Precedent

3.1 Commencement of obligations

This Deed will not automatically commence until the date on which the last Condition Precedent has been satisfied (or waived under clause 3.3(b)), except for the provisions contained in:

(a) clause 1 (Definitions);

(b) clause 2.1 (Interpretation);

(c) clause 2.3 (Order of Precedence);

(d) clause 2.4 (Inconsistency between State Project Documents);

(e) clause 2.5 (Inconsistency between this Deed and Project Plans);

(f) clause 2.6 (Resolution of inconsistency, ambiguity or discrepancy);

(g) clause 2.12 (Provisions limiting or excluding Liability, rights or obligations);

(h) clause 2.14 (Relationship of the parties);

(i) clause 2.15 (State's executive rights, duties and functions);

(j) clause 2.16 (Reasonable endeavours of State);

(k) clause 2.18 (Final and Binding);

(l) clause 2.21 (Netflow OSARS (Western) Partnership);

(m) clause 2.22 (Trustee's limitation of liability);

(n) this clause 3 (Conditions Precedent);

(o) clause 4.1 (Commencement date);

(p) clause 5.6 (All risks);

(q) clauses 7.2 and 7.3 (Parties' representatives);

(r) clause 8.1(a) (Appointment of Independent Reviewer);

(s) clause 10.2 (No State liability for review);

(t) clause 13.5 (Initial Licence);

(u) clause 39 (Probity Events and Probity Investigations);

(v) clause 43.1 (General indemnity);

(w) clause 43.2 (Indemnity for Project Co breach);

(x) clause 43.3 (Project Information indemnity and release);

(y) clause 43.4 (Project Area indemnity);

(z) clause 43.5 (Intellectual Property and Moral Rights indemnity);

(aa) clause 43.6 (Limits on Project Co Liability to indemnify);

(bb) clause 43.7 (Third party claim under indemnity);

(cc) clause 43.9 (Responsibilities as if owner);

(dd) clause 43.10 (Limitation on State Liability to Project Co for Relief Events);

(ee) clause 43.11 (Indirect or Consequential Loss);

(ff) clauses 44 (Insurance);

(gg) clause 48 to 50 (Dispute resolution);

(hh) clause 51 (Corporate representations, warranties and obligations);

(ii) clause 52 (Assignment and change in control);

(jj) clause 53.1 (Provision of the Financial Close Financial Model);

(kk) clause 55 (Confidential Information and privacy);

(ll) clause 56 (Intellectual Property);

(mm) clause 62 (Notices and bar to Claims);

(nn) clause 63 (Miscellaneous); and

(oo) the Schedules to the extent necessary to give effect to the above clauses,

which will commence on the date of this Deed.

3.2 Satisfaction of Conditions Precedent

(a) (**Conditions Precedent Schedule**): The Conditions Precedent Schedule sets out which party is to satisfy each Condition Precedent.

(b) (**Project Co to satisfy**): Unless otherwise waived in accordance with clause 3.3(b), Project Co must satisfy each Condition Precedent it is obliged to satisfy in accordance with the Conditions Precedent Schedule by the relevant date specified next to that Condition Precedent in the Conditions Precedent Schedule or such other date as the parties may agree (**Condition Precedent Deadline**) and must notify the State as each Condition Precedent is satisfied or waived.

(c) (**State to satisfy**): Unless otherwise waived in accordance with clause 3.3(b), the State must satisfy each Condition Precedent it is obliged to satisfy in accordance with the Conditions Precedent Schedule by the relevant Condition Precedent Deadline and must notify Project Co as each such Condition Precedent is satisfied or waived.

(d) (**Notice at Financial Close**): When the last Condition Precedent to be satisfied has been satisfied or waived, the State must confirm that all Conditions Precedent have been satisfied or waived and the date upon which the last Condition Precedent was satisfied or waived.

3.3 Waiver of Conditions Precedent

(a) (**Conditions Precedent Schedule**): The Conditions Precedent Schedule sets out which party benefits from the satisfaction of each Condition Precedent.

(b) (**Waiver**): A Condition Precedent is only waived if the Condition Precedent is included for the benefit of:

(i) only one party as set out in the Conditions Precedent Schedule, if that party gives notice of the waiver of the Condition Precedent to the other party; or

(ii) both parties, if both parties agree to waive the Condition Precedent.

3.4 Failure to satisfy Condition Precedent by Condition Precedent Deadline

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

(a) (**State option to terminate**): the State may, at its option terminate this Deed by giving not less than 5 Business Days' notice to Project Co;

(b) (**State Project Documents terminated**): if the State terminates this Deed under clause 3.4(a), each State Project Document will be taken to have been terminated at the time this Deed is terminated and will be of no further force or effect; and

(c) (**no claim**): neither party will have any Claim against the other party in connection with the Project including for failure to satisfy a Condition Precedent or the termination of the Project Documents as a consequence of the failure to satisfy (or procure the waiver of) a Condition Precedent.

3.5 Financial Close Adjustment Protocols and Model Output Schedule

(a) (**Financial Close Adjustment Protocols**): The parties acknowledge and agree that they will update and audit the Contract Close Financial Model at Financial Close in accordance with the Financial Close Adjustment Protocol.

(b) (**Model Output Schedule**): The parties acknowledge that the Financial Close Financial Model will contain the Model Output Schedule.

(c) (**Conformed copies**): As soon as practicable after Financial Close, the parties will amend the Project Documents incorporating the relevant outputs derived from the Model Output Schedule.

4. Term

4.1 Commencement date

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

4.2 Expiry Date

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

PART C - GENERAL OBLIGATIONS

5. Overarching obligations of Project Co

5.1 Project Activities

Project Co must carry out the Project Activities in accordance with:

(a) the State Project Documents;

(b) all applicable Laws;

(c) all applicable Standards; and

(d) Best Industry Practices.

5.1A Transition Phase

Without limiting any other provision in any State Project Document (including clause 5.1), during the Transition Phase, Project Co must:

(a) perform the Transition Activities in accordance with the Transition Plan; and

(b) use reasonable endeavours to achieve Maintenance Commencement by the Date for Maintenance Commencement,

in each case in accordance with clause 19A.

5.1B Maintenance Phase (Initial)

Without limiting any other provision in any State Project Document (including clause 5.1), during the Maintenance Phase (Initial):

(a) Project Co must perform both the Development Activities (including the Works) and the Services;

(b) Project Co is not obliged to perform Services in respect of any Project Asset during the period when that Project Asset is the subject of the Development Activities;

(c) Project Co must perform the Project Activities (including the Services) in respect of the Project Assets in accordance with all applicable Laws, Standards, Best Industry Practice, the Project Plans and the Network Rules;

(d) the Development Activities are divided into Milestones;

(e) the Milestones include the Initial Capital Projects, Initial Rehabilitation Works and Returned Assets to be completed by Project Co. A description of each of the Milestones and Returned Assets is set out in the PSDR;

(f) Project Co must:

(i) achieve Acceptance by the Date for Acceptance;

(ii) use reasonable endeavours to achieve Milestone Completion of each Milestone (other than the Key Milestones) by the Milestone Date as referred to in clause 26.1; and

(iii) achieve Milestone Completion in relation to the Key Milestones by the relevant Key Milestone Completion Date;

(g) the period during which Project Co performs any part of the Development Activities is known as a Development Phase but only for the Development Phase Area on which those Development Activities are performed;

(h) Project Co must ensure that at all relevant times the condition of the Project Assets during the Maintenance Phase (Initial) is and remains at all times equal to or above the Asset Condition (Initial) and that the Maintained Assets comply with the requirements of this Deed, all applicable Laws, and all applicable Standards on and after the Date for Maintenance Commencement;

(i) Project Co must ensure that the Project Assets comply with the FFP Warranty and that obligation will commence at the time set out in clause 5.5 for each of the relevant assets identified in that clause;

(j) the State must pay to Project Co the Services Payment determined pursuant to the Payment Schedule. The Services Payments will commence on the Date for Maintenance Commencement and increase on the Date of Commercial Acceptance; and

(k) the period commencing on Financial Close and ending on and including the Date of Commercial Acceptance is known as the Initial Phase.

5.1C Maintenance Phase (Full)

Without limiting any other provision in any State Document including clause 5.1, during the Maintenance Phase (Full):

(a) Project Co must perform the Project Activities (including the Services) in respect of the Project Assets in accordance with all applicable Laws, Standards, Best Industry Practice, Project Plans and the Network Rules;

(b) Project Co must ensure that the condition of the Project Assets during the Maintenance Phase (Full) is and remains at all times equal to or above the Asset Condition (Full);

(c) Project Co must ensure that the Project Assets are Fit for Purpose and that obligation will commence at the time set out in clause 5.5 for each of the relevant assets identified in that clause; and

(d) the State must continue to pay to Project Co the Services Payments determined pursuant to the Payment Schedule.

5.2 Comply with directions

(a) (**Comply with directions**): Subject to clause 5.2(b), Project Co must and must procure that each Project Co Associate complies with:

(i) all directions given or determinations made by the State or the State Representative in accordance with or purported to be given in accordance with, the State Project Documents;

(ii) all directions to comply with the State Project Documents; and

(iii) all directions or determinations given by the Independent Reviewer in accordance with the State Project Documents,

unless any such compliance will be a breach of Law.

(b) (**Project Co not to act**): Except as otherwise required by Law, Project Co must not accept or act upon directions or determinations in connection with the Project from an officer, employee or agent of the State other than the State Representative or a State delegate appointed under clause 7.2(f) acting in accordance with its delegation.

(c) (**State direction**): Subject to clause 5.2(e), if Project Co considers that a direction, or determination would entitle Project Co to make a Claim against the State, Project Co must, within 5 Business Days after receiving the direction or determination, and before commencing work on the subject matter of the direction or determination, give written notice to the State that it considers the direction or determination will give rise to a Claim against the State and specifying details of the Claim.

(d) (**Conditions for Project Co claim**): Without limiting any other limitations on Project Co's entitlement to make a Claim as set out in this Deed, Project Co is not entitled to make any Claim against the State in respect of a direction or determination unless it has given a notice under clause 5.2(c) within the period identified in that clause.

(e) (**Directions that are Modifications**) Project Co's obligation to notify in respect of a direction or determination that Project Co claims gives rise to a Modification, is set out in clause 35.10.

5.3 Provide all information

Project Co must provide or make available to the State all information in connection with the Project that Project Co (or any Project Co Associate) has in its power, possession or control as requested of the State.

5.4 Not put State in breach

In carrying out the Project Activities, Project Co must ensure that neither it nor any Project Co Associate causes the State or any State Associate to breach:

(a) any applicable Law or Standard; or

(b) [not used].

5.5 Fit For Purpose warranty

(a) (**Maintained Assets**): On and from the Date of Commercial Acceptance, Project Co warrants that the Maintained Assets (excluding the Remaining Works):

(i) (**Fit for Purpose**): are Fit For Purpose by reference to the purposes, functions and uses which are current and apply as at the Date of Commercial Acceptance; and

(ii) comply with:

(A) the requirements of this Deed;

(B) all applicable Laws; and

(C) all applicable Standards,

(b) (**Remaining Works**); On and from the Date of Final Acceptance, Project Co warrants that the Remaining Works:

(i) are Fit For Purpose by reference to the purposes, functions and uses which are current and apply as at the Date of Final Acceptance; and

(ii) comply with:

(A) the requirements of this Deed;

(B) all applicable Laws; and

(C) all applicable Standards.

(c) (**Returned Assets**): On the Date of Returned Asset Acceptance of the relevant Returned Asset, Project Co warrants that the relevant Returned Asset:

(i) is Fit For Purpose by reference to the purposes, functions and uses which are current and apply as at the Date of Returned Asset Acceptance for that Returned Asset;

(ii) complies with:

(A) the requirements of this Deed;

(B) all applicable Laws; and

(C) all applicable Standards;

(iii) is capable of remaining Fit For Purpose by reference to the purposes, functions and uses which are current and apply as at the Date of Returned Asset Acceptance for that Returned Asset at all times

throughout the Term, subject to operation and maintenance after such date which:

(A) is in accordance with Best Maintenance Practices;

(B) is such that any damage to relevant Returned Assets or component of the relevant Returned Assets occurring after the Date of Returned Asset Acceptance is promptly rectified in accordance with Best Industry Practices; and

(C) takes into account any:

1) change in law

2) the introduction of a new Standard;

3) a change in a Standard; or

4) the reclassification of a Road or any other change to a Road management category under the Road Management Plan,

occurring after the Date of Returned Asset Acceptance; and

(iv) is capable of complying at all times throughout the Term with:

(A) the requirements of this Deed;

(B) all applicable Laws; and

(C) all applicable Standards.

5.6 All risks

(a) (**All risks and no Claim**): Except as otherwise expressly provided in the State Project Documents, or for any Liability that the State has to Project Co for damages for breach of the State Project Documents, as between the State and Project Co:

(i) Project Co accepts all risks (and the cost of such risks) in connection with delivering the Project (including the Site, the Site Conditions, the Project Assets and the Project Activities); and

(ii) Project Co is not entitled to make any Claim against the State or any State Associate in connection with the Project or the Project Documents including any claim Project Co would otherwise be entitled to make at Law.

(b) (**State Liability**): Without limiting clause 5.6(c) or clause 34.5(b), clause 5.6(a) does not exclude or limit any Liability the State or any State Associate may have to Project Co or any Project Co Associate under the State Project Documents or at Law:

(i) for damages for breach of a State Project Document by the State or any State Associate; or

(ii) in respect of Project Co's or any Project Co Associate's Liability to a third party in respect of death, personal injury or damage to property, to the extent that the Liability of Project Co or any Project Co Associate is a

consequence of a fraudulent, reckless, unlawful or malicious act or omission of the State or any State Associate.

(c) (**Project Co acknowledgement**): Project Co acknowledges and agrees that, except in respect of its rights to the payment of interest for late payments as set out in clause 34.5, Project Co's sole financial remedy and the State's sole financial Liability:

(i) for delay, disruption or disturbance to the progress of any part of the Development Activities, including by reason of an Extension Event, is limited to the amount payable by the State to Project Co in accordance with clauses 26.10(d), 26.12, 26.13, 26.19 and 35.5 and the Change Compensation Principles; and

(ii) for prevention of the performance of the Services, including by reason of an Intervening Event, is limited to the amount payable by the State to Project Co in accordance with clauses 32.3(d), 32.4, 32.5, 32.7 and 35.5 and the Change Compensation Principles.

(d) (**PSDR**): Project Co warrants that:

(i) it has checked, examined, analysed and carefully considered the PSDR;

(ii) it has satisfied itself as to the completeness, correctness, accuracy, appropriateness, suitability and adequacy of the PSDR;

(iii) it has satisfied itself that there are no omissions, ambiguities, discrepancies or inconsistencies in or between the PSDR; and

(iv) the PSDR is proper, adequate and fit for the purpose of enabling Project Co to carry out the Project Activities in accordance with this Deed, and ensuring that the Works satisfy the relevant FFP Warranty.

6. Approvals

6.1 State Approvals

(a) (**State Approvals**): The State:

(i) has obtained, or will obtain, the State Approvals on or before the dates set out in Attachment 2; and

(ii) will, subject to the provision of all required information and assistance from Project Co in accordance with clause 6.1(c), ensure that Project Co has the benefit of such State Approvals as required to perform the Project Activities on and from the relevant dates set out in Attachment 2.

(b) (**Changes to State Approvals**): The State must obtain any changes to a State Approval required as a consequence of:

(i) a State Initiated Modification;

(ii) an Intervening Event; or

(iii) an Extension Event.

(c) (**Reasonable assistance**): Project Co must provide to the State all reasonable assistance and all information reasonably requested by the State in order for the State to obtain:

(i) the State Approvals that have not been obtained as at the date of this Deed; and

(ii) any changes to a State Approval.

(d) (**State Approval Event**): If a State Approval Event occurs:

(i) at the request of the State, Project Co must provide all reasonable assistance in connection with dealing with the State Approval Event;

(ii) as between the State and Project Co, the State may deal with the State Approval Event as it sees fit (including, if appropriate, conducting any legal challenge in the name of Project Co); and

(iii) this will be deemed to be a Modification in respect of which Project Co may submit a Modification Proposal in accordance with clause 35.2(b) and Project Co's entitlements will be determined in accordance with clause 35 and the Change Compensation Principles as if the State Approval Event was a State Initiated Modification.

(e) (**Condition Precedent**): Project Co is not entitled to make any Claim against the State in respect of any State Approval Event (including its impact) unless it has given notice in accordance with clause 35.2(b)(i).

(f) [Not used].

(g) (**Exercise of Required Road Management Power**): Project Co may (and must procure each Project Co Associate to) only exercise a Required Road Management Power to the extent that is it necessary for it to do so in order to meet a Project Co obligation under this Deed. Project Co must not (and must procure each Project Co Associate not to) exercise a Required Road Management Power unless and until it has complied with any conditions or notice period imposed on the exercise of that Required Road Management Power under any State Project Document or any instrument of delegation or sub-delegation (including any requirement to consult with the State or VicRoads or to provide the State or VicRoads with notice that Project Co may exercise the Required Road Management Power).

(h) (**Provide information on exercise of Required Road Management Power**): Promptly after being requested to do so by the State but no later than 10 Business Days after receipt of a request from the State to do so, Project Co must provide the State and VicRoads with any information reasonably requested by the State or VicRoads arising in connection with the exercise of any Required Road Management Power including:

(i) details of the specific Required Road Management Powers exercised by Project Co or any Project Co Associate;

(ii) the basis on which Project Co considered that the exercise of the Required Road Management Power was necessary to enable Project Co or any Project Co Associate to comply with Project Co's obligations under this Deed; and

(iii) details of any third party who has been or may be affected by the exercise of the Required Road Management Power.

(i) (**Lawful direction**): Project Co must comply (and must procure that each Project Co Associate complies) with any lawful direction given by the State or VicRoads in relation to the exercise of a Required Road Management Power.

(j) (**Act in a manner consistent with delegation**): Project Co must:

(i) exercise (and must ensure that each Project Co Associate exercises) any power and must carry out any duty under the Road Management Act which has been delegated or sub-delegated to it in a manner consistent with the relevant instrument of delegation or sub-delegation; and

(ii) not exercise (and must ensure that each Project Co Associate does not exercise) any power, comply with any function or carry out any duty under the Road Management Act which has been delegated or sub-delegated to it in a manner that is inconsistent with this Deed.

(k) (**VicRoads functions and duties**): Project Co acknowledges that VicRoads has functions and duties imposed upon it under Law (including under the *Transport Integration Act 2010* (Vic) and the Road Management Act) and must cooperate and liaise with VicRoads to assist VicRoads (including providing the assistance reasonably requested by the State within 10 Business Days after receipt of a request from the State to do so) to discharge those functions and duties, in each case to the extent relating to the Project Area or the Maintained Assets.

(l) (**Provide Information, personnel and resources**): Project Co must provide VicRoads with such information and access to personnel and resources as is necessary (including information, personnel and resources which the State reasonably requests Project Co to provide to VicRoads within 10 Business Days after receipt of a request from the State to do so) to enable VicRoads to perform its functions and comply with its duties under any Law including the *Transport Integration Act 2010* (Vic), the Road Management Act, any Road Management Plan and each Code of Practice (as defined under the Road Management Act) and provide such reasonable assistance to VicRoads (including the assistance reasonably requested by the State within 10 Business Days after receipt of a request from the State to do so) to enable VicRoads to carry out such functions and duties, in each case to the extent relating to the Project Area or the Maintained Assets.

(m) (**Not cause breach of duties or functions**): Project Co must ensure that it (and must procure that each Project Co Associate) does not do anything, or omit to do anything in connection with the Project Activities, which may cause VicRoads or any other Coordinating Road Authority or Responsible Road Authority to breach any of its duties or functions under any Law including the *Transport Integration Act 2010* (Vic) or the Road Management Act, any Road Management Plan and each Code of Practice (as defined under the Road Management Act).

6.2 Relevant Approvals to be obtained and complied with by Project Co

(a) (**Project Co to obtain Approvals (other than State Approvals)**): Project Co must:

(i) obtain all Approvals (other than the State Approvals); and

(ii) subject to clause 6.1(b), obtain any amendments to any Approvals.

(b) (**Project Co to obtain secondary approvals**): Project Co must:

(i) obtain all secondary consents, verifications and information; and

(ii) undertake other action,

required under a State Approval.

(c) (**Project Co to comply**): Project Co must not take any action that will prevent the State from complying with, to the extent relevant, any conditions or requirements of any Approval or Environmental Requirement.

(d) (**Deviations from the approved Project**): If the Project as proposed or undertaken by Project Co deviates from the Project that is permitted by and will comply with the State Approvals, Project Co must, subject to clause 6.1(b), obtain and comply with:

(i) any further Approvals required as a result of such deviation; and

(ii) any necessary amendments to Approvals (including, to the extent necessary, the State Approvals).

(e) (**Copies of Approvals**): Project Co must promptly provide to the State:

(i) copies of all Approvals it is required to obtain under any State Project Document when they are obtained, amended or renewed; and

(ii) upon request, evidence that Project Co has complied with any conditions or requirements of the Approvals.

(f) (**Condition Precedent**): Project Co must, as a condition precedent to each Commercial Acceptance, ensure that it has:

(i) obtained all Approvals it is required to obtain under this Deed with respect to the Works; and

(ii) complied with, carried out and fulfilled all conditions and requirements of all Approvals with respect to the Works.

6.3 Conditional Approvals

If any Approval is issued with conditions which would or could have a material adverse effect on:

(a) the ability of Project Co to meet its obligations under this Deed; or

(b) the ability of any State Associates (as applicable) to undertake any relevant Operations,

Project Co must:

(c) notify the State Representative that those conditions would or could have such an effect; and

(d) provide a copy of the relevant conditions, together with Project Co's detailed proposal for satisfying those conditions in a manner that would not have such an effect, to the State Representative for review in accordance with the Review Procedures.

7. Parties and personnel

7.1 Authorities

Project Co acknowledges and agrees that:

(a) there are Authorities with jurisdiction over aspects of the Project Activities and the Project Area;

(b) such Authorities may, from time to time and at any time, exercise their functions and powers in such a way as to disrupt, interfere with or otherwise affect the Project Activities or the Project Area; and

(c) it will co-operate with and co-ordinate its Project Activities with such Authorities as is required by them.

7.2 State Representative

(a) (**Natural person**): The State must ensure that at all times throughout the Term there is a natural person appointed by it as the State Representative for the Project.

(b) (**Identity**): As at the date of this Deed, the State Representative is the party nominated as such in the Contract Particulars.

(c) (**Agent of the State**): The State Representative will administer the State Project Documents on behalf of the State and:

(i) will exercise all rights, powers, authority and functions of the State Representative under the State Project Documents; and

(ii) may exercise all rights, powers, authority and functions of the State under the State Project Documents,

as the State's agent.

(d) (**Oral directions**): The State Representative may give a direction orally but will as soon as practicable confirm that direction in writing.

(e) (**Replacement**): The State may at any time replace the State Representative, in which event the State must appoint another person as the State Representative and notify Project Co of that appointment.

(f) (**Delegation**): The State may at any time delegate the exercise of any power or authority of the State to a person other than the then appointed State Representative.

(g) (**Notification of delegation**): The State must promptly notify Project Co of the identity of each delegate and the powers and authority delegated (including any conditions applying to the delegated power).

(h) (**Vary or terminate delegation**): The State may vary or terminate any power or authority it has delegated, whether to the State Representative or otherwise, and must promptly notify Project Co of any such variation or termination.

7.3 Project Co Representative

(a) (**Natural person**): Project Co must ensure that at all times throughout the Term there is a natural person appointed by it as the Project Co Representative in respect of the Project.

(b) (**Employee**): The Project Co Representative must be an officer or employee of Project Co or a Related Body Corporate of Project Co and must be employed full time as the Project Co Representative.

(c) (**Contact**): The Project Co Representative must act as the principal point of contact between Project Co and the State in respect of the administration of the State Project Documents and be available to the State as and when required.

(d) (**Presence**): Project Co must ensure that the Project Co Representative is present at the Project Area at such times as is necessary to ensure that Project Co is complying with its obligations under the State Project Documents and upon reasonable request by the State Representative.

(e) (**Directions**): A direction is given to Project Co if it is given to the Project Co Representative.

(f) (**Authority and skills**): Project Co must ensure that at all times during their appointment, the Project Co Representative has:

(i) the authority to perform its role and duties and discharge its obligations under the State Project Documents; and

(ii) a detailed knowledge of the Project and sufficient experience and skills to undertake the role of Project Co Representative.

(g) (**Duties during the Term**): The Project Co Representative must perform the duties of the Project Co Representative under the State Project Documents, including to:

(i) (**spokesperson**): act as the spokesperson for Project Co;

(ii) (**partnership**): facilitate the ongoing implementation of a collaborative relationship with the State;

(iii) (**liaison**): liaise and generally deal with stakeholders;

(iv) (**manage**): represent the views of Project Co and manage and co-ordinate issues with any Project Co Associate prior to presentation to the State; and

(v) (**presence**): ensure a strong presence and consistent project management role for Project Co in the implementation of the Project.

7.4 Other Representatives

(a) (**Natural person**): Project Co must appoint a natural person as:

(i) the Design Development Coordinator for the duration of the Initial Phase;

(ii) the Construction Traffic Representative for the duration of the Initial Phase;

(iii) the Maintenance Traffic Representative for the duration of the Maintenance Phase;

(iv) the Environmental Representative for the duration of the Initial Phase;

(v) the Environmental Representative for the duration of the Maintenance Phase (Full);

(vi) the Communications and Community Engagement Representative for the duration of the Term;

(vii) the Construction Quality Representative for the duration of the Initial Phase; and

(viii) the Maintenance Quality Representative for the duration of the Maintenance Phase,

(each an **Other Representative**).

(b) (**Appointment**): If they are not already approved by the State as at the date of this Deed, for each role listed in clause 7.4(a), Project Co must recommend to the State a person who, in Project Co's opinion, is suitable for appointment in that role. The State must consider the person recommended by Project Co and must, acting reasonably, approve or disapprove Project Co's recommendation. If the State:

(i) approves Project Co's recommendation, Project Co must promptly appoint such person in the relevant role; or

(ii) disapproves the person proposed by Project Co, Project Co must recommend a further candidate and the process in this clause 7.4(b) will apply again.

(c) (**Presence**): Project Co must ensure that each Other Representative is present at the Project Area at such times as are necessary to ensure that Project Co is complying with its obligations under this Deed and otherwise upon reasonable request by the State Representative.

(d) (**Authority and skills**): Project Co must ensure that at all times during their appointment, each Other Representative has the authority to perform its role and duties and discharge its obligations in accordance with this Deed.

(e) (**Role**): The role of each Other Representative is as set out in the relevant sections in the PSDR which describes that Other Representative's role, function and obligations.

7.5 Key People

Project Co must:

(a) (**Key People**): subject to clauses 7.5(b) and 7.5(c), ensure that the Key People are employed or engaged in the roles specified in the Contract Particulars;

(b) (**State consent to delegate**): not delegate any of the functions of any of the Key People or allow any such delegation (other than if entitled to do so under this Deed) without the State's approval (which approval will not be unreasonably withheld or delayed); and

(c) (**State consent to replace**): if any of the Key People die, become seriously ill, resign from the employment of Project Co or any Project Co Associate or the State agrees to the replacement of any Key People, replace the relevant Key People with persons approved by the State (such approval not to be unreasonably withheld or delayed) of at least equivalent qualification, experience, ability and expertise.

7.6 Senior Representatives Group

(a) (**Establishment**): The parties will establish a group consisting of the following members (together the **Senior Representatives Group**):

(i) a director of Project Co;

(ii) a senior representative of the Financiers;

(iii) prior to the expiry of the last defects liability period under the D&C Contract, a senior representative of the D&C Contractor (who must be a director of the D&C Contractor);

(iv) a senior representative of the Services Contractor (who must be a director of the Services Contractor);

(v) a senior representative of the Equity Investors (who must be a director of one of the Equity Investors);

(vi) the State Representative;

(vii) the Project Co Representative;

(viii) senior representatives from the State;

(ix) any other person the State nominates from time to time; and

(x) any other person the parties agree is appropriate.

(b) (**Functions**): The functions of the Senior Representatives Group will be to:

(i) review the performance of the Project Activities;

(ii) review the Development Phase Reports and the Maintenance Phase Reports;

(iii) assist in the resolution of any matters referred to the Senior Representatives Group by a party, including any Dispute referred to it under clause 48.3(d); and

(iv) discuss and address such other matters as the members of the Senior Representatives Group may agree from time to time in connection with the Project.

(c) (**Meetings**): The Senior Representatives Group must meet:

(i) Quarterly during the Initial Phase no earlier than 5 Business Days after the receipt of the Monthly Development Phase Progress Report for the last Month in the previous Quarter;

(ii) annually during the Maintenance Phase (Full) at the end of the third Quarter of each Maintenance Year; and

(iii) when otherwise called to meet on no less than 10 Business Days' notice by the State Representative or the Project Co Representative (or on such earlier notice as otherwise agreed by them or as is required under clause 48.3(d)),

and conduct its meetings in the manner agreed from time to time between the State Representative and the Project Co Representative.

(d) (**Other attendees**): The State may require that one or more representatives of the Independent Reviewer or any Interface Party attend a meeting of the Senior Representatives Group and Project Co agrees to those representatives attending the relevant meeting.

7.7 Project Control Group

(a) (**Establishment**): The parties will establish a group consisting of the following members (together the **Project Control Group**):

(i) during the Initial Phase:

(A) the State Representative;

(B) the Project Co Representative;

(C) the Design Development Coordinator;

(D) the on-site project director of the D&C Contractor;

(E) the project director of the Services Contractor;

(F) any other person the State nominates from time to time; and

(G) any other person the parties agree is appropriate; and

(ii) during the Maintenance Phase (Full):

(A) the State Representative;

(B) the Project Co Representative;

(C) the project director of the Services Contractor;

(D) any other person the State nominates from time to time; and

(E) any other person the parties agree is appropriate.

(b) (**Functions**): The functions of the Project Control Group will be to:

(i) monitor the overall progress of the Project Activities and compliance with the requirements of the State Project Documents;

(ii) assist in the resolution of any matters referred to the Project Control Group by a party including Disputes referred to it under clause 48.3(d);

(iii) review all reports and plans provided by Project Co, its Subcontractors and the Independent Reviewer during the Term;

(iv) during the Term, discuss the application of the regime for Abatement described in the Payment Schedule and agree to any changes to that regime (if any);

(v) discuss and address such other matters as the members of the Project Control Group may agree from time to time in connection with the Project;

(vi) discuss and address matters in relation to Augmentations including those arising out of clause 35.14 and Schedule 23 and potential Augmentations; and

(vii) discuss and address interface management issues.

(c) (**Meetings**): The Project Control Group must:

(i) meet:

(A) Monthly during the Initial Phase (not later than 15 Business Days after the end of each Month);

(B) Quarterly during the Maintenance Phase (Full) (not later than 15 Business Days after the end of each Quarter); and

(C) as otherwise:

1) agreed by the State Representative and the Project Co Representative; or

2) called to meet on 10 Business Days' notice by the State Representative or the Project Co Representative (or on such other notice as otherwise agreed by them or as is required under clause 48.3(d)); and

(ii) conduct its meetings in the manner agreed from time to time between the State Representative and the Project Co Representative.

(d) (**Reports**): Project Co must no later than 10 Business Days after the end of each Month, and in any event no later than 5 Business Days before each meeting of the Project Control Group convened in accordance with clause 7.7(c)(i)(A) or 7.7(c)(i)(B) (as applicable), give each member of the Project Control Group and the Independent Reviewer:

(i) prior to Final Acceptance, a Monthly Development Phase Progress Report for the previous Month prepared in accordance with the PSDR; and

(ii) during the Maintenance Phase, a Monthly Maintenance Phase Performance Report for the previous Month prepared in accordance with the PSDR.

(e) (**Other attendees**): The State may:

(i) require that one or more representatives of the Independent Reviewer or any Interface Party attend a meeting of the Project Control Group and Project Co agrees to those representatives attending the relevant meeting; and

(ii) direct Project Co to procure the attendance of senior representatives of any of the Subcontractors (not forming part of the Project Control Group), the Financiers or any of their respective Associates at any meeting of the Project Control Group.

7.8 Working Groups

Project Co acknowledges and agrees that it will establish each Working Group in accordance with the PSDR.

7.9 General requirements for meetings

(a) (**Meeting agendas**): The State must determine the agenda for each meeting of the Project Control Group, the Senior Representatives Group and any Working Group and in determining each agenda will:

(i) seek input from the Project Co Representative; and

(ii) include any items notified to it by any other member received not later than 5 Business Days prior to the date of the meeting.

(b) (**Minutes**): The State must either:

(i) take minutes of each Project Control Group meeting, Senior Representatives Group meeting and any Working Group meeting and distribute such minutes prior to the next relevant meeting; or

(ii) notify Project Co that it requires Project Co to take minutes of each Project Control Group meeting, Senior Representatives Group meeting and any Working Group meeting and distribute such minutes prior to the next relevant meeting.

(c) (**Chair**): The chair for each of the Project Control Group and the Senior Representatives Group will be the State Representative unless otherwise agreed by the parties.

(d) (**Continuity of membership**): The parties acknowledge the importance of each of the Project Control Group, the Senior Representatives Group and each Working Group having a continuity of membership in order to successfully carry out its functions.

(e) (**Changes to membership**): The people who are required to attend the Project Control Group meetings, Senior Representatives Group meetings or Working Group meetings under this Deed may, if necessary, be changed by the party they are representing from time to time on notice to the other parties together with details of the reason for the change.

(f) (**Liability of groups**): The Project Control Group, Senior Representatives Group and each Working Group:

(i) are advisory only and their decisions or recommendations are not binding on the parties; and

(ii) do not have any legal responsibilities, liability or power to require any of the parties to act or refrain from acting in any way.

(g) (**No limitation**): The parties' involvement in the Project Control Group, Senior Representatives Group and any Working Group does not affect their respective rights and obligations under this Deed.

(h) (**Further information**): The State Representative may require Project Co to provide information on matters discussed at any Project Control Group, Senior Representatives Group or Working Group meeting and Project Co must provide that information in a timely manner.

(i) (**No reliance or Claim**): Neither the State nor Project Co will be entitled to:

(i) rely on any statement, opinion, advice, representation, warranty, promise or undertaking made or given by or on behalf of any member of the

Project Control Group, Senior Representatives Group or Working Group; or

(ii) make any Claim against any member of the Project Control Group, Senior Representatives Group or Working Group,

arising in connection with anything which any such member does or fails to do in its capacity as a member of the Project Control Group, Senior Representatives Group or Working Group.

(j) (**Conduct at meetings**): Project Co and each Project Co Associate must freely and openly discuss the Project Activities at all meetings conducted with the State and Project Co must, and must procure that each Project Co Associate, responds to any questions which the State may ask Project Co or the relevant Project Co Associate at any meetings conducted in accordance with this Deed within 5 Business Days.

7.10 Stakeholder and community engagement

(a) (**Community liaison**): Project Co:

(i) acknowledges that the areas where the Project Activities are being carried out are of great importance to many people, including local residents and businesses; and

(ii) must manage and participate in all community relations programs and activities as:

(A) required by this Deed;

(B) required by any Laws;

(C) contained in the Communications and Community Relations Plan; and

(D) reasonably requested by the State from time to time.

(b) (**Communications approach**): Without limiting the generality of clause 7.10(a), Project Co must not, and must procure that any Project Co Associate does not, communicate with the media or communicate any information publicly with regard to the Project without the consent of the State Representative.

(c) (**Community obligations**): Project Co must (to the extent not otherwise addressed in the Communications and Community Relations Plan) promptly notify the State Representative of any requests, problems and complaints received from members of the community in connection with the Project and not liaise directly with members of the community in relation to requests, problems and complaints without the consent of the State Representative.

8. Independent Reviewer

8.1 Appointment of Independent Reviewer

(a) (**Appointment and engagement**): The State and Project Co must jointly appoint the Independent Reviewer to act as Independent Reviewer:

(i) in accordance with the terms of this Deed and the Independent Reviewer Deed of Appointment; and

(ii) independently and not as an agent of either party.

(b) (**Costs**): Subject to clause 8.1(c), clause 8.1(d)(i) and clause 8.1(e), the State and Project Co must each pay an equal portion of the costs and expenses of the Independent Reviewer (excluding any payments due to the Independent Reviewer in respect of any Downstream Independent Reviewer Functions which, as between the State and Project Co, are paid by Project Co).

(c) (**Alternative split**): To the extent that the Independent Reviewer considers that the parties (as a result of their respective conduct) have a proportionate responsibility for the costs and expenses of the Independent Reviewer which differs from the proportion stated in clause 8.1(b), the party that the Independent Reviewer considers should have a higher proportionate responsibility must pay to the other party as a debt due and payable the relevant proportion of the costs and expenses of the Independent Reviewer paid by the first party under clause 8.1(b) as stated in a notice from the Independent Reviewer to the parties.

(d) (**Costs for reports**): If the Independent Reviewer prepares a report not otherwise required by this Deed or the Independent Reviewer Deed of Appointment, but requested by the State or Project Co (if they are entitled to do so or the consent to the preparation of the report is given by the party who has not sought the report to the other party):

(i) the costs of the Independent Reviewer of preparing such an additional report will be paid directly by the party requesting the report; and

(ii) a copy of that additional report must be provided by the Independent Reviewer to both parties.

(e) (**Cost of insurances**): The State must pay the cost of the insurance policies required to be effected and maintained by the Independent Reviewer under clause 9.3 of the Independent Reviewer Deed of Appointment.

(f) (**Period of appointment and references to Independent Reviewer**): References to the Independent Reviewer will be interpreted only to the extent of the Independent Reviewer's role under the Independent Reviewer Deed of Appointment (including the term of such appointment). To the extent that any reference to the Independent Reviewer would require the Independent Reviewer to exercise a right or carry out an obligation under this Deed outside the term of its appointment, the State will be required to exercise such right on a similar basis as the Independent Reviewer would have, acting in accordance with the Independent Reviewer Deed of Appointment. Any such exercise of a right or carrying out of such an obligation by the State will be a decision or determination of the State and not a decision or determination of the Independent Reviewer for the purpose of clause 2.18 or clauses 48 to 50.

8.2 Other Project roles of Independent Reviewer

(a) (**No conflict**): Project Co must ensure that:

(i) the Financiers do not appoint the Independent Reviewer to act in any role in connection with the Finance Documents or Subcontracts, without the consent of the State Representative and on such terms approved by the State Representative; and

(ii) the Independent Reviewer is not appointed to any role where it certifies payments to be made to the D&C Contractor under the D&C Contract.

(b) (**Independent Reviewer role**): The State consents to the Independent Reviewer acting as the sub-independent reviewer under the D&C Contract, subject to Project Co notifying the State of this and ensuring that any agreement pursuant to which Project Co and the D&C Contractor engage the Independent Reviewer as independent reviewer for the purposes of the D&C Contract:

(i) includes an acknowledgment and agreement by the parties to the paramountcy and independence of the role of the Independent Reviewer under this Deed; and

(ii) does not contain terms which otherwise prejudice or compromise the paramountcy or independence of the Independent Reviewer role under this Deed.

(c) (**Copy to be provided**): Project Co must provide to the State a copy of any agreement which appoints the Independent Reviewer as the sub independent reviewer under the D&C Contract in relation to the Project.

(d) (**No cross-subsidisation**): Project Co must at all times ensure that the amounts being paid by the State to the Independent Reviewer under the Independent Reviewer Deed of Appointment are not cross-subsidising any other services which the Independent Reviewer is performing in relation to the Project and must provide evidence to that effect to the State Representative.

(e) (**Separation of roles**): If the Independent Reviewer is appointed as the sub-independent reviewer under the D&C Contract or in any other role in connection with the Project, Project Co must put in place and ensure the Independent Reviewer puts in place appropriate arrangements to provide for the separation of the Independent Reviewer's roles under this Deed and the D&C Contract or other relevant contract.

(f) (**No compromise**): Project Co must not, and must ensure that any Project Co Associate does not, do anything which would prejudice or compromise the paramountcy of the Independent Reviewer's role under this Deed.

(g) (**No other roles**): Unless otherwise expressly stated in this Deed, neither party may engage the Independent Reviewer in respect of any other role in connection with the Project without the consent of the other party.

(h) (**No compromise of independence**): Neither party may engage the Independent Reviewer to undertake any work that is in conflict with its independence or is not consistent with its role as the Independent Reviewer.

8.3 Determinations of Independent Reviewer

Subject to clause 2.18, determinations of the Independent Reviewer will be final and binding on the State and Project Co unless there is an express provision in this Deed to the contrary.

8.4 Replacement of Independent Reviewer

(a) (**Replacement**): If:

(i) the Independent Reviewer Deed of Appointment is terminated; or

(ii) the Independent Reviewer is, for any reason, not appointed or ceases to act as the Independent Reviewer in accordance with the State Project Documents,

then the parties must:

(iii) jointly appoint another person to act as Independent Reviewer agreed in accordance with clause 8.4(f) or selected by the State in accordance with clause 8.4(g); and

(iv) enter into an Independent Reviewer Deed of Appointment with that new or replacement Independent Reviewer on substantially the same terms as the Independent Reviewer Deed of Appointment.

(b) (**State nominates up to 5 firms**): If a new or replacement Independent Reviewer is required in accordance with clause 8.4(a), the State must provide Project Co with a notice setting out up to 5 firms which the State considers appropriate to act as Independent Reviewer.

(c) (**Project Co nominates 3 firms**): Within 10 Business Days after receipt of the State's notice under clause 8.4(b), Project Co must nominate 3 firms out of the firms listed in the State's notice, each of which must:

(i) have appropriate qualifications and experience;

(ii) have no interest or duty which may conflict with the role of the Independent Reviewer under this Deed;

(iii) indicate its willingness to execute the Independent Reviewer Deed of Appointment without substantial amendment;

(iv) have professional indemnity insurance in accordance with the requirements of the Independent Reviewer Deed of Appointment; and

(v) provide such information in relation to fees and other matters as the State reasonably requires.

(d) (**State refusal**): If the State, acting reasonably, refuses to seek a proposal from one of the 3 firms nominated by Project Co in accordance with clause 8.4(c) within 10 Business Days after Project Co's nomination, Project Co must, within 5 Business Days after receiving notice from the State of that refusal, nominate a firm to replace that firm in accordance with the requirements set out in clause 8.4(c).

(e) (**Proposals**): The State must, on behalf of the State and Project Co, seek proposals from each of the 3 firms nominated by Project Co in accordance with clause 8.4(c) or 8.4(d) (as applicable), provided that firm satisfies the requirements set out in clause 8.4(c), and each proposal procured must:

(i) address the requirements set out in clause 8.4(c);

(ii) include details of all proposed fees and costs, which must be capable of evaluation on an open book basis;

(iii) disclose any details of any current or proposed downstream role; and

(iv) include any other information the State reasonably requires.

(f) (**State and Project Co select**): The State and Project Co shall seek to agree to the selection of an Independent Reviewer from the firms that have submitted a proposal in accordance with clause 8.4(e) within 30 Business Days after receiving the last of those proposals.

(g) (**State selection**): If no agreement is reached by the State and Project Co in accordance with clause 8.4(f), the State shall select the Independent Reviewer from the firms that have submitted a proposal in accordance with clause 8.4(e).

(h) (**Not an agent**): The Independent Reviewer is appointed jointly by the parties and will act independently and not as agent of either party.

(i) (**Decisions of previous Independent Reviewer**): The new or replacement Independent Reviewer appointed under clause 8.4(a) is bound by the exercise of any functions exercised or decisions made by the State or Project Co or the prior Independent Reviewer where such functions were exercised or decisions were made under this Deed or the Independent Reviewer Deed of Appointment.

9. Subcontracting and third party arrangements

9.1 Subcontracting

Project Co:

(a) (**notify the State of all Subcontractors**): must provide the State with:

(i) 20 Business Days' notice of all Key Subcontractors and Significant Subcontractors that will be engaged (other than the Notified Significant Subcontractors); and

(ii) 1 Business Days' notice of any Subcontractor that will be engaged by Project Co, any Key Subcontractor or any Significant Subcontractor (excluding all Key Subcontractors and Significant Subcontractors),

to undertake the Project Activities prior to any such Subcontractors undertaking any Project Activities;

(b) (**requirements for Subcontracting**): must not subcontract the performance of the Project Activities or any part of them except in accordance with this clause 9;

(c) (**no relief**): is not relieved from any or all of its obligations or Liabilities (whether under the State Project Documents or otherwise) as a result of any subcontracting of those obligations or Liabilities;

(d) (**Project Co responsible**): will be responsible for the acts and omissions of any Subcontractor and their respective Associates in carrying out the Project Activities as if such acts or omissions were the acts or omissions of Project Co;

(e) (**Wrongs Act**): for the purposes of the *Wrongs Act 1958* (Vic), is entirely responsible for any failure to take reasonable care on the part of any Subcontractor or their Associates; and

(f) (**access to Subcontracts**): must, if the State requires, give the State access to (or, upon request, copies of):

(i) any Key Subcontract, Significant Subcontract or Management Services Contract (regardless of whether Project Co is a party to that Subcontract); and

(ii) any other proposed or executed Subcontract (regardless of whether Project Co is a party to that Subcontract) to which:

(A) Project Co or a Subcontractor has access; or

(B) a prudent, competent and experienced person in the position of Project Co or the Subcontractor (as applicable) exercising Best Industry Practices should have access,

together with all plans, specifications and drawings relating to that Subcontract.

9.2 Requirements for Subcontracting

(a) (**Subcontracting requirements**): Without limiting clause 9.3, Project Co must not engage, and must ensure that none of its:

(i) Key Subcontractors engage any Subcontractor unless the State, within 15 Business Days after receipt of notification under clause 9.1(a), does not require a Probity Investigation to be carried out in respect of that Subcontractor; and

(ii) Key Subcontractors or Significant Subcontractors engage, any Subcontractor unless the proposed Subcontractor has the financial capacity, experience and capability to perform the obligations of Project Co to be subcontracted to the Subcontractor to at least the standards required by the State Project Documents.

(b) (**Copies of Subcontracts**): Project Co:

(i) must provide to the State:

(A) a copy of any Key Subcontract, Significant Subcontract or Management Services Contract entered into in connection with the Project Activities within 15 Business Days after the relevant Subcontract being entered into; and

(B) a copy of any other Subcontracts requested by the State to which Project Co or a Subcontractor has access within 15 Business Days after the relevant Subcontract being entered into; and

(ii) other than in respect of the Key Subcontracts and Management Services Contract, may redact any commercially sensitive information from any Subcontract provided under clause 9.2(b)(i) before it is provided.

9.3 Specific requirements for Key Subcontracts, Significant Subcontracts and Management Services Contract

(a) (**Roles**): Project Co must employ the Key Subcontractors, Significant Subcontractors and Management Services Contractor as specified in the Contract Particulars in the relevant roles specified in the Contract Particulars.

(b) (**Amendments**): Project Co must provide to the State a copy of any amendment it proposes to make to any Key Subcontract, Significant Subcontract or Management Services Contract before it is made.

(c) (**State consent**): Without limiting clause 52.1, Project Co must not, and must ensure that none of the Project Co Associates:

(i) amend or agree to amend, grant an indulgence, waive or accept any waiver of any rights under any Key Subcontract, Significant Subcontract or Management Services Contract in a way that would:

(A) have a material adverse effect on the ability of Project Co to perform and observe its obligations under any Project Document; or

(B) have a material adverse effect on the rights, or increase the liabilities or obligations, of the State under any Project Document, or the ability or capacity of the State to exercise its rights or perform its obligations under a State Project Document; or

(ii) terminate, rescind, novate or assign or agree to any termination, rescission, novation or assignment of any Key Subcontract, Significant Subcontract or Management Services Contract,

without the consent of the State, which will not be unreasonably withheld or delayed.

(d) (**Direct deeds**): Project Co must procure:

(i) an executed direct deed:

(A) from the D&C Contractor, in the form of the D&C Contractor Direct Deed;

(B) from the Services Contractor, in the form of the Services Contractor Direct Deed; and

(C) from each other Key Subcontractor in the form of the Subcontractor Direct Deed (if required by the State); and

(ii) that any Significant Subcontractor execute a direct deed substantially in the form of the Subcontractor Direct Deed in respect of its Significant Subcontract (if required by the State).

(e) (**Prescribed terms**): Project Co must ensure that each Key Subcontract and Significant Subcontract contains provisions expressly recognising and permitting the exercise by the State of its rights under and contains all relevant provisions prescribed by (if applicable), clauses 7.5, 9.1, 9.3, 15.1, 15.3, 16.1(c)(iv), 19, 20.2, 20.4, 26, 35, 38, 39, 44, 45, 46, 47, 52, 55 and 59.1(g).

(f) (**No Liability on termination**): Subject to clause 9.3(g), Project Co must ensure that if this Deed is terminated under clause 46 that the State has no Liability to Project Co in respect of any Liability Project Co may have to any Subcontractor as a consequence of the termination.

(g) (**Subcontractor Termination Amount**): If Project Co:

(i) terminates a Key Subcontract due to the termination of this Deed by the State under clause 46.2; and

(ii) is obliged to pay the Key Subcontractor any amount under that Key Subcontract as a consequence of any such termination (**Subcontractor Termination Amount**),

the State's Liability to Project Co for any Subcontractor Termination Amount that the State is otherwise liable to pay Project Co in accordance with the Termination Payments Schedule due to the termination of this Deed by the State under clause 46.2 must not exceed:

(iii) for work carried out prior to the date of termination, the amount which would have been payable if the Key Subcontract had not been terminated and the Key Subcontractor had submitted a payment claim in accordance with the relevant Key Subcontract for work carried out in accordance with the Key Subcontract to the date of termination;

(iv) the cost of the plant and equipment and other items reasonably ordered by the Key Subcontractor for the Project Activities, that cannot be cancelled without payment provided that:

(A) the value of the plant and equipment and other items has not been previously paid to the Key Subcontractor or otherwise included in an amount payable under this clause 9.3(g); and

(B) title in the plant and equipment and other items will vest in the State upon payment;

(v) the reasonable cost of meeting the obligations in respect of Handover that the Key Subcontractor is required to meet under the Key Subcontract other than to the extent the State has exercised its rights under clause 47.7(a)(ii); and

(vi) the lesser of:

(A) [not disclosed]% of the unpaid balance of the contract sum that would have been payable to the relevant Key Subcontractor in accordance with the Key Subcontract (after deducting the amounts payable in accordance with clauses 9.3(g)(iii), 9.3(g)(iv) and 9.3(g)(v)) but for the termination; and

(B) [not disclosed]% of the unpaid balance of the contract sum that would have been payable to the relevant Key Subcontractor in accordance with the Key Subcontract (after deducting the amounts payable in accordance with clauses 9.3(g)(iii), 9.3(g)(iv) and 9.3(g)(v)) but for the termination, for the 12 month period from the date of the termination.

9.4 Competence

(a) (**Project Co to ensure competence**): Project Co must ensure that all persons employed or engaged on the Project Activities hold appropriate qualifications and have received appropriate training for their intended duties, and provide evidence of such qualifications and training to the State as reasonably requested.

(b) (**Incompetence**): If the State notifies Project Co that, in the State's reasonable opinion, any person employed or engaged on the Project Activities is incompetent, does not meet the standard required by clause 9.4(a), or is negligent, dishonest or guilty of misconduct, then, without limiting Project Co's other obligations under this Deed, Project Co must promptly ensure that such person is removed from performing any Project Activities for the remainder of the Project.

9.5 Payment of amounts owed to Subcontractors

(a) (**Payment to Key Subcontractors and Significant Subcontractors**): Project Co must ensure that:

(i) all Key Subcontractors and Significant Subcontractors are paid in accordance with the terms of their Subcontracts; and

(ii) each Key Subcontract and Significant Subcontract contains an equivalent provision to clause 9.5(a)(i) in relation to that Subcontract and Subcontractor.

(b) (**Payment to other Subcontractors**): Project Co must use reasonable endeavours to ensure that all Subcontractors (other than Key Subcontractor and Significant Subcontractors) are paid in accordance with the terms of their Subcontracts.

(c) (**Copies of notices under Security of Payment Act**): Project Co must ensure that, within:

(i) 2 Business Days after any notice under the *Building and Construction Industry Security of Payment Act 2002* (Vic) (**Security of Payment Act**) (excluding any "payment claim" or "payment schedule" as those terms are defined under the Security of Payment Act) is given to or received by Project Co from any Subcontractor; or

(ii) 2 Business Days after notice of a Subcontractor's intention to suspend work under a Subcontract in accordance with the Security of Payment Act is given to, or received by, Project Co from any of its Subcontractors,

a copy of that notice is given to the State.

(d) (**Suspension under Security of Payment Act**): If a Subcontractor has become entitled to suspend work under a Subcontract in accordance with the Security of Payment Act because of a failure by Project Co or any Project Co Associate to pay amounts to the Subcontractor, the State may pay to the Subcontractor the amount owing to the Subcontractor in connection with that work, and any amount so paid by the State, will be a debt due and payable by Project Co to the State.

(e) (**State may pay Subcontractors**): Notwithstanding clause 9.5(d), if any amount is:

(i) certified as payable; or

(ii) otherwise due and payable,

to a Subcontractor under a Subcontract, and Project Co or any Project Co Associate does not satisfy its obligations to pay such amount to that Subcontractor in accordance with that Subcontract, then the State may pay such amount to that Subcontractor provided it has given Project Co 10 Business Days' notice of its intention to do so, and any amount so paid by the State will be a debt due and payable by Project Co to the State.

9.6 Notification of Subcontractor claims and disputes

Project Co must notify the State Representative:

(a) (**existence of claims and disputes**): of the existence of any claims or disputes of which it is aware that have arisen under any Key Subcontract, Significant Subcontract or a Subcontract to a Key Subcontractor or Significant Subcontractor (regardless of whether Project Co is a party to that Subcontract), if the claims process or dispute resolution process under that Subcontract has been activated by any party to it; and

(b) (**resolution of claims and disputes**): when and how any such claims or disputes have been resolved.

9.7 Obligations as to Claims made on pass-through basis

Project Co must, in circumstances where it makes any Claim against the State as a consequence of a Claim that has been made by a Subcontractor against Project Co:

(a) (**ensure claim is bona fide**): take reasonable steps to ensure that any such Claim made by the Subcontractor is bona fide, including that the Claim:

(i) is made in good faith;

(ii) has a genuine legal, technical or factual basis; and

(iii) the amount of compensation claimed (if any) is not grossly in excess of the amount that the Subcontractor can reasonably expect to recover.

prior to making any related Claim against the State;

(b) (**notice of steps taken by Project Co**): notify the State of the steps it has taken, including in accordance with clause 9.7(a), prior to or at the same time it makes the Claim against the State; and

(c) (**notice of resolution of subcontractor claim against Project Co**): notify the State when and how such a Claim is resolved.

9.8 Industrial issues

Project Co:

(a) (**sole responsibility**): has sole responsibility for and must manage all aspects of industrial relations in connection with the Project Activities; and

(b) (**State to be kept informed**): must keep the State fully and immediately informed of industrial relations issues or action which affect or are likely to affect the carrying out of the Project Activities and what action or measures (including settlements) Project Co has taken or proposes to take to overcome the effects of such industrial relations issues or action.

9.9 Proof Engineer

(a) (**Appointment**): Project Co must:

(i) with the D&C Contractor, jointly engage the Proof Engineer; and

(ii) ensure that, where the engagement of the Proof Engineer is terminated or otherwise ceases, it engages another person to act as Proof Engineer.

(b) (**Approval**): Any Proof Engineer appointed by Project Co under clause 9.9(a) must:

(i) be reasonably acceptable to the State;

(ii) have appropriate qualifications and experience; and

(iii) be engaged on terms reasonably acceptable to the State.

(c) (**Obligations**): Project Co must ensure that the Proof Engineer:

(i) complies with the requirements of the Proof Engineer set out in the State Project Documents; and

(ii) provides such information, assistance and documentation to the Independent Reviewer and gives such access to the Independent Reviewer (and any person authorised by the Independent Reviewer) as may be reasonably required by the Independent Reviewer (and any person authorised by the Independent Reviewer) for the purpose of performing its role and functions under this Deed and the Independent Reviewer Deed of Appointment.

9.10 Unplanned Rail Disruption

Project Co must not (and must procure its Project Co Associates not to) cause any disruption to tram or train operations in connection with the Project, other than any disruption that occurs during any Agreed Occupation or period of track access permitted by a Rail Franchisee or other relevant rail entity with jurisdiction in connection with the occupation or access (but only to the extent permitted by that agreed track occupation or agreed period of track access).

PART D - SITE

10. Project and Site Information

10.1 No representations or warranties from the State

Project Co acknowledges and agrees that except as expressly provided by this Deed, neither the State nor any State Associate has made or makes any representations, has given any warranties or guarantees or owes any duty of care in respect of:

(a) (**Project Information**): the accuracy, suitability, adequacy or completeness of the Project Information;

(b) (**Project Area**):

(i) title to the Project Area or adequacy of or access to the Project Area and its surroundings for the Project; or

(ii) any Site Conditions;

(c) (**Utility Infrastructure**): the existence, location, condition or availability of any Utility Infrastructure;

(d) (**Easement**): any Easements or rights of way; or

(e) (**asset condition**): the existence, adequacy, location, condition (including the fitness for purpose), type, number, availability or suitability of any Project Assets including those made available to Project Co by or on behalf of the State or VicRoads during the Term.

10.2 No State liability for review

(a) (**No obligation**): The State does not owe any duty of care to Project Co to (including to procure or ensure that any of the State Associates) review or inspect:

(i) the Project Co Material submitted by Project Co (even if required to be submitted in accordance with the Review Procedures); or

(ii) the Project Activities or the Project Assets,

for Defects, other errors or omissions or for compliance with the State Project Documents or any Laws or Standards.

(b) (**No relief**): No:

(i) inspection, review or comment upon, acceptance or rejection of, approval or certification of, or failure to review or comment upon, accept or reject or approve or certify any Project Co Material, Project Activities or the Project Assets by the State or any State Associate; or

(ii) failure by (or on behalf of) the State or any State Associate, to detect any non-compliance by Project Co with its obligations under the State Project Documents or any Laws or Standards,

will:

(iii) relieve Project Co from, or alter or affect, its Liabilities, obligations or responsibilities whether under the State Project Documents or otherwise according to Law;

(iv) evidence or constitute the granting of an extension of time or a request or direction to accelerate, disrupt, prolong or vary any or all of the Project Activities;

(v) prejudice the State's rights against Project Co whether under the State Project Documents or otherwise according to Law; or

(vi) constitute an approval by the State of Project Co's performance of its obligations under the State Project Documents.

10.3 Representations and warranties by Project Co

(a) (**Project Co representations**): Project Co acknowledges and agrees that:

(i) (**entry into State Project Documents**): it enters into the State Project Documents based on its own investigations, interpretations, deductions, information and determination;

(ii) (**opportunity to investigate**): it was given the opportunity to itself undertake, and to request others to undertake, tests, enquiries and investigations:

(A) relating to the subject matter of any Project Information existing prior to the date of this Deed; and

(B) of the Project Area and its surroundings;

(iii) (**Project Information**): any Project Information provided by or on behalf of the State or any State Associate is provided for the information only of Project Co;

(iv) (**Site Information Reports**): the Site Information Reports are not provided to Project Co by or on behalf of the State or any State Associate;

(v) (**no invitation, offer or recommendation**): the Project Information does not form part of the State Project Documents or constitute an invitation, offer or recommendation by or on behalf of the State or any State Associate;

(vi) (**no reliance**): it did not rely upon any Project Information or any other information, data, representation, statement or document provided by or on behalf of the State or any State Associate, or the accuracy, adequacy, suitability or completeness of the Project Information for the purposes of entering into the State Project Documents or delivering the Project;

(vii) (**adequacy of PSDR and Concept Design**): without limiting clause 5.6(d), it has satisfied itself that there is nothing in the Project Documents which would prevent:

(A) the Project Assets from being Fit For Purpose; or

(B) the Services from being carried out in accordance with the PSDR;

(viii) (Intellectual Property Rights): all Intellectual Property Rights in the Project Information remain the property of the State, the relevant State Associate or the Site Information Report Providers (as the case may be); and

(ix) (**State entry into Deed**): the State has entered into the State Project Documents relying upon the warranties, acknowledgements, representations and agreements of Project Co set out in this Deed.

(b) (**Project Co warranties**): Project Co warrants that it has, and will be deemed to have, done everything (including all assessments, tests or studies of the Project Area and its surroundings and making all reasonable enquiries with all relevant Utility providers in respect of the existence, adequacy, location, condition, completeness or availability of Utility Infrastructure on, or in connection with, the Project Area) that would be expected of a prudent, competent and experienced person in the position of Project Co exercising Best Industry Practices:

(i) in assessing the risks regarding Site Conditions;

(ii) in ensuring that this Deed contains allowances to protect it against any of these risks eventuating;

(iii) in order to determine the suitability of the Project Area and its surroundings for the Project;

(iv) in assessing the existence, adequacy, location, condition (including fitness for purpose), type, number, availability and suitability of the Project Assets (including those made available to Project Co by or on behalf of the State or VicRoads pursuant to this Deed as at Financial Close); and

(v) in assessing the Project Activities that it needs to carry out to enable Project Co to comply with its obligations arising out of or in connection with the Project Documents.

11. The Site

11.1 Environmental issues

(a) (**No Hazardous Substance**): Project Co must not and must procure that any Project Co Associate does not:

(i) abandon or dump any substance or material which is potentially harmful to human beings, any property or the Environment (**Hazardous Substance**) in, on, over or under the Project Area; or

(ii) except as authorised by Law, and then only as necessary to carry out the Project Activities, remove, handle, disturb, discharge or release any Hazardous Substance in, on, over or under the Project Area or cause any Hazardous Substance to migrate from the Project Area in a manner which is likely to cause or contribute to an Environmental Hazard.

(b) (**Environmental responsibility**): Project Co must:

(i) (**Environmental responsibility**): at all times carry out the Project Activities in accordance with the Environmental Requirements and the applicable Environmental Management Plan;

(ii) (**notification**): immediately notify the State of any non-compliance or alleged or potential non-compliance with any Environmental Requirements, the applicable Environmental Management Plan or any applicable Environmental Management Plan;

(iii) (**manage waste disposal**): subject to clause 11.1(b)(iv), manage and be responsible for the handling and proper disposal or removal of all waste, rubbish, debris, redundant materials, spoil and Hazardous Substances produced by the Project Activities in accordance with all Environmental Requirements, the applicable Environmental Management Plan and the requirements of this Deed;

(iv) (**directions**): comply with all directions given by the State (acting reasonably) regarding the removal from the Project Area and disposal of any Hazardous Substance;

(v) (**Contamination and Pollution**): not cause, contribute to, disturb or interfere with any Pollution or Contamination, other than to the extent expressly permitted by a State Project Document; and

(vi) (**Development Phase Area**): at all times keep the Development Phase Area clean and tidy.

11.2 Native Title Claims and Heritage Claims

(a) (**Native Title**): As between the State and Project Co, the State is responsible for:

(i) dealing with any Native Title Claim in connection with any part of the Project Area; and

(ii) the payment of any compensation or other amount required to be paid to the native title holders of any part of the Project Area as a consequence of a successful Native Title Claim.

(b) (**Artefacts**): If an Artefact is discovered on or under the surface of the Project Area:

(i) as between the State and Project Co, it will be the absolute property of the State; and

(ii) Project Co must:

(A) immediately notify the State of the discovery;

(B) permit the State to watch or examine any excavation or treatment on the Project Area; and

(C) take every reasonable precaution in carrying out the Project Activities so as to prevent Artefacts being damaged, removed, disturbed or destroyed until appropriate arrangements for dealing with, or removing, the Artefacts have been made.

(c) (**Project Co must continue to carry out**): If there is a:

(i) Native Title Claim or Heritage Claim in connection with; or

(ii) discovery of Artefacts on, under or over,

any part of the Project Area, Project Co must:

(iii) continue to carry out its obligations under this Deed, except to the extent otherwise:

(A) directed by the State;

(B) ordered by an order of a court or tribunal of competent jurisdiction; or

(C) required by Law; and

(iv) provide all reasonable assistance to the State in connection with dealing with the Native Title Claim, Heritage Claim or Artefact.

(d) (**State directions**): Project Co must comply with all reasonable directions of the State concerning Artefacts on, under or over the Project Area and the protection of Aboriginal Cultural Heritage.

11.3 Interference, obstruction and nuisance

(a) (**Project Co's obligations**): In undertaking the Project Activities, Project Co must:

(i) not interfere with the free movement of traffic (vehicular and pedestrian) into and out of, adjacent to, around, on or about the Project Area except to the extent such interference is a direct and unavoidable result of carrying out and completing the Project Activities in accordance with the State Project Documents;

(ii) prevent nuisance including any nuisance caused by unreasonable noise, dust, light emission, vibration or disturbance, air pollution, odour on or adjacent to the Project Area above the levels required in the Environmental Management Plan and the Environmental Requirements;

(iii) ensure the safety of people and property in accordance with Best Industry Practices;

(iv) give priority to and minimise the impact on the safety of persons or property; and

(v) on completion of any Project Activities, remove all temporary protection or other structures or equipment erected in connection with those Project Activities as soon as practicable, and in accordance with Best Industry Practices.

(b) (**Unreasonable levels of nuisance or interference**): If, in the reasonable opinion of the State or the Independent Reviewer, Project Co has failed to meet its obligations under clause 11.3(a), Project Co must comply with any reasonable direction of the State or any determination of the Independent Reviewer to:

(i) stop or change the manner of undertaking the Project Activities; and

(ii) amend the applicable Project Plan to Cure the nuisance or interference and submit it to the State for review in accordance with the Review Procedures.

11.4 Traffic management

(a) (**Traffic management**): Subject to the *Road Management Act 2004* (Vic) (**Road Management Act**), the powers and functions of any relevant road authority under

the Road Management Act and the Required Road Management Powers delegated to Project Co, Project Co or a Project Co Associate must, during the carrying out of the Project Activities, manage all traffic on, to and from, the Project Area (as the case may be) but only to the extent affected by those Project Activities to ensure:

(i) the safe, efficient and continuous movement of traffic;

(ii) that any traffic congestion, delays or disruptions to roads, public transport, pedestrians, cyclists, or any shared use path are minimised; and

(iii) that Project Co otherwise complies with the requirements of this Deed.

(b) (**Compliance**): Project Co must:

(i) at all times when performing the Project Activities comply with the Traffic Management Strategy, Road Management Act, the *Road Safety Act 1986* (Vic) and the requirements of this Deed in connection with traffic management; and

(ii) comply with the directions of the State and any relevant road authority under the Road Management Act in connection with the management of traffic.

11.5 Security

Without limiting anything in the PSDR and Concept Design, Project Co must provide reasonable security measures in accordance with Best Industry Practices or otherwise as are provided on similar projects (by parties performing similar activities to Project Co) for the protection and security of the Project Assets against theft, vandalism, unauthorised entry into the Project Area and any other unlawful acts.

11.6 Contamination

(a) (**Contamination Notice**): Each party must promptly provide the other with a copy of any Contamination Notice served on it, and of all related correspondence which precedes or follows the issuing of the Contamination Notice.

(b) (**Notification**): If either party discovers any Contamination in, on, over or under the Project Area or the Rail Land or that has emanated or migrated, or is emanating or migrating, from or to the Project Area or the Rail Land or in the direct vicinity of the Project Area or the Rail Land (whether or not that party has caused or contributed to that Contamination), it must notify the other party as soon as practicable and, in any event within 5 Business Days after the discovery of the Contamination.

(c) (**Notification requirements**): A notice under clause 11.6(b) must contain, to the extent such details are known at the time the notification is provided, all relevant details in relation to the Contamination, including:

(i) the type of Contamination;

(ii) the location of the Contamination;

(iii) the nature and extent of the Contamination; and

(iv) whether it considers the Remediation of the Contamination will give rise to a Contamination Compensation Event.

(d) (**Further notice**): Project Co must notify the State of any further relevant details of the Contamination in accordance with clause 11.6(b) to the extent such details are not included in the initial notice delivered in accordance with clause 11.6(b), as soon as reasonably practicable after becoming aware of those details.

(e) (**Remediation**): Project Co must Remediate any Contamination (or part of a mass of Contamination):

(i) that Project Co or any Project Co Associate has caused or contributed to and which is in, on, over or under the Project Area or the Rail Land or in the direct vicinity of the Project Area or the Rail Land to the extent that such Remediation is required to:

(A) comply with any Law;

(B) ensure that there is no unacceptable risk of harm to human health or the Environment as a consequence of the Contamination, having regard to the use of the Project Area or the Rail Land for the purposes of the Project and Best Industry Practice;

(C) prevent the migration of the Contamination from the Project Area or the Rail Land to adjoining sites; or

(D) ensure that the Project Area is Fit for Purpose and the Rail Land is fit for purpose (and where the Contamination is located in the direct vicinity of the Project Area or the Rail Land, that other area is fit for its purpose);

(ii) that Project Co is required to Remediate to meet the requirements of an Approval;

(iii) that is encountered, disturbed or interfered with by Project Co or any Project Co Associate to the extent that:

(A) such Contamination is:

1) in, on, over or under the Project Area; or

2) in the direct vicinity of the Project Area (where it is part of Contamination that is also in, on, over or under the Project Area) and Project Co is required to Remediate such Contamination in accordance with Best Industry Practice; and

(B) such Remediation is required to:

1) comply with any Law;

2) ensure that there is no unacceptable risk of harm to human health or the Environment as a consequence of the Contamination, having regard to the use of the Project Area for the purposes of the Project and Best Industry Practice;

3) prevent the migration of the Contamination from the Project Area to adjoining sites; or

4) ensure that the Project Area is Fit For Purpose (and where the Contamination is located in the direct vicinity of the Project Area, that other area is fit for its purpose); or

(iv) that is in, on, under or over an area that is not the Project Area or the Rail Land or the area in the direct vicinity of the Project Area or the Rail Land because it has migrated from the Project Area or the Rail Land or the area in the direct vicinity of the Project Area or the Rail Land and:

(A) Project Co or any Project Co Associate has caused or contributed to that Contamination; and

(B) the Contamination is the subject of a Contamination Notice; or

(v) in, on, over or under the Project Area:

(A) that is the subject of a Contamination Notice to Project Co or any Project Co Associate and which Project Co is not otherwise required to Remediate in accordance with clause 11.6(e)(i), clause 11.6(e)(ii), clause 11.6(e)(iii) or clause 11.6(e)(iv); or

(B) which the State directs Project Co to Remediate and Project Co is not otherwise obliged to Remediate in accordance with clause 11.6(e)(i), clause 11.6(e)(ii), clause 11.6(e)(iii), clause 11.6(e)(iv) or clause 11.6(e)(v)(A),

regardless of whether the Contamination occurred before or after Project Co was given access to the Project Area or the Rail Land (as applicable).

(f) (**Disputing a Contamination Notice**): Nothing in this clause 11.6 prevents Project Co from disputing the issue of a Contamination Notice with the Environment Protection Authority constituted under the *Environment Protection Act 1970* (Vic) or taking an action against a third party with respect to the Contamination.

(g) (**Parties not to cause service of a Contamination Notice**): Subject to their respective obligations at Law, neither party will do anything with the intent, directly or indirectly, of causing or being likely to cause the issue or service of a Contamination Notice.

11.7 Project Co's entitlement to compensation for Remediation

(a) (**Contamination Compensation Event**): To the extent that Project Co is required to Remediate Contamination in accordance with clause 11.6(e)(v) **(Contamination Compensation Event)** this will be deemed to be a Modification in respect of which Project Co may submit a Modification Proposal in accordance with clause 35.2(b) and Project Co's entitlements will be determined in accordance with clause 35 and the Change Compensation Principles as if the Contamination Compensation Event was a State Initiated Modification.

(b) (**Conditions for Project Co Claim**): Project Co is not entitled to make any Claim against the State in respect of any Contamination Compensation Event (including its impact) unless it has given notice in accordance with clause 11.6(b) and clause 35.2(b)(ii).

12. Utilities

Project Co must:

(a) (**enquiries**): make enquiries as to the location of existing Utility Infrastructure and liaise with the owner of that Utility Infrastructure and the relevant Utility provider as to the need for any potential relocation, protection or decommissioning of the Utility Infrastructure (as applicable);

(b) (**inform the State**): consult with and keep the State fully informed as to Project Co's dealings with the Utility providers and owners of Utility Infrastructure;

(c) (**provide information**): upon request from the State, provide the State and VicRoads with any information or supporting documentation in its possession or control required by the State and VicRoads in relation to Utility Infrastructure or any Utility Agreements;

(d) (**no breach**): to the extent the State or VicRoads is a party to any utility agreement with a Utility provider in connection with the Project, do all things reasonably requested or necessary to enable the State or VicRoads to comply with their obligations under, and not cause the State or VicRoads to breach the terms of any utility agreement, provided that the State or VicRoads provides Project Co with reasonable access to, or notice of, the terms of any such utility agreement;

(e) (**risk**): assume all risk in relation to:

(i) the existence, location, condition and availability of Utility Infrastructure and the continuous supply and sufficiency of Utilities in connection with the Project Activities;

(ii) the need to relocate, protect or modify, or procure the relocation, protection or modification of, such Utility Infrastructure to the extent necessary for the Project Activities, including in accordance with the requirements of Utility providers; and

(iii) any access to the Site or interference with the Project Activities by or on behalf of a Utility provider;

(f) (**Utility works**): undertake, or procure (at its own cost) that a Utility provider undertakes, all work in connection with protecting, relocating, modifying and providing all Utility Infrastructure necessary for Project Co to comply with its obligations under the State Project Documents as part of the Returned Assets and to ensure that the relevant Utility provider and its subcontractors remediate any Project Asset affected by those works;

(g) (**supply**): obtain Utilities required for the Project Activities;

(h) (**Utility Agreements**): negotiate and enter into (or procure that the D&C Contractor or the Services Contractor (as applicable) enters into) all Utility Agreements for the supply of Utilities for the Project Activities;

(i) (**payment for Utility Infrastructure**): obtain and bear the Cost of any Utility Infrastructure (including connections, protection, modification and relocation) required to carry out its obligations under the State Project Documents, including in respect of any agreement entered into by VicRoads or the State with a Utility provider in connection with the relocation, protection, modification or provision of Utility Infrastructure to the extent necessary for the Project Activities or the VIVA Works;

(j) (**payment for Utilities**): pay for, or procure that the D&C Contractor or Services Contractor (as applicable) pays for, all Utilities consumed or used in connection with the Project Activities in accordance with any agreements entered into with Utility providers, including any other costs, expenses or charges incurred in connection with the supply, consumption or use of such Utilities;

(k) (**State consent**): obtain the State's consent (such consent not to be unreasonably withheld or delayed) in relation to:

(i) any proposal to construct any Utility Infrastructure outside the Project Area; and

(ii) the exact location of any Utility Infrastructure within or outside of the Project Area;

(l) (**notice**): notify the State and VicRoads at least 10 Business Days before any planned connection, disconnection or interference with, removal, relocation or carrying out works on Utility Infrastructure and liaise with the State and VicRoads as to how best to manage the connection, disconnection, interference with, removal, relocation or carrying out of works taking into account the nature and requirements of the Project Area, the State, any State Associate, all relevant Interface Parties and all relevant Utility providers;

(m) (**access**): give all Utility providers reasonable access to any part of the Project Area to undertake any work or provide any service in respect of the Utilities;

(n) (**no damage**): not damage or destroy the Utility Infrastructure; and

(o) (**no disruption**): not unreasonably disrupt or interfere with any Utility Infrastructure or the supply of Utilities.

13. Land

13.1 Property Committee

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

(a) at least two representatives from the State; and

(b) two representative from Project Co,

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

13.2 Land Availability Plans

(a) (**State to make available**): The State must make each relevant parcel of land specified in the Land Availability Plans available to Project Co by the dates specified for that parcel of land in the Land Availability Plans and otherwise in accordance with the terms of this Deed:

(i) pursuant to the terms of the Initial Licence in accordance with clause 13.5;

(ii) pursuant to the terms of the Maintenance Phase Licence (Full), in accordance with clause 13.6; or

(iii) by an alternative process determined by the State.

(b) (**no other rights**): Except as provided for in this clause 13, the State has no obligation to provide Project Co with any rights identified in the Land Availability Plans relating to land.

(c) (**adjustment of Land Availability Plans**): The Land Availability Plans may only be adjusted in accordance with clause 13.3.

13.3 Adjustment of Land Availability Plans

(a) (**Project Co may request**): Project Co may submit a notice to the State for review in accordance with the Review Procedures, requesting that the Land Availability Plans be amended to:

(i) include additional parcels of land; or

(ii) amend the availability date of an existing parcel of land referred to in the Land Availability Plans.

(b) (**Project Co's notice**): Project Co's notice under clause 13.3(a) must include details of:

(i) in connection with an additional parcel of land:

(A) the additional parcel of land (including height and depth) required by Project Co;

(B) the purpose for which Project Co requires that additional parcel of land;

(C) the date by which Project Co reasonably anticipates it requires access to the additional parcel of land; and

(D) any consequential amendments required to the Land Availability Plans or any Lane Closures or Lane Speed Reductions; and

(ii) in connection with an existing parcel of land, the amended availability date being requested.

(c) (**State may exercise powers**): Within a reasonable period following receipt of a notice under:

(i) clause 13.3(a)(i), if the State has the power to enable it to do so; or

(ii) clause 13.3(a)(ii), if the State is reasonably able to make the parcel of land available by the proposed Land Availability Date,

the State may:

(iii) agree to amend the Land Availability Plans under clause 13.3(f); or

(iv) advise Project Co that it will not accede to the request made by Project Co under clause 13.3(a).

(d) (**Project Co accepts all risks**): Project Co accepts all risks under this clause 13.3, including:

(i) the risk of any unavailability or delay in making a parcel of land available, where the State exercises its powers under clause 13.3(c)(iii);

(ii) any risk arising as a result of compliance with the conditions imposed by the State under clause 13.3(c)(iii);

(iii) all costs incurred by the State (including land acquisition costs), where the State exercises its powers under clause 13.3(c)(iii), which will be a debt due and payable by Project Co to the State; and

(iv) the risk that the State does not accede to a request in accordance with clause 13.3(c)(iv).

(e) (**Payment as a condition of exercise of power**): The State may, as a condition of exercising its powers under clause 13.3(c)(iii), require Project Co to deposit sufficient funds into its nominated bank account in order to meet all costs that the State reasonably anticipates that it will incur as a result of the exercise of its powers.

(f) (**Adjustment of the Land Availability Plans**): If the State agrees to amend the Land Availability Plans under clause 13.3(c)(iii), then the Land Availability Plans will be amended by the State to reflect the:

(i) additional parcel of land to be made available by the State and the Land Availability Date for that land, having regard to the date advised by Project Co under clause 13.3(b)(i)(C) and the exercise of the State's powers to make the parcel available; or

(ii) the amended Land Availability Date of an existing parcel of land,

(as the case may be), including any consequential amendments required to remove Land Availability Plans as a result of the inclusion of an additional parcel of land.

13.4 Permitted use

Project Co must not use or permit the use of the Project Area for any purpose other than as permitted under this Deed, the Initial Licence or the Maintenance Phase Licence (Full).

13.5 Initial Licence

(a) (**Initial Licence**) Subject to clause 13.2(a) and the other provisions of this Deed affecting access or granting rights in relation to land, the State must grant, or procure the grant, to Project Co of a non-exclusive licence:

(i) in respect of each part of the Initial Licenced Areas:

(ii) for that part of the Initial Licence Areas, commencing on the later of:

(A) the date of Financial Close; and

(B) to the extent that the Initial Licence Area is the subject of a Land Availability Plan, the relevant Land Availability Date,

or such other date otherwise agreed between the parties;

(iii) substantially in the form of, and on the same terms as, the Initial Licence set out in the Site Access and Tenure Schedule;

(iv) for the purpose of performing the Transition Activities, the Development Activities and, for the Maintenance Phase (Initial), the Services, as relevant in respect of each part of the part of the Initial Licence Areas; and

(v) otherwise on such other terms imposed by the State (acting reasonably):

(A) having regard to any obligations owed by the State to the relevant landowner in respect of that part of the Initial Licence Area;

(B) having regard to the nature, location, hours and mode of construction of the Works and the Services for which the Initial Licence is granted; and

(C) in consultation with the Property Committee.

(b) (**Comply with Initial Licence**): Project Co must comply with the terms of the Initial Licence.

(c) (**Access to Returned Assets for Defect rectification**): The State must grant, or procure the grant of, to Project Co a non-exclusive licence to access, and permit Project Co's Subcontractors to access at all relevant times the Returned Assets for the purpose of Defect rectification under clause 27.

13.6 Maintenance Phase Licence (Full)

(a) (**Maintenance Phase Licence (Full)**): Subject to the Date of Commercial Acceptance having occurred, the State must grant, or procure the grant of, to Project Co, a non-exclusive licence:

(i) in respect of the Maintenance Phase Licence Areas;

(ii) from the Date of Commercial Acceptance until the Expiry Date;

(iii) substantially in the form of, and on the same terms as, the Maintenance Phase Licence (Full) set out in the Site Access and Tenure Schedule;

(iv) for the purpose of performing the Services and the rectification of Defects; and

(v) otherwise on such other terms imposed by the State (acting reasonably):

(A) having regard to the nature and location of Project Co's obligations in relation to the Maintained Assets; and

(B) having regard to any easements, restrictions on use; covenants, agreements or other arrangements applicable to the Maintenance Phase Licence Areas.

(b) (**Comply with Maintenance Phase Licence (Full)**): Project Co must comply with the terms of the Maintenance Phase Licence (Full).

(c) (**Coordination**): Project Co bears the risk of coordinating its access to the Project Area with any other person that uses the access ways to the Project Area.

(d) (**Delivery of Maintenance Phase Licence (Full)**): Not later than 20 Business Days prior to the expected day on which the Date of Commercial Acceptance will

occur, Project Co must prepare and deliver to the State for review in accordance with the Review Procedures three counterparts of the Maintenance Phase Licence (Full) which:

(i) must be substantially in the form of, and on the same terms as, the Maintenance Phase Licence (Full) set out in the Site Access and Tenure Schedule; and

(ii) are executed by Project Co and complete, except for those matters that the State is authorised to complete under clause 13.6(e).

(e) (**Authority to complete**): Project Co authorises the State to complete the Maintenance Phase Licence (Full) by inserting:

(i) the commencement date of the Maintenance Phase Licence (Full), which will be the Maintenance Phase (Full) Commencement Date; and

(ii) any other particulars necessary to complete the Maintenance Phase Licence (Full).

(f) (**Execution**): The State must complete the counterparts of the Maintenance Phase Licence (Full) delivered by Project Co, execute (or procure the execution of) each counterpart and return one of the completed and executed counterparts to Project Co.

(g) (**Licence to have effect from the Maintenance Phase (Full) Commencement Date**): The Maintenance Phase Licence (Full) will come into force and effect on and from the Maintenance Phase (Full) Commencement Date.

(h) (**Whether executed**): Whether or not the Maintenance Phase Licence (Full) has been executed by all parties by the Date of Commercial Acceptance, each party will be bound by the Maintenance Phase Licence (Full) on and from the Maintenance Phase (Full) Commencement Date as if the Maintenance Phase Licence (Full) had been fully completed and executed.

(i) (**Comply with Maintenance Phase Licence (Full)**): Project Co must comply with the terms of the Maintenance Phase Licence (Full).

(j) (**Permitted Use**): Project Co must not use or permit the use of the Maintenance Phase Licence Area for any purpose other than as permitted for the Maintenance Phase under this Deed or the Maintenance Phase Licence (Full).

13.7 All risk (access and make good obligations)

(a) (**Project Co bears risk of obtaining access**): Project Co bears all risks in relation to, and is responsible for, gaining access to and from the Project Area and to and from any land outside the Project Area, to which access is required to carry out the Project Activities, including any failure to gain or delay in gaining access to the Project Area (other than to the extent arising out of a failure by the State to comply with its obligations under clause 13.2(a)(iii), clause 13.5(a), clause 13.5(c) or clause 13.6(a)).

(b) (**Coordination**): Project Co bears the risk of coordinating its access to the Project Area with any other person that uses, or is entitled to use, the Project Area.

(c) (**Progressive removal of materials and make good**): Project Co must, in accordance with the terms of the Initial Licence and the Maintenance Phase Licence (Full) (as relevant) and the requirements of all Authorities and other relevant parties having jurisdiction in connection with the Project Activities, remove

all temporary equipment, facilities and vehicles and make good all damage or Contamination caused by Project Co's use and occupation of that part of the Project Area, including removing all rubbish and debris, unless Project Co is expressly not required to do so under this Deed, the Initial Licence or the Maintenance Phase Licence (Full).

(d) (**Access to Dohertys Road Bridge Works Site**): Notwithstanding any provision of any State Project Document to the contrary, Project Co bears all risks in relation to, and is responsible for, gaining access to and from the Dohertys Road Bridge Works Site after the Vacate Date, and Project Co will not be entitled to make any Claim against the State, any State Associate or VicRoads in connection with such matters.

(e) (**Project Co must demobilise by the Vacate Date**): Notwithstanding any other provision of this Deed, including clauses 45.4(h), 45.4(i) and any Cure Program provided to the State under clause 45.4(a), Project Co must completely demobilise from the Dohertys Road Bridge Works Site by the Vacate Date unless Project Co provides written evidence satisfactory to the State confirming that WGT Project Co consents to Project Co remaining on the Dohertys Road Bridge Works Site after the Vacate Date.

(f) (**No Default Termination Event if access obtained**): For the avoidance of doubt, a Default Termination Event will not arise under paragraph (j) of the definition of Default Termination Event if Project Co provides written evidence satisfactory to the State confirming that WGT Project Co consents to Project Co remaining on the Dohertys Road Bridge Works Site after the Vacate Date.

13.8 Termination of this Deed

If this Deed is terminated, Project Co:

(a) (**no entitlement**): ceases to have any entitlement to call for the grant of any licence in connection with any land within the Project Area; and

(b) (**no right or interest**): has no right, interest or entitlement (whether legal or equitable) in, or to any part of, the Project Area.

14. Occupations

Project Co must comply with the requirements set out in Schedule 26.

15. State access and Project monitoring

15.1 State's right to enter, inspect and test

(a) (**Right of entry**): Subject to clause 15.1(b), Project Co must not prevent the State, any State Associate, the Independent Reviewer and any other person directly authorised by the State, entering any part of the Site to:

(i) inspect, observe or test any part of the Project Assets or the Project Activities;

(ii) conduct any State Audit in accordance with clause 15.3 or Asset Condition Survey in accordance with clause 15.4;

(iii) exercise any right (including any step-in right), power or function or carry out any obligation which the State has under any State Project Document or Law;

(iv) observe any Acceptance or Milestone Completion (as applicable) tests;

(v) examine and make copies of all Project Co Material requested of Project Co or any Subcontractor in connection with the Project; or

(vi) take such other action as the State considers necessary to discharge its legal, executive or statutory rights, duties or functions.

(b) (**Conditions of access**): When entering any part of the Site controlled by Project Co (or any Project Co Associates) the State must, and must ensure any State Associate and any other person authorised to enter that part of the Site by the State:

(i) only does so during Business Hours or upon giving reasonable notice to Project Co (except in the case of an Emergency that occurs on or in respect of the Project Area when no notice is required);

(ii) complies with the Site Access and Interface Protocols;

(iii) does not unnecessarily interfere with the carrying out of the Project Activities; and

(iv) does not damage the Project Assets or the Site.

(c) (**Project Co Material**): Subject to clause 15.1(b), at all times during the Term, Project Co must give the State access to all Project Co Material.

(d) (**State occupation of Maintenance Phase Area**): At all times during the Maintenance Phase, the State, the State Associates and any person authorised by the State will have free and unfettered access to Project Co's officers to discuss Project Co's activities or those of any Subcontractor relating to the Services, at such times and as often as may be reasonably requested by any such person, provided that the discussions:

(i) may be supervised by Project Co if required; and

(ii) do not unreasonably disrupt the duties of the relevant officer.

(e) (**Project Co to assist**): If requested by the State, Project Co must assist the State in connection with any access, observation, inspection or testing including:

(i) providing access to such part of the Project Assets and all Project Co Material as may be required by the State;

(ii) preparing and providing such samples of materials used in connection with the Project Assets as required by the State; and

(iii) if requested by the State, carrying out any tests (including tests reasonably required by the State that are not otherwise required by this Deed) and providing the results of those tests to the State.

(f) (**Project Assets not to be covered up**):

(i) The State may direct that any part of the Project Assets must not be covered up or made inaccessible without the State's approval, which will not be unreasonably withheld or delayed.

(ii) If a direction has been given under clause 15.1(f)(i) and a part of the Project Assets has been covered up or made inaccessible without the State's approval and the State wishes to inspect or test this part of the Project Assets, Project Co must uncover or make accessible such part of the Project Assets.

(g) (**Costs of inspection or testing**): Subject to clause 15.3(g) the State will bear the costs incurred by it and must pay Project Co the extra actual costs properly and reasonably incurred by Project Co in connection with any test or inspection undertaken by the State in accordance with this clause 15.1, unless:

(i) the inspection or test is in connection with Project Assets covered up or made inaccessible without the State's approval if such approval was required;

(ii) the inspection or test reveals a Defect or shows that the Project Activities are not in accordance with the requirements of this Deed; or

(iii) the inspection or test was otherwise required by this Deed to be carried out by Project Co or should have been carried out by Project Co in accordance with Best Industry Practices, and Project Co did not do so,

in which case Project Co will be responsible for its own costs and all reasonable costs incurred by the State in connection with the inspection or test, which will be a debt due and payable by Project Co to the State.

15.2 Public access areas

Project Co acknowledges that those parts of the Project Area available for public access are not part of the Project Area controlled by Project Co for the purposes of clause 15.1 and nothing in this Deed fetters the State's right to access such areas.

15.3 State audits

(a) (**Audit for compliance**): The State may initiate an audit at any time to verify Project Co's compliance with its obligations under the State Project Documents and the Project Plans and its capacity to continue to do so (**State Audit**).

(b) (**Project Co obligations**): Project Co must:

(i) provide, and procure that any relevant Project Co Associates provide, all Project Co Material requested by the State or any State Associate undertaking the State Audit that is relevant to the conduct of the State Audit;

(ii) arrange for those undertaking the State Audit to meet with any Project Co Associates that they nominate; and

(iii) provide, and procure that any relevant Project Co Associate provide, the State or any person carrying out the State Audit all other assistance and information reasonably required by the State.

(c) (**Audit**): A State Audit may include examination of:

(i) the Project Assets or any part of the Project Assets;

(ii) the carrying out of the Project Activities;

(iii) Project Co Material;

(iv) the amount of the recurrent Maintenance Base Costs being paid to Project Co for a Change Compensation Event; and

(v) Project Co's and any Project Co Associate's processes and methodologies.

(d) (**Minimise disruption**): The State must use reasonable endeavours to minimise any disruption a State Audit might cause to Project Activities.

(e) (**Provision of audit report**): Subject to clause 15.4(b) in respect of Asset Condition Survey reports, the State may provide a copy of any report prepared as a consequence of a State Audit to Project Co and any relevant Project Co Associates and may require Project Co and any relevant Project Co Associates to attend a meeting to discuss the State Audit report.

(f) (**Cure of failures**): If a State Audit report provided to Project Co reveals any failure on the part of Project Co or any Project Co Associate to comply with any of its obligations under the State Project Documents or Project Plans, then, Project Co must promptly take such steps necessary to Cure or mitigate those failures and the effect of those failures.

(g) (**Costs**): Project Co will not be liable for any costs incurred by the State in performing State Audits in accordance with this clause 15.3 unless a State Audit establishes that Project Co is or has been in material breach of this Deed, or has acted improperly in the performance of any of the Project Activities, in which case the State's reasonable costs of performing the State Audit are to be paid by Project Co as a debt due and payable by Project Co to the State.

(h) (**Auditor-General's rights**): Without limiting this clause 15.3, the parties acknowledge and agree that, notwithstanding any provision of any State Project Document to the contrary:

(i) the powers and responsibilities of the Auditor-General for the State of Victoria under the *Audit Act 1994* (Vic) (or any substituted legislation) are not limited or affected by the terms of any State Project Document and each party submits to those powers and responsibilities;

(ii) the State or Project Co may be the subject of an audit by the Auditor-General pursuant to section 94A of the *Constitution Act 1975* (Vic) or the *Audit Act 1994* (Vic); and

(iii) without limiting clause 15.3(h)(i), Project Co undertakes to the State that it will, and it will procure that each Project Co Associate will, at its own cost, co-operate and fully comply with the directions and requests of the Auditor-General and the State in relation to any audit referred to in clause 15.3(h)(ii).

(i) (**Not a State Audit**): An audit referred to in clause 15.3(h)(ii) is not a State Audit.

15.4 Asset Condition Survey

(a) (**Purpose and notice**): If a State Audit involves the Maintained Assets and is to assess whether Project Co is maintaining those Maintained Assets in accordance with the requirements of this Deed (**Asset Condition Survey**), the State:

(i) will consult with and then notify Project Co at least 10 Business Days in advance of the date it wishes to carry out or procure the carrying out of each Asset Condition Survey;

(ii) will not undertake the Asset Condition Survey more than once every year after the Date of Commercial Acceptance and that survey may only be undertaken by the State during January in any such year;

(iii) will not undertake an Asset Condition Survey after the appointment of the Handover Reviewer under clause 47.5; and

(iv) will notify Project Co of any person it appoints to conduct the Asset Condition Survey and prepare the Asset Condition Report.

(b) (**Provision of report**): The State must provide Project Co with a copy of the Asset Condition Survey report.

(c) (**Discussion and agreement**): The Project Control Group must discuss the contents of the Asset Condition Survey report provided in accordance with clause 15.4(b) and seek to agree:

(i) any action Project Co must undertake to ensure that it meets the requirements set out in clauses 5.1 and 5.5; and

(ii) the time within which any such action must be undertaken,

within 20 Business Days after Project Co receives the Asset Condition Survey report.

(d) (**State direction**): To the extent that the parties are unable to reach an agreement in accordance with clause 15.4(c), the State Representative may (acting reasonably and in accordance with the findings of the Asset Condition Survey) direct Project Co as to:

(i) any action Project Co must undertake to meet the requirements referred to in clauses 5.1 and 5.5; and

(ii) the time in which any such action must be undertaken by Project Co.

15.5 Performance data audits

(a) (**Audit report**): Project Co must provide to the State, within 30 Business Days after the end of each Maintenance Year from Financial Close up to the end of the Maintenance Phase, an audit report, prepared as a minimum on a "negative assurance basis" by an independent and reputable auditor approved by the State (such approval not to be unreasonably withheld or delayed), who has audited the Performance Data and the Maintenance Phase Reports for that Maintenance Year.

(b) (**Performance Audit Notice**): At any time up to 36 Months after the end of any Maintenance Year, but no later than 12 Months after the Expiry Date, the State may give notice to Project Co requiring an audit of any one or more of the Performance Data, the Maintenance Phase Reports or the operation of the Payment Schedule in

connection with that Maintenance Year to verify their accuracy (**Performance Audit Notice**).

(c) (**Performance Auditor**): If the State gives Project Co a Performance Audit Notice:

(i) the State must appoint and notify Project Co of a person to conduct the audit (**Performance Auditor**), and subject to clause 15.5(d)(v), at the State's cost and on terms reasonably determined by the State; and

(ii) Project Co must, and must procure that any Project Co Associate, within a reasonable period, make the Performance Data, the Maintenance Phase Reports and any information related to the operation of the Payment Schedule (or any of them) available, and provide all necessary assistance (including access to senior management and personnel as reasonably required by the Performance Auditor) to the Performance Auditor.

(d) (**Inaccurate Performance Data or Maintenance Phase Report**): If:

(i) a report provided to the State under clause 15.5(a); or

(ii) the report prepared by the Performance Auditor under clause 15.5(c)(i),

reveals that the Performance Data or an Maintenance Phase Report is not accurate Project Co must:

(iii) fix the inaccuracy and reissue the relevant data or report to the State within 5 Business Days after Project Co receives the relevant report;

(iv) to the extent it is identified as inaccurate in the report prepared by the Performance Auditor under clause 15.5(c)(i), reassess the occurrence or extent of any Abatement Event including any Abatement originally applied (or which would have been originally applied) in connection with that Abatement Event;

(v) if the report prepared by the Performance Auditor under clause 15.5(c)(i) reveals a material inaccuracy, reimburse the State for any costs of the Performance Auditor paid by the State in connection with:

(A) the relevant audit; and

(B) the next Performance Audit Notice,

and such amounts will be a debt due and payable by Project Co to the State; and

(vi) the Service Payment will be adjusted in accordance with the Payment Schedule to accurately reflect any Abatement that should or should not have been applied but for the inaccuracy identified in the report prepared by the Performance Auditor under clause 15.5(c).

15.6 Site Access and Interface Protocols

Project Co acknowledges and agrees that the Site Access and Interface Protocols:

(a) only apply to the relevant portion of the Development Phase Area and the Maintenance Phase Area (as applicable) where "construction work" (as defined under the OHS Regulations) is being undertaken by a third party;

(b) only apply to the extent necessary to enable the D&C Contractor or the Services Contractor (as the case may be) to discharge the duties imposed on a Principal Contractor under the OHS Legislation to manage and control the relevant workplace; and

(c) do not, except to the extent described in clause 15.6(b), entitle Project Co to issue permits for access to, or to impose any other restrictions on access to, the Project Area by Utility providers or any other person.

16. Workplace health and safety and Quality Assurance

16.1 Work health and safety

(a) (**Works**): Project Co must carry out and must procure that the Works are carried out:

(i) safely and in a manner that does not put the health and safety of employees (as defined in the OHS Legislation, hereafter **Employee**) or any other persons whose health and safety is put at risk by the carrying out of the Works; and

(ii) in a manner that protects property.

(b) (**State direction**): If there is a risk of injury to Employees or any other person or damage to property arising from the Works:

(i) the State Representative may direct Project Co to change its manner of working or to cease working to minimise that risk; and

(ii) Project Co must, at its cost, comply with any direction given by the State Representative under clause 16.1(b)(i).

(c) (**Project Co obligations**): Project Co must and must ensure that the Key Subcontractors:

(i) comply with all Laws and other requirements of this Deed for work, health, safety and rehabilitation management;

(ii) commit to continuous improvement in work health and safety;

(iii) ensure that all Subcontractors and their respective Employees comply with their respective obligations under the OHS Legislation;

(iv) ensure that any Subcontracts that they enter into contain the same or substantially the same terms as this clause 16;

(v) consult, co-operate and co-ordinate activities with all other persons who have a work health and safety duty in relation to the same matter;

(vi) notify the State Representative immediately (and in any event, within 12 hours after such matter arising) of any 'notifiable incident' (as defined in the OHS Legislation) in connection with, the Maintained Assets or the Project Activities;

(vii) in respect of any notifiable incident referred to in clause 16.1(c)(vi):

(A) immediately provide the State Representative with a copy of the notice required to be provided to the relevant Commonwealth, State or Territory regulator;

(B) promptly provide the State Representative with a copy of all witness statements and the investigation report relating to the notifiable incident;

(C) promptly provide the State Representative with copies of any notice(s) or other documentation issued by the relevant Commonwealth, State or Territory regulator; and

(D) within 10 days of the date of notification to the relevant Commonwealth, State or Territory regulator, provide the State Representative with a summary of the related investigations, actions to be taken and any impact on the Project that may result from the notifiable incident;

(viii) within 10 days of receipt, provide to the State Representative copies of:

(A) all formal notices and written communications issued by a regulator or agent of the regulator under or in compliance with the applicable OHS Legislation to Project Co or a Subcontractor relating to work health and safety matters;

(B) all formal notices issued by a health and safety representative of Project Co or a Subcontractor under or in compliance with the applicable OHS Legislation; and

(C) all formal notices, written communications and written undertakings given by Project Co or a Subcontractor to the regulator or agent of the regulator under or in compliance with the applicable OHS Legislation;

(ix) institute systems to:

(A) obtain regular written audit results from all Subcontractors about their ongoing compliance with OHS Legislation; and

(B) ensure that Subcontractors comply with any such audit findings;

(x) provide the State Representative with a written report of all work health and safety matters (including matters in connection with clauses 16.1 and 16.2) or any other relevant matters as the State Representative may reasonably require from time to time, including a summary of Project Co's (and the Key Subcontractors') compliance with the OHS Legislation;

(xi) exercise a duty of utmost good faith to the State in carrying out the Project Activities to enable the State to discharge its duties under the OHS Legislation;

(xii) ensure that they do not do anything or fail to do anything that would cause the State to be in breach of the OHS Legislation;

(xiii) if requested by the State Representative or required by OHS Legislation, demonstrate compliance with the OHS Legislation, including providing evidence of any approvals, certificates, authorisations, licences,

prescribed qualifications or experience, or any other information relevant to work health and safety matters; and

(xiv) comply with all reasonable requests of the State to assist the State to discharge any work health and safety obligations of the State in connection with the Project under OHS Legislation.

16.2 Principal Contractor

(a) (**Definitions**): In this clause 16.2, the terms "construction project", "construction work" and "workplace" have the same meanings given to those terms under the OHS Legislation. For the purposes of the OHS Legislation and this Deed:

(i) any Project Activity, including work under any Subcontract; and

(ii) any construction work carried out on the Project Area by the State or any State Associate or an Interface Party carrying out Site Interface Works:

(A) during any period in which the D&C Contractor or the Services Contractor has been engaged as principal contractor in respect of the Project Area; and

(B) which interfaces with the Project Activities,

is taken to be part of the same "construction project", unless otherwise agreed.

(b) (**Appointment as Principal Contractor**): Subject to clause 16.2(f), without limiting Project Co's obligations under any other provision of this Deed:

(i) to the extent that the Project Activities include construction work, the State must:

(A) appoint the D&C Contractor as Principal Contractor in respect of the Development Activities from Financial Close up to the Maintenance Phase (Full) Commencement Date;

(B) authorise the D&C Contractor to have management and control of each workplace at which that construction work is to be carried out and to discharge the duties of a Principal Contractor under the OHS Legislation in respect of construction work at that workplace;

(C) engage the Services Contractor as Principal Contractor in respect of the Services from the Date for Maintenance Commencement until the Expiry Date; and

(D) authorise the Services Contractor to have management and control of each workplace at which that construction work is to be carried out and to discharge the duties of a Principal Contractor under the OHS Legislation in respect of the construction work carried out at that workplace,

in accordance with the D&C Contractor Direct Deed and the Services Contractor Direct Deed (as applicable); and

(ii) Project Co must procure that each of the D&C Contractor and the Services Contractor (as the case may be) accepts the appointment as Principal Contractor and agrees to discharge the duties imposed on a Principal Contractor by the OHS Legislation.

(c) (**Project Co to ensure compliance**): Subject to clause 16.2(f), Project Co must procure that the D&C Contractor or the Services Contractor (as the case may be) exercise and fulfil all of their functions and obligations as Principal Contractor under the OHS Legislation relevant to the Project.

(d) (**Functions and obligations of Principal Contractor**): Subject to clause 16.2(f), if the appointment of the D&C Contractor or the Services Contractor (as the case may be) as Principal Contractor under the D&C Contractor Direct Deed or the Services Contractor Direct Deed (as applicable) is not effective for any reason, Project Co must procure that the D&C Contractor or the Services Contractor (as applicable) will exercise and fulfil the functions and obligations of the Principal Contractor under the OHS Legislation as if it had been validly appointed and authorised as Principal Contractor under the D&C Contractor Direct Deed or the Services Contractor Direct Deed (as applicable).

(e) (**Project Co obligations**): Subject to clause 16.2(f), Project Co must:

(i) ensure that if any Law, including in the state or territory in which the Works or the Project Activities are situated or being carried out (as the case may be), requires that:

(A) a person:

1) be authorised or licensed (in accordance with the OHS Legislation) to carry out any work at that workplace, that person is so authorised or licensed and complies with any conditions of such authorisation or licence; or

2) has prescribed qualifications or experience or, if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the OHS Legislation), that person has the required qualifications or experience or is so supervised; or

(B) a workplace, plant or substance (or design) or work (or class of work) be authorised or licensed, that workplace, plant or substance (or design) or work (or class of work) is so authorised or licensed;

(ii) not direct or allow a person to carry out work or use plant or a substance at a workplace unless the requirements of clause 16.2(e)(i) are met (including any requirement to be authorised, licensed, qualified or supervised); and

(iii) if requested by the State or required by the OHS Legislation, produce evidence of any approvals, certificates, authorisations, licenses, prescribed qualifications or experience or any other information relevant to work health and safety (as the case may be) to the satisfaction of the State (acting reasonably) before Project Co or a Subcontractor (as the case may be) commences such work.

(f) (**Other Principal Contractor**): On and from 25 June 2019 until completion of the WGT Interface Works, Project Co:

(i) acknowledges that to the extent the Project Activities include 'construction work', the State will appoint:

(A) the WGT D&C Subcontractor as Principal Contractor in respect of the WGT Interface Site (**Other Principal Contractor**); and

(B) the D&C Contractor as Principal Contractor in respect of the Bridge Deck Site.

16.3 Quality Assurance System

Project Co must develop, implement and maintain a quality assurance system that covers:

(a) **(Development Activities)*:*** the carrying out of the Development Activities;

(b) (**Services**): performance of the Services; and

(c) (**personnel**): personnel and human resources during the Term, including recruitment, training, and occupational health and safety management of Project Co and any Project Co Associate,

(**Quality Assurance System**) during the Term in accordance with the PSDR.

17. Project Plans and Reports and Notices

17.1 Project Plans

(a) (**Submission**): Project Co must:

(i) update the Bid Project Plans in accordance with Part F1 of the PSDR by the "Time for Submission" set out in Table F1.1 in Part F1 of the PSDR; and

(ii) for any other Project Plan in respect of which a Bid Project Plan is not included in the PSDR, prepare the Project Plan in accordance with Part F1 of the PSDR,

and submit those Project Plans to the State (and, where applicable, in accordance with Part F1 of the PSDR, the Independent Reviewer) for review in accordance with the Review Procedures.

(b) (**Updates**): Project Co must update the Project Plans in accordance with Part F1 of the PSDR, including Table F1.1 in Part F1 of the PSDR.

(c) (**Delivery**): Unless otherwise agreed by the State, Project Co must carry out the Project Activities in accordance with the Project Plans.

(d) (**Additional information**): Project Co must provide to the State and, where applicable, the Independent Reviewer, any additional information in connection with the Project Plans reasonably requested by the State and, where applicable, the Independent Reviewer.

17.2 Development Phase Reports and Maintenance Phase Reports

(a) (**Preparation and submission**): Except in respect of the Monthly Development Phase Progress Report and the Monthly Maintenance Phase Performance Report, which must be submitted in accordance with clause 7.7(d), Project Co must prepare and submit the Development Phase Reports and the Maintenance Phase Reports to the State and the Independent Reviewer (where applicable) in accordance with the PSDR.

(b) (**Additional information**): Project Co must provide to the State and, where applicable, the Independent Reviewer, any additional information in connection with the Development Phase Reports and Maintenance Phase Reports reasonably requested by the State and, where applicable, the Independent Reviewer.

17.3 Schedule of Certificates and Notices

Project Co must provide to the State and the Independent Reviewer (if applicable), the certificates and notices in the form set out in the Schedule of Certificates and Notices if such certificate or notice is required to be provided by Project Co under the State Project Documents.

18. Title and Ownership

18.1 Fixtures

As between the State and Project Co, all chattels affixed to the Project Area (**Fixtures**) will be owned by the State free from any Encumbrance other than a Permitted Encumbrance (other than the Returned Assets which will be owned by the owner of the relevant part of the Project Area) from the time they are affixed.

18.2 Moveable Assets

(a) (**Project Co ownership**): As between the State and Project Co, all Moveable Assets including the Hired Moveable Assets will be owned by Project Co.

(b) (**Project Co to acquire title**): Project Co must acquire title to each Moveable Asset (other than the Hired Moveable Assets):

(i) where the Moveable Asset forms part of the Works, by the earlier of:

(A) the date on which that Moveable Asset is paid for; and

(B) the Date of Commercial Acceptance;

(ii) where the Moveable Asset is acquired during the Maintenance Phase, on the date on which it has paid for that Moveable Asset; and

(iii) in any event, by no later than the Expiry Date.

(c) (**Date of transfer of ownership**): Project Co must ensure that all rights, title and interest, in and to the Moveable Assets (other than the Hired Moveable Assets) transfer to the State:

(i) upon the earlier of:

(A) in the case of any Moveable Asset (other than the Hired Moveable Assets) forming part of the Works, not later than the Date of Commercial Acceptance; or

(B) in the case of any Moveable Asset (other than the Hired Moveable Assets) acquired during the Maintenance Phase, as and when Project Co acquires title to that Moveable Asset (other than the Hired Moveable Assets), which it must do no later than when it has paid for the Moveable Asset; and

(C) the Expiry Date; and

(ii) free from any Encumbrance other than a Permitted Encumbrance,

and must deliver, and procure that any relevant Project Co Associate delivers, to the State all deeds and documents of title held by or under the control of Project Co or any Project Co Associate relating to the Moveable Assets (other than the Hired Moveable Assets) no later than when the relevant Moveable Asset (other than the Hired Moveable Assets) is transferred to the State.

(d) (**Licence**): Project Co grants the State a licence (including a right to sub-license) to use the Moveable Assets for any purpose arising from or in connection with the State Project Documents including performing any of Project Co's obligations under any State Project Document after this Deed is terminated.

(e) (**Hired Moveable Assets**):

(i) Project Co must not enter into any lease or hire-purchase arrangement in respect of a Moveable Asset unless:

(A) the State (acting reasonably) agrees to Project Co hiring or leasing that Moveable Asset and the terms of that lease or hire-purchase arrangement; and

(B) the proposed lease or hire-purchase arrangements permit the novation of the rights and obligations under the lease or hire-purchase arrangement to the State (or its nominee) at the end of the Term.

(ii) If, during the Term, the State gives notice to Project Co that the State wishes to acquire title to a Hired Moveable Asset in each case that is the subject of a hire-purchase arrangement or a Moveable Asset, Project Co must promptly procure the transfer of the title to that Hired Moveable Asset or Moveable Asset respectively upon payment by the State of the residual value of that Hired Moveable Asset in accordance with the relevant hire-purchase arrangement or at the reasonable market value of that Moveable Asset (as applicable).

18.3 Moveable Asset register

Project Co must include in the Asset Management System details of all Moveable Assets and provide it to the State in accordance with Part D of the PSDR and otherwise upon request by the State.

19. Interface requirements

19.1 No restrictions on State's planning and development rights

(a) (**No restriction on changes to transport network**): Nothing in the Project Documents will restrict, or require the exercise of, any right of the State, or any Authority, to develop, manage or change the State's transport network or make policy decisions in relation to the development and implementation of transport planning in Victoria.

(b) (**Examples**): Without limiting clause 19.1(a) and Project Co's rights under this Deed in respect of Change Compensation Events, the State and any Authority may, on its own account, exercise or not exercise (and may authorise others including Interface Parties to exercise or not exercise) any right it has to:

(i) construct or install new transport infrastructure, including on the Project Area;

(ii) extend, alter or upgrade existing transport infrastructure (including roads and road intersections);

(iii) introduce or construct new public transport infrastructure, routes or services;

(iv) extend, alter or upgrade existing public transport infrastructure, routes or services;

(v) otherwise implement government transport policies;

(vi) privatise or otherwise sell any existing public transport infrastructure or services; or

(vii) otherwise do anything which it is empowered to do by Law.

(c) (**Participation**): Project Co must participate as reasonably required by the State in the development and implementation of transport planning that may impact the Project. This participation may include:

(i) attending meetings, consultation forums and other similar events;

(ii) reviewing and contributing to the development of proposals and strategies put forward by the State or other stakeholders;

(iii) providing comments on the impact of proposals and strategies on the Project Activities and the Project Assets; and

(iv) cooperating in good faith in the implementation of the State's public transport policy objectives, as notified to Project Co.

(d) (**No exclusivity**): Project Co acknowledges that:

(i) neither it nor any Project Co Associate is or will be the exclusive provider or supplier of works or services to the State, any State Associate, VicRoads or its Associates or any third party on, in, under and over the Project Area or in the direct vicinity, but outside, of the Project Area; and

(ii) the State, any State Associate, VicRoads or its Associates or any third party may procure works and services to be performed on, in, under and over the Project Area or in the direct vicinity but outside, of the Project Area, in each case from any third party.

19.2 General Interface Requirements

(a) (**Coordination**): Project Co acknowledges that Interface Parties may carry out Interface Works.

(b) (**Notification**): Other than if they are Direct Interface Works, the State must notify Project Co when it intends to undertake or authorise any Interface Works and will provide Project Co with details of the Interface Works and the proposed time for the Interface Works.

(c) (**Co-operation**): Project Co must, subject to the terms of the Direct Interface Deed with the Direct Interface Party if they are Direct Interface Works:

(i) permit the Interface Parties to undertake their Interface Works on and in the direct vicinity of the Project Area;

(ii) fully co-operate with the Interface Parties, including to facilitate the implementation of the Interface Works, including providing information to co-ordinate and permitting reasonable temporary closure of parts of the Project Area, and other areas affected by the Interface Works and rescheduling or otherwise adjusting Project Activities;

(iii) carefully co-ordinate and interface the Project Activities with the Interface Works carried out or to be carried out by the Interface Parties;

(iv) carry out the Project Activities so as to minimise interference, disruption or delay to the Interface Works;

(v) notify the State of any matter in connection with the undertaking or intended undertaking of the Interface Works that may have an adverse effect upon the carrying out of the Project Activities or the safety of persons as soon as possible after becoming aware of such matters;

(vi) provide sufficient, safe access to the Project Area to an Interface Party to enable the relevant Interface Party to undertake the Interface Works;

(vii) assist the State with the tender process for any Interface Works by providing information required by the State and meeting with tenderers as required by the State;

(viii) attend any meetings called by the Interface Parties that relate to Interface Works; and

(ix) not tender, and must ensure that none of the Key Subcontractors or Significant Subcontractors tender, for or carry out any element of the Interface Works without the approval of the State.

(d) (**Compliance**): Project Co must enter into, and comply with all of its obligations under each Direct Interface Deed.

(e) (**No State liability**): Except to the extent set out in an agreement between the State and a relevant Key Subcontractor or Significant Subcontractor for the carrying out of the Interface Works:

(i) the State will not have any Liability to Project Co or any Project Co Associate; and

(ii) neither Project Co nor any Project Co Associate will be entitled to make any Claim against the State,

in respect of any Interface Works carried out by a Key Subcontractor or Significant Subcontractor and any such Key Subcontractor or Significant Subcontractor will not be a State Associate.

(f) (**State obligations**): The State must:

(i) except where the Interface Works are undertaken by a Direct Interface Party (whose access to the Site is regulated by the Direct Interface Deed) procure that any Interface Party complies with the relevant Site Access and Interface Protocols when accessing the Site; and

(ii) subject to the terms of any Direct Interface Deed, if the Interface Works are Direct Interface Works, procure that any Interface Party provides Project Co with all as-built drawings and any other Material in respect of the Interface Works as may be reasonably requested by Project Co that are relevant to the carrying out of the Project Activities provided that Project Co complies with any reasonable confidentiality requirements of the Interface Party.

(g) (**Maintenance responsibility**): If the State constructs or procures the construction of any Site Interface Works, the State may at any time issue to Project Co a Modification Request under clause 35.1 or a Modification Order under clause 35.10, in relation to the maintenance and repair of those Site Interface Works.

PART E – INITIAL PHASE OBLIGATIONS

19A Transition Phase Obligations

19A.1 Transition Activities

Project Co must:

(a) **(Transition Plan):** comply with its obligations under the Transition Plan;

(b) **(Transition Activities):** perform the Transition Activities in accordance with the Transition Plan; and

(c) **(Progress of Transition Activities):** regularly, expeditiously and diligently carry out and progress the Transition Activities and use reasonable endeavours to achieve Maintenance Commencement by the Date for Maintenance Commencement.

19A.2 Right to Inspect during the Transition Phase

The State, any State Associate, VicRoads and any other person authorised by the State may during the Transition Phase inspect, observe or test any part of the Transition Activities or Development Activities on the Site and any other site where the Transition Activities or Development Activities are being carried out (whether or not such inspections, observations or tests are otherwise required under any State Project Document).

19A.3 VicRoads works and services during the Transition Phase

Project Co acknowledges that VicRoads and its Associates will be performing works and services in relation to the Maintained Assets in the Project Area during the Transition Phase. Project Co is not entitled to make any Claim against the State or any State Associate in connection with any act or omissions of VicRoads and its Associates performing those works and services.

19B Maintenance Commencement

19B.1 Notice before Maintenance Commencement

(a) **(Notice):** Project Co must give the State (with a copy to the Independent Reviewer) separate notices:

(i) 40 Business Days; and

(iii) 20 Business Days,

prior to the date upon which it reasonably expects to achieve Maintenance Commencement.

(b) **(Revised date):** If, after Project Co gives the State and the Independent Reviewer a notice in accordance with clause 19B.1(a), the date upon which Project Co reasonably expects to achieve the Maintenance Commencement changes, Project Co must notify the State and the Independent Reviewer promptly of the revised date.

19B.2 Maintenance Commencement

(a) **(Notice by Project Co):** When Project Co considers that it has achieved Maintenance Commencement, Project Co must:

(i) notify the State and the Independent Reviewer of its opinion; and

(ii) request the Independent Reviewer to issue the applicable Certificate of Maintenance Commencement.

(b) **(Notice by State):** Notwithstanding that Project Co may not have issued a notice under clause 19B.2(a) when the State considers that Project Co has achieved Maintenance Commencement, the State may:

(i) notify Project Co and the Independent Reviewer of its opinion; and

(ii) request the Independent Reviewer to issue the Certificate of Maintenance Commencement.

(c) **(Independent Reviewer to make determination):** As soon as reasonably practicable and, in any event, within 15 Business Days after Project Co complies with clause 19B.2 or the State gives notice under clause 19B.2(b), the Independent Reviewer is required to determine whether Maintenance Commencement has been achieved and either if Maintenance Commencement:

(i) has been achieved, issue the relevant Certificate of Maintenance Commencement to the State and Project Co:

(A) certifying that Maintenance Commencement has been achieved; and

(B) stating the date on which Maintenance Commencement occurred;

(ii) has not been achieved, issue a notice to the State and Project Co:

(A) listing the Transition Activities remaining to be undertaken by Project Co to achieve that Maintenance Commencement; or

(B) stating that Maintenance Commencement is so far from being achieved that it is not practicable to provide a list of the type referred to in clause 19B.2(c)(ii)(A),

after which Project Co must continue to expeditiously and diligently progress the relevant Transition Activities to achieve Maintenance Commencement.

(d) **(Where Maintenance Commencement not achieved):** Project Co must give notice to the State and the Independent Reviewer when the Transition Activities listed in a notice issued by the Independent Reviewer under clause 19B.2(c)(ii)(A) have been completed.

(e) **(Resubmission):** Clause 19B.2(c) will apply in connection with Project Co's notice under clause 19B.2(d) in the same way as if it were the original notice given under clause 19B.2(a)

(f) **(No restriction on Independent Reviewer):** Subject to clause 19B.2(g), the Independent Reviewer, in making its determination as to whether Maintenance Commencement has been achieved, will:

(i) not be restricted by any notice, list or opinion which it previously provided to Project Co under clause 19B.2(c)(ii); and

(ii) be entitled to raise any other Transition Activities applicable to Maintenance Commencement which has not been completed in accordance with this Deed (other than Minor Defects) as a ground for determining that Maintenance Commencement has not been achieved in accordance with the State Project Documents.

(g) **(No delay to commencement of Maintenance Phase (Initial))**: For the avoidance of doubt, the Maintenance Phase (Initial) will commence under the Project Documents whether or not Project Co has achieved Maintenance Commencement by the Date for Maintenance Commencement.

19C Legacy Maintained Asset Information

The State must procure that VicRoads continues to maintain records in accordance with its usual practices during the period between the date on which Project Co's Proposal was submitted and the Date for Maintenance Commencement and will use reasonable endeavours to make available to Project Co such records which are relevant to the Maintained Assets, the Project Area and Project Co's obligations under this Deed.

20. Development Phase Obligations

20.1 [Not used]

20.2 Design

Project Co:

(a) (**FFP Warranty**): must, in relation to any Project Assets which it does or is required to perform design work, design those Project Assets and develop the Design Documentation in accordance with the Design Requirements so that those Project Assets, when manufactured or constructed in accordance with that design, will satisfy the relevant FFP Warranty;

(b) (**Design Development Process**): must:

(i) design the Works; and

(ii) submit it for review by the Independent Reviewer and the State,

in accordance with the design development process set out in the Design Appendix (**Design Development Process**); and

(c) (**no Claim**): the Design Development Process itself does not constitute a Modification or otherwise enable Project Co to make any Claim against the State or any State Associate for any Liabilities suffered or incurred by Project Co in connection with the conduct of the Design Development Process.

20.3 Construction

Project Co must undertake the Works:

(a) (**Construction Documentation**): in accordance with the Construction Documentation; and

(b) (**standard**): so that:

(i) the Maintained Assets, Remaining Works and Returned Assets satisfy the relevant FFP Warranty;

(ii) the Temporary Works are Fit for Purpose; and

(iii) the Maintained Assets which result from those Works are wholly located within the Project Area.

20.4 State right to require Project Co to call on D&C Contractor Construction Bond

(a) (**Call on D&C Contractor Construction Bond**): Without limiting the State's rights under this Deed or at Law, the State may require Project Co to call on any Performance Bond provided by the D&C Contractor in favour of Project Co (**D&C Contractor Construction Bond**) that it holds, or is held on its behalf, to satisfy any debt due and payable by Project Co to the State if Project Co has the right to call on the D&C Contractor Construction Bond under the D&C Contract and the relevant debt due and payable by Project Co to the State has not been paid within 10 Business Days after receipt of a demand for payment.

(b) (**Amount of call**): The amount the State may require Project Co to call under the D&C Contractor Construction Bond shall, in aggregate, be limited to an amount no greater than:

(i) (**prior to Commercial Acceptance**): prior to the Date of Commercial Acceptance, the D&C Contractor Construction Bond Amount, or if the amount the subject of the D&C Contractor Construction Bond at that time is less than the D&C Contractor Construction Bond Amount, that lesser amount; or

(ii) (**during defects liability period**): for the period commencing on the Date of Commercial Acceptance and expiring on the later of the date 24 months after the Date of Commercial Acceptance and the expiration of the last defects liability period under the D&C Contract, the D&C Contractor DLP Bond Amount, or if the amount the subject of the D&C Contractor Construction Bond at that time is less than the D&C Contractor DLP Bond Amount, that lesser amount,

and such amount will be a debt due and payable by Project Co to the State.

21. [Not used]

22. [Not used]

23. [Not used]

24. Commercial Acceptance and Milestone Completion

24.1 Commercial Acceptance and Milestone Completion Tests

Project Co must develop, conduct and satisfy all tests required to determine Commercial Acceptance and each Milestone Completion in accordance with the PSDR.

24.2 Notice before Commercial Acceptance and Milestone Completion

(a) (**Notice**): Project Co must give the State and the Independent Reviewer notice:

(i) 90 Business Days;

(ii) 60 Business Days; and

(iii) 20 Business Days,

prior to the date upon which it reasonably expects to achieve Commercial Acceptance and a notice 20 Business Days prior to the date on which it reasonably expects to achieve Milestone Completion.

(b) (**Revised date**): If, after Project Co gives the State and the Independent Reviewer a notice in accordance with clause 24.2(a), the date upon which Project Co reasonably expects to achieve Commercial Acceptance, or Milestone Completion changes, Project Co must notify the State and the Independent Reviewer promptly of the revised date.

24.3 Commercial Acceptance and Milestone Completion

(a) (**Notice by Project Co**): When Project Co considers that it has achieved Commercial Acceptance or Milestone Completion, Project Co must:

(i) notify the State and the Independent Reviewer of its opinion;

(ii) request the Independent Reviewer to issue a Certificate of Commercial Acceptance or Certificate of Milestone Completion (as applicable);

(iii) in relation to Commercial Acceptance only, provide the State and the Independent Reviewer with a detailed list of any Commercial Acceptance Outstanding Items and any Remaining Works remaining to be undertaken, in its opinion, to achieve Final Acceptance; and

(iv) in relation to Milestone Completion only, provide the State and the Independent Reviewer with a detailed list of the work (including Minor Defect correction) remaining to be undertaken, in its opinion, to complete that Milestone.

(b) (**Notice by State**): Notwithstanding that Project Co may not have issued a notice under clause 24.3(a), when the State considers that Project Co has achieved Commercial Acceptance or Milestone Completion, the State may:

(i) notify Project Co and the Independent Reviewer of its opinion; and

(ii) request the Independent Reviewer to issue a Certificate of Commercial Acceptance or Certificate of Milestone Completion (as applicable).

(c) (**Independent Reviewer to make determination**): As soon as reasonably practicable and, in any event, within 10 Business Days after Project Co complying

with clause 24.3(a) or the State giving notice under clause 24.3(b) (as the case may be), the Independent Reviewer is required to determine whether Commercial Acceptance or Milestone Completion (as applicable) has been achieved and either:

(i) if Commercial Acceptance or Milestone Completion has been achieved, or the State and Project Co require the Independent Reviewer to issue a Certificate of Commercial Acceptance or Certificate of Milestone Completion, issue a Certificate of Commercial Acceptance or Certificate of Milestone Completion (as applicable) to the State and Project Co:

(A) certifying that Commercial Acceptance or Milestone Completion (as applicable) has been achieved;

(B) stating the Date of Commercial Acceptance or the date on which Milestone Completion has been achieved (in each case being the date on which that certificate is issued);

(C) attaching a list of any Commercial Acceptance Outstanding Items as determined by the Independent Reviewer in accordance with clause 24.4;

(D) attaching a list of any Remaining Works;

(E) listing any Minor Defects (including any Minor Defects in a Returned Asset);

(F) in relation to Commercial Acceptance only, setting out details of the Independent Reviewer's opinion of the work remaining to be undertaken to achieve Final Acceptance including the Remaining Works and correction of Minor Defects; and

(G) in relation to Milestone Completion only, provide the State and the Independent Reviewer with a detailed list of the work (including Minor Defect correction) remaining to be undertaken, in its opinion, to complete that Milestone; or

(ii) if Commercial Acceptance or Milestone Completion (as applicable) has not been achieved, unless the State and Project Co require the Independent Reviewer to issue a Certificate of Commercial Acceptance or a Certificate of Milestone Completion issue a notice to the State and Project Co:

(A) listing the work remaining to be undertaken by Project Co to achieve Commercial Acceptance or Milestone Completion (as applicable); or

(B) stating that Commercial Acceptance or Milestone Completion (as applicable) is so far from being achieved that it is not practicable to provide a list of the type referred to in clause 24.3(c)(ii)(A),

after which Project Co must continue to expeditiously and diligently progress the Development Activities to achieve Commercial Acceptance or Milestone Completion (as applicable).

(d) (**Where Commercial Acceptance or Milestone Completion not achieved**): Project Co must give notice to the State and the Independent Reviewer when the work listed in a notice issued by the Independent Reviewer under clause 24.3(c)(ii)(A) has been completed.

(e) (**Resubmission**): Clauses 24.3(c) will apply in connection with Project Co's notice under clause 24.3(d) in the same way as if it were the original notice given under clause 24.3(a).

(f) (**No restriction on Independent Reviewer**): Subject to clause 24.3(h), the Independent Reviewer, in making its determination as to whether Commercial Acceptance or Milestone Completion (as applicable) has been achieved, will:

(i) not be restricted by any notice, list or opinion which it previously provided to Project Co under clause 24.3(c)(ii); and

(ii) be entitled to raise any other items of work which are required to be completed in accordance with this Deed in order to achieve Commercial Acceptance or Milestone Completion (as applicable) which have not been so completed (other than any Commercial Acceptance Outstanding Items or Remaining Works) as a ground for determining that Commercial Acceptance or Milestone Completion (as applicable) has not been achieved.

(g) (**Certificate of Commercial Acceptance**): The issue of a Certificate of Commercial Acceptance in accordance with clause 24.3(c)(i) does not constitute:

(i) evidence that Project Co has satisfied the relevant FFP Warranty;

(ii) an approval by the State of the completion or acceptance of the relevant Works under this Deed; or

(iii) evidence that all or any other obligations under this Deed have been satisfied.

(h) (**Other Works or Returned Assets**): Without limiting any other rights which the State has under the Project Documents, when assessing whether Commercial Acceptance or Milestone Completion (as applicable) has been achieved, the Independent Reviewer is not entitled to raise issues which relate to:

(i) any Works including Returned Assets which Project Co is obliged to complete to achieve any other Commercial Acceptance or Milestone Completion (as applicable) nor any Final Acceptance related to that other Commercial Acceptance or Milestone Completion (as applicable); or

(ii) any Milestone which forms part of the Commercial Acceptance under assessment for which a Certificate of Milestone Completion has been issued or work which has previously achieved Returned Assets Acceptance.

24.4 Returned Asset Acceptance

(a) (**Consultation**): Project Co must:

(i) fully consult with the relevant Returned Asset Owners a reasonable time prior to undertaking any work in connection with the relevant Returned Assets which will be returned to that owner and while undertaking any work in connection with the Returned Asset so as to ensure that:

(A) Project Co identifies the usual requirements of the Returned Asset Owners for works of the nature of the relevant Returned Assets which, in the case of a Direct Interface Party, must be

consistent with any corresponding obligations in any relevant Direct Interface Deed; and

(B) the requirements of clause 24.4(b) are satisfied;

(ii) complete each Returned Asset in accordance with the requirements of this Deed and any relevant Direct Interface Deed; and

(iii) carry out all tests required in order to determine the relevant Returned Asset Acceptance in accordance with the PSDR.

(b) (**General obligations**): Project Co must progressively complete the Returned Asset to achieve Returned Asset Acceptance of each Returned Asset as soon as possible:

(i) so as to ensure that any loss of amenity and inconvenience to the relevant Returned Asset Owner is minimised, unless such loss of amenity or inconvenience is consistent with any relevant Direct Interface Deed;

(ii) so as to ensure that the completion of each Returned Asset occurs in a smooth and orderly manner (rather than in a compressed period immediately prior to Commercial Acceptance or any Milestone Completion as applicable) which:

(A) is consistent with the Initial Phase Program; and

(B) in any event will provide the Independent Reviewer and the relevant Returned Asset Owner with sufficient time to progressively inspect the relevant Returned Asset, consider whether the relevant Returned Asset has been completed in accordance with the State Project Documents and any relevant Direct Interface Deed and carry out any reinspection or other activities required by this Deed or the Independent Reviewer Deed of Appointment to be carried out by the Independent Reviewer, in respect of the Returned Asset, in a smooth and orderly manner; and

(iii) in order to achieve completion of the Returned Assets in respect of the Dohertys Road Bridge Works by the Dohertys Road Bridge Works Completion Date.

(c) (**Reasonable endeavours**): Project Co must use reasonable endeavours to achieve completion of the Returned Assets in relation to a Milestone (other than the Key Milestones) by the Milestone Date.

(d) (**Acceptance of Returned Assets**): Returned Asset Acceptance for a Returned Asset will not be achieved until:

(i) the relevant Returned Asset has been completed in accordance with the State Project Documents subject only to Minor Defects;

(ii) Project Co has issued a notice in the form required by the Schedule of Certificates and Notices to the State, the Independent Reviewer and the relevant Returned Asset Owner which:

(A) states that it considers that the relevant Returned Asset has been completed in accordance with the State Project Documents; and

(B) lists any Minor Defects;

(iii) Project Co, the Independent Reviewer, the State and the relevant Returned Asset Owner have had the opportunity to jointly inspect the Returned Asset at a time agreed (or in the absence of agreement, determined by the Independent Reviewer) which will be no more than 5 Business Days after receipt of Project Co's notice under clause 24.4(d)(ii); and

(iv) the Independent Reviewer has issued to the State and Project Co a notice under clause 24.4(f)(i).

(e) (**Independent Reviewer to consider comments of Returned Asset Owner**): In determining whether or not to issue a notice under clause 24.4(f), the Independent Reviewer will consider any reasonable comments of the relevant Returned Asset Owner provided within 5 Business Days after the time of the inspection under clause 24.4(d)(iii).

(f) (**Independent Reviewer to make determination**): As soon as reasonably practicable following the inspection under clause 24.4(d)(iii), the Independent Reviewer is required to determine whether the Returned Asset has been completed in accordance with the State Project Documents (subject only to Minor Defects) and issue to the State and Project Co either:

(i) a notice in the form required by the Schedule of Certificates and Notices confirming that the relevant Returned Asset has been completed (subject only to Minor Defects); or

(ii) a notice either:

(A) listing the work remaining to be undertaken in order to complete the relevant Returned Asset in accordance with the State Project Documents (subject only to Minor Defects); or

(B) stating that the relevant Returned Asset is so far from being completed in accordance with the State Project Documents that it is not practicable to provide a list of the type referred to in clause 24.4(f)(ii)(A),

after which Project Co must continue to expeditiously and diligently progress the Development Activities to complete the relevant Returned Assets in accordance with the State Project Documents.

(g) [Not used].

(h) (**Further notice by Project Co**): Project Co must give notice to the State, the relevant Returned Asset Owner and the Independent Reviewer when the work listed in a notice issued by the Independent Reviewer under clause 24.4(f)(ii)(A) has been completed.

(i) (**Resubmission**): Clause 24.4(e) will apply in connection with Project Co's notice under clause 24.4(h) in the same way as if it were the original notice given under clause 24.4(d)(ii).

(j) (**No restriction on Independent Reviewer**): The Independent Reviewer, in making its determination as to whether any Returned Asset has been completed in accordance with the State Project Documents and any relevant Direct Interface Deed (subject only to Minor Defects), will:

(i) not be restricted by any notice, list or opinion which it previously provided to Project Co under clause 24.4(d)(ii); and

(ii) be entitled to raise any other items of work applicable to the relevant Returned Asset (other than the Minor Defects) as a ground for determining that the relevant Returned Asset has not been completed in accordance with the State Project Documents.

(k) (**Project Co's Acceptance obligations**): Upon receipt of a notice from the Independent Reviewer under clause 24.4(f)(i), Project Co must:

(i) notify the relevant Returned Asset Owner of the date upon which Returned Asset Acceptance for that Returned Asset will occur (which date must not be fewer than 5 Business Days after issue of the notice under this clause 24.4(k)(i)) (**Date of Returned Asset Acceptance**);

(ii) continue to maintain and repair that Returned Asset until the relevant Returned Asset Acceptance; and

(iii) provide the State and the relevant Returned Asset Owner with all such assistance as may be reasonably required in relation to achieving Returned Asset Acceptance of the relevant Returned Asset.

(l) (**Correction of Defects which did not prevent Returned Asset Acceptance**): Subject to clause 27.1(g), Project Co must immediately upon receipt of the Independent Reviewer's notice under clause 24.4(f)(i), expeditiously and diligently correct all of the Defects specified in the Independent Reviewer's notice.

(m) (**Determination under Road Management Act**): For the avoidance of any doubt, a determination of the Project as a 'designated road project' under section 16 of the Road Management Act does not change the status of any local council as a Returned Asset Owner under this Deed.

24.5 Commercial Acceptance Outstanding Items

(a) (**Commercial Acceptance Outstanding Items list**): The Independent Reviewer may issue its determination that Commercial Acceptance has been achieved with:

(i) an attached list of Commercial Acceptance Outstanding Items which have been determined by the Independent Reviewer or agreed by the State and Project Co; and

(ii) a timeframe within which each Commercial Acceptance Outstanding Item must be rectified.

(b) (**Submit plan**): Project Co must submit to the State and the Independent Reviewer for review in accordance with the Review Procedures a program for the completion of the Commercial Acceptance Outstanding Items that complies with the time periods determined in accordance with clause 24.5(a)(ii) within 5 Business Days after the issue of a certificate of Commercial Acceptance.

(c) (**Project Co to complete**): Project Co must complete or Cure each Commercial Acceptance Outstanding Item set out in the list issued by the Independent Reviewer in the relevant timeframe determined in accordance with clause 24.5(a) to the satisfaction of the Independent Reviewer.

25. Final Acceptance

25.1 Final Acceptance

(a) (**Progression**): After achieving each Commercial Acceptance, Project Co must expeditiously and diligently undertake the balance of the relevant Works required to achieve Final Acceptance for the relevant Works.

(b) (**Final Acceptance tests**): Project Co must develop, conduct and satisfy all tests required to determine Final Acceptance in accordance with the PSDR.

(c) (**Notice by Project Co**): When Project Co considers that Final Acceptance has been achieved, Project Co must:

(i) notify the State and the Independent Reviewer of its opinion; and

(ii) request the Independent Reviewer to issue a Certificate of Final Acceptance.

(d) (**Notice by State**): Notwithstanding that Project Co may not have issued a notice under clause 25.1(c), when the State considers that Project Co has achieved Final Acceptance, the State may:

(i) notify Project Co and the Independent Reviewer of its opinion; and

(ii) request the Independent Reviewer to issue a Certificate of Final Acceptance.

(e) (**Independent Reviewer to make determination**): Within 15 Business Days after Project Co's notice under clause 25.1(c) or the State's notice under clause 25.1(d), the Independent Reviewer is required to inspect the Project Assets to determine whether Final Acceptance has been achieved and either:

(i) if Final Acceptance has been achieved or the State requests the Independent Reviewer to issue a Certificate of Final Acceptance in accordance with clause 25.1(d), issue a Certificate of Final Acceptance to the State and Project Co:

(A) certifying that Final Acceptance has been achieved; and

(B) stating the Date of Final Acceptance (being the date of the Certificate of Final Acceptance); or

(ii) if Final Acceptance has not been achieved in accordance with clause 25.1(e)(i), unless the State and Project Co have required the Independent Reviewer to issue a Certificate of Final Acceptance, issue a notice to the State and Project Co listing the work remaining to be undertaken to achieve Final Acceptance, including any relevant Commercial Acceptance Outstanding Items and Remaining Works.

(f) (**Project Co to complete work specified in notice**): Immediately upon receipt of a notice under clause 25.1(e)(ii), Project Co must expeditiously and diligently progress performance of the work specified in the notice.

(g) (**Further notice by Project Co**): Project Co must give notice to the State and the Independent Reviewer when the work listed in the Independent Reviewer's notice under clause 25.1(e)(ii) has been completed.

(h) (**Resubmission**): Clauses 25.1(e) and 25.1(f) will apply in connection with Project Co's notice under clause 25.1(g) in the same way as if it were the original notice under clause 25.1(c).

(i) (**No restriction by Independent Reviewer**): Subject to clause 25.1(k), the Independent Reviewer, in making a determination as to whether Final Acceptance has been achieved, will:

(i) not be restricted by any:

(A) Certificate of Commercial Acceptance issued in relation to the relevant Works, notice, list or opinion already provided in accordance with the requirements of this Deed; or

(B) obligation of Project Co under this Deed to correct any Defects; or

(ii) be entitled to raise any other items of work which are required to be completed in accordance with this Deed in order to achieve Final Acceptance which have not been so completed as a ground for determining that Final Acceptance has not been achieved.

(j) (**Certificate of Final Acceptance**): The issue of a Certificate of Final Acceptance in accordance with clause 25.1(e)(i) does not constitute:

(i) evidence that Project Co has satisfied the relevant FFP Warranty;

(ii) an approval by the State of the completion or acceptance of the relevant Works under this Deed; or

(iii) evidence that all or any other obligations under this Deed have been satisfied.

(k) (**Other Works or Returned Assets**): Without limiting any other rights which the State has under the Project Documents, when assessing whether Final Acceptance has been achieved, the Independent Reviewer is not entitled to raise issues which relate to any Works which form part of the Final Acceptance under assessment for which a Certificate of Milestone Completion has been issued or which has previously achieved Returned Asset Acceptance.

25.2 Late Final Acceptance

(a) (**Retention**): If:

(i) Project Co does not achieve Final Acceptance by the Date for Final Acceptance; or

(ii) at any time after the Date of Commercial Acceptance, the State considers (acting reasonably) that Final Acceptance will not be achieved by the Date for Final Acceptance,

then:

(iii) the State may issue a notice to the Independent Reviewer and Project Co requiring the Independent Reviewer to:

(A) identify the work remaining to be undertaken to achieve Final Acceptance; and

(B) determine the cost of performing such work;

(iv) within 5 Business Days after the State's notice under clause 25.2(a)(iii), the Independent Reviewer must issue a notice to the State and Project Co:

(A) listing the work remaining to be undertaken to achieve Final Acceptance; and

(B) setting out the cost of performing such work;

(v) if Final Acceptance does not occur (or has not already occurred) by the Date for Final Acceptance, the State may retain from any amount due to Project Co (including Service Payments):

(A) an amount equal to [not disclosed]% of the amount set out in the Independent Reviewer's notice under clause 25.2(a)(iv)(B); or

(B) such lesser amount as the State may determine,

until Final Acceptance is achieved (**Retention Amount**); and

(vi) within 20 Business Days after the Date of Final Acceptance, Project Co will be entitled to payment of the Retention Amount less:

(A) any amount to be reimbursed to the State under clause 25.2(b)(iv)(B); and

(B) any other amount the State may set-off or deduct under clause 34.7.

(b) (**State's Rights**): The State:

(i) is not obliged to pay Project Co interest on any Retention Amount;

(ii) does not hold any Retention Amount on trust;

(iii) if Final Acceptance is not achieved before this Deed is terminated, will be absolutely entitled to the Retention Amount subject to paying any Termination Payment payable to Project Co; and

(iv) at any time after the Date for Final Acceptance and subject to giving Project Co prior notice of its intention to do so, may:

(A) undertake any work remaining to be undertaken to achieve Final Acceptance itself or engage others to do so; or

(B) elect to:

1) determine that Final Acceptance has been achieved without all or any part of the work remaining to be undertaken to achieve Final Acceptance having been undertaken by Project Co;

2) direct the Independent Reviewer to issue a Certificate of Final Acceptance in accordance with clause 25.1(d);

3) undertake any such remaining work itself or engage others to do so; and

4) use that Retention Amount to reimburse it for the costs (including any Liability) incurred in undertaking that work.

26. Time

26.1 Primary obligation

Project Co must:

(a) (**commence**): promptly commence performance of the Development Activities on the relevant Development Area following Financial Close;

(b) (**progress**): regularly, expeditiously and diligently carry out and progress the Development Activities to achieve Acceptance or Milestone Completion (as applicable);

(c) (**achieve Acceptance**): achieve Acceptance by the relevant Date for Acceptance;

(d) (**achieve Milestone Completion**): use reasonable endeavours to achieve Milestone Completion of each Milestone (other than the Key Milestones) by the Milestone Date; and

(e) (**achieve Milestone Completion in relation to Key Milestones**): achieve Milestone Completion in relation to the Key Milestones by the relevant Key Milestone Completion Date.

26.2 Initial Phase Program

(a) (**Submission**): Project Co must amend the Bid Initial Phase Program in accordance with Part F2 of the PSDR and otherwise in accordance with this Deed and submit it to the State and the Independent Reviewer for review in accordance with the Review Procedures.

(b) (**Resubmission**): The parties acknowledge and agree that the Bid Initial Phase Program submitted and amended in accordance with Part F2 of the PSDR and the Review Procedures (as relevant) will become the Initial Phase Program.

(c) (**Further submission**) If Project Co amends the Initial Phase Program in accordance with this Deed, it must submit the amended Initial Phase Program for review by the State and the Independent Reviewer in accordance with the Review Procedures.

(d) (**Accuracy**): The Initial Phase Program must accurately reflect the status and progress of the Development Activities.

(e) (**Departure**): Project Co:

(i) acknowledges and agrees that the Initial Phase Program does not form part of this Deed; and

(ii) subject to complying with its obligations under clause 26.2(f), and without limiting its obligations under this clause 26, may depart from the Initial Phase Program if it is necessary to do so to comply with the requirements of this Deed, except that any such departure will not relieve

Project Co from its obligations under this Deed to achieve Acceptance by the relevant Date for Acceptance.

(f) (**Notice of departure**): Project Co must give notice to the State and the Independent Reviewer promptly upon becoming aware of any proposed or likely departure from the critical path in the Initial Phase Program, together with the reasons why it is necessary to do so to comply with the requirements of this Deed.

(g) (**Updated Initial Phase Program**): A notice under clause 26.2(f) must include an Initial Phase Program updated to reflect the departure in accordance with the requirements of Part F2 of the PSDR for review by the State and the Independent Reviewer in accordance with the Review Procedures.

(h) (**Warranty**): Project Co warrants that each update of the Initial Phase Program accurately reflects the status and progress of the Works and the date by which Project Co will achieve Acceptance.

(i) (**Assessing Claims**): Neither the State nor the Independent Reviewer is required to use the Initial Phase Program for any purpose, including for the purpose of assessing the impact of any delay event or any extension of time, or any Claim made by Project Co, but may do so in their sole and absolute discretion.

(j) (**No liability**): Project Co agrees that to the extent that the Initial Phase Program seeks to impose any obligation on the State, Project Co will not be entitled to make any Claim against the State in respect of that obligation (unless that same obligation is expressly imposed on the State in a clause or Schedule of this Deed).

26.3 Sole remedy for late Acceptance

(a) (**Sole remedy**): Subject to clause 46 and clause 26.3(b), the State acknowledges and agrees that the State's sole financial remedy, and Project Co's sole financial Liability, for a failure to achieve Commercial Acceptance by the Date for Commercial Acceptance, is limited to the amount of the Service Payment not required to be paid by the State in those circumstances.

(b) (**Preservation of rights and Liabilities**): Project Co acknowledges and agrees that clause 26.3(a) does not limit the State's rights and Project Co's Liability in respect of an event giving rise to the delay or the consequences of such event, other than the delay itself.

26.4 Independent Reviewer's review of progress

(a) (**Review of Development Activities**): Project Co acknowledges that the Independent Reviewer will continually review (including by general overview, reasonable checking and Site visits) (including if requested to do so by the State) the carrying out of the Development Activities to ensure that:

(i) Commercial Acceptance will be achieved by the Date for Commercial Acceptance and Project Co is using reasonable endeavours to achieve Milestone Completion by the relevant Milestone Date; and

(ii) the Initial Phase Program accurately reflects the actual progress of the Works in all material respects.

(b) (**Notice of non-compliance by Independent Reviewer**): If, at any time after the date that is 6 Months after Financial Close, the Independent Reviewer believes that:

(i) subject to clause 26.4(m), Commercial Acceptance will not be achieved by the Date for Commercial Acceptance; or

(ii) the Initial Phase Program does not accurately reflect the actual progress of the Works in all material respects,

the Independent Reviewer may make a determination to that effect and give notice to the State and Project Co of that determination, together with its reasons for making that determination.

(c) (**Frequency of review**): The Independent Reviewer must not make a determination under clause 26.4(b) more frequently than once every 3 Months.

(d) (**Project Co's response**): Within 10 Business Days after receipt of the Independent Reviewer's notice referred to in clause 26.4(b), Project Co must:

(i) notify the State and the Independent Reviewer of any matters in connection with that notice with which it disagrees with the Independent Reviewer's opinion, together with its reasons for doing so (**Explanation**); and

(ii) to the extent it does not disagree, provide to the State and the Independent Reviewer a plan and a program for the rectification of any non-compliance in accordance with the requirements set out in clause 26.4(f) (**Remediation Plan**),

for review in accordance with the Review Procedures.

(e) (**Explanation**): The Independent Reviewer must, within 10 Business Days after receipt of the Explanation from Project Co under clause 26.4(d)(i), give notice to the State and Project Co whether the Explanation:

(i) has adequately addressed its concerns such that it will withdraw the determination under clause 26.4(b), in which case, no further action is required from Project Co in connection with the notice issued by the Independent Reviewer under clause 26.4(b); or

(ii) does not adequately address its concerns (and the reasons for this) such that it is not prepared to withdraw the determination under clause 26.4(b), in which case, if the notice that was provided by the Independent Reviewer in accordance with clause 26.4(b) was that:

(A) the Initial Phase Program does not accurately reflect the actual progress of the Works in all material respects; or

(B) Commercial Acceptance will not be achieved by the Date for Commercial Acceptance,

Project Co will have 10 Business Days from the date it receives notification from the Independent Reviewer under clause 26.4(e)(ii) within which to provide a Remediation Plan (which complies with the requirements set out in clause 26.4(f)), for review in accordance with the Review Procedures.

(f) (**Remediation Plan requirements**): To the extent that a Remediation Plan has been prepared by Project Co in response to a notice under clause 26.4(b) or clause 26.4(e)(ii), a Remediation Plan will not be considered to be satisfactory unless at a minimum:

(i) it sets out the date by which Commercial Acceptance will be achieved, which date may be later than the Date for Commercial Acceptance, but

cannot be later than 24 Months after the Date for Commercial Acceptance;

(ii) it contains a program for Curing the issues set out in the Independent Reviewer's notice referred to in clause 26.4(b) or clause 26.4(e)(ii) (as applicable), which must include:

(A) each task to be undertaken, the date by which each task is to be completed and the additional resources and personnel (if applicable) to be applied to the remediation; and

(B) any temporary measures that will be undertaken to ameliorate the impact of the delay;

(iii) if it sets out a date by which Commercial Acceptance will be achieved that is after the Date for Commercial Acceptance, it contains evidence satisfactory to the Independent Reviewer (acting reasonably) that the date is the earliest date by which Commercial Acceptance can be achieved if Project Co takes those steps a prudent, experienced and competent person in the position of Project Co exercising Best Industry Practices would reasonably be expected to undertake to satisfy all requirements for Commercial Acceptance as expeditiously as possible (including a reasonable expenditure of amounts); and

(iv) it contains any further information reasonably required by the Independent Reviewer.

(g) (**Review of Remediation Plan**): The Independent Reviewer and the State must review any Remediation Plan submitted by Project Co in accordance with the Review Procedures.

(h) (**Progress**): If the Independent Reviewer notifies the State and Project Co that, in its opinion, a Remediation Plan satisfactorily addresses the requirements of clause 26.4(f), Project Co must:

(i) diligently pursue that Remediation Plan; and

(ii) update that Remediation Plan Monthly to reflect actual progress of the Remediation and submit it to the Independent Reviewer and the State for review in accordance with the Review Procedures.

(i) (**Amended Remediation Plan**): If the Independent Reviewer notifies the State and Project Co that, in its opinion, a Remediation Plan does not satisfactorily address the requirements of clause 26.4(f), Project Co may, within 5 Business Days after the date of the Independent Reviewer's notice, submit an amended Remediation Plan to the Independent Reviewer for review in accordance with the Review Procedures (**Amended Remediation Plan**).

(j) (**Outcome of Amended Remediation Plan**): If the Independent Reviewer notifies the State and Project Co that, in its opinion, an Amended Remediation Plan satisfactorily addresses the requirements of clause 26.4(f), Project Co must:

(i) diligently pursue the Amended Remediation Plan; and

(ii) update the Amended Remediation Plan monthly to reflect actual progress and submit it to the Independent Reviewer and the State for review in accordance with the Review Procedures.

(k) (**Deemed Major Default**): If the Independent Reviewer notifies the State and Project Co:

(i) that, in its opinion:

(A) an Amended Remediation Plan does not satisfactorily address the requirements of clause 26.4(f); or

(B) Project Co is not diligently pursuing or updating the Remediation Plan or the Amended Remediation Plan (as applicable);

(ii) after it has received any Remediation Plan or Amended Remediation Plan (including any update), that, in its opinion, Project Co will not be able to achieve Commercial Acceptance by the date that is 24 Months after the Date for Commercial Acceptance; or

(iii) that Project Co has not provided any Explanation, Remediation Plan or Amended Remediation Plan when it is obliged to do so under this clause 26.4,

then a Major Default will be deemed to have occurred.

(l) (**Dispute**): If either party does not agree with a determination of the Independent Reviewer under this clause 26.4 either party may refer the matter by notice to the other party to expert determination in accordance with clause 48.1(d)(i) within 20 Business Days after the Independent Reviewer's determination save that neither party can refer a determination made by the Independent Reviewer under clause 26.4(b) to expert determination unless Project Co has first provided the Independent Reviewer and the State with an Explanation under clause 26.4(d)(i).

(m) (**Subsequent reviews**): While Project Co is diligently pursuing a Remediation Plan in accordance with clause 26.4(h) or an Amended Remediation Plan in accordance with clause 26.4(j), any subsequent review under clause 26.4(a) must take into consideration that Remediation Plan or Amended Remediation Plan (as applicable).

26.5 Delay to Acceptance and Key Milestone Completion

If Project Co becomes aware of any matter which will, or is likely to, give rise to a delay in achieving Acceptance or Key Milestone Completion (as applicable), it must promptly give the State and the Independent Reviewer notice of the matter and the delay it is likely to cause.

26.6 Delays entitling Claim

Subject to this clause 26, if Project Co has been or will be delayed by an Extension Event in a manner which will, or has delayed Project Co in achieving Acceptance or Key Milestone Completion (as applicable), Project Co will be entitled to claim an extension of time to the relevant Date for Acceptance or Key Milestone Completion Date (as applicable) for the period of the delay.

26.7 Change Notice

To claim an extension of time to the relevant Date for Acceptance or Key Milestone Completion Date (as applicable) under this Deed, Project Co must submit a Change Notice for that Extension Event to the State and the Independent Reviewer in accordance with the Change Compensation Principles and must continue to update the State and the Independent Reviewer in respect of the Extension Event in accordance with the Change Compensation Principles.

26.8 Conditions precedent to extension

(a) (**Conditions precedent**): Subject to clause 26.10, it is a condition precedent to Project Co's entitlement to an extension of time that:

(i) (**submission of Change Notice**): Project Co complies with clause 26.7;

(ii) (**submission of updated Change Notice**): Project Co submits any updated Change Notice it is required to submit in accordance with section 9.1(e) of the Change Compensation Principles;

(iii) (**effect of delay**): Project Co can demonstrate that it has been or will be delayed from carrying out the Development Activities by the relevant Extension Event;

(A) in a manner which will delay the achievement of Acceptance or Key Milestone Completion (as applicable); and

(B) the relevant Extension Event has caused or will cause activities on the critical path contained in the then current Initial Phase Program to be delayed; and

(iv) (**updated program**): subject to clauses 26.8(c) to 26.8(f), Project Co, at the time it submits the relevant Change Notice referred to in clause 26.7 and section 9.1(e) of the Change Compensation Principles, submits an updated Initial Phase Program to the State and the Independent Reviewer which:

(A) complies with all the relevant requirements of this Deed;

(B) takes into account the impact of the relevant Extension Event; and

(C) contains a level of detail which is sufficient to enable the Independent Reviewer to determine Project Co's entitlement to an extension of time.

(b) (**Independent Reviewer determines**): The Independent Reviewer will determine whether or not the requirements of this clause 26.8 have been satisfied.

(c) (**determination of non-compliance**): If the Independent Reviewer determines that the updated Initial Phase Program submitted in accordance with clause 26.8(a)(iv) does not comply with the requirements in clause 26.8(a)(iv), it must notify Project Co of that determination together with detailed reasons of the non-compliance, within 5 Business Days after receipt of the relevant Change Notice in accordance with clause 26.7.

(d) (**updated Initial Phase Program**): Project Co may submit an updated Initial Phase Program, within 10 Business Days after the notification from the Independent Reviewer under clause 26.8(c).

(e) (**failure to submit**): If Project Co does not submit an updated Initial Phase Program in accordance with clause 26.8(d), Project Co will be deemed not to have met the requirements set out in clause 26.8(a)(iv).

(f) (**determination by Independent Reviewer**): If the Independent Reviewer determines that the updated Initial Phase Program submitted by Project Co:

(i) addresses the non-compliances previously notified by the Independent Reviewer to Project Co in accordance with clause 26.8(c), Project Co will be deemed to have met the requirements in clause 26.8(a)(iv); or

(ii) does not address the non-compliances previously notified by the Independent Reviewer to Project Co under clause 26.8(c), Project Co will be deemed not to have met the requirements in clause 26.8(a)(iv).

26.9 Extension of Time determined by Independent Reviewer

(a) (**Extension of time**): If the conditions precedent in clause 26.8(a) have been satisfied, unless the parties otherwise agree an extension to the relevant Date for Acceptance or Key Milestone Completion Date (as applicable), or the State issues a direction under clause 26.16 beforehand, either party may ask the Independent Reviewer to extend the relevant Date for Acceptance or Key Milestone Completion Date (as applicable) by a reasonable period determined by the Independent Reviewer in accordance with the Independent Reviewer Deed of Appointment.

(b) (**Interim determinations**): In the circumstances contemplated by clause 26.9(a), the Independent Reviewer may, in its absolute discretion, give interim determinations of Project Co's entitlement to an extension of time notwithstanding that the effects of the relevant Extension Event are continuing.

(c) (**Independent Reviewer may consider**): In dealing with an extension of time claim, the Independent Reviewer (without limiting clause 26.9(a)) must take into account all relevant evidence presented by the parties (but is not bound by any of that evidence).

26.10 Unilateral extensions

(a) (**Unilateral extensions**): Whether or not Project Co has made, or is entitled to make, a claim for, or is entitled to, an extension of time under this clause 26 or under clause 35.7 for a State Initiated Modification, the State may at any time and from time to time, by notice to Project Co, unilaterally extend the Date for Acceptance or Key Milestone Completion Date (as applicable).

(b) (**Acknowledgements**): The parties acknowledge that:

(i) the State is not required to exercise the State's discretion under clause 26.10(a) for the benefit of Project Co;

(ii) other than in accordance with clause 26.10(d), Project Co shall not be entitled to make any Claim against the State as a consequence of the State exercising its discretion under clause 26.10(a); and

(iii) other than in accordance with clause 26.10(c), the exercise or failure to exercise the State's discretion under clause 26.10(a) is not capable of being the subject of a Dispute or otherwise subject to review.

(c) (**Right to dispute**): If the State exercises its power under clause 26.10(a) in respect of an Extension Event or in respect of a State Initiated Modification for which, but for the exercise by the State of its powers under clause 26.10(a), Project Co would otherwise be entitled to an extension of time to a Date for Acceptance or Key Milestone Completion Date (as applicable), if Project Co disputes the determination made by the State under clause 26.10(a) in respect of that extension of time, Project Co may refer the State's determination under clause 26.10(a) to expert determination in accordance with clause 48.1(d)(i) provided that Project Co refers such determination to expert determination within 20 Business Days after the State's exercise of its discretion under clause 26.

(d) (**Compensation**): If the State exercises its power under clause 26.10(a) in respect of a Compensable Extension Event, Force Majeure Event or a State Initiated Event for which, but for the exercise by the State of its powers under clause 26.10(a), Project Co would otherwise be entitled to an extension of time to the Date for Acceptance, Project Co will be entitled to compensation for that Compensable Extension Event or Force Majeure Event in accordance with clause 26.12 or clause 35.7(b) as the case may be.

26.11 Force Majeure

If a Force Majeure Event, prevents:

(a) (**prevention of Project Co**): Project Co from carrying out all or a material part of the Development Activities; or

(b) (**prevention of State**): the State from carrying out all or a material part of its obligations under the State Project Documents,

the obligations of each party under this Deed which are affected by the Force Majeure Event, will be suspended to the extent of such prevention, and the failure to perform such suspended obligations will not be a breach of this Deed by Project Co, a Project Co Act or Omission, a Major Default or a Default Termination Event.

26.12 Entitlement to financial compensation for delay

To the extent that Project Co is granted an extension of time to a Date for Acceptance under clause 26.9(a) or 26.10(a) (and clause 26.10(d) applies) then, if the Extension Event is a Compensable Extension Event or Force Majeure Event, subject to clause 26.14(b), Project Co will be entitled to claim compensation in accordance with the Change Compensation Principles except to the extent the Compensable Extension Event or Force Majeure Event has given rise to loss or damage to the Project Assets and clause 42.4(a)(iii) or clause 42.5 applies, in which case, Project Co's entitlement to claim any compensation in respect of that loss or damage to the Project Assets will be as set out in clause 42.4 and clause 42.5.

26.12A Entitlement to compensation for extended Term

To the extent that Project Co is granted an extension of time to the Date for Commercial Acceptance under clause 26.9(a) or 26.10(a) or as a result of a State Initiated Modification and achieves Commercial Acceptance after the Original Date for Commercial Acceptance, Project Co will be entitled to claim Extended Term Compensation in accordance with the Change Compensation Principles.

26.13 Share of Savings

If Project Co achieves Commercial Acceptance earlier than the Date for Commercial Acceptance but after the Original Date for Commercial Acceptance and Project Co has been granted an extension of time for an Extension Event and has been compensated or is entitled to compensation under clause 26.12 for the period until the Date for Commercial Acceptance, this will be deemed to be a Change Compensation Event and the Change Compensation Principles will apply.

26.14 Concurrent delays

(a) (**No entitlement**): Subject to clause 26.14(b), if:

(i) there are two or more events each of which by itself, if the other event(s) had not occurred, would cause a delay to Acceptance, and at least one

event is an Extension Event and at least one event is not an Extension Event or a State Initiated Modification; and

(ii) any period of delay caused by the Extension Event(s) referred to in clause 26.14(a)(i) is occurring at the same time as a period of delay caused by an event referred to in clause 26.14(a)(i) that is not an Extension Event or a State Initiated Modification (**Concurrent Delay**),

Project Co is not entitled to an extension of time in accordance with clause 26.9 or compensation in accordance with clause 26.12 (if applicable) for the period of that Concurrent Delay.

(b) (**Entitlement for breach**): Project Co's rights under clause 26.9 or clause 26.12 are not limited by clause 26.14(a) if:

(i) an Extension Event as referred to in clause 26.14(a)(i) is an event contemplated by paragraph (a) of the definition of Compensable Extension Event; and

(ii) that Extension Event occurs before any of the events referred to in paragraph 26.14(a)(i) that are not Extension Events or State Initiated Modifications.

26.15 Acceleration by Project Co

If Project Co chooses to compress the Development Activities or otherwise accelerate progress other than in accordance with a direction of the State under clause 26.19:

(a) (**no State action**): the State will not be obliged to take any action to assist or enable Project Co to achieve any particular sequencing or rate of progress of the Project Activities; and

(b) (**State obligations not affected**): the time for the carrying out of the State's obligations will not be affected.

26.16 Acceleration Notice

If:

(a) (**delay by an Extension Event**): any part or the whole of the Development Activities are delayed by an Extension Event; and

(b) (**entitlement to extension of time**): Project Co is or would have been entitled to an extension of time to a Date for Acceptance or a Key Milestone Completion Date (as applicable) for that Extension Event under this clause 26, whether or not the Independent Reviewer has made a determination in accordance with clause 26.9,

the State may direct Project Co to submit a Change Notice setting out the estimated time and cost consequences of accelerating any part or the whole of the Development Activities to overcome or minimise the extent and effect of some or all of the delay including, if required, in order to achieve Acceptance by the relevant Date for Acceptance, or Milestone Completion in relation to a Key Milestone by the relevant Key Milestone Completion Date (as applicable) and Project Co must submit a Change Notice within 10 Business Days after the State's direction and the Change Compensation Principles will apply.

26.17 Reasonably achievable

(a) (**Acceleration reasonably achievable**): In any Change Notice submitted under clause 26.7 in respect of a compression or acceleration of the Development Activities or in response to a direction under clause 26.16, Project Co must identify whether and to what extent the acceleration is reasonably achievable in the circumstances.

(b) (**Consequences if not reasonably achievable**): If some or all of the acceleration is not reasonably achievable in the circumstances, then the State must not direct the acceleration to the extent that it is not reasonably achievable.

26.18 Partial acceleration

If the State gives Project Co a Change Response, in response to a Change Notice submitted by Project Co under clause 26.7 or clause 26.16 (as applicable), to accelerate and it only applies to part of the delay, any entitlement to an extension of time Project Co would have had but for the acceleration will only be reduced to the extent to which the instruction to accelerate requires Project Co to accelerate the relevant part or the whole of the Development Activities to overcome the delay.

26.19 Acceleration

If the State gives Project Co a Change Response to accelerate in response to a Change Notice submitted by Project Co under clause 26.7 or clause 26.16 (as applicable) in accordance with the Change Compensation Principles:

(a) (**Project Co must accelerate**): Project Co must accelerate the relevant part, or the whole, of the Development Activities to overcome or minimise the extent and effect of some or all of the delay as instructed including Milestone Completion in relation to the Key Milestones by the relevant Key Milestone Date (as applicable) if required, in order to achieve Acceptance by the relevant Date for Acceptance; and

(b) (**entitlement to actual costs**): if Project Co would, but for the instruction, have been entitled to an extension of time to the relevant Date for Acceptance or a Key Milestone Completion Date (as applicable) for the cause of the delay, the State must pay Project Co the extra actual costs properly and reasonably incurred by Project Co and directly attributable to accelerating the relevant part or the whole of the Development Activities calculated in accordance with the Change Compensation Principles.

26.20 State's rights and Project Co's obligations and liabilities not affected and time not at large

The State's rights and Project Co's liabilities for any failure by Project Co to achieve Acceptance by the relevant Date for Acceptance are not limited or affected by:

(a) (**acceleration**): the giving of any Change Response to accelerate under clause 26.19; or

(b) (**other circumstances**): any:

(i) breach of any State Project Document by the State;

(ii) Modification directed or Modification Order issued by the State or the State Representative;

(iii) other act or omission of the State, any State Associate or any Interface Party;

(iv) failure by the Independent Reviewer to grant any extension of time under clause 26.9 or to do so within the time required by that clause; or

(v) other default, act or omission of the Independent Reviewer or any of its Associates,

and none of the matters mentioned in this clause 26.20 will set a Date for Acceptance or any other time at large.

26.21 Extension of time disputes

Subject to clause 26.10, if either party disputes a determination of the Independent Reviewer under clause 26.8(b) or clause 26.9, either party may refer the matter to expert determination in accordance with clause 48.1(d)(i) provided that the party disputing the Independent Reviewer's determination under clause 26.8(b) or clause 26.9 (as applicable) gives a notice to the other party within 10 Business Days after the determination.

27. Defects

27.1 Notification of Defects

(a) (**All Defects**): Subject to clause 27.1(b) and 27.1(c), Project Co must rectify all Defects in accordance with this clause 27.1.

(b) (**Returned Assets**): Project Co is not required to rectify any Defect in a Returned Asset which is discovered after the end of the Defects Liability Period for that Returned Asset.

(c) (**Commercial Acceptance Outstanding Items**): Project Co's obligation to rectify Commercial Acceptance Outstanding Items as set out in the Certificate of Milestone Completion or Certificate of Commercial Acceptance (as applicable) are as set out in clause 24.

(d) (**Notification by Project Co**): Subject to clauses 27.1(b) and 27.1(c), if Project Co identifies a Defect, Project Co must notify the State and the Independent Reviewer (if still engaged) of that Defect.

(e) (**Notification by the State or Independent Reviewer**): Subject to clauses 27.1(b) and 27.1(c), if the State or the Independent Reviewer (if still engaged) believes there is a Defect or Project Co notifies the State of a Defect under clause 27.1(d), the State or the Independent Reviewer may give notice to Project Co specifying:

(i) that Defect; and

(ii) subject to clause 27.1(g), the reasonable period of time within which Project Co must rectify that Defect which, if the Defect will also give rise to an Abatement Event other than in accordance with clause 27.1(k), must not be less than the rectification period for that Abatement Event under the Payment Schedule,

and Project Co must comply with that notice.

(f) (**Dispute**): If Project Co disagrees with:

(i) any notice given by the State or the Independent Reviewer under clause 27.1(e); or

(ii) any determination by the Independent Reviewer that there are Defects,

then:

(iii) the State and Project Co must use reasonable endeavours to resolve the disagreement;

(iv) if:

(A) the notice of a Defect is given by the State under clause 27.1(e) and the disagreement is not resolved within 10 Business Days after the notice given under clause 27.1(e); and

(B) the Independent Reviewer is still engaged in respect to the Project in accordance with the Independent Reviewer Deed of Appointment,

either party may, by notice to the other party and the Independent Reviewer, refer the matter for determination by the Independent Reviewer, who must within 10 Business Days after the date of the notice given under this clause 27.1(f)(iv) make a determination as to the matter and notify the parties of its determination and reasons, in which case, subject to clause 27.1(f)(v), the parties must comply with that determination; and

(v) if:

(A) either party disagrees with a determination made by the Independent Reviewer under clause 27.1(f)(iv);

(B) the Independent Reviewer is no longer engaged in respect to the Project in accordance with the Independent Reviewer Deed of Appointment; or

(C) the Independent Reviewer is the party that determines that there is a Defect (including in respect of a Returned Asset) under clause 27.1(e),

either party may refer the matter to expert determination in accordance with clause 48.1(d)(i), provided that:

(D) the dispute is a bona fide dispute in accordance with the requirements set out in clause 9.7(a); and

(E) the party disputing the Independent Reviewer's determination gives a notice to the other party within 10 Business Days after the determination.

(g) (**Returned Assets**): If the Defect relates to any Returned Assets, Project Co must rectify the Defect:

(i) at times agreed with the Returned Asset Owner and in accordance with the requirements of any other relevant Authority or the relevant Returned Asset Owner; and

(ii) so as to minimise any adverse effect on any relevant Returned Asset Owner or Authority.

(h) (**Notice of rectification**): Project Co must give notice to the State and the Independent Reviewer (and, if the Defect relates to any Returned Asset, the relevant Returned Asset Owner) that a Defect has been rectified promptly after its rectification by Project Co, which notice must describe the rectification works undertaken.

(i) (**Rights of State**): If, in the reasonable opinion of the State, rectification of a Defect:

(i) the subject of a notice given in accordance with clause 27.1(e), or described in clause 24.4(l), is not being expeditiously and diligently progressed by Project Co; or

(ii) the subject of a notice given in accordance with clause 27.1(e) has not been achieved within the period specified in the notice,

the State may:

(iii) issue a notice to the Independent Reviewer and Project Co requiring the Independent Reviewer to determine the cost necessary to rectify the relevant Defect, in which case:

(A) the State may retain from any amount due to Project Co (including Service Payments):

1) [not disclosed]% of the amount determined by the Independent Reviewer or the State, if the Independent Reviewer is no longer engaged; or

2) such lesser amount as the State may determine,

until that Defect is rectified by Project Co or the State in accordance with clause 27.1(i)(v) and any amount due and payable to the State under clause 27.1(i)(v) has been paid (**Defects Retention Amount**); and

(B) within 10 Business Days after that Defect being rectified by Project Co, Project Co will be entitled to payment of the Defects Retention Amount less any amount the State may set-off or deduct under clause 34.7;

(iv) elect to accept the relevant Defect and issue a notice to the Independent Reviewer and Project Co requiring the Independent Reviewer to determine the cost necessary to rectify the relevant Defect and the relevant diminution in value of the Project Assets as a consequence of the Defect in which case Project Co must pay the State the greater of:

(A) the costs necessary to rectify that Defect; and

(B) the diminution in value of the Project Assets as a consequence of that Defect,

as certified by the Independent Reviewer in which case, the amount payable to the State will be a debt due and payable from Project Co to the State; or

(v) rectify the relevant Defect itself or engage others to rectify that Defect, in which case the costs incurred by the State will be a debt due and payable from Project Co to the State.

(j) (**Corrective action plan**): Project Co must review and analyse the cause of all Defects and develop a plan of corrective action to minimise the likelihood of recurrence.

(k) (**Defects in Maintained Assets**): If a Defect referred to in clause 27.1(d) or 27.1(e) is in respect of the Maintained Assets:

(i) occurs after the Date of Final Acceptance; and

(ii) would not otherwise constitute an Abatement Event (but for this clause 27.1(k)),

that Defect will be deemed to be:

(iii) an Abatement Event under section 2.2 of Table 6 of Annexure B of the Payment Schedule:

(A) in respect of which Project Co will accumulate the applicable Performance Points; and

(B) which has a remedy period which is the same as the time period for rectification specified in the Code of Maintenance Standards for that Defect,

each as set out in the notice referred to in clause 27.1(i); and

(iv) a Default.

27.2 Defects Liability Period for Returned Assets

(a) (**Defects Liability Period**): Each Returned Asset has a Defects Liability Period which:

(i) commences on the Returned Asset Acceptance relating to that Returned Asset; and

(ii) subject to clause 27.2(b), expires 24 months after the Date of Commercial Acceptance.

(b) (**Extension of DLP**): If Project Co is required to rectify a Defect in a Returned Asset in the 24 month period referred to in clause 27.2(a), the Defects Liability Period will expire on the later of:

(i) the date which is 24 months after the Date of Commercial Acceptance; and

(ii) the date which is 12 months after the rectification of the relevant Defect.

27.3 Defects list

Project Co must maintain and update a list of all Defects in accordance with section 12 of Part F6 of the PSDR.

PART F – MAINTENANCE PHASE OBLIGATIONS

28. Maintenance Phase Obligations

28.1 [Not used]

28.2 Delivery of the Services

Without limiting clause 5.1, Project Co must perform the Services so that the Maintained Assets are in a condition which satisfies the relevant FFP Warranty.

28.3 Innovation and continuous improvement

(a) (**Project Efficiency Review**): Every 5 years after the Maintenance Phase (Full) Commencement Date (each a **Project Review Date**) Project Co and the State must conduct a review in order to ensure that the Services and the Project Assets are providing a suitable and cost effective solution for the State (**Project Efficiency Review**).

(b) (**Project Improvement Report**): As part of the Project Efficiency Review, Project Co must produce a report which must:

(i) identify any activities undertaken by Project Co to improve the effectiveness of the Services, and any further opportunities for improvement of the Project through Modifications, changes in respect of the role of the State and behaviour or usage changes by either party; and

(ii) include as a minimum:

(A) a trend analysis of performance of the Services against the standards set out in this Deed or required by Best Industry Practice from the Date for Maintenance Commencement to the Project Review Date;

(B) areas of performance of the Services that can be improved, and steps taken by Project Co to address performance issues;

(C) where the performance trend analysis identifies a deteriorating trend in performance, repeat failures, or significant failures, an action plan to identify how these failures are to be improved;

(D) opportunities for reducing Services costs; and

(E) a financial summary identifying the cost impact of all the efficiency improvement opportunities identified and any cost savings that can be achieved,

(**the Project Improvement Report**) and submit the relevant Project Improvement Report for review by the State in accordance with the Review Procedures no less than 30 days prior to the relevant Project Review Date.

(c) (**Appointment of independent technical advisor**): The State may appoint an independent technical advisor to carry out an independent review and produce an independent report which addresses any of the requirements of the Project Improvement Report as part of a Project Efficiency Review.

(d) (**Project Co must co-operate**): Project Co must co-operate fully with any independent technical advisor appointed by the State to conduct a Project Efficiency Review and provide access to systems, copies or reports and any relevant data to enable the independent technical advisor to complete their report.

(e) (**Costs**): The costs of the independent technical advisor will be borne by the State, unless the State has engaged the independent technical advisor to prepare the independent report in accordance with clause 28.3(c) because Project Co has failed to provide a Project Improvement Report in accordance with the requirements of clause 28.3(a) or 28.3(b), in which case the costs of the independent technical advisor will be borne by Project Co as a debt due and payable by Project Co to the State.

(f) (**Meeting**): As part of the Project Efficiency Review the parties will hold one or more meetings after:

(i) submission of the Project Improvement Report by Project Co under clause 28.3(b); and

(ii) receipt of any report prepared by the independent technical advisor under clause 28.3(c),

and both parties will present their overview of the effectiveness of the Project and improvements that can be made.

(g) (**Implementation**): Following the meeting under clause 28.3(f), the State may at any time issue to Project Co a Modification Request under clause 35.1 or a Modification Order under clause 35.10 or exercise its rights in relation to an Augmentation, in relation to any improvements identified in accordance with this clause, in which case the relevant procedures in clause 35 will apply.

(h) (**Not required to defer Planned Lifecycle Activities**): In order to comply with its obligations under this clause 28.3, Project Co is not required to defer any Planned Lifecycle Activities under clause 28.4(a).

28.4 Deferral of Lifecycle

(a) (**Proposal**): Subject to clause 28.4(c) and clause 28.4(d), if Project Co proposes to defer any Planned Lifecycle Activities, it must identify in the Forecast Maintenance and Refurbishment Plan submitted for review in accordance with the Review Procedures:

(i) the details of each proposed deferral;

(ii) the period of time of deferral; and

(iii) whether such deferral would:

(A) entitle the State to reject the Forecast Maintenance and Refurbishment Plan under clause 28.4(b); or

(B) result in a breach of clause 28.4(c) or clause 28.4(d).

(b) (**State may reject**): Subject to clause 29(c) the State may reject any Forecast Maintenance and Refurbishment Plan submitted under clause 28.4(a):

(i) in accordance with the Review Procedures;

(ii) for the reasons set out in clause 28.4(c); or

(iii) if the State is of the view, acting reasonably, that such deferral would result in a breach of clause 28.4(d).

(c) (**Reasons for rejection**): The State may reject any Forecast Maintenance and Refurbishment Plan submitted in accordance with clause 28.4(a) if Project Co's proposed deferral of Planned Lifecycle Activities would, if approved, result in the relevant Planned Lifecycle Activities being deferred by a period (measured in Maintenance Years) equal to or greater than [not disclosed]% of the period of the relevant replacement or refurbishment cycle as shown in:

(i) the Forecast Maintenance and Refurbishment Plan submitted at least 40 Business Days prior to the Date for Maintenance Commencement and which has been reviewed in accordance with the Review Procedures; or

(ii) if the item the subject of the Planned Lifecycle Activities was not included in that Forecast Maintenance and Refurbishment Plan or has since been replaced or refurbished, the Forecast Maintenance and Refurbishment Plan in which the relevant item and the replacement cycle for the relevant item was first shown.

(d) (**Project Co may not defer**): Project Co must not defer, or propose to defer any Planned Lifecycle Activities:

(i) if Project Co will no longer be able to satisfy the FFP Warranty as a result of such deferral; or

(ii) during the five years prior to the Final Expiry Date without the consent of the State Representative.

28.5 Obsolescence

(a) (**Obsolescence**): If a part of a Project Asset becomes, or will become, Obsolete during the Maintenance Phase or is likely to become Obsolete within [not disclosed] after the Final Expiry Date, Project Co must either:

(i) (**replacement**): replace that part of the Project Asset with a replacement part (the **Replacement Maintained Asset**) which:

(A) is not Obsolete;

(B) meets all relevant requirements of this Deed and does not prevent or hinder any other part of the Project Assets from meeting the relevant requirements of this Deed;

(C) is at least of the same standard, functionality and reliability and has the same residual life as that part of the Project Asset it is replacing; and

(D) has the same or a better standard, functionality and reliability relative to the market at the time of replacement, as that part of the Project Asset it is replacing had at the time that the part of the Project Asset was incorporated into the Project Asset; or

(ii) (**deferral**): submit a plan to the State which sets out the measures that will be undertaken to ensure that:

(A) Project Co will be able to continue to meet its obligations under this Deed without replacing the Obsolete part of the Project Asset;

(B) the Obsolete part of the Project Asset will be supported:

1) if the Obsolete part of the Project Asset is due to be replaced prior to the Final Expiry Date in accordance with the then current Asset Management Plan and Forecast Maintenance and Refurbishment Plan, until it is replaced in accordance with the then current Asset Management Plan; or

2) if the Obsolete part of the Project Asset is not due to be replaced prior to the Final Expiry Date in accordance with the then current Asset Management Plan and Forecast Maintenance and Refurbishment Plan, until three years after the Final Expiry Date; and

(C) the State is not adversely affected by the relevant Obsolescence, including that the State does not incur any additional cost or expense or material inconvenience as a result of the Obsolescence for the period that the Obsolete part of the Project Asset is required to be supported in accordance with clause 28.5(a)(ii)(B),

(**Obsolescence Plan**), for review in accordance with the Review Procedures.

(b) (**Update Obsolescence Plan**): Project Co must update the Obsolescence Plan where it is necessary for Project Co to change the Obsolescence Plan to meet the requirements set out in clause 28.5(a)(ii) and, otherwise, annually and submit the updated Obsolescence Plan to the State for review in accordance with the Review Procedures.

(c) (**Project Co must continue to comply with obligations**): If at any time Project Co is no longer able to comply with an Obsolescence Plan or the State rejects an Obsolescence Plan in accordance with the Review Procedures on the basis that Project Co cannot continue to meet its obligations under this Deed without replacing the Obsolete part of the Project Asset, Project Co must replace the Obsolete part of the Project Asset in accordance with clause 28.5(a)(i).

28.6 Warranted Life

(a) (**Warranted Life**): For each of the Warranted Assets supplied by Project Co or a Project Co Associate under this Deed, Project Co must obtain and maintain a warranty that is capable of assignment to the State or a Project Successor from the manufacturer or supplier, that:

(i) the relevant Warranted Asset; or

(ii) if the relevant Warranted Asset is replaced during the Term, that replaced Warranted Asset,

will be Fit For Purpose by reference to the purposes, functions, uses and requirements set out in clause 5.5 (without any major maintenance or refurbishment works), for the Warranted Life including the period that continues beyond the

relevant Date of Returned Asset Acceptance or the Expiry Date (as applicable), provided that the relevant Warranted Asset is operated and maintained after the date of the relevant Returned Asset Acceptance or the Expiry Date (as applicable):

(iii) in accordance with Best Maintenance Practices;

(iv) such that any damage to all or part of the relevant Warranted Asset occurring after the relevant Date of Returned Asset Acceptance or the Expiry Date (as applicable) is promptly rectified in accordance with Best Industry Practices;

(v) in relation to a Maintained Asset, in accordance with the Asset Management Plan and Forecast Maintenance and Refurbishment Plan; and

(vi) in accordance with Law and taking into account any Change in Law or Change in Policy occurring after the Final Expiry Date,

(each a **Warranted Life Warranty**).

(b) (**Maintain in force**): Without limiting clause 47.6(c), Project Co must ensure that each Warranted Life Warranty remains in force for the period of the relevant Warranted Asset's Warranted Life up to the Expiry Date.

(c) (**Date of obtaining**): Project Co must obtain each Warranted Life Warranty as soon as reasonably practicable and must include in the Handover Management Sub-Plan, copies of each Warranted Life Warranty and identify each of the Warranted Assets for which it has obtained or has not yet obtained a Warranted Life Warranty.

29. WGT Heavy Haulage Routes and Dynon Road Bridge Rehabilitation Works

(a) (**State's right to extend**): The State may, by notice in writing to Project Co not later than two months prior to the WGT Heavy Haulage Routes Date for Completion or the Dynon Road Bridge Date for Completion (as applicable), extend the WGT Heavy Haulage Routes Date for Completion or the Dynon Road Bridge Date for Completion (as applicable) to such other future date as determined by the State in its discretion.

(b) **(Submission of updated Forecast Maintenance and Refurbishment Plan**): Within 20 Business Days after the State's notice given under clause 29(a), Project Co must submit an updated Forecast Maintenance and Refurbishment Plan in accordance with clause 28.4(a) which may provide for the deferral (as applicable) of:

(i) the Planned Lifecycle Activities in respect of the WGT Heavy Haulage Routes to reflect the extended WGT Heavy Haulage Routes Date for Completion as set out in the State's notice given under clause 29(a); or

(ii) the Planned Lifecycle Activities in respect of the Dynon Road Bridge Rehabilitation Works to reflect the extended Dynon Road Bridge Date for Completion as set out in the State's notice given under clause 29(a).

(c) **(State must not reject updated Forecast Maintenance and Refurbishment Plan**): The State must not reject the updated Forecast Maintenance and Refurbishment Plan to the extent that the only change or update to the Forecast Maintenance and Refurbishment Plan is the deferral of either or both of:

(i) the Planned Lifecycle Activities in respect of the WGT Heavy Haulage Routes to reflect the extended WGT Heavy Haulage Routes Date for Completion; or

(ii) the Planned Lifecycle Activities in respect of the Dynon Road Bridge Rehabilitation Works to reflect the extended Dynon Road Bridge Date for Completion.

(d) **(Acknowledgement):** The parties acknowledge that Project Co shall not be entitled to make any Claim against the State as a consequence of the State exercising or not exercising its discretion under clause 29(a).

30. [Not used]

31. [Not used]

32. Intervening Events

32.1 Intervening Events entitling Change Notice

(a) (**Definition**): For the purposes of this clause 32 a reference to "prevent" or any form of that term includes preventing the relevant party from being able to perform its obligations under this Deed within the timeframes (if any) specified in this Deed.

(b) (**Notification**): If Project Co becomes aware of an Intervening Event or any other matter that has occurred during the Maintenance Phase, which has prevented or will prevent its performance of the Services or other obligations under this Deed in accordance with the requirements of this Deed (which are not Development Activities), Project Co must promptly notify the State of the relevant Intervening Event or other matter and its then current effect and likely further effect.

(c) (**Relief**): Subject to this clause 32, if, during the Maintenance Phase, the performance by Project Co of the Services or any of its other obligations under this Deed (which are not Development Activities) is prevented by an Intervening Event or the consequences of that Intervening Event, Project Co will be entitled to relief in accordance with clause 32.2.

(d) (**Claim for relief**): To claim relief under clause 32.1(c), Project Co must submit a Change Notice to the State for that Intervening Event and its consequences, in accordance with the Change Compensation Principles and must continue to update the State in respect of the Intervening Event and its consequences in accordance with the Change Compensation Principles.

(e) (**Conditions precedent**): Subject to clause 32.3, it is a condition precedent to Project Co's entitlement to relief under clause 32.2 that:

(i) Project Co complies with clause 32.1(d);

(ii) Project Co can demonstrate that it has actually been or will be prevented from performing the Services or other obligations under this Deed in

each case during the Maintenance Phase by the relevant Intervening Event or its consequences; and

(iii) Project Co, at the time it submits the relevant Change Notice, submits to the State such other information reasonably required by the State to enable the State to determine Project Co's entitlement to relief.

32.2 Obligations suspended and no breach

(a) (**Obligations suspended**): To the extent that an Intervening Event or its consequences prevent Project Co from performing the Services or other obligations under this Deed in each case during the Maintenance Phase (which are not Development Activities) and the conditions precedent in clause 32.1(e) have been satisfied, then:

(i) (**suspension**): the relevant obligations of Project Co will be suspended, but only until the earlier of the date the Intervening Event and its consequences cease to prevent Project Co from performing the Services or otherwise meeting those obligations under this Deed, or would have ceased to prevent Project Co from performing the Services or otherwise meeting those obligations under this Deed had Project Co or any Project Co Associate not failed to do any of the things contemplated by clause 43.10(a)(ii); and

(ii) (**no breach**): the failure to perform such suspended obligations will not be a breach of this Deed by Project Co, a Project Co Act or Omission, a Major Default, a Default Termination Event or an Abatement Event.

(b) (**Obligation to keep Project Assets open**): Without limiting clause 32.3, in the case of a Force Majeure Event, Project Co may only close a Road in the Project Area affected by that Force Majeure Event to the extent that the Force Majeure Event prevents or delays the safe, efficient and continuous passage of vehicles.

32.3 Unilateral right

(a) (**Unilateral relief**): The State may at any time and from time to time, and whether or not Project Co has made, or is entitled to make, a claim for, or is entitled to, relief under clause 32.1, by notice to Project Co, unilaterally grant relief in respect of an Intervening Event and its consequences or any other matter that has occurred which has prevented, or will prevent, Project Co's performance of the Services or other obligations under this Deed during the Maintenance Phase.

(b) (**Acknowledgements**): The parties acknowledge that:

(i) the State is not required to exercise the State's discretion under this clause 32.3(a) for the benefit of Project Co;

(ii) other than in accordance with clause 32.3(c), Project Co must not be entitled to make any Claim against the State as a consequence of the State exercising its discretion under clause 32.3(a); and

(iii) other than in accordance with clause 32.3(c), the exercise or failure to exercise the State's discretion under clause 32.3(a) is not capable of being the subject of a Dispute or otherwise subject to review.

(c) (**Right to dispute**): If the State exercises its power under clause 32.3(a) in respect of an Intervening Event for which, but for the exercise by the State of its powers under clause 32.3(a), Project Co would otherwise be entitled to relief under clause 32.2, if Project Co disputes the determination made by the State under clause

32.3(a) in respect of that relief, Project Co may refer the State's determination under clause 32.3(a) to expert determination in accordance with clause 48.1(d)(i).

(d) (**Compensation**): If the State exercises its power under clause 32.3(a) in respect of a Compensable Intervening Event or a Force Majeure Event for which, but for the exercise by the State of its powers under clause 32.3(a), Project Co would otherwise be entitled to compensation in accordance with clause 32.5, Project Co will be entitled to claim compensation for the Compensable Intervening Event or Force Majeure Event in accordance with clause 32.5.

32.4 Service Payments when there is an Intervening Event

To the extent that Project Co is granted relief under clause 32.2 or clause 32.3 in respect of an Intervening Event, notwithstanding that Project Co's obligations to perform the Services or other obligations under this Deed (which are not Development Activities) affected by the relevant Intervening Event or its consequences are suspended in accordance with clause 32.2 or clause 32.3, then:

(a) (**State pays Service Payments for suspended Services**) subject to clause 32.4(b):

(i) the State must continue to pay Project Co the Service Payment for the Services or other obligations suspended due to the Intervening Event or its consequences for the period of suspension under clause 32.2 or clause 32.3;

(ii) the Service Payment will not be subject to Abatement in accordance with the Payment Schedule in respect of the Services that have been suspended in accordance with clause 32.2 or clause 32.3 for the period of such suspension; and

(iii) the State will deduct from the Service Payment the amounts of any recurrent and other costs of Project Co which are not being incurred by Project Co during the period of suspension of the relevant Services under clause 32.2 or clause 32.3,

(iv) provided that Project Co has complied and continues to comply with the requirements under clause 32.1(e); or

(b) (**where Abatement will apply to payments for suspended Services**) if the Intervening Event is:

(i) the consequence of Direct Interface Works;

(ii) a Force Majeure Event; or

(iii) an Insured Risk (other than an Insured Risk (which is not a Force Majeure Event) for which Project Co is unable to recover insurance proceeds in respect of that Insured Risk under any Insurances or Insurances (State) as a result of a State Insurance Breach),

or Project Co fails to comply with the requirements under clause 32.1(e), the Service Payment will be subject to Abatement in accordance with the Payment Schedule for the period of the suspension of the Services due to the Intervening Event for period of suspension under clause 32.2 or clause 32.3.

32.5 Compensation for Compensable Intervening Events and Force Majeure Events

To the extent that Project Co is granted relief under clause 32.2 or clause 32.3 in respect of an Intervening Event that is a Compensable Intervening Event or a Force Majeure Event and without limiting clause 32.4(b), Project Co will be entitled to claim compensation in accordance with the Change Compensation Principles except to the extent that the Compensable Intervening Event or Force Majeure Event has given rise to loss or damage to the Project Assets and clause 42.4(a)(iii) or clause 42.5 applies, in which case, Project Co's entitlement to claim any compensation in respect of that loss or damage to the Project Assets will be as set out in clause 42.4 or clause 42.5 (as the case may be).

32.6 Abatement not to constitute Major Default or Default Termination Event

Any Abatement of the Service Payment in accordance with clause 32.4(b) will not be a breach of this Deed and will not be included in the calculation of any Abatement Event for a Major Default under paragraph (s) of the definition of "Major Default" or any Abatement Event for a Default Termination Event under paragraph (h) of the definition of "Default Termination Event".

32.7 Alternative arrangements

(a) (**Alternative arrangements or method**): Without limiting clause 38, if an Intervening Event occurs during the Maintenance Phase, the State may as a consequence of and for the duration of the Intervening Event or its consequences:

(i) make alternative arrangements for the performance of those Services or other obligations under this Deed (which are not Development Activities) at no cost to Project Co and without the State incurring any Liability to Project Co in respect of those alternative arrangements; or

(ii) direct Project Co to:

(A) deliver those Services or those other obligations by an alternative method or "work around" from that contemplated in the then current Maintenance Phase Plans and the PSDR to the extent that it is reasonably possible for Project Co to do so; or

(B) require Project Co to undertake additional Services,

("**Work Around**").

(b) (**Payment**): If the State Representative requires Project Co to perform a Work Around this will constitute a Change Compensation Event and the State must pay Project Co an amount calculated in accordance with the Change Compensation Principles in respect of such Work Around.

32.8 Cessation of Intervening Event

Project Co must:

(a) (**notice to the State**): notify the State; and

(b) (**recommence all obligations**): recommence carrying out all obligations suspended as a result of the Intervening Event,

immediately after it ceases to be prevented from carrying out the Services or any of its other obligations under this Deed (which are not Development Activities) as a result of an Intervening Event or its consequences.

32.9 Force Majeure

If a Force Majeure Event prevents the State from carrying out all or a material part of its obligations under the State Project Documents during the Maintenance Phase, the obligations of the State under this Deed which are affected by the Force Majeure Event will be suspended to the extent of such prevention.

PART G - PAYMENT

33. Options in relation to Option Receivables

(a) (**State option**): At any time prior to the State Option Notification Date, the State may notify Project Co that it will pay the Option Amount on the Option Repayment Date to Finance Co to repurchase the Option Receivables.

(b) (**Project Co option**): If Project Co has not received a notice from the State that the State will pay the Option Amount in accordance with clause 33(a) on or before the State Option Notification Date, at any time prior to the Project Co Option Notification Date, Project Co may request the State to pay the Option Amount on the Option Repayment Date to Finance Co to repurchase the Option Receivables.

(c) (**Option Receivables Notice**): No later than 35 Business Days prior to the Option Repayment Date, if either the State has provided a notice to Project Co under clause 33(a) or Project Co has issued a request to the State which complies with clause 33(b), Project Co must submit to the State for approval in accordance with the Review Procedures a notice, in the form of a draft Tax Invoice, which includes:

(i) the amount of the Option Amount;

(ii) a draft Financial Model updated:

(A) to reflect the Option Amount;

(B) to reflect an updated capital component of the Base Quarterly Service Payment and an updated 'Option Amount Affected Licence Fee' which are determined in order keep the Equity IRR calculated in this draft Financial Model equal to the Equity IRR calculated in the Financial Model immediately prior to this update, in accordance with the steps set out in Schedule 29; and

(C) to identify the 'Option Amount Affected Licence Fee' in the Model Output Schedule;

(iii) a draft Licence Fee Schedule for the Maintenance Phase Licence (Full) showing the Maintenance Phase Licence (Full) Fee A and Maintenance Phase Licence (Full) Fee B as updated to reflect the draft Financial Model submitted pursuant to clause 33(c)(ii);

(iv) a draft Payment Schedule updated to reflect the draft Financial Model submitted pursuant to clause 33(c)(ii); and

(v) details of any changes required to the Project Documents as a result of changes to the work sheets in the draft Financial Model identified as the 'Model Output Schedule',

(the **Option Receivables Notice**).

(d) (**State payment obligation triggers**): Following approval by the State of an Option Receivables Notice in accordance with clause 33(c) and the State payment obligation being triggered in accordance with clause 33(e):

(i) Project Co must promptly and no later than 2 Business Days prior to the Option Repayment Date:

(A) provide to the State a final Tax Invoice which reflects the approved Option Receivables Notice; and

(B) vary the Financial Model, the Licence Fee Schedule for the Maintenance Phase Licence (Full) and the Payment Schedule to reflect the approved Option Receivables Notice;

(ii) variation of the Financial Model will be undertaken and agreed in accordance with clause 53;

(iii) as soon as practicable following variation of the Financial Model under clause 53, the parties will prepare conformed copies of the Project Documents incorporating the details of any changes required to the Project Documents as a result of changes to the worksheets in the amended Financial Model identified as the 'Model Output Schedule' provided with the approved Option Receivables Notice; and

(iv) any conformed Project Documents prepared in accordance with 33(c)(ii) will be effective from the Option Repayment Date.

(e) (**Payment**): The State must pay the Option Amount on the Option Repayment Date to Finance Co in accordance with the Receivables Purchase Deed, only if:

(i) either the State has provided a notice to Project Co under clause 33(a) or Project Co has issued a request to the State which complies with clause 33(b);

(ii) the Certificate of Commercial Acceptance has been issued on or before the date which is 5 Business Days prior to the Option Repayment Date; and

(iii) no Default Termination Event is subsisting as at the date which is 5 Business Days prior to the Option Repayment Date.

(f) (**Outstanding Debt**): Project Co must apply or procure the application of the Option Amount towards:

(i) repayment of amounts owing to Bank Lenders, and ensure that the repaid amount is not available to be redrawn at any time under the Finance Documents; and

(ii) if the Option Amount exceeds amounts owing to Bank Lenders, to the Operating Account (as defined in the Security Trust and Intercreditor Deed).

(g) (**Effect of payment**):The payment of the Option Amount does not constitute:

(i) an approval by the State of the completion or acceptance of the Development Activities or Services under this Deed;

(ii) evidence that the Project Assets are Fit For Purpose or constitute evidence that all or any other obligations under the State Project Documents have been satisfied; or

(iii) any equity capital contributed to, or ownership interest in, Project Co by the State.

(h) (**Set-off**): The State may not set-off any amount due and payable to the State under a State Project Document against the Option Amount.

(i) (**Interest**): If the State fails to pay an amount of the Option Amount which is due and payable within the time required under clause 33(e), the State must pay interest on the unpaid amount at the overdue rate applicable under the Syndicated Facilities Agreement calculated daily from the Option Repayment Date until the amount is paid. The amount of interest specified in this clause 33(i) will be Project Co's sole entitlement in respect of the late payment of all or part of the Option Amount, including interest or damages for loss of use of, or the cost of borrowing, money.

(j) (**Calculation**): Interest under clause 33(i) must be calculated on and from the day after payment of the relevant amount is due or determined to have been due.

34. Payments and Abatements

34.1 Service Payments and other payments

(a) (**Payment for Services**): In consideration of Project Co providing the Services, the State must pay Project Co the Service Payments:

(i) calculated in accordance with the Payment Schedule; and

(ii) in arrears,

during the period from the Date for Maintenance Commencement to the end of the Term from the end of the first Quarter of that period.

(b) (**Calculation of Service Payment**): The Service Payment will be calculated in accordance with the Payment Schedule.

(c) (**Other payments**): Other than the Service Payments, the State must pay any payment that is due and payable to Project Co, and Project Co must pay any payment that is due and payable to the State, at the time specified in this Deed or the relevant State Project Documents for the particular payment.

(d) (**Time for payment**): If no time is specified for the payment of the relevant amount under clause 34.1(c), the payment will be made:

(i) in the case of a payment to Project Co:

(A) up to the Maintenance Phase (Full) Commencement Date, within 20 Business Days after a demand is made for payment of the amount; and

(B) at any time after the Maintenance Phase (Full) Commencement Date, at the time the next Service Payment is made by the State to Project Co after the occurrence of the circumstances giving rise to the Liability (unless the next Service Payment is within 10 Business Days after the occurrence of the circumstances giving rise to the Liability, in which case the relevant payment will be made at the time of the Service Payment immediately following that Service Payment); and

(ii) in the case of a payment to the State, within 20 Business Days after a demand being made by the State for payment of the relevant amount.

34.2 Abatements

(a) (**Payment Schedule applies**): The Service Payments may be Abated by the State to the extent and in the manner described in the Payment Schedule to reflect the agreed principle that the State must only pay for the quantum, quality and availability of the Services actually provided.

(b) (**Not to affect other rights**): Subject to clauses 34.2(c) and 34.2(e), adjustment of the Service Payments by application of the Payment Schedule under clause 34.2(a) will be the only financial liability that Project Co will have to the State for an Abatement Event.

(c) (**No limit**): Clause 34.2(b) does not limit or affect:

(i) Project Co's Liability under clause 27.1(i) for any cost or expenses incurred by the State in engaging a party to rectify a Defect under clause 27.1(i)(v);

(ii) the State's rights under this Deed or any other State Project Document in respect of the event that caused or contributed to the Abatement Event (as opposed to the Abatement Event itself);

(iii) any other right or remedy of the State under this Deed, any other State Project Document or at Law (other than for monetary compensation for an Abatement Event);

(iv) the State's rights under clauses 42, 45 and 46;

(v) any entitlement of the State to recover any Liabilities suffered or incurred by the State as a consequence of exercising its rights under clause 38;

(vi) any payment on termination of this Deed (including a Termination Payment);

(vii) any Liability that Project Co may have for costs, losses, damage, destruction or other amounts which are indemnified by Project Co under clause 43.1 to the extent that the State has not been fully compensated for that Liability by the adjustment under clause 34.2(a);

(viii) any Liability that Project Co has to the State for any Liability that the State has to a third party, to the extent that the State has not been fully compensated for that Liability by the adjustment under clause 34.2(a); or

(ix) any Liability that Project Co may have for a Liability (including reasonably foreseeable economic loss) suffered or incurred by the State as a result of any:

(A) fraudulent, reckless, unlawful or malicious act or omission; or

(B) Wilful Misconduct,

by Project Co or any Project Co Associate to the extent that the State has not been fully compensated for that Liability by the adjustment under clause 34.2(a).

(d) (**Abatement**): Project Co acknowledges and agrees that:

(i) it is difficult, and in some instances impossible, to calculate with precision the diminution in value the State may suffer in connection with each Abatement Event;

(ii) notwithstanding clause 34.2(d)(i), the application and escalation of the Abatements in accordance with the Payment Schedule associated with each Abatement Event:

(A) reflects a genuine pre-estimate of, and is proportionate to the diminution in value (including having regard to associated mitigation and other costs) to the State in connection with each Abatement Event; and

(B) has been agreed to protect the legitimate interests of the State in the performance of the Services in accordance with the requirements of this Deed, which include:

1) meeting the growing vehicle travel demand by reducing congestion on arterial roads in Melbourne's fast growing outer suburbs;

2) improving the reliability and performance of arterial roads and reduce vehicle operating costs through enhanced maintenance outcomes;

3) promoting investment and employment creation by improving the access to key economic centres and employment clusters;

4) contributing to the creation of a safe, efficient and accessible road network that supports the health and wellbeing of all users and the liveability of communities; and

5) seeking a value for money solution for road users through innovative design, optimum risk allocation between the Project parties and a whole of life approach to the design and maintenance of the arterial road network in scope.

(iii) both the State and Project Co require a formula for calculation of the diminution in value the State may suffer in connection with each Abatement Event that is able to be readily applied without unnecessary administrative costs, delay or difficulty;

(iv) to the extent it is legally permitted to so agree, it will not assert in any proceedings under clauses 48 to 50 or in any court or other proceedings that the Abatements provided for in this clause 34 and the Payment Schedule are exorbitant, extravagant or unconscionable or a penalty or that the clause or any adjustment under the Payment Schedule in respect of an Abatement is void or unenforceable (whether in whole or in part); and

(v) the State has entered into this Deed on the basis of and in reliance on the acknowledgements given by Project Co in this clause 34.2(d).

(e) (**Project Co acknowledgements**): Subject to clause 34.2(d), Project Co acknowledges and agrees that if the Abatement of the Service Payment in accordance with clause 34.2(a) is held to be void or unenforceable, clause 34.2(b)

and the Payment Schedule will not limit Project Co's Liability to the State under this Deed or otherwise at Law for any Liability suffered by the State as a consequence of an Abatement Event.

(f) (**Unilateral waiver**): The State may waive any Abatement (in whole or in part) at any time and from time to time, by notice to Project Co. No waiver of an Abatement:

(i) constitutes acceptance by the State of the Abatement Event giving rise to the Abatement;

(ii) operates as a waiver of another Abatement Event giving rise to an Abatement; or

(iii) prejudices any rights or powers of the State or the State Representative.

34.3 Dispute

Any Dispute in respect of any calculation of the Service Payment or the calculation or application of an Abatement may be referred by either party to expert determination in accordance with clause 48.1(d)(i).

34.4 Service Payments

(a) (**Payment Claims**): Within 5 Business Days after the date Project Co delivers the Monthly Maintenance Phase Performance Report for the last Month in each Quarter during the Maintenance Phase, Project Co must provide to the State a Payment Claim for the Service Payment for that Quarter (calculated in accordance with the Payment Schedule) and any other amounts then due and payable by the State or by Project Co under this Deed.

(b) (**Payment Statement**): The State must provide to Project Co a statement stating the amount payable to or by Project Co (which may be more or less than the amount set out in the Payment Claim) and the reasons for any difference from the amount in the Payment Claim (**Payment Statement**), within the later of:

(i) 6 Business Days after receipt by the State of a Payment Claim; and

(ii) 6 Business Days after receipt by the State of the relevant Monthly Maintenance Phase Performance Report for that last Month of the relevant Quarter.

(c) (**No Payment Claim**): If Project Co does not issue a Payment Claim or Monthly Maintenance Phase Performance Report, the State may still issue a Payment Statement setting out the amount payable to or by Project Co.

(d) (**Registered**): Each of the State and Project Co acknowledges that it (or in the case of the State, a person on behalf of the State) is registered for GST when it enters into this Deed and that each party will notify the other party if it (or the relevant person) ceases to be registered.

(e) (**Tax Invoice**): Without limiting Project Co's or the State's right to dispute the amount for payment stated in the Payment Statement, Project Co or the State (as applicable) will provide to the other party a Tax Invoice in connection with any supplies which are the subject of the Payment Statement for the amount stated in the Payment Statement within 2 Business Days after receipt of the Payment Statement.

(f) (**Project Co failure to provide Tax Invoice**): Without limiting clause 34.4(g), if Project Co or the State fails to provide a Tax Invoice in the time required, the State Representative or Project Co's Representative (as the case may be) may prepare the Tax Invoice on behalf of Project Co or the State (as applicable) and provide that Tax Invoice to Project Co or the State (as applicable).

(g) (**Timing of payment**): Subject to clause 34.7, payment of the amount stated to be payable to or by Project Co in the Payment Statement must be made by the State to Project Co or by Project Co to the State (as the case may be) within 10 Business Days after receipt of the Tax Invoice provided under clause 34.4(e) or 34.4(f).

(h) (**Payment not evidence of proper performance**): The payment of Service Payments by the State to Project Co and the issuing of any Payment Statement is not evidence that the Project Activities have been carried out by Project Co in accordance with the State Project Documents, or an admission of liability, and is only to be taken as payment on account.

(i) (**Correction of previous Payment Statement**): The State may, in any Payment Statement, correct any error in any previous Payment Statement issued by the State.

34.5 Interest

(a) (**Interest**): If a party fails to pay any amount due and payable by that party to the other party within the time required under this Deed, then it must pay interest on that amount:

(i) from the date on which payment was due and payable until the date on which payment is made;

(ii) calculated daily at the Overdue Rate; and

(iii) capitalised monthly.

(b) (**Sole entitlement**): Subject to clause 46, the amount specified in clause 34.5(a) will be a party's sole entitlement in respect of the other party's failure to pay an amount due and payable, including interest or damages for loss of use of, or the cost of borrowing, amounts.

34.6 Refund

If:

(a) (**payment**): the State pays Project Co, or Project Co pays the State any amount under clause 34.4(g) or otherwise; and

(b) (**no entitlement**): it is subsequently agreed or determined for any reason that the recipient was not entitled to that payment, in whole or in part,

the recipient will immediately refund that payment (or such part as constitutes an overpayment) to the party that made the payment.

34.7 Set-off

(a) (**State's payments**): The State may deduct from any amounts due and payable by the State or any State Associate to Project Co under any of the State Project Documents or otherwise at Law:

(i) any amount due and payable by any Group Member to the State; and

(ii) the amount of any Claim that the State may have against any Group Member.

(b) (**Project Co's payments**): Project Co must make all payments to the State free from any set-off or counterclaim and without deduction or withholding for or on account of any present or future Tax, unless Project Co is compelled by Law to make such a deduction or withholding.

(c) (**Deduction or withholding**): If a party is compelled by Law to make a deduction or withholding for the benefit of an Authority, it must:

(i) remit the deducted or withheld amount to the relevant Authority within the time required by Law; and

(ii) provide to the other party all information and documentation relating to that deduction or withholding, including any information or documentation required to obtain a credit for or repayment of the deducted or withheld amount from an Authority.

(d) (**No set-off**): Notwithstanding clause 34.7(a), the State may not set off any amount against the Option Amount.

34.8 Floating Rate Component

(a) (**Floating Rate Component**): The Floating Rate Component will be payable with effect from the first Interest Period specified in the Floating Rate Component Schedule (as defined in section 8 of the Payment Schedule). Within 5 Business Days after each Floating Rate Component being able to be calculated, Project Co must provide a notice to the State setting out the amount of the Floating Rate Component for the Interest Period to which the Floating Rate Component relates.

(b) (**Invoice**): Within 5 Business Days after receipt of such notice, either:

(i) the State must provide a Floating Rate Component Invoice to Project Co (if the Floating Rate Component is negative); or

(ii) Project Co must provide a Floating Rate Component Invoice to the State (if the Floating Rate Component is positive),

for the amount of the Floating Rate Component.

(c) (**Timing of payment**): Project Co or the State (as the case may be) must pay the amount of a Floating Rate Component Invoice on or before the last day of the relevant Interest Period.

PART H - CHANGE IN CIRCUMSTANCES

35. Modifications

35.1 Modification Request by the State

(a) (**Modification Request**): The State may, at any time, issue to Project Co a notice entitled "Modification Request" which must include details of:

(i) the proposed Modification which the State is considering;

(ii) the State's preferred financing for the proposed Modification in accordance with the Change Compensation Principles; and

(iii) any specific information that the State requires Project Co to include in its Change Notice or that may be relevant to the preparation of the Change Notice,

(**Modification Request**).

(b) (**No obligation to proceed**): The State will not be obliged to proceed with any Modification proposed in a Modification Request.

35.2 Modification Proposal

(a) (**Change Notice**): Project Co must submit a Change Notice entitled "Modification Proposal" in accordance with the Change Compensation Principles within 20 Business Days after the receipt of the Modification Request issued under clause 35.1 (or such longer period determined by the State in accordance with clause 35.2(c)), unless the State withdraws that Modification Request prior to the expiry of the time period within which Project Co must submit a Change Notice under this clause 35.2(a).

(b) (**Events entitling Modification Proposal**): To make a Claim in respect of a Contamination Compensation Event, State Approval Event, Compensable Change in Mandatory Requirements or loss or damage to the Project Assets, Project Co must submit a Change Notice entitled "Modification Proposal" in accordance with the Change Compensation Principles:

(i) in respect of a State Approval Event, within 20 Business Days after the State Approval Event occurs;

(ii) in respect of a Contamination Compensation Event, within 20 Business Days after a notice under clause 11.6(b) in respect of the Contamination Compensation Event;

(iii) in respect of a Compensable Change in Mandatory Requirements:

(A) subject to clause 35.2(b)(iii)(B), within 20 Business Days after issuing a notice under clause 36.1(a) in respect of the Compensable Change in Mandatory Requirements; or

(B) if clause 36.2(a)(iii)(B) applies, within 20 Business Days after receipt of the State's direction to comply under clause 36.1(b);

(iv) in respect of any loss or damage to Project Assets where clause 42.4(a)(iii) or clause 42.4(a)(iv) applies, within 20 Business Days after

receipt of the State's direction to repair or reinstate under clause 42.2(b)(iii); or

(v) in respect of any loss or damage to the Project Assets where clause 42.5(b) applies, within 20 Business Days after receipt of the State's direction not to repair or reinstate under clause 42.2(b)(iv),

(or such longer period determined, by the State in accordance with clause 35.2(c)).

(c) (**Extension**): If the size and complexity of the proposed Modification and the information to be included in the Modification Proposal is such that it is not reasonably practicable for Project Co to prepare the Modification Proposal within the period referred to in clause 35.2(a) or clause 35.2(b) (as applicable), the State must, on the request of Project Co, extend the date for submitting the Modification Proposal by a reasonable period of time.

35.3 Modification Proposal Quote

(a) (**Payment for Modification Proposal**): If Project Co is required or entitled to prepare a Modification Proposal in accordance with this Deed, Project Co will be entitled to be paid the amount calculated in accordance with the Change Compensation Principles for the preparation of the Modification Proposal.

(b) (**Calculation of payment**): If Project Co intends to make a claim for payment from the State in relation to the preparation of any Modification Proposal in accordance with the Change Compensation Principles, Project Co must, prior to preparing the Modification Proposal:

(i) promptly notify the State that it or a Key Subcontractor needs to engage a third party other than any Consortium Member or Related Body Corporate of a Consortium Member to provide design, engineering or quantity surveying or other consultancy services reasonably required to be outsourced to assist in the preparation of the Modification Proposal; and

(ii) provide the State with a quotation for the preparation of the Modification Proposal which must be prepared in accordance with the principles set out in the Change Compensation Principles (**Modification Proposal Quote**).

(c) (**State response**): Within 5 Business Days after receipt of Project Co's Modification Proposal Quote, the State must notify Project Co whether:

(i) the State agrees to the price determined by Project Co as payable in accordance with clause 35.3(b)(ii) (in which case Project Co must proceed with the preparation of the Modification Proposal); or

(ii) the State does not agree with the price determined by Project Co as payable in accordance with clause 35.3(b)(ii) in which case the State must either:

(A) direct Project Co to proceed with the preparation of the Modification Proposal and determine the amount payable for the preparation of the Modification Proposal in accordance with the Change Compensation Principles, in which case, Project Co must comply with such direction and may refer the price for the preparation of the Modification Proposal for expert determination in accordance with clause 48.1(d)(i)

within 20 Business Days (or such other period as agreed with the relevant Reviewing Party) after the State's direction; or

(B) subject to clause 35.6, inform Project Co that it does not wish to proceed with the Modification.

35.4 Meeting

Within 10 Business Days after the State's receipt of Project Co's Modification Proposal, the State and Project Co must meet to discuss the Modification Proposal and may agree:

(a) (**agreement and issue of a Change Response**): Project Co or the State's entitlement in respect of the relevant Modification, in which case the State must issue a Change Response in accordance with that agreement and otherwise in accordance with clause 35.5 and the Change Compensation Principles;

(b) (**alternative process may apply**): an alternative process for determining Project Co or the State's entitlement in respect of the Change Compensation Event;

(c) (**changes to Modification Proposal**): any changes that are to be made to the Modification Proposal;

(d) (**further information**): the process for Project Co to provide any further information in respect of the Modification Proposal; or

(e) (**other matters**): anything else relevant to the Modification Proposal or Change Compensation Event.

35.5 Change Response

(a) (**State response to Modification Proposal**): Subject to clauses 35.4 and 35.5(b), once Project Co has provided the State with the Modification Proposal in accordance with clause 35.2:

(i) Project Co must promptly provide the State with any additional information the State notifies Project Co that it reasonably requires to assess the Modification Proposal; and

(ii) the State must issue a Change Response to the Modification Proposal in accordance with the Change Compensation Principles within 20 Business Days after the later of the receipt of the Modification Proposal by the State and the provision to the State of any further information reasonably required by the State to assess the Modification Proposal.

(b) (**Extension to response time**): The period of time in which the State is required to issue a Change Response to a Modification Proposal will be extended by such period as the State reasonably requires and notifies to Project Co having regard to the nature of the relevant Modification, the content and quality of the Change Notice, and the time within which any further information was provided in respect of the Modification Proposal.

(c) (**Content of Change Response**): Subject to clause 35.6, in the Change Response the State must advise Project Co, that the State either:

(i) accepts the Modification Proposal, in which case the Change Response must be entitled "Modification Order" and Project Co must comply with the Modification Order and will be entitled to the remedies and

entitlements set out in the Modification Proposal on the terms set out in the relevant Modification Proposal;

(ii) does not accept the Modification Proposal on the basis set out in clause 10.1 of the Change Compensation Principles in which case the State can either:

(A) direct Project Co to amend and resubmit the Modification Proposal; or

(B) issue a Change Response entitled "Modification Order" and determine the terms of the Modification and the amount payable for the Modification in accordance with the Change Compensation Principles, in which case Project Co must proceed with the Modification in accordance with the Modification Order but may refer the State's determination for expert determination in accordance with clause 48.1(d)(i) within 20 Business Days (or such other period as agreed with the relevant Reviewing Party) after Project Co's receipt of the Change Response; or

(iii) subject to clause 35.6, does not accept the Modification Proposal because the State does not wish to proceed with the proposed Modification in which case the Modification Request will be deemed to be withdrawn.

(d) (**Varies Deed**): A Modification Order provided by the State under clause 35.5(c)(i) or 35.5(c)(ii)(B) has the effect of varying this Deed to the extent provided in the relevant Modification Order with effect from the date of receipt by Project Co of that Modification Order or such other date specified in that Modification Order.

(e) (**Not a Submitted Document**): A Modification Order is not a Submitted Document and nothing in this Deed requires a recipient of a Change Notice to review a Change Notice in accordance with the Review Procedures.

(f) (**No time at large**): A failure of the State to issue a Modification Order in accordance with the requirements of this Deed (including within any time period specified in this Deed) will not entitle Project Co to the relief or compensation set out in the relevant Modification Proposal or put any time at large or, deprive the State of the power to grant the relief sought or such other relief as appropriate (including the power to extend time).

(g) (**Project Co not to proceed**): Subject to its rights to make a claim in respect of a Modification Proposal as set out in clause 35.5(c)(ii)(B), Project Co will not have any entitlement to make any Claim in respect of a Modification unless a Change Response entitled "Modification Order" requiring Project Co to proceed with the Modification has been issued by the State in accordance with the Change Compensation Principles.

35.6 Mandatory Modification Order

Subject to Schedule 25, the State must issue a Modification Order under clause 35.5(c)(i) or clause 35.5(c)(ii)(B) and cannot refuse to proceed with the Modification:

(a) for a State Approval Event; or

(b) (**other circumstances**): in relation to:

(i) a Compensable Change in Mandatory Requirements the subject of a Modification Proposal issued under clause 36.2(a)(i), clause 36.2(a)(ii) or clause 36.2(a)(iii)(A);

(ii) any Modification the subject of a Modification Proposal issued under clause 42.4(a)(iii);

(iii) any Modification the subject of a Modification Proposal issued under clause 42.5(b); or

(iv) any Modification for a Contamination Compensation Event the subject of a Contamination Notice as described in clause 11.6(e)(v)(A) and a Modification Proposal in accordance with clause 11.7(a).

35.7 Extension of time for Modification

(a) (**Extension of time**): Subject to clause 35.7(c) and clause 35.7(d), the parties acknowledge and agree that:

(i) if Project Co has included in its Modification Proposal a claim for an extension of time; and

(ii) the conditions precedent in clause 35.7(c) have been satisfied,

Project Co will (other than for an Uninsurable Risk which is not also an Extension Event) be entitled to an extension of time to the relevant Date for Acceptance or Key Milestone Completion Date (as applicable) which will, subject to clause 35.7(b), be agreed by the State and Project Co.

(b) (**Failure to agree**): If the State and Project Co cannot agree on the applicable extension of time under clause 35.7(a), then:

(i) the State may issue a Modification Order only for the non-time related aspects of the relevant claim;

(ii) the State may have the Independent Reviewer determine any extension to the relevant Date for Acceptance or Key Milestone Completion Date (as applicable) to which Project Co is entitled as if the Independent Reviewer were determining an extension of time for an Extension Event under clause 26.9;

(iii) any determination by the Independent Reviewer may be referred to expert determination in accordance with clause 48.1(d)(i); and

(iv) a further Modification Order will be issued by the State including the extension of time (if any) determined by the Independent Reviewer (or as determined in accordance with clause 49).

(c) (**Conditions precedent to extensions of time**): It is a condition precedent to Project Co's entitlement to an extension of time for a Modification or an event which is deemed to be a Modification under this Deed that:

(i) Project Co has submitted a Modification Proposal in accordance with clause 35.2;

(ii) Project Co will be delayed from carrying out the Development Activities by the relevant Modification or deemed Modification in a manner which will delay the achievement of Acceptance or Milestone Completion in relation to the Key Milestones (as applicable);

(iii) the relevant Modification or deemed Modification will cause activities on the critical path contained in the then current Initial Phase Program to be delayed; and

(iv) Project Co, at the time it submits the relevant Modification Proposal, submits an updated Initial Phase Program to the State and the Independent Reviewer which:

(A) complies with all the relevant requirements of this Deed;

(B) takes into account the impact of the relevant Modification or deemed Modification; and

(C) contains a level of detail which is sufficient to enable the State or the Independent Reviewer (as applicable) to determine Project Co's entitlement to an extension of time (where applicable),

provided that clauses 26.8(b) to 26.8(f) will apply (as if the Modification Proposal submitted in accordance with clause 35.2 was a Change Notice submitted in accordance with clause 26.7 and the Initial Phase Program was submitted in accordance with clause 26.8(a)(iv)).

(d) (**Concurrent delay**): If:

(i) there are two or more events each of which by itself, if the other event(s) had not occurred, would cause a delay to Acceptance or Milestone Completion in relation to the Key Milestones (as applicable) and at least one event is:

(A) a State Approval Event;

(B) a Compensable Change in Mandatory Requirements;

(C) loss or damage to the Project Assets where clause 42.4(a)(iii) or clause 42.4(a)(iv) applies; or

(D) a Contamination Compensation Event, the subject of a Contamination Notice as described in clause 11.6(e)(v)(A) and a Modification Proposal in accordance with clause 11.7(a),

which is the subject of a Modification Order (each a **State Modification Event**), and at least one event is not a State Initiated Modification or an Extension Event; and

(ii) any period of delay caused by the State Modification Event(s) referred to in clause 35.7(d)(i) is occurring at the same time as a period of delay caused by an event referred to in clause 35.7(d)(i) that is not a State Initiated Modification or an Extension Event (**Modification Concurrent Delay**),

Project Co is not entitled to:

(iii) any extension of time to the relevant Date for Acceptance or Key Milestone Completion Date (as applicable); and

(iv) in respect of the Date for Acceptance, Prolongation Costs or Initial Phase Finance Amounts,

for the period of that Modification Concurrent Delay.

35.8 Omission by State

(a) (**Scope**): Subject to clause 35.8(d), the parties acknowledge and agree that a Modification may decrease, omit, delete or remove any of the Project Activities or omit any Project Area.

(b) (**State Associate to perform**): The parties acknowledge and agree that the State may itself or may engage any State Associate or Interface Party to undertake any decreased, omitted, deleted or removed Project Activities or work or services on any omitted Project Area.

(c) (**Coordination with Project Activities**): Project Co must:

(i) permit the State, a State Associate or Interface Party to carry out any decreased, omitted, deleted or removed Project Activities or work or services on any omitted Project Area;

(ii) co-operate with the State, any State Associate and any Interface Party in carrying out any decreased, omitted, deleted or removed Project Activities or work or services on any omitted Project Area; and

(iii) co-ordinate and interface the Project Activities with the work carried out or to be carried out by the State, any State Associate or any Interface Party arising from or in connection with any decreased, omitted, deleted or removed Project Activities or work or services on any omitted Project Area.

(d) (**Limits on omission by State**): Notwithstanding anything else in this Deed, the State must not instruct a Modification (whether by issuing a Modification Request or a Change Response entitled "Modification Order", or by some other method) which decreases, omits, deletes or removes all or substantially all of the Development Activities or the Services.

35.9 Direction to proceed

Whether or not:

(a) (**Modification request**): the State has issued a Modification Request under clause 35.1;

(b) (**Modification Proposal**): Project Co has issued a Modification Proposal under clause 35.2; or

(c) (**parties have reached agreement**): the parties have reached agreement on any disputed matters in the Modification Proposal in accordance with this clause 35 or the Change Compensation Principles (as applicable),

the State may at any time direct Project Co to implement a Modification by issuing a Change Response which is a Modification Order in accordance with the Change Compensation Principles.

35.10 Directions giving rise to Modification

(a) (**Direction**): In this clause 35.10, "direction" means any direction, approval, consent, requirement, determination, request, claim, notice, agreement, demand or the like.

(b) (**State direction**): Without limiting clause 5.2, if Project Co considers that a direction by the State constitutes or involves a Modification and the State has not given that direction by way of a Modification Order, and Project Co intends to make a Claim that the direction is a Modification, Project Co must:

(i) within 10 Business Days after receiving the direction and before commencing work on the subject matter of the direction, give written notice to the State that it considers the direction constitutes or involves a Modification; and

(ii) within 5 Business Days after providing the notice under clause 35.10(b)(i) and before commencing work on the subject matter of the direction, give the State a Modification Proposal in accordance with the requirements set out in clause 35.2, as if that direction by the State was a Modification Request issued under clause 35.1.

(c) (**Confirmation**): Within 10 Business Days after the State receiving a Modification Proposal in accordance with clause 35.10(b)(ii), the State must issue a Change Response:

(i) confirming that the direction is in fact a request for a Modification in which case the State must issue a Change Response entitled "Modification Order" in respect of the relevant direction in accordance with clause 35.5;

(ii) withdrawing the direction, in which case Project Co must not comply with the direction; or

(iii) informing Project Co that, in the State's view, the direction does not constitute or involve a Modification in which case Project Co must comply with the direction but may refer the matter to expert determination in accordance with clause 48.1(d)(i).

(d) (**Conditions for Project Co claim**): Project Co is not entitled to make any Claim in respect of a direction that gives rise to a Modification of the type described in clause 35.10(b) unless it has given a Modification Proposal under clause 35.10(b)(ii) within the period identified in that clause.

35.11 Modifications proposed by Project Co

(a) (**Project Co may propose a Modification**): Project Co may request the State to direct a Modification by submitting a Change Notice to the State entitled "Project Co Modification Proposal" in accordance with the Change Compensation Principles (**Project Co Modification Proposal**).

(b) (**State may approve or reject**): Upon receipt of a Project Co Modification Proposal, this clause 35 and the Change Compensation Principles will apply save that the State may, but is under no obligation to issue a Modification Order requiring Project Co to proceed with the Modification proposed by Project Co under clause 35.11(a).

(c) (**Project Co to bear risks and costs**): Unless otherwise agreed in writing by the State, Project Co will:

(i) bear all risks and costs associated with a Modification proposed by Project Co; and

(ii) not be entitled to make any Claim against the State arising out of, or in any way in connection with, a Modification proposed by Project Co,

including if the State issues a Modification Order requiring Project Co to implement the Modification in accordance with the Project Co Modification Proposal.

(d) (**Sharing of Savings**): If the State issues a Modification Order requiring Project Co to proceed with the Modification proposed by Project Co under clause 35.11(a) and the Modification will give rise to any Savings, the share of any Savings between the parties will be determined in accordance with the Change Compensation Principles.

35.12 Minor Modifications

(a) (**Purposes**): The parties agree that the purposes of this clause 35.12 are to:

(i) better facilitate and more efficiently give effect to Minor Modifications; and

(ii) ease the administrative burden on Project Co and the State in the implementation of Minor Modifications,

and Project Co must seek to give effect to the purpose stated in this clause 35.12(a) in complying with its obligations under this clause 35.12.

(b) (**Minor Modification Proposal**): Without limiting the State's rights under clause 35.9, Project Co or the State may propose a Modification which is a Minor Modification by issuing a notice entitled "Minor Modification Proposal" in which case clauses 35.1 to 35.11 will not apply to the Minor Modification unless the State gives notice under clause 35.12(h).

(c) (**Accumulation**): Project Co and the State may agree to accumulate Minor Modifications on a monthly basis (or such other period as is agreed by the parties) by recording the proposed Minor Modifications by agreement on a register and either the State or Project Co (as the case may be) submitting a Minor Modification Proposal for all Minor Modifications on that register at the end of each month (or such other period as is agreed by the parties) and prior to their implementation.

(d) (**Notice**): Within 7 Business Days after receipt of a Minor Modification Proposal from Project Co or the State (as the case may be), the receiving party must provide the other party with a notice which:

(i) accepts the Minor Modification Proposal;

(ii) rejects the Minor Modification Proposal; or

(iii) sets out reasonable amendments to the Minor Modification Proposal.

(e) (**Terms**): The State and Project Co will implement the Minor Modification on the terms:

(i) of the Minor Modification Proposal if a Minor Modification Proposal is accepted under clause 35.12(d)(i); or

(ii) agreed between the State and Project Co, as recorded in an amended Minor Modification Proposal if either party seeks to amend a Minor Modification Proposal under clause 35.12(d)(iii).

(f) (**No claims**): The parties acknowledge and agree that, as Minor Modifications are intended to be simple to administer, Project Co will not be entitled to make any Claim for:

(i) an extension of time to a Date for Acceptance or additional recurrent costs that may be incurred in performing the Services, as a consequence of a Minor Modification; or

(ii) any impact the Minor Modification may have on the FFP Warranty or any other warranties given by Project Co or any Project Co Associate under any State Project Document.

(g) (**Failure to agree**): If the State and Project Co fail to agree in accordance with clause 35.12(e)(ii), in respect of the Minor Modification Proposal, the State may:

(i) issue a Modification Order under clause 35.9; or

(ii) issue a Modification Request under clause 35.1,

in order to implement the Minor Modification as a Modification.

(h) (**State direction**): If the State considers that the Minor Modification process is not meeting the purposes set out in clause 35.12(a), the State may, by notice to Project Co, suspend the Minor Modification process set out in this clause 35.12. If the State issues a notice to Project Co to this effect, all Minor Modifications thereafter will be managed in accordance with the process set out in clause 35 (other than this clause 35.12).

(i) (**Recommence Minor Modification process**): Following a suspension of the Minor Modification process, the State may, by notice to Project Co, recommence the Minor Modification process set out in this clause 35.12.

(j) (**Change Compensation Principles to apply**): A Minor Modification will be a Change Compensation Event and the Change Compensation Principles will apply.

35.13 [Not used]

35.14 Augmentation Process

(a) (**Augmentation Process**): The parties agree that the process set out in the Augmentation Process Schedule outlines how Augmentations can be implemented in accordance with this Deed.

(b) (**Compliance**): The parties agree to comply with the requirements set out in the Augmentation Process Schedule if:

(i) the State proposes an Augmentation; or

(ii) Project Co proposes a change which the State determines is an Augmentation,

under this Deed.

35.15 Pre-agreed Rates

Annexure C of Schedule 5 sets out a list of labour and other rates. When Project Co makes a Claim against the State, prepares a Modification Proposal or prepares any submission pursuant to Schedule 23, Project Co must use those rates as the basis of that Claim, Modification Proposal or submission, to the maximum extent practicable.

35.16 Commercial Vehicle Volume Change

(a) (**Commercial Vehicle Volume Change Claim**): To the extent that a Commercial Vehicle Volume Change occurs, Project Co may, within 60 Business Days after that Commercial Vehicle Volume Change occurring, submit a Change Notice:

(i) in accordance with this Deed including section 9.1 of the Change Compensation Principles; and

(ii) setting out its proposed forecast sum of the average two way Business Day traffic for Commercial Vehicles at each Location for each whole month of March during the Revised Forecast Period in relation to that Commercial Vehicle Volume Change..

(b) (**Consult in good faith**): Following submission of a Change Notice under clause 35.16(a), Project Co must:

(i) consult in good faith with the State and use its reasonable endeavours to agree on the new Base Case Commercial Vehicle Volumes in relation to the Commercial Vehicle Volume Change which is the subject of that Change Notice;

(ii) provide to the State such further information in relation to the subject matter of the Change Notice submitted by Project Co pursuant to clause 35.16(a), as is reasonably requested by the State, within 10 Business Days after receipt by Project Co of that request; and

(iii) provide to the State (as an alternative to increasing the Service Payments pursuant to clause 35.16(d)), information on any other adjustment which could be made to the State Project Documents (including amendment of the Forecast Maintenance and Refurbishment Plan) which would partly or wholly avoid the need for the State to adjust the Service Payment as a result of the Commercial Vehicle Volume Change, which is the subject of that Change Notice, within 10 Business Days after receipt by Project Co of a request from the State for such information.

(c) (**Dispute**): If the parties fail to reach agreement under clause 35.16(b)(i), within 20 Business Days after the State receives Project Co's Change Notice under clause 35.16(a) either party may refer the matter to expert determination in accordance with clause 48.1(d)(i).

(d) (**Service Payments**): Subject to clause 35.16(e), Project Co's entitlement to an adjustment to the Service Payments (if any) will be determined by the State in accordance with the Change Compensation Principles for so long as the Commercial Vehicle Volume Change persists as agreed (or determined by expert determination in accordance with clause 48.1(d)(i)) under this clause 35.16.

(e) (**State response**): Notwithstanding anything to the contrary in this Deed, within 40 Business Days after receipt of any Change Notice pursuant to clause 35.16(a), the State must issue a Modification Order which either:

(i) adjusts the Service Payment to which Project Co is entitled;

(ii) provides Project Co with relief from its obligations under this Deed in relation to the Commercial Vehicle Volume Change; or

(iii) identifies a combination of actions pursuant to clauses 35.16(e)(i) and 35.16(e)(ii) (such combination also to be in the State's sole discretion).

(f) (**Condition precedent**): It is a condition precedent to Project Co's entitlements under clauses 35.16(d) and 35.16(e) that Project Co:

(i) has submitted a Change Notice in accordance with clause 35.16(a); and

(ii) at the time it submits the relevant Change Notice submits to the State such information reasonably required by the State to enable the State to determine Project Co's entitlement to relief.

36. Change in Law and Change in Policy

36.1 Change in Law and Change in Policy

(a) (**Notification**): Project Co must submit to the State a notice within 10 Business Days after becoming aware of any actual or likely Change in Law or Change in Policy which may have an impact on the Project, the Project Activities or the State Project Documents and identify:

(i) whether it is or will be a Change in Law or a Change in Policy;

(ii) if it is or will be a Change in Law, whether it is a Project Specific Change in Law or a General Change in Law;

(iii) if it is or will be a Change in Policy, whether Project Co is bound to comply with the Change in Policy as a matter of Law; and

(iv) the likely impact of the Change in Law or Change in Policy on the Project cost and Project Activities.

(b) (**Change in Policy**): If Project Co's notice under clause 36.1(a) is a consequence of a Change in Policy occurring after the date of this Deed and Project Co is not legally obliged to comply with that Change in Policy as a matter of Law, without limiting its rights under clause 35, the State must, within 10 Business Days after the date of the notice referred to in clause 36.1(a), direct Project Co whether or not it wants Project Co to comply with the Change in Policy.

(c) (**State may request**): If the State considers that a Change in Law or Change in Policy has occurred and Project Co has not provided notice under clause 36.1(a), the State may direct Project Co to submit a notice under clause 36.1(a) in respect of that Change in Law or Change in Policy.

(d) (**Project Co to comply**): Project Co must comply with a Change in Law or Change in Policy unless, in the case of a Change in Policy, the State directs Project Co not to comply with the relevant Change in Policy (as changed) in accordance with clause 36.1(b).

(e) (**Further direction regarding Change in Policy**): Notwithstanding any other provision of this Deed, if the State directs Project Co to comply with a Change in Policy in accordance with clause 36.1(b), the State may subsequently direct Project Co not to comply with such Change in Policy at any time.

36.2 Compensable Change in Mandatory Requirements

(a) (**Compensable Change in Mandatory Requirements**): If:

(i) a General Change in Law occurs after the Maintenance Phase (Full) Commencement Date;

(ii) a Project Specific Change in Law occurs after the date of this Deed; or

(iii) a Change in Policy occurs after the date of this Deed that:

(A) Project Co is legally obliged to comply with as a matter of Law; or

(B) Project Co is not required to comply with as a matter of Law but the State directs Project Co to comply with under clause 36.1(b),

(each a **Compensable Change in Mandatory Requirements**), this will be deemed to be a Modification and Project Co may submit a Modification Proposal in accordance with clause 35.2(b)(iii) and Project Co's entitlements will be determined in accordance with clause 35 and the Change Compensation Principles as if the relevant Change in Law or Change in Policy was a State Initiated Modification.

(b) (**Conditions for Project Co Claim**): Project Co is not entitled to make any Claim against the State in respect of any Compensable Change in Mandatory Requirements (including its impact) unless it has given notice in accordance with clause 36.1(a) and 35.2(b)(iii).

37. Refinancing

37.1 Consent to Refinancing

(a) (**State consent**): Project Co must not enter into or implement any Refinancing without the consent of the State, which:

(i) must not be unreasonably withheld or delayed; and

(ii) in any case, must be given or withheld within 20 Business Days after receipt by the State of the information provided by Project Co under clause 37.2(a)(ii).

(b) (**State may withhold consent**): It will be reasonable for the State to withhold such consent if (without limitation):

(i) an effect of the Refinancing would be an increase or adverse change in the profile of the risks or liabilities (including contingent liabilities) of the State under any State Project Document, without adequate compensation to the State;

(ii) the terms and conditions of the proposed Refinancing are not on arm's length commercial terms or are not in accordance with market practice at the time;

(iii) the terms and conditions of the proposed Refinancing (taken as a whole) are materially more onerous or disadvantageous to a Project Entity than the terms and conditions under the existing Finance Documents and the State considers that entering into the proposed Refinancing will adversely impact on a Project Entity's ability to perform its obligations under the Project Documents;

(iv) the financial indebtedness assumed in accordance with the proposed Refinancing will not be used solely for the Project;

(v) the matters referred to in clause 37.4 have not been agreed or otherwise determined; or

(vi) in connection with the proposed Refinancing, Project Co has failed to comply with this clause 37.

(c) (**Change in timing**): If Project Co requests a change in the timing or manner of payment of an Option Amount, the State may give, withhold or delay its consent to such a request.

37.2 Details of Refinancing

(a) (**Provision of details**): Project Co must:

(i) at least 60 Business Days prior to any proposed Refinancing (or such shorter period of no less than 35 Business Days as Project Co reasonably requests if the proposed Refinancing is in response to any actual or potential event of default under any Finance Document), consult with the State to outline the proposed refinancing strategy and alert the State to any changes that may have a material impact on the ability of a Project Entity to meet its obligations under the Project Documents;

(ii) promptly (and at least 30 Business Days prior to the proposed Refinancing) provide the State with full details of any proposed Refinancing, consistent with the requirements of clause 53, including:

(A) a copy of the proposed financial model relating to it;

(B) the basis for the assumptions used in the proposed financial model;

(C) a comparison with any refinancing assumed within the Financial Model;

(D) a certificate in terms acceptable to the State from the auditors of such financial model;

(E) details of any revised Base Case Floating Rate Debt, Base Case Floating Rate Interest Payment or Base Case Interest Rate for the purposes of the Payment Schedule; and

(F) a copy of any draft document proposed to be entered into in connection with such Refinancing; and

(iii) at least 2 Business Days prior to the proposed Refinancing, provide the State with final execution versions of each document proposed to be entered into.

(b) (**Material changes**): The proposed financial model provided under clause 37.2(a)(ii):

(i) must show, amongst other things:

(A) the material changes to Project Co's or Finance Co's obligations to its Financiers;

(B) projected Distributions; and

(C) any anticipated Refinancing Gain; and

(ii) may include adjustments to any relevant assumptions necessary to reflect the committed financing terms of the proposed Refinancing. Any assumptions relating to the period beyond the term of the proposed Refinancing must be the same as those set out in the Financial Model immediately prior to the proposed Refinancing.

(c) (**State's unrestricted rights**): Project Co agrees that the State, whether before, during or at any time after any Refinancing, will have unrestricted rights of audit of any financial model and documentation, including formulae and calculations used in connection with the Refinancing.

37.3 Refinancing documents

(a) (**Consent**): Project Co must not execute or amend any document in connection with a Refinancing (including by amending, restating or replacing any Finance Document) without the State's consent (such consent not to be unreasonably withheld or delayed if the relevant document is on substantially the same terms as provided to the State under clause 37.2(a)(iii) and does not give rise to any grounds to withhold consent under clause 37.1(b)).

(b) (**Documents to be delivered to State**): Project Co must, within 5 Business Days after the execution of any document in connection with a Refinancing (including by amending, restating or replacing any Finance Document), deliver to the State a certified true copy of that document.

(c) (**Execution of Refinancing documents**): Project Co must not execute any Refinancing until any new Financiers have executed or agreed to be bound by a deed with the State substantially in the form of the Finance Direct Deed and any existing Financiers who will cease to be Financiers as a consequence of the Refinancing have executed any document reasonably requested by the State to terminate their rights in accordance with the then current Finance Direct Deed.

37.4 Calculation and Sharing of Refinancing Gains

(a) (**Refinancing Gain calculation**): A Refinancing Gain arises where a Refinancing Event results in A - B being greater than zero, where A and B are defined as:

A = the present value of the Distributions projected (using the Financial Model updated to reflect only the terms of the proposed Refinancing and in no other respect) at the proposed date of, and after executing, the Refinancing Event, discounted using the Equity IRR as set out or determined in the Financial Close Financial Model; and

B = the present value of the Distributions projected (using the Financial Model) immediately prior to the Refinancing Event (without taking into account the effect of the proposed Refinancing Event), discounted using the Equity IRR as set out or determined in the Financial Close Financial Model,

(**Refinancing Gain**).

(b) (**State's entitlement to Refinancing Gains**): The State is entitled to:

(i) [not disclosed]% of any Refinancing Gain arising from a change in the manner or timing of payment of an Option Amount; and

(ii) [not disclosed]% of the benefit of any other Refinancing Gain but only to the extent that after payment of such amount to the State under this clause 37.4, the Equity IRR over the Term as reflected in the Financial Model (taking into account the proposed Refinancing Event and all previous Refinancing Events) would be at or above the Equity IRR over the Term as reflected in the Financial Close Financial Model (without taking into account the proposed Refinancing Event or any previous Refinancing Event),

(**State Share of Refinancing Gain**).

(c) (**State's election on Refinancing Gain**): The State may, after taking into account the nature and timing of the Refinancing Gain, elect to receive the State Share of Refinancing Gain as:

(i) a direct payment (but only to the extent a Project Entity receives its Refinancing Gain as a direct payment or to the extent that a Project Entity receives a lump sum payment or is able to pay all or part of the Refinancing Gain to another party as a lump sum payment as a result of the Refinancing (for example, upon a release of funds from a reserve account));

(ii) a reduction in the Service Payment; or

(iii) a combination of the above.

(d) (**Negotiate in good faith**): The State and Project Co must negotiate in good faith to agree the manner and timing of payments of the State Share of the Refinancing Gain on the basis that the State is to be paid the State Share of Refinancing Gain not later than when a Project Entity receives its share of the Refinancing Gain and subject to the State's rights under clause 37.4(c).

(e) (**Information**): Project Co must provide the State with all information concerning the Refinancing, projected Distributions and the Project that the State may require to calculate the Refinancing Gain and the State Share of Refinancing Gain.

37.5 Costs Relating to a Refinancing

(a) (**Project Co to pay State's reasonable costs**): Project Co must reimburse the State its costs (including legal and financial advisers' fees) reasonably incurred in relation to considering or consenting to a Refinancing.

(b) (**Estimate of costs**): For the purposes of calculating any Refinancing Gain under this clause 37, Project Co may include in the Financial Model as a cost associated with the Refinancing an estimate of those costs of the State referred to in clause 37.5(a) to which the State has agreed.

38. Suspension and Step-In by the State

38.1 State right to suspend

(a) (**Suspension**): The State:

(i) may instruct Project Co to suspend, and after a suspension has been instructed, to recommence, the carrying out of all or any part of the Project Activities; and

(ii) is not required to exercise its power under clause 38.1(a) for the benefit of Project Co.

(b) (**Result of suspension**):

(i) Except to the extent the circumstances leading to the suspension under clause 38.1(a):

(A) are caused or contributed to by a Project Co Act or Omission; or

(B) are a Force Majeure Event,

an instruction to suspend all or any or part of the Project Activities by the State under clause 38.1(a):

(C) will be:

1) in relation to any Development Activities, a Compensable Extension Event; or

2) in relation to any Services or other obligations under this Deed (which are not Development Activities) in each case during the Maintenance Phase, an Intervening Event; and

(D) must not be for a period of more than 180 days.

(ii) To the extent the circumstances leading to the suspension are a Force Majeure Event, an instruction to suspend the Works or the Project Activities (while that Force Majeure Event or its effects are subsisting) by the State under clause 38.1(a)(i) will be a Force Majeure Event.

38.2 Right of step-in

(a) (**State rights**): If:

(i) subject to clause 38.2(b) but without limiting the State's other rights under this clause 38.2(a), a Major Default occurs;

(ii) a State Cure Notice has been issued by the D&C Contractor or the Services Contractor in accordance with the D&C Contractor Direct Deed or the Services Contractor Direct Deed (as the case may be);

(iii) a Default Termination Event occurs;

(iv) an Emergency occurs;

(v) the State, VicRoads, any Responsible Road Authority or Co-ordinating Road Authority is entitled by Law to act to discharge a statutory power or duty; or

(vi) any Project Activities are suspended following the occurrence of an Intervening Event,

(each a **Step-In Event**), the State may elect to do (or have its nominee do) any or all of the following:

(vii) assume total or partial management and control of the whole or any part of the Project Assets or the Project Activities;

(viii) access those parts of the Project Area and the Project Assets to which Project Co has access or is entitled to occupy; and

(ix) take such other steps as are necessary in the reasonable opinion of the State for it to carry out any Project Activities and minimise the effect of the relevant Step-In Event.

(b) (**Exercise of rights**): Other than when it is exercising its rights in accordance with clause 38.2(a)(v) and clause 38.2(a)(vi), the State must not exercise its rights under clause 38.2(a) on the occurrence of a Major Default for so long as Project Co is complying with its obligations under clauses 45.4 and 45.5 in respect of that Major Default.

38.3 Notice

The State may exercise its rights under clause 38.2(a) without prior notice to Project Co but the State must, if it is reasonably practicable to do so, give prior notice and in any event must, as soon as practicable, provide notice to Project Co that it is exercising those rights.

38.4 Consequences of the State exercising its rights

(a) (**Suspension of Project Co's rights**): During the exercise of the State's rights under clause 38.2, Project Co's rights and obligations under the State Project Documents are suspended to the extent necessary to permit the State to exercise its rights under clause 38.2.

(b) (**No limitation**): Except to the extent that Project Co's obligations are suspended under clause 38.4(a), the exercise by the State of its rights under clause 38.2 (or the cessation of such exercise) will not affect any other right of the State under the State Project Documents or at Law.

38.5 Payments

(a) (**Step-in caused by Project Co**): If the State has exercised its rights under clause 38.2 as a consequence of any Step-In Event:

(i) contemplated by clauses 38.2(a)(i), 38.2(a)(ii) or 38.2(a)(iii); or

(ii) contemplated by clauses 38.2(a)(iv), 38.2(a)(v) or 38.2(a)(vi), and that Step-In Event is the result of a Project Co Act or Omission,

then:

(iii) if the State exercises its rights during the Maintenance Phase, the Service Payment will be subject to Abatement in accordance with the Payment Schedule to the extent the Services are not being provided in accordance with this Deed; and

(iv) if the State exercises its rights at any time during the Term, any Liability suffered or incurred by the State or any State Associates in connection with the exercise by the State of those rights (provided that during the Maintenance Phase, the Liability is in excess of the Service Payments that are Abated under clause 38.5(a)(iii)) will be a debt due and payable by Project Co to the State, except to the extent that the State's Liability is

suffered or incurred as a consequence of a breach of the State Project Documents by the State or any State Associate.

(b) (**Step-in not caused by Project Co**): If the State has exercised its rights under clause 38.2 other than for the reasons set out in clause 38.5(a) or clause 38.5(c), the exercise by the State of those rights will be:

(i) in relation to any Development Activities during any Development Phase, a Compensable Extension Event; and

(ii) in relation to any Services or other obligations under this Deed (which are not Development Activities) in each case during the Maintenance Phase, an Intervening Event.

(c) (**Payments during Force Majeure Event**): Where the State has exercised its rights under clause 38.2 as a consequence of any Step-In Event contemplated by clause 38.2(a)(iv), clause 38.2(a)(v) or clause 38.2(a)(vi) and that Step-In Event is the result of a Force Majeure Event, the exercise by the State of those rights will be a Force Majeure Event.

38.6 Project Co to assist the State

Project Co must:

(a) (**access to be granted**): grant such access rights as are necessary and take all action that is necessarily required by the State to assist the State in exercising its rights under clause 38.2;

(b) (**sufficient resources**): provide sufficient resources, including personnel, to assist the State in exercising its rights under clause 38.2; and

(c) (**not hinder**): not do anything to hinder, disrupt or prevent the State in exercising its rights under clause 38.2.

38.7 Undertake Project consistent with this Deed

When exercising its rights under clause 38.2, the State must use its reasonable endeavours to carry out the relevant Project Activities in a manner which is consistent with the State Project Documents, but taking into account the State's statutory rights and the circumstances that prompted the State to exercise its rights under clause 38.2.

38.8 State obligations during step-in

Project Co acknowledges and agrees that the State is not obliged to exercise its rights under clause 38.2 or to Cure any breach, or to overcome or mitigate any risk or risk consequences, in connection with which the State exercises its rights under clause 38.2.

38.9 Cessation of step-in rights

(a) (**State may cease**): The State may, at any time, cease to exercise its rights under this clause 38 upon giving 5 Business Days' notice to Project Co.

(b) (**State must cease**): Subject to clause 38.9(a), the State must cease to exercise its rights under this clause 38, if the State has exercised its rights as a consequence of any Step-In Event under:

(i) clause 38.2(a)(i) or 38.2(a)(iii) and the Major Default or Default Termination Event (as the case may be) has been Cured in the reasonable opinion of the State;

(ii) clause 38.2(a)(ii) and the D&C Contractor or the Services Contractor (as the case may be) notifies the State that default under the relevant Subcontract has been Cured in the reasonable opinion of the State; or

(iii) clause 38.2(a)(iv), 38.2(a)(v) or 38.2(a)(vi) and the relevant event has ceased and its consequences have been Cured or overcome in the reasonable opinion of the State.

(c) (**Project Co to recommence**): If the State ceases to exercise its rights under clause 38.1 or clause 38.2 in accordance with this clause 38.9, Project Co must immediately recommence performing any obligations suspended due to the exercise by the State of those rights and the State must give reasonable assistance to Project Co to ensure that this process of transition is effected as smoothly as possible.

39. Probity Events and Probity Investigations

39.1 Probity Investigation

(a) (**Requirement for Probity Investigation**): Project Co agrees that the State may conduct or require Project Co to conduct an investigation into the character, integrity or honesty of:

(i) a Relevant Person, a Group Member or a Consortium Member or any person who is proposed to become a Relevant Person, a Group Member or a Consortium Member;

(ii) a Subcontractor in respect of whom a Probity Event has occurred; or

(iii) a proposed Subcontractor when notified of their proposed appointment in accordance with clause 9.2(a)(i),

including:

(iv) investigations into commercial structure, business and credit history, prior contract compliance or any criminal records or pending charges; and

(v) interviews of any person or research into any relevant activity that is or might reasonably be expected to be the subject of criminal or other regulatory investigation,

(**Probity Investigation**).

(b) (**Consents required for Probity Investigation**): Project Co must procure all relevant consents from people who will be the subject of the Probity Investigation.

(c) (**No appointment of Relevant Person without consent**): Project Co must not appoint a person to a position of Relevant Person unless the State has given approval (including following a Probity Investigation if required by the State).

39.2 Probity Event

(a) (**Notice**): Project Co must give notice to the State immediately upon becoming aware that a Probity Event has occurred or is likely to occur. The notice must, at a minimum, describe the Probity Event, when the Probity Event occurred or is likely to occur and the circumstances giving rise to the Probity Event.

(b) (**Meeting**): Within 10 Business Days after receipt of a notice under clause 39.2(a) or either party becoming aware of a Probity Event (including by way of a Probity Investigation undertaken in accordance with clause 39):

(i) the State and Project Co must meet and attempt to agree a course of action to Cure or otherwise address the Probity Event (including conducting a Probity Investigation) and the timeframe in which that will occur; and

(ii) subject to clause 39.2(c), Project Co must comply with any agreement made under clause 39.2(b)(i) (if any) including in accordance with any timeframe agreed.

(c) (**Failure to agree**): If the State and Project Co fail to agree to a course of action under clause 39.2(b)(i), Project Co must take any action as required by the State to Cure the Probity Event immediately upon being required to do so (including where the Probity Event is in respect of a Subcontractor or Relevant Person, removing or not engaging that Subcontractor or Relevant Person in respect of the Project) and in accordance with any timeframe determined by the State.

(d) (**Failure by Project Co to act**): A failure by Project Co to take any action agreed in accordance with clause 39.2(b) or determined in accordance with clause 39.2(c) is a Major Default.

39.3 State costs of Probity Events and Probity Investigation

(a) (**State Costs**): Subject to clause 39.3(b), Project Co must bear all costs incurred by the State in connection with a Probity Event or Probity Investigation.

(b) (**Project Co not liable**): Project Co will not be liable for the State's costs of any further Probity Investigations required by the State after an initial Probity Investigation has been undertaken in respect of the same person.

40. Commercial Opportunities

(a) (**Project Co's revenue**): Without limiting clause 51.4(a), Project Co may only derive revenue or other returns from:

(i) Service Payments, Option Amount, Floating Rate Components and any other amounts expressly provided for under the State Project Documents;

(ii) interest or other returns on amounts held by or on behalf of Project Co under this Deed or any other Project Document; and

(iii) other activities which are approved by the State, where such approval may be subject to any conditions the State thinks fit, including a State determined share of net revenues.

(b) (**Obligations in relation to Associates**): Project Co must ensure that, after the date of this Deed, none of its Associates (excluding consultants and advisers)

derive revenue or other returns in connection with the Project Assets other than revenue or returns derived:

(i) directly or indirectly from payments made by Project Co; or

(ii) under arm's length commercial arrangements approved by the State.

41. Securitised Licence Structure

41.1 Construction Payment

(a) (**Payment of Construction Price**): Subject to clause 41.1(b), in consideration for the execution of the Works and carrying out of the other Development Activities, the State agrees to pay to, or at the direction of, Project Co the Construction Price by paying each Construction Payment on the applicable Construction Payment Date.

(b) (**Corresponding Receivables Purchase Payment**): The State has no obligation to pay a Construction Payment unless, and its obligation is limited to the extent that, the State receives the corresponding Receivables Purchase Payment from Finance Co in accordance with the Receivables Purchase Deed.

(c) (**Adjustments**): The amount of a Construction Payment (and therefore the Construction Price) and the corresponding Receivables Purchase Payment may only be adjusted to reflect:

(i) a Change Compensation Event occurring prior to Commercial Acceptance in respect of which the parties have agreed that finance will be or has been provided under the Finance Documents (and such finance is to be applied in respect of amounts owing to the D&C Subcontractor) calculated in accordance with the Change Compensation Principles; and

(ii) otherwise by agreement in writing between the parties prior to Commercial Acceptance,

provided that no adjustment to a Construction Payment or the corresponding Receivables Purchase Payment will affect the limitation referred to in clause 41.1(b).

(d) (**No set-off**): Notwithstanding any other clause of any Project Document, the State may not set off any amount due and payable by Project Co or Finance Co to the State under the Project Documents against any Construction Payment.

(e) (**Right, title and interest**): To the extent it has not already passed, all right, title and interest of Project Co in the Works to which a Construction Payment applies passes to the State on payment by the State under clause 41.1(a).

(f) (**Adjustment to Licence Fees**): If a Construction Payment (and the corresponding Receivables Purchase Payment) is adjusted in accordance with clause 41.1(c), the State and Project Co agree to adjust the Licence Fee payable under each of the Initial Licence and the Maintenance Phase Licence (Full) in accordance with the Change Compensation Principles.

(g) (**Relief is sole remedy**): Notwithstanding anything else in the Project Documents, the State acknowledges that if a Receivables Purchase Payment is not received in full or at all under the Receivables Purchase Deed, the State's only right or remedy in respect of such non-payment is the relief from payment of the corresponding Construction Payment under clause 41.1(b).

41.2 Maintenance Phase (Full) Modification Payment

(a) (**Payment of Maintenance Phase (Full) Modification Payment**): If a Change Compensation Event occurs on or after the Date of Commercial Acceptance and the State requests that Project Co (either itself or via Finance Co), and Project Co or Finance Co agree to, provide financing for that event under the Change Compensation Principles, the State must pay a Maintenance Phase (Full) Modification Payment to (or at the direction of) Project Co on the Additional Purchase Date in relation to that Change Compensation Event.

(b) (**Corresponding Receivables Purchase Price**): The State has no obligation to pay a Maintenance Phase (Full) Modification Payment unless, and its obligation is limited to the extent that, it receives the corresponding additional Receivables Purchase Price for the relevant Additional Receivables from Finance Co under the Receivables Purchase Deed in relation to that Change Compensation Event.

(c) (**No set-off**): Notwithstanding any other clause of any Project Document, the State may not set off any amount due and payable by Project Co or Finance Co to the State under the Project Documents against a Maintenance Phase (Full) Modification Payment.

(d) (**Right, title and interest**): To the extent it has not already passed, all right, title and interest of Project Co in the assets to which a Maintenance Phase (Full) Modification Payment applies passes to the State on payment by the State under clause 41.2(a).

(e) (**Relief is sole remedy**): Notwithstanding anything else in the Project Documents, the State acknowledges that, if the additional Receivables Purchase Price for the relevant Additional Receivable is not received in full or at all under the Receivables Purchase Deed, the State's only right or remedy in respect of such non-payment is the relief from payment of the corresponding Maintenance Phase (Full) Modification Payment under clause 41.2(b).

41.3 No change in risk allocation

(a) (**No Increased State Risk Allocation**): The parties acknowledge and agree that the Securitised Licence Structure is not intended to result in an Increased State Risk Allocation.

(b) (**If Increased State Risk Allocation**): If the State believes (on reasonable grounds supported by external advice) that the Securitised Licence Structure results or is likely to result in an Increased State Risk Allocation, then it may give Project Co a notice stating that the Securitised Licence Structure is to be amended to the extent necessary to ensure there is no Increased State Risk Allocation.

(c) (**Necessary amendments**): Following receipt of a notice given by the State under clause 41.3(b), Project Co agrees (and must procure Finance Co) to do anything reasonably requested by the State in a notice given by the State under clause 41.3(b) to modify the Securitised Licence Structure to ensure there is no Increased State Risk Allocation.

(d) (**No Claim**): Project Co undertakes not to make any Claim inconsistent with the acknowledgement in clause 41.3(a) and to procure that neither Finance Co nor any of their Related Bodies Corporate will make any such Claim.

(e) (**Damages not adequate**): Project Co acknowledges and agrees that:

(i) damages may not be an adequate remedy for the State for any failure by Project Co to comply with the undertaking in clause 41.3(d); and

(ii) if there is a breach or purported breach by Project Co of its obligation in clause 41.3(d), the State may seek, and is entitled to, injunctive or declaratory relief.

41.4 Indemnity

Project Co must indemnify the State for:

(a) (**All costs of loss**): all Liability incurred by the State as a result of any Increased State Risk Allocation to the extent that it is not removed or remedied by changes to the Securitised Licence Structure agreed in accordance with clause 41.3; and

(b) (**any Claim**): any Claim brought against the State by Project Co or Finance Co or any Related Body Corporate of either Project Co or Finance Co which is inconsistent with the acknowledgements in clause 41.3.

PART I - RISK, INDEMNITIES AND INSURANCE

42. Damage

42.1 Risk of loss or damage to Project Assets

Unless otherwise expressly provided in this clause 42, Project Co bears the risk of loss or damage to the Project Assets during the Term.

42.2 Notification of damage

(a) (**Notification of loss or damage**): Project Co must:

(i) promptly notify the State of any loss of or damage to the Project Assets of which it becomes aware (other than damage that is Minor Damage), including details of the nature and extent of such loss or damage; and

(ii) subject to allowing reasonable time for inspection by insurers, take immediate steps to clear any debris, make the Project Area and the Project Assets safe and do any other things necessary to ensure that Project Co complies with its obligations under clauses 44.3(a)(v) and 44.3(b)(i).

(b) (**Loss or Damage election**): If the loss or damage:

(i) is loss of or damage to all or substantially all of the Project Assets (**Major Loss or Damage**), within 60 Business Days after such Major Loss or Damage (or such other period as reasonably required by the State having regard to the degree of loss or damage and the nature and extent of any repair or reinstatement required); or

(ii) is not:

(A) Major Loss or Damage; or

(B) Minor Damage,

within 30 Business Days after such loss or damage,

the State must notify Project Co that:

(iii) it requires Project Co to repair or reinstate the relevant Project Assets the subject of the loss or damage and the standard to which it requires Project Co to repair or reinstate the Project Assets in accordance with clause 42.3; or

(iv) it does not require Project Co to repair or reinstate the Project Assets the subject of the loss or damage in which case clause 42.5 will apply.

(c) (**Minor Damage**): Project Co must promptly repair any Minor Damage.

42.3 Repairing and reinstating

(a) (**Project Co to repair or reinstate**): If Project Co is required to repair or reinstate the Project Assets after loss or damage in accordance with clause 42.2, other than if this is due to Minor Damage, Project Co must promptly consult with the State and:

(i) submit a plan to the State for the repair or reinstatement of the Project Assets for review in accordance with the Review Procedures (the **Repair and Reinstate Plan**); and

(ii) promptly repair or reinstate the Project Assets in accordance with the requirements of this Deed and the Repair and Reinstate Plan.

(b) (**Standard of repair or reinstatement**): If Project Co is required to repair or reinstate the Project Assets after loss or damage in accordance with clause 42.2, Project Co must:

(i) ensure that the repaired or reinstated Project Assets comply with the requirements of this Deed;

(ii) ensure if possible, there is minimal disruption to the use of the Project Assets;

(iii) to the greatest extent possible, continue to comply with its obligations under the Project Documents; and

(iv) other than if the repair or reinstatement is in respect of Minor Damage, keep the State fully informed of the progress of the repair or reinstating of the Project Assets.

42.4 Cost and risk of repairing or reinstating

(a) (**Project Co bears cost and risk subject to exceptions**): Subject to clause 42.5, clause 42.7 and any liability of the State for payment of any insurance excess or deductibles which is set out in clause 44.12(b), Project Co bears the risk and cost of the repairing or reinstating of:

(i) all Minor Damage; and

(ii) all other loss or damage to the Project Assets,

unless:

(iii) (**Day 1 Uninsurable Risk, Uninsurable Risk or State Insurance Breach**): the loss of or damage to the Project Assets was caused by a Day 1 Uninsurable Risk or an Uninsurable Risk or to the extent that Project Co is unable to recover the cost of repairing or reinstating the Project Assets under any of the Insurances or Insurances (State) under which Project Co would have otherwise been entitled to recover, as a result of a State Insurance Breach, in which case:

(A) the repair or reinstatement of the Project Asset and the impact of this (if any) on the Project Activities will constitute a Modification in respect of which Project Co may issue a Modification Proposal in accordance with clause 35.2(b)(iv) and Project Co's entitlements will be determined in accordance with clause 35 and the Change Compensation Principles as if the relevant loss or damage was a State Initiated Modification; and

(B) the State must also indemnify Project Co for all other Liabilities incurred by Project Co as a consequence of the loss or damage,

provided that the amount payable by the State under this clause 42.4(a)(iii) will not, in the aggregate exceed the amount that is equal to the insurance proceeds that would have been payable under the relevant Insurances or Insurances (State) (as applicable) that would have applied to the event had the event been insurable under those Insurances or Insurances (State) (as applicable) or had the Insurances or Insurances (State) (as applicable) responded; or

(iv) (**different specification**): if the State requires all or any part of the Project Assets to be repaired or reinstated to different specifications to the required design specifications and standards of the lost or damaged Project Assets (as at the date on which the loss or damage occurred), the State must issue a Modification Request for that part of the Project Assets to be repaired or reinstated to the different specifications.

(v) (**State Initiated Modification for different Specification**): If the State issues a Modification Order in accordance with clause 35.5(c)(i) for the repair or reinstatement referred to in clause 42.4(a)(iv), Project Co's entitlements for that part of the Project Asset that is required to be repaired or reinstated to the different specifications will be determined in accordance with clause 35 and the Change Compensation Principles as if the relevant loss or damage was a State Initiated Modification.

42.5 Consequences of not repairing or reinstating

(a) (**Termination if Major Loss or Damage**): If the loss or damage is Major Loss or Damage and the State notifies Project Co not to repair or reinstate the Project Assets under clause 42.2(b)(iv) in respect of that Major Loss or Damage and the Major Loss or Damage was caused by:

(i) a Major Default or a breach of this Deed by Project Co, this will be deemed to be a Default Termination Event and the State must issue a notice to terminate this Deed under clause 46.4(a);

(ii) a Force Majeure Event or an Uninsurable Risk, the State must issue a notice to terminate this Deed for a Force Majeure Event under clause 46.3 as if for a Force Majeure Termination Event; or

(iii) any other event, the State must issue a notice to terminate this Deed for convenience under clause 46.2.

(b) (**Omission of Project Asset**): If the loss or damage is not Major Loss or Damage or Minor Damage and the State notifies Project Co under clause 42.2(b)(iv) that it does not require Project Co to repair or reinstate any part of the Project Assets the subject of any loss or damage, the State may omit that part of the Project Assets from the Project or take such other action as it sees fit, and to the extent that such act or omission impacts Project Co's rights or obligations under this Deed, it will constitute a Modification in respect of which Project Co may issue a Modification Proposal in accordance with clause 35.2(b)(v) and Project Co's entitlements will be determined in accordance with clause 35 and the Change Compensation Principles as if the relevant act or omission was a State Initiated Modification.

42.6 Damage to third party property

(a) (**Project Co interference**): Other than in accordance with its rights or obligations under this Deed, Project Co must not interfere with, obstruct, damage or destroy any property on, under, over, in or in the vicinity of the Project Area.

(b) (**Project Co to rectify and compensate**): Subject to the terms of any Direct Interface Deed, if Project Co or any Project Co Associate interferes with, obstructs, damages or destroys any property (including the Excluded Assets but excluding the Project Assets) on, under, over, in or in the vicinity of the Project Area other than in accordance with its obligations under this Deed, Project Co must:

(i) promptly rectify any such loss or damage; and

(ii) compensate the affected person for that interference, obstruction, damage or destruction in accordance with its obligations at Law and any obligations at Law that the State may have to compensate the affected person.

42.7 Minor damage

If any loss or damage to the Project Assets for which the State would otherwise be liable to pay Project Co in accordance with clause 42.4(a)(iii) or clause 42.4(a)(iv) is of such a minor nature (when considered item by item and in aggregate) that it can be remedied by Project Co:

(a) (**usual resources**): through the use of its site-based resources during normal working hours; and

(b) (**no adverse effect**): without adversely affecting the ability of Project Co to carry out the Project Activities,

then Project Co must bear the cost of rectifying such loss or damage notwithstanding clause 42.4(a)(iii) or clause 42.4(a)(iv).

43. Indemnities and limits of liabilities

43.1 General indemnity

Project Co indemnifies the State, VicRoads, each State Associate and each Interface Party carrying out Site Interface Works or Proximate Interface Works from and against any Claim or Liability suffered or incurred by the State, VicRoads, the State Associate or the Interface Party respectively arising in connection with:

(a) (**property damage**): any loss, damage or destruction to, or loss of use of, property including any real or personal property, whether the Project Assets or other property belonging to the State, VicRoads, a State Associate or a third party (other than the cost of repairing or reinstating the Project Assets, which is addressed in clause 42); or

(b) (**injury, illness or death**): any injury to, illness or death of, any person,

in connection with any act or omission of Project Co or any Project Co Associate in connection with the Project.

43.2 Indemnity for Project Co breach

Save to the extent the State, each State Associate and each Interface Party (other than any Direct Interface Party) is already indemnified under clause 43.1 Project Co indemnifies the State, VicRoads, each State Associate and each Interface Party carrying out Site Interface Works or Proximate Interface Works from and against any Claim or Liability suffered or incurred by the State, VicRoads, the State Associate or the Interface Party, respectively, as a consequence of any breach by Project Co or any Project Co Associate of any State Project Document.

43.3 Project Information indemnity and release

(a) (**Project Information**): Save to the extent the State, each State Associate and each Interface Party (other than any Direct Interface Party) is already indemnified under clause 43.1 or clause 43.2, Project Co indemnifies the State, VicRoads, each State Associate and each Interface Party carrying out Site Interface Works or Proximate Interface Works, from and against any Claim or Liability suffered or incurred by the State, VicRoads, any State Associate or the Interface Party, respectively, arising in connection with the provision of, or the purported reliance upon, or use of, the Project Information by Project Co, a Project Co Associate or any other person to whom the Project Information is disclosed by Project Co, a Project Co Associate or any person on Project Co's or a Project Co Associate's behalf.

(b) (**Failure to provide information**): Save where the State, VicRoads, a State Associate or an Interface Party carrying out Site Interface Works or Proximate Interface Works, has an express obligation under a State Project Document to provide or procure the provision of information, data or material relating to Project Co or a Project Co Associate, Project Co:

(i) releases the State, VicRoads, each State Associate and each Interface Party carrying out Site Interface Works or Proximate Interface Works, from any Claim made by Project Co; and

(ii) indemnifies the State, VicRoads, each State Associate and each Interface Party carrying out Site Interface Works or Proximate Interface Works from and against any Claim made by any Project Co Associate,

in connection with any failure by the State, VicRoads, the State Associate or the Interface Party to make available to Project Co any information, data or material relating to the Project.

43.4 Project Area indemnities

Save to the extent the State, each State Associate and each Interface Party (other than any Direct Interface Party) is already indemnified under clause 43.1, clause 43.2 or clause 43.3:

(a) (**Utility indemnity**): Project Co indemnifies the State, VicRoads, each State Associate to whom the State delegates a right, power, function or duty in accordance with a State Project Document and each Interface Party carrying out Site Interface Works or Proximate Interface Works, from and against any Claim or Liability suffered or incurred by any of them arising in connection with:

(i) any disruption to any Utility Infrastructure or disruption to the supply of Utilities;

(ii) any damage to any Utility Infrastructure;

(iii) the removal, relocation or carrying out of works to Utility Infrastructure,

to the extent caused or contributed to by a Project Co Act or Omission; and

(iv) any amount payable by VicRoads under the VIVA Recoverable Works Agreement in connection with the removal, relocation or carrying out of works to Utility Infrastructure.

(b) (**Contamination indemnity**): Project Co indemnifies the State, VicRoads, each State Associate to whom the State delegates a right, power, function or duty in accordance with a State Project Document and each Interface Party carrying out Site Interface Works or Proximate Interface Works, from and against any Claim or

Liability suffered or incurred by any of them arising in connection with any Contamination to the extent that:

(i) such Contamination was caused or contributed to by Project Co or any Project Co Associate; or

(ii) where the Contamination is not caused or contributed to by Project Co or any Project Co Associate, but is emanating or migrating from the Project Area and Project Co or a Project Co Associate has caused or contributed to such Contamination emanating or migrating from the Project Area,

whether or not Project Co is obliged to Remediate that Contamination in accordance with clause 11.6(e).

43.5 Intellectual Property and Moral Rights indemnity

(a) (**Definitions**): For the purposes of this clause 43.5:

(i) those indemnified are the State, VicRoads, each State Associate and any third party duly authorised or licensed by the State to exercise any Intellectual Property Rights assigned, granted or licensed to the State under this Deed and any of their Associates (each an **Indemnified IP Person**); and

(ii) unless otherwise expressly defined, expressions used in this clause 43.5 have the meanings given to them in the Intellectual Property Schedule.

(b) (**Indemnity**): Save to the extent an Indemnified IP Person is already indemnified under clause 43.1 or clause 43.2, Project Co indemnifies each Indemnified IP Person from and against:

(i) any Claim or Liability suffered or incurred by an Indemnified IP Person arising in connection with any alleged or actual infringement or violation of Intellectual Property Rights or Moral Rights:

(A) by Project Co or a Project Co Associate in the course of, or incidental to, performing any obligations under the Project Documents other than to the extent such Intellectual Property Rights or Moral Rights (as applicable) comprise the State IP; and

(B) by an Indemnified IP Person using, exercising or enjoying:

1) the Project Co Material, the Project Assets or the Returned Assets as delivered by or on behalf of Project Co to the State or as amended or changed from time to time (but not to the extent that any Claim or Liability arises from any amendment or change made by the State or third parties engaged by the State which is not as directed or approved by Project Co during the Term) in connection with this Deed; or

2) its rights in respect of such Intellectual Property Rights or Moral Rights in the manner authorised by this Deed;

(ii) any Claim or Liability suffered or incurred by an Indemnified IP Person arising in connection with a breach of the warranties set out in the Intellectual Property Schedule; and

(iii) any Claim or Liability suffered or incurred by an Indemnified IP Person arising in connection with the Intellectual Property Rights necessary for the continuation of the Project Activities being unavailable as a result of or in connection with Project Co not fulfilling its obligations under section 2.12 of the Intellectual Property Schedule, to obtain the licenses referred to in section 2.12 of the Intellectual Property Schedule.

(c) (**Moral Rights indemnity**): Save to the extent an Indemnified IP Person is already indemnified under clause 43.1 or clause 43.2, Project Co indemnifies each Indemnified IP Person against all Claims which arise in connection with an infringement of Moral Rights resulting from the use, operation or modification of the Project Activities or the Returned Assets.

43.6 Limits on Project Co liability to indemnify

Project Co's Liability to indemnify the State, VicRoads, each State Associate and each Interface Party carrying out Site Interface Works or Proximate Interface Works under the State Project Documents will be reduced to the extent that any such Liability is caused or contributed to by:

(a) (**breach**): any breach by the State of any State Project Document;

(b) (**certain acts or omissions**): any fraudulent, reckless, unlawful or malicious act or omission of:

(i) the State, VicRoads, any State Associate or an Interface Party carrying out Site Interface Works or Proximate Interface Works; or

(ii) in respect of the indemnity provided by Project Co under clause 43.5 only, any other Indemnified IP Person;

(c) (**events**): without limiting clause 43.6(a) or clause 43.6(b), any:

(i) Extension Event that occurs during the Initial Phase but only if Project Co is entitled to an extension to the Date for Acceptance in accordance with this Deed as a consequence of the Extension Event; or

(ii) Intervening Event that occurs during the Maintenance Phase but only if Project Co is entitled to relief from performance of the Services as a consequence of the Intervening Event;

(d) (**compliance with directions**): Project Co complying strictly with a direction from the State or the State Representative (except to the extent that the direction is a direction to comply with a State Project Document, is permitted under a State Project Document or was given as a result of a Project Co Act or Omission), provided that prior to complying with the direction:

(i) Project Co notified the State or the State Representative (as the case may be) that, in its opinion, compliance with the direction will directly result in a Liability that would otherwise be the subject of an indemnity by Project Co to the State, VicRoads, any State Associate or any Interface Party carrying out Site Interface Works or Proximate Interface Works; and

(ii) notwithstanding having received the notification referred to in clause 43.6(d)(i), the State or the State Representative (as the case may be) confirms that Project Co should comply or continue to comply with the direction; or

(e) (**mitigation**): a failure by the State, VicRoads, any State Associate or any Interface Party carrying out Site Interface Works or Proximate Interface Works to use reasonable endeavours to mitigate the extent or consequences of the Liability,

other than to the extent that Project Co or any Project Co Associate is entitled to recover the amount for which they are liable to indemnify the State, VicRoads, any State Associate or any Interface Party carrying out Site Interface Works or Proximate Interface Works under any of the Insurances or Insurances (State) (or would have been entitled to so recover but for an Insurance Failure Event).

43.7 Third party claim under indemnity

(a) (**Management of Claims**): Subject to clauses 43.7(c) and 43.7(d), if a Claim is made by a third party against the State, VicRoads, any State Associate or any Interface Party carrying out Site Interface Works or Proximate Interface Works (or in respect of the indemnity provided by Project Co under clause 43.5 only, any other Indemnified IP Person) in respect of which and to the extent for which Project Co is required to indemnify the State, VicRoads, the State Associates, any Interface Party carrying out Site Interface Works or Proximate Interface Works or other Indemnified IP Person (as applicable) under this Deed, the State must or must procure that VicRoads, the relevant State Associate, Interface Party or other Indemnified IP Person (as applicable), as soon as reasonably practicable:

(i) notifies Project Co of the alleged Claim;

(ii) gives Project Co the option to conduct the defence of the Claim; and

(iii) provides Project Co (at Project Co's expense) with reasonable assistance in negotiating, defending or otherwise taking action or proceedings in respect of that Claim, if Project Co chooses to do so.

(b) (**Settling Claims**): The State must not and must procure that VicRoads, any relevant State Associate, Interface Party carrying out Site Interface Works or Proximate Interface Works or other Indemnified IP Person (as applicable) does not settle a Claim:

(i) of the type referred to in clause 43.7(a) without Project Co's involvement in and agreement to (acting reasonably) any such settlement; and

(ii) managed by the State under clause 43.7(c) or 43.7(d), without giving Project Co prior notice and consulting with Project Co in good faith before agreeing to any compromise or settlement of such a Claim.

(c) (**Urgent proceedings**): Clauses 43.7(a)(ii) and 43.7(a)(iii) do not apply if:

(i) interlocutory proceedings are commenced against the State, VicRoads, any State Associate, any Interface Party or other Indemnified IP Person (as applicable) on an urgent basis;

(ii) the State reasonably considers that there is insufficient time to notify Project Co and for Project Co to notify its requirements under clause 43.7(a)(ii) or to commence the defence of such proceedings on behalf of the State; and

(iii) to the extent that the State, VicRoads, any State Associate, Interface Party or other Indemnified IP Person (as applicable) initially defends such proceedings,

provided that as soon as reasonably practicable after commencement of the proceedings, the State must, or must procure that the State Associate, Interface Party (other than any Direct Interface Party) or other Indemnified IP Person (as applicable), gives Project Co the option to conduct the defence of such proceedings, and if Project Co chooses to do so, clause 43.7(a)(iii) will then apply.

(d) (**Other matters**): Clause 43.7(a) does not apply to any Claim which:

(i) the State considers should be conducted by the State, VicRoads, a State Associate, Interface Party or other Indemnified IP Person (as applicable) for public policy reasons; or

(ii) would prevent the continued development or operation of the Project or continued conduct of the Project Activities,

and the State, to the extent reasonably practicable, consults and procures that VicRoads, any relevant State Associate, an Interface Party or other Indemnified IP Person (as applicable) consults in good faith with Project Co with respect to such Claim.

(e) (**Management of Claims by Project Co**): In respect of a Claim managed by Project Co under clause 43.7(a), Project Co must:

(i) use reasonable endeavours to give the State prior notice before agreeing to any compromise or settlement of such a Claim; and

(ii) consult in good faith with the State prior to agreeing to any such compromise or settlement.

43.8 Continuing obligation

(a) (**Indemnity continues**): Each indemnity in the State Project Documents is a continuing obligation, separate and independent from the other obligations of the parties.

(b) (**Expense not necessary**): It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity under the State Project Documents.

(c) (**Payment on demand**): A party must pay on demand as a debt due and payable any amount it must pay under an indemnity in the State Project Documents.

43.9 Responsibilities as if owner

Project Co acknowledges and agrees that it has responsibilities to third parties in connection with persons, property and other aspects of the Project under the other provisions of this Deed which may be the same as it would have if it held the freehold title to the Project Area.

43.10 Limitation on State Liability to Project Co for Relief Events

(a) (**Failure to mitigate**): Notwithstanding any other provision of this Deed, the State's Liability to Project Co in connection with any Relief Event will be reduced to the extent that:

(i) (**caused by Project Co**): the Relief Event or the consequences of the Relief Event are caused or contributed to by a Project Co Act or Omission; or

(ii) (**failure to mitigate**): Project Co, or any Project Co Associate, fails to take all reasonable steps which a prudent, competent and experienced contractor in the circumstances of Project Co or the relevant Project Co Associate exercising Best Industry Practices would have taken to mitigate, minimise or avoid the effects, consequences or duration of the Relief Event.

(b) (**Insurance**): Other than payment of any excess or deductible for which the State is liable in accordance with clause 44.12(b), Project Co will not be entitled to Claim compensation from the State for a Relief Event to the extent that the loss for which compensation is claimed is required to be covered by the Insurances or Insurances (State) as part of an Insured Risk, unless Project Co has demonstrated that the compensation is not covered by the proceeds of such Insurance or Insurance (State) due to a State Insurance Breach.

(c) (**No Claims by Project Co**): Project Co is not entitled to make any Claim for an extension of time in respect of acts or omissions of:

(i) WGT Project Co or a WGT Project Co Associate, except to the extent of a WGT Failure Event; or

(ii) the Franchisee (Metro) or any of its Associates, except to the extent of an MTM Failure Event.

43.11 Indirect or Consequential Loss

(a) (**No Liability of the State**): Subject to clause 43.11(b), but otherwise despite anything to the contrary in this Deed, neither the State nor VicRoads, any State Associate has any Liability to Project Co or any Project Co Associate for any Indirect or Consequential Loss suffered or incurred by Project Co or any Project Co Associate as a result of any breach of a State Project Document by the State, VicRoads or any State Associate.

(b) (**Exceptions to no State Liability**): The exclusion of Liability of the State and any State Associate under clause 43.11(a) does not apply to:

(i) Liability arising from any criminal act or fraud on the part of the State, VicRoads or any State Associate;

(ii) Liability arising from any Wilful Misconduct on the part of the State, VicRoads or any State Associate;

(iii) any amounts payable under and calculated in accordance with the Change Compensation Principles;

(iv) Liability arising from any loss of or damage to third party property or injury to, illness or death of any person;

(v) any amounts payable under and calculated in accordance with the Payment Schedule; or

(vi) any amounts payable under and calculated in accordance with the Termination Payments Schedule.

(c) (**No Liability of Project Co**): Subject to clause 43.11(d), but otherwise despite anything to the contrary in this Deed, neither Project Co nor any Project Co Associate has any Liability to the State, VicRoads, any State Associate or any Interface Party (or in respect of the indemnity provided by Project Co under clause 43.5 only, any other Indemnified IP Person) for any Indirect or Consequential Loss.

(d) (**Exceptions to no Project Co Liability**): The exclusion of Liability of Project Co and any Project Co Associate under clause 43.11(c) does not apply to:

(i) the extent to which Project Co or a Project Co Associate would be entitled and able to recover under any Insurances or Insurances (State) in respect of such a Liability, or would have been so entitled and able but for an Insurance Failure Event;

(ii) Liability for which Project Co recovers pursuant to an indemnity under any Project Documents;

(iii) Liability arising from any criminal act or fraud on the part of Project Co or any Project Co Associate;

(iv) Liability arising from any Wilful Misconduct on the part of Project Co or any Project Co Associate;

(v) Liability for economic loss of third parties that are not State Associates (that is not caused by physical damage or personal injury);

(vi) Liability arising from any loss of or damage to third party property or any injury to, illness or death of any person;

(vii) Liability in respect of any reduction of any Service Payment as a consequence of:

(A) the application of the Payment Schedule in accordance with this Deed; or

(B) clause 25.2(a)(v);

(viii) Liability expressly imposed on Project Co or any Project Co Associate under any of the Project Documents to pay the State any of the following amounts:

(A) any State Share of Refinancing Gain under clause 37.4;

(B) any interest under clause 34.5;

(C) any amounts expressly provided to be a debt due and payable under this Deed;

(D) without limiting clause 43.11(d)(viii)(C), any amounts payable as a debt under clause 34.2(b) or 38.5(a)(iv) to the extent the amounts payable under those clauses is not otherwise Indirect or Consequential Loss;

(E) any amounts payable under clause 34.6, 37.5 or 52.8;

(F) any amounts payable under and calculated in accordance with the Payment Schedule;

(G) any amounts payable under and calculated in accordance with the Change Compensation Principles; or

(H) any amounts payable under and calculated in accordance with the Termination Payments Schedule;

(ix) Liability imposed on Project Co under clause 26.13 or clause 35.11 or pursuant to the Change Compensation Principles Schedule to pay or allow to the State any share of Savings; and

(x) Liability arising from abandonment of the whole or a substantial part of the Development Activities or Services by Project Co or any Project Co Associate.

43.12 Benefits held on trust for its Associates

(a) (**Benefit of indemnities**): The State holds on trust for VicRoads, each State Associate, each Interface Party carrying out Site Interface Works or Proximate Interface Works and each other Indemnified IP Person, the benefit of:

(i) each indemnity, release, limitation of Liability and exclusion of Liability given by Project Co under this Deed in favour of VicRoads, the relevant State Associate, Interface Party or any other Indemnified IP Person; and

(ii) each right in this Deed to the extent that such right is expressly stated to be for the benefit of the State, VicRoads, a State Associate, any Interface Party carrying out Site Interface Works or Proximate Interface Works or any other Indemnified IP Person.

(b) (**Project Co acknowledgement**): Project Co acknowledges the existence of such trusts and consents to the State exercising rights in relation to, or otherwise enforcing such indemnities, releases, limitations and rights on behalf of VicRoads, the State's Associates, the Interface Parties carrying out Site Interface Works or Proximate Interface Works and each other Indemnified IP Person.

(c) (**Amendment**): The parties agree that the State does not require the consent of VicRoads, any State Associate, any Interface Party or any other Indemnified IP Person to amend or waive any provision of any State Project Document.

44. Insurance

44.1 Initial Phase Insurances

(a) Project Co must procure and maintain or cause to be procured and maintained for the duration of the Initial Phase and for any extended period of cover applicable to any Initial Phase Insurances (Project Co) as detailed in the Insurance Schedule:

(i) (**Initial Phase Insurances**): the Initial Phase Insurances (Project Co); and

(ii) (**additional insurances**): any additional insurance which a prudent developer and prospective operator would procure and maintain when undertaking works or carrying out activities of a similar nature to the Development Activities.

(b) The State must procure and maintain for the duration of the Initial Phase, the Initial Phase Insurances (State).

44.2 Maintenance Phase Insurances

(a) Without limiting its obligations under clause 44.7, from Financial Close, and for any extended period of cover applicable to a Maintenance Phase Insurance (Project Co) as detailed in the Insurance Schedule, Project Co must procure and maintain, or cause to be procured and maintained:

(i) (**Maintenance Phase Insurances**): the Maintenance Phase Insurances (Project Co); and

(ii) (**additional insurances**): any additional insurances which a prudent operator and services provider would procure and maintain when carrying out activities of a similar nature to the Services.

(b) From Financial Close, and for the period of cover applicable to each Maintenance Phase Insurance (State), the State must procure and maintain the Maintenance Phase Insurances (State) including in accordance with clauses 44.3(b) and 44.3(c).

44.3 General insurance requirements

(a) Project Co must:

(i) (**Reputable Insurers**): effect all Insurances with an insurance company having the Required Rating (**Reputable Insurer**);

(ii) (**premiums**): punctually pay all premiums and other amounts payable in connection with the Insurances, and give the State copies of receipts for payment of premiums if and when requested by the State;

(iii) (**no alteration**): not alter, extend, discontinue or cancel any Insurance, or allow any Insurance to lapse, if this would result in the relevant Insurance not meeting the requirements of this Deed, without the State's approval;

(iv) [Not used];

(v) (**rectify**): promptly rectify any situation which may, if not rectified, prejudice any Insurance;

(vi) (**fully disclose**): fully and promptly disclose all material information to all relevant insurers (and any persons acting on their behalf) relating to the Insurances;

(vii) [Not used]; and

(viii) (**do everything to enable State recovery**): do everything reasonably required by the State or any State Associate to whom the benefit of such Insurance may extend, to enable the State or any State Associate (as the case may be) to claim, pursue and recover money due under that Insurance.

(b) Each of Project Co and the State must:

(i) (**not prejudice**): not do or permit, or omit to do, anything which prejudices any Insurance or Insurance (State) (as applicable); and

(ii) (**comply**): comply at all times with the legal obligations of proponents for, parties to and beneficiaries of contracts of insurance and with terms of each Insurance or Insurance (State) (as applicable).

(c) The State must procure and maintain the Insurances (State) from the VMIA (provided its obligations in connection with the relevant Insurances (State) are guaranteed in accordance with section 27 of the *Victorian Managed Insurance Authority Act 1996* (Vic)) or a Reputable Insurer.

44.4 Terms of Insurances

Project Co must ensure that each of the Insurances:

(a) (**Insured**): includes, as named insureds, all persons to whom the benefit of its cover is required to extend under this Deed as detailed in the Insurance Schedule;

(b) (**terms**): contains terms that:

(i) are acceptable to the State, such acceptance not to be unreasonably withheld; and

(ii) to the extent applicable, are to the effect that the relevant insurer:

(A) does not require the State, any State Associate, any relevant Interface Party carrying out Site Interface Works or Proximate Interface Works or any Indemnified IP Person to exhaust the indemnities given by Project Co or any Project Co Associate to them under any State Project Document, before the insurer will consider, accept or pay proceeds in respect of any claim under the Insurance;

(B) in the case of those Insurances where there is more than one Insured party (but excluding workers' compensation insurance or compulsory third party motor vehicle insurance), will not impute to any Insured any knowledge or intention or a state of mind possessed or allegedly possessed by any other Insured;

(C) in the case of Insurances under which the State or any State Associate are also Insureds, agrees that the interests of the Insured include the entire assets of the Project and waives any rights of subrogation which it may have against any Insured;

(D) in the case of liability Insurances, agrees to treat each Insured as a separate Insured as though a separate contract of insurance had been entered into with each of the Insureds, without increasing the applicable deductible or the overall limit of indemnity under the relevant Insurance; and

(E) except in relation to workers' compensation insurance and compulsory third party motor vehicle insurance, agrees that no reduction in limits or coverage affecting the Project or the Project Assets will be made during the period of insurance, except under the circumstances and to the extent permitted by the *Insurance Contracts Act 1984* (Cth) or other applicable Law and with not less than 20 Business Days' prior notice to the State and Project Co;

(c) (**nature**): is appropriate given the nature and objectives of the Project and the responsibilities and entitlements of the various Insureds in connection with this Deed;

(d) (**project specific**): if stipulated in the Insurance Schedule, is effected on a project specific basis; and

(e) (**consistency**): is consistent with the terms set out in the Insurance Schedule or, to the extent of any departure, has the State's written approval.

44.4A Terms of Insurances (State)

(a) (**Minimum terms**): Each of the Insurances (State) must contain the minimum prescribed terms and provide the level of cover as set out in the Insurance Schedule.

(b) (**Altering terms**): Subject to clause 44.4B, the State must ensure that its terms of the Insurances (State) are not materially altered, to the detriment of the persons insured under it, during the period for which it is required to be procured and maintained.

(c) (**State to pay premium**): Subject to clause 44.4B(f), the State must pay all premiums for the Insurances (State).

44.4B Procurement of Insurances (State)

(a) (**Required information**): No later than the date of this Deed, Project Co must provide to the State all information the State reasonably requires for the purpose of procuring the Insurances (State).

(b) (**Policy terms**): As soon as practicable after receiving the information provided under clause 44.4B(a) but in any event not later than the date which is 10 Business Days prior to Financial Close, the State must provide Project Co with proposed policy terms for the relevant Insurances (State) and details of the premiums payable for those Insurances (State).

(c) (**Acceptability of terms**): Within 10 Business Days after receiving the information provided under clause 44.4B(b), Project Co must advise the State whether the proposed policy terms for the Insurances (State) are acceptable to Project Co. If Project Co:

(i) advises that the proposed policy terms are acceptable, or does not advise whether or not the proposed policy terms are acceptable within that 10 Business Day period, the State must procure the relevant Insurances (State) on the terms proposed, and pay the premiums for such Insurances (State); or

(ii) advises that the proposed policy terms are not acceptable within that 10 Business Day period, it must provide reasons for this to the State, following which:

(A) the parties must, within 10 Business Days, meet to attempt to resolve the matter; and

(B) if the matter is not resolved at the meeting referred to in clause 44.4B(c)(ii)(A), either party may refer the matter to expert determination in accordance with clause 48.1(d)(i).

(d) (**During resolution**): If either party refers the matter for resolution in accordance with clause 44.4B(c)(ii)(B), then while the Dispute is being resolved, the State must place the policy for the relevant Insurances (State) in accordance with the terms referred to in clause 44.4B(b).

(e) (**Prior to expiry**): No later than 3 months prior to the expiry of the period of each policy of the Insurances (State), the parties must repeat the procedures under clauses 44.4B(a), 44.4B(b), 44.4B(c) and 44.4B(d), subject to clause 44.4B(f).

(f) (**Increased premiums**): If the amount of a premium payable for an Insurance (State) procured under clause 44.1(b), 44.2(b), 44.4B(c) or 44.4B(d) is significantly greater than the premium which was paid for that Insurance (State) in the previous period of insurance, and in the State's opinion, acting reasonably, the increase in the premium is wholly or partially attributable to an act or omission of Project Co, or a substantial amendment to the policy terms as compared with previous policies procured or maintained by the State or determined under clause 44.4B(d):

(i) the State must advise Project Co of its opinion, following which the parties must, within 10 Business Days, meet to attempt to resolve the matter; and

(ii) without limiting Project Co's rights under clause 49, if the matter is not resolved by the process outlined in clause 44.4B(f)(i):

(A) the State will make a reasonable assessment of the amount of the premium increase which is attributable to an act or omission of Project Co or a substantial amendment to the policy terms as compared with previous policies procured by the State or determined under clause 44.4B(d), which amount will be a debt due and payable to the State; and

(B) the State must advise Project Co of its assessment as soon as practicable.

44.4C Limitation of State Liability

(a) (**No Claim**): Notwithstanding the procurement of any Insurances (State) by the State, Project Co will not be entitled to make any Claim against the State or any of the State's Associates arising out of or in connection with any such Insurances (State) other than:

(i) a claim upon VMIA or the applicable Reputable Insurer in its capacity as an insurer under a relevant contract of insurance; or

(ii) in respect of a failure by the State to meet its obligations under clauses 44.1(b), 44.2(b), 44.3(b), 44.3(c) or 44.4A to 44.4C.

(b) (**No Claim on the State**): Project Co acknowledges and agrees that any refusal or inability of an insurer to meet its contractual obligations, in respect of a claim upon any of the Insurances (State), will not of itself constitute a failure of the State to meet its obligations under clauses 44.2(b), 44.3(b), 44.3(c) or 44.4A to 44.4C or any other act or omission of the State or any State Associate upon which Project Co may make a Claim.

44.5 Insurances primary

(a) (**Enforceability of rights under indemnities**): The State is not obliged to make a claim or institute proceedings against any insurer under the Insurances or

Insurances (State) before enforcing any of its rights or remedies under the indemnities given or referred to in this Deed or generally.

(b) (**Project Co's obligations not affected**): Project Co is not relieved from and remains fully responsible for its obligations under this Deed regardless of whether the Insurances or Insurances (State) respond or fail to respond to any claim and regardless of the reason why any Insurance respond or fail to respond.

44.6 Notification and making of claims

Project Co must:

(a) (**notification**): promptly notify the State of any occurrence that may give rise to a claim under any Insurance or Insurance (State) in connection with the Project, unless an Insured's right of indemnity under the relevant Insurance or Insurance (State) would be prejudiced by giving such notices;

(b) (**subsequent developments**): keep the State informed of subsequent developments concerning the occurrence notified under clause 44.6(a);

(c) (**pursue claims**): subject to clause 44.6(d), diligently pursue any claim which it has under any Insurance or any Insurance (State) which has arisen in connection with the Project and ensure that any Project Co Associate which has any claim does likewise; and

(d) (**State consent**): not compromise, settle, prosecute or enforce any claim of the type referred to under clause 44.6(a) under any Insurances or Insurances (State) without the State's written consent (which must not be unreasonably withheld or delayed).

44.7 Maintenance Phase Insurances (Project Co)

(a) (**Copies of Maintenance Phase Insurances (Project Co)**): No less than:

(i) 15 Business Days prior to Financial Close; and

(ii) 30 Business Days prior to the date on which any Maintenance Phase Insurances (Project Co) is due to be renewed during the Maintenance Phase (as detailed in the Insurance Schedule),

Project Co must, if it is able to do so, provide the State with copies of the proposed Maintenance Phase Insurances (Project Co) for the State to review in accordance with the Review Procedures.

(b) (**Project Co to make terms available**): If Project Co is unable to provide copies of the Maintenance Phase Insurances (Project Co) to the State under clause 44.7(a), it must:

(i) make the terms of such Insurances available to VMIA, the State's insurance adviser and the State's lawyers to review confidentially on behalf of the State in accordance with the Review Procedures; and

(ii) provide the evidence in respect of such Insurances as required under clause 44.8.

(c) (**Acknowledgement by parties**): The parties acknowledge and agree that:

(i) the terms and requirements specified in this Deed for the Maintenance Phase Insurances (Project Co) and Maintenance Phase Insurances (State) are a reflection of the insurance market at Financial Close;

(ii) if, throughout the period from Financial Close to the end of the Maintenance Phase, either party reasonably considers that the terms or requirements relating to a Maintenance Phase Insurance (Project Co) or Maintenance Phase Insurance (State) set out in the Insurance Schedule no longer represent the terms or requirements of such insurance that an owner, operator or maintainer of assets similar to the Maintained Assets or services provider providing services similar to the Services and exercising Best Industry Practices would procure and maintain, then that party may send a written notice to the other party advising it of the same and then the State and Project Co (both acting reasonably) must promptly confer in good faith with a view to reaching agreement on the replacement terms or requirements (as applicable); and

(iii) if the parties do not reach agreement on any replacement terms or requirements under clause 44.7(c)(ii), within 5 Business Days after the date on which a written notice was first given under that clause, either party may refer the matter to expert determination in accordance with clause 48.1(d)(i).

44.8 Evidence of Insurances

(a) As often as reasonably requested by the State, Project Co must give the State evidence satisfactory to the State that the Insurances have been procured and continue to be maintained in accordance with the requirements of this Deed, including:

(i) (**policies**): certified copies of each insurance policy, or if Project Co is unable to provide a certified copy of an insurance policy, Project Co must make such Insurance policy available to VMIA, the State's insurance adviser and the State's lawyers to review confidentially on behalf of the State, in accordance with the Review Procedures;

(ii) (**certificate**): signed certificates of currency evidencing at a minimum sum insured, deductible(s), class of policy and any unusual terms;

(iii) (**all requirements**): confirmation that all the requirements of the Insurances specified in the Insurance Schedule are met by the Insurances; and

(iv) (**particular deductibles**): such other details of the terms of coverage, erosion and reinstatement of limits, as the State may reasonably require,

to enable the State to satisfy itself that Project Co is complying with all of the insurance requirements of the Project under this Deed are being complied with.

(b) The State must provide to Project Co upon inception and each renewal of the Insurances (State), satisfactory evidence that the Insurance (State) is in force and on the terms prescribed in accordance with clause 44.4A(a), including:

(i) copies of each signed insurance policy and certificates of currency:

(A) issued by the VMIA; and

(B) confirming that the Insurance (State) in question is current and contains all of the minimum prescribed terms specified in the Insurance Schedule in respect of that insurance;

(ii) deductibles, terms of coverage, erosion and reinstatement limits as the other party may reasonably require, to enable Project Co to satisfy itself that all of the insurance requirements for the Project in accordance with this Deed are complied with; and

(iii) where requested, access to the terms of the Insurances (State) procured by a party, for the other party, its brokers and legal advisors.

(c) If the State fails to provide satisfactory evidence of insurance in accordance with clause 44.8(b), within 10 Business Days after the later of the date upon which the relevant Insurance (State) is required by this clause 44 to be procured and receipt of notice of such default from Project Co, Project Co may procure the Insurance (State) and the costs of it doing so, including the premium, brokerage and all taxes, levies or other statutory charges, will be a debt due and payable by the State to Project Co.

44.9 State may effect Insurances

(a) (**State may effect insurance**): The State may procure and/or maintain the relevant Insurances and pay the relevant premiums in connection with such Insurances:

(i) if Project Co fails to provide evidence satisfactory to the State that the Insurances have been procured and continue to be maintained in accordance with this Deed within 10 Business Days after a request under clause 44.8;

(ii) in the event of any default by Project Co or a Project Co Associate in procuring or maintaining Insurances in accordance with this clause 44; or

(iii) if any Insurance that Project Co is obliged to effect and maintain under this Deed is terminated and Project Co has failed to effect and maintain replacement Insurance for that Insurance under this Deed on or before the date of that termination.

(b) (**Costs to be recoverable from Project Co**): Without limiting any other remedies of the State under this Deed or at Law, the costs reasonably incurred by the State in taking such action as may reasonably be necessary in accordance with this clause 44.9 will be a debt due and payable by Project Co to the State.

44.10 Insurance Proceeds Account

(a) (**Establish account**): Project Co must:

(i) establish the Insurance Proceeds Account on or before Financial Close;

(ii) maintain that account in the joint names of Project Co and the State with a financial institution nominated by Project Co and approved by the State (such approval not to be unreasonably withheld or delayed) or with a financial institution that is a party to, or whose trustee or agent is a party to, the Finance Direct Deed;

(iii) give details of that account to the State on or before Financial Close;

(iv) notify the financial institution referred to in clause 44.10(a)(ii) of the charge over the Insurance Proceeds Account in accordance with the State Security and procure acknowledgement of the notice from the financial institution and provide a copy of that to the State in each case on or before Financial Close; and

(v) procure the agreement of the financial institution referred to in clause 44.10(a)(ii) not to exercise any right of set-off or counterclaim in relation to the Insurance Proceeds Account on or before Financial Close.

(b) (**Deposit insurance proceeds**): All insurance proceeds received from insurers by Project Co or the State under the Contract Works Insurance (Material Damage), the Industrial Special Risks/Business Interruption Insurance (other than proceeds of the business interruption section of the policy) and the Marine Transit and Marine Transit (Delay in Start-Up) Insurance (other than proceeds of the delay in start-up section of the policy) must be deposited by the recipient into the Insurance Proceeds Account.

(c) (**Application of amounts**): Subject to clause 44.10(e), amounts in the Insurance Proceeds Account may only be applied towards the repair or reinstatement of the Project Assets or as part of any Termination Payment.

(d) (**Records**): If amounts in the Insurance Proceeds Account are used for repair or reinstatement of the Project Assets, Project Co must give the State records of expenditure from the Insurance Proceeds Account within 30 Business Days after such expenditure.

(e) (**Surplus funds**): Any funds remaining in the Insurance Proceeds Account after application in connection with repair or reinstatement of the Project Assets will, subject to any right of set-off the State may have, be payable to Project Co.

44.11 Proportionate liability

(a) (**Reduce or exclude insurance cover**): Subject to clause 44.11(b), Project Co must ensure that no Insurance reduces or excludes the insurance cover in connection with liabilities governed by Part IVAA of the *Wrongs Act 1958* (Vic) or any corresponding legislation of another Australian jurisdiction, by reason of the manner in which that legislation operates or does not operate, as the case may be, in light of any of the provisions of this Deed and the obligations undertaken by Project Co in connection with it.

(b) (**Non-specific Project Insurance**): To the extent that the relevant Insurance is not specific to the Project, Project Co is only required to use its reasonable endeavours to procure insurance on the terms referred to in clause 44.11(a).

44.12 Liability for Deductible

(a) (**Project Co liability**): Subject to clause 44.12(b), Project Co must pay or bear all amounts by way of deductibles and excesses which apply to a claim made under any Insurances or any Insurances (State).

(b) (**State liability**): The State must pay all amounts by way of deductibles and excesses which apply to a claim made under any Insurances or Insurances (State) where the event that is insured in respect of which the claim is made on the Insurances or any Insurances (State) is:

(i) a Compensable Extension Event or a Compensable Intervening Event;

(ii) to the extent not covered by clause 44.12(b)(i), is caused by a breach of a State Project Document by the State or a State Associate; or

(iii) to the extent not covered by clause 44.12(b)(i) or clause 44.12(b)(ii), death, personal injury or loss of or damage to property (including the Project Assets), to the extent that the Liability of Project Co or any Project Co Associate is a consequence of a fraudulent, reckless, unlawful or malicious act or omission of the State or any State Associate.

44.13 Uninsurable Risks

(a) (**Risk likely to become Uninsurable Risk**): If any risk becomes or is likely to become an Uninsurable Risk, then:

(i) Project Co must notify the State within 5 Business Days after becoming aware that the risk has become or is likely during the Term to become an Uninsurable Risk;

(ii) the State must meet with Project Co within 5 Business Days after receipt of Project Co's notice to discuss the risk, including whether in fact the risk is an Uninsurable Risk; and

(iii) if, within 5 Business Days after receipt of Project Co's notice, the parties have not reached agreement on whether the risk is an Uninsurable Risk, either party may refer the matter to expert determination in accordance with clause 48.1(d)(i).

(b) (**Parties to discuss management of an Uninsurable Risk**): If the parties agree that a risk is an Uninsurable Risk (or in the absence of agreement, it is determined under clause 49 to be so), the parties must meet further to discuss the means by which the risk should be managed.

(c) (**Uninsurable Risk**): If clause 44.13(b) applies but the parties have not, within 10 Business Days after one party has notified the other that a meeting is required under that clause, reached agreement on how the Uninsurable Risk is to be managed, then this Deed will continue but each Service Payment will be adjusted by deducting the amount corresponding to the proportion of the total insurance premium (inclusive of brokerage and all taxes, levies and other statutory charges) for any Insurance that was payable by Project Co, for the insurance of that risk before it became an Uninsurable Risk.

(d) (**No longer an Uninsurable Risk**): If the risk ceases to be an Uninsurable Risk and Project Co takes out insurance to cover the risk in accordance with clause 44.14, then the Service Payment will be increased according to the amount of the premium (inclusive of brokerage and all taxes, levies and other statutory charges) payable for the same provided however (for each Service Payment) that increase must not exceed the amount which was deducted from the Service Payment when the risk became an Uninsurable Risk in accordance with clause 44.13(c). If the State takes out the insurance to cover the risk in accordance with clause 44.14, then the State will bear the premium payable.

44.14 Review of insurance markets

(a) (**Review and testing of market**): Subject to clause 44.14(c), Project Co must review and test the insurance market vigilantly (and for the Maintenance Phase Insurances (Project Co) during the period from Financial Close to the end of the Maintenance Phase, no less than once every 12 months) to ascertain whether a Day 1 Uninsurable Risk or Uninsurable Risk is no longer an Uninsurable Risk, and determine whether, and if so what, insurance terms as to premium, deductible and

coverage are available in connection with that risk from Reputable Insurers or in the case of the Insurances (State), from VMIA.

(b) (**Project Co to effect insurance**): If upon such review it is found that a Day 1 Uninsurable Risk or an Uninsurable Risk is no longer an Uninsurable Risk, then Project Co must promptly notify the State and unless the State requires otherwise, Project Co must procure the relevant Insurance or the State must procure the relevant Insurance (State) (as applicable) in connection with that risk in accordance with the other provisions of this clause 44 and the Insurance Schedule and Project Co and the State must meet to discuss the effect of that Day 1 Uninsurable Risk or Uninsurable Risk no longer being an Uninsurable Risk. Unless the State and Project Co agree otherwise within 10 Business Days after the State receives Project Co's notice and the Insured Risk is one which this Deed obliges Project Co to procure and maintain, or cause to be procured and maintained, coverage under any Insurance, then:

(i) during the period from Financial Close to the end of the Transition Phase, the State must pay Project Co:

(A) if the risk is not insurable under an existing Insurance, an amount equal to the premium that is payable by Project Co for insurance of such a risk (when incepted and at each renewal date); or

(B) if the risk is insurable under an existing Insurance, an amount equal to the increase in the premium of the existing Insurance that is required to cover insurance of such a risk,

within 10 Business Days after Project Co providing evidence to the State's reasonable satisfaction that it has procured such Insurance or amendment to the existing Insurance and the amount of the additional or increased premium (as applicable); and

(ii) during the Maintenance Phase, the Service Payment will be increased to reflect the additional or increased premium (as applicable) payable by Project Co for insurance to cover the risk.

(c) (**Terrorist incidents**): If a Day 1 Uninsurable Risk is a terrorist act occurring on the Project Area then unless the Insurance in question is one under which coverage is provided for a declared terrorist incident by operation of the *Terrorism Insurance Act 2003* (Cth), Project Co will not be required to review and test the insurance market under clause 44.14(a) unless expressly requested by the State to do so.

44.15 [Not used]

44.16 State Insurance Event

(a) (**Notification**): If a State Insurance Event has occurred or is likely to occur, Project Co must notify the State, or the State must notify Project Co, as applicable, within 5 Business Days after becoming aware that a State Insurance Event has occurred or is likely to occur.

(b) (**Redress of State Insurance Event**): As soon as practicable but no later than 5 Business Days after a party receives notice under clause 44.16(a), the parties must meet:

(i) to discuss whether a State Insurance Event has occurred or is likely to occur; and

(ii) if both parties agree (or if not, it is determined in accordance with clauses 48 to 50) that a State Insurance Event has occurred or is likely to occur, negotiate in good faith in an endeavour to agree on a method of redress to enable each of the State and Project Co to be, on balance, in no better or worse off position with respect to the insurance coverage provided by the applicable Insurances (State) than they would be if Project Co had procured those insurances on the same terms and conditions with Reputable Insurers.

(c) (**Flexible Negotiations**): The parties acknowledge that in any negotiations undertaken in accordance with clause 44.16(b)(ii), they will take a flexible approach, including giving consideration to amending this Deed to require Project Co to procure the Insurances (State) previously procured by the State.

(d) (**No agreement on redress**): If the parties do not reach agreement on a method of redress to enable each of the State and Project Co to be, on balance, in no better or worse off position with respect to the insurance coverage provided by the relevant Insurances (State) than they would be in if Project Co had procured those insurances on the same terms and conditions with Reputable Insurers within 10 Business Days after commencing the negotiations referred to in clause 44.16(b), then either party may refer the matter to resolution under clauses 48 to 50.

(e) (**Interim measures**): If a State Insurance Uninsurable Event occurs, the State must:

(i) if the State Insurance Uninsurable Event gives rise to loss or damage to the Maintained Assets within 20 Business Days after the occurrence of that State Insurance Uninsurable Event (or such longer period as is reasonable in the circumstances), either:

(A) subject to clause 44.16(f), require Project Co to reinstate the Maintained Assets, in which case the State will indemnify Project Co for the reasonable costs of reinstating and all other Liabilities incurred by Project Co to the extent such Liabilities arose from the occurrence of the State Insurance Uninsurable Event; or

(B) if the loss or damage to the Maintained Assets is Major Loss or Damage, terminate this Deed by notice to Project Co, in which case a Force Majeure Termination Event will be deemed to have occurred on the date provided in the State's notice and clause 46.6 will apply; or

(ii) if the State Insurance Uninsurable Event gives rise to personal injury or property damage (other than loss or damage to the Maintained Assets) in connection with the Project Activities, subject to clause 44.16(f), indemnify Project Co for all Liabilities incurred by Project Co to the extent such Liabilities arose from the occurrence of the State Insurance Uninsurable Event.

(f) (**Maximum indemnity**): The maximum amount for which the State must indemnify Project Co in accordance with clause 44.16(e)(i)(A) or clause 44.16(e)(ii) (as applicable) will be an amount equal to the Insurance (State) proceeds that would have been payable under the relevant Insurances (State) but for the occurrence of the State Insurance Uninsurable Event.

(g) (**No entitlement to Claim**): Other than to the extent expressly set out in this Deed, Project Co:

(i) will not be entitled to make any Claim against the State or any State Associate in relation to the occurrence of a State Insurance Event or a State Insurance Uninsurable Event; and

(ii) is not relieved from any of its obligations or Liabilities in accordance with the State Project Documents arising out of or in connection with the occurrence of a State Insurance Event or a State Insurance Uninsurable Event,

including in respect of any failure by the State to comply with its obligations in relation to the procurement of the Insurances (State) as a consequence of a State Insurance Event.

PART J –DEFAULT, TERMINATION AND END OF TERM OBLIGATIONS

45. Major Default

45.1 Events deemed capable of Cure

The parties acknowledge and agree that the following paragraphs of the definition of Major Default will, for the purposes of this clause 45, be deemed to be capable of Cure notwithstanding that they may not, as a matter of fact, be capable of "remedy" or "cure":

(a) (**late Commercial Acceptance**): paragraph (a) (late Commercial Acceptance);

(b) (**late Final Acceptance**): paragraph (b) (late Final Acceptance);

(c) (**Local Content Requirements**): paragraph (p), in respect of a breach of the Local Content Requirements or the LIDP;

(d) (**Major Projects Skills Guarantee**): paragraph (q), in respect of a breach of the Major Projects Skills Guarantee or the Major Projects Skills Guarantee Compliance Plan; and

(e) (**late Dohertys Road Bridge Works Completion**): paragraph (t) in respect of a failure by Project Co to achieve Milestone Completion in respect of the Dohertys Road Bridge Works by the Dohertys Road Bridge Works Completion Date.

45.2 Notice of Default

(a) (**Default Notice**): If the State considers that a Default has occurred, the State Representative may give Project Co a notice in writing:

(i) stating that a Default has occurred;

(ii) identifying and providing details of the Default; and

(iii) requiring Project Co to Cure the Default where it is capable of Cure, or comply with any reasonable requirements of the State where it is not, within 20 Business Days (or such longer period as is stated in the notice) of Project Co receiving that notice,

(a **Default Notice**).

(b) (**Default will become Major Default**): If Project Co:

(i) fails to Cure the Default; or

(ii) if the Default is not capable of Cure, fails to comply with the reasonable requirements of the State,

in accordance with the Default Notice within 20 Business Days (or any longer period stated in the Default Notice) of Project Co receiving the Default Notice, the Default will become a Major Default.

45.3 Notice of Major Default

(a) (**Project Co's obligations**): Project Co must:

(i) promptly notify the State upon the occurrence of a Major Default; and

(ii) immediately take steps to mitigate, minimise or avoid the effects, consequences and duration of the Major Default.

(b) (**Major Default Notice**): If Project Co notifies the State of a Major Default under clause 45.3(a) or if the State considers that a Major Default has occurred, the State may give Project Co a notice:

(i) stating that a Major Default has occurred;

(ii) identifying and providing details of the Major Default; and

(iii) if the Major Default:

(A) is capable of Cure, stating a date by which Project Co must Cure the Major Default (which subject to clause 45.4(h), must allow for a reasonable period of time to Cure the Major Default in the circumstances);

(B) is not capable of Cure, stating any reasonable requirements of the State to overcome the consequences of, or compensate the State for, the Major Default and a date by which Project Co must comply with those requirements (which, subject to clause 45.4(h), must allow for a reasonable period of time to comply with the State's requirements in the circumstances); or

(C) is not capable of Cure and the State has formed the view (acting reasonably) that there are no reasonable requirements that can be met by Project Co to overcome the consequences of, or compensate the State for, that Major Default, a statement to that effect along with its reasons for forming that view,

(a **Major Default Notice**).

(c) (**Unreasonable requirements**): If Project Co acting in good faith disputes the Major Default Notice, it must promptly notify the State including the reasons why.

(d) (**State to act in good faith**): Subject to clause 45.3(f), the State must in good faith consider Project Co's notice under clause 45.3(c) and must:

(i) make any changes to the Major Default Notice that it considers reasonable as a consequence of Project Co's notice (if any); and

(ii) notify Project Co of any such changes.

(e) (**Major Default not capable of Cure**): If:

(i) the State issues a notice in accordance with clause 45.3(b)(iii)(C), that there are no reasonable requirements that can be met by Project Co to overcome the consequences of, or compensate the State for, a Major Default not capable of Cure and this is disputed by Project Co in accordance with clause 45.3(c); and

(ii) having considered Project Co's notice issued under clause 45.3(c), and subject to clause 45.3(f) the State maintains the view (acting in good faith) that there are no reasonable requirements that can be met by Project Co to overcome the consequences of, or compensate the State for, that Major Default,

the State must notify Project Co of this determination and the Major Default will be a Default Termination Event.

(f) (**Notify Project Co and the Independent Reviewer**): Prior to issuing a notice under clause 45.3(e), the State must:

(i) notify Project Co and the Independent Reviewer (if an Independent Reviewer is engaged on the Project at that time) that it proposes to form a view under clause 45.3(e), and in the case of:

(A) Project Co, advise Project Co that it may submit to the State; and

(B) the Independent Reviewer, require the Independent Reviewer to submit to the State,

any comments or other information within 10 Business Days after the date of the notice under this clause 45.3(f)(i) (or such later date as determined by the State (acting reasonably)), which Project Co or the Independent Reviewer (as the case may be) considers may be relevant to the State forming or not forming a view in accordance with clause 45.3(e); and

(ii) consider any comments or other information submitted by Project Co and the Independent Reviewer under clause 45.3(f)(i).

(g) (**Project Co not satisfied**): If Project Co is not satisfied with:

(i) the changes (if any) made by the State under clause 45.3(d); or

(ii) the State's determination under clause 45.3(e),

Project Co may refer the matter to expert determination in accordance with clause 48.1(d).

45.4 Project Co to provide Cure Program and comply with Major Default Notice

(a) (**Cure Program**): Subject to clause 45.4(c), if the State gives a Major Default Notice to Project Co, then notwithstanding its rights under clauses 45.3(c) to 45.3(g), within 10 Business Days after receipt of the Major Default Notice, Project Co must:

(i) if the Major Default is capable of Cure, unless the relevant Major Default is a failure to pay amounts, give the State a program to Cure the Major Default; and

(ii) if the Major Default is not capable of Cure, give the State a program to comply with any reasonable requirements of the State (which may include a plan to replace the Subcontractor causing the Major Default),

(in each case, a **Cure Program**) in accordance with the terms of the Major Default Notice, for review by the State in accordance with the Review Procedures.

(b) (**Content of Cure Program**): Any Cure Program provided to the State under clause 45.4(a) must include:

(i) each task to be undertaken, the date by which each task is to be completed and the additional resources and personnel (if applicable) to be applied to Cure the Major Default; and

(ii) any temporary measures that will be undertaken while the Major Default is being Cured to ameliorate the impact of the Major Default.

(c) (**Existing Remediation Plan**): Where the Major Default is a failure by Project Co to achieve Commercial Acceptance by the Date for Commercial Acceptance and Project Co has provided a Remediation Plan in accordance with clause 26.4(d)(ii) or an Amended Remediation Plan in accordance with clause 26.4(i), which has a date by which Commercial Acceptance will be achieved, which is after the Date for Commercial Acceptance, Project Co may submit that Remediation Plan or Amended Remediation Plan (as applicable) as the Cure Program for the Major Default for review in accordance with the Review Procedures.

(d) (**Comply**): Notwithstanding the fact that it may have exercised its rights under clauses 45.3(c) to 45.3(g), Project Co must comply with the Major Default Notice and any Cure Program provided under clause 45.4(a) or clause 45.4(c) as reviewed by the State Representative in accordance with the Review Procedures.

(e) (**Extension of Major Default Notice**): Subject to clause 45.4(g), clause 45.4(h) and clause 45.4(l), if Project Co has been diligently pursuing:

(i) if the Major Default is capable of Cure, the Cure of that Major Default; or

(ii) if the Major Default is not capable of Cure, compliance with any reasonable requirements of the State,

Project Co may request that the State extend the Cure Program and the time stated in the Major Default Notice will be extended by such period as the State determines is required (acting reasonably) to enable Project Co to either Cure the Major Default or comply with any reasonable requirements of the State.

(f) (**Request for further information**): The State may request, and Project Co must provide, any further information reasonably required by the State in respect of Project Co's Cure of the Major Default to enable the State to determine the required extension under clause 45.4(e) (if any).

(g) (**Limitation**): Unless otherwise agreed by the State, Project Co is only entitled to one extension under clause 45.4(e) in connection with the same Major Default.

(h) (**Maximum Cure period**): Subject to the Finance Direct Deed and clause 45.5(a), the maximum period of time which Project Co may be given to Cure a Major Default, (or comply with the reasonable requirements of the State where the Major Default is not capable of Cure) including any extension granted under clause 45.4(e)) will be:

(i) if the applicable Major Default occurs during the Initial Phase, 24 Months in the aggregate from the date of the applicable Major Default Notice; or

(ii) if the applicable Major Default occurs during the Maintenance Phase (Full), 18 Months in the aggregate from the date of the applicable Major Default Notice.

(i) (**Milestone Completion in respect of the Dohertys Road Bridge Works**): Without limiting clause 45.3(b)(iii)(B) or 45.4(a)(ii), if the relevant Major Default is a failure by Project Co to achieve Milestone Completion in respect of the Dohertys

Road Bridge Works by the Dohertys Road Bridge Works Completion Date, the Cure Program must include, as a minimum, a detailed plan setting out the following:

(i) how Project Co intends to achieve Milestone Completion in respect of the Dohertys Road Bridge Works as soon as possible after the Dohertys Roads Bridge Works Completion Date, but in any event, showing Project Co achieving Milestone Completion in respect of the Dohertys Road Works prior to the Vacate Date; and

(ii) if, despite clause 45.4(i)(i), Project Co is unable to achieve Milestone Completion in respect of the Dohertys Road Bridge Works by the Vacate Date, full details of how Project Co will completely demobilise from the Dohertys Road Bridge Works Site by the Vacate Date and to leave the Dohertys Road Bridge Works Site clean and with any damage to the Dohertys Road Bridge Works rectified.

(j) (**Project Co to complete Dohertys Road Bridge Works**): Nothing in this Deed (including Project Co's obligation under clause 13.7(e) and clause 45.4(i)) derogates from Project Co's obligation to complete the Dohertys Road Bridge Works in accordance with this Deed by the Dohertys Road Bridge Works Completion Date and Project Co waives any Claim against the State in connection with Project Co's obligation to vacate the Dohertys Road Bridge Works Site by the Vacate Date.

(k) (**Indemnity**): Project Co indemnifies the State, each State Associate and VicRoads from and against any Claim or Liability suffered or incurred by the State, a State Associate or VicRoads as a result of any Claim against the State, a State Associate or VicRoads by WGT Project Co or its Associates in relation to Project Co or any Project Co Associate carrying out the Dohertys Road Bridge Works after the Vacate Date.

(l) (**Extension of Major Default Notice and Cure Program for late Dohertys Road Bridge Works completion**): If Project Co seeks (and is otherwise entitled to):

(i) an extension of time to a Major Default Notice and Cure Program relating to a Major Default arising as a result of a failure by Project Co to achieve Milestone Completion in respect of the Dohertys Road Bridge Works by the Dohertys Road Bridge Works Completion Date; and

(ii) such extension of time would result in the date for Cure in the Major Default Notice and Cure Program being later than the Vacate Date,

then Project Co will not be entitled to such extension unless Project Co provides written evidence satisfactory to the State confirming that WGT Project Co consents to Project Co either:

(iii) remaining on the Dohertys Road Bridge Works Site; or

(iv) returning to the Dohertys Road Bridge Works Site (on agreed dates or periods),

after the Vacate Date to complete the Dohertys Road Bridge Works.

(m) (**Extension to Major Default Notice or Cure Program**): Provided that Project Co has complied with the other requirements of clause 45.4(l), the State will grant a reasonable extension of time described in clause 45.4(l)(i) to the extent that:

(i) Project Co demonstrates to the State that compliance with the relevant Major Default Notice or Cure Plan (as applicable) has been delayed by an act or omission of WGT Project Co or any of its Associates;

(ii) Project Co has not caused or contributed to the act or omission; and

(iii) the act or omission is not permitted or authorised under the WGT Direct Interface Agreement.

45.5 Extension of Cure Program for Extension Event or Intervening Event

(a) (**Impact of Extension Event or Intervening Event**): To the extent that Project Co is prevented from carrying out its obligations in accordance with a Cure Program provided under clause 45.4(a) as a direct result of an Extension Event or Intervening Event, then, subject to clause 45.5(b), the State must extend the periods identified in clause 45.4(h) and the time set out in the Major Default Notice:

(i) to reflect the period Project Co is prevented from carrying out its obligations in accordance with the Cure Program as a consequence of that Extension Event or Intervening Event; or

(ii) without limiting clause 42, in respect of loss or damage caused by that Extension Event or Intervening Event for the period from the commencement of that loss or damage until the earlier of the date the necessary repairs or reinstatement have been completed or ought reasonably to have been completed had Project Co complied with its obligations under this Deed,

provided that:

(iii) Project Co is entitled to be granted:

(A) an extension of time under clause 26.9 or clause 26.10 or the Change Compensation Principles; or

(B) relief under clause 32.2 or clause 32.3;

(as applicable) for the relevant Extension Event or Intervening Event; and

(iv) Project Co demonstrates to the State's satisfaction (acting reasonably) that Project Co has diligently pursued and, to the extent reasonably possible, continues to diligently pursue the Cure Program agreed or determined under clause 45.4(a).

(b) (**Limitation on extension**): Project Co will not be entitled to an extension to the periods identified in clause 45.4(h) and the time set out in the Major Default Notice for an Extension Event or Intervening Event beyond the period of any extension of time or relief from performance that Project Co is granted for that Extension Event or Intervening Event under clause 26.9, clause 26.10, clause 32.2 or clause 32.3 (as applicable).

45.6 Default Termination Event

Subject to the Finance Direct Deed, if any Default Termination Event occurs, the State may, without limiting any rights or remedies it has under any State Project Document or at Law (other than rights of termination), elect to:

(a) (**terminate**): terminate this Deed at any time after the occurrence of a Default Termination Event under clause 46.4; or

(b) (**Cure**): exercise its rights under clause 38.2 to Cure or attempt to Cure the Default Termination Event.

45.7 Effect of Curing

If a Major Default or Default Termination Event occurs and is Cured by any person, any right to terminate this Deed in respect of that Major Default or Default Termination Event (as the case may be) not exercised prior to it being Cured may not thereafter be exercised.

46. Termination

46.1 Sole basis

(a) (**Sole basis**): Clauses 3 and 45 and this clause 46 set out the sole bases at Law or otherwise upon which the State is entitled to terminate, rescind or accept a repudiation of this Deed.

(b) (**No right to terminate**): Project Co acknowledges and agrees that, other than its right to terminate this Deed for a Force Majeure Termination Event in accordance with clause 46.3(a), Project Co has no right to, and will not, terminate any State Project Document notwithstanding any other provision of this Deed or any other State Project Document or any rights Project Co would have at Law but for this clause 46.1(b).

46.2 Termination for convenience

(a) (**Termination for convenience notice**): The State may:

(i) at any time, for its convenience, and for any reason, terminate this Deed by giving Project Co not less than 60 Business Days' notice; and

(ii) thereafter complete any uncompleted part of the Project, either itself or by engaging others to do so.

(b) (**Date of termination**): Termination of this Deed for convenience will take effect upon the date specified in the notice given under clause 46.2(a).

46.3 Termination for Force Majeure

(a) (**Force Majeure Termination Event notice**): Subject to clause 46.3(c), if a Force Majeure Termination Event occurs (or is deemed to have occurred) and its effects are subsisting or clause 42.5(a)(ii) applies, then either party may terminate this Deed by giving notice to the other party.

(b) (**Date of termination**): Termination of this Deed for a Force Majeure Termination Event will take effect upon the date specified in the notice given under clause 46.3(a) (or clause 42.5(a)(ii) (as applicable)).

(c) (**Restrictions on termination**): Project Co must not terminate this Deed under clause 46.3(a):

(i) during the period Project Co is entitled to recover (or would have been entitled to recover but for an Insurance Failure Event) under the:

(A) Contract Works Insurance (Advance Loss of Profits) or the delay in start-up sections of the Marine Transit and Marine Transit (Delay in Start Up) Insurance;

(B) [not used]; or

(C) the business interruption section of the Industrial Special Risks/Business Interruption Insurance,

for the relevant Force Majeure Termination Event; or

(ii) if it has not complied with its obligations under clause 26.5 or 32.1(b) in respect of the relevant Force Majeure Event (as applicable).

46.4 Termination for Default Termination Event

(a) (**Termination for Default Termination Event**): Subject to the Finance Direct Deed, if a Default Termination Event occurs, the State may terminate this Deed by giving notice to Project Co.

(b) (**Date of termination**): Termination of this Deed for a Default Termination Event will take effect upon the date specified in the notice given under clause 46.4(a).

46.5 Termination and payments

Upon termination under this clause 46, the State's future obligations under the State Project Documents to pay any Service Payment, any Option Amount, any Construction Payment and any Floating Rate Component will cease.

46.6 Payment on termination

(a) (**Termination Payment**): Subject to clause 46.6(c):

(i) if the Termination Payment is a positive amount, the State must pay to Project Co; and

(ii) if the Termination Payment is a negative amount, Project Co must pay to the State the absolute value of,

in accordance with clause 46.6(b) and as a debt due and payable the relevant Termination Payment, being:

(iii) for termination of this Deed for convenience under clause 46.2, the Termination Payment calculated under section 5 of the Termination Payments Schedule;

(iv) for termination of this Deed for a Force Majeure Termination Event under clause 46.3, the Termination Payment set out in section 6 of the Termination Payments Schedule; or

(v) for termination of this Deed for a Default Termination Event under clause 46.4, the Termination Payment calculated under section 3 or section 4 of the Termination Payments Schedule (as applicable).

(b) (**Timing**): The relevant party must make the Termination Payment no later than 20 Business Days after the later of:

(i) the Expiry Date;

(ii) the date on which the amount of the relevant Termination Payment is agreed by the State and Project Co or, failing agreement, is determined by an independent expert in accordance with the Termination Payments Schedule or clause 49 (as applicable); and

(iii) in the case of a Default Termination Payment (as defined in the Termination Payments Schedule), the Compensation Date,

or such other date as may be specified in the Termination Payments Schedule for payment of a Termination Payment.

(c) (**Project Co obligations**): The State's obligation to make a Termination Payment to Project Co under clause 46.6(a) is subject to Project Co having delivered up the vacated Project Area and the Project Assets to the State.

46.7 Novation of liabilities to the State

(a) (**State's election**): If this Deed is terminated and Project Co or Finance Co has any Actual Debt outstanding, subject to clause 46.7(c), the State may elect to assume some or all of the liability for that Actual Debt that would otherwise have been payable by Project Co or Finance Co, and to the extent the State so elects:

(i) Project Co must ensure that such liability is novated to the State; and

(ii) the amount of the Termination Payment which the State would otherwise be obliged to pay will be reduced by:

(A) the amount of the liability; and

(B) the amount of any costs of terminating the Finance Documents which would otherwise have been taken into account in determining the Termination Payment, but which are not incurred by reason of the novation.

(b) (**Finance Documents**): Project Co must ensure that each of it and Finance Co is permitted, in accordance with the terms of the Finance Documents, to procure the novation of its debt obligations in accordance with this clause 46.7.

(c) (**Bond Financing**): The State may only elect to assume Liabilities of any Project Co entity under or in relation to the Note and Guarantee Agreement entered or to be entered into by the Project Co Entities amongst others on or about the date of this Project Deed but only if the State has terminated this Project Deed pursuant to clause 46.2.

46.8 Waiver

If this Deed is terminated then subject to clause 46.6:

(a) (**waiver of rights to Claim**): Project Co waives any right it might otherwise have to make any Claim against the State or any State Associate; and

(b) (**no further Liability**): the State and each State Associate will have no further Liability to Project Co or any Project Co Associate,

by reason, or as a result, of the termination or the circumstances relating to the termination, or otherwise in connection with the Project.

47. Expiry obligations

47.1 Right to appoint Project Successor

Project Co acknowledges that the State may, on or before the Final Expiry Date, invite and engage any person (including Project Co) to perform all or any part of the Project Activities for the period commencing after the Final Expiry Date (the **Project Successor**).

47.2 Assistance in securing continuity prior to the Expiry Date

(a) (**Project Co to ensure delivery**): Subject to clause 47.2(b), Project Co must for the period commencing 2 years prior to the Final Expiry Date do all things reasonably required by the State to ensure the smooth and orderly transfer of responsibility for delivering the Project to the State or any Project Successor, including:

(i) (**meetings**): meeting with the State, any State Associate, any Project Successor and such other persons notified by the State to discuss delivery of the Project after the Expiry Date on reasonable notice by the State;

(ii) (**access**): providing to the State, any State Associate, any Project Successor and such other persons notified by the State access to its operations and Project Co Associates for the purpose of familiarisation with the Project Activities, the Project Assets and the Project Area;

(iii) (**information**): providing sufficient information to the State, any State Associate, any Project Successor and such other persons notified by the State, to determine the condition of the Project Assets and the Project Area and the status of the Final Refurbishment Works, at the time;

(iv) (**resources**): providing sufficient resources, including personnel to facilitate the transfer of the Project to the State and any Project Successor;

(v) (**procurement of novations**): procuring the novation or, if such novation cannot be procured, the assignment to the State or any Project Successor on the Expiry Date of:

(A) any Subcontracts; and

(B) any leases, subleases and licences (other than those to which the State is a counterparty),

as the State may nominate, which are material to the performance of the Project Activities, to the State or any Project Successor on the Expiry Date;

(vi) (**Intellectual Property Rights**): granting or procuring the grant to the State, any State Associate or any Project Successor of a licence or sub-licence to such Intellectual Property Rights as will enable the State or any Project Successor to deliver the Project to the standards specified in this Deed after the Expiry Date; and

(vii) (**delivery of Project**): doing all other acts and things reasonably required to enable the State (or any Project Successor) to be in a position to deliver the Project after the Expiry Date to the standards specified in this Deed, with minimum disruption.

(b) (**Timing**): If the Expiry Date is prior to the Final Expiry Date and Project Co receives notice of the Expiry Date less than 2 years prior to the Final Expiry Date, Project Co must meet the requirements under clause 47.2(a) from the time that Project Co receives notice of the Expiry Date until the Expiry Date unless, the State Representative, acting reasonably, determines such requirements cannot be met due to the limited notice period Project Co has received of the Expiry Date, in which case, Project Co must meet such requirements as soon as practicable after the Expiry Date.

(c) (**Transition person**): Without limiting its other obligations under this clause 47.2, for not less than:

(i) 6 Months before the Expiry Date; or

(ii) if Project Co is given less than 6 Months' notice of the Expiry Date, the relevant notice period,

Project Co must:

(iii) provide a dedicated person, with appropriate expertise and experience, to manage the transition out and handover of the Project; and

(iv) train personnel nominated by the State in all aspects of the operation, maintenance and repair of the Project Assets to an appropriate level of competency that will allow those personnel to operate, maintain and repair the Project Assets to the standards required of Project Co under this Deed from the relevant Expiry Date (having regard to the period prior to the Expiry Date).

(d) (**Asset Management System**): No later than 12 Months prior to the Expiry Date or such other shorter period reasonably required by the State if the Expiry Date occurs earlier than the Final Expiry Date, Project Co must commence transfer of the Asset Management System to the State.

47.3 Handover Condition

By the Expiry Date, Project Co must have handed over to the State or any Project Successor, the Project Assets and the Project Area (including all rights, title and interest in them to the extent not already transferred to the State), free from any encumbrance created by or on behalf of Project Co and, subject to clause 47.7(a)(ii), if Handover of the Project Assets is to occur:

(a) (**prior to Commercial Acceptance**): prior to the Date of Commercial Acceptance, in the condition that the Project Assets and the Project Area would be in if Project Co had complied with all of its obligations in connection with the Project in accordance with the requirements of this Deed having regard to the time and circumstances of the termination; or

(b) (**on or after Commercial Acceptance**): on or after the Date of Commercial Acceptance, the condition that the Project Assets and the Project Area would be in:

(i) if Project Co had complied with all of its obligations in connection with the Project under, or reasonably inferred from this Deed at the time of Handover and having regard to the timing of and reasons for the Handover at that time; and

(ii) such that if the Project Asset is a Warranted Asset or otherwise has a residual life specified in the PSDR, it will be Fit For Purpose by reference to the purposes, functions, uses and requirements referred to in clause

5.5(a) (without any major maintenance or refurbishment works) for its Warranted Life or specified residual life (as applicable) that continues beyond the relevant Date of Returned Asset Acceptance or the Expiry Date (as applicable), provided that the Project Asset or relevant component of the Project Asset will be operated and maintained after the relevant Date of Returned Asset Acceptance or the Expiry Date (as applicable):

(A) in accordance with Best Maintenance Practices;

(B) such that any damage to the relevant Project Asset or component of the relevant Project Asset occurring after the relevant Date of Returned Asset Acceptance or the Expiry Date (as applicable) is promptly rectified in accordance with Best Industry Practices;

(C) in relation to a Maintained Asset, in accordance with the Asset Management Plan and Forecast Maintenance and Refurbishment Plan; and

(D) taking into account:

1) any change in law;

2) the introduction of a new Standard;

3) a change in a Standard; or

4) the reclassification of a Road or any other change to a Road management category under the Road Management Plan,

occurring after the Expiry Date,

(the **Handover Condition**).

47.4 Other Handover obligations

Project Co must:

(a) (**Handover Management Sub-Plan**): deliver to the State everything that is required under the Handover Management Sub-Plan;

(b) (**transfer of rights, title and interests**): transfer (or procure the transfer) to the State or its nominee all rights, title and interest, in and to the Project Assets and the additional plant, machinery and equipment of Project Co and the Subcontractors (if the relevant Subcontractors are not engaged to carry out similar activities to the Project Activities after the Expiry Date) to allow the State or any Project Successor to operate, maintain and repair the Project Assets after the Expiry Date to the standards required of Project Co under this Deed;

(c) (**assignment of warranties and guarantees**): procure that all warranties and guarantees in respect of the Project Assets (including the Warranted Life Warranties) or Services undertaken in respect of the Project Assets that remain in force at the Expiry Date are assigned to the State or its nominee free from any Encumbrance;

(d) (**delivery of information**): update (as applicable) and deliver to the State or its nominee all Project Co Material not previously delivered to the State;

(e) (**payment of insurance proceeds**): deposit in the Insurance Proceeds Account any insurance proceeds Project Co has received from any Insurances or Insurances (State) for the repair, reinstatement or replacement of the Project Assets to the extent not already repaired, reinstated or replaced, and assign to the State any rights available to Project Co under each of the Insurances and Insurances (State) in respect of the repair, reinstatement and replacement of the Project Assets;

(f) (**management and control systems**): provide to the State all software, hardware, equipment, materials and documentation necessary or desirable in order for the State or the Project Successor to fully maintain the Maintained Assets and otherwise perform the Services, if the Expiry Date occurs:

(i) prior to the Date of Commercial Acceptance, to the extent reasonably practicable taking into account the progress of the Works as at the Expiry Date; or

(ii) on or after the Date of Commercial Acceptance, so that the State or any Project Successor can fully maintain the Maintained Assets and otherwise perform the Services; and

(g) (**transfer of approvals**): do all acts and things necessary to enable the State or any Project Successor to have transferred to it or to obtain all existing Approvals necessary to continue to carry out the activities similar to the Project Activities after the Expiry Date,

by the Expiry Date or if the Expiry Date is prior to the Final Expiry Date, and the State Representative, acting reasonably, determines such requirements cannot be met by the Expiry Date, as soon as practicable after the Expiry Date.

47.5 Appointment of Handover Reviewer

(a) (**Handover Reviewer**): No later than 6 Months before the earliest Condition Review Date (or where clause 47.6(a)(ii) applies, within such shorter period as is reasonably required by the State), Project Co and the State must meet to determine the identity of a person with suitable expertise and experience to be appointed by them to perform the tasks identified in clause 47.6 (**Handover Reviewer**).

(b) (**State Representative to appoint**): If Project Co and the State Representative do not agree on the appointment of the Handover Reviewer on or before the date which is 3 Months before the earliest Condition Review Date (or where clause 47.6(a)(ii) applies, within such shorter period as is reasonably required by the State), the Handover Reviewer will be appointed using the process set out in clause 49.1 for the appointment of an expert (as if the review of the Project Assets were a Dispute).

(c) (**Terms of engagement**): The Handover Reviewer will be appointed on similar terms to the Independent Reviewer Deed of Appointment, taking into account any changes required to reflect the different role and the effluxion of time since the engagement of the Independent Reviewer.

(d) (**Dispute**): If either party does not agree with any aspect of the Outstanding Matters Report given under clause 47.6(c) or any updated Outstanding Matters Report given under clause 47.6(d), that party may refer the matter to expert determination in accordance with clause 48.1(d)(i), provided that the party disputing the Handover Reviewer's determination under clause 47.6(c) or clause 47.6(d) gives a notice to the other party within 10 Business Days after the Handover Reviewer's determination.

(e) (**Costs**): Subject to clause 47.5(f), the State and Project Co must each pay to the Handover Reviewer [not disclosed]% of the costs and expenses of the Handover Reviewer in accordance with the relevant deed of appointment entered into in accordance with clause 47.5(c).

(f) (**Alternative split**): To the extent that the Handover Reviewer considers that the parties (as a result of their respective conduct) have a proportionate responsibility for the costs and expenses of the Handover Reviewer which differs from the proportion stated in clause 47.5(e), the party that the Handover Reviewer considers should have a higher proportionate responsibility must pay to the other party as a debt due and payable the relevant proportion of the costs and expenses of the Handover Reviewer paid by the first party under clause 47.5(e) as stated in a notice from the Handover Reviewer to the parties.

47.6 Handover Reviewer Role

(a) (**Joint inspection**): Project Co, the State and the Handover Reviewer appointed under clause 47.5(a) or clause 47.5(b) (as applicable) must carry out joint inspections of the Project Assets:

(i) if the Expiry Date is the Final Expiry Date:

(A) at or about 24 Months before the Final Expiry Date;

(B) 12 Months before the Final Expiry Date;

(C) 6 Months before the Final Expiry Date; and

(D) at or about the Final Expiry Date; or

(ii) if the Expiry Date is earlier than the Final Expiry Date, within such shorter period before the Expiry Date as is reasonably required by the State,

(each a **Condition Review Date**).

(b) (**Provision of information**): Upon the appointment of the Handover Reviewer, Project Co and the State must provide to the Handover Reviewer all information that the Handover Reviewer reasonably requires to undertake the Handover Review including the then latest Monthly Maintenance Phase Performance Report and Asset Management Plan.

(c) (**Program to achieve proper Handover**): Following the first Condition Review Date under clause 47.6(a), the Handover Reviewer must give to the State and Project Co a report specifying:

(i) the details of the work required to be carried out to meet the Handover Condition and a program for undertaking such works including any Planned Lifecycle Activities (**Final Refurbishment Works**); and

(ii) an itemised estimate of the total costs of carrying out the Final Refurbishment Works under this Deed,

(**Outstanding Matters Report**).

(d) (**Update of Outstanding Matters Report**): The Handover Reviewer must give to the State and Project Co an updated Outstanding Matters Report after each Condition Review Date subsequent to the first one (if any), which includes details of:

(i) the Final Refurbishment Works that have been completed to the satisfaction of the Handover Reviewer;

(ii) the Final Refurbishment Works still to be completed;

(iii) the Final Refurbishment Works which the State has relieved Project Co from carrying out in accordance with clause 47.7(a)(ii); and

(iv) an itemised estimate of the cost of carrying out the remaining Final Refurbishment Works at that point in time.

47.7 State election

(a) (**Adjustment**): Notwithstanding the terms of this clause 47, the State Representative may, by giving notice to Project Co:

(i) adjust any Condition Review Date to an alternative date which may not be earlier than 24 Months before the Expiry Date;

(ii) relieve Project Co from, or defer any obligation to carry out any of the Final Refurbishment Works in any Maintenance Year; or

(iii) acting reasonably, increase the number of times and frequency with which the Handover Reviewer must inspect and assess the condition of the Project Assets, assess any Final Refurbishment Works or prepare the Outstanding Matters Report pursuant to clause 47.5(c) or 47.6(d).

(b) (**Effect of adjustment**): If the State Representative relieves Project Co from its obligations to carry out any of the Final Refurbishment Works under clause 47.7(a)(ii):

(i) any relevant parts of this Deed and relevant Maintenance Phase Plans will be varied to the extent agreed by the parties or, if not agreed, within 5 Business Days after the date on which the State Representative gives the relevant notice under clause 47.7(a)(ii), as determined by the Handover Reviewer; and

(ii) any subsequent Service Payment will be reduced by the cost of carrying out the relevant Final Refurbishment Works as agreed by the parties or, if not agreed, within 5 Business Days after the date on which the State Representative gives the relevant notice under clause 47.7(a)(ii), as determined by the Handover Reviewer.

47.8 Implementing Final Refurbishment Works

(a) (**Implement program**): Project Co must:

(i) within 1 Month after the provision by the Handover Reviewer of each Outstanding Matters Report:

(A) amend the relevant Maintenance Phase Plans to include details of the Final Refurbishment Works that Project Co is required to carry out in accordance with the then current Outstanding Matters Report (or as otherwise agreed or determined in accordance with clause 47.5(d)); and

(B) submit the updated Maintenance Phase Plans to the State Representative and the Handover Reviewer for review in accordance with the Review Procedures; and

(ii) carry out and complete the Final Refurbishment Works in accordance with the updated Maintenance Phase Plans.

(b) (**State right to complete**): Upon or prior to the Expiry Date, the State may, in addition to any other remedies under this Deed or at Law, exercise its rights of step in under clause 38.2 to carry out and complete (or engage others to carry out and complete) any Final Refurbishment Works which:

(i) have not been completed by Project Co:

(A) to the satisfaction of the Handover Reviewer (or as otherwise agreed or determined in accordance with clause 47.5(d)); or

(B) prior to the Expiry Date, by the date programmed for completion of such works in the Outstanding Matters Report,

and all costs incurred by the State in doing so will be a debt due and payable by Project Co to the State; or

(ii) the State has relieved Project Co from carrying out in accordance with clause 47.7(a)(ii).

47.9 Security for Final Refurbishment Works

(a) (**Security threshold**): At any time after a Condition Review Date, if the aggregate of the remaining Service Payments is equal to or less than [not disclosed]% of the estimated total cost of the remaining Final Refurbishment Works (as set out in the then current Outstanding Matters Report or as otherwise agreed or determined in accordance with clause 47.5(d)) (the **Threshold Amount**), Project Co must, within 20 Business Days after the Condition Review Date either elect to:

(i) notify the State that the State may deposit into a registered interest bearing bank account opened by the State in the State's name (the **Handover Escrow Account**) each subsequent Service Payment until the balance of the Handover Escrow Account equals or exceeds the Threshold Amount (in which case the State may proceed accordingly); or

(ii) provide to the State a Performance Bond having a face value not less than the Threshold Amount (**Handover Bond**),

as security for the performance of the Final Refurbishment Works.

(b) (**Project Co makes no election**): If Project Co fails to make an election under clause 47.9(a) within the time stated in that clause, Project Co will be deemed to have made the election and notified the State in accordance with clause 47.9(a)(i) and that clause and clause 47.10 will apply.

(c) (**Adjustment of Threshold Amount**): If the scope or estimated cost of the Final Refurbishment Works is amended pursuant to clause 47.6 or 47.7(a)(ii), the total estimated cost of the remaining Final Refurbishment Works and the Threshold Amount will be adjusted accordingly, provided that if the State exercises its rights under clause 47.7(a)(ii) and the aggregate of the remaining Service Payments is insufficient to cover the cost of carrying out the relevant omitted Final Refurbishment Works, as agreed or determined in accordance with clause 47.7(b)(ii), the Threshold Amount will not be adjusted.

47.10 Handover Escrow Account

If Project Co has, or has been deemed to have, made the election to establish the Handover Escrow Account under clause 47.9(a)(i):

(a) (**interest**): interest earned on a credit balance in the Handover Escrow Account must be deposited into the Handover Escrow Account;

(b) (**statements**): Project Co is entitled, on request, to receive copies of the statements for the Handover Escrow Account;

(c) (**drawing on Handover Escrow Account for Project Co's benefit**): the State must draw upon the Handover Escrow Account to pay Project Co:

(i) not later than 20 Business Days after the Handover Reviewer issues an updated Outstanding Matters Report in accordance with clause 47.6(d):

(A) the estimated cost of the Final Refurbishment Works that have been completed to the satisfaction of the Handover Reviewer (as set out in the then current Outstanding Matters Report or as otherwise agreed or determined in accordance with clause 47.5(d)) since the last Condition Review Date, provided that after drawing such amount the balance of the Handover Escrow Account equals or exceeds the then current Threshold Amount; or

(B) if all of the Final Refurbishment Works have been completed prior to the Expiry Date to the satisfaction of the Handover Reviewer (as set out in the then current Outstanding Matters Report or as otherwise agreed or determined in accordance with clause 47.5(d)), the balance of the Handover Escrow Account;

(ii) the estimated cost of the Final Refurbishment Works (as set out in the then current Outstanding Matters Report or as otherwise agreed or determined in accordance with clause 47.5(d)) that the State has relieved Project Co from carrying out in accordance with clause 47.7(a)(ii) (if applicable); and

(iii) if Final Refurbishment Works have not been completed to the satisfaction of the Handover Reviewer (as set out in the then current Outstanding Matters Report or as otherwise agreed or determined in accordance with clause 47.5(d)) as at the Expiry Date, the balance of the Handover Escrow Account less the then current Threshold Amount; and

(d) (**drawing on Handover Escrow Account for State's benefit**): the State may, in addition to any other remedies under this Deed or at Law, draw upon the Handover Escrow Account for its own benefit and use:

(i) to fund or refund any costs incurred by it in carrying out (or engaging others to carry out) any Final Refurbishment Works in accordance with clause 47.8(b)(i); or

(ii) if there is any amount remaining in the Handover Escrow Account after all amounts have been drawn and paid to Project Co in accordance with clause 47.10(c).

47.11 Handover Bond

If Project Co has, or has been deemed to have, made the election to provide a Handover Bond under clause 47.9(a)(ii):

(a) (**expiry date**): any Handover Bond, including any replacement Handover Bond provided under clause 47.9(a)(ii), clause 47.11(d) or clause 47.11(e), must have an expiry date no earlier than one year after the end of the Term;

(b) (**reduction**): Project Co may reduce the amount of the Handover Bond in accordance with clause 47.11(d) no more than once an Operating Year to account for any Final Refurbishment Works completed to the satisfaction of the Handover Reviewer (as set out in the then current Outstanding Matters Report or as otherwise agreed or determined in accordance with clause 47.5(d)) since Project Co last exercised its rights under this clause 47.11(b), provided that the amount of the Handover Bond is no less than the then current Threshold Amount;

(c) (**State use of Handover Bond**): the State, in addition to any other remedies under this Deed or at Law:

(i) may draw on the Handover Bond:

(A) to fund or refund any costs it incurs in carrying out (or engaging others to carry out) any Final Refurbishment Works under clause 47.8(b)(i) unless that amount is paid by Project Co to the State within 10 Business Days of demand by the State of the amount due and payable under clause 47.8(b)(i); and

(B) for the remaining amount of the Handover Bond no later than 20 Business Days after the Expiry Date if all of the Final Refurbishment Works have not been completed by the Expiry Date to the satisfaction of the Handover Reviewer (as set out in the then current Outstanding Matters Report or as otherwise agreed or determined in accordance with clause 47.5(d));

(ii) must otherwise return the Handover Bond to Project Co on the earlier of 30 Business Days after:

(A) the date on which the Handover Reviewer issues an updated Outstanding Matters Report in accordance with clause 47.6(d) or as otherwise agreed or determined in accordance with clause 47.5(d) stating that all of the Final Refurbishment Works are completed to the satisfaction of the Handover Reviewer; and

(B) the Expiry Date;

(d) (**Return and replacement of Handover Bond**): if the amount of the Handover Bond is reduced pursuant to clause 47.11(b), subject to any right of the State to have recourse to the existing Handover Bond, the State must return that Handover Bond to Project Co in exchange for the delivery to the State by Project Co of a replacement Handover Bond that complies in all respects with this Deed and is for an amount which is not less than the relevant reduced amount; and

(e) (**change in circumstances**): where:

(i) the issuer of a Handover Bond ceases to hold a current licence issued by the Australian Prudential Regulation Authority or have the Required Rating; or

(ii) the specified location within Melbourne (or such other place as approved by the State) is no longer available for demand to be given or for payment to be made under a Handover Bond,

then Project Co must promptly:

(iii) notify the State of that circumstance; and

(iv) after being requested to do so by the State (and in any event within 10 Business Days), procure the issue to the State of a replacement Handover Bond that complies in all respects with this Deed for an amount which is not less than the undrawn amount of the replaced Handover Bond.

47.12 Required Employee Details

(a) (**Information on Required Employees**): Not later than 30 Business Days prior to the Expiry Date or, in the event that this Deed is terminated, with less than 60 Business Days' notice, within 30 Business Days after any notice of termination is received by the relevant party, Project Co must provide to the State:

(i) a list of the names of each person employed by Project Co or the Services Contractor or any other Key Subcontractor or Significant Subcontractor who is engaged to undertake the Services (each a **Required Employee**);

(ii) a statement setting out each Required Employee's:

(A) grade/classification;

(B) rate of pay;

(C) date of commencement of employment; and

(D) estimated accrued entitlements (including annual leave, long-service leave, sick pay and rostered days off) as at the Expiry Date,

which has been countersigned by the relevant Required Employee with a statement by the Required Employee that the statement is accurate or otherwise identifying the extent that the Required Employee considers that the statement is not accurate;

(iii) the other terms and conditions of employment for each Required Employee; and

(iv) each Required Employee's roster.

(b) (**Employment contracts**): Project Co must ensure, and must procure that each Key Subcontractor and Significant Subcontractor ensures, that contracts of employment in relation to each Required Employee seek the consent of the Required Employee for their employer to comply with clause 47.12(a)(ii).

(c) (**Dispute**): In the event that a Required Employee notifies Project Co that he or she disputes any of the information contained in the statement provided to that

Required Employee pursuant to clause 47.12(a)(ii), Project Co must notify the State of such dispute and the State must refer the disputed issue to an actuary for determination.

47.13 Variation of terms and conditions of employment

Project Co must not, without the State's consent (which must not be unreasonably withheld or delayed), vary, or purport or promise to vary, the terms or conditions of employment (including superannuation entitlements) of any Required Employee if:

(a) (**variation in 12 Months prior to Expiry Date**): 12 months prior to the Final Expiry Date or, if the Expiry Date is not the Final Expiry Date, from the date that is the later of:

(i) 12 months prior to the Expiry Date; and

(ii) the date Project Co is notified of the Expiry Date,

unless:

(iii) it is in the ordinary course of business and, when aggregated with any other variation which takes effect during that period, represents a percentage increase in the remuneration of the Required Employee of no more than the percentage increase in the index referred to in section 2(b) of the Indexes Schedule over the 12 Month period ending on the Month for which that index was last published; or

(iv) it is a variation imposed by a determination of the Fair Work Commission or is otherwise a consequence of the operation of an enterprise agreement made under the *Fair Work Act 2009* (Cth);

(b) (**variation after Expiry Date**): all or part of the variation first takes effect after the Expiry Date;

(c) (**variation relates to non-financial benefit**): the variation relates to the provision of a financial or non-financial benefit (but excluding base salary and the Required Employee's legal entitlements) which the Required Employee will or may have a contractual right to receive after the Expiry Date; or

(d) (**variation restricts ability to work for Project Successor**): the variation prevents, restricts or hinders the Required Employee from working for the State, or a Project Successor after the Expiry Date in any capacity or from performing any duties which are the same as or similar to the duties the Required Employee performed in the course of their employment with Project Co.

47.14 Transfer of employees to Project Successor

(a) (**Employment offers**): At the Expiry Date, the State must use reasonable endeavours to make or procure that the Project Successor (or a contractor of the Project Successor) makes offers of employment to the Required Employees on terms which are similar to and are, on an overall basis, no less favourable than their terms of employment with Project Co (or the relevant Key Subcontractor or Significant Subcontractor).

(b) (**Project Co to assist**): Project Co must assist the State in the transfer of any employees of:

(i) Project Co; or

(ii) any Subcontractors,

who agree with the State to be employed by the State or its nominee after the Expiry Date.

(c) (**Payment**): Notwithstanding clause 47.14(a), Project Co will (or will ensure that the Project Successor, relevant Key Subcontractor or Significant Subcontractor will) pay to any employee who becomes entitled to any redundancy payment upon the cessation of their employment with Project Co (or the relevant Subcontractor), an amount which complies with the terms of any relevant employment agreement and applicable Laws.

(d) (**Details of offer**): For the purposes of this clause 47.14, any offer of employment by the State or Project Successor (or a contractor of the Project Successor) will:

(i) recognise continuity of service for all service related entitlements;

(ii) expressly waive any qualifying period which would otherwise preclude an employee's access to Commonwealth unfair dismissal laws in place from time to time; and

(iii) meet any criteria as to 'acceptable alternative employment' (howsoever described) for the purposes of any exemption from the liability of Project Co (or the relevant Subcontractor) to make redundancy payments set under any applicable contract, policy or industrial agreement which applies to the employee as at the end of the Term.

(e) (**Termination**): This clause 47.14 does not apply if this Deed is terminated under clause 46.

PART K - DISPUTE RESOLUTION

48. Dispute Resolution procedure

48.1A Disputes involving Finance Co

The parties acknowledge and agree that any dispute between the State (on the one hand) and Project Co and/or Finance Co (on the other hand) arising in connection with the Receivables Purchase Deed or the Payment Direction Deed (as applicable), must be resolved in accordance with this clause 48 and clause 49 as if it were a Dispute between the State and Project Co.

48.1 Procedure

Unless a State Project Document provides otherwise or the parties otherwise agree, the parties acknowledge and agree that any dispute between the State and Project Co arising in connection with:

(a) (**the Project**): the Project (including questions concerning a State Project Document's existence, meaning or validity); or

(b) (**decisions or reports**): any decision of the Independent Reviewer or report of the Handover Reviewer which is not final and binding on the parties,

(each a **Dispute**) must only be resolved in accordance with the following procedure:

(c) (**negotiation**): first, the Dispute must be the subject of negotiation as required by clause 48.3;

(d) (**expert determination**): second, if the Dispute remains unresolved (in whole or in part) after the expiration of the period for resolution referred to in clause 48.3 and either party wishes to pursue the Dispute:

(i) if the Dispute is expressly referred to in a State Project Document to be a Dispute which may be referred to expert determination in accordance with clause 48.1(d)(i), the Dispute must be referred to expert determination in accordance with clause 49; or

(ii) if clause 48.1(d)(i) does not apply:

(A) the parties may either agree that the Dispute will be referred to expert determination in accordance with clause 49; or

(B) if the parties do not agree in accordance with clause 48.1(d)(ii)(A) to refer the Dispute to expert determination, either party may refer the Dispute to arbitration in accordance with clause 50.1; and

(e) (**arbitration**): third, if the Dispute has been referred to expert determination in accordance with clause 48.1(d)(i) or clause 48.1(d)(ii)(A), either party may subsequently refer the dispute to arbitration in the circumstances stated in clause 50.1.

48.2 Dispute under the Independent Reviewer Deed of Appointment

The parties acknowledge and agree that the parties may, by joint notice to the Independent Reviewer, consolidate proceedings or dispute processes under this Deed and under the Independent Reviewer Deed of Appointment relating to similar matters or issues.

48.3 Senior negotiations

(a) (**Notification**): If a Dispute arises then a party must, if it wants to pursue the Dispute, give notice to the other party requesting that the Dispute be referred for resolution by negotiation between the Chief Executive Officers (or equivalent) of the State and Project Co (**Representatives**).

(b) (**Contents of notice**): A notice under clause 48.3(a) must:

(i) state that it is a notice under clause 48.3; and

(ii) include or be accompanied by particulars of the matters which are the subject of the Dispute.

(c) (**Attempt to resolve dispute**): If a Dispute is referred to negotiation under clause 48.3(a), then:

(i) the Representatives must meet and attempt in good faith to resolve the Dispute (in whole or in part) within 10 Business Days after the date on which the notice under clause 48.3(a) is received or such later date as the parties may agree; and

(ii) any agreement reached between the Representatives will be reduced to writing, signed by or on behalf of each party and will be contractually binding on the parties.

(d) (**Meeting**): The Representatives may agree to call a meeting of the Project Control Group or the Senior Representative Group to assist in the resolution of the Dispute by the Representatives in accordance with clause 48.3(c)(i), which meeting must, unless otherwise agreed, take place within the 10 Business Days referred to in clause 48.3(c)(i).

49. Expert determination

49.1 Referral and selection of expert

(a) (**Referral to expert determination**): If a Dispute:

(i) remains unresolved (in whole or in part) within 10 Business Days after the date on which the notice under clause 48.3(a) is received or such later date as the parties may agree; and

(ii) either clause 48.1(d)(i) applies or the parties agree to refer the Dispute to expert determination under clause 48.1(d)(ii)(A),

then if a party wants to pursue the Dispute, that party must refer the Dispute to expert determination within 20 Business Days after the date on which the notice under clause 48.3(a) is received or such later date as the parties may agree.

(b) (**Agreement**): Within 5 Business Days after the date on which a Dispute is referred to expert determination under clause 49.1(a), the State and Project Co must endeavour to agree on the expert to be appointed to determine the Dispute.

(c) (**Exchange of lists of 3 preferred experts**): If the State and Project Co are unable to agree on an expert to determine the Dispute within the 5 Business Day period referred to in clause 49.1(a), the State and Project Co must exchange lists of 3 persons (in order of preference) who, if appointed, would satisfy the requirements of

clause 49.1(f) on or before the date which is 10 Business Days after the date on which the Dispute is referred to expert determination under clause 49.1(a).

(d) (**Appointment of person who appears on both lists**): If:

(i) a person appears on both lists under clause 49.1(c), that person will be deemed to be the expert to determine a Dispute; or

(ii) more than one person appears on both lists, the person given the highest order of priority by the party that gave the notice under clause 48.3(a) will be deemed to be the expert to determine the Dispute.

(e) (**Appointment if no person appears on both lists**): If no person appears on both lists, the party which gave the notice under clause 48.3(a) must procure:

(i) the president (or the senior non-executive officer, howsoever described) of the institute or governing body for the technical or professional discipline that is the subject of the relevant Dispute to nominate the expert, having regard to, but not being bound by, those persons proposed by the parties under clause 49.1(c); or

(ii) if:

(A) there is no governing body for the technical or professional discipline that is the subject of the relevant Dispute;

(B) such governing body advises that it will not nominate an expert; or

(C) there are multiple technical or professional disciplines that are the subject of the Dispute,

the President of the Australian Centre for International Commercial Arbitration to nominate a person to act as the expert, having regard to, but not being bound by, those persons proposed by the parties under clause 49.1(c),

within 7 Business Days after the exchange of the lists under clause 49.1(c).

(f) (**Appropriate skills**): It is the intention of the parties that the expert appointed to determine a Dispute will be an independent person with appropriate skills having regard to the nature of the matters in Dispute.

(g) (**No entitlement to challenge appointment**): Neither party will be entitled to challenge the appointment of an expert under this clause 49.1 on the basis that the expert does not satisfy the requirements of clause 49.1(f).

(h) (**Not an arbitration agreement**): Any agreement for expert determination under this Deed will not constitute an arbitration agreement including for the purposes of the *Commercial Arbitration Act 2011* (Vic).

(i) (**Agreement**): Within 7 Business Days after the identity of the expert being agreed or determined under this clause 49.1, the State and Project Co must enter into an agreement with the expert on the terms of the Expert Determination Agreement or such other terms as the expert may reasonably require.

49.2 Rules of expert determination

The expert determination process will be administered in accordance with, and the expert will be required to act, under the terms of the Expert Determination Agreement.

49.3 Expert finding

(a) (N**otification**): Subject to clause 2.18, the determination of the expert(s) must be in writing and will be final and binding on the State and Project Co unless:

(i) the expert determination includes:

(A) payment of compensation and the amount claimed, or subsequently determined by the expert to be payable, is equal to or greater than $[not disclosed] (Indexed); or

(B) an extension of the Date for Acceptance or rejection of an extension to the Date for Acceptance, where the period of the extension that was claimed is more than 5 Business Days; and

(ii) within 10 Business Days after receipt of the determination, a party gives notice to the other party of its dissatisfaction with the expert's determination.

(b) (**Amendment to determination**): Upon submission by any party, the expert may amend the determination to correct:

(i) a clerical mistake;

(ii) an error from an accidental slip or omission;

(iii) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or

(iv) a defect in form.

(c) (**Binding on an interim basis**): Notwithstanding any challenge made under clause 49.3(a) to the determination of an expert, the determination of the expert will be binding on the parties until it is overturned, reversed, varied or otherwise changed by the determination of an arbitrator or a court (to the extent that it can be overturned, reversed, varied or otherwise changed in accordance with this Deed).

49.4 Proportionate liability

The expert will have no power to apply or to have regard to the provisions of any proportionate liability legislation which might, in the absence of this clause 49.4, have applied to any Dispute referred to expert determination under this clause 49.

49.5 Liability of expert

(a) (**Liability of expert**): The parties agree:

(i) that the expert will have no liability in connection with the expert determination, except in the case of fraud on the part of the expert; and

(ii) to indemnify the expert against any Claim or Liability in connection with the expert determination, except in the case of fraud on the part of the

expert, in which case a Claim may be made against him or her by any person who is party to the Dispute.

(b) (**Engagement**): The State and Project Co must jointly engage the expert to provide services in connection with the expert determination proceedings and each party will seek a separate Tax Invoice equal to its share of the costs of the expert.

49.6 Costs

The State and Project Co must:

(a) (**costs of State and Project Co**): bear their own costs in connection with the expert determination proceedings; and

(b) (**costs of expert**): pay an equal portion of the costs of the expert.

50. Arbitration

50.1 Reference to arbitration

If:

(a) (**no referral to expert determination**): a Dispute:

(i) which has been referred to the Representatives for negotiation under clause 48.3(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 48.3(c)(i); and

(ii) is not a Dispute which the parties:

(A) must refer to expert determination under clause 48.1(d)(i); or

(B) have agreed to refer to expert determination under clause 48.1(d)(ii)(A),

either party may refer the Dispute to arbitration by notice to that effect to the other party within 30 Business Days after the date on which the notice under clause 48.3(a) is received or such later date as the parties may agree; or

(b) (**after referral to expert determination**): a Dispute has been referred to expert determination under clause 49.1(a) and:

(i) a determination is not made by the expert within 22 Business Days after the expert's acceptance of the appointment to determine the Dispute, either party may refer the Dispute to arbitration within 30 Business Days after the expert's acceptance of the appointment;

(ii) no expert enters into the Expert Determination Agreement with the parties in accordance with clause 49.1(i) within 20 Business Days after the date on which the Dispute is referred to expert determination under clause 49.1(a), either party may refer the Dispute to arbitration within 25 Business Days after the date on which the Dispute was referred to expert determination; or

(iii) a notice of dissatisfaction in respect of the Expert's determination is given under clause 49.3, either party may refer the Dispute to arbitration within 5 Business Days after a party gives notice to the other party of its

dissatisfaction with the expert's determination in accordance with clause 49.3(a)(ii).

50.2 Arbitration

(a) (**ACICA rules**): Arbitration in accordance with this clause 50 will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Rules) and as otherwise set out in this clause 50.

(b) (**Seat**): The seat of the arbitration will be Melbourne, Victoria.

(c) (**Language**): The language of the arbitration will be English.

50.3 Appointment of arbitrator

The parties will endeavour to agree on the person to be appointed as arbitrator, but if no such agreement is reached within 14 Business Days after the Dispute is referred to arbitration under clause 50.1, the arbitrator will be appointed by the Australian Centre for International Commercial Arbitration.

50.4 General Principles for conduct of arbitration

(a) (**Conduct of arbitration**): The parties agree that:

(i) they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;

(ii) any arbitration conducted in accordance with this clause 50 will not necessarily mimic court proceedings of the seat of the arbitration or the place where hearings take place (if different), and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and

(iii) in conducting the arbitration, the arbitrator must take into account the parties' intentions as set out in clauses 50.4(a)(i) and 50.4(a)(ii).

(b) (**Evidence in writing**): All evidence in chief must be in writing unless otherwise ordered by the arbitrator.

(c) (**Evidence and discovery**): The rules for evidence and discovery will be the IBA Rules on the Taking of Evidence in International Arbitration current at the date of arbitration.

(d) (**Oral hearing**): The oral hearing must be conducted as follows:

(i) any oral hearing must take place in Melbourne, Victoria and all outstanding issues must be addressed at the oral hearing;

(ii) the date and duration of the oral hearing must be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in clause 50.4(a) when determining the duration of the oral hearing;

(iii) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;

(iv) the oral hearing must be conducted on a stop clock basis with the effect that the time available to the parties must be split equally between the parties so that each party has the same time to conduct its case unless, in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the parties;

(v) not less than 28 days prior to the date fixed for oral hearing, each party must give notice of those witnesses (both factual and expert) of the other party that it wishes to attend the hearing for cross examination;

(vi) in exceptional circumstances the arbitrator may amend the date of hearing and extend the time for the oral hearing set pursuant to clause 50.4(d)(ii);

(vii) a party will not be bound to accept the written evidence of a witness submitted on behalf of the opposing party which is not challenged in cross-examination; and

(viii) each party is expected to put its case on significant issues in cross examination of a relevant witness called by the opposing party or, if it seeks to challenge the evidence of a witness not called for cross-examination by reference to other evidence, to identify that evidence in its written opening submissions so that the opposing party may know the nature of and basis for the challenge to the written evidence of a witness.

(e) (**Experts**): Unless otherwise ordered each party may only rely upon one expert witness in connection with any recognised area of specialisation.

50.5 Proportionate liability

The arbitrator will have no power to apply or to have regard to the provisions of any proportionate liability legislation which might, in the absence of this clause 50.5, have applied to any Dispute referred to arbitration under this clause 50.

50.6 Extension of ambit of arbitration proceedings

(a) (**Extending disputes**): If:

(i) a Dispute between the parties to this Deed is referred to arbitration under this clause 50; and

(ii) there is some other Dispute also between the parties to and under this Deed (whenever occurring),

the arbitrator may, upon application being made to the arbitrator by one or both of the parties at any time before a final award is made in relation to the first-mentioned Dispute, make an order directing that the arbitration be extended so as to include the other Dispute.

(b) (**Arbitrator's order**): An arbitrator may make an order under clause 50.6(a) on such terms and conditions (if any) as the arbitrator thinks fit.

50.7 Award final and binding

(a) (**Final and binding**): Subject to clause 2.18 and clause 50.7(b), any award will be final and binding on the parties.

(b) (**Appeal**): Each party consents to any appeal to a court where that appeal is made under the *Commercial Arbitration Act 2011* (Vic) on a question of law arising in connection with an arbitral award made pursuant to this clause 50.

50.8 Continue to perform

Notwithstanding the existence of a Dispute, each party must continue to perform its obligations under the State Project Documents.

50.9 Governing law of arbitration agreement

The Law governing this arbitration agreement is the law of Victoria, Australia.

50.10 Interlocutory relief

This clause 50 does not prevent a party from seeking urgent interlocutory relief from a court of competent jurisdiction where, in that party's reasonable opinion, that action is necessary to protect that party's rights.

50.11 Consolidation

The parties agree that section 27C of the *Commercial Arbitration Act 2011* (Vic) will apply.

PART L - CORPORATE OBLIGATIONS

51. Corporate representations, warranties and obligations

51.1 State's representations and warranties

The State represents and warrants for the benefit of Project Co that:

(a) (**power to execute**): it has the power to execute, deliver and perform its obligations under the State Project Documents (and does so through the Minister for Roads and Road Safety on behalf of the Crown in right of the State of Victoria) and all necessary action has been taken to authorise that execution, delivery and performance;

(b) (**validity**): each of its obligations under each State Project Document is valid and legally binding on it in accordance with its terms; and

(c) (**legality**): the execution, delivery and carrying out of its obligations under each State Project Document does not violate any Law to which the State is subject.

51.2 Project Co's representations and warranties

Project Co represents and warrants for the benefit of the State (except as to matters notified by it to the State and accepted by the State in writing) that:

(a) (**power to execute and perform**): it and each Trustee has the power to execute, deliver and carry out its obligations under the Project Documents and all necessary action has been taken to authorise that execution, delivery and performance;

(b) (**legality**): the execution, delivery and carrying out of its obligations under each Project Document (and the Trust Deeds) to which it is a party does not and will not violate any Law, or any document or agreement to which it is a party or which is binding on it or any of its assets;

(c) (**validity**): each of its obligations under each Project Document is valid and legally binding on it in accordance with its terms;

(d) (**registration**): it and each Trustee is duly registered, properly constituted and remains in existence;

(e) (**necessary licences**): it holds and will continue to hold all licences, registrations, accreditations and certifications that it is required by Law to hold in order to lawfully execute, deliver and carry out its obligations under the Project Documents to which it is a party;

(f) (**no trust relationship**): unless otherwise expressly stated in this Deed, it is not the trustee or Responsible Entity of any trust nor does it hold any property subject to or impressed by any trust;

(g) (**no subsidiaries**): it and each Trustee has no subsidiaries;

(h) (**no Tax consolidation**): it is not part of any Tax consolidation arrangement contemplated by the *Income Tax Assessment Act 1997* (Cth) or GST grouping arrangement contemplated by the GST Law, except with the consent of the State;

(i) (**no trading**): neither it nor its Trustee has traded since its incorporation, other than for the purposes of entering into the Project Documents and has no liabilities other than those that have arisen in connection with entering into the Project Documents;

(j) (**no material change**): except as expressly disclosed to the State in such detail as the State requires (and by specific reference to this clause 51.2(j)) there has been no material change in the financial condition of Project Co (since its incorporation) or the Trusts (since the later of their establishment or settlement and the date of any prior notice) or any other Group Member, the Equity Investors or the Key Subcontractors, Significant Subcontractors and Management Services Contractor (since the date of their last audited accounts) which would prejudice the ability of Project Co to perform its obligations under the Project Documents;

(k) (**information true and correct**): all information that has been provided to the State is true and correct at the time it was provided to the State;

(l) (**material facts**): it is not aware of any material facts or circumstances that have not been disclosed to the State that may have a material adverse effect on Project Co's ability to meet its obligations under the State Project Documents;

(m) (**disclosure prior to the Project Deed**): it is not aware of any material facts or circumstances that have not been disclosed to the State as at the date of this Deed and which had they been disclosed, may have made a prudent person in the State's position, considering whether or not to enter into the State Project Documents, determine not to enter into the State Project Documents;

(n) (**no other security interests**): none of its assets are subject to any Encumbrance other than a Permitted Encumbrance;

(o) (**Trust status**): the Trusts are duly and validly constituted and existing under the Laws of Victoria, Australia and the Trust Deeds, a true and complete copy of which was provided to the State before the date of this Deed;

(p) (**Trustees**): the Trustees have been validly appointed as, and will remain, the sole trustees for the Trusts and no action has been taken to remove them or to appoint an additional trustee for the Trusts;

(q) (**Trusts not been terminated**): the Trusts have not been terminated, nor has any event for the vesting of the assets of the Trusts occurred;

(r) (**Property of the Trusts**): all of the assets, property and revenue required to carry on the business of Project Co is and will at all times form part of the Trusts' assets and no property of the Trusts has been or will be re-settled, set aside or transferred to any other trust;

(s) (**Personal capacity**): Project Co will not at any time:

(i) in its personal capacity hold any assets relevant to, required for or otherwise in connection with the Project and all such assets will at all times be held by the Trusts; or

(ii) hold any assets or incur any liabilities other than as relevant to, as required by or otherwise in connection with its role as trustee for the Trusts;

(t) (**commercial benefit**): it is to the commercial benefit of the Trusts and the beneficiaries of the Trusts that the Trustees:

(i) enter into the Project Documents to which they are expressed to be a party in their own right and as trustees for the Trusts; and

(ii) charge the property of the Trusts as provided in those Project Documents;

(u) (**rights of indemnity and exoneration**): as trustees for the Trusts, the Trustees have valid rights of indemnity and exoneration against the assets of the Trusts, which rights are available for the satisfaction of all liabilities and other obligations incurred by them under the Project Documents;

(v) (**rights not limited**): the Trustees' rights of indemnity out of, and lien over the assets of, the Trusts have not been limited, released or disposed of other than under the State Security to which they are a party or the Finance Documents, and the Trustees have no material liability which may be set off against the right of indemnity;

(w) (**rights of any beneficiaries**): the rights of any beneficiaries relating to, and their interests in, the property of the Trusts are subject to the prior rights and interests of:

(i) the State under the State Project Documents; and

(ii) the Trustees in the property of the Trusts to which the State may from time to time be subrogated;

(x) (**Trust Deeds**): the Trust Deeds comply with all applicable Laws; and

(y) (**duties as Trustee**): the Trustees have complied with their obligations and duties as Trustees under the Trust Deeds and at Law and no one has alleged to it that it has not so complied.

51.3 Repetition of representation and warranties

(a) (**Repeating representations and warranty**): Unless otherwise expressly stated in this Deed, each representation and warranty given by Project Co under this Deed:

(i) (**date of Deed**): is made on the date of this Deed; and

(ii) (**repetition**): subject to clause 51.3(b), is repeated each day during the period from the date of this Deed to the Expiry Date.

(b) (**Limited repetition**): The warranty given by Project Co and any Trustee under:

(i) clause 5.5(c) in respect of the Returned Assets is repeated only as at the Date of Returned Asset Acceptance of the relevant Returned Asset;

(ii) clause 26.2(h) is not repeated after the Date of Final Acceptance; and

(iii) clause 51.2(k) is not repeated after the date of this Deed.

51.4 Restrictions on Project Co

(a) (**Restrictions**): Project Co must not:

(i) conduct any business other than the Project and the performance of its obligations and the exercise of its rights under the Project Documents;

(ii) acquire or hold any property or incur any liability other than for the purposes of the Project;

(iii) enter into contracts with, or assume or permit to subsist any liability in favour of, other Consortium Members, any Trustee, the Equity Investors or any of their respective Associates, other than as anticipated by the Project Documents;

(iv) engage in or become a member of any Tax consolidation arrangement contemplated by the *Income Tax Assessment Act 1997* (Cth) or GST grouping arrangement contemplated by the GST Law; or

(v) permit any Trustee to, and must ensure that each Trustee does not:

(A) in its personal capacity at any time hold any assets relevant to, required for or otherwise in connection with the Project;

(B) hold its interest as partner in the Netflow OSARS (Western) Partnership other than through the Trusts;

(C) at any time hold any assets or incur any Liability other than as relevant to, required by or otherwise in connection with its role as trustee of any Trust; or

(D) terminate its respective Trust or vest, or permit the vesting of, the capital of any Trust in any person, except in respect of a Permitted Distribution (as defined in the Security Trust and Intercreditor Deed),

without the State's written consent.

(b) (**Consent**): The State must not unreasonably withhold its consent under clause 51.4(a)(iii) if the relevant transaction is on arm's length commercial terms.

51.5 Project Co name and branding

Project Co must not display its or any Project Co Associates' livery, name/corporate images or brands on the Works, the Project Assets, on the Project Area or any material or assets visible to the public other than as set out in the PSDR.

52. Assignment and change in control

52.1 Assignment, amendments to Project Documents and other dealings by Project Co

(a) (**Restrictions on Project Co**): Subject to clause 52.1(b), unless otherwise expressly permitted by this Deed, the Finance Direct Deed or the State Security, Project Co must not (and must procure Finance Co not to):

(i) assign, sell, novate, transfer, (subject to clause 52.2) mortgage or charge, create or allow to exist any security interest over, or otherwise deal with all or any part of its interest in, or obligations under any of the Project Documents, the whole or any part of the Project Area or the whole or any part of the Project Assets;

(ii) lease, license, transfer, sell, dispose of, part with possession of, or otherwise deal with any of the Project Documents, the whole or any part of the Project Area or the whole or any part of the Project Assets;

(iii) make or permit any amendment to, replacement of or waiver of any provision of any of the Project Documents;

(iv) terminate, surrender, rescind or accept repudiation of any of the Project Documents; or

(v) enter into any agreement or arrangement which affects the operation or interpretation of any of the Project Documents,

(each an **Amendment** for the purpose of this clause 52).

(b) (**Exceptions**): Clause 52.1(a) does not apply in respect of:

(i) a Refinancing, which is to be dealt with under clause 37; or

(ii) a Share Capital Dealing, which is to be dealt with under clauses 52.4 to 52.9.

(c) (**Notice of intended Amendment**): If Project Co or Finance Co requires an Amendment, Project Co must submit to the State a request seeking the State's consent. Such a request must set out:

(i) the proposed Amendment and the reasons for it;

(ii) the response or anticipated response of any other party to the relevant Project Documents regarding the proposed Amendment;

(iii) the response or anticipated response of any relevant assignee or incoming party to the Project Documents to the proposed Amendment; and

(iv) copies of any documents relevant to Project Co's request.

(d) (**State to advise**): The State must advise Project Co within:

(i) 15 Business Days after receiving the request under clause 52.1(c) if it requires further information from Project Co or Finance Co regarding the proposed Amendment, in which case Project Co must provide the additional information sought by the State within a further period of 10 Business Days after receiving the State's request for further information; and

(ii) 10 Business Days after the later of receiving Project Co's request under clause 52.1(c) or the additional information requested by the State under clause 52.1(d)(i) that:

(A) it consents to the proposed Amendment; or

(B) the proposed Amendment is unacceptable to it and the reasons why the proposed Amendment is unacceptable in which case the proposed Amendment will not be made.

(e) (**Failure to respond**): If the State fails to respond for any reason within the relevant period specified under clause 52.1(d) in relation to a proposed Amendment in respect of a Project Document:

(i) Project Co must send a reminder notice; and

(ii) if that notice is not responded to within 7 Business Days, if the relevant Project Document for which the Amendment is sought:

(A) is not a State Project Document, the State will be deemed to have given its consent to such Amendment; or

(B) is a State Project Document, the State will be deemed to have determined that the proposed Amendment is unacceptable, in which case, the proposed Amendment will not be made.

(f) (**State consent**): The State must not withhold its consent to a requested Amendment in respect of a Project Document which is not a State Project Document if the requested Amendment will not have a material adverse effect on:

(i) the ability of Project Co to perform, and observe its respective obligations under any Project Document to which it is a party; or

(ii) the rights or obligations of the State under any State Project Document, or the ability or capacity of the State to exercise its rights or perform its obligations under a State Project Document.

52.2 Financiers' securities

Each Project Entity may mortgage, charge or create a security interest over its interest under the Project Documents to secure its obligations to any Financier (or the trustee or agent for any Financier) under the Finance Documents if, and only for so long as, the Financier (or the trustee or agent for the Financier) is a party to the Finance Direct Deed.

52.3 Initial status of ownership

Project Co represents and warrants that, as at Financial Close, Project Co will be indirectly and beneficially owned and Controlled as set out in the Ownership Schedule.

52.4 Restrictions on Share Capital Dealings

Subject to clause 52.6, Project Co must not and must ensure that each Group Member does not:

(a) (**restrictions on Project Entities**): at any time:

(i) redeem, repurchase, defease, retire or repay any share capital or units in any Project Entity, a Trustee or a Trust, or resolve to do so;

(ii) issue or agree to issue any share capital or units in a Project Entity, a Trustee or a Trust other than in accordance with the Deferred Equity Contribution and Subscription Deed;

(iii) issue or agree to issue any warrants or options over any unissued share capital or units in a Project Entity, a Trustee or a Trust; or

(iv) permit or suffer any change to (or transfer of) the issued share capital or units in a Project Entity, a Trustee or a Trust which results in:

(A) that Project Entity, Trustee or Trust ceasing to be directly and beneficially wholly owned and controlled as set out in the Ownership Schedule; or

(B) Project Co ceasing to be comprised of the Trustees in the proportions set out in the Ownership Schedule;

(b) (**restrictions on Holding Entities**): allow a Holding Entity, at any time, to:

(i) redeem, repurchase, defease, retire or repay any share capital or units in that Holding Entity, or resolve to do so;

(ii) issue or agree to issue any share capital or units in that Holding Entity other than in accordance with the Deferred Equity Contribution and Subscription Deed;

(iii) issue or agree to issue any warrants or options over any unissued share capital or units in a Holding Entity;

(iv) permit or suffer any change to (or transfer of), the issued share capital or units in that Holding Entity which changes the percentage of issued share capital or units owned (legally and/or beneficially) by any Equity Investor; or

(v) permit the transfer of unitholder or shareholder loans (or other loans in the nature of Equity Funding) made to a Holding Entity from an Equity Investor to a party other than one wholly owned and controlled by that Equity Investor;

(c) (**no Change in Control**): at any time, permit or suffer any Change in Control of a Consortium Member; or

(d) (**no change in trustee**): permit or suffer a change in the manager, trustee or responsible person of any Group Member that is a trust,

(each a **Share Capital Dealing**), without the State's prior consent, which must be requested by notice from Project Co to the State.

52.5 State's right to withhold consent

Subject to clause 52.9, the State may only not consent to a Share Capital Dealing if the State is of the opinion (acting reasonably) that:

(a) (**solvency and no conflict**): a proposed new Equity Investor or Equity Investors (or any person that directly or indirectly Controls that new Equity Investor or Equity Investors):

(i) is or are not Solvent and reputable; or

(ii) has or have an interest or duty which conflicts or may conflict in a material way with the interests of the State; or

(b) (**negative effects**): the proposed Share Capital Dealing:

(i) is against the public interest;

(ii) would adversely affect the ability or capability of a Project Entity to perform its obligations under any Project Document;

(iii) could lead to a Probity Event;

(iv) would, in respect of a Change in Control of a Consortium Member (who is not an Equity Investor) result in the Consortium Member being Controlled by a person that:

(A) has an interest or duty which conflicts or may conflict in a material way with the interests of the State; or

(B) does not have a sufficient level of financial, managerial and technical capacity to deliver the Project;

(v) would have a material adverse effect on the Project; or

(vi) would increase the liability of, or risks accepted by, the State under the State Project Documents or in any other way in connection with the Project.

52.6 Permitted Share Capital Dealings and on-market acquisitions

(a) (**Permitted Share Capital Dealings**): Project Co may effect, permit, suffer or allow a Permitted Share Capital Dealing at any time without the State's consent, provided that Project Co provides notice to the State of the proposed Permitted Share Capital Dealing:

(i) subject to clause 52.6(a)(ii), as soon as reasonably practicable and, in any event, not less than 5 Business Days prior to the Permitted Share Capital Dealing; or

(ii) in relation to a Permitted Share Capital Dealing which relates to a transfer of shares or other interests which are listed on a stock exchange, as soon as reasonably practicable.

(b) (**On-market acquisitions**): If:

(i) a Share Capital Dealing by way of a Change in Control occurs due to the transfers of shares or other interests which are listed on a stock exchange; and

(ii) the consent of the State is required under this Deed but could not have been obtained prior to the Share Capital Dealing, that consent must be sought immediately after the Share Capital Dealing, and Project Co must procure that the person to whom Control has passed, ceases to have the Control which resulted in the Change in Control within 60 Business Days after receiving any notice under clause 52.7 that the State does not consent to the Change in Control.

52.7 Consent to a Share Capital Dealing

The State must advise Project Co, within 10 Business Days (or such longer period as the State reasonably requests given the nature of the proposed Share Capital Dealing) after receiving Project Co's request for consent under clause 52.4 or clause 52.6(b), that:

(a) (**consent**): it consents to the Share Capital Dealing;

(b) (**unacceptable**): in accordance with clause 52.5, the State does not consent to the Share Capital Dealing and the reasons why the Share Capital Dealing is unacceptable; or

(c) (**further information**): it requires further information from Project Co regarding the Share Capital Dealing, in which case Project Co must provide the additional information sought by the State within a further period of 10 Business Days, after which the State must respond in terms of clause 52.7(a) or clause 52.7(b) within 10 Business Days.

52.8 Costs relating to a Share Capital Dealing

Project Co must pay to the State the State's costs (including legal and financial advisers' fees) reasonably incurred in relation to considering or consenting to a proposed Share Capital Dealing.

52.9 Designated Investor

(a) (**Designated Investor percentage**): Notwithstanding this clause 52, until the second anniversary of the Date of Final Acceptance, Project Co must ensure that each Designated Investor continues to hold at least the percentage set out in the Ownership Schedule of the total issued securities in:

(i) the Holding Entity directly owned by the Designated Investor; and

(ii) Project Co indirectly (through its holding of issued securities in the Holding Entity directly owned by the Designated Investor).

(b) (**State consent**): The State may give or withhold its consent to a Share Capital Dealing which decreases the holding of any Designated Investor in:

(i) the relevant Holding Entity (directly); or

(ii) Project Co (indirectly),

prior to the second anniversary of the Date of Final Acceptance.

52.10 Assignment by the State

(a) (**Project Co consent required**): Subject to clause 52.10(b), the State may not sell, transfer or assign or otherwise dispose of all or any part of its interest in the State Project Documents without Project Co's prior consent.

(b) (**No consent required**): The State may sell, transfer or assign or otherwise dispose of all or any part of its interest in the State Project Documents and Project Co hereby consents to that sale, transfer, assignment or disposal, if:

(i) it has provided Project Co with details of the proposed transferee and the terms and conditions of the proposed transfer;

(ii) the proposed transferee is an Authority (including any Minister) which is an agent of, or the obligations of which are supported by, the Crown in the right of the State of Victoria; and

(iii) the proposed transferee has agreed to be bound by the relevant State Project Documents.

53. Financial Model

53.1 Provision of the Financial Close Financial Model

Project Co must provide to the State Representative on the date of Financial Close, Project Co's audited financial model for the Project as at that date in a form and substance approved by the State (**Financial Close Financial Model**).

53.2 Status of the Financial Model

(a) (**Purpose of Financial Model**): The parties acknowledge and agree that the Financial Model is only to be used for the purposes of:

(i) varying the Financial Model on the occurrence of a Model Variation Event;

(ii) the calculation of Termination Payments; and

(iii) the determination of any Dispute in relation to this clause 53.

(b) (**Not entitled to claim**): Project Co is not entitled to make any Claim against the State as a consequence of any ambiguities, discrepancies, inconsistencies, conflicts, errors or omissions in the Financial Model, or by the fact that it may not reflect the actual financial performance or the projected performance or budgets of the Project or Project Entities.

(c) (**State not affected**): The State must not be adversely affected by any ambiguities, discrepancies, inconsistencies, conflicts, errors or omissions in the Financial Model, or by the fact that it may not reflect the actual financial performance or the projected performance or budgets of the Project or the Project Entities and is purely a model.

53.3 Varying the Financial Model

The Financial Model must be varied in accordance with this clause 53 upon the occurrence of each of the following events:

(a) (**Refinancing**): achievement of financial close in respect of a Refinancing;

(b) (**adjustment to the Service Payment**): any permanent adjustment to the Service Payments made in accordance with this Deed;

(c) (**Augmentation**): achievement of Contract Close (as defined in the Augmentation Process Deed) in respect of an Augmentation;

(d) (**Initial Phase Finance Principal event**): adjustments to the Service Payment following the achievement of Commercial Acceptance where any Initial Phase Finance Principal calculated in accordance with the Change Compensation Principles has been paid by the State to Project Co in accordance with this Deed, to ensure that:

(i) there is no increase in the Equity IRR as a consequence of the relevant Change Compensation Event;

(ii) the net present value of the total capital payment components of the Service Payments payable to Project Co during the Term as a consequence of the relevant Change Compensation Event are less than or equal to the Capital Payment Threshold Amount;

(iii) there is no financial gain or benefit to Project Co as a consequence of the Change Compensation Event;

(iv) there is not, in the State's reasonable opinion, any unintended financial loss or disadvantage to the State as a consequence of the Change Compensation Event (which shall not include loss or disadvantage incurred by the State in accordance with the Project Documents or loss or damage to third parties);

(v) there is no double counting or over recovery in relation to the Service Payments under this Deed in respect of payments made by the State as a consequence of that Change Compensation Event;

(vi) there is no increase in the risk as to whether Project Co will:

(A) have sufficient amounts (including contingencies to fund its obligations); or

(B) be able to comply with its obligations,

in each case in relation to maintenance and Handover (including those under clause 47) as and when those obligations are due to be performed; and

(vii) there are no adverse consequences in relation to Project Co's ability to comply with (nor the State's rights in relation to) any one or more of the Project Documents and the Financing Documents; and

(e) (**Agreed Events**): any other event which Project Co and the State agree should give rise to a variation to the Financial Model,

(each a **Model Variation Event**).

53.4 Principles for variations to the Financial Model

When a Model Variation Event occurs, the Financial Model will be varied by the amounts:

(a) (**as prescribed in this Deed**): determined in accordance with this Deed; or

(b) (**as otherwise agreed**): otherwise agreed between the State and Project Co.

53.5 Procedures for variations to the Financial Model

Any variation to the Financial Model to take account of a Model Variation Event must be made as follows:

(a) (**Project Co proposal**): Project Co must propose the variation by notice to the State Representative within 15 Business Days after the Model Variation Event occurring, giving full details of the assumptions and calculations used;

(b) (**Project Co to provide**): Project Co must provide the State Representative and any other authorised representatives of the State with:

(i) full access to electronic copies of the varied Financial Model;

(ii) a log of all changes that have been made to the Financial Model;

(iii) all supporting calculations; and

(iv) any other information reasonably requested by the State,

for the Model Variation Event, including reasonable access to the financial modellers who prepared the Financial Model and the amendments to it and relevant passwords or other access information;

(c) (**amendment**): once the variation to the Financial Model is agreed or determined in accordance with this Deed, Project Co must promptly amend the Financial Model and Table 7 and Table 8 of the Payment Schedule accordingly; and

(d) (**review**): the amended Financial Model and Table 7 and Table 8 of the Payment Schedule must be reviewed in accordance with the Review Procedures.

53.6 Auditing the Financial Model

(a) (**Model auditors**): The State may at any time appoint a model auditor to audit the Financial Model and:

(i) Project Co must provide all reasonable assistance to the model auditor;

(ii) the results of the audit must be disclosed to both the State and Project Co; and

(iii) to the extent any inconsistency, ambiguity, discrepancy, conflict, error or omission is revealed in the audit by the State, Project Co must promptly correct the Financial Model accordingly.

(b) (**Costs**): If an audit by the State results in a correction to the Financial Model, Project Co must pay the reasonable costs of the State in conducting the audit, but, if not, the State must bear the costs of the audit.

54. Accounts

54.1 Accounting records

(a) (**Proper books of account**): Project Co must:

(i) keep proper books and accounts and all other records in connection with the Project at its offices; and

(ii) ensure that each other Group Member, the D&C Contractor (during the Maintenance Phase (Initial)) and the Services Contractor (during the Maintenance Phase) keep proper books and accounts and all other records in connection with the Project at their respective offices.

(b) (**Annual audit**): Project Co must have its accounts, and must ensure that each other Group Member, the D&C Contractor (during the Development Phase) and the Services Contractor (during the Maintenance Phase) have their accounts, audited annually on both an unconsolidated basis and on a consolidated basis (to the extent that Project Co or any of the other Group Members are part of a consolidated entity within the meaning of the Corporations Act).

(c) (**Accounting principles**): Project Co must ensure that its accounts and the accounts of each other Group Member, the D&C Contractor (during the Initial Phase) and the Services Contractor (during the Maintenance Phase) are prepared:

(i) in accordance with the Corporations Act and generally accepted Australian accounting principles and practices; and

(ii) in a manner which fairly represent its operations and financial position or consolidated financial position (as the case may be).

(d) (**Availability of accounts**): Project Co must ensure that its books and accounts and all other records, and the books and accounts and all other records in connection with the Project of each Group Member are available to the State and any person authorised by the State at any time during Business Hours (subject to receiving 2 Business Days' notice from the State) during the Term for examination, audit, inspection, transcription and copying.

(e) (**Availability of accounts if Deed is terminated**): Without limiting its obligations under clause 47, if this Deed is terminated, Project Co must give access to all of its books and accounts and all other records, and must ensure that each other Group Member gives access to all of their books and accounts and all other records in connection with the Project, to the State and any State Associate which are necessary for the carrying out of the Project Activities.

54.2 Cost to complete information

Project Co must give to the State all information any of the Group Members give or are required to give to any Financier in accordance with the Finance Documents in relation to the costs to complete construction of the Works, at such times as are required under the Finance Documents.

54.3 Financial statements

(a) (**Audited financial statements**): Subject to clause 54.3(b), as soon as practicable (and in any event not later than 120 days) after the close of each Financial Year or calendar year (as applicable), Project Co must give to the State certified copies of the consolidated (if applicable) and unconsolidated audited financial statements for:

(i) the previous calendar year for each Project Entity; and

(ii) the previous Financial Year, if requested by the State, for the D&C Contractor (during the Development Phase) and the Services Contractor (during the Maintenance Phase).

(b) (**Compliance**): Project Co is not required to comply with its obligation under clause 54.3(a)(i) for the first calendar year of the Term.

(c) (**Management accounts**): As soon as practicable (and in any event not later than 120 days) after the close of each calendar year during the Term, Project Co must give to the State certified copies of the unaudited management accounts of each Group Member (excluding Project Co and Finance Co and except to the extent that the State requests the audited accounts for that calendar year for a Group Member in accordance with clause 54.1(b)) comprising:

(i) a statement of financial performance, cash flow statement and statement of financial position;

(ii) details of any revenue earned by that Group Member in respect of the Project (other than the Service Payments); and

(iii) details of all financial indebtedness (present or future, actual or contingent) of that Group Member, and any changes to its financial arrangements.

(d) (**Cashflow and profit and loss statements**): Not later than 30 days after the end of each Quarter, Project Co must give to the State certified copies of cashflow and profit and loss statements for Project Co and each other Group Member.

54.4 Other information

(a) Project Co must give to the State the following information:

(i) (**copies**): copies of all documents or information given or received by any Group Member to or from the Australian Securities & Investments Commission or Australian Stock Exchange Limited, promptly after the information is first given or received;

(ii) (**material changes**): details of any material change in the financial condition of Project Co (since its incorporation) or any other Group Member, the Equity Investors, or a Key Subcontractor (in each case, since the date of their last audited accounts) which would prejudice the

ability of Project Co to perform its obligations under the Project Documents;

(iii) (**equity return**): without limiting its obligations under clause 54.1 and clause 54.3, the Actual Equity Disclosure no later than 5 Business Days after the Actual Equity Disclosure Date in each Operating Year, and if requested by the State, the Project Co Representative and any other person who prepared the relevant Actual Equity Disclosure must meet with the State within 10 Business Days after receipt of the State's request, to discuss the relevant Actual Equity Disclosure; and

(iv) (**other information**): such other information relating to the Project as the State may reasonably require from time to time.

(b) Notwithstanding clause 54.4(a), any unintended or immaterial errors in the calculation of the Actual Equity IRR will not constitute a Default provided Project Co promptly provides the State with an amended Actual Equity Disclosure which rectifies those errors.

54.5 Project Co Material

Project Co must implement and maintain the IMS for all Project Co Material and Project Information that:

(a) (**PSDR requirement**): is in accordance with the requirements set out in the PSDR;

(b) (**safe, secure and compatible**): is safe and secure and compatible with the State's document management systems as advised by the State;

(c) (**user friendly**): enables the State and any State Associate (including any nominee) to quickly and easily retrieve, review and utilise the Project Co Material;

(d) (**tracks distribution**): tracks the distribution of all Project Co Material and Project Information to any Project Co Associate (including the Equity Investors); and

(e) (**meets standards**): is in accordance with the standards under the *Public Records Act 1973* (Vic).

55. Confidential Information and privacy

55.1 Confidential Information and disclosure by the State

(a) (**Public Disclosure Obligations**): Subject to clause 55.1(d), the State and any Authority may disclose any information in connection with the Project (including any Confidential Information):

(i) in accordance with Laws;

(ii) to satisfy the disclosure requirements of the Victorian Auditor-General;

(iii) to satisfy the requirements of Parliamentary accountability;

(iv) if the disclosure is in the course of the official duties of the responsible Minister, the Treasurer of Victoria or the Attorney General;

(v) to any State Associate, any Authority, VicRoads or any person authorised or nominated by the State to the extent necessary for the purpose of the Project or the broader Victorian transport network

provided they agree to maintain the confidentiality of any Confidential Information;

(vi) in annual reports of the State;

(vii) in accordance with policies of the State or any Authority;

(viii) to any person who is bidding for or undertakes works similar to the Works or services similar to the Services after the Expiry Date and their actual and/or potential Associates, provided the relevant person agrees to maintain the confidentiality of the Confidential Information; or

(ix) to satisfy any other recognised public requirement,

(**Public Disclosure Obligations**) and Project Co must use all reasonable endeavours to assist the State or any Authority in meeting its Public Disclosure Obligations.

(b) (**Other purposes**): The State or any Authority may disclose any information in connection with the Project (including any Confidential Information, but excluding the Finance Documents and the Equity Documents) in connection with:

(i) the State selling, transferring, assigning or otherwise disposing of its interest in any tolling revenue or tolling collection contractor or procuring any tolling collection contractor in relation to the Project Assets;

(ii) any Interface Works or any future road, transport or infrastructure project or transaction undertaken in Victoria that may be investigated, assessed, constructed, operated or maintained from time to time including any tolling (including tolling revenue), any equipment, computer hardware, computer software and computer or telecommunications systems and any complementary works or services associated with them but excluding this Project; or

(iii) the requirements of any State Project Documents (including any tender process required to be conducted under the Termination Payments Schedule, the Change Compensation Principles or in respect of an Augmentation or proposed Augmentation).

(c) (**Major Projects Skills Guarantee**): Without limiting clause 55.1(a), the State, any Authority and VicRoads may disclose statistical information contained in the Major Projects Skills Guarantee Compliance Plan and the measures of Project Co's compliance with the Major Projects Skills Guarantee Compliance Plan.

(d) (**Commercially Sensitive Information**): Unless otherwise expressly stated in this Deed, the State must not publish or disclose any Commercially Sensitive Information without Project Co's prior written consent (which consent will not be unreasonably withheld or delayed), unless that Commercially Sensitive Information:

(i) is required or authorised to be disclosed under Law;

(ii) is reasonably necessary for the enforcement of the criminal law;

(iii) is disclosed to the State's solicitors, auditors, insurers or advisers;

(iv) is generally available to the public;

(v) is in the possession of the State without restriction in relation to disclosure before the date of receipt from Project Co;

(vi) is disclosed by the responsible Minister in reporting to the Legislative Assembly or its committees;

(vii) is required to be made available to a court in the course of proceedings to which the State or a State Associate is a party;

(viii) is disclosed to the ombudsman or for a purpose in relation to the protection of the public revenue; or

(ix) is required to be published or disclosed to enable the State to comply with the Public Disclosure Obligations under clauses 55.1(a)(i), 55.1(a)(ii), 55.1(a)(iii), 55.1(a)(iv) or 55.1(a)(vii).

(e) (**Exercise of licence**): Nothing in this Deed prevents the State and any sublicensees using or disclosing any information to the extent necessary or desirable for, or in connection with, the exercise of any licence granted under this Deed.

55.2 Confidential Information and disclosure by Project Co

(a) (**Confidential Information**): Subject to clause 55.2(b) and clause 55.4(b), and other than where the information is in the public domain, Project Co must treat as secret and confidential and must not, and must procure that each Project Co Associate does not, without the State's written consent, make public or disclose to any person any:

(i) Project Documents;

(ii) Project Information;

(iii) information provided by:

(A) the State or any State Associate to Project Co or any Project Co Associate; or

(B) Project Co or any Project Co Associate to the State or any State Associate,

in connection with the Project, whether provided prior to or after the date of this Deed;

(iv) Project Co Material;

(v) Personal Information; or

(vi) other information in connection with the Project which Project Co is required to keep confidential in complying with the information privacy principles set out in the *Privacy and Data Protection Act 2014* (Vic) (as in force from time to time) or any other applicable Law,

(**Confidential Information**).

(b) (**Disclosure of Confidential Information**): Subject to clause 55.2(c) and clause 55.4(b), Project Co may disclose Confidential Information to:

(i) a Project Co Associate to the extent necessary for the purpose of undertaking the Project;

(ii) an Interface Party, to the extent required in order to comply with Project Co's obligations with respect to the Interface Parties under the Project Documents; or

(iii) any prospective financier or equity investor of the Project, subject to the State having been provided necessary information in respect of the proposed parties and having carried out any Probity Investigation that the State considers necessary.

(c) (**Confidentiality deed**): Before disclosing any Confidential Information in accordance with:

(i) clause 55.2(b)(i), if the relevant Project Co Associate is not already subject to an agreement with Project Co in which it agrees to maintain the confidentiality of any disclosed Confidential Information; or

(ii) clause 55.2(b)(iii), Project Co must ensure that the person to whom the information is disclosed enters into a confidentiality deed with Project Co on terms reasonably acceptable to the State.

55.3 Personal Information

Project Co must:

(a) (**collection**): not collect any Personal Information except in accordance with the PSDR, all Laws and Standards;

(b) (**disclosure**): not disclose any Personal Information to any person other than as is necessary to undertake the Project Activities or to comply with Laws, and then only in accordance with the PSDR, all Laws and Standards; and

(c) (**records**): keep, and make available to the State on request, records detailing the recipient of any Personal Information Project Co has disclosed, the date of disclosure and the Personal Information that has been disclosed.

55.4 Disclosure by Project Co

(a) (**Project Co's disclosure obligations**): Subject to clause 55.4(b), Project Co must:

(i) not make any public disclosures, announcements or statements in relation to the Project or the State's or any State Associates' involvement in the Project, without the State's written consent;

(ii) comply with any terms and conditions the State imposes and must use all reasonable endeavours to agree with the State the wording and timing of all public disclosures, announcements or statements to be made by it or any Project Co Associate relating to the Project or the State's or any State Associates' involvement in the Project before the relevant disclosure, announcement or statement is made; and

(iii) as soon as practicable, give to the State a copy of any public disclosure, announcement or statement agreed to or approved by the State under this clause 55.4(a) or for which the State's consent or approval was not required under clause 55.4(b).

(b) (**Permitted disclosure**): For the purposes of clause 55.2(a) and clause 55.4(a), Project Co will not be required to obtain the State's consent or approval to the extent that any disclosure, announcement or statement is:

(i) required by Law, provided that it:

(A) notifies the State of the requirement to make that disclosure prior to such disclosure; and

(B) takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;

(ii) required to obtain legal or other advice from its advisers provided any such adviser is under a duty of confidentiality;

(iii) required to be made to a court in the course of proceedings to which Project Co is a party;

(iv) in respect of information that is already in the public domain; or

(v) required by a relevant stock exchange, subject to:

(A) such disclosure, announcement or statement not referring to the State's or any State Associates' involvement in the Project; and

(B) Project Co having used all reasonable endeavours to obtain the State's consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant stock exchange.

55.5 Privacy

(a) (**Information Privacy Principles**): Project Co agrees to, and will ensure that any Subcontract contains terms which require the Subcontractor to, be bound by the Information Privacy Principles and any applicable code of practice defined in, and approved under, the *Privacy and Data Protection Act 2014* (Vic) (**Privacy Code**) with respect to any act done, or practice engaged in, by it in connection with this Deed or for the Subcontract (as the case may be), in the same way as the State would be bound by the Information Privacy Principles and any applicable Privacy Code, in connection with that act or practice had it been directly done or engaged in by the State.

(b) (**Release and indemnity**): Save to the extent the State is already indemnified under clause 43.1 or clause 43.2, Project Co must release, indemnify and keep indemnified on demand the State and any State Associate from and against any Claim or Liability which the State or any State Associate suffers or incurs resulting from any act done or practice engaged in by Project Co or any Project Co Associate in connection with the Project, which would, had that act or practice been done or engaged in by the State, have contravened one or more of the Information Privacy Principles or any applicable Privacy Code.

56. Intellectual Property

(a) (**Intellectual Property Rights**): The rights and obligations of the parties with respect to Intellectual Property Rights are set out in the Intellectual Property Schedule.

(b) (**Compliance**): The parties agree to comply with the requirements set out in the Intellectual Property Schedule.

57. [Not used]

58. Local Jobs First - Victorian Industry Participation Policy

58.1 Local Industry Development Plan (LIDP)

Project Co must comply with the LIDP and utilise Local Content (ANZ) in the carrying out of the Project Activities so that the aggregate of Local Content (ANZ) in all goods and services utilised:

(a) (**Development Activities**): in the Development Activities is 96.00%; and

(b) (**Services**): in the Services is 95.00%,

(**Local Content Requirements**).

58.1A Aboriginal Participation Requirements

Project Co must comply with the Aboriginal Participation Requirements in the carrying out of the Project Activities.

58.2 Revised LIDP

(a) (**Revised LIDP**): If at any time:

(i) an amendment to this Deed, a Modification or an Augmentation is proposed which involves or effects a change in the nature of any Contestable Items;

(ii) following receipt of a report from Project Co submitted in accordance with clause 58.3, the State or the Independent Reviewer notifies Project Co that it is not satisfied that:

(A) Project Co is meeting the Local Content Requirements; or

(B) Project Co will be able to meet the aggregate Local Content Requirements; or

(iii) Project Co considers that the requirements of the LIDP are not being met,

Project Co must unless otherwise agreed with the State:

(iv) prepare a revised LIDP which demonstrates Project Co's ability to meet the aggregate Local Content Requirements in collaboration with and certified by ICN (**Revised LIDP**); and

(v) submit the Revised LIDP to the State and the Independent Reviewer for review in accordance with the Review Procedures.

(b) (**Provision of Revised LIDP**): When requested by the State, Project Co must provide the Revised LIDP to the State within the time stated in the State's request.

(c) (**Variation**): The Revised LIDP must be submitted, reviewed and amended in accordance with the Review Procedures before any variation to this Deed, Modification or Augmentation can take effect, unless the parties agree that a Revised LIDP is unnecessary.

58.2A Cure Plan (APR)

(a) (**Cure Plan (APR**)): If at any time:

(i) following receipt of a report from Project Co submitted in accordance with clause 58.3, the State or the Independent Reviewer notifies Project Co that it is not satisfied that:

(A) Project Co is meeting the Aboriginal Participation Requirements; or

(B) Project Co will be able to meet the aggregate Aboriginal Participation Requirements; or

(ii) Project Co considers that the requirements of the Aboriginal Participation Requirements are not being met,

Project Co must unless otherwise agreed with the State:

(iii) prepare a plan which demonstrates Project Co's ability to meet the aggregate Aboriginal Participation Requirements (**Cure Plan (APR)**); and

(iv) submit the Cure Plan (APR) to the State and the Independent Reviewer for review in accordance with the Review Procedures.

(b) (**Provision of Cure Plan (APR)**): When requested by the State, Project Co must provide the Cure Plan (APR) to the State within the time stated in the State's request.

(c) (**Variation**): The Cure Plan (APR) must be submitted, reviewed and amended in accordance with the Review Procedures before any variation to this Deed, Modification or Augmentation can take effect unless the parties agree that a Cure Plan (APR) is unnecessary.

58.3 Reporting

(a) (**Records**): Project Co must prepare and maintain records demonstrating its compliance with the LIDP and the Aboriginal Participation Requirements.

(b) (**Reporting**): Project Co must provide to the State:

(i) a table in the form set out in the VIPP Schedule detailing:

(A) Project Co's aggregate compliance with the LIDP; and

(B) identifying and explaining any departures from the LIDP,

(**LIDP Monitoring Table**);

(iA) a table detailing:

(A) Project Co's aggregate compliance with the Aboriginal Participation Requirements; and

(B) identifying and explaining any departures from the Aboriginal Participation Requirements,

(**APR Monitoring Table**);

(ii) a statutory declaration made by a director of Project Co or Project Co's Chief Executive Officer or Chief Financial Officer declaring that the information contained in the LIDP Monitoring Table is true and accurate, in the form of and executed in accordance with the form set out in the VIPP Schedule, and declaring that the APR Monitoring Table is true and accurate,

during:

(iii) the Initial Phase:

(A) within 20 Business Days after the end of each Financial Year; and

(B) upon:

1) the earlier of Commercial Acceptance and 1 month after the Date for Commercial Acceptance; and

2) Final Acceptance; and

(iv) the Maintenance Phase (Full) within 20 Business Days after the end of each Financial Year.

(c) (**Further information**): At the request of the State Representative, Project Co must provide further information or explanation of any departures from the LIDP as reported in the LIDP Monitoring Table and the Aboriginal Participation Requirement as reported in the APR Monitoring Table.

(d) (**No limitation**): The reporting obligations are in addition to and do not derogate from any other reporting obligations as set out in this Deed.

58.4 Damages for failure to comply

(a) (**Certification by the Independent Reviewer**): On the Date of Commercial Acceptance, the Independent Reviewer must certify:

(i) the percentage of Local Content Requirements used by Project Co to the Date of Commercial Acceptance in undertaking the Development Activities, subject to the Utilities Assumptions; and

(ii) the percentage of the Project Co Development Phase Workforce to the Date of Commercial Acceptance which was comprised of Aboriginal Persons undertaking Development Activities in Victoria, calculated as an Annualised Employee Equivalent against the Project Co Development Phase Workforce, subject to the Utilities Assumptions,

by issuing a certificate in the form set out in the Schedule of Certificates and Notices.

(b) (**State's entitlement to adjustment**): Without limiting clause 59.4 if, at the Date of Commercial Acceptance, Project Co has not met:

(i) the aggregate Local Content Requirements by the Date of Commercial Acceptance as determined in accordance with clause 58.4(a) Project Co

will be liable to the State for liquidated damages as calculated in accordance with section 7 of the Payment Schedule; or

(ii) the Aboriginal Participation Requirements in accordance with clause 58.4(a), Project Co will be liable to the State for liquidated damages as calculated in accordance with section 6 of the Payment Schedule,

and in each case, such amount will be a debt due and payable from Project Co to the State.

(c) (**Calculation of liquidated damages**): The parties acknowledge and agree that:

(i) the liquidated damages referred to in clause 58.4(b):

(A) will be calculated in accordance with the formula set out in section 6 or 7 of the Payment Schedule (as applicable); and

(B) the formula has been agreed by the parties in good faith and the adjustment resulting from its application is a genuine pre-estimate of the anticipated or actual Liability the State will suffer if Project Co fails to meet:

1) the aggregate Local Content Requirements by the Date of Commercial Acceptance; or

2) the Aboriginal Participation Requirements by the Date of Commercial Acceptance,

(as applicable), each as determined in accordance with clause 58.4(a);

(ii) each party wishes to avoid the difficulties of proof of damages in connection with a failure by Project Co to meet each of:

(A) the aggregate Local Content Requirements to the Date of Commercial Acceptance; and

(B) the Aboriginal Participation Requirements to the Date of Commercial Acceptance; and

(iii) the liquidated damages payable in accordance with clause 58.4(b) are reasonable and are not intended as a penalty.

(d) (**State's entitlement to common law damages**): Notwithstanding clause 58.4(e), to the extent that all or any part of this clause 58.4 is found for any reason to be void, invalid, unenforceable or otherwise inoperative so as to disentitle the State from receiving the amount of liquidated damages payable in accordance with clause 58.4(b), the State will be entitled to recover common law damages for the failure by Project Co to meet the aggregate Local Content Requirements or the Aboriginal Participation Requirements (as applicable) but Project Co's Liability for such damages will not be any greater than the Liability which it would have had if this clause 58.4 had not been void, invalid, unenforceable or otherwise inoperative.

(e) (**Sole remedy**): Subject to clause 58.4(d), payment by Project Co of liquidated damages in accordance with clause 58.4(b) will be the State's sole financial remedy for a failure by Project Co to meet (as applicable):

(i) the aggregate Local Content Requirements to the Date of Commercial Acceptance; and

(ii) the Aboriginal Participation Requirements to the Date of Commercial Acceptance.

58.5 Verification of Project Co's compliance with LIDP

(a) (**Review of performance**): Project Co must:

(i) permit the State, or any person authorised by the State, from time to time during Business Hours and upon notice, to inspect, verify and make copies at the State's expense of all records maintained by Project Co for the purposes of ensuring Project Co's compliance with the LIDP, at Project Co's premises, or provide copies of those records to the State at its request;

(ii) permit the State, or any person authorised by the State, from time to time to undertake a review of Project Co's performance in accordance with the LIDP; and

(iii) ensure that any Project Co Associate gives all reasonable assistance to any person authorised by the State to undertake such inspection, verification or review.

(b) (**Authorisations**): Project Co acknowledges and agrees that the State, the State Representative and ICN are authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding Project Co's compliance with the LIDP.

(c) (**Additional obligations**): The obligations set out in this clause 58.5 are in addition to and do not derogate from any other obligation under this Deed.

58.6 Use of LIDP information

Project Co acknowledges and agrees that:

(a) (**assessment**): ICN will assess Project Co's performance against the LIDP; and

(b) (**disclosure**): the statistical information contained in the LIDP and the LIDP Monitoring Table may be:

(i) included in the State's report of operations under Part 7 of the *Financial Management Act 1994* (Vic) in respect of the State's compliance with the LIDP in the financial year to which the report of operations relates;

(ii) provided to the Responsible Minister for the VIPP for inclusion in the Responsible Minister for VIPP's report to the Parliament for each financial year on the implementation of the LIDP during that year; and

(iii) disclosed in the circumstances set out in clauses 58.3 and 55.1 or as otherwise required by Law.

59. Major Projects Skills Guarantee

59.1 Major Projects Skills Guarantee

(a) (**Major Projects Skills Guarantee**): Project Co acknowledges that the Major Projects Skills Guarantee requires that a minimum of 10% of the total labour hours for the Works be performed by Apprentices, Trainees and Engineering Cadets.

(b) (**Compliance**): Project Co must, in performing its obligations under this Deed in connection with the Works during the Initial Phase, comply with the Major Projects Skills Guarantee and the Major Projects Skills Guarantee Compliance Plan.

(c) (**Application to the Works**): Project Co agrees that the minimum labour hours requirements set out in the Major Projects Skills Guarantee Compliance Plan will:

(i) be applied to the Works as a whole; and

(ii) not be applied on the basis of individual Subcontracts or components.

(d) (**Inclusion of Apprentices, Trainees or Engineering Cadets**): Subject to clauses 59.1(e) and clause 59.1(f), the parties agree that labour hours performed by:

(i) Apprentices, Trainees or Engineering Cadets; or

(ii) pre-existing or new Apprentices, Trainees or Engineering Cadets,

either separately or in any combination, may be included in determining whether the requirements of the Major Projects Skills Guarantee Compliance Plan have been achieved.

(e) (**Work hours performed by Apprentices**): Work hours performed by Apprentices may include Apprentices:

(i) directly employed by Project Co and its Subcontractors; and

(ii) employed through Group Training Organisations.

(f) (**Time spent training**): Time spent by Apprentices, Trainees or Engineering Cadets attending course related education in accordance with a Training Contract at a Registered Education and Training Organisation, or other educational institution may be included in determining whether the requirements of the Major Projects Skills Guarantee Compliance Plan have been achieved.

(g) (**Subcontracts**): Project Co must ensure that any Subcontracts entered into in relation to the Works contain clauses requiring Subcontractors:

(i) to comply with the Major Projects Skills Guarantee and the Major Projects Skills Guarantee Compliance Plan to the extent that it applies to work performed under the Subcontract;

(ii) to provide necessary information that allows Project Co to comply with its reporting obligations under clause 59.3; and

(iii) to permit the State to exercise its inspection and verification rights under clause 59.5.

59.2 Revised Major Projects Skills Guarantee Compliance Plan

(a) (**Revised Compliance Plan**): If at any time an amendment to this Deed or Modification or an Augmentation is proposed which involves or effects a change in the nature of Project Co's workforce, Project Co must unless otherwise agreed with the State:

(i) prepare a revised Major Projects Skills Guarantee Compliance Plan which demonstrates Project Co's ability to meet the Major Projects Skills Guarantee (**Revised Compliance Plan**); and

(ii) submit the Revised Compliance Plan to the State and the Independent Reviewer for review in accordance with the Review Procedures.

(b) (**Provision of Revised Compliance Plan**): When requested by the State, Project Co must provide the Revised Compliance Plan within the time stated in the State's request.

(c) (**Amendment**): The Revised Compliance Plan must be submitted, reviewed and amended in accordance with the Review Procedures before any variation to this Deed, Modification or Augmentation can take effect.

59.3 Reports

(a) (**Performance reports**): Project Co must submit written reports (**Major Projects Skills Guarantee Performance Report**) to the State outlining its performance against the Major Projects Skills Guarantee Compliance Plan.

(b) (**Content of reports**): The Major Projects Skills Guarantee Performance Reports must include details specifying Project Co's performance in complying with the Major Projects Skills Guarantee Compliance Plan. Any deviations from the Major Projects Skills Guarantee Compliance Plan must be included in the Major Projects Skills Guarantee Performance Reports.

(c) (**Frequency of reports**): Major Projects Skills Guarantee Performance Reports must be submitted by Project Co to the State:

(i) as specified in the Major Projects Skills Guarantee Compliance Plan; and

(ii) otherwise, at a frequency of not less than Quarterly during the Development Phase.

(d) (**Additional requirements**): In addition to the Major Projects Skills Guarantee Performance Reports, Project Co must also submit:

(i) an interim Major Projects Skills Guarantee Performance Report 12 months after Financial Close as set out in the Major Projects Skills Guarantee Compliance Plan;

(ii) a final report (**Major Projects Skills Guarantee Final Report**) on the Date of Commercial Acceptance; and

(iii) a statutory declaration made by a director of Project Co or Project Co's Chief Executive Officer or Chief Financial Officer declaring that the contents of the Major Projects Skills Guarantee Final Report are true and correct, which must be submitted together with the Major Projects Skills Guarantee Final Report.

59.4 Damages for failure to comply

(a) (**Certification by the Independent Reviewer**): On the Date of Commercial Acceptance, the Independent Reviewer must certify the percentage of the total labour hours for the Works performed by Apprentices, Trainees and Engineering Cadets to the Date of Commercial Acceptance, subject to the Utilities Assumptions, by issuing a certificate in the form set out in the Schedule of Certificates and Notices.

(b) (**State's entitlement to liquidated damages**): Without limiting clause 59.4(d), if, at the Date of Commercial Acceptance, Project Co has not met the Major Projects Skills Guarantee by the Date of Commercial Acceptance as determined in accordance with clause 59.4(a), Project Co will be liable to the State for liquidated damages as calculated in accordance with section 9 of the Payment Schedule, and such amount will be a debt due and payable from Project Co to the State.

(c) (**Calculation of liquidated damages**): The parties acknowledge and agree that:

(i) the liquidated damages referred to in clause 59.4(b):

(A) will be calculated in accordance with the formula set out in section 9 of the Payment Schedule; and

(B) the formula has been agreed by the parties in good faith and the adjustment resulting from its application is a genuine pre-estimate of the anticipated or actual Liability the State will suffer if Project Co fails to meet the Major Projects Skills Guarantee (by the Date of Commercial Acceptance);

(ii) each party wishes to avoid the difficulties of proof of damages in connection with a failure by Project Co to meet the Major Projects Skills Guarantee by the Date of Commercial Acceptance; and

(iii) the liquidated damages payable in accordance with clause 59.4(b) are reasonable and are not intended as a penalty.

(d) (**State's entitlement to common law damages**) Notwithstanding clause 59.4(e), to the extent that all or any part of this clause 59.4 is found for any reason to be void, invalid, unenforceable or otherwise inoperative so as to disentitle the State from receiving the amount of liquidated damages payable in accordance with clause 59.4(b), the State will be entitled to recover common law damages for the failure by Project Co to meet the Major Projects Skills Guarantee to the Date of Commercial Acceptance but Project Co's Liability for such damages will not be any greater than the Liability which it would have had if this clause 59.4 had not been void, invalid, unenforceable or otherwise inoperative.

(e) (**Sole remedy**): Subject to clause 59.4(d), payment by Project Co of liquidated damages in accordance with clause 59.4(b) will be the State's sole financial remedy for a failure by Project Co to meet the Major Projects Skills Guarantee.

59.5 Verification of compliance with Major Projects Skills Guarantee Compliance Plan

(a) (**Verification**): Project Co agrees that the State will have the right to inspect Project Co's records in order to verify compliance with the Major Projects Skills Guarantee Compliance Plan.

(b) (**Review of performance**): Project Co must:

(i) permit the State, or any person authorised by the State, from time to time during Business Hours and upon notice, to inspect, verify and make copies, at the State's expense, of all records maintained by Project Co for the purposes of ensuring Project Co's compliance with the Major Projects Skills Guarantee Compliance Plan at Project Co's premises, or provide copies of those records to the State at its request;

(ii) permit the State, or any person authorised by the State, from time to time to undertake a review of Project Co's performance in accordance with the Major Projects Skills Guarantee Compliance Plan; and

(iii) ensure that any Project Co Associate gives all reasonable assistance to any person authorised by the State to undertake such inspection, verification or review.

(c) (**Authorisations**): Project Co acknowledges and agrees that the State, and the State's authorised representative, are authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding Project Co's compliance with the Major Projects Skills Guarantee Compliance Plan.

59.6 Use of Major Projects Skills Guarantee information

Project Co acknowledges and agrees that the State and the Department of Economic Development, Jobs, Transport and Resources may consider statistical information contained in the Major Projects Skills Guarantee Compliance Plan and the measures of Project Co's compliance with the Major Projects Skills Guarantee Compliance Plan in the assessment or review of each Consortium Member's eligibility to tender for future Victorian Government contracts.

60. Other State Policies

60.1 Supplier Code of Conduct

Project Co acknowledges and agrees that:

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

(b) (**compliance**): it has read and aspires to comply with the Supplier Code of Conduct; and

(c) (**impact on obligations**): the expectations set out in the Supplier Code of Conduct are not intended to reduce, alter or supersede any other obligations which may be imposed on the supplier, whether under this Deed or at Law.

61. Taxes

61.1 GST General

(a) (**Revenue**): For the purposes of this clause 61, "Revenue" has the meaning given in clause 61.1(g).

(b) (**GST exclusive amounts**): Unless otherwise expressly stated, all amounts referred to in this Deed are exclusive of GST.

(c) (**GST payable by Supplier**): If GST becomes payable on any Taxable Supply made by a party (**Supplier**) under or in connection with this Deed:

(i) any amount payable or consideration to be provided in accordance with any other provision of this Deed for that supply (**Agreed Amount**) is exclusive of GST;

(ii) an additional amount will be payable by the party which is the recipient of the Taxable Supply (**Recipient**), equal to the amount of GST payable on that Taxable Supply as calculated by the Supplier in accordance with the GST Law, which will be payable at the same time and in the same manner as for the Agreed Amount; and

(iii) the Supplier will provide a Tax Invoice to the Recipient in connection with that supply, either at the time expressly set out in any other provision of this Deed or no later than the time at which the Agreed Amount for that Taxable Supply is to be provided under this Deed. The Recipient is not obliged to pay any amount in accordance with this clause 61.1(c) unless and until a Tax Invoice is received by the Recipient in connection with the Taxable Supply unless the Recipient is required to issue the Tax Invoice.

(d) (**Variation in GST payable**): If for any reason, the GST payable by the Supplier in connection with a supply it makes under or in connection with this Deed (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it received from the Recipient under clause 61.1(c) in connection with that supply, the Supplier will provide a refund or credit to, or will be entitled to receive from, the Recipient (as applicable) the amount of this variation. If an adjustment event occurs in relation to a supply, and unless the Recipient is required to issue the Adjustment Note:

(i) the Supplier will issue an Adjustment Note to the Recipient in connection with that supply within 14 days after becoming aware of that adjustment event occurring; and

(ii) no additional amount will be payable by the Recipient unless and until an Adjustment Note is received by the Recipient.

(e) (**GST ceasing to be payable**): No amount is payable by a party in accordance with clause 61.1(c) or clause 61.1(d) to the extent that the GST to which the amount relates has ceased to be payable by or refundable to the Supplier by the Commissioner of Taxation under the GST Law.

(f) (**Expert determination**): If the Recipient is dissatisfied with any calculation to be made by the Supplier in accordance with this clause 61.1, the Recipient may, at its own expense and after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the President of the Institute of Chartered Accountants for expert determination, which will be final and binding. The expert will act as an expert and not as an arbitrator and must take into account the terms of this Deed, the matters required to be taken into account by the Supplier in accordance with this clause 61 and any other matter considered by the expert to be relevant to the determination. The parties release the expert from any liability in acting as an expert, except in the case of fraud on the part of the expert.

(g) (**Revenue net of GST**): Any reference in this Deed or any Project Document to price, value, sales, revenue, profit or a similar amount (**Revenue**), is a reference to the GST exclusive component of that Revenue, unless the contrary intention is expressed.

(h) (**Cost net of GST**): Any reference in this Deed or any Project Document to cost, expense, liability or other similar amount (**Cost**) of a party, is a reference to that Cost reduced by the Input Tax Credits to which the party is entitled in respect of such Cost, unless the contrary intention is expressed.

(i) (**Construction Payment, Maintenance Phase (Full) Modification Payment and Option Amount**): Notwithstanding any other provision in this clause 61.1:

(i) the parties intend that the State will not bear any net costs (including funding costs arising from timing differences) in respect of GST payable on any Taxable Supply to which any Construction Payment, Maintenance Phase (Full) Modification Payment or Option Amount relates;

(ii) the parties will use their reasonable endeavours to obtain and implement an agreement by the Commissioner of Taxation to offset, in the parties' running balance accounts, Project Co's liability to pay GST on a Taxable Supply to which any Construction Payment, Maintenance Phase (Full) Modification Payment or Option Amount relates and the State's entitlement to Input Tax Credits for a Creditable Acquisition to which any Construction Payment, Maintenance Phase (Full) Modification Payment or Option Amount relates. The setting off by the Commissioner of Taxation of these amounts in the parties' running balance accounts will be taken to satisfy any obligation of the State to pay to Project Co an amount in respect of GST on the relevant Taxable Supply (whether or not the amount set-off is equal to the whole of that GST);

(iii) Project Co must issue the State a Tax Invoice for any Taxable Supply to which the relevant Construction Payment, Maintenance Phase (Full) Modification Payment or Option Amount relates in accordance with clause 41.2(a);

(iv) the State is not obliged to make a payment to Project Co in respect of GST in respect of a Supply to which any Construction Payment, Maintenance Phase (Full) Modification Payment or Option Amount relates on a payment date in accordance with clause 41.2(b) (as applicable) until it has (acting reasonably and in accordance with clause 61.1(i)(ii)) received the benefit of an Input Tax Credit for such GST or other tax liability, credited to the State's running balance account, being refunded to the State (or a combination of the above);

(v) if the State is denied an Input Tax Credit by the Australian Tax Office, a Court or other appropriate Authority for all or part of the GST in respect of any Construction Payment, Maintenance Phase (Full) Modification Payment or Option Amount, Project Co must reimburse the State for any relevant GST it has paid in excess of its Input Tax Credit entitlement and indemnify the State for an amount equal to any penalty or interests as a result of claiming an Input Tax Credit for the whole of the GST on that Construction Payment, Maintenance Phase (Full) Modification Payment or Option Amount;

(vi) if clause 61.1(i)(v) applies, the State must co-operate with Project Co as reasonably required by Project Co to enable the State and Project Co to discuss with the Australian Tax Office the reasons for the denial of an Input Tax Credit and will take reasonable steps, as reasonably directed by Project Co, to dispute the denial (provided that the obligation to dispute is not a condition precedent to the operation of clause 61.1(i)(v)). Project Co Indemnifies the State for its costs incurred in disputing any denial of an Input Tax Credit;

(vii) if, as a result of clause 61.1(i)(vi), the State's entitlement to an Input Tax Credit is increased, the State must promptly pay to Project Co an amount equal to that increase together with any interest to which the State is entitled in relation to that amount;

(viii) the State must take all reasonable steps to ensure it (or the State entity that it is treated as making the supplies and acquisitions under the State

Project Documents for GST purposes) receives the benefit of the Input Tax Credit from the Australian Taxation Office as quickly as possible including:

(A) claiming the Input Tax Credit in the "Business Activity Statement" for the Tax Period to which the Input Tax Credit is attributable;

(B) lodging the Business Activity Statement in which the Input Tax Credit is reported no later than the due date for that Business Activity Statement;

(C) forwarding any queries or correspondence from the Commissioner of Taxation in respect of that Business Activity Statement (but only to the extent that queries or correspondence relates to the relevant Input Tax Credit) to Project Co; and

(D) promptly informing Project Co of any delays or other related issues in respect of the Input Tax Credit;

(ix) if at any time this Deed is terminated, the obligations of the State to pay Project Co any amount in accordance with clause 61.1(i)(iv) continues in full force and effect and is an obligation separate, independent and additional to the State's obligation to make a Termination Payment in accordance with clause 46.6. Notwithstanding the termination of this Deed, the State is obliged to use reasonable endeavours to obtain the Input Tax Credit and to pay to Project Co each amount in accordance with clause 61.1(i)(iv); and

(x) if at any time this Deed is terminated, the obligation of Project Co to pay the State any amount in accordance with 61.1(i)(v) continues in full force and effect.

(j) (**General obligation**): Each party agrees to do all things, including providing Tax Invoices and other documentation, that may be necessary or desirable to enable or assist the other party in determining its GST payable on any supply made by that other party in connection with this Deed, or any Input Tax Credits, adjustments or refunds in relation to any amount of GST paid or payable in connection with any supply made in connection with this Deed.

(k) (**GST groups**): For the purposes of this Deed, a reference to GST payable on a Taxable Supply made by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member and a reference to an Input Tax Credit entitlement of a party includes any corresponding Input Tax Credit entitlement of the representative member of any GST group of which that party is a member, and if a party to this Deed makes a Taxable Supply by virtue of entering into or performing this Deed and the 'recipient' of that Taxable Supply (within the meaning of the GST Act) is an Associate of another party to this Deed that other party to this Deed will be obliged either to pay the amount referred to in clause 61.1(c)(ii) or procure that the actual recipient pays the relevant amount, and the payer of that amount shall be the 'Recipient' for the purposes of this clause 61.1 in relation to the relevant Taxable Supply.

(l) (**Project Deed to prevail**): If, but for this clause 61.1(l), a GST clause in another Project Document would apply in connection with a Taxable Supply to which this clause 61.1 also applies, then this clause 61.1 will apply in connection with that supply and the GST clause in the other Project Document will not apply.

(m) (**Definitions**): In this clause 61.1 unless otherwise defined in this Deed, terms used have the meanings given to them in the GST Law.

61.2 General liability for Taxes

(a) (**Payment**): As between the State and Project Co, Project Co bears the risk of, and must pay all Rates and Taxes incurred or imposed in connection with:

(i) the Project;

(ii) payments, income or net income received or receivable by any Group Member;

(iii) the execution, stamping and registration of any Project Document;

(iv) the performance of any Project Document and each transaction effected by or made under or in connection with any Project Document, including the Project Activities;

(v) any amendment to, or any consent, approval, waiver, release, surrender or discharge of or under any Project Document;

(vi) any transaction, assignment, transfer or other dealing by or in relation to a Group Member (including dealings in the shares or other interests in a Group Member), whether or not related to the Project or the Project Documents, including in connection with a Change in Control or Share Capital Dealing and any Refinancing; and

(vii) any Site,

except as provided in clause 61.1.

(b) (**Indemnity**): Project Co must indemnify the State against any Claim or Liability arising in connection with the Rates and Taxes which Project Co is required to pay under clause 61.2(a).

62. Notices and bar to Claims

62.1 Notices

All approvals, consents, directions, requirements, determinations, requests, claims, notices, agreements, demands or other communications in connection with this Deed:

(a) (**in writing**): must be in writing;

(b) (**addressed**): must be addressed as specified in the Contract Particulars or to such other addressee as notified by the receiving party to the other party from time to time;

(c) (**signed**): must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;

(d) (**form of delivery**): must be delivered by hand or posted by prepaid express post or emailed to the email address of the addressee as referred to in clause 62.1(b); and

(e) (**taken to be received**): are taken to be received by the addressee:

(i) in the case of delivery by hand, on delivery at the address of the addressee as referred to in clause 62.1(b), unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;

(ii) in the case of prepaid express post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and

(iii) in the case of email, on the first to occur of:

(A) receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;

(B) the time that the communication enters an information system which is under the control of the addressee; or

(C) the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day.

62.2 Prescribed notices

If Project Co wants to make a Claim against the State in connection with the Project and there are no notice requirements specified in this Deed in respect of that Claim, Project Co must submit to the State:

(a) (**intention to submit Claim**): a notice in which Project Co states that it intends to submit a Claim and identifies the event on which the Claim will be based and which must be given to the State within 20 Business Days after the date Project Co first became aware of the event on which the Claim is based; and

(b) (**Claim**): a written Claim by Project Co to be given to the State within 10 Business Days after the date on which Project Co is required to give notice under clause 62.2(a), which must include:

(i) detailed particulars concerning the event on which the Claim is based;

(ii) the legal basis for the Claim, whether based on a term of a State Project Document or otherwise, and if based on a term of a State Project Document, clearly identifying the specific term;

(iii) the facts relied upon in support of the Claim in sufficient detail to permit verification; and

(iv) details of the amount of relief claimed and how it has been calculated.

62.3 Meeting

(a) (**Parties must meet**): Within 10 Business Days after receipt of Project Co's Claim under clause 62.2(b) the State and Project Co must meet to discuss the Claim and

the process for providing the State with any further information in respect of the Claim, including any further updates of the Claim.

(b) (**Further information**): If the parties are unable to agree a process for providing further information to the State in respect of the Claim within 20 Business Days after the State's receipt of Project Co's Claim under clause 62.2(b), Project Co must, if the event upon which that Claim under clause 62.2(b) is based or the consequences of the events are continuing, continue to give information required by clause 62.2(b) every 20 Business Days after the Claim under clause 62.2(b) was submitted, until after the event or consequences of the event have ceased.

62.4 Notices of Claims

Project Co acknowledges and agrees that:

(a) (**no liability on any Claim**): the State and each State Associate will not be liable upon any Claim that Project Co is entitled to make against the State or a State Associate; and

(b) (**absolute bar on making any Claim**): Project Co will be absolutely barred from making any Claim against the State or any State Associate,

under any State Project Document or otherwise arising in connection with, the Project unless Project Co gives the State, or State Associate, as the case may be, the notices required by the State Project Documents in respect of such a Claim.

62.5 Notice to Financiers

Project Co acknowledges that the State may provide to the Financiers a copy of any notice from:

(a) (**from Project Co**): Project Co to the State; or

(b) (**from State**): the State to Project Co,

in connection with the Project.

63. Miscellaneous

63.1 Governing Law and jurisdiction

(a) (**Governing Law**): This Deed is governed by, and must be construed according to, the Laws of Victoria, Australia.

(b) (**Jurisdiction**): Without limiting clauses 48 to 50, each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from the courts of Victoria, with respect to any proceedings which may be brought in connection with this Deed.

63.2 Entire agreement

The State Project Documents to which the State and Project Co are parties:

(a) (**entire understanding**): embody the entire terms agreed between the parties in connection with the Project; and

(b) (**prior agreements**): supersede any prior agreement of the parties in connection with the Project.

63.3 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to both parties) required by Law or reasonably requested by the other party to give effect to this Deed.

63.4 Survival of certain provisions

(a) (**Surviving clauses**): All provisions of this Deed which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of this Deed will survive the rescission, termination or expiration of this Deed, including any provision in connection with:

(i) the State's rights to set-off and recover amounts;

(ii) confidentiality or privacy;

(iii) Intellectual Property Rights;

(iv) any obligation to make any books and accounts and all other records or information available to the State;

(v) any indemnity, release or financial security given under this Deed;

(vi) any limitation on Liability; and

(vii) any right or obligation arising on termination or expiry of this Deed.

(b) (**Interpretation**): No provision of this Deed which is expressed to survive the termination, rescission or expiration of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the termination, rescission or expiration of this Deed.

(c) (**Survival of rights and obligations**): No right or obligation of any party will merge on completion of any transaction under this Deed. All rights and obligations under this Deed survive the execution and delivery of any transfer or other document which implements any transaction under this Deed.

63.5 Waiver

(a) (**Writing**): Other than where the waiver is already given expressly in the terms of this Deed, a waiver that may be given by a party under this Deed, is only effective and binding on that party if it is given or confirmed in writing by that party.

(b) (**No waiver**): A failure to exercise or enforce, a delay in the exercise or enforcement of or the partial exercise or enforcement of a right provided by Law by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or under this Deed.

(c) (**No waiver of another breach**): No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

63.6 Consents and approvals

A consent or approval required under this Deed from the State may be given or withheld, or may be given subject to any conditions, as the State thinks fit, unless otherwise expressly provided in this Deed.

63.7 Amendments

(a) (**Deed**): Unless otherwise expressly provided in this Deed, this Deed may only be amended by a deed executed by or on behalf of each party.

(b) (**Other State Project Documents**): Except as otherwise expressly provided in the relevant State Project Documents, no amendment to any other State Project Document is valid or binding on a party unless made in writing and executed by the State and all other parties to the relevant State Project Document.

63.8 Expenses

Unless otherwise expressly provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

63.9 Severance

If, at any time, a provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

(a) (**provisions**): any other provision of this Deed; or

(b) (**other jurisdictions**): that provision under the Law of any other jurisdiction.

63.10 Counterparts

This Deed may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same Deed.

63.11 Moratorium legislation

Project Co waives, and will procure that each Key Subcontractor waives, any right or remedy it may have under any Law which comes into effect after the date of this Deed if the exercise of such right or remedy would:

(a) (**no reduction**): lessen any obligation or Liability of Project Co; or

(b) (**no prejudice**): prejudicially affect the rights, powers or remedies of the State,

under a State Project Document to which it is a party.

63.12 PPSA

Project Co acknowledges and agrees that:

(a) (**State's rights**): if and to the extent that the State at any time forms a belief on reasonable grounds that the State is, or will become, a secured party in connection with this Deed or any other State Project Document or any transaction

contemplated by this Deed or any other State Project Document, the State may at Project Co's expense take all steps that the State considers advisable to:

(i) perfect, protect, record, register, amend or remove the registration of, the State's Security Interest in any relevant personal property that is the subject of this Security Interest (**Relevant Personal Property**); and

(ii) better secure the State's position in respect of the Relevant Personal Property under the PPSA;

(b) (**Key Subcontractor to assist the State**): it will do, and ensure that each Key Subcontractor and the Management Services Contractor does, all things reasonably necessary to assist the State to take the steps described in clause 63.12(a);

(c) (**waiver of right to receive any verification statement**): it irrevocably and unconditionally waives, and will ensure that each Key Subcontractor and the Management Services Contractor irrevocably and unconditionally waives, its right to receive any verification statement in respect of any financing statement or financing change statement relating to any Security Interests of the State in the Relevant Personal Property;

(d) (**excluded PPSA sections**): if, and only if, the State is or becomes a secured party in relation to Relevant Personal Property, and to the extent only that Chapter 4 of the PPSA would otherwise apply to an enforcement of a Security Interest in Relevant Personal Property, Project Co and the State agree, and Project Co will ensure that each Key Subcontractor and the Management Services Contractor agrees, that, pursuant to section 115 of the PPSA, the following provisions of the PPSA do not apply in relation to those Security Interests to the extent, if any, mentioned in section 115, section 117, section 118, section 120, subsection 121(4), section 125, section 129, section 130, subsection 132(3)(d), subsection 132(4), section 142, and section 143;

(e) (**no disclosure**): subject to section 275(7) of the PPSA, it will not, and it will ensure that each Key Subcontractor and the Management Services Contractor does not, disclose the contents of this Deed, the amount or performance obligation secured by the State's Security Interest in Relevant Personal Property and the other information mentioned in section 275(1) of the PPSA pursuant to section 275(4) of the PPSA;

(f) (**Project Co to notify the State**): other than in relation to Security Interests arising in the ordinary course of the Project Activities and Security Interests described in section 12(d) of the PPSA of which Project Co is the grantor (but only where the interest does not secure payment or performance of an obligation) it must immediately notify the State if Project Co, a Key Subcontractor or the Management Services Contractor becomes aware of any person other than the State taking steps to register, or registering, a financing statement in relation to Relevant Personal Property; and

(g) (**removal of registered security interest**): it must arrange, and ensure that each Key Subcontractor and the Management Services Contractor arranges, for the removal or cessation of any registration of any Security Interest that affects the priority of the State's interest in Relevant Personal Property.

For the purposes of this clause 63.12, 'registration', 'secured party', 'verification statement', 'financing statement', 'personal property' and 'financing change statement' each have the meaning given to those terms in the PPSA.

Executed as a deed.

State

Executed by the **Honourable Luke Donnellan MP, in his capacity as Minister for Roads and Road Safety,** on behalf of the Crown in right of the State of Victoria in the presence of:

Signature of witness	Signature of Minister
Name of witness (print)	

Project Co

Executed by **Netflow OSARS (Western) Pty Ltd as trustee for Netflow OSARS (Western) Unit Trust for and on behalf of the Netflow OSARS (Western) Partnership** by being signed, sealed and delivered by its attorney

……

under power of attorney dated

……

who declares that he or she has no notice of revocation of the power of attorney, in the presence of:

Signature of witness	Signature of attorney
Name of witness (print)	

Executed by **Cintra OSARS (Western) Pty Ltd as trustee for Cintra OSARS (Western) Unit Trust for and on behalf of the Netflow OSARS (Western) Partnership** by being signed, sealed and delivered by its attorney

……

under power of attorney dated

……

who declares that he or she has no notice of revocation of the power of attorney, in the presence of:

Signature of witness

Signature of attorney

Name of witness (print)

Schedule 1 - Contract Particulars

Item	Subject	Particulars
Clause 1 - Definitions and interpretation		
1.	**Change in Law** (clause 1)	Not Applicable
2.	**D&C Contractor** (clause 1)	Name: WBHO Infrastructure Pty Ltd ABN 78 089 434 220 Attention: [not disclosed] Address: [not disclosed] Phone: [not disclosed] Email: [not disclosed]
2A.	**Original D&C Contract Price**	$[not disclosed]
3.	**D&C Contractor Construction Bond Amount** (clause 1)	$[not disclosed] being [not disclosed]% of the Original D&C Contract Price on and from Financial Close to the Date of Commercial Acceptance
4.	**D&C Contractor DLP Bond Amount** (clause 1)	$[not disclosed] being [not disclosed]% of the Original D&C Contract Price on and from the Date of Commercial Acceptance to the date that is [not disclosed] after the Date of Commercial Acceptance
5.	**Date for Commercial Acceptance/ Original Date for Commercial Acceptance** (clause 1)	30 June 2020
6.	**Date for Final Acceptance** (clause 1)	30 December 2020
7.	**Dohertys Road Bridge Works Completion Date**	Refer to Site Number 5A in Part H10 of the PSDR
8.	**Hyde Street Bridge Works Completion Date**	Refer to Site Number 16 in Part H10 of the PSDR
9.	**Date for Maintenance Commencement** (clause 1)	1 July 2018
10.	**Designated Investor** (clause 1)	Name: Plenary Investments (Western OSARS) Pty Ltd ABN 12 617 967 941 Address: [not disclosed] Name: CINTRA OSARS WESTERN LTD (company number 11023582)

Item	Subject	Particulars
		Address: [not disclosed]
11.	**Financiers' Certifier** (clause 1)	Name: Aquenta Consulting Pty Ltd ABN 15 007 406 840 Attention: [not disclosed] Address: [not disclosed] Phone: [not disclosed] Email: [not disclosed]
12.	**Key Subcontracts** (other than the D&C Contract and Services Contract) (clause 1)	Nil
13.	**Key Subcontractor** (other than the D&C Contractor and Services Contractor) (clause 1)	Nil
14.	**Key People** (clause 1)	Role: Project Co Representative Name: [not disclosed] Role: Services and Transition Manager* Name: Role: Design Development Coordinator* Name: Role: Construction Traffic Representative Name: [not disclosed] Role: Maintenance Traffic Representative Name: [not disclosed] Role: Environmental Representative Name: [not disclosed] Role: Communications and Community Engagement Representative Name: [not disclosed] Role: Construction Quality Representative Name: [not disclosed] Role: Maintenance Quality Representative Name: [not disclosed]

Item	Subject	Particulars
		Role: Financial and Commercial Manager Name: [not disclosed] Role: Communications Manager Name: [not disclosed] Role: Technical Delivery Lead Name: [not disclosed] Role: Design Manager Name: [not disclosed] Role: D&C Construction Manager Name: [not disclosed] Role: Commercial Manager Name: [not disclosed] Role: HSEQ Manager Name: [not disclosed] Role: Industry Development Manager Name: [not disclosed] Role: Program Manager Name: [not disclosed] Role: Network Manager Name: [not disclosed] Role: Asset Manager Name: [not disclosed] Role: Network Delivery Hub Manager Name: [not disclosed] Role: Services Delivery Lead Name: [not disclosed] Role: Transition Manager Name: [not disclosed] * To be approved by the State in accordance with clause 7.4(b) of this Deed.

Item	Subject	Particulars
15.	**Management Services Contractor** (clause 1)	Name: Plenary Asset Management Pty Ltd ABN 70 161 527 466 Attention: [not disclosed] Address: [not disclosed] Phone: [not disclosed] Email: [not disclosed] Name: Cintra Developments Australia Pty Ltd ABN 35 159 740 039 Attention: [not disclosed] Address: [not disclosed] Phone: [not disclosed] Email: [not disclosed]
16.	**Milestone Dates** (clause 1)	Refer to Part H10 of the PSDR
17.	**Parent Guarantor** (clause 1)	**D&C Contractor Parent Guarantor** Name: WBHO Australia Pty Ltd ABN 11 095 983 681 Attention: [not disclosed] Address: [not disclosed] Phone: [not disclosed] Email: [not disclosed] Name: WBHO Construction (Pty) Ltd (South African registration no. 1983/011953/07) Attention: [not disclosed] Address: [not disclosed] Phone: [not disclosed] Email: [not disclosed] **Maintenance Services Contractor Parent Guarantor** Name: Amey (UK) plc Attention: [not disclosed] Address: [not disclosed]

Item	Subject	Particulars
		Phone: [not disclosed] Name: Broadspectrum Pty Ltd ABN 69 000 484 417 Attention: [not disclosed] Address: [not disclosed] Phone: [not disclosed] Email: [not disclosed]
18.	**Project Co Representative/s** (clause 1)	Name: [not disclosed] Address: [not disclosed] Phone: [not disclosed] Email: [not disclosed]
19.	**Security Trustee** (clause 1)	Name: P.T. Limited ABN 67 004 454 666 Attention: [not disclosed] Address: [not disclosed] Email: [not disclosed]
20.	**Services Contractor** (clause 1)	Name: Broadspectrum (Australia) Pty Ltd ABN 11 093 114 553 and Amey Consulting Australia Pty Ltd ABN 34 162 890 940, together jointly and severally Attention: [not disclosed] Address: [not disclosed] Phone: [not disclosed] Email: [not disclosed] Attention: [not disclosed] Address: [not disclosed] Phone: [not disclosed] Email: [not disclosed]
21.	**Significant Subcontracts** (clause 1)	Role: [not disclosed] Name: ACE Contractors Group Pty. Ltd. ABN 30 007 256 242 Role: [not disclosed]

Item	Subject	Particulars
		Name: Civilex Victoria Pty. Ltd. ABN 87 130 808 276 Role: [not disclosed] Name: Winslow Group Pty Ltd ABN 20 122 353 520 Role: [not disclosed] Name: Amey / Broadspectrum JV (a joint venture between Amey Consulting Australia Pty Ltd ACN 162 890 940 / ABN 34 162 890 940 and Broadspectrum (Australia) Pty Limited ACN 093 114 553 / ABN 11 093 114 553)
21A.	**Notified Significant Subcontracts**	Role: [not disclosed] Name: Fotunato Group Pty Ltd ABN 43 097 172 435 Role: [not disclosed] Name: Negri Contractors (Vic.) Pty. Ltd. ABN 99 006 337 239 Role: [not disclosed] Name: Amey Consulting Australia Pty Ltd ABN 34 162 890 940 Role: [not disclosed] Name: Kellogg Brown & Root Pty Ltd ABN 91 007 660 317 Role: [not disclosed] Name: Pitt & Sherry (Operations) Pty. Ltd. ABN 67 140 184 309 Role: [not disclosed] Name: Hatch Pty Ltd ABN 69 008 637 974
22.	**Site Information Report** (clause 1)	Not applicable
23.	**State Representative** (clause 1)	Name: [not disclosed] Attention: [not disclosed] Address: [not disclosed] Phone: [not disclosed]

Item	Subject	Particulars
		Email: [not disclosed]
Clause 62 – Notices		
24.	**Notices** (clause 62.1)	**The State** Name: [not disclosed] Attention: [not disclosed] Address: [not disclosed] Phone: [not disclosed] Email: [not disclosed] **Project Co** Name: [not disclosed] Attention: [not disclosed] Address: [not disclosed] Phone: [not disclosed] Email: [not disclosed]

Schedule 2 - Conditions Precedent Schedule

Condition Precedent	Benefiting Party	Condition Precedent Deadline	Party to satisfy
1. Project Documents Project Co delivering to the State original counterparts of each of the State Project Documents (other than this Deed and the Maintenance Phase Licence (Full)) and certified copies of all other Project Documents (which in respect of the Significant Subcontracts is limited to those listed in Item 21 of Schedule 1), in each case duly executed by each of the parties to the documents other than the State, and each in form and substance satisfactory to the State.	State and Project Co	[not disclosed]	Project Co
2. Legal Opinions The State receiving legal opinions given for the benefit of the State in form and substance satisfactory to it from solicitors acting for each Consortium Member as to: (a) the legal capacity and corporate power of that Consortium Member to enter into and perform its obligations under the Project Documents to which it is a party; (b) the enforceability against the relevant Consortium Member of the Project Documents to which it is a party; and (c) due execution by the Consortium Member of the Project Documents to which it is a party.	State	[not disclosed]	Project Co

Condition Precedent	Benefiting Party	Condition Precedent Deadline	Party to satisfy
3. Pre-Rate Set Satisfaction Notice The State receiving an original pre-rate set satisfaction notice in form and substance satisfactory to the State Representative signed by the Facility Agent confirming that all initial conditions precedent to funding and drawdown of the facilities for the Project (including the satisfaction of conditions precedent under any other Project Documents) have been satisfied or waived in accordance with the terms of the Finance Documents, save for those specified in the notice which will be satisfied upon the occurrence of the agreed actions listed in the notice.	State	[not disclosed]	Project Co
4. Initial Phase Insurances (Project Co) Project Co delivering to the State in respect of the Insurances required to be effected under clause 44.1(a): (a) certified copies of the fully subscribed and executed policies relating to such Insurances in form and substance satisfactory to the State; and (b) certificates from an insurance broker as to the currency of all such Insurances and confirming that the State or its Associates are insured under the policy (to the extent this is required under this Deed).	State	[not disclosed]	Project Co
5A Initial Phase Insurances (State) The State delivering to Project Co in respect of the Initial Phase Insurances	Project Co	[not disclosed]	State

Condition Precedent	Benefiting Party	Condition Precedent Deadline	Party to satisfy
(State) and the Maintenance Phase Insurances (State) required to be effected under clause 44.1(b) and 44.2(b) of this Deed, evidence that such Insurances (State) are in force and on the terms prescribed in accordance with clause 44.4A(a) including the evidence identified in clause 44.8(b)(i) to 44.8(b)(iii) of the Deed for such Initial Phase Insurances (State) and Maintenance Phase Insurances (State).			
5B VMIA Direction regarding Insurances (State) The Minister for Finance has given a direction under section 25A of the *Victorian Managed Insurance Authority Act 1996* (Vic) to allow each of the parties expressed to be insured under the Insurances (State) to be insured under those policies.	Project Co	[not disclosed]	State
5. FIRB approvals The State receiving a certified copy of the approval of the Foreign Investment Review Board of the Commonwealth Department of Treasury in respect of any foreign ownership of any Equity Investor.	State and Project Co	[not disclosed]	Project Co
6. Financial Close Financial Model The State receiving an electronic copy of the Financial Close Financial Model initialled by Project Co and the Facility Agent.	State	[not disclosed]	Project Co

Condition Precedent	Benefiting Party	Condition Precedent Deadline	Party to satisfy
7. Native Title The State satisfying itself in relation to the processes required under the *Native Title Act 1993* (Cth) to allow for the Project to be carried out in accordance with the State Project Documents.	State	[not disclosed]	State
8. State Approvals The State has obtained the State Approvals identified in the table in Attachment 2.	State and Project Co	[not disclosed]	State
9. Tax Ruling The State receiving a certified copy of tax rulings issued by and binding upon the Australian Taxation Office, in a form and substance satisfactory to the State, in respect of the deductibility of the securitised licence fees under section 8-1 of the *Income Tax Assessment Act 1997* (Cth).	State	[not disclosed]	Project Co
10. Delegation of Road Functions Project Co has been delegated the Required Road Management Powers for the sole purpose of performing the Services in accordance with the requirements of	State and Project Co	[not disclosed]	State

Condition Precedent	Benefiting Party	Condition Precedent Deadline	Party to satisfy
this Deed pursuant to section 115 of the *Transport Integration Act 2010* (Vic), with such delegation authorising the sub-delegation of those Required Road Management Powers to the Services Contractor.			
11. Performance Bond Project Co delivering to the State evidence satisfactory to the State that Project Co has secured the D&C Contractor Construction Bonds from the D&C Contractor with an aggregate face value of at least the D&C Contactor Construction Bond Amount.	State	[not disclosed]	Project Co
12. List of Intellectual Property Project Co has delivered to the State the List of Intellectual Property identified in section 2.16 of the Intellectual Property Schedule.	State	[not disclosed]	Project Co
13. Enforceable undertaking and legal opinion [not disclosed]	Project Co	[not disclosed]	Project Co

Schedule 3 – Payment Schedule

Table of contents

1. Definitions 2
2. Calculation of the Service Payments 7
2.1 Service Payment Calculation 7
2.2 Pro rata calculation 7
2.3 Service Payment not less than zero 7
2.4 No claim 7
2.5 Inaccurate Performance Data, Monthly Maintenance Phase Performance Reports or Monthly Development Phase Progress Reports 7
3. Base Quarterly Service Payment 8
3.1 Calculation of the Base Quarterly Service Payment 8
3.2 Calculation of the capital payment component of the Base Quarterly Service Payment 8
3.3 Calculation of the maintenance cost component of the Base Quarterly Service Payment 8
3.4 Calculation of the lifecycle cost component of the Base Quarterly Service Payment 8
4. Lane Access Adjustment 9
4.1 Lane Access 9
4.2 Lane Closure 9
4.3 Lane Speed Reduction 9
4.4 Lane Access Adjustment calculation and application over the different phases 9
4.5 Calculation and application of the total Lane Access Adjustment during the Initial Phase 9
4.6 Calculation and application of the total Lane Access Adjustment during the Maintenance Phase (Full) 11
5. Performance Abatement 12
5.1 Key Performance Indicators 12
5.2 Calculation of Performance Abatement 12
5.3 Calculation of the Performance Point Amount for the Maintenance Phase (Initial) 12
5.4 Calculation of the Performance Point Amount for the Maintenance Phase (Full) 12
6. Aboriginal Persons Employment Adjustment 13
7. Local Content Requirements Adjustment 14
8. Floating Rate Component Payment 15
9. Major Project Skill Guarantee Adjustment 16

Annexure A **Lane Access Adjustment**
Annexure B **Performance Abatements**
Annexure C **Calculation of Service Payment**
Annexure D **Floating Rate Component**
Annexure E **Approved Lane Access Points Schedules**
Annexure F **Example Calculations**

1. Definitions

In addition to the definitions set out in clause 1 of this Deed, the definitions set out below apply in this Deed unless the context otherwise requires:

Abatement means any amount calculated in accordance with this Schedule resulting from an Abatement Event.

Abatement Event means any event that results in a Lane Access Adjustment, Performance Abatement, Aboriginal Persons Employment Adjustment, Local Content Requirements Adjustment or Major Projects Skills Guarantee Adjustment.

Aboriginal Persons has the meaning given to it in this Deed.

Aboriginal Persons Employment Adjustment means the liquidated damages amount calculated in accordance with section 6.

Aboriginal Persons Employment Commitment means 2.5%.

Aboriginal Employment Price means $[not disclosed].

Actual Floating Rate means, in respect of an Interest Period, the Bank Bill Rate.

Actual Floating Rate Interest Payment means, in respect of an Interest Period, the interest payable at the Actual Floating Rate on the Base Case Floating Rate Debt. The method of calculating the Actual Floating Rate Interest Payment must be consistent with the method for calculating the Base Case Floating Rate Interest Payment in the Financial Close Financial Model. For the purposes of calculating the FRCn in section 8, the Actual Floating Rate Interest Payment is to be expressed as a positive number.

Annualised Employee Equivalent has the meaning given to in it in the Deed.

Apprentice, Trainee and Engineering Cadet have the meanings given to them in this Deed.

Available has the meaning given to it in the PSDR.

Base Case Floating Rate Debt means, in respect of an Interest Period, the amount of the Project Debt labelled as “Base Case Floating Rate Debt” in Annexure D in relation to which floating rate interest payments are made. For the purposes of calculating the FRCn in section 8, the Base Case Floating Rate Debt is to be expressed as a positive number.

Base Case Floating Rate Interest Payment means, in respect of an Interest Period, the interest payable at the Base Case Interest Rate on the Base Case Floating Rate Debt, as specified in Annexure D.

Base Case Interest Rate means, in respect of an Interest Period, the reference floating interest rate (exclusive of any margin) as specified in Annexure D.

Base Lane Access Points Amount means $[not disclosed] (indexed in accordance with this Schedule from the date of Financial Close).

Base Quarterly Service Payment means such amount referred and calculated in accordance with section 3.1.

Base Performance Amount Maintenance Phase (Full) means $[not disclosed] (indexed in accordance with this Schedule from the date of Financial Close).

Base Performance Amount Maintenance Phase (Initial) means $[not disclosed] (indexed in accordance with this Schedule from the date of Financial Close).

Consumer Price Indexation Factor means CPI Multiplier Quarterly (C) identified in Schedule 16 of this Deed.

Date for Commercial Acceptance has the meaning given to it in this Deed.

Date for Maintenance Commencement has the meaning given to it in this Deed.

Development Activities has the meaning given in this Deed.

Development Lane Access Adjustment means any Lane Access Adjustment incurred for any Development Lane Closure or any Development Lane Speed Reduction, each as calculated in accordance with Annexure A.

Development Lane Closure means a Lane Closure required to enable Project Co to undertake the Development Activities, excluding the Initial Rehabilitation Works.

Development Lane Speed Reduction means a Lane Speed Reduction required to enable Project Co to undertake the Development Activities, excluding the Initial Rehabilitation Works.

Dynon Road Bridge has the meaning given to it in this Deed.

Dynon Road Bridge Date for Completion has the meaning given to it in this Deed.

Emergency Event has the meaning given to it in the PSDR.

Emergency Response Plan means has the meaning given to it in the PSDR.

Expiry Date has the meaning given to it in this Deed.

Existing Structural Assets has the meaning given to it in the PSDR.

Fatality is a death of a person or individual.

Floating Rate Component or **FRCn** has the meaning given in section 8.

FRC Commencement Date means the date specified as the 'Interest Period – Start Date' in Annexure D.

Independent Reviewer has the meaning given to it in this Deed.

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

Initial Phase has the meaning given to it in this Deed.

Initial Rehabilitation Works has the meaning given to it in the PSDR.

Initial Rehabilitation Works Lane Access Adjustment means any Lane Access Adjustment incurred for any Initial Rehabilitation Works Lane Closure or any Initial

Rehabilitation Works Lane Speed Reduction, each as calculated in accordance with Annexure A.

Initial Rehabilitation Works Lane Closure means a Lane Closure required to enable Project Co to undertake the Initial Rehabilitation Works.

Initial Rehabilitation Works Lane Speed Reduction means a Lane Speed Reduction required to enable Project Co to undertake the Initial Rehabilitation Works.

IRI has the meaning given to it in the PSDR.

KPI means key performance indicator, a measure of Project Co's performance against specified criteria. The Project's KPIs are contained in the KPI Summary.

KPI Incident means a failure to achieve a KPI in accordance with the requirements of the KPI Summary, as set out in Table 6 in Annexure B and which results in Performance Points being incurred by Project Co in respect of a KPI.

KPI Summary means Table 6 of Annexure B.

Lane has the meaning given to it the PSDR.

Lane Access means either a Lane Closure or a Lane Speed Reduction.

Lane Access Adjustment means an amount calculated in accordance with section 4.

Lane Access Adjustment Regime means the mechanism set out in section 4 and Annexure A of Schedule 3 used to determine the relevant Lane Access Adjustment.

Lane Access Points means points incurred by Project Co calculated pursuant to Tables (2, 3 and 4) of Annexure A.

Lane Closure has the meaning given to it the PSDR.

Lane Closure Unit has the meaning given to it in the PSDR.

Lane Speed Reduction has the meaning given to it the PSDR.

Lane Speed Reduction Unit has the meaning given to it in the PSDR.

Local Content (ANZ) has the meaning given to it in this Deed.

Local Content Requirements means 96.0%.

Local Content Requirements Adjustment means the liquidated damages amount calculated in accordance with section 7.

Lost Time Injury (LTI) means any incapacity (as defined in section 3 of the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic)) sustained by Project Co or any Project Co Associate in connection with the performance of the Works or Services that requires Project Co or that Project Co Associate to miss an equivalent [not disclosed] shift or single business day (whatever is applicable) due to that incapacity sustained in connection with performance of the Works or Services.

Maintenance Lane Access Adjustment means any Lane Access Adjustment incurred from either a Maintenance Lane Closure or Maintenance Lane Speed Reduction, in each case as calculated in accordance with Annexure A.

Maintenance Lane Closure means a Lane Closure required to enable Project Co to undertake the Services.

Maintenance Lane Speed Reduction means a Lane Speed Reduction required to enable Project Co to undertake the Services.

Maintenance Phase has the meaning given to it in this Deed.

Maintenance Phase (Full) has the meaning given to it in this Deed.

Maintenance Phase (Initial) has the meaning given to it in this Deed.

Maintenance Phase Reports mean each of the reports defined in this Deed.

Major Project Skills Guarantee Adjustment means the liquidated damages amount calculated in accordance with section 9.

Major Project Skills Guarantee Commitment means 10%.

Model Output Schedule has the meaning given to it in this Deed.

Monthly Maintenance Phase Performance Reports has the meaning given to it in this Deed.

Monthly Development Phase Progress Reports has the meaning given to it in this Deed.

Non-Permitted Lane Access has the meaning given to it in the PSDR.

Non-Permitted Lane Access Points means points allocated in accordance with Table 3 of Annexure A.

Pavement Reporting Section has the meaning given to it in the PSDR.

Payment Claim has the meaning given to it in this Deed.

Performance Abatement means an amount calculated in accordance with section 5.2.

Performance Auditor has the meaning given to it in the Deed.

Performance Data means any Material:

(a) used by Project Co to prepare the Monthly Development Phase Progress Reports and the Monthly Maintenance Phase Performance Reports;

(b) related to the operation of the Payment Schedule; or

(c) on which any Payment Claim is based.

Performance Points means the points incurred by Project Co for a KPI Incident as calculated in accordance with the KPI Summary.

Performance Point Amount means an amount calculated in accordance with section 5.

Performance Point Ratchet means the amount determined for a KPI Incident in accordance with section B.3 of Annexure B.

Performance Target means the specific performance target set out in respect of each KPI, in the KPI Summary.

Permitted Lane Access has the meaning given to it in the PSDR.

Permitted Lane Access Points means points allocated in accordance with Table 2 of Annexure A.

Project Roads has the meaning given to it in the PSDR.

PSDR means the Outer Suburban Arterial Roads Program – Western Package, Project Scope and Delivery Requirements (Outline Scope and Requirements until Financial Close).

Quarter has the meaning given to it in this Deed and "**Qtr**" has the same meaning.

Refinancing has a meaning given to it in the Deed.

Relevant Amounts has the meaning given to it in Annexure C.

Revision Period means:

(a) the period of five years commencing at the start of the Maintenance Phase (Initial); and

(b) each consecutive period of five years thereafter for the duration of the Term.

Services has the meaning given to it in this Deed.

Structures means the Structural Assets as defined in the PSDR.

SP Shortfall means when the Service Payment for a relevant Quarter as calculated in section 2, is less than zero.

Time Factor Periods means the periods set out in Table 5 of Annexure A.

Total and Permanent Disability means “serious injury” as defined under section 325 of the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic).

Unplanned Lane Access has the meaning given to it in the PSDR.

Unplanned Lane Access Points means points allocated in accordance with Table 4 of Annexure A.

Victorian Apprentices Price means $[not disclosed].

Wage Price Indexation Factor means the WPI Multiplier Quarterly (C) as per Schedule 16.

WGT Heavy Haulage Routes has the meaning given to it in this Deed.

WGT Heavy Haulage Routes Date for Completion has the meaning given to it in this Deed.

2. Calculation of the Service Payments

2.1 Service Payment Calculation

The Service Payment for each Quarter during the period from the Date for Maintenance Commencement to the last day of the Term (**QSPq**) is calculated as:

[not disclosed]

2.2 Pro rata calculation

Where any of paragraphs (a) to (d) inclusive of the definition of Quarter apply, the Base Quarterly Service Payment will be adjusted proportionally, having regard to the number of days in the relevant partial quarter as a percentage of the total number of days in the full calendar quarter.

2.3 Service Payment not less than zero

If the Service Payment for a relevant Quarter, as calculated in accordance with this section 2, is less than zero:

(a) subject to section 2.3(b), the Service Payment for that Quarter will be deemed to be zero; and

(b) the amount by which the Service Payment for that Quarter is less than zero (**SP Shortfall**) will carry forward and the State may deduct any part or all of the SP Shortfall (and interest applicable to the SP Shortfall until the SP Shortfall and such interest have been deducted in full with such interest calculated in accordance with clause 34.5 of this Deed) from any subsequent Service Payment. For the avoidance of doubt, any SP Shortfall shall be deemed due and payable by Project Co to the State.

2.4 No claim

Project Co will not be entitled to make any Claim in connection with Service Payments, other than a claim for payment in accordance with clause 34.

2.5 Inaccurate Performance Data, Monthly Maintenance Phase Performance Reports or Monthly Development Phase Progress Reports

In accordance with clause 15.5(d)(vi) of the Deed, any Abatement for an Abatement Event that should have been applied but for an inaccuracy identified in the report prepared by the Performance Auditor under clause 15.5(c) of this Deed, Project Co must reduce the amount of the next Payment Claim by any positive amount equal to two times:

(a) the reassessed Abatement (for the relevant Abatement Event(s) calculated in accordance with the Payment Schedule),

less:

(b) the Abatement for the relevant Abatement Event(s) originally applied or not applied (as the case may be).

3. Base Quarterly Service Payment

3.1 Calculation of the Base Quarterly Service Payment

The Base Quarterly Service Payment for each relevant Quarter (**BQSPq**) is calculated as:

[not disclosed]

3.2 Calculation of the capital payment component of the Base Quarterly Service Payment

(a) The capital payment component of the Base Quarterly Service Payment will only be included in Service Payments from the later of the Date of Commercial Acceptance and the Date for Commercial Acceptance.

(b) Subject to section 3.2(a), the capital payment component of the Base Quarterly Service Payment for each relevant Quarter (**CPq**) is calculated as set out in Table 8 of Annexure C.

(c) Subject to section 3.2(a) and 3.2(b), in the event that the Date of Commercial Acceptance is a date that falls within Quarter Q2, as set out in Table 8 of Annexure C, then:

(i) if such date falls within the period from [not disclosed] to [not disclosed], then the capital payment component of the Base Quarterly Service Payment for that Quarter will be the full amount as set out in Table 8 of Annexure C for that Quarter, and will not be subject to section 2.2; and

(ii) if such date falls in the period after [not disclosed], then the capital payment component of the Base Quarterly Service Payment for that Quarter will be adjusted proportionally, having regard to the number of days remaining in the Quarter as a percentage of the total number of days in the last two months of the Quarter.

3.3 Calculation of the maintenance cost component of the Base Quarterly Service Payment

The maintenance cost component of the Base Quarterly Service Payment for each relevant Quarter (**MTq**) is calculated as:

[not disclosed]

3.4 Calculation of the lifecycle cost component of the Base Quarterly Service Payment

The lifecycle cost component of the Base Quarterly Service Payment for each relevant Quarter (**LFCq**) is calculated as:

[not disclosed]

4. Lane Access Adjustment

4.1 Lane Access

Lane Access means:

(a) a Lane Closure; and

(b) a Lane Speed Reduction.

(or the relevant one of these as the case may be).

4.2 Lane Closure

Lane Closure will be categorised as follows:

(a) if the Lane Closure is for Development Activities excluding Initial Rehabilitation Works, then it will be deemed a **Development Lane Closure,** and must adhere to section 2.2(a) of Part H18 of the PSDR;

(b) if the Lane Closure is for Initial Rehabilitation Works, then it will be deemed an **Initial Rehabilitation Works Lane Closure,** and must adhere to section 2.2(a) of Part H18 of the PSDR; and

(c) if the Lane Closure is for Services, then it will be deemed a **Maintenance Lane Closure,** and must adhere to section 3.2(a) of Part H18 of the PSDR.

4.3 Lane Speed Reduction

A Lane Speed Reduction will be categorised as follows:

(a) if the Lane Speed Reduction is for Development Activities excluding Initial Rehabilitation Works, then it will be deemed a **Development Lane Speed Reduction** and must adhere to section 2.2(a) of Part H18 of the PSDR;

(b) if the Lane Speed Reduction is for Initial Rehabilitation Works, then it will be deemed an **Initial Rehabilitation Works Lane Speed Reduction** and must adhere to section 2.2(a) of Part H18 of the PSDR; and

(c) if the Lane Speed Reduction is for Services, then it will be deemed a **Maintenance Lane Speed Reduction** and must adhere to section 3.2(a) of Part H18 of the PSDR.

4.4 Lane Access Adjustment calculation and application over the different phases

During the Initial Phase, the Lane Access Adjustment shall be calculated and applied in accordance with section 4.5.

During the Maintenance Phase (Full), the Lane Access Adjustment shall be calculated and applied in accordance with section 4.6.

4.5 Calculation and application of the total Lane Access Adjustment during the Initial Phase

The total Lane Access Adjustment during the Initial Phase is the sum of the Development Lane Access Adjustment (incurred for any Development Lane Closures and any

Development Lane Speed Reductions), the Initial Rehabilitation Works Lane Access Adjustment (incurred for any Initial Rehabilitation Works Lane Closures and any Initial Rehabilitation Works Lane Speed Reduction) and the Maintenance Lane Access Adjustment (incurred for any Maintenance Lane Closures and Maintenance Lane Speed Reductions).

The Development Lane Access Adjustment during the Initial Phase shall be calculated on an accrual basis quarterly and applied against the first Service Payment applicable in the Maintenance Phase (Full).

The Initial Rehabilitation Works Lane Access Adjustment during the Initial Phase shall be calculated on the Date of Commercial Acceptance and applied against the first Service Payment applicable in the Maintenance Phase (Full).

The Maintenance Lane Access Adjustment during the Initial Phase shall be calculated on an accrual based quarterly and applied against the first Service Payment applicable in the Maintenance Phase (Full).

The Lane Access Adjustment during the Initial Phase (**LAAq**) is calculated as follows:

[not disclosed]

Please refer to Annexure F for worked examples (specifically Example 1, 2 and 3) calculating the total Lane Access Adjustment during the Initial Phase.

4.5.1 Calculation and application of Development Lane Access Adjustment for each Quarter

The Development Lane Access Adjustment for each Quarter during the Initial Phase (**DLAAq**) is calculated as set out below.

[not disclosed]

4.5.2 Calculation of the Development Lane Access schedule amount

The Development Lane Access schedule amount (**DLASAq**) for the relevant Quarter is calculated as follows:

[not disclosed]

4.5.3 Calculation and application of Initial Rehabilitation Works Lane Access Adjustment

The Initial Rehabilitation Works Lane Access Adjustment for the Initial Phase (**IRLAA**) is calculated as set out below.

[not disclosed]

4.5.4 Calculation of the Initial Rehabilitation Works Lane Access schedule amount

The Initial Rehabilitation Works Lane Access schedule amount (**IRLASA**) for the Initial Phase is calculated as follows:

[not disclosed]

4.5.5 Calculation of Maintenance Lane Access Adjustment for each Quarterly period

The Maintenance Lane Access Adjustment (**MLAAq**) for the relevant Quarter is calculated as follows:

[not disclosed]

4.5.6 Calculation of the Maintenance Lane Access schedule amount

The Maintenance Lane Access schedule amount (**MLASAq**) for the relevant Quarter is calculated as follows:

[not disclosed]

4.5.7 Calculation of the Lane Access Points Amount

The Lane Access Points Amount (**LAPAq**) for the quarter within the relevant Quarterly period is calculated as follows:

[not disclosed]

4.6 Calculation and application of the total Lane Access Adjustment during the Maintenance Phase (Full)

During the Maintenance Phase (Full), the Lane Access Adjustment is calculated and applied on a Quarterly basis. The total Lane Access Adjustment (**LAAq**) during the Maintenance Phase (Full) is calculated as follows:

[not disclosed]

4.6.1 Calculation and application of the Maintenance Lane Access Adjustment during the Maintenance Phase (Full)

The total Maintenance Lane Access Adjustment for each Quarter is calculated as follows:

[not disclosed]

4.6.2 Calculation of the Maintenance Lane Access schedule amount

The Maintenance Lane Access schedule amount (**MLASAq**) for the relevant Quarter is calculated as follows:

[not disclosed]

5. Performance Abatement

The State is entitled to make deductions from the Service Payment where Project Co fails to perform in accordance with the requirements set out in the KPI Summary.

5.1 Key Performance Indicators

The KPIs are numbered 1 to 8 (inclusive) in the KPI Summary. Each KPI is measured on the basis specified in the column entitled 'Measurement' in the KPI Summary.

5.2 Calculation of Performance Abatement

The Performance Abatement (**PAq**) for each Quarter is calculated as follows:

[not disclosed]

5.3 Calculation of the Performance Point Amount for the Maintenance Phase (Initial)

The Performance Point Amount for the relevant Quarter (**PPAq**) during the Maintenance Phase (Initial) is calculated as follows:

[not disclosed]

Where:

[not disclosed]

5.4 Calculation of the Performance Point Amount for the Maintenance Phase (Full)

The Performance Point Amount for the relevant Quarter (**PPAq**) during the Maintenance Phase (Full) is calculated as follows:

[not disclosed]

Please refer to Annexure F for worked examples (specifically Example 4 and 5) calculating the total Performance Abatement during the Maintenance Phase (Full).

6. Aboriginal Persons Employment Adjustment

(Aboriginal Persons Employment Adjustment) (**APEA**) applies only if Project Co does not meet the Aboriginal Persons Employment Commitment. The Aboriginal Persons Employment Adjustment is a one-off liquidated damages amount adjustment applied to the first Service Payment in the Maintenance Phase (Full) and is calculated as:

[not disclosed]

7. Local Content Requirements Adjustment

(Local Content Requirements Adjustment) (**LCRA**) applies only if Project Co does not meet the Local Content Requirements (**CLC**) for performance of the Works.

The LCRA is a one-off liquidated damages amount adjustment applied against the first Service Payment in the Maintenance Phase (Full). The Local Content Requirements Adjustment applies when the actual of level of Local Content (ANZ) (**ALC**) as outlined in the calculation below, is less than the Local Content Requirements (96.0%).

Where:

LCRA = the Local Content Requirements Adjustment as determined in the table below:

Table 1: Local Content Requirements Adjustment

% (LCP)	LCPA
If the LCP calculated below is greater than or equal to [not disclosed]% and less than or equal to [not disclosed]%	[not disclosed]
If the LCP calculated below is greater than or equal to [not disclosed]% and less than or equal to [not disclosed]%	[not disclosed]
If the LCP calculated below is greater than [not disclosed]%	[not disclosed]

[not disclosed]

8. Floating Rate Component Payment

(a) This section 8 applies for the purposes of calculating the Floating Rate Component and in order to enable Project Co to prepare a Floating Rate Component Invoice in accordance with clause 34.8.

(b) On the first day of each Interest Period after the FRC Commencement Date, the Floating Rate Component will be calculated for that Interest Period as follows:

[not disclosed]

where:

[not disclosed]

(c) The Floating Rate Component may be a positive or negative amount.

(d) Upon a Refinancing, Project Co may request an amendment to the schedule of the Base Case Floating Rate Debt and the Base Case Interest Rate, such that the net present cost to the State of paying the Floating Rate Component for the remainder of the Term based upon the schedule of Base Case Floating Rate Debt and the Base Case Interest Rate as at Financial Close, is equal to the net present cost to the State of paying the Floating Rate Component based upon the revised schedule of Base Case Floating Rate Debt and the revised Base Case Interest Rate. In each case, the net present cost will be calculated at the time of the Refinancing, based upon prevailing market rates, using generally accepted market conventions and Treasury Corporation of Victoria swap margin pricing methodologies. For the avoidance of doubt, this may include an upfront payment to or from the State as mutually agreed.

9. Major Project Skill Guarantee Adjustment

(Major Project Skills Guarantee Adjustment) (**MPSGA**) applies only if Project Co does not meet the Major Project Skills Guarantee Commitment for performance of the Works.

The MPSGA is a one-off liquidated damages amount adjustment applied against the first Service Payment in the Maintenance Phase (Full). The MPSGA applies when the actual number of labour hours for the Works performed by Apprentices, Trainees and Engineering Cadets is less than 10% of the total labour hours for the Works.

[not disclosed]

If the MPSGA calculated in accordance with the above formula is less than zero, then the Major Projects Skills Guarantee Adjustment will be deemed to be zero.

Annexure A Lane Access Adjustment

A.1 Lane Access Points

(**Lane Access Points**): To identify the Lane Access Points for a Lane Closure or Lane Speed Reduction as applicable:

(a) For a Lane Closure, take the Lane Closure Units for that Lane Closure and multiply them by the applicable number of points contained in the tables in this Annexure A subject to whether it is a Peak, Inter peak or Off Peak (Table 5) and Permitted, Non-Permitted or Unplanned Access (Tables 2, 3 and 4); and

(b) For a Lane Speed Reduction, take the Lane Speed Reduction Units for that Lane Speed Reduction and multiply them by the applicable number of points contained in the tables in this Annexure A subject to whether it is a Peak, Inter Peak or Off Peak (Table 5) and Permitted, Non-Permitted or Unplanned Access (Tables 2, 3 and 4).

Where a Lane Closure Unit or Lane Speed Reduction Unit occurs across Time Factor Periods the points attributed to that unit will reflect the higher points allocation of the two Time Factor Periods.

For Permitted Lane Access, the number of points shall be allocated based on Table 2 (Permitted Lane Access Points) outlined below.

Table 2: Permitted Lane Access Points

Day	Period	Number of Points	
		Lane Closure	Lane Speed Reduction
Business Day	Peak	[not disclosed]	[not disclosed]
	Inter Peak	[not disclosed]	[not disclosed]
	Off Peak	[not disclosed]	[not disclosed]
A day other than a Business Day	Peak	[not disclosed]	[not disclosed]
	Inter Peak	[not disclosed]	[not disclosed]
	Off Peak	[not disclosed]	[not disclosed]

For Non-Permitted Lane Access, the number of points shall be allocated based on Table 3 (Non-Permitted Lane Access Points) outlined below.

Table 3: Non-Permitted Lane Access Points

Day	Period	Number of Points	
		Lane Closure	Lane Speed Reduction
Business Day	Peak	[not disclosed]	[not disclosed]
	Inter Peak	[not disclosed]	[not disclosed]
	Off Peak	[not disclosed]	[not disclosed]
A day other than a Business Day	Peak	[not disclosed]	[not disclosed]
	Inter Peak	[not disclosed]	[not disclosed]
	Off Peak	[not disclosed]	[not disclosed]

For Unplanned Lane Access, the number of points shall be allocated based on Table 4 (Unplanned Lane Access Points) outlined below.

Table 4: Unplanned Lane Access Points

Day	Period	Number of Points	
		Lane Closure	Speed Reduction
Business Day	Peak	[not disclosed]	[not disclosed]
	Inter Peak	[not disclosed]	[not disclosed]
	Off Peak	[not disclosed]	[not disclosed]
A day other than a Business Day	Peak	[not disclosed]	[not disclosed]
	Inter Peak	[not disclosed]	[not disclosed]
	Off Peak	[not disclosed]	[not disclosed]

(**Time Factor Periods**) For the purposes of section 4.1, the Time Factor Periods that determine the Peak / Inter Peak / Off Peak periods applicable to each Lane Closure Unit or Lane Speed Reduction Unit during a weekly period ([not disclosed]) are outlined below in Table 5.

Table 5: Time Factor Periods

Day	Period	Timing Begin	Timing End
Business Day	Peak (AM)	[not disclosed]	[not disclosed]
	Inter Peak	[not disclosed]	[not disclosed]
	Peak (PM)	[not disclosed]	[not disclosed]
	Off Peak	[not disclosed]	[not disclosed]
A day other than a Business Day	Inter Peak (AM)	[not disclosed]	[not disclosed]
	Peak	[not disclosed]	[not disclosed]
	Inter Peak (PM)	[not disclosed]	[not disclosed]
	Off Peak	[not disclosed]	[not disclosed]

A.2 Review of Time Factor periods and Lane Access Points Tables

1. (**Review by the State**): No later than [not disclosed] prior to the end of each Revision Period, the State may (in consultation with Project Co) review and adjust the Time Factor Periods Table (Table 5) or the Lane Access Points Tables (Tables 2, 3 or 4) having regard to the factors set out in section A.2.2.

2. (**State may increase or decrease**): The State may increase or decrease any of the Lane Access Points (in Tables 2, 3 or 4) or extend or minimise the allocated times in the Time Factor Periods Table (Table 5):

    (a) for any given Lane Access;

    (b) in accordance with:

        (i) current or anticipated changes in traffic patterns on different roads; and

        (ii) the objective of minimising disruption to traffic

(c) so that the period of time during which the Time Factor Periods expressed as Inter Peak or Peak will not increase by more than [not disclosed], as compared to the Time Factor Periods immediately prior to the revision; and

(d) the total accumulated Lane Access Points over an entire weekly period (taking into consideration the Time Factor Periods above) do not increase by more than [not disclosed]% as compared to the total accumulated Lane Access Points immediately prior to the revision.

3. (**Notification**): No later than [not disclosed] to the end of each Revision Period, the State must provide Project Co with either:

(a) revised versions of; or

(b) a notice stating that it does not intend to amend,

the Time Factor Periods or Lane Access Points.

4. (**Effect**): The amendments (if any) to the Time Factor Periods or Lane Access Points provided to Project Co in accordance with section A.2.2 will take effect from the commencement of the first Quarter following the relevant Revision Date.

5. (**Dispute**): If Project Co disagrees with the revised versions of the Time Factor Periods or Lane Access Points provided by the State in accordance with section A.2.2, then Project Co:

(a) must, within [not disclosed] of receipt of the revised Time Factor Periods or Lane Access Points from the State, give notice of its disagreement to the State;

(b) must consult in good faith with the State and use reasonable endeavours to resolve the matter of the disagreement; and

(c) if the matter is not resolved within [not disclosed] after the date of Project Co's notice under section A.2.3, Project Co may, by notice to the State, refer the matter for determination in accordance with clauses 48 to 50 this Deed.

A.3 Development Lane Closure, Initial Rehabilitation Works Lane Closure, Development Lane Speed Reduction and Initial Rehabilitation Works Lane Speed Reduction

For the purposes of determining a Development Lane Closure, an Initial Rehabilitation Works Lane Closure, a Development Lane Speed Reduction or an Initial Rehabilitation Works Lane Speed Reduction, Project Co must adhere to section 2 of Part H18 of the PSDR. This section A.3 outlines when a Permitted Lane Access, Non-Permitted Lane Access and an Unplanned Lane Access occurs in respect of a Development Lane Closure, an Initial Rehabilitation Works Lane Closure, a Development Lane Speed Reduction or an Initial Rehabilitation Works Lane Speed Reduction.

A3.1 Permitted Lane Access

A Development Lane Closure, an Initial Rehabilitation Works Lane Closure, a Development Lane Speed Reduction or an Initial Rehabilitation Works Lane Speed Reduction can only be considered a Permitted Lane Access if Project Co adheres to the requirements of section 2.2(a) in Part H18 of the PSDR.

Permitted Lane Access Points are determined in accordance with Table 2 (Permitted Lane Access Points).

A3.2 Non-Permitted Lane Access

If a Development Lane Closure, an Initial Rehabilitation Works Lane Closure, a Development Lane Speed Reduction or an Initial Rehabilitation Works Lane Speed Reduction is a Non-Permitted Lane Access, it must adhere to section 4 of Part H18 of the PSDR.

Non-Permitted Lane Access Points are determined in accordance with Table 3 (Non-Permitted Lane Access Points).

A3.3 Unplanned Lane Access

If a Development Lane Closure, an Initial Rehabilitation Works Lane Closure, a Development Lane Speed Reduction or an Initial Rehabilitation Works Lane Speed Reduction is an Unplanned Lane Access, it must adhere to section 7 of Part H18 of the PSDR.

Unplanned Lane Access Points are determined in accordance with Table 4 (Unplanned Lane Access Points).

In any circumstance during the Initial Phase where Project Co has scheduled to allow for at least one Lane to be open for through traffic in any single direction and in fact closes all Lanes or does not provide a Lane for through traffic (in any single direction) on any Project Roads set out in (a) to (g) below, the Peak points rate for Unplanned Lane Access set out in Table 4 (Unplanned Lane Access Points) will apply to those applicable Lane Closures regardless of the time the Lanes are closed.

(a) Dunnings Road;

(b) Palmers Road;

(c) Derrimut Road;

(d) Leakes Road;

(e) Dohertys Road;

(f) Forsyth Road; and

(g) Duncans Road.

A.4 Maintenance Lane Closure and Maintenance Lane Speed Reduction

For the purposes of determining a Maintenance Lane Closure or Maintenance Lane Speed Reduction, Project Co must adhere to Section 3 of Part H18 of the PSDR. This section A.4 outlines when a Permitted Lane Access, Non-Permitted Lane Access or an Unplanned Lane Access occurs in respect of a Maintenance Lane Closure or a Maintenance Lane Speed Reduction.

A.4.1 Permitted Lane Access

A Maintenance Lane Closure or Maintenance Lane Speed Reduction can only be considered a Permitted Lane Access, if it adheres to the requirements of section 3.2(a) in Part H18 of the PSDR.

Permitted Lane Access Points are determined in accordance with Table 2 (Permitted Lane Access Points).

A.4.2 Non-Permitted Lane Access

If a Maintenance Lane Closure or Maintenance Lane Speed Reduction is a Non-Permitted Lane Access, it must adhere to the requirements of section 4 in Part H18 of the PSDR.

Non-Permitted Lane Access Points are determined in accordance with Table 3 (Non-Permitted Lane Access)

A.4.3 Unplanned Lane Access

If a Maintenance Lane Closure or Maintenance Lane Speed Reduction is an Unplanned Lane Access, it must adhere to section 7 of Part H18 of the PSDR.

Unplanned Lane Access Points are determined in accordance with Table 4 (Unplanned Lane Access Points).

Annexure B Performance Abatements

B.1 General overview of the KPIs

1. (**Purpose**): This Annexure B sets out the KPIs applied during the Initial Phase and Maintenance Phase in order to measure Project Co's performance.

2. (**Summary**): The KPIs set out in the KPI Summary of this Annexure B are separated into 7 categories, being:

    1. Inspections;

    2. Response;

    3. Compliance;

    4. Pavement performance;

    5. Structures performance;

    6. Reporting; and

    7. Safety.

3. (**Minimum Performance Outcome**): The minimum performance outcomes required of Project Co for each KPI are detailed in Table 6 (KPI Summary) in the 'Performance Target' column. Project Co is to meet or exceed (where relevant) the Performance Target defined for each KPI in order to avoid incurring Performance Abatements.

4. (**Performance Target**): In assessing Project Co's performance against the Performance Targets, all numbers will be rounded down to the next whole number.

5. (**Not to derogate from KPI Table**): Project Co acknowledges and agrees that the contents of this section B.1 of this Annexure B:

    (a) do not derogate from Project Co's obligations under the State Project Documents; and

    (b) are not an exhaustive list of the performance standards and outcomes Project Co may be required to achieve to meet the KPIs and its obligations under the Project Documents.

6. (**KPI Summary to prevail to the extent of any inconsistency**): If there is any conflict or inconsistency between this section B.1 of this Annexure B and the KPI Summary, the KPI Summary will prevail.

7. (**Measurement Method**): Where specified in the KPI Summary, Project Co must monitor compliance with KPIs. Project Co's reporting requirements in respect of the KPIs are set out in the Deed.

B.2 Calculation of Performance Points for each Quarter

(**Performance Points**): For the purposes of section 5, the Performance Points (**PPs**) incurred by Project Co for a KPI Incident are determined in accordance with the KPI Summary in Table 6.

B.3 Calculation of Performance Point Ratchet for each Quarter

1. (**Calculation**): Where Project Co has accumulated Performance Points in relation to a KPI Incident and Table 6 provides that a Performance Point Ratchet applies, the Performance Point Ratchet for a relevant Quarter, in respect of that KPI (**PPR**), is:

   (a) [not disclosed], if Project Co did not incur Performance Points for the immediately preceding Quarter in respect of the same KPI;

   (b) [not disclosed], if it is the [not disclosed] consecutive Quarter in which Project Co has incurred Performance Points for the same KPI;

   (c) [not disclosed], if it is the [not disclosed] consecutive Quarter in which Project Co has incurred Performance Points for the same KPI; or

   (d) [not disclosed], if it is the [not disclosed] consecutive Quarter in which Project Co has incurred Performance Points for the same KPI.

2. (**Calculation for subsequent consecutive Quarters**): If Performance Points are accumulated by Project Co for a [not disclosed] and any subsequent consecutive Quarter for the same KPI, then the Performance Point Ratchet for the [not disclosed] and each subsequent consecutive Quarter will be calculated at a rate of [not disclosed]% of the Performance Point Ratchet for the previous Quarter.

B.4 KPI Summary

(**Overview**): The information contained in the KPI Summary Table 6 is presented in the manner described in the following paragraphs:

1. The first column of the KPI Summary, headed "No." allocates a reference number for each KPI.

2. The second column of the KPI Summary, headed "KPI", describes each KPI that Project Co is required to meet or exceed (where relevant), and also provides a reference to the key documents specifying each KPI requirement.

3. The third column of the KPI Summary, headed "Measurement Method and Frequency", sets out the KPI measuring methods and frequencies that will be adopted to determine Project Co's performance against each KPI.

4. The fourth column of the KPI Summary, headed "Performance Assessment Period", sets out the frequency of the calculation of Performance Abatements in respect of the KPI.

5. The fifth column of the KPI Summary, headed "Performance Target", sets out the level of performance below which non-compliance is deemed to occur.

6. The sixth column of the KPI Summary, headed "Performance Failure", sets out the number of Performance Points incurred by Project Co in respect of each KPI Incident provided that Project Co's actual level of performance is below the Performance Target within the nominated KPI category or level.

7. The seventh column of the KPI Summary, headed "Ratchet", sets out whether the ratchet is applied against the respective KPI for multiple Quarterly failures where Project Co's actual level of performance is below the Performance Target for consecutive periods.

8. The headings shaded grey and set out at the beginning of each KPI category in the KPI Summary are for guidance only. Project Co is only required to meet those KPIs that are allocated Performance Points.

Table 6: KPI Summary

No.	KPI	Measure Method and Frequency	Performance Assess Period	Performance Target	Performance Failure	Performance Point Ratchet
Inspections						
1.1	**Hazard Inspection** During the Maintenance Phase, Project Co must ensure that safety inspections are carried out in accordance with the safety inspections requirements set out in the Code of Maintenance Standards. An individual non-compliance is an inspection missed or not conducted in accordance with the requirements set out in the Code of Maintenance Standards. Where the Performance Target is not met, each individual non-compliance below the target will result in an individual KPI Incident. PSDR reference: section 7 of Part F7 (Code of Maintenance Standards).	Project Co monitor / Quarterly reporting	Quarterly	[not disclosed]%	Incremental calculation based on the hazard inspection rate band: [not disclosed] PP(s) per KPI Incident where the hazard inspection rate during the Quarter is below [not disclosed]% but above or equal to [not disclosed]%. [not disclosed] PP(s) per KPI Incident where the hazard inspection rate during the Quarter is below [not disclosed]% but above or equal to [not disclosed]%. [not disclosed] PP(s) per KPI Incident where the hazard inspection rate during the Quarter is below [not disclosed]%. The term 'hazard inspection rate' means the total number of safety inspections completed during the Quarter in accordance with the requirements, set out in the Code of Maintenance Standards, divided by the total number of safety inspections that should have been completed during the same Quarter in accordance with the requirements set out in the Code of Maintenance Standards.	See Note 1 below.
1.2	**Defect Inspection** During the Maintenance Phase, Project Co must ensure that inspections are carried out in accordance with the defect inspections requirements set out in the Code of Maintenance Standards. An individual non-compliance is an inspection missed or not conducted in accordance with the requirements set out in the Code of Maintenance Standards. Where the Performance Target is not met, each individual non-compliance below the target will result in an individual KPI Incident. PSDR reference: section 7 of Part F7 (Code of Maintenance Standards).	Project Co monitor / Quarterly reporting	Quarterly	[not disclosed]%	Incremental calculation based on the defect inspection rate band: [not disclosed] PP(s) per KPI Incident where the defect inspection rate during the Quarter is below [not disclosed]% but above or equal to [not disclosed]%. [not disclosed] PP(s) per KPI Incident where the defect inspection rate during the Quarter is below [not disclosed]% but above or equal to [not disclosed]%. [not disclosed] PP(s) per KPI Incident where the defect inspection rate during the Quarter is below [not disclosed]%. The term 'defect inspection rate' means the total number of defect inspections completed during the Quarter in accordance with the requirements, set out in the Code of Maintenance Standards, divided by the total number of defect inspections that should have been completed during the same Quarter in accordance with the requirements set out in the Code of Maintenance Standards.	See Note 1 below.
1.3	**Structure Condition Inspection** During the Maintenance Phase, Project Co must ensure that inspections are carried out in accordance with the condition inspections requirements set out in section 8.2(b)(i)(B) of Part F7 and section 8.3(b)(ii) of	Project Co monitor / quarterly reporting	Quarterly	Level 1 = [not disclosed]% Level 2 = [not disclosed]%	Incremental calculation based on the condition inspection rate band: **Level 1 inspection:**	See Note 1 below.

No.	KPI	Measure Method and Frequency	Performance Assess Period	Performance Target	Performance Failure	Performance Point Ratchet
	Part F7 of the PSDR and the Code of Maintenance Standards. An individual non-compliance is an inspection programmed for a structure, for a specific Quarter and not completed during the designated Quarter or not conducted in accordance with the requirements set out in section 8.2(b)(i)(B) of Part F7 and section 8.3(b)(ii) of Part F7 of the PSDR and the Code of Maintenance Standards. Where the Performance Target is not met, each individual non-compliance below the target will result in an individual KPI Incident. PSDR reference: section 8.2(b)(i)(B) of Part F7 and section 8.3(b)(ii) of Part F7 of the PSDR and the Code of Maintenance Standards.				[not disclosed] PP(s) per KPI Incident where the condition inspection rate during the Quarter is below [not disclosed]% but above or equal to [not disclosed]%. [not disclosed] PP(s) per KPI Incident where the condition inspection rate during the designated Quarter is below [not disclosed]%. **Level 2 inspection:** [not disclosed] PP(s) per KPI Incident where the condition inspection rate during the Quarter is below [not disclosed]% but above or equal to [not disclosed]%. [not disclosed] PP(s) per KPI Incident where the condition inspection rate during the Quarter is below [not disclosed]%. The term 'condition inspection rate' means the total number of condition inspections completed during the Quarter in accordance with the requirements, set out in section 8.2(b)(i)(B) of Part F7 and section 8.3(b)(ii) of Part F7 of the PSDR and the Code of Maintenance Standards, divided by the total number of condition inspections that should have been completed during the same Quarter **plus any inspections that were missed in the previous quarter** in accordance with the requirements set out in section 8.2(b)(i)(B) of Part F7 and section 8.3(b)(ii) of Part F7 of the PSDR and the Code of Maintenance Standards.	
Response						
2.1	**Hazard Response** During the Maintenance Phase, Project Co must ensure that the hazard response, from the time Project Co identifies a hazard by inspection or receives notification from the State or VicRoads of a hazard to the time the hazard is rectified by Project Co, is compliant with the requirements set out in the Code of Maintenance Standards. PSDR reference: section 7 of Part F7 (Code of Maintenance Standards). Where the Performance Target is not met, each individual non-compliance below the target will result in an individual KPI Incident.	Project Co monitor / Quarterly reporting	Quarterly	[not disclosed]%	Incremental calculation based on the hazard intervention rate band: [not disclosed] PP(s) per KPI Incident if the hazard intervention rate during the Quarter is below [not disclosed]% but above or equal to [not disclosed]%. [not disclosed] PP(s) per KPI Incident if the hazard intervention rate during the Quarter is below [not disclosed]% but above or equal to [not disclosed]%. [not disclosed] PP(s) per KPI Incident if the hazard intervention rate, in percentage, during the Quarter is below [not disclosed]%. The term 'hazard intervention rate' means the total number of hazard interventions performed by Project Co during the Quarter in accordance with the PSDR divided by the total number of hazard interventions to which Project Co was required to respond to and complete during that Quarter in accordance with the PSDR.	See Note 1 below.

No.	KPI	Measure Method and Frequency	Performance Assess Period	Performance Target	Performance Failure	Performance Point Ratchet
2.2	**Defect Response** During the Maintenance Phase, Project Co must ensure that the Defect response, from the time Project Co identifies a Defect by inspection or receives notification from the State or VicRoads of a **Category A** and/or a **Category B** Defect to the time the Defect is rectified by Project Co, is compliant with the requirements set out in the Code of Maintenance Standards with the exception of activities under items RM411 to RM416 and RM611 to 613 identified in the Table 750.H11 -Routine Maintenance Intervention Criteria and Response which shall commence from the date which is [not disclosed] after the commencement of the Maintenance Phase. PSDR reference: section 7 of Part F7 (Code of Maintenance Standards). Where the Performance Target is not met, each individual non-compliance below the target will result in an individual KPI Incident.	Project Co monitor / Quarterly reporting	Quarterly	Cat A: [not disclosed]% Cat B: [not disclosed]%	Incremental calculation at the Category Level based on the defect intervention rate band: **Category A:** [not disclosed] PP(s) per KPI Incident if the defect intervention rate during the Quarter is below [not disclosed]% but above or equal to [not disclosed]%. [not disclosed] PP(s) per KPI Incident if the defect intervention rate during the Quarter is below [not disclosed]% but above or equal to [not disclosed]%. [not disclosed] PP(s) per KPI Incident if the defect intervention rate, in percentage, during the Quarter is below [not disclosed]%. **Category B:** [not disclosed] PP(s) per KPI Incident if the defect intervention rate during the Quarter is below [not disclosed]% but above or equal to [not disclosed]%. [not disclosed] PP(s) per KPI Incident if the defect intervention rate during the Quarter is below [not disclosed]% but above or equal to [not disclosed]%. [not disclosed] PP(s) per KPI Incident if the defect intervention rate during the Quarter is below [not disclosed]%. The term 'defect intervention rate' means the total number of defect interventions performed by Project Co during the Quarter in accordance with the PSDR divided by the total number of Defect interventions to which Project Co was required to complete during that Quarter in accordance with the PSDR. The defect intervention rate, for each Category A and Category B, is calculated considering the total number of interventions required to be completed in accordance with the requirements and the total number of interventions actually completed during the Quarter.	See Note 1 below.
2.3	**Emergency Response** During the Maintenance Phase, Project Co must ensure that the emergency response, from the time Project Co receives notification from the State or VicRoads of an Emergency Event to the time the Emergency Event is responded to by Project Co, is compliant with **each** of the requirements set out in the	Project Co monitor / Quarterly reporting	Quarterly	[not disclosed]%	Incremental calculation based on the emergency intervention rate band: [not disclosed] PP(s) per KPI Incident if the emergency intervention rate during the Quarter is below [not disclosed]% but above or equal to [not disclosed]%.	See Note 1 below.

No.	KPI	Measure Method and Frequency	Performance Assess Period	Performance Target	Performance Failure	Performance Point Ratchet
	section 2.3(i) of Part F1 (Emergency Response Plan) of the PSDR. An individual non-compliance is an Emergency response that is not conducted in accordance with any one requirement set out in section 2.3(i) of Part F1 (Emergency Response Plan) of the PSDR. Where the Performance Target is not met, each individual non-compliance below the target will result in an individual KPI Incident. PSDR reference: section 2.3(i) of Part F1.				[not disclosed] PP(s) per KPI Incident if the emergency intervention rate during the Quarter is below [not disclosed]% but above or equal to [not disclosed]%. [not disclosed] PP(s) per KPI Incident if the emergency intervention rate during the Quarter is below [not disclosed]%. The term 'emergency intervention rate' means the total number of emergency interventions performed by Project Co during the Quarter in accordance with the PSDR divided by the total number of emergency interventions to which Project Co was required to complete during that Quarter in accordance with the PSDR.	
Compliance						
3.1	**Code of Maintenance Standards** During the Maintenance Phase, Project Co must ensure that all activities (to the extent not already captured under KPI items 1.1, 1.2, 1.3, 2.1, 2.2 and 2.3) set out in the Code of Maintenance Standards**,** under items RM411 to RM416 and RM611 to 613 and RM 615 identified in the Table 750.H11 -Routine Maintenance Intervention Criteria and Response are completed in accordance with the requirements set out in the section 7 of Part F7 of the PSDR. From the date [not disclosed] after the Date of Maintenance Commencement until the end of the Maintenance Phase, Project Co must ensure that all activities under items RM411 to RM416 and RM611 to 613 and RM 615 identified in the Table 750.H11 - Routine Maintenance Intervention Criteria and Response set out in the Code of Maintenance Standards, are completed in accordance with the requirements set out in the section 7 of Part F7 of the PSDR. Where the Performance Target is not met, each individual non-compliance below the target will result in an individual KPI Incident.	Project Co monitor / quarterly reporting	Quarterly	Category A target = [not disclosed]% Category B target = [not disclosed]%	Incremental calculation based on the non-compliance rate band: **Category A** [not disclosed] PP(s) per KPI Incident if the overall non-compliance rate during the Quarter is below [not disclosed]% but above or equal to [not disclosed]%. [not disclosed] PP(s) per KPI Incident if the overall non-compliance rate during the Quarter is below [not disclosed]% but above or equal to [not disclosed]%. [not disclosed] PP(s) per KPI Incident if the non-compliance rate during the Quarter is below [not disclosed]%. **Category B** [not disclosed] PP(s) per KPI Incident if the overall non-compliance rate during the Quarter is below [not disclosed]% but above or equal to [not disclosed]%. [not disclosed] PP(s) per KPI Incident if the overall non-compliance rate during the Quarter is below [not disclosed]% but above or equal to [not disclosed]%. [not disclosed] PP(s) per KPI Incident if the non-compliance rate during the Quarter is below [not disclosed]%. The term 'non-compliance rate' means the total number of activities set out in the Code of Maintenance Standards performed by Project Co	See Note 1 below.

No.	KPI	Measure Method and Frequency	Performance Assess Period	Performance Target	Performance Failure	Performance Point Ratchet
	PSDR reference: section 7 of Part F7.				during the Quarter in accordance with the Code of Maintenance Standards divided by the total number of activities set out in the Code of Maintenance Standards to which Project Co was required to perform during that Quarter in accordance with the Code of Maintenance Standards.	
3.2	**Forecast Maintenance and Refurbishment Plan** During the Maintenance Phase, Project Co must ensure that all activities set out in the Forecast Maintenance and Refurbishment Plan are completed in accordance with that plan (as updated and reviewed by the State in accordance with the Review Procedures on an annual basis to reflect the condition monitoring of Project Assets). Completion of all activities set out in the Forecast Maintenance and Refurbishment Plan is to occur no later than [not disclosed] after the scheduled time for completion in that plan. Each individual non-compliance below the target will result in an individual KPI Incident. PSDR reference: section 2.3(h) of Part F1.	Project Co monitor / Quarterly reporting	Quarterly	[not disclosed]%	Incremental calculation based on the non-compliance rate band: [not disclosed] PP(s) per KPI Incident if the overall non-compliance rate during the Quarter is below [not disclosed]% but above or equal to [not disclosed]%. [not disclosed] PP(s) per KPI Incident if the overall non-compliance rate during the Quarter is below [not disclosed]% but above or equal to [not disclosed]%. [not disclosed] PP(s) per KPI Incident if the non-compliance rate during the Quarter is below [not disclosed]%. The term 'non-compliance rate' means the total number of activities set out in the Forecast Maintenance and Refurbishment Plan performed by Project Co during the Quarter in accordance with the Forecast Maintenance and Refurbishment Plan divided by the total number of activities set out in the Forecast Maintenance and Refurbishment Plan to which Project Co was required to perform during the same Quarter in accordance with the Forecast Maintenance and Refurbishment Plan.	See Note 1 below.
3.3	**Communications and Community Relations Plan** During the Maintenance Phase, Project Co must ensure that all activities set out in the Communications and Community Relations Plan are completed in accordance with that plan. Where the Performance Target is not met, each occasion where Project Co is non-compliant with any one of the Communications and Community Relations Plan requirements will result in an individual KPI Incident. PSDR reference: section 2.4(a) of Part F1.	Project Co monitor / Quarterly reporting	Quarterly	[not disclosed]%	Incremental calculation based on the non-compliance rate band: [not disclosed] PP(s) per KPI Incident if the overall non-compliance rate during the Quarter is below [not disclosed]% but above or equal to [not disclosed]%. [not disclosed] PP(s) per KPI Incident if the overall non-compliance rate during the Quarter is below [not disclosed]% but above or equal to [not disclosed]%. [not disclosed] PP(s) per KPI Incident if the non-compliance rate during the Quarter is below [not disclosed]%. The 'non-compliance rate' means the total number of activities set out in the Communications and Community Relations Plan performed by	See Note 1 below.

No.	KPI	Measure Method and Frequency	Performance Assess Period	Performance Target	Performance Failure	Performance Point Ratchet
					Project Co in accordance with that plan during the Quarter in accordance with that plan divided by the total number of activities set out in the Communications and Community Relations Plan to which Project Co was required to perform during the same Quarter in accordance with the Communications and Community Relations Plan.	
Pavement Performance						
4.1	**Roughness – Network based** During the Maintenance Phase (Initial), Project Co must ensure roughness limits set out in section 8.2(a)(ii) of Part F7 of the PSDR, are as a minimum achieved for pavement on the Project Roads. During the Maintenance Phase (Full), Project Co must as a minimum achieve the roughness limits set out in section 8.3(a)(ii)(A) of the PSDR, for pavement on the Project Roads. An individual KPI Incident will occur for each performance band failure to achieve the minimum roughness requirements during the Quarter that Project Co is required to release the relevant test results. Each subsequent Quarter that the failure is not rectified will result in a KPI Incident until the next annual test result is released. For the purposes of this KPI 4.1, Project Roads will not include the WGT Heavy Haulage Routes until the WGT Heavy Haulage Routes Date for Completion.	Project Co monitor annual testing / Quarterly reporting	Quarterly	[not disclosed]%	**Maintenance Phase (Initial) – Network-based roughness limits (measured in 100m long segments):** [not disclosed] PP(s) per KPI Incident where less than [not disclosed]% of the total lane kilometres of the Project Roads is less than or equal to [not disclosed] IRI (Failure Level 1). [not disclosed] PP(s) per KPI Incident where less than [not disclosed]% of the total lane kilometres of the Project Roads is less than or equal to [not disclosed] IRI (Failure Level 2). [not disclosed] PP(s) per KPI Incident where less than [not disclosed]% of the total lane kilometres of the Project Roads is less than or equal to [not disclosed] IRI (Failure Level 3). [not disclosed] PP(s) per KPI Incident where less than [not disclosed]% of the total lane kilometres of the Project Roads is less than or equal to [not disclosed] IRI (Failure Level 4). **Maintenance Phase (Full) – Network-based roughness limits (measured in 100m long segments):** [not disclosed] PP(s) per KPI Incident where less than [not disclosed]% of the total lane kilometres of the Project Roads is less than or equal to [not disclosed] IRI (Failure Level 1). [not disclosed] PP(s) per KPI Incident where less than [not disclosed]% of the total lane kilometres of the Project Roads is less than or equal to [not disclosed] IRI (Failure Level 2). [not disclosed] PP(s) per KPI Incident where less than [not disclosed]% of the total lane kilometres of the Project Roads is less than or equal to [not disclosed] IRI (Failure Level 3). [not disclosed] PP(s) per KPI Incident where less than [not disclosed]% of the total lane kilometres of the Project Roads is less than or equal to [not disclosed] IRI (Failure Level 4).	See Note 1 below.
4.1.1	**Roughness – Pavement Reporting Section based**	Project Co monitor	Quarterly	[not disclosed]%	**Maintenance Phase (Full) – Pavement Reporting Sections based:**	See Note 1 below.

No.	KPI	Measure Method and Frequency	Performance Assess Period	Performance Target	Performance Failure	Performance Point Ratchet
	During the Maintenance Phase (Full) an individual KPI Incident will occur for each 100m lane section of any Pavement Reporting Section failing to meet the minimum requirements set out in section 8.3(a)(ii)(B) and section 8.3(a)(ii)(C) of Part F7 of the PSDR. A KPI Incident for failure to achieve the minimum roughness requirements during the Quarter of the test results release will trigger an abatement for this specific Quarter and every additional subsequent Quarter until the failure(s) are either rectified or the next annual test result is released. For the purposes of this KPI 4.1.1, Pavement Reporting Section will not include any section of the WGT Heavy Haulage Routes until the WGT Heavy Haulage Routes Date for Completion.	annual testing / Quarterly reporting			For RMC 2 Project Roads - [not disclosed] PP(s) per KPI Incident for a failure, per extra 100m lane section above the [not disclosed]% threshold per Pavement Reporting Section, with a measure greater than [not disclosed] IRI. For RMC 3 Project Roads - [not disclosed] PP(s) per KPI Incident for a failure, per extra 100m lane section above the [not disclosed]% threshold per Pavement Reporting Section, with a measure greater than [not disclosed] IRI.	
4.2	**Rutting – Network based** During the Maintenance Phase (Initial), Project Co must ensure rutting limits set out in section 8.2(a)(iii) of Part F7 of the PSDR, are as a minimum achieved for pavement on the Project Roads. During the Maintenance Phase (Full), Project Co must as a minimum achieve the rutting limits set out in section 8.3(a)(iii)(A) of Part F7 of the PSDR, for pavement on the Project Roads. An individual KPI Incident will occur for each performance band failure to achieve the minimum rutting requirements during the Quarter that Project Co is required to release the relevant test results. Each subsequent Quarter that the failure is not rectified will result in a KPI Incident until the next annual test result is released. PSDR reference: section 8 of Part F7. For the purposes of this KPI 4.2, Project Roads will not include the WGT Heavy Haulage Routes until the WGT Heavy Haulage Routes Date for Completion.	Project Co monitor annual testing / quarterly reporting	Quarterly	[not disclosed]%	**Maintenance Phase (Initial) – Network-based rutting limits (measured in 100m long segments):** [not disclosed] PP(s) per KPI Incident where less than [not disclosed]% of the total lane kilometres of the Project Roads is less than or equal to 5mm (Failure Level 1). [not disclosed] PP(s) per KPI Incident where less than [not disclosed]% of the total lane kilometres of the Project Roads is less than or equal to 10mm (Failure Level 2). [not disclosed] PP(s) per KPI Incident where less than [not disclosed]% of the total lane kilometres of the Project Roads is less than or equal to 15mm (Failure Level 3). **Maintenance Phase (Full) – Network-based rutting limits (measured in 100m long segments):** [not disclosed] PP(s) per KPI Incident where less than [not disclosed]% of the total lane kilometres of the Project Roads is less than or equal to 5mm (Failure Level 1). [not disclosed] PP(s) per KPI Incident where less than [not disclosed]% of the total lane kilometres of the Project Roads is less than or equal to 10mm (Failure Level 2). [not disclosed] PP(s) per KPI Incident where less than [not disclosed]% of the total lane kilometres of the Project Roads is less than or equal to 15mm (Failure Level 3).	See Note 1 below.

No.	KPI	Measure Method and Frequency	Performance Assess Period	Performance Target	Performance Failure	Performance Point Ratchet
4.2.1	**Rutting – Pavement Reporting Section based** During the Maintenance Phase (Full) an individual KPI Incident will occur for each 100m lane section of any Pavement Reporting Section failing to meet these requirements as set out in section 8.3(a)(iii)(B) of Part F7 of the PSDR. A KPI Incident for failure to achieve the minimum rutting requirements during the Quarter of the test results release will trigger an abatement for this specific Quarter and every additional subsequent Quarter until the failure is either rectified or the next annual test result is released. For the purposes of this KPI 4.2.1, Pavement Reporting Section will not include any section of the WGT Heavy Haulage Routes until the WGT Heavy Haulage Routes Date for Completion**.**	Project Co monitor annual testing / quarterly reporting	Quarterly	[not disclosed]%	**Maintenance Phase (Full) – Pavement Reporting Section based:** [not disclosed] PP(s) per KPI Incident for a failure, per extra 100m lane section of any Pavement Reporting Section above the [not disclosed]% threshold, with a measure greater than 10mm rutting.	See Note 1 below.
Structures Performance						
5.1	**Structures Performance** During the Maintenance Phase (Initial) in relation only to Existing Structural Assets, Project Co must ensure that Existing Structural Assets are operating at their designed load, speed, and availability levels with no restrictions applied, in accordance with the requirements set out in section 8.2(b)(i)(A) of Part F7 of the PSDR. A [not disclosed] grace period will apply in relation to this KPI to all Existing Structural Assets that are subject to Initial Rehabilitation Works. During the Maintenance Phase (Full), Project Co must ensure that all Structures are operated at their designed load, speed and Lane availability levels with no load restrictions applied, in accordance with the requirements set out in section 8.3(b)(i)(A) of Part F7 of the PSDR. An individual KPI Incident will occur for each Structure failing to achieve this requirement on a daily basis.	Project Co monitor and Quarterly reporting	Quarterly	[not disclosed]%	From the date which is [not disclosed] after the commencement of the Maintenance Phase (Initial) until the start of the Maintenance Phase (Full), [not disclosed] PP(s) per Existing Structural Asset subject to Initial Rehabilitation Works, per day, from the notification of a restriction / limitation performance failure until the performance failure is rectified. From commencement of the Maintenance Phase (Initial) until the start of the Maintenance Phase (Full), [not disclosed] PP(s) per Existing Structural Asset not subject to Initial Rehabilitation Works, per day from the notification of a restriction / limitation performance failure, until the performance failure is rectified. During the Maintenance Phase (Full), [not disclosed] PP(s) per structure per day where a Structural Asset is non-compliant from the day of notification of a restriction / limitation performance failure until the day the performance failure has been rectified. If the State gives a notice of non-compliance in respect of the Dynon Road Bridge prior to the Dynon Road Bridge Date for Completion, PP(s) will commence to be incurred [not disclosed] after the State's notice if the non-compliance the subject of the notice has not been rectified.	See Note 1 below.

No.	KPI	Measure Method and Frequency	Performance Assess Period	Performance Target	Performance Failure	Performance Point Ratchet
	PSDR reference: section 8 of Part F7.					
Reporting category						
6.1	**Asset Management System Availability** During the Maintenance Phase, Project Co must ensure the Asset Management System is available to the State and VicRoads, in accordance with the requirements set out in section 1 of Part D of the PSDR. Availability of Project Co's Asset Management System will commence to be measured: • [not disclosed] after Financial Close excluding the Asset Inventory related to drainage; and • [not disclosed] after Financial Close including the Asset Inventory related to drainage. PSDR reference: section 1 of Part D.	Project Co monitor and monthly reporting	Quarterly	[not disclosed]%	[not disclosed] PP(s) if the Asset Management System is not available for a period of [not disclosed] or more within a Quarterly period from Financial Close.	See Note 1 below.
7.1	**General Reporting** During the Initial Phase, Project Co must submit Monthly Development Phase Progress Reports and the Monthly Maintenance Phase Performance Reports in accordance with the Deed. During the Maintenance Phase (Full), Project Co must submit Monthly Maintenance Phase Performance Reports in accordance with the Deed. Any further information requested or clarifications sought by the State must also be provided by Project Co as per the requirements the Deed. If a Monthly Maintenance Phase Performance Report or the Monthly Development Phase Progress Reports are not submitted in accordance with the requirements set out in the Deed (including times, documentation and format) then it is a KPI Incident.	Project Co monitor / Quarterly reporting	Quarterly	[not disclosed]%	[not disclosed] PP(s) for every KPI Incident.	See Note 1 below.
Safety						
8.1	**Safety** During the Initial Phase and Maintenance Phase, an individual Safety KPI Incident is an Event for incidents which result in a Lost Time Injury (LTI), Total and Permanent Disability or Fatality to any employee, or	Project Co monitor / Quarterly reporting	Quarterly	[not disclosed] KPI Incidents for an LTI per Quarter	[not disclosed] PP(s) per KPI Incident for an LTI recorded above the target per Quarter. [not disclosed] PP(s) per KPI Incident for a Total and Permanent Disability	See Note 1 below.

No.	KPI	Measure Method and Frequency	Performance Assess Period	Performance Target	Performance Failure	Performance Point Ratchet
	contractor, or consultant of Project Co or its contractors or sub-contractors in connection with the performance of the Services or Works.			[not disclosed]% for KPI Incidents for Total and Permanent Disability and Fatality	[not disclosed] PP(s) per KPI Incident for a Fatality For the avoidance of doubt, an individual KPI incident for an LTI, Total and Permanent Disability and Fatality will be recorded on Event basis. Each subsequent day missed due to the injury sustained will not be recorded as a further individual KPI Incident.	

Note 1: The Performance Point Ratchet applies to all KPIs other than the KPI set out in item no. 5.1 (Structure Performance) of this Table 6.

Annexure C Calculation of Service Payment

1. The capital payment component of the Service Payment for each Quarter must be calculated by reference to Table 8 below and the terms set out in section 3.2.

2. The base maintenance cost component for each Quarter must be calculated by reference to column 1 in Table 7 below and the terms set out in section 3.3.

3. The adjustment to the base maintenance cost for each Quarter must be calculated by reference to clause 3.2 of Schedule 25 of this Deed and column 2 in Table 7 below.

4. The base lifecycle cost component for each Quarter must be calculated by reference to column 3 in Table 7 below and the terms set out in section 3.4.

5. The following terms apply to the amounts referred to in sections 1 to 4 above (**Relevant Amounts**):

    (a) Service Payments are payable in accordance with this Schedule pursuant to clause 34 of this Deed commencing from the Date for Maintenance Commencement and ending on the Expiry Date;

    (b) Service Payments will be calculated by reference to the base amounts set out against the relevant Quarter and derived from the Model Output Schedule;

    (c) Any values in Table 7 and Table 8 for Quarters ending after the Quarter in which the Expiry Date occurs will not be applicable; and

    (d) Table 7 and Table 8 may be updated to reflect variations to the Model Output Schedule of the Financial Model after Financial Close, as those variations are agreed in accordance with clause 53 of the Deed.

Base Quarterly Service Payment

Table 7: Base maintenance cost component and base lifecycle cost component

Column	1	2	3
	BMTq	BMTAdjq	BLFCq
Closing date of the Quarter	$	$	$
Quarter 1* (Q1)	[not disclosed]	-	-
Q2	[not disclosed]	-	-
Q3	[not disclosed]	-	-
Q4	[not disclosed]	-	-
Q5	[not disclosed]	-	-
Q6	[not disclosed]	-	-
Q7	[not disclosed]	-	-
Q8	[not disclosed]	-	-
Q9	[not disclosed]	-	[not disclosed]
Q10	[not disclosed]	-	[not disclosed]
Q11	[not disclosed]	-	[not disclosed]
Q12	[not disclosed]	-	[not disclosed]
Q13	[not disclosed]	-	[not disclosed]
Q14	[not disclosed]	-	[not disclosed]

Column	1	2	3
	BMTq	BMTAdjq	BLFCq
Closing date of the Quarter	$	$	$
Q15	[not disclosed]	-	[not disclosed]
Q16	[not disclosed]	-	[not disclosed]
Q17	[not disclosed]	-	[not disclosed]
Q18	[not disclosed]	-	[not disclosed]
Q19	[not disclosed]	-	[not disclosed]
Q20	[not disclosed]	-	[not disclosed]
Q21	[not disclosed]	-	[not disclosed]
Q22	[not disclosed]	-	[not disclosed]
Q23	[not disclosed]	-	[not disclosed]
Q24	[not disclosed]	-	[not disclosed]
Q25	[not disclosed]	-	[not disclosed]
Q26	[not disclosed]	-	[not disclosed]
Q27	[not disclosed]	-	[not disclosed]
Q28	[not disclosed]	-	[not disclosed]
Q29	[not disclosed]	-	[not disclosed]
Q30	[not disclosed]	-	[not disclosed]
Q31	[not disclosed]	-	[not disclosed]
Q32	[not disclosed]	-	[not disclosed]
Q33	[not disclosed]	-	[not disclosed]
Q34	[not disclosed]	-	[not disclosed]
Q35	[not disclosed]	-	[not disclosed]
Q36	[not disclosed]	-	[not disclosed]
Q37	[not disclosed]	-	[not disclosed]
Q38	[not disclosed]	-	[not disclosed]
Q39	[not disclosed]	-	[not disclosed]
Q40	[not disclosed]	-	[not disclosed]
Q41	[not disclosed]	-	[not disclosed]
Q42	[not disclosed]	-	[not disclosed]
Q43	[not disclosed]	-	[not disclosed]
Q44	[not disclosed]	-	[not disclosed]
Q45	[not disclosed]	-	[not disclosed]
Q46	[not disclosed]	-	[not disclosed]
Q47	[not disclosed]	-	[not disclosed]
Q48	[not disclosed]	-	[not disclosed]
Q49	[not disclosed]	-	[not disclosed]
Q50	[not disclosed]	-	[not disclosed]
Q51	[not disclosed]	-	[not disclosed]
Q52	[not disclosed]	-	[not disclosed]

Column	1	2	3
	BMTq	BMTAdjq	BLFCq
Closing date of the Quarter	$	$	$
Q53	[not disclosed]	-	[not disclosed]
Q54	[not disclosed]	-	[not disclosed]
Q55	[not disclosed]	-	[not disclosed]
Q56	[not disclosed]	-	[not disclosed]
Q57	[not disclosed]	-	[not disclosed]
Q58	[not disclosed]	-	[not disclosed]
Q59	[not disclosed]	-	[not disclosed]
Q60	[not disclosed]	-	[not disclosed]
Q61	[not disclosed]	-	[not disclosed]
Q62	[not disclosed]	-	[not disclosed]
Q63	[not disclosed]	-	[not disclosed]
Q64	[not disclosed]	-	[not disclosed]
Q65	[not disclosed]	-	[not disclosed]
Q66	[not disclosed]	-	[not disclosed]
Q67	[not disclosed]	-	[not disclosed]
Q68	[not disclosed]	-	[not disclosed]
Q69	[not disclosed]	-	[not disclosed]
Q70	[not disclosed]	-	[not disclosed]
Q71	[not disclosed]	-	[not disclosed]
Q72	[not disclosed]	-	[not disclosed]
Q73	[not disclosed]	-	[not disclosed]
Q74	[not disclosed]	-	[not disclosed]
Q75	[not disclosed]	-	[not disclosed]
Q76	[not disclosed]	-	[not disclosed]
Q77	[not disclosed]	-	[not disclosed]
Q78	[not disclosed]	-	[not disclosed]
Q79	[not disclosed]	-	[not disclosed]
Q80	[not disclosed]	-	[not disclosed]
Q81	[not disclosed]	-	[not disclosed]
Q82	[not disclosed]	-	[not disclosed]
Q83	[not disclosed]	-	[not disclosed]
Q84	[not disclosed]	-	[not disclosed]
Q85	[not disclosed]	-	[not disclosed]
Q86	[not disclosed]	-	[not disclosed]
Q87	[not disclosed]	-	[not disclosed]
Q88	[not disclosed]	-	[not disclosed]

Table 7 note:

* Commencing from the Date for Maintenance Commencement.

Table 8: Capital payment component

Closing date of the Quarter	CPTq $	Closing date of the Quarter	CPTq $
Quarter 1* (Q1)	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter	Q41	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter
Q2	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter	Q42	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter
Q3	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter	Q43	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter
Q4	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter	Q44	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter
Q5	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter	Q45	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter
Q6	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter	Q46	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter
Q7	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter	Q47	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter
Q8	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter	Q48	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter
Q9	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter	Q49	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter
Q10	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter	Q50	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter
Q11	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter	Q51	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter
Q12	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter	Q52	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter
Q13	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter	Q53	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter
Q14	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter	Q54	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter
Q15	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter	Q55	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter
Q16	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter	Q56	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter
Q17	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter	Q57	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter
Q18	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter	Q58	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter
Q19	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter	Q59	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter
Q20	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter	Q60	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter
Q21	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter	Q61	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter
Q22	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter	Q62	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter
Q23	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter	Q63	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter
Q24	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter	Q64	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter

Closing date of the Quarter	CPTq $	Closing date of the Quarter	CPTq $
Q25	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter	Q65	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter
Q26	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter	Q66	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter
Q27	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter	Q67	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter
Q28	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter	Q68	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter
Q29	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter	Q69	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter
Q30	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter	Q70	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter
Q31	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter	Q71	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter
Q32	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter	Q72	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter
Q33	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter	Q73	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter
Q34	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter	Q74	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter
Q35	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter	Q75	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter
Q36	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter	Q76	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter
Q37	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter	Q77	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter
Q38	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter	Q78	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter
Q39	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter	Q79	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter
Q40	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter	Q80	The amount identified as CPTq in the Model Output Schedule for the relevant Quarter

Table 8 note:

* Commencing from the Date for Commercial Acceptance subject to section 3.2(a).

Annexure D Floating Rate Component

Table 9: Floating Rate Component

Floating Rate Component	Base Case Floating Rate Debt	Base Case Interest Rate	Base Case Floating Rate Interest Payment
Interest Period*			
1	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
2	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
3	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
4	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
5	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
6	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
7	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
8	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
9	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
10	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
11	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
12	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
13	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule

Floating Rate Component	Base Case Floating Rate Debt	Base Case Interest Rate	Base Case Floating Rate Interest Payment
Interest Period*			
14	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
15	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
16	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
17	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
18	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
19	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
20	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
21	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
22	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
23	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
24	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
25	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
26	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
27	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule

Floating Rate Component	Base Case Floating Rate Debt	Base Case Interest Rate	Base Case Floating Rate Interest Payment
Interest Period*			
28	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
29	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
30	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
31	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
32	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
33	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
34	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
35	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
36	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
37	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
38	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
39	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
40	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
41	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule

Floating Rate Component	Base Case Floating Rate Debt	Base Case Interest Rate	Base Case Floating Rate Interest Payment
Interest Period*			
42	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
43	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
44	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
45	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
46	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
47	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
48	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
49	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
50	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
51	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
52	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
53	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
54	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
55	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule

Floating Rate Component	Base Case Floating Rate Debt	Base Case Interest Rate	Base Case Floating Rate Interest Payment
Interest Period*			
56	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
57	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
58	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
59	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
60	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
61	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
62	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
63	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
64	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
65	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
66	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
67	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
68	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule
69	The amount identified as the Base Case Floating Rate Debt in the Model Output Schedule	The amount identified as the Base Case Interest Rate in the Model Output Schedule	The amount identified as the Base Case Floating Rate Interest Payment in the Model Output Schedule

Floating Rate Component	Base Case Floating Rate Debt	Base Case Interest Rate	Base Case Floating Rate Interest Payment
Interest Period*			

Table 9 Note:

Each Interest Period commences on the first day of the first month of each Interest Period, except for Interest Period 1 which commences on the Maturity Date.

Annexure E Approved Lane Access Points Schedules

[not disclosed]

Initial Rehabilitation Works Lane Access Points schedule

[not disclosed]

Maintenance Lane Access Points schedule

[not disclosed]

ME_144195167_2

Annexure F Example Calculations

[not disclosed]

ME_144195167_2

Schedule 4 - Review Procedures

1. Submission and review

1.1 Submission

(a) (**Submission**): Project Co must submit all documents, data or other information which the State Project Documents requires it to provide for review in accordance with the Review Procedures (**Submitted Documents**) to the State, the Independent Reviewer or both (as the case may be) (**Reviewing Party**) in accordance with this Schedule and the terms of the State Project Documents.

(b) (**Specified documents**): For the avoidance of doubt, the Design Documentation, WTMP and WEMP (each as defined in the PSDR) are the subject of a separate review process under the PSDR and will not be reviewed in accordance with this Schedule.

(c) (**Requirements for Submission**): With each Submitted Document, Project Co must provide:

(i) details of the Submitted Document, its nature and the relevant clause or Schedule of the State Project Documents in accordance with which it is submitted for review; and

(ii) any other information required in accordance with the State Project Documents or otherwise necessary for the review of the Submitted Document in accordance with this Schedule.

1.2 Review Period

For the purpose of this Schedule, the "**Review Period**" means:

(a) (**period in State Project Documents**): where the period is expressly specified in the State Project Documents, that period;

(b) (**determined under the Review Procedures**): where the period is specified or determined under section 4.3(b), the period so specified or determined; or

(c) (**no period specified of determined**): where no period is expressly specified or determined as referred to in paragraphs (a) or (b), 15 Business Days.

2. Further information

Project Co must as soon as possible upon request by the Reviewing Party:

(a) submit any further information, data or documents;

(b) make available appropriately qualified personnel; and

(d) provide access to Project Co's books, records and systems,

that the Reviewing Party reasonably requires in order to review the Submitted Document and respond in accordance with this Schedule.

3. Review in stages

(a) (**Stages**): If Submitted Documents are to be reviewed in stages, each stage must be submitted for review and the review completed in accordance with this Schedule before any subsequent stage may be submitted for review.

(b) (**Further Review**): If, for any reason, any stage is reviewed out of sequence as a consequence of any act or omission of Project Co, the Reviewing Party will be entitled to further review or complete a new review of those stages of the Submitted Documents that have already been reviewed in accordance with this Schedule.

4. Comments on, approval or rejection of Submitted Document

4.1 Comments or no comments

(a) (**Options for review**): Subject to section 4.1(b), the Reviewing Party may:

(i) review any Submitted Document; and

(ii) within the Review Period, comment on or reject the Submitted Document in accordance with this section 4.

(b) (**Documents requiring approval**): With respect to any of the following documents:

(i) [Not used];

(ii) a Construction Environmental Management Plan;

(iii) a Construction Traffic Management Plan (as defined in the PSDR);

(iv) a Maintenance Phase Project Road Access Plan (as defined in the PSDR);

(v) a Maintenance Environmental Management Plan;

(vi) the Code of Maintenance Standards; and

(vii) the Handover Management Sub-Plan,

the Reviewing Party must, within the Review Period, review the Submitted Document and either:

(viii) approve; or

(ix) reject or comment on,

the Submitted Document.

(c) (**Proceeding with Submitted Document**): Project Co must not proceed with, or proceed to implement, a Submitted Document:

(i) subject to section 4.1(c)(ii), unless the Reviewing Party has been afforded the Review Period to review the Submitted Document and has not rejected or commented on the Submitted Document; or

(ii) with respect to the documents listed in section 4.1(b), unless the Reviewing Party has approved the Submitted Document.

4.2 Grounds upon which Reviewing Party may comment or reject

The Reviewing Party may only provide comments on, or reject a Submitted Document if the Submitted Document:

(a) (**incomplete**): is incomplete or inaccurate, of poor quality, is ambiguous or unclear or otherwise is not in a condition to allow the Reviewing Party, in its reasonable opinion, to adequately review it;

(b) (**applicable Laws or Standards**): does not comply with the applicable Laws or Standards;

(c) (**non-compliance with State Project Documents**): is otherwise not in accordance with, or is not submitted in accordance with, the requirements of the State Project Documents (including that Project Co will not satisfy the FFP Warranty (after it commences) or the requirements of the PSDR);

(d) (**adverse affect on State**): adversely affects any right of the State in accordance with a State Project Document, the State's ability to perform its obligations under a State Project Document or any of its statutory functions or its ability to enforce any such right; or

(e) (**increase in State's Liabilities**): would result in an increase to the State's Liabilities under a State Project Document.

4.3 Substantiate rejection or comments

If the Reviewing Party provides Project Co with comments on or rejects a Submitted Document, the Reviewing Party must:

(a) (**sufficient details**): provide sufficient detail to Project Co within the Review Period to substantiate those comments or that rejection including as set out in section 6.1; and

(b) (**revised Review Period**): notify Project Co of the reasonable time period within which Project Co must resubmit the Submitted Document to the Reviewing Party in which case such period will also be the revised "Review Period".

4.4 Initial Phase Program

(a) If the Submitted Document is the Initial Phase Program, in addition to its rights in accordance with section 4.2, the Reviewing Party may provide comments in connection with the Initial Phase Program or reject the Initial Phase Program and Project Co must amend:

(i) the Initial Phase Program accordingly if compliance with the Submitted Document would mean that a requirement under a Project Document would not be achieved (however, in so far as this concerns a Date for Acceptance and that Date for Acceptance cannot be practicably achieved by Project Co, amendments will only be required to the extent necessary to ensure the Initial Phase Program has a Date for Acceptance that is the earliest possible date following the relevant Date for Acceptance, provided that:

A. such amendment will not relieve Project Co from its obligation to achieve Acceptance by the relevant Date for Acceptance; and

B. the Initial Phase Program is amended to clearly differentiate between the Date for Acceptance and the anticipated Date of Commercial Acceptance or Date of Final Acceptance (as the case may be); or

(ii) such other program or timing requirement as may be:

A. specified in a Remediation Plan notified by the Independent Reviewer as satisfactory under clause 26.4(h) of the Project Deed or a Cure Program prepared under clause 45.3(a) of the Project Deed; or

B. required so that the Initial Phase Program accurately reflects the actual progress of the Works in accordance with clause 26.2(d) of the Project Deed.

4.5 Construction Traffic Management Plan

If the Submitted Document is the Construction Traffic Management Plan (**Proposed CTMP**), without limiting sections 4.2(a) to 4.2(e), the Reviewing Party may reject a Proposed CTMP if it would be reasonably likely to result in a material reduction in the performance of the road network compared to the performance which could be reasonably anticipated by the Bid Construction Traffic Management Plan.

5. Document management

5.1 Copies of Submitted Documents

(a) (**Copies required**): Unless otherwise expressly provided in the State Project Documents, Project Co must provide:

(i) three original paper copies;

(ii) one electronic version in .pdf format; and

(iii) one electronic version in original format (in accordance with section 5.1(b)),

of each Submitted Document to the Reviewing Party for review in accordance with this Schedule.

(b) (**Form for Electronic copies**): An electronic copy of a Submitted Document must be an electronic copy of that document in the format of the software in which the document was originally created that has been configured to allow the Reviewing Party to access and amend the information contained therein in the same manner as the original creator(s) of that document.

5.2 Register of Submitted Documents

(a) (**Register**): Project Co must compile and maintain a register of the date of submission and content of each Submitted Document and must regularly update that register to record:

(i) each Submitted Document to which it receives a response or comment from the Reviewing Party, including a copy of that response or comment; and

(ii) each Submitted Document to which it receives no response or comment within the Review Period.

(b) (**Access**): The register must be capable of access by the State, the Independent Reviewer and any person authorised by the State.

6. Compliance with Submitted Documents

6.1 Rejected or commented on Submitted Document

Subject to section 6.2, if the Reviewing Party comments on or rejects a Submitted Document in accordance with section 4.2, Project Co must:

(a) (**amend Submitted Document**): amend the Submitted Document in accordance with the comments of the Reviewing Party to the extent necessary to ensure that the Submitted Document meets the requirements of the State Project Documents and otherwise addresses the comments of the Reviewing Party in accordance with section 4; and

(b) (**resubmit Submitted Document**): resubmit the revised Submitted Document to the Reviewing Party within the time specified in the notice under section 4.3(b),

and the provisions of sections 1 to 5 will reapply to the amended Submitted Document until such time as Project Co is entitled to proceed with, or proceed to implement, the Submitted Document in accordance with section 4.1(c).

6.2 Disputed amendments

(a) (**Disagreement**): If Project Co does not agree that any amendments or comments requested by the Reviewing Party to a Submitted Document are required or required to be addressed, Project Co must notify the Reviewing Party and Project Co and the Reviewing Party must meet to try to resolve the difference of opinion in good faith.

(b) **(No resolution):** If, within 5 Business Days of Project Co's notice under section 6.2(a), Project Co still disputes that any amendments are required to the Submitted

Document, Project Co may refer the matter for resolution in accordance with clauses 48 to 50 of this Deed.

6.3 Compliance with Submitted Document

If:

(a) (**entitled to proceed**): Project Co is entitled to proceed with, or proceed to implement, a Submitted Document in accordance with section 4.1(c); or

(b) (**no amendment required**): it is determined in accordance with section 6.2 that no further amendment to the Submitted Document is required,

then,

(c) (**delivery by Project Co**): Project Co must deliver the Project Activities in accordance with the Submitted Document and otherwise in accordance with the State Project Documents;

(d) (**departure by Project Co**): subject to section 6.3(e), Project Co may depart from that Submitted Document where it is necessary to do so to comply with the State Project Documents; and

(e) (**notice of departure**): if Project Co wishes to depart from that Submitted Document, then:

(i) it must give the Reviewing Party prior notice of this intention together with an updated version of the Submitted Document incorporating all or any changes proposed; and

(ii) the provisions of sections 1 to 5 will apply again to such re-submission.

Schedule 5 – Change Compensation Principles Schedule

Contents

Part 1 - Interpretation **3**
1. Definitions **3**
Part 2 Change Compensation Events **9**
2. Change Compensation Events **9**
Part 3 Calculation and timing of Compensation **15**
3. Change Compensation Events occurring during the Initial Phase **15**
3.1 General 15
3.2 Formula for compensation during the Initial Phase 15
3.3 How to calculate Base Costs plus Margin (BCM) during the Initial Phase 15
3.4 How to calculate Initial Phase Finance Amounts and Prolongation Costs (DelC) during the Initial Phase 16
3.5 How to calculate compensation for Force Majeure during the Maintenance Phase (Initial) 16
4. Change Compensation Events occurring during the Maintenance Phase (Full) **17**
4.1 General 17
4.2 Formula for compensation during the Maintenance Phase (Full) 17
4.3 How to calculate Base Costs plus Margin (BCM) during the Maintenance Phase (Full) 18
4.4 How to calculate compensation for Force Majeure during the Maintenance Phase (Full) 19
4.5 How to calculate Prolongation Costs (DelC) during the Maintenance Phase (Full) 19
5. How to calculate Savings during the Initial Phase or the Maintenance Phase (Full) **19**
6. Rules for calculating compensation **20**
6.1 General rules 20
6.2 Specific rules 21
6.3 Annual review of ongoing compensation 23
7. Timing of compensation **24**
8. Tendering Requirements and Process **26**
Part 4 Change Notice and Change Response **28**
9. Change Notice **28**
9.1 Change Notice and State Response 28
9.2 State may request a Change Notice 30
10. Change Response **30**
10.1 State to issue a Change Response 30
10.2 Project Co's options where the Change Notice is not accepted or is rejected 32
10.3 Extension of time in Change Response 32

10.4 Dispute resolution 32

11. Contents of Change Notice 33

11.1 General 33
11.2 Mitigating factors 34
11.3 Effects 34

Part 1 - Interpretation

1. Definitions

Unless otherwise expressly defined below, expressions used in this Schedule have the meanings given to them in clause 1 of this Deed. In this Schedule:

Agreed Margin means the Construction Margin, the Maintenance Margin and the Project Co Margin.

Base Costs means the Construction Base Costs and Maintenance Base Costs that in each case are directly attributable to the relevant Change Compensation Event.

Base Quarterly Service Payment has the meaning given to it in Schedule 3 of this Deed.

Change Compensation Event means each event described in Table 1.

Change Notice means a notice prepared and submitted, and where applicable, updated and submitted by Project Co in accordance with section 9.1, a pro forma of which is set out in Annexure A to this Schedule.

Change Notice Request means the notice referred to in section 9.2(a).

Change Response means the notice referred to in section 10.1(b).

Construction Base Costs means:

(a) the additional Costs of or, in the calculation of Savings, Costs saved by:

(i) the D&C Contractor;

(ii) the Services Contractor; or

(iii) the contractor selected as a result of a Tender Process; and

(b) any Consultant Costs,

that are directly attributable to the relevant Change Compensation Event relating to the Works or any capital work after Final Acceptance, but excluding all Agreed Margins, Prolongation Costs, Maintenance Base Costs and Initial Phase Finance Amounts.

Construction Margin means:

(a) subject to paragraph (c), if the D&C Contractor incurs or, in the case of a Saving, saves the relevant Construction Base Costs in respect of a Change Compensation Event, the applicable fixed percentage which is set out in Table 2;

(b) subject to paragraph (c), if the Services Contractor incurs or, in the case of a Saving, saves the relevant Construction Base Costs, the applicable fixed percentage set out in Table 3; or

(c) subject to section 6.2(i), if a contractor (including the D&C Contractor or the Services Contractor) is selected as a result of a Tender Process to undertake the

works the subject of the relevant Change Compensation Event and incurs the relevant Construction Base Costs, the Margin set out in the contract with that contractor for those works.

Consultant Costs means:

(a) the actual third party consultant fees properly and reasonably incurred or, in the calculation of Savings, the actual third party consultant fees saved; or

(b) the third party consultant fees that are projected to be properly and reasonably incurred and payable, or in the calculation of Savings, projected to be saved,

by either Project Co or a Key Contractor (such as design fees, legal fees and other advisors' fees), that are directly attributable to the relevant Change Compensation Event provided that:

(c) Consultant Costs do not include any third party consultant fees that would have been payable by Project Co or the Key Contractor (as applicable) during the Term notwithstanding the Change Compensation Event; and

(d) if clause 35.3 of this Deed applies, the Consultant Costs directly attributable to the preparation of the Modification Proposal will be capped at the amount agreed or determined in accordance with clause 35.3 of this Deed.

Costs means all costs properly and reasonably incurred, or which will be properly and reasonably incurred that are directly attributable to the relevant Change Compensation Event.

CPI Multiplier Quarterly (C) has the meaning given in Schedule 16.

Extended Term Compensation means the amount payable to Project Co in relation to an Extension Event or a State Initiated Modification, calculated in accordance with section 3.6.

Extended Term Period means the period commencing on the date which is 20 years after the Original Date for Commercial Acceptance and ending on the date which is 20 years after the earlier of:

(a) the Date of Commercial Acceptance; and

(b) the Date for Commercial Acceptance.

Initial Phase Finance Amount means (in relation to a Change Compensation Event), the aggregate of the Initial Phase Finance Interest and the Initial Phase Finance Principal.

Initial Phase Finance Interest means (in relation to a Change Compensation Event), the lower of:

(a) the actual interest payable by Project Co under the Finance Documents; and

(b) the amount of interest on the principal which is forecast as being outstanding to the Financiers in the Financial Close Financial Model or Financial Model,

(if any) during the period for which Project Co is entitled to an extension of time to the Date for Commercial Acceptance under this Deed as a result of that Change Compensation Event commencing on:

(c) for the first Change Compensation Event for which Project Co is entitled to an extension of time to the Date for Commercial Acceptance under this Deed, the Original Date for Commercial Acceptance; or

(d) for any subsequent Change Compensation Event for which Project Co is entitled to an extension of time to the Date for Commercial Acceptance under this Deed, the Date for Commercial Acceptance as at the day immediately prior to the occurrence of that Change Compensation Event,

in each case, up to and including the earlier of:

(e) the Date for Commercial Acceptance (as extended as a result of the relevant Change Compensation Event);

(f) the Date of Commercial Acceptance; and

(g) the Expiry Date,

(**Compensation Period (Interest)**). In each case, if the relevant Compensation Period (Interest) does not end on the same day as an Interest Period, the Initial Phase Finance Interest will be the aggregate of:

(h) in respect of any interest payable during the relevant Compensation Period (Interest), on or prior to the expiry of the most recent Interest Period in the relevant Compensation Period (Interest), an amount calculated in accordance with paragraph (a) to (g) of this definition above; and

(i) in respect of that part of the Compensation Period (Interest) which runs after the expiry of the most recent Interest Period in the relevant Compensation Period (Interest) until the end of that Compensation Period (Interest), an amount calculated by pro rating the lower of:

(i) the actual interest payable by Project Co under the Finance Documents; and

(ii) the amount of interest on the principal which is forecast as being outstanding to the Financiers in the Financial Close Financial Model or Financial Model,

in each case that will become payable at the expiry of the Interest Period which is current at the end of that Compensation Period (Interest).

Initial Phase Finance Principal means (in relation to a Change Compensation Event), the lower of:

(a) the actual principal repayment by Project Co under the Finance Documents; and

(b) the amount of principal repayment forecast in the Financial Close Financial Model or Financial Model as owing to the Financiers,

(if any) during the period for which Project Co is entitled to an extension of time to the Date for Commercial Acceptance under this Deed as a result of that Change Compensation Event commencing on:

(c) for the first Change Compensation Event for which Project Co is entitled to an extension of time to the Date for Commercial Acceptance under this Deed, the Original Date for Commercial Acceptance; or

(d) for any subsequent Change Compensation Event for which Project Co is entitled to an extension of time to the Date for Commercial Acceptance under this Deed, the Date for Commercial Acceptance as at the day immediately prior to the occurrence of that Change Compensation Event,

in each case, up to and including the earlier of:

(e) the Date for Commercial Acceptance (as extended as a result of the relevant Change Compensation Event);

(f) the Date of Commercial Acceptance; and

(g) the Expiry Date,

(**Compensation Period (Principal)**). In each case, if the relevant Compensation Period (Principal) does not end on the same day as a Principal Repayment Date, the Initial Phase Finance Principal will be the aggregate of:

(h) in respect of any principal repayment payable during the relevant Compensation Period (Principal), on or prior to the most recent Principal Repayment Date in the relevant Compensation Period (Principal), an amount calculated in accordance with paragraph (a) to (g) of this definition above; and

(i) in respect of that part of the Compensation Period (Principal) which runs after the most recent Principal Repayment Date in the relevant Compensation Period (Principal) until the end of that Compensation Period (Principal), an amount calculated by pro rating the lower of:

(i) the actual principal repayment by Project Co under the Finance Documents; and

(ii) the amount of principal repayment forecast in the Financial Close Financial Model or Financial Model as owing to the Financiers,

in each case that will become payable at the next Principal Payment Date immediately after that Compensation Period (Principal).

Interest Period has the meaning given in the Finance Documents.

Mandatory Modification means those events for which the State must issue a Modification Order in accordance with clause 35.6 of this Deed.

Margin means the amount that a party charges to contribute to its off-site overheads and administrative, corporate and other like costs and profit, that are directly attributable to the relevant Change Compensation Event.

Maintenance Base Costs means, subject to item 15 of Table 1 Change Compensation Events – compensation entitlements:

(a) the additional Costs of or, in the calculation of Savings, Costs saved by the Services Contractor (or any other person selected as a result of a Tender Process); and

(b) any Consultant Costs,

that are directly attributable to the relevant Change Compensation Event relating to the Services (of either a one-off or recurrent nature), but excluding all Agreed Margins and all Maintenance Phase Force Majeure Event Costs.

Maintenance Margin means:

(a) subject to paragraph (b), if the Services Contractor undertakes the Services and incurs the relevant Maintenance Base Costs, the applicable fixed percentage set out in Table 2 (Initial Phase) or Table 3 (Maintenance Phase (Full)); or

(b) if a contractor (including the Services Contractor) is selected as a result of a Tender Process to undertake the Services the subject of the Change Compensation Event and incurs the relevant Maintenance Base Costs, subject to section 6.2(h), the Margin set out in the contract with that contractor for those Services.

Maintenance Phase Force Majeure Event Costs means Maintenance Phase (Initial) Force Majeure Event Costs and Maintenance Phase (Full) Force Majeure Event Costs.

Maintenance Phase (Full) Force Majeure Event Costs has the meaning given in section 4.4.

Maintenance Phase (Initial) Force Majeure Event Costs has the meaning given in section 3.5.

Principal Repayment Date has the meaning given in the Finance Documents

Project Co Margin means the applicable fixed percentage that Project Co may charge in accordance with Table 2 (Initial Phase) or Table 3 (Maintenance Phase (Full)) as compensation for the incremental impact of the relevant Change Compensation Event on the risk profile of the Project for Project Co and additional resources required by Project Co to implement the relevant Change Compensation Event.

Prolongation Costs means the additional net Costs (excluding all Agreed Margins, Base Costs and Initial Phase Finance Amounts) of Project Co that are directly attributable to a delay to achieving Acceptance as a direct result of the relevant Change Compensation Event for which Project Co is entitled to an extension of time.

Reviewing Party has the meaning given in section 9.1(d)(i).

Savings means the amount of any Base Costs and any other Costs, including any Agreed Margin and other Margins avoided or otherwise reduced or saved in accordance with this Schedule that are directly attributable to the relevant Change Compensation Event as calculated in accordance with section 5 and including any other receipts or benefits received or achieved that are directly attributable to the relevant Change Compensation Event.

Table means a table in this Schedule.

Tender Process means a tender process carried out in accordance with section 8.

Part 2 Change Compensation Events

2. Change Compensation Events

Table 1 sets out:

(a) the Change Compensation Events for which either party may be entitled to compensation in accordance with these Change Compensation Principles;

(b) a brief description of the relevant Change Compensation Event;

(c) relevant clauses in this Deed which identify the event as a Change Compensation Event; and

(d) the Base Costs, Initial Phase Finance Amounts, Prolongation Costs and Margin that Project Co or the State is entitled to be paid as a consequence of the relevant Change Compensation Event.

The rights of the parties set out in Table 1 are subject to any limitations on such rights as set out in the clauses in this Deed and if there is an inconsistency between Table 1 and the clauses in this Deed, the clauses in this Deed prevail.

Table 1 Change Compensation Events - compensation entitlements

Item	Change Compensation Event	Clause reference in Deed	Compensation entitlement where the Change Compensation Event occurs during the Initial Phase and relevant section of this schedule for calculating the compensation entitlement	Compensation entitlement where the Change Compensation Event occurs during the Maintenance Phase (Full) and relevant section of this schedule for calculating the compensation entitlement
1.	A Compensable Extension Event occurs and clause 26.12 of this Deed applies (other than if clauses 26.14, 42.4(a)(iii) or 42.5 apply). (See item 3 below in respect of clause 26.14 and see item 11 below in respect of clauses 42.4(a)(iii) or 42.5).	Clause 26.12	[not disclosed]	[not disclosed]
2.	An Extension Event that is a Force Majeure Event occurs and clause 26.12 of this Deed applies (other than if clauses 26.14, 42.4(a)(iii) or 42.5 apply). (See item 11 below in respect of clauses 42.4(a)(iii) or 42.5).	Clause 26.12	[not disclosed]	[not disclosed]
3.	An event contemplated by paragraph (a) of the definition of Compensable Extension Event occurs and clause 26.14(b) and clause 26.12 of this Deed apply (other than if clauses 42.4(a)(iii)	Clause 26.12 and 26.14(b)	[not disclosed]	[not disclosed]

Item	Change Compensation Event	Clause reference in Deed	Compensation entitlement where the Change Compensation Event occurs during the Initial Phase and relevant section of this schedule for calculating the compensation entitlement	Compensation entitlement where the Change Compensation Event occurs during the Maintenance Phase (Full) and relevant section of this schedule for calculating the compensation entitlement
	or 42.5 apply). (See item 11 below in respect of clauses 42.4(a)(iii) or 42.5).			
4.	The State exercises its rights under clause 26.10 of this Deed and clause 26.12 of this Deed applies (other than if clauses 26.14, 42.4(a)(iii) or 42.5 apply). (See item 3 above in respect of clause 26.14 and see item 11 below in respect of clauses 42.4(a)(iii) or 42.5).	Clauses 26.10 and 26.12	[not disclosed]	[not disclosed]
5.	Project Co achieves Commercial Acceptance earlier than the Date for Commercial Acceptance but after the Original Date for Commercial Acceptance and Project Co has been granted an extension of time and compensation for an Extension Event and clause 26.13 of this Deed applies.	Clause 26.13	[not disclosed]	[not disclosed]
6.	Acceleration directed by the State.	Clause 26.19	[not disclosed]	[not disclosed]

Item	Change Compensation Event	Clause reference in Deed	Compensation entitlement where the Change Compensation Event occurs during the Initial Phase and relevant section of this schedule for calculating the compensation entitlement	Compensation entitlement where the Change Compensation Event occurs during the Maintenance Phase (Full) and relevant section of this schedule for calculating the compensation entitlement
7.	A Compensable Intervening Event occurs and clause 32.5 of this Deed applies (other than if clauses 42.4(a)(iii) or 42.5 apply). (See item 11 below in respect of clauses 42.4(a)(iii) or 42.5)	Clause 32.5	[not disclosed]	[not disclosed]
8.	An Intervening Event that is a Force Majeure Event occurs and clause 32.5 of this Deed applies (other than if clauses 42.4(a)(iii) or 42.5 apply). (See item 11 below in respect of clauses 42.4(a)(iii) or 42.5).	Clause 32.5	[not disclosed]	[not disclosed]
9.	An Intervening Event occurs and the State requires Project Co to perform a Work Around.	Clause 32.7	[not disclosed]	[not disclosed]
10.	Project Co has prepared a Modification Proposal and clause 35.3 of this Deed applies and the State elects not to proceed with the relevant Modification.	Clause 35.3	[not disclosed]	[not disclosed]
11.	A State Initiated Modification other than a Change in Mandatory Requirements which	Clauses 11.6, 11.7, 35.5, 35.6,	[not disclosed]	[not disclosed]

Item	Change Compensation Event	Clause reference in Deed	Compensation entitlement where the Change Compensation Event occurs during the Initial Phase and relevant section of this schedule for calculating the compensation entitlement	Compensation entitlement where the Change Compensation Event occurs during the Maintenance Phase (Full) and relevant section of this schedule for calculating the compensation entitlement
	is a General Change in Law (see item 14 below)	35.10, 36.2, 42.4(a)(iii) and 42.5(b)		
12.	Project Co initiated Modification.	Clause 35.11(d)	[not disclosed]	[not disclosed]
13.	Minor Modification.	Clause 35.12	[not disclosed]	[not disclosed]
14.	A General Change in Law which is a Compensable Change in Mandatory Requirements occurs and is the subject of a Modification Order.	Clause 35 and 36	[not disclosed]	[not disclosed]
15.	Commercial Vehicle Volume Change Claim	35.16	[not disclosed]	[not disclosed]
16.	Project Co is granted an extension of time to the Date for Commercial Acceptance for an Extension Event under clause 26.9(a) or 26.10(a) or as a result of a State Initiated Modification, the Date of Commercial Acceptance has occurred and clause 26.12A of this Deed	26.12A	[not disclosed]	[not disclosed]

Item	Change Compensation Event	Clause reference in Deed	Compensation entitlement where the Change Compensation Event occurs during the Initial Phase and relevant section of this schedule for calculating the compensation entitlement	Compensation entitlement where the Change Compensation Event occurs during the Maintenance Phase (Full) and relevant section of this schedule for calculating the compensation entitlement
	applies			

Part 3 Calculation and timing of Compensation

3. Change Compensation Events occurring during the Initial Phase

3.1 General

(a) Project Co's or the State's entitlement to compensation for a Change Compensation Event (as applicable) that occurs during the Initial Phase and the amount of entitlement will depend on:

(i) the type of Change Compensation Event that has occurred; and

(ii) the actual consequences of that Change Compensation Event (for example whether the Change Compensation Event results in additional Costs or Savings being incurred during the Initial Phase, or will require Project Co to incur additional Costs or will result in Savings during the Maintenance Phase (Full)).

(b) Those Change Compensation Events that may occur during the Initial Phase for which Project Co is entitled to compensation, together with the components of such compensation, are set out in Table 1.

(c) Project Co is only entitled to be compensated, including for any Base Costs, Agreed Margin, Prolongation Costs, Maintenance Phase (Initial) Force Majeure Event Costs or Initial Phase Finance Amounts for a Change Compensation Event that occurs during the Initial Phase to the extent that such Base Costs, Agreed Margin, Prolongation Costs, Maintenance Phase (Initial) Force Majeure Event Costs or Initial Phase Finance Amounts are identified as being payable for the relevant Change Compensation Event in Table 1

(d) Where any Initial Phase Finance Amount calculated in accordance with the Change Compensation Principles has been paid by the State to Project Co in accordance with this Deed, on the occurrence of the achievement of Commercial Acceptance, the Financial Model must be varied in accordance with clause 53.3(d).

3.2 Formula for compensation during the Initial Phase

Unless this Deed expressly states otherwise, the amount payable (**AP**) in respect of a Change Compensation Event which occurs during the Initial Phase is calculated as follows:

[not disclosed]

3.3 How to calculate Base Costs plus Margin (BCM) during the Initial Phase

(a) If a Change Compensation Event occurs during the Initial Phase for which Project Co is entitled to be paid Construction Base Costs, then:

[not disclosed]

(b) If a Change Compensation Event occurs during the Initial Phase for which Project Co is entitled to be paid Maintenance Base Costs during the Maintenance Phase, then:

[not disclosed]

(c) If a Change Compensation Event that occurs during the Initial Phase for which Project Co is entitled to be paid Construction Base Costs in the Initial Phase and additional Maintenance Base Costs in the Maintenance Phase, for the purposes of section 3.2, BCM will be the aggregate of the amounts calculated in sections 3.3(a) and 3.3(b).

Table 2 - Agreed Margins for Change Compensation Events that occurring during the Initial Phase

Relevant Margin	Applicable fixed percentage		
	$[not disclosed] - $[not disclosed] [1] (Base Cost)	$[not disclosed] > - $[not disclosed] [1] (Base Cost)	$[not disclosed] > $[not disclosed] [1] (Base Cost)
Construction Margin of D&C Contractor (paragraph (a) of definition of Construction Margin)	[not disclosed]%	[not disclosed]%	[not disclosed]%
Maintenance Margin of Services Contractor (paragraph (a) of definition of Maintenance Margin)	[not disclosed]%	[not disclosed]%	[not disclosed]%
Project Co Margin	[not disclosed]%	[not disclosed]%	[not disclosed]%

[1] The above dollar thresholds are at Financial Close and will be Indexed thereafter by CPI Multiplier Quarterly (C).

3.4 How to calculate Initial Phase Finance Amounts and Prolongation Costs (DelC) during the Initial Phase

The Initial Phase Finance Amounts and Prolongation Costs payable to Project Co for a Change Compensation Event that occurs during the Initial Phase will be calculated as follows:

[not disclosed]

3.5 How to calculate compensation for Force Majeure during the Maintenance Phase (Initial)

The Maintenance Phase (Initial) Force Majeure Event Costs payable to Project Co for a Force Majeure Event that occurs during the Maintenance Phase (Initial) will be calculated as follows:

[not disclosed]

3.6 Extended Term Compensation

Project Co's entitlement to Extended Term Compensation will:

(a) be determined pursuant to sections 6, 9, 10 and 11; and

(b) be paid as an adjustment to the Base Quarterly Service Payments payable in accordance with Schedule 3 after the date which is [not disclosed] after the Original Date for Commercial Acceptance.

[not disclosed]

4. Change Compensation Events occurring during the Maintenance Phase (Full)

4.1 General

(a) Project Co's or the State's entitlement to compensation for a Change Compensation Event (as applicable) that occurs during the Maintenance Phase (Full) and the amount of entitlement will depend on:

(i) the type of Change Compensation Event that has occurred;

(ii) the nature of the costs that will be incurred by Project Co as a consequence of the Change Compensation Event – capital or recurrent;

(iii) the actual consequences of that Change Compensation Event (for example, whether the Change Compensation Event results in additional Costs or Savings being incurred during the Maintenance Phase (Full)); and

(iv) when the Change Compensation Event occurs, in particular before or after Final Acceptance where it is an Extension Event.

(b) Those Change Compensation Events that may occur during the Maintenance Phase (Full) for which Project Co is entitled to compensation, together with the composition of such compensation, are set out in Table 1.

(c) Project Co is only entitled to be compensated, including for any Base Costs, Maintenance Phase (Full) Force Majeure Event Costs, Prolongation Costs or Agreed Margin for a Change Compensation Event that occurs during the Maintenance Phase (Full) to the extent that such Base Costs, Maintenance Phase (Full) Force Majeure Event Costs, Prolongation Costs or Agreed Margin are identified as being payable for the relevant Change Compensation Event in Table 1.

4.2 Formula for compensation during the Maintenance Phase (Full)

Unless this Deed expressly states otherwise, the amount payable (**AP**) in respect of a Change Compensation Event which occurs during the Maintenance Phase (Full) is calculated as follows:

[not disclosed]

4.3 How to calculate Base Costs plus Margin (BCM) during the Maintenance Phase (Full)

(a) If a Change Compensation Event occurs during the Maintenance Phase (Full) for which Project Co is entitled to be paid Construction Base Costs then:

[not disclosed]

(b) If a Change Compensation Event occurs during the Maintenance Phase (Full) for which Project Co is entitled to be paid Maintenance Base Costs, then:

[not disclosed]

(c) If a Change Compensation Event occurs during the Maintenance Phase (Full) for which Project Co is entitled to be paid:

(i) additional Construction Base Costs; and

(ii) additional Maintenance Base Costs,

then, for the purposes of section 4.2, BCM will be the aggregate of the amounts calculated in sections 4.3(a) and 4.3(b).

Table 3 - Agreed Margins for Change Compensation Events that occur during the Maintenance Phase (Full)

Relevant Margin	Applicable fixed percentage		
	$[not disclosed] - $[not disclosed] [1] (Base Cost per annum)	[not disclosed] > $[not disclosed] - $[not disclosed] [1] (Base Cost per annum)	> $[not disclosed] [1] (Base Cost per annum)
Maintenance Margin of Services Contractor (paragraph (a) of definition of Maintenance Margin)	[not disclosed]%	[not disclosed]%	[not disclosed]%
Construction Margin of Services Contractor or D&C Contractor	Same as Construction Margin of D&C Contractor in Table 2	Same as Construction Margin of D&C Contractor in Table 2	Same as Construction Margin of D&C Contractor in Table 2
Project Co Margin	[not disclosed]%	[not disclosed]%	[not disclosed]%

[1] The above dollar thresholds are at Financial Close and will be Indexed thereafter by CPI Multiplier Quarterly (C).

4.4 How to calculate compensation for Force Majeure during the Maintenance Phase (Full)

The Maintenance Phase (Full) Force Majeure Event Costs Project Co is entitled to be paid for a Force Majeure Event that occurs during the Maintenance Phase (Full) will be calculated as follows:

[not disclosed]

4.5 How to calculate Prolongation Costs (DelC) during the Maintenance Phase (Full)

The Prolongation Costs payable to Project Co for a Compensable Extension Event that occurs during the Maintenance Phase (Full) but prior to Final Acceptance will be calculated as follows:

[not disclosed]

5. How to calculate Savings during the Initial Phase or the Maintenance Phase (Full)

(a) (**Value of Savings**): A Change Compensation Event may directly or indirectly result in Savings. Any such impacts must be identified in the Change Response and, subject to sections 5(b) and 5(c), the sum of their value will be:

(i) the amount agreed by Project Co and the State; or

(ii) if the parties are unable to agree within [not disclosed] after Project Co issues the relevant Change Notice the amount estimated by the State (acting reasonably), as set out in the Change Response.

(b) (**Share of Savings**): If Project Co achieves Commercial Acceptance earlier than the Date for Commercial Acceptance but after the Original Date for Commercial Acceptance and Project Co has been granted an extension of time and compensation for a Compensable Extension Event, the State will be entitled to be repaid [not disclosed]% of the Prolongation Costs paid to Project Co for the period between the Date of Commercial Acceptance and the Date for Commercial Acceptance which amount will be set out in the Change Response.

(c) (**Agreed Margins**): To calculate any Savings payable under this Schedule, the Savings (net of any Agreed Margins) will be multiplied by the applicable Agreed Margins. The Agreed Margins included in the calculation of any Savings must be no less than the amount of the Agreed Margins referred to in Table 2 or Table 3, as applicable.

6. Rules for calculating compensation

6.1 General rules

The extent (if any) to which compensation will be payable by the State to Project Co for a Change Compensation Event in accordance with this Schedule, will be determined as follows:

(a) (**overriding considerations**): the overriding considerations will be that:

(i) the State is receiving value for money;

(ii) sufficient information is provided to demonstrate that the compensation amount is fair and reasonable and is calculated in a transparent manner; and

(iii) Project Co should be resourced in accordance with its Bid Project Plans and is not entitled to additional compensation to the extent those resources are utilised or should have been utilised to address the Change Compensation Event;

(b) (**time value of money**):

(i) appropriate regard must be given to the time value of money and timing of cash flows;

(ii) all cash flows must be discounted or inflated to reflect when they occur (if applicable); and

(iii) the present value of any lump sum amount paid to Project Co will take account of how Project Co intends to use those funds prior to expending them on the relevant Change Compensation Event including any interest likely to be earned on those funds;

(c) (**open book basis**):

(i) Project Co must and must procure that the Project Co Associates:

A. prepare and provide all information referred to in this Schedule on an open book basis in accordance with section 6.1(c)(ii);

B. if required by the State, make available the appropriate personnel to explain the basis on which a particular calculation has been made; and

C. allow the State to review and undertake audits to enable it to verify compliance with this Schedule in respect of the information referred to in section 6.1(c)(ii),

in order to enable the State to make an accurate assessment of Costs and Savings in accordance with this Schedule; and

(ii) "open book basis" means Project Co:

A. providing a reasonable breakdown of the calculation of all relevant preliminaries, labour, consultant fees, equipment, materials, subcontract, finance and other Costs, Margins and receipts of Project Co and the Project Co Associates in a clear and transparent manner;

B. using best endeavours to provide a breakdown of any compensation payable under any relevant Subcontracts directly with a Key Contractor or Significant Subcontractor; and

C. providing other information reasonably requested by the State including reasonably available source documents required to verify such calculation;

(d) (**Project Co's role**): Project Co must not subcontract the management of a Change Compensation Event without the consent of the State;

(e) (**no double counting**): in calculating any amount under this Schedule there will be no double counting;

(f) (**not part of scope**): as part of providing a Change Response, Project Co must demonstrate that the additional or varied work or services that it has provided or proposes to provide as a consequence of the relevant Change Compensation Event, for which it seeks compensation in accordance with these Change Compensation Principles, do not form part of the Project Activities at the time of the relevant Change Compensation Event;

(g) (**Augmentation**): these Change Compensation Principles (including the entitlements to Margins) do not apply to Augmentations unless expressly stated in the Augmentation Process Schedule; and

(h) (**obligations under Project Deed relevant to CCE**): nothing in this Schedule limits Project Co's obligations or liabilities in respect of the relevant Change Compensation Event as otherwise set out in this Project Deed including any conditions precedent that Project Co must satisfy before it is entitled to any compensation for that Change Compensation Event in accordance with these Change Compensation Principles.

6.2 Specific rules

The following rules for calculating compensation payable (if any) in respect of a Change Compensation Event apply:

(a) (**Relief Events**): for any Change Compensation Events that are Relief Events, compensation will be calculated subject to clause 43.10(a) of this Deed;

(b) (**Insured Risk**): for any Change Compensation Events that are Insured Risks, compensation will be calculated subject to clause 43.10(b) of this Deed;

(c) (**GST**): unless otherwise specifically agreed, any reference in the Change Notice or any other document pursuant to this Schedule to cost, price, value, sales, revenue, rates, fees or a similar amount will be a reference to that amount exclusive of GST;

(d) (**Margins**): except where Project Co is expressly entitled to be paid an Agreed Margin, the State will not pay or otherwise compensate Project Co for any Margin of Project Co or a Key Contractor (or loss of Margin of Project Co or a Key Contractor);

(e) (**Margin excluded from Base Costs**): Base Costs must not include:

(i) any Margin for Project Co, the D&C Contractor, the Services Contractor or any other contractor engaged by Project Co to carry out the works or services the subject of the relevant Change Compensation Event; or

(ii) Prolongation Costs, Initial Phase Finance Amounts or Maintenance Phase (Full) Force Majeure Event Costs;

(f) (**no Base Costs for Project Co**): other than Consultant Costs, the additional costs incurred by Project Co for managing the relevant Change Compensation Event or otherwise are included in the Project Co Margin and no costs incurred by Project Co in respect of the Change Compensation Event other than Consultant Costs can be included in the Base Costs unless otherwise agreed by the State;

(g) (**Defect rectification**): notwithstanding anything else in this Deed, to the extent that Project Co:

(i) is granted an extension of time under clause 26.9 or clause 26.10 of this Deed; or

(ii) is granted relief under clause 32.2 or clause 32.3 of this Deed,

in relation to any of its Defect rectification obligations, Project Co will not be entitled to any compensation under these Change Compensation Principles;

(h) (**reasonably and properly incurred**): it is a condition precedent to Project Co's entitlement to the payment of any Base Costs, Prolongation Costs, Initial Phase Finance Amounts or Maintenance Phase (Full) Force Majeure Event Costs under these Change Compensation Principles that such costs were or will be reasonably and properly incurred by the relevant party to whom the costs are payable;

(i) (**Key Contractors and Competitive Tender**): where:

(i) Project Co is required to conduct a Tender Process in accordance with these Change Compensation Principles for the relevant Change Compensation Event in accordance with section 8; and

(ii) the D&C Contractor or Services Contractor is the successful respondent in the Tender Process,

the Margin charged by the D&C Contractor or the Services Contractor (as applicable) for the work or services the subject of the relevant Change Compensation Event cannot exceed the applicable Construction Margin or Maintenance Margin set out in Table 2 or 3 of these Change Compensation Principles;

(j) (**Corporate financing or financial administration costs excluded from Base Cost**): Base Costs must exclude any costs related to movements in working capital, or costs related to drawing on corporate debt facilities generally; and

(k) (**Uninsurable Risks**): where Insurance proceeds would have been payable in respect of an event for which Project Co is entitled to compensation in accordance with Table 1, but the event is an Uninsurable Risk, the amount payable by the State will not, in the aggregate, exceed the amount that is equal to the insurance proceeds that would have been payable under the relevant Insurances that would have applied had the event continued to be insurable under those Insurances.

6.3 Annual review of ongoing compensation

(a) (**Annual review**): Subject to sections 6.3(d) and 6.3(e), if compensation for a Change Compensation Event has been made by an increase or decrease in the Service Payment under section 7(a), the amount of the compensation will be subject to annual review at the end of each Financial Year in accordance with this section 6.3.

(b) (**Adjustment to Services Payment**): To the extent that, on any such review, the ongoing net Costs or net Savings arising as a consequence of any Change Compensation Event differ from the net Costs or net Savings for which compensation was first made through the Service Payment in accordance with the Change Compensation Principles or the amount of compensation as adjusted on any prior review and re-assessment under this section 6.3, the Service Payment will be adjusted to take account of this difference for the remainder of the Term.

(c) (**Time of review**): No later than one month prior to the end of each Financial Year, Project Co must:

(i) undertake and provide to the State a review and re-assessment of the amount of net Costs or net Savings that will arise as a consequence of the Change Compensation Event for which compensation has been made through the Service Payment over the Term; and

(ii) submit a Change Notice for any compensation payable to Project Co or the State where there is a difference in the net Costs or net Savings from the net Costs or net Savings for which compensation was first made through the Service Payment in accordance with the Change Compensation Principles or the amount of an adjustment on any prior review and re-assessment under this section 6.3.

(d) (**Refinancing**): To the extent that any compensation is to accommodate the costs incurred by Project Co or Finance Co for financing a Change Compensation Event, this compensation will not be subject to review in accordance with this section, but will be governed by the provisions of this Deed dealing with Refinancings.

(e) (**Reasonably foreseeable**): Where the annual review under section 6.3(a) will result in an increase in the Service Payment, Project Co will not be entitled to any such increase unless Project Co can demonstrate to the satisfaction of the State (acting reasonably) that:

(i) the increase in the Service Payment could not reasonably have been foreseen by a party performing activities similar to the Project Activities in accordance with Best Maintenance Practices; or

(ii) if an increase in the Service Payment was reasonably foreseeable in accordance with section 6.3(e)(ii), the amount of the increase could not reasonably have been foreseen by a party performing activities similar to the Project Activities in accordance with Best Maintenance Practices,

as at the date on which Project Co issued the first Change Notice for the relevant Change Compensation Event.

7. Timing of compensation

(a) (**Timing**): If a Change Compensation Event:

(i) results in an amount owing from Project Co to the State:

A. during the Initial Phase, the State will deduct such amount from the Service Payments payable to Project Co after the relevant Change Compensation Event, or if no subsequent Service payments are payable to Project Co, such amount will be a debt due and payable by Project Co to the State;

B. during the Maintenance Phase (Full), the State may elect to:

1) receive such payment as a lump sum, in which case the amount will be a debt due and payable by Project Co to the State and payment must be made in accordance with the Change Response; or

2) deduct that amount from the Service Payments payable to Project Co after the relevant Change Compensation Event, or if there are insufficient subsequent Service Payments payable to Project Co to cover the amount owing then the balance of the amount not deducted from the Service Payments will be a debt due and payable by Project Co to the State and payment must be made in accordance with the Change Response; and

(ii) results in an amount owing from the State to Project Co that is not, or is not able to be, financed by Project Co in accordance with section 7(c), the State must pay that amount to Project Co:

A. subject to sections 7(a)(ii)B and 7(a)(ii)C, in accordance with the payment arrangements set out in the Change Response which could include a lump sum payment, monthly or quarterly in arrears, a series of milestone payments or an adjustment to the Service Payment (or a combination of these methods);

B. in respect of the Initial Phase Finance Amounts, on the dates which the State would have paid the Service Payment had Commercial Acceptance not been delayed by the relevant Change Compensation Event; or

C. in respect of Maintenance Phase (Full) Force Majeure Event Costs, on the dates which the State would have paid the Service Payment but for Abatement in accordance with this Deed as a direct result of the relevant Change Compensation Event; or

(iii) results in an amount owing from the State to Project Co that is financed by Project Co in accordance with sections 7(c)(ii) or 7(c)(iii), in addition to the amount payable by the State to Project Co under section 3 or section 4, the State must pay Project Co in respect of such financing, the financing costs agreed to be paid by the State in accordance with the payment arrangements set out in the Change Response.

(b) (**Funding for CCE**): The State may request that Project Co endeavour to obtain funding for a Change Compensation Event.

(c) (**Project Co to obtain funding for CCE**): Where the State makes a request of Project Co under section 7(b), Project Co must use (and must procure that Finance Co use) all reasonable endeavours to obtain such funding, including by:

(i) applying any Savings resulting from other Change Compensation Events which have resulted in amounts being available under the Finance Documents;

(ii) to the extent any Savings referred to in section 7(c)(i) are unavailable or exhausted, using (including indirectly) any standby facility that may be available to Project Co or Finance Co; and

(iii) to the extent any Savings and any standby facilities referred to in section 7(c)(i) or section 7(c)(ii) are unavailable or exhausted, arranging for additional funding under the Finance Documents and from other sources (if permitted under the Finance Documents).

(d) (**Adjustment to Securitised Licence Structure**): If the State has requested Project Co to finance the Change Compensation Event, Project Co must calculate the increase (which only represents the amount payable to Project Co under sections 3.1 or 4.1 plus the amounts payable by any Project Entity to the Financiers in respect of the relevant Change Compensation Event) to:

(i) the relevant Construction Payments and the Maintenance Phase (Full) Modification Payment (as applicable) required to be paid by the State to Project Co; and

(ii) the revised Initial Licence Fee or Maintenance Phase Licence (Full) Fee under the Initial Licence or the Maintenance Phase Licence (Full) (as applicable) as determined in accordance with clause 41 of this Deed, such that the amount payable by Finance Co in respect of that Change Compensation Event under the Receivables Purchase Deed will equal the increase to the Construction Payment or Maintenance Phase (Full) Modification Payment (as applicable).

8. Tendering Requirements and Process

(a) (**Project Co to carry out tender process**): Project Co must carry out, or must, if agreed to by the State, procure that the relevant Key Contractor carries out a tender process in respect of a Change Compensation Event in accordance with this section 8 if at any time:

(i) the relevant Change Compensation Event involves a capital works component and the Construction Base Costs are, in the State's reasonable opinion, likely to exceed $[not disclosed] (Indexed by CPI Multiplier Quarterly (C));

(ii) the relevant Change Compensation Event involves a change to Services and the Maintenance Base Costs are, in the State's reasonable opinion, likely to exceed $[not disclosed] (Indexed by CPI Multiplier Quarterly (C)); or

(iii) the State notifies Project Co that it does not accept or rejects a Change Notice issued by Project Co and that it requires Project Co to carry out a tender process in respect of the relevant Change Compensation Event,

unless otherwise agreed by the State.

(b) (**Tender process**): If a tender process is required to be carried out in accordance with Section 8(a):

(i) (**Tender Process**): Project Co must obtain, or if applicable must procure that the relevant Key Contractor obtains, a minimum of three separate quotes from experienced, independent and capable contractors which have been agreed by the State (acting reasonably) to carry out any work in respect of the relevant Change Compensation Event;

(ii) (**Project Co to select**): Project Co will be responsible for selecting a Subcontractor from this tender process provided that:

A. Project Co must do so in consultation with the State (and the relevant Key Contractor if that Key Contractor carries out the tender process); and

B. the State must agree to the Subcontractor selected by Project Co (acting reasonably);

(iii) (**Tender Process Material**): Project Co must permit, and if applicable must procure that the relevant Key Contractor permits, the State to review all materials that are issued and submitted in the tender process and provide any other information that the State reasonably requires including such written consents as are required (including by Law) to carry out any Probity Investigations;

(iv) (**Selection Criteria**): prior to selection of a Subcontractor, Project Co must demonstrate to the reasonable satisfaction of the State that the

Subcontractor it, or the relevant Key Contractor (as the case may be), intends to engage is the best choice having regard to the:

A. price quoted;

B. experience and technical and financial capability of that Subcontractor in the context of the relevant Change Compensation Event; and

C. ability of the Subcontractor to carry out the work or the services in respect of the relevant Change Compensation Event in the manner required by this Deed;

(v) (**Subcontracting requirements**): the Subcontractor must meet the requirements in respect of Subcontractors set out in this Deed; and

(vi) (**State not satisfied**): if, following the conduct of the tender process, the State is not reasonably satisfied with the tenders that are received, it may:

A. direct Project Co not to accept, and if applicable to procure that the relevant Key Contractor does not accept, any tender offer;

B. except where expressly stated otherwise in this Deed, direct Project Co not to proceed with the relevant Change Compensation Event; or

C. instruct Project Co to proceed with the work in respect of the relevant Change Compensation Event, but on another basis under this Schedule.

Part 4 Change Notice and Change Response

9. Change Notice

9.1 Change Notice and State Response

(a) (**Submission of Change Notice**): If:

(i) an event or circumstance is expressed in this Deed to be a Change Compensation Event (other than a Minor Modification); or

(ii) Project Co is entitled or required to submit a Change Notice to the State in accordance with this Deed in respect of an event or circumstance,

then, as a condition precedent to making a Claim in respect of such event or circumstance, or obtaining any relief or compensation in respect of the event or circumstance, Project Co must prepare and submit to the person to whom the Change Notice is required to be given under this Deed (as applicable) (each a **Change Notice Recipient**), a Change Notice:

(iii) within the time specified in this Deed; or

(iv) if no time is specified in this Deed, within 20 Business Days after the earlier of the date on which Project Co:

A. first became aware of the relevant event or circumstance; or

B. ought reasonably to have become aware of the relevant event or circumstance,

(or (provided it is requested prior to the period referred to in section 9.1(a)(iv)) such longer period as is agreed to by the State (acting reasonably) having regard to the extent and the nature of the relevant event or circumstance and its effects and the information required to be included in the Change Notice).

(b) (**General**): Any Change Notice submitted by Project Co (including any Modification Proposal) in accordance with this Deed must be prepared in accordance with and comply with sections 9 and 11.

(c) (**Multiple and simultaneous events):** Where an event gives rise to more than one type of Change Compensation Event or a Change Compensation Event gives rise to different entitlements under these Change Compensation Principles, (for example, where a Change Compensation Event is a Compensable Extension Event for which Project Co is entitled to Prolongation Costs and Initial Phase Finance Amounts and is also a different Change Compensation Event for which Project Co is entitled to Construction Base Costs and Margin), Project Co is only required to issue one Change Notice for the relevant event which must include and clearly identify each Change Compensation Event and all entitlements claimed under the Change Compensation Principles for each of those Change Compensation Events (including any extension of time) and must be submitted within the earliest relevant time specified under this Deed.

(d) (**Meeting**): Except where this Deed otherwise expressly provides, within 10 Business Days after the State's receipt of Project Co's Change Notice, the State, any other Change Notice Recipient and Project Co must meet to discuss the Change Notice and may agree:

(i) Project Co's or the State's entitlement in respect of the relevant Change Compensation Event, in which case the person who is required to respond to the Change Notice under this Deed (the **Reviewing Party**) will issue a Change Response in accordance with that agreement;

(ii) an alternative process for determining Project Co's or the State's entitlement in respect of the relevant Change Compensation Event; or

(iii) any changes that Project Co must make to the relevant Change Notice;

(iv) the process for Project Co to:

A. provide the Change Notice Recipients any further information in respect of the Change Compensation Event; and

B. update its claim in circumstances where the Change Compensation Event is continuing; or

(v) anything else relevant to the relevant Change Notice or Change Compensation Event.

(e) (**Further notices**): If the Change Compensation Event upon which the Change Notice is based is continuing and the parties have been unable to reach an agreement relevant to updating the Change Notice, within 20 Business Days after the State's receipt of Project Co's initial Change Notice, Project Co must, prepare and submit to the relevant Change Notice Recipients an updated Change Notice:

(i) within the time specified in this Deed; or

(ii) if no time is specified in this Deed, every 20 Business Days (or such longer period determined by the Reviewing Party (acting reasonably), having regard to the extent and nature of the relevant Change Compensation Event and its effects and the information required to be included in the updated Change Notice) for the period of the Change Compensation Event where it continues beyond the issue of the initial Change Notice.

(f) (**Further information**): If the parties are unable to agree a process for providing further information to the Change Notice Recipients in respect of the Change Compensation Event, Project Co must provide any such information requested by the State within the timeframe determined by the State (acting reasonably).

(g) (**Provision of Change Notice to the State**): If Project Co is required to submit a Change Notice in accordance with this Deed, to a Change Notice Recipient who is not the State, Project Co must, at the same time as it submits a Change Notice, or any other information in respect of that Change Compensation Notice to a Change Notice Recipient, provide the State with a copy of that Change Notice or further information (as the case may be).

9.2 State may request a Change Notice

(a) Without limiting the State's rights under this Deed, where:

(i) the State believes that a Change Compensation Event has occurred; and

(ii) Project Co has not submitted a Change Notice in accordance with section 9.1,

the State may, in a notice entitled "Change Notice Request", request that Project Co prepare and submit a Change Notice in respect of the particular Change Compensation Event (a **Change Notice Request**).

(b) Project Co must prepare and submit a Change Notice in accordance with section 9.1 within 20 Business Days after receipt of a Change Notice Request (or such longer period as reasonably determined by the State, having regard to the extent and nature of the relevant Change Compensation Event and, its effects and the information required to be included in the Change Notice).

10. Change Response

10.1 State to issue a Change Response

(a) (**State Initiated Modification**): The parties rights and obligations in respect of the timing of a Change Response and content of a Change Response for a State Initiated Modification are set out in clauses 35.5, 35.6 and 35.9 of this Deed.

(b) (**Change Response**): Subject to sections 10.1(a), 10.1(c) and 10.1(f) and unless otherwise stated in this Deed or agreed with the State under section 9.1(d), the State must or, where applicable, must procure that the Reviewing Party, within 20 Business Days of receiving the Change Notice, in a notice entitled "Change Response", notifies Project Co that the Reviewing Party:

(i) accepts the Change Notice in which case the relevant party will, be entitled to the remedies set out in the Change Notice on the terms set out in the relevant Change Notice;

(ii) subject to section 10.1(c), does not accept or rejects the Change Notice or a part of the Change Notice (and the reasons for this) and, in the Change Response, sets out Project Co's entitlements for the relevant Change Compensation Event, determined in accordance with this Deed; or

(iii) in the case of a Change Notice which is a Project Co Modification Proposal, does not accept the Change Notice because the State does not wish to proceed with the proposed Project Co Modification,

(each a **Change Response**).

(c) (**Time for issue**): The period of time within which the Reviewing Party has to issue a Change Response under section 10.1(b) will be extended by the period that the Reviewing Party reasonably requires having regard to:

(i) the nature of the Change Compensation Event;

(ii) any determinations that need to be made under this Deed in respect of the relevant Change Compensation Event;

(iii) the content and quality of the Change Notice; and

(iv) when any further information was provided by Project Co which was reasonably required in respect of the Change Notice.

(d) (**Accept or reject**): Subject to sections 10.1(a) and 10.1(b)(iii) the Reviewing Party may only not accept or reject a Change Notice if it is of the view that:

(i) there has not been a Change Compensation Event;

(ii) the information contained in the Change Notice is not correct;

(iii) the remedies claimed in the Change Notice are not in accordance with this Deed; or

(iv) the Change Notice otherwise fails to comply with this Deed.

(e) (**Reviewing Party may not reject**): A Reviewing Party may not reject a Change Notice under section 10.1(b)(iii) if:

(i) to do so would result in Project Co being in breach of Law or any Approval; or

(ii) clause 35.6 of this Deed applies.

(f) (**State may issue Change Response**): Whether or not Project Co has issued a Change Notice in respect of a Change Compensation Event, the State may at any time, issue a Change Response in accordance with this section 10.1 in respect of a Change Compensation Event.

(g) (**Variation**): A Change Response will vary this Deed to the extent expressly stated in the Change Response.

(h) (**Review Procedures**): A Change Notice is not a Submitted Document and nothing in this Deed requires a Change Notice Recipient to review a Change Notice in accordance with the Review Procedures.

(i) (**No time at large**): No failure of a Change Notice Recipient to issue a Change Response in accordance with this Deed (including within any time period specified in this Deed) will entitle Project Co to the relief or compensation set out in the Change Notice or put any time at large or, deprive the Change Notice Recipient or relevant person of the power to grant the relief sought or such other relief as appropriate (including the power to extend time).

10.2 Project Co's options where the Change Notice is not accepted or is rejected

If the relevant Reviewing Party does not accept or rejects a Change Notice or a part of it under section 10.1(a), without limiting its rights under section 10.4, Project Co must proceed with the Project Activities in accordance with this Deed and the Change Response.

10.3 Extension of time in Change Response

The parties acknowledge and agree that where Project Co has included in its Change Notice a claim for an extension of time and the State and Project Co cannot agree on the applicable extension of time the State may issue a Change Response only for the non-time related aspects of the relevant claim pending the determination of the extension of time (if any) in accordance with clause 26 of this Deed.

10.4 Dispute resolution

(a) (**Referral of Dispute**): Subject to sections 10.3 and 10.4(b), any Disputes concerning a Change Response may be referred by either party to expert determination in accordance with clause 48.1(d)(i) of this Deed within 20 Business Days of the date Project Co receives the Change Response (or such longer period as is agreed with the non-referring party).

(b) (**Verification of amounts**): If a Reviewing Party does not accept or rejects an amount as calculated by Project Co in any Change Notice (such amount not being a fixed or specified amount under these Change Compensation Principles), the State may have the amounts verified by an expert appointed in accordance with clause 49 of this Deed, in which case:

(i) if the expert determines that an amount is payable to Project Co, Project Co will be entitled to be paid the lower of:

A. the amount claimed by Project Co in accordance with this Schedule; and

B. the amount verified by the expert; and

(ii) if the expert determines that an amount is payable to the State, the State will be entitled to be paid the higher of:

A. the amount claimed by Project Co in accordance with this Schedule; and

B. the amount verified by the expert,

and the State will procure that the Reviewing Party updates any Change Response provided under section 10.1 (if any) in accordance with this section 10.4(b), promptly following the expert's determination in accordance with clause 49 of this Deed.

11. Contents of Change Notice

11.1 General

A Change Notice prepared by Project Co in respect of a Change Compensation Event must:

(a) (**contents**): contain:

(i) the information, to the extent that it is relevant to the relevant Change Compensation Event, required by this Schedule and Annexure A;

(ii) without limiting section 11.1(c), evidence demonstrating the satisfaction of any conditions precedent to Project Co's entitlement in respect of the relevant Change Compensation Event as required by this Deed; and

(iii) any additional information required under this Deed in respect of a particular Change Compensation Event or required by the Change Notice Recipient (acting reasonably);

(b) (**warranty**): be warranted by the Project Co Representative as being true and correct to the best of his or her knowledge and belief;

(c) (**signed**): be signed by the Project Co Representative;

(d) (**attachments**): attach copies of any required changes to the Project Plans, the Initial Phase Program, the Development Phase Reports or the Maintenance Phase Reports (as applicable);

(e) (**extension of time**): in respect of any Change Compensation Event for which Project Co may be entitled to an extension of time to a Date for Acceptance, include:

(i) details of:

A. the extension requested;

B. how the relevant Change Compensation Event:

1) has delayed or will delay the achievement of Acceptance; and

2) has caused or will cause activities on the critical path contained in the then current Initial Phase Program to be delayed; and

(ii) without limiting clause 26.8(a)(iii) or clause 35.7(c)(iv) of this Deed, an updated Initial Phase Program which:

A. complies with all the relevant requirements of this Deed;

B. clearly identifies the impact of the relevant Change Compensation Event; and

C. contains a level of detail which is sufficient to enable the State to agree or the Independent Reviewer to determine Project Co's entitlement to an extension of time (where applicable); and

(f) (**State Initiated Modification**): in respect of a State Initiated Modification only, include details of the basis on which Project Co would be prepared to fund or to procure the funding of the whole or part of the Modification and the cost differences between the State and Project Co funding the Modification.

11.2 Mitigating factors

In each Change Notice, Project Co must describe the actions Project Co and the Project Co Associates have taken (and any further action Project Co proposes to take in the future) to:

(a) (**mitigate**): mitigate, minimise or avoid the adverse effects, costs, consequences or duration of the relevant Change Compensation Event (including by putting in place temporary measures reasonably required by the State); and

(b) (**take advantage**): take advantage of any positive or beneficial effects of the relevant Change Compensation Event and maximise any reduction in costs arising from the relevant Change Compensation Event.

11.3 Effects

In each Change Notice, Project Co must provide details, where applicable, and to the extent known or able to be predicted, of:

(a) (**effects**): the effects of the relevant Change Compensation Event on:

(i) the workmanship, quality, appearance or durability of any part of the Relevant Assets;

(ii) the design, construction or commissioning of the Works;

(iii) the management and maintenance of the Project Assets;

(iv) the carrying out of the Services and Project Co's ability to carry out the Services in accordance with the Maintenance Phase Requirements;

(v) the warranties given by Project Co in this Deed;

(vi) any other relevant part of this Deed or any other State Project Document, including any amendments required;

(vii) any existing Approvals or the requirement for any new Approvals; and

(viii) only where a Commercial Vehicle Volume Change has occurred, the Adjustment Threshold Commercial Vehicle Volume applicable to that Commercial Vehicle Volume Change including details as to how and why the relevant Change Compensation Event will result in such effects;

(b) (**damage**): any damage caused by the relevant Change Compensation Event;

(c) (**time consequences**): the time consequences of a relevant Change Compensation Event, including:

(i) an estimate of the time (if any) during which Project Co will be prevented from carrying out or delayed in carrying out the Project Activities due to the relevant Change Compensation Event, any impact on any Date for Acceptance or any likely Date of Acceptance and any impact on activities on the critical path contained in the then current Initial Phase Program;

(ii) in the case of a Change Compensation Event which is a Modification, the time for completion of the Modification (including whether the Modification is required to be completed prior to any Date for Acceptance); and

(iii) any revised Date for Acceptance; and

(d) (**cost consequences**): the cost consequences of, and the compensation claimed in respect of, the Change Compensation Event.

Annexure A - Change Notice

Change Notice	
Date:	
To:	[State] [*insert details*]
From:	[*insert details*] (**Project Co**)
Project Deed:	the Project Deed entered into between [the State] and Project Co dated [*insert date*]

[Insert any other relevant details such as claim reference numbers]

Unless the context requires otherwise, capitalised terms used in this Change Notice have the meanings given to them in the Project Deed.

Section 1 - Details of relevant Change Compensation Event	
The relevant Change Compensation Event is:	• *[insert details eg. Contamination Compensation Event (clauses 11.6 and 11.7 of the Project Deed)]* • •
The impact of the Change Compensation Event is:	*[insert detailed particulars of the nature, occurrence and impact of the relevant Change Compensation Event, including:* • *the basis on which Project Co has formed the opinion that an event constitutes a Change Compensation Event;* • *an estimate of the time (if any) during which Project Co will be prevented from carrying out or be delayed in carrying out the obligations affected by the Change Compensation Event;* • *in the case of a Change Compensation Event which is a Modification the subject of a Modification Order, the time for completion of the Modification (including whether the*

Section 1 - Details of relevant Change Compensation Event

Modification is required to be completed prior to any Date for Final Acceptance).]

The following information reasonably required by a Change Notice Recipient to demonstrate that Project Co has satisfied the conditions relevant to its extension of time claim as referred to in clauses 26.8(a) or 35.7(c) of the Project Deed (if applicable):	*[insert details]*
The following information reasonably required by a Change Notice Recipient to demonstrate that Project Co has satisfied the conditions relevant to its Claim in relation to an Intervening Event as referred to in clause 32.1(e) of the Project Deed (if applicable):	*[insert details]*
The following additional information is required under the Project Deed in respect of the Change Compensation Event or by a Change Notice Recipient and is not otherwise covered in sections 2 to 7 of this Change Notice:	*[insert details]*

Section 2 - Details of the effect of the relevant Change Compensation Event

To the extent known or able to be predicted, Project Co considers that the Change Compensation Event will have the following effects on:

• The workmanship, quality, appearance or durability of any part of the Project:	*[insert details]*
• The design, manufacture, construction, supply, installation, or commissioning of the Works:	*[insert details]*
• The management and maintenance of the Project Assets:	*[insert details]*

- The carrying out of the Services and Project Co's ability to carry out Services in accordance with the performance standards in the Project Deed and the PSDR: *[insert details]*

- The use of the Project Assets and the safe, efficient and continuous operation of the Project Assets: *[insert details]*

- The Project Assets meeting the FFP Warranty: *[insert details]*

- Any other warranties given by Project Co in the Project Deed: *[insert details]*

- Any relevant part of the Project Deed, including any amendments required: *[insert details]*

- The performance of any other obligations of Project Co or Finance Co under the Project Documents: *[insert details]*

- Any existing Approvals or the requirements for any new Approvals: *[insert details]*

- only where a Commercial Vehicle Volume Change has occurred, the relevant Adjustment Threshold Commercial Vehicle Volume applicable to that Commercial Vehicle Volume Change including details as to how and why the relevant Change Compensation Event will result in such effects *[insert details]*

- Any damage caused by the Change Compensation Event: *[insert details]*

Section 3 - Details of mitigating factors

To the extent known or able to be predicted, Project Co considers that the Change Compensation Event will have the following effects on:

Project Co and the Project Co Associates have taken the following action to mitigate, minimise or avoid the adverse effects, Costs, consequences or duration of the Change Compensation Event (including those temporary measures reasonably required by the State):	*[insert details]*
Project Co and the Project Co Associates propose to take the following action in the future to mitigate, minimise or avoid the adverse effects, Costs, consequences or duration of the Change Compensation Event (including by putting in place any temporary measures reasonably required by the State):	*[insert details]*
Project Co and the Project Co Associates have taken the following action to take advantage of any positive or beneficial effects of the Change Compensation Event and maximise any reduction in Costs arising from the Change Compensation Event:	*[insert details]*
Project Co and the Project Co Associates propose to take the following action in the future to take advantage of any positive or beneficial effects of the Change Compensation Event and maximise any reduction in Costs arising from the Change Compensation Event:	*[insert details]*

Section 4 - Details of cost and saving implications

The estimated Costs and Savings arising as a result of the Change Compensation Event are as set out in the following table.

Description	Estimate of savings ($AUD ex GST)	Estimate of costs ($AUD ex GST)
All amounts payable by or to Project Co, and each component of any payment calculation, for the proposed Change Compensation Event in accordance with the Change Compensation Principles (in the form of and including all information required in accordance with the Change Compensation Principles)	*[insert details]*	*[insert details]:* •
Amounts of any required capital expenditure that can be accommodated within the next planned refurbishment of the Maintained Assets	*[insert details]*	*[insert details]*
The cost of Insurances	*[insert details]*	*[insert details]*
The proposed form and timing for compensation in accordance with section 7 of the Change Compensation Principles:	*[insert details]*	
The funding to be provided for a Change Compensation Event (where the State has requested such funding):	*[insert details of proposed funding, if any]* *[to the extent Project Co is unable to provide the requested funding, insert evidence that Project Co has used all reasonable endeavours to obtain such funding, including by:* • *using any Savings resulting from other Change Compensation Events which have resulted in amounts being available under the Finance Documents;* • *using any standby facility that may be available to Project Co;* • *arranging for additional funding under the Finance Documents and from*	

other sources (if permitted under the Finance Documents); and

- *arranging other funding obtained on commercial terms for Project Co by the State (without any obligation on the State to make any such arrangements).]*

[if the Change Compensation Event is a State Initiated Modification, details of the basis on which Project Co would be prepared to fund or to procure the funding of whole or part of the Modification and the cost differences between the State and Project Co funding the Modification.]

Section 5 - Details of time implications

The delay is:	*[insert details]*
The time consequences of the Change Compensation Event are:	*[insert details, including any impact on any Provisional Acceptance Date, any Date for Commercial Acceptance or any Date for Final Acceptance, any impact on activities on the critical path contained in the then current Initial Phase Program and the time during which Project Co will be unable to carry out any other obligations due to the relevant Change Compensation Event]*
The number of days extension claimed is:	*[insert details]*
The basis for calculating the total number of days claimed is:	*[insert details]*
The proposed revised Date for Acceptance:	*[insert details]*
The amount of Prolongation Costs:	*[insert details]*

Section 6 - Details of Modification request

[Project Co to insert any further information as required by clause 35 of the Project Deed.]

Section 7 - Warranty as to Change Notice

Project Co warrants that it is satisfied that the Claim the subject of this Change Notice is bona fide and the relief sought is an accurate reflection of Project Co's entitlement under the Project Deed to the extent

it is able to be known at the time.

I, [insert name of Project Co Representative], as the Project Co Representative, warrant that this Change Notice is true and correct to the best of my knowledge.

Where this Change Notice is in respect of a Modification, Project Co warrants in respect of the Change Compensation Event that:

1. this Change Notice has been prepared so as to avoid or minimise:

   (a) any delay in achieving Acceptance, any aspect of Commercial Acceptance and any aspect of Final Acceptance; and

   (b) any adverse safety impacts of the Change Compensation Event on people and the Project Assets; and

2. the Modification when implemented will:

   (a) enable the relevant Project Assets to meet the FFP Warranty and otherwise meet the requirements of the Project Deed, except to the extent that it is agreed or determined that the proposed Modification will have an adverse effect on the matters referred to in section 2 of this Change Notice; and

   (b) enable Project Co at all relevant times to carry out the Services in accordance with the Maintenance Phase Requirements and to comply with the terms of the Project Deed, except to the extent that it is agreed or determined that the proposed Modification will have an adverse effect on the matters referred to in section 2 of this Change Notice,

   in each case, without limiting the warranties given by Project Co in other clauses of the Project Deed, except to the extent that it is agreed between the parties or determined in accordance with the Project Deed that the proposed Modification will have an adverse effect on the matters referred to in section 2 of this Change Notice.

Section 8 - Signed by

Signed for and on behalf of Project Co by:

Name: *[insert name]*

Position: Project Co Representative

Date: *[insert date]*

Section 9 - Attached	
Attached with this Change Notice are the following documents:	*[insert list of documents attached to this Change Notice, including:* • *copies of any required changes to the Project Plans.]*

Annexure B - Adjustment Threshold Commercial Vehicle Volumes Table and Locations

[not disclosed]

Annexure C – Pre-Agreed Rates Table

[not disclosed]

Schedule 6 - Termination Payments

1. Definitions

Unless otherwise expressly defined below, expressions used in this Schedule have the meanings given to them in or for the purposes of this Deed. In this Schedule:

Abatement Regime means the abatement regime described in sections 4 to 7 of the Payment Schedule.

Compensation Date means:

(a) for a tender conducted under section 3.3:

(i) where section 3.3(k)(ii) applies, the date on which the State notifies Project Co under section 3.3(k)(ii); or

(ii) otherwise the date on which the New Contract is entered into or is anticipated to be entered into; and

(b) for an Independent Expert valuation under section 4:

(i) where it is deemed under section 3.3(g) that there is no Liquid Market, 60 Business Days after the date on which the State notifies Project Co that it has received fewer than two Compliant Tenders under section 3.3(g);

(ii) where section 3.3(j) applies, the later of the date on which the State notifies Project Co in accordance with section 3.3(j) and the date which is 60 Business Days after the Expiry Date; or

(iii) otherwise the date which is 60 Business Days after the Expiry Date.

Compliant Tender means any tender submitted that meets the qualification criteria notified under section 3.3(b).

Compliant Tenderer means the party who submits a Compliant Tender.

Contributed Equity Portion means the amount of Equity Contributed which is paid to Project Co as Equity Funding on the same date (whether by way of a cash payment or drawing under any letter of credit in respect of the Equity Funding, or any combination of these).

Contribution Period means, for each Contributed Equity Portion, the number of days from the date of contribution of the relevant Contributed Equity Portion to the Expiry Date, divided by 365.

Default Termination Payment means the Termination Payment calculated under section 3 or section 4 of this Schedule.

Equity Committed means the aggregate of all amounts of Equity Funding irrevocably committed to be contributed by Equity Investors to Project Co as required by and in accordance with the Equity Documents and as set out in the Financial Model.

Equity Contributed means the aggregate of all amounts of Equity Funding contributed by Equity Investors to Project Co before the Expiry Date in accordance with the Equity

Documents and the Financial Model (but excluding any amounts which are either paid earlier than the dates scheduled in the Financial Model or are not scheduled in the Financial Model, and that are contributed as Equity Funding as a consequence of any default, however described, under the Finance Documents or the State Project Documents).

Equity IRR has the meaning given to it in this Deed.

Fair Market Value means the amount at which an asset, equity or liability could be exchanged in an arm's length transaction between informed and willing parties, other than in a forced or liquidation sale.

Force Majeure Termination Payment means the Termination Payment calculated under section 6 of this Schedule.

Highest Compliant Tender Price means the highest tender price offered by a Compliant Tender.

Independent Expert means an independent expert appointed under section 2.

Liquid Market means where there are at least two contractors (in addition to any party controlled by the Financiers) in the prevailing market prepared to competitively tender for the undertaking of, or acquisition of, projects which are the same or of a similar type to the Project on the same or substantially similar terms and conditions to those of this Deed and each of whom has agreed with the State to submit a Compliant Tender (even if a Compliant Tender is subsequently not received), such that the result of that tender process would provide a reasonably likely indicator as to Fair Market Value.

New Contract means a contract that replaces this Deed, but without imposing on the new contracting party any Liability for any breach of this Deed by Project Co prior to the date of that contract, and that assumes that:

(a) if the New Contract is entered into prior to the Date of Commercial Acceptance , the Works are to be designed, built, commissioned and tested to achieve each Commercial Acceptance in accordance with this Deed;

(b) the Services are to be carried out in accordance with, and to the standards set out in, the PSDR and otherwise in accordance with this Deed;

(c) the term of the New Contract will be the period from the Compensation Date to the Final Expiry Date;

(d) the provisions with respect to payment of the Floating Rate Component and Service Payment continue to apply as set out in this Deed, noting that the Maintenance Phase (Full) may be shorter than is contemplated in the Financial Model as a result of delay or forecast delay to the achievement of Commercial Acceptance; and

(e) all other provisions of this Deed continue to apply.

Post Termination Quarterly Amount means for the whole or any part of a Quarter or Quarters for the period from the Expiry Date to the Compensation Date, an amount equal to the Service Payments, assuming no Abatement, plus or minus the Floating Rate Component, which would have been payable in respect of that Quarter or those Quarters under this Deed had this Deed not been terminated less an amount equal to the aggregate of (without double counting):

(a) the greater of all cost components related to the carrying out of the Services and the reasonable costs to the State of alternative provision of the Services in accordance with, and to the standards set out in, the PSDR and otherwise in accordance with this Deed (whether or not any Services are carried out);

(b) all cost components related to the provision of Insurance; and

(c) Rectification Costs incurred by the State.

For the avoidance of doubt, the Post Termination Quarterly Amount can be an amount that is less than zero.

Rectification Costs means an amount equal to the reasonable and proper costs incurred or reasonably anticipated to be incurred by the State in curing or otherwise addressing any default by Project Co and procuring performance of Project Co's obligations in accordance with the Project Documents.

Tender Costs means the reasonable and proper internal and external costs incurred by or on behalf of the State in carrying out the Tender Process (if any) and calculating the relevant Termination Payment (including engaging an Independent Expert).

Tender Process means the process by which the State requests tenders from persons interested in entering into a New Contract, evaluates the responses from those interested parties and negotiates to enter into a New Contract with a Compliant Tenderer.

Tender Process Monitor has the meaning given to that term in section 3.3(e).

Termination for Convenience Payment means the Termination Payment calculated under section 5 of this Schedule.

Total Equity Contributed means Equity Contributed plus any amounts which are either paid earlier than the dates scheduled in the Financial Model or are not scheduled in the Financial Model, and that are contributed as Equity Funding as a consequence of any default, however described, under the Finance Documents or the State Project Documents.

2. Independent Expert

(a) (**Calculation of relevant Termination Payment**): If this Deed is terminated and an Independent Expert is required to administer this Schedule, the parties will appoint an Independent Expert to act as an expert calculator of the relevant Termination Payment within 7 Business Days of:

(i) in the case of section 4, the date on which that section commences to apply; and

(ii) in the case of sections 5 and 6, the Expiry Date,

and the following provisions of clause 49 of this Deed will apply:

(iii) clause 49.1(b) to clause 49.1(i) of this Deed, as if:

A. the reference in paragraph (b) to "*the date on which a Dispute is referred to expert determination under clause 49.1(a)*" were a reference to the time referred to in paragraphs (a)(i) and (ii) of this section 2(a), and the reference to "*determine the*

Dispute" were a reference to "*calculate a Termination Payment*";

B. the references in paragraph (c) to "*the 5 Business Day period referred to in clause 49.1(a)*" and to *"the Dispute is referred to expert determination under clause 49.1(a)*" were references to the time referred to in paragraphs (a)(i) and (ii) of this section 2(a), and the reference to "*determine the Dispute*" were a reference to "*calculate a Termination Payment*";

C. the references in paragraph (d) to "*determine a Dispute*" and "*determine the Dispute*" were references to "*calculate a Termination Payment*" and the reference to "*the party that gave the notice under clause 48.3(a)*" were a reference to "*the State*";

D. paragraph (e) requires both parties to procure the President of the Australian Centre for International Commercial Arbitration to nominate a person to act as the expert, having regard to, but not being bound by, those persons proposed by the parties under paragraph (b) or paragraph (c) and the reference in paragraph (e) to "*determine a Dispute*" were a reference to "*calculate a Termination Payment*";

E. the reference in paragraph (f) to "*determine a Dispute*" were a reference to "*calculate a Termination Payment*" and the reference to "*matters in dispute*" were a reference to "*role of the Independent Expert as an expert calculator of the relevant Termination Payment*"; and

F. the reference in paragraph (i) to "*the terms of the Expert Determination Agreement*" were a reference to "*terms consistent with section 2 of the Termination Payments Schedule*";

(iv) clause 49.2 of this Deed, as if the reference to "*the terms of the Expert Determination Agreement*" were a reference to "*the agreement entered into in accordance with clause 49.1(i)*";

(v) clause 49.4 of this Deed, as if the reference to "*any Dispute referred to expert determination under this clause 49*" were a reference to "*any calculation of a Termination Payment*"; and

(vi) clause 49.5(a)(ii) of this Deed, as if the reference to "*any person who is party to the Dispute*" were a reference to "*the parties*".

(b) (**Independent Expert to consider**): In calculating a Termination Payment, the Independent Expert may have regard to submissions and information provided by the parties, but must have regard to the matters set out in this Schedule and calculate the Termination Payment as an expert calculator.

(c) (**Request for further information**): If the Independent Expert decides that further information is required, the Independent Expert may call for further submissions, documents or information from either or both parties and the Independent Expert must provide any information received from one party to the other party.

(d) (**Conduct of conferences by Independent Expert**): The Independent Expert may call and conduct one or more conferences between the parties as the Independent Expert sees fit, but must give the parties reasonable notice of the matters to be addressed at any such conference.

(e) (**Legal Representation of parties at conference**): The parties may be legally represented at any conference under this section 2.

(f) (**Conferences to be held in private**): All conferences under this section 2 must be held in private.

(g) (**Independent Expert may visit**): The Independent Expert may, if he or she considers it necessary, visit the Site, the Works or the Project Assets (as the case may be), and the parties must facilitate the Independent Expert's access to any of those areas.

(h) (**Timing of determination by the Independent Expert**): The Independent Expert must make his or her determination in relation to the calculation of the Termination Payment:

(i) within 20 Business Days of the last of the steps set out in paragraphs (c) to (g); or

(ii) within 30 Business Days of the date of his or her appointment,

whichever is the earliest. If the Independent Expert fails to make a determination within this time, either party may refer the matter to dispute resolution in accordance with clauses 48 to 50 of this Deed.

(i) (**Independent Expert to act as expert**): The Independent Expert will act as an expert and not an arbitrator and may make a decision from his or her own knowledge and expertise.

(j) (**Cost of Independent Expert to be borne by State**): The cost of the Independent Expert will be borne by the State, but without limiting the State's right to recover those costs as Tender Costs in calculating any Termination Payment.

3. Termination for Default Termination Event

3.1 The State's election

(a) (**State's right to elect**): If the State terminates this Deed due to the occurrence of a Default Termination Event (whether any other basis for termination then applies), the State may, subject to section 3.1(c), elect (in its sole and absolute discretion) to either:

(i) conduct a tender for the New Contract in accordance with section 3.3; or

(ii) require the Independent Expert to undertake an expert determination in accordance with section 4.

(b) (**State to notify Project Co**): The State will notify Project Co of its election on or before the day falling [not disclosed] after the Expiry Date and if the State fails to notify Project Co of its election by that date, then:

(i) if section 3.1(c) does not apply, section 3.1(a)(i) will apply; or

(ii) if section 3.1(c) applies, section 3.1(a)(ii) will apply.

(c) (**Circumstances State not entitled to conduct a tender**): The State is not entitled to elect to conduct a tender for the New Contract:

(i) where Project Co or the Financiers have demonstrated to the reasonable satisfaction of the State that:

A. the Financiers have used best efforts to procure the transfer of Project Co's rights and liabilities under this Deed in accordance with the Finance Direct Deed but have not done so; and

B. the reason for the failure to effect a transfer of Project Co's rights and liabilities under this Deed is that there is no Liquid Market; or

(ii) where either the State agrees, or it is determined in accordance with clauses 48 to 50 of this Deed, that no Liquid Market exists.

(d) (**Disputes**): Any Dispute in relation to whether a Liquid Market exists may be referred by either party for resolution in accordance with clauses 48 to 50 of this Deed.

(e) (**State to pay Post Termination Quarterly Amount**): With respect to all or any part of a Quarter falling within the period from the Expiry Date to the Compensation Date (each inclusive), the State will pay to Project Co the Post Termination Quarterly Amount at the same time that the State would have been required to pay to Project Co the Service Payment or that any Floating Rate Component would have been payable (as applicable) in respect of that Quarter had this Deed not been terminated.

(f) (**Set off of Post Termination Quarterly Amount**): If any Post Termination Quarterly Amount is less than zero then it will be carried forward and will be set off against any future positive Post Termination Quarterly Amount or other elements of the Default Termination Payment.

3.2 Payment on tender

(a) (**State elects to conduct a tender**): If the State elects to conduct a tender for the New Contract in accordance with section 3.1(a)(i), sections 3.2 and 3.3 will apply.

(b) (**Object of Tender Process**): The objective of the Tender Process is to establish a Highest Compliant Tender Price.

(c) (**Calculation of Default Termination Payment**): The Default Termination Payment will be calculated as follows:

TP = A - C - D - E - F - G - H + J – M - P

where:

TP = the Default Termination Payment.

A = the Highest Compliant Tender Price. In determining item A, the Tender Process must:

A. assume:

1) a Compensation Date determined under paragraph (a)(ii) of that definition (which will be subject to adjustment to reflect the actual date on which the Compensation Date occurs);

2) that the Project Activities are carried out in accordance with, and to the standards set out in, the PSDR and otherwise in accordance with this Deed;

3) that the provisions with respect to payment of the Floating Rate Component and Service Payments continue to apply as provided for in this Deed;

4) that any breach of this Deed and any adjustments under the Abatement Regime occurring prior to the Compensation Date will be disregarded for the purposes of the New Contract; and

5) that the Project Documents will be amended as required to reasonably allow for an incoming provider to carry out the Project Activities in accordance with, and to the standards set out in, the PSDR and otherwise in accordance with this Deed; and

B. take into account:

1) the costs (if any), and their timing, which are required to be incurred to complete the Works in accordance with this Deed and to achieve each Commercial Acceptance;

2) the reinstatement or repair costs (if any) and their timing, including a reasonable contingency against Project risks, which are required to be incurred with respect to the Project Assets and the Site, to enable carrying out of the Project Activities until the Final Expiry Date, in accordance with and to the standards set out in the PSDR and otherwise in accordance with this Deed; and

3) any costs, and their timing, required to be incurred to enable the entity (who is to become the new "Project Co") to carry out the Project Activities in accordance with, and to the standards set out in, the PSDR and otherwise in accordance with this Deed and otherwise to perform Project Co's obligations under the Project Documents,

but excluding any costs in relation to which the State will retain the benefit of a Retention Amount or Defect Retention Amount;

C = the Tender Costs;

D = any Liability of Project Co to the State under the State Project Documents, including all amounts in respect of which the State is entitled to exercise a right of set-off under this Deed (but subject to clauses 43.11(c) and (d) (other than clause 43.11(d)(viii)(H)));

E = any additional costs reasonably incurred by the State as a direct result of the Default Termination Event (but subject to clauses 43.11(c) and (d) (other than clause 43.11(d)(viii)(H)));

F = to the extent the aggregate of all Post Termination Quarterly Amounts equates to a negative number, the absolute value of the aggregate of all such amounts calculated under this Deed. For the avoidance of doubt the Default Termination Payment is reduced where the aggregate of all Post Termination Quarterly Amounts equates to a negative number;

G = any gains which have accrued, or will accrue, to Project Co as a result of the termination of this Deed or termination of any other Project Documents;

H = the aggregate of:

(i) Insurance proceeds:

A. that would have been received before the Expiry Date but for an Insurance Failure Event and which if so received would have been, or would have been required to be, applied towards any component of the Default Termination Payment otherwise payable under this section 3; and

B. received or receivable by Project Co at any time during the period between the Expiry Date and the Compensation Date, except for Insurance proceeds:

1) that are required under the Project Documents to be (and are) applied to repairing or reinstating the Works or the Project Assets; or

2) representing Insurance indemnification of Project Co against liabilities to third parties);

(ii) any other amounts owing to Project Co; and

(iii) any credit balances standing in accounts held by or for the benefit of Project Co on the Expiry Date (other than those amounts which Project Co holds on trust for a Subcontractor in those accounts in accordance with the Finance Documents),

in each case only to the extent it has not otherwise been taken into account in the determination of the Default Termination Payment;

J = any amounts owing by the State to Project Co under the State Project Documents as at the Expiry Date (including amounts of any Floating Rate Component or Service Payments which have accrued but not been paid as at the Expiry Date);

M = any third party amounts paid to Project Co at any time during the period between the Expiry Date and the Compensation Date; and

P = the Receivables Refund Payment.

In calculating items A to P, there will be no double counting of amounts.

3.3 Tender Process

If the State elects to conduct a Tender Process for the New Contract, the following provisions will apply.

(a) (**State to use reasonable endeavours**): The State will (subject to any legal requirements preventing it from doing so) use its reasonable endeavours to complete the Tender Process as soon as practicable.

(b) (**State to notify Project Co of qualification criteria and other requirements of Tender Process**): The State will notify Project Co of the qualification criteria, the other requirements and the terms of the Tender Process, including the timing of the Tender Process, but will act reasonably in setting such requirements and terms. If the tenderer is required to engage sub-contractors, qualification criteria will include a requirement that the tenderer engage sub-contractors with the requisite technical and financial capabilities to undertake the Project.

(c) (**State to ensure appropriate methodology**): The State, in setting the qualification criteria and the other requirements and terms of the Tender Process, must ensure that there is in place an appropriate methodology for comparing tenders.

(d) (**Project Co authorises release of information by State under Tender Process**): Project Co authorises the release of any information by the State under the Tender Process that would otherwise be prevented under this Deed that is reasonably required as part of the Tender Process.

(e) (**Project Co may appoint Tender Process Monitor**): Project Co may, at its own cost, appoint a person (the **Tender Process Monitor**) to monitor the Tender Process for the purpose of monitoring and reporting to Project Co and the Financiers on the State's compliance with the Tender Process and making representations to the State. The Tender Process Monitor will not disclose any confidential information in relation to tenders submitted as part of the Tender Process to Project Co or any other person except:

(i) where permitted to do so by the terms of the confidentiality agreement referred to in section 3.3(f); or

(ii) to advise Project Co and the Financiers as to whether it considers that the State has acted in accordance with the Tender Process and correctly determined the Highest Compliant Tender Price and to provide details of any representations that the Tender Process Monitor makes to the State regarding the Tender Process.

(f) (**Tender Process Monitor to enter into confidentiality agreement**): Project Co will procure the Tender Process Monitor to enter into a confidentiality agreement with the State in a form acceptable to the State, and the Tender Process Monitor will be entitled to attend all meetings relating to the Tender Process, inspect copies of the tender documentation and proposals and make written representations to the State regarding compliance with the Tender Process. Project Co will procure that the Tender Process Monitor makes any such representations in relation to the Tender Process to the State in a timely manner as the Tender Process proceeds. The State will not be bound to consider or act upon such representations but acknowledges that such representations may be referred to by Project Co in the event that Project Co refers a dispute relating to the Highest Compliant Tender Price for resolution in accordance with clauses 48 to 50 of this Deed.

(g) (**State to determine Compliant Tenders**): As soon as practicable after tenders have been received, the State will (acting reasonably) determine the Compliant Tenders. Subject to the State receiving at least two Compliant Tenders, it will notify Project Co of the Highest Compliant Tender Price. If fewer than two Compliant Tenders are received, the State must promptly notify Project Co accordingly and it will be deemed that there is no Liquid Market and the tendering process pursuant to this section 3 will cease and the 'no tendering' procedure under section 4 will automatically apply.

(h) (**Discretion of State following Tender Process**): The State is not obliged to enter into any contract with any person, resulting from the Tender Process. It may enter into a contract in its sole and absolute discretion.

(i) (**Dispute Resolution**): If Project Co refers a Dispute relating to the Highest Compliant Tender Price or the Default Termination Payment for resolution in accordance with clauses 48 to 50 of this Deed, the State will still be entitled to enter into a contract replacing this Deed (whether or not a New Contract).

(j) (**State may elect to follow 'no tendering' procedure**): The State may elect at any time prior to the receipt of two Compliant Tenders to follow the 'no tendering' procedure under section 4 by notifying Project Co that this election has been made.

(k) (**Calculation of Default Termination Payment if Liquid Market exists**): If a Liquid Market exists, the Default Termination Payment is determined in accordance with section 3.2 and this section 3.3 and (where the Default Termination Payment is a positive amount) Project Co has complied with clause 46.6(c) of this Deed:

(i) the Default Termination Payment, calculated in accordance with section 3.2 and this section 3.3, will be payable within 20 Business Days of the date of the New Contract; or

(ii) if the State chooses not to enter into any contract with any person resulting from the Tender Process, it must notify Project Co accordingly in which case the Default Termination Payment calculated in accordance with section 3.2 and this section 3.3 will be payable within 20 Business Days of such notification.

4. No tendering

If the State terminates this Deed due to the occurrence of a Default Termination Event (whether any other right of termination then applies) and section 3.1(a)(ii) applies, or a Liquid Market does not or is deemed not to exist under section 3.3(g), or where section 3.3(j) applies, the Default Termination Payment will be calculated as follows:

TP = A - C - D - E - F - G - H + J - M – N - P

where:

TP = the Default Termination Payment;

A = the Fair Market Value of the Project as at the Compensation Date determined by the Independent Expert on the basis that this Deed and each of the other State Project Documents as existing immediately prior to the Expiry Date had continued until the Final Expiry Date (but for the earlier termination).

In determining item A, the Independent Expert must determine the net present value of the projected cash flows for the period between the Compensation Date and the Final Expiry Date calculated on a nominal pre-tax basis using the rate of indexation forecast in the most recently published State Budget papers and otherwise by:

(i) assessing the market value as though the willing buyer was bidding in a public tender process for the right to enter into a New Contract;

(ii) assuming that:

A. the Project Activities are carried out in accordance with, and to the standards set out in, the PSDR and otherwise in accordance with this Deed;

B. the provisions with respect to payment of the Floating Rate Component and Service Payments continue to apply as provided for in this Deed;

C. any breach of this Deed and any adjustments under the Abatement Regime occurring prior to the Compensation Date will be disregarded for the purposes of the New Contract; and

D. the Project Documents will be amended as required to reasonably allow for an incoming provider to carry out the Project Activities in accordance with, and to the standards set out in, the PSDR and otherwise in accordance with this Deed;

(iii) taking into account:

A. the costs (if any), and their timing, which are required to be incurred to complete the Works in accordance with this Deed and to achieve Commercial Acceptance;

B. the reinstatement or repair costs (if any) and their timing, including a reasonable contingency against Project risks, required to be incurred with respect to the Project Assets and the Site to enable the carrying out of the Project Activities until the Final Expiry Date in accordance with and to the standards set out in the PSDR and otherwise in accordance with this Deed; and

C. any costs, and their timing, required to be incurred to enable the buyer (who is to become the new "Project Co") to carry out the Project Activities in accordance with, and to the

standards set out in, the PSDR and otherwise in accordance with this Deed and to perform Project Co's obligations under the Project Documents,

but excluding any costs in relation to which the State will retain the benefit of a Retention Amount, a Defect Retention Amount, a Handover Escrow Account or Handover Bond (if any); and

(iv) using a discount rate to calculate the net present value of the cashflows based on the following formula:

$$R = (1 + PIRR + CB_b - CB_a) \cdot (1 + i) - 1$$

where:

R = the discount rate;

PIRR = the pre-tax Project internal rate of return (real) as shown in the Financial Model;

CB_b = the real yield to maturity as at the Compensation Date on a benchmark Commonwealth bond traded in the Australian bond markets with a modified duration closest to that of the weighted average life of any outstanding amounts referred to in paragraph (b) of the definition of Project Debt as shown in the Financial Model;

CB_a = the real yield to maturity as at the date of Financial Close on a benchmark Commonwealth bond traded in the Australian bond markets with a modified duration closest to that of the weighted average life of any outstanding amounts referred to in paragraph (b) of the definition of Project Debt as shown in the Financial Model; and

i = the assumed long term CPI (or equivalent) indexation rate using the rates of indexation forecast in the most recently published State Budget papers;

C = the Tender Costs (if any) and the State's reasonable forecast internal and external costs of tendering a form of contract(s) for the Project Activities to replace this Deed after termination of this Deed;

D = any Liability of Project Co to the State under the State Project Documents, including all amounts in respect of which the State is entitled to exercise a right of set-off under this Deed (but subject to clauses 43.11(c) and (d) (other than clause 43.11(d)(viii)(H)));

E = any additional costs reasonably incurred by the State as a direct result of the Default Termination Event (but subject to clauses 43.11(c) and (d) (other than clause 43.11(d)(viii)(H)) of this Deed);

F = to the extent the aggregate of all Post Termination Quarterly Amounts equates to a negative number, the absolute value of the aggregate of all such amounts calculated under this Deed. For the avoidance of doubt the Default Termination

Payment is reduced where the aggregate of all Post Termination Quarterly Amounts equates to a negative number;

G = any gains which have accrued, or will accrue, to Project Co as a result of the termination of this Deed or termination of any other Project Document;

H = the aggregate of:

(i) Insurance proceeds:

A. that would have been received before the Expiry Date but for an Insurance Failure Event and which if so received would have been, or would have been required to be, applied towards any component of the Default Termination Payment otherwise payable under this section 4; and

B. received or receivable by Project Co at any time during the period between the Expiry Date and the Compensation Date, except for Insurance proceeds:

1) that are required under the Project Documents to be (and are) applied to repairing or reinstating the Works or the Project Assets; or

2) representing Insurance indemnification of Project Co against its liabilities to third parties);

(ii) any other amounts owing to Project Co; and

(iii) any credit balances standing in accounts held by or for the benefit of Project Co on the Expiry Date (other than those amounts which Project Co holds on trust for a subcontractor in those accounts in accordance with the Finance Documents),

in each case only to the extent it has not otherwise been taken into account in calculating the Default Termination Payment;

J = any amounts owing by the State to Project Co under the State Project Documents as at the Expiry Date (including amounts of any Floating Rate Component or Service Payments which have accrued but not been paid as at the Expiry Date);

M = any third party amounts paid to Project Co at any time during the period between the Expiry Date and the Compensation Date;

N = the costs incurred by the State of engaging the Independent Expert to administer this Schedule; and

P = the Receivables Refund Payment

In calculating items A to P, there will be no double counting of amounts.

5. Termination for Convenience

If this Deed is terminated for convenience under clause 46.2 of this Deed, the Termination for Convenience Payment will be calculated as follows.

The Termination for Convenience Payment or TP means the greater of:

TP = A + B - D +/- G - H + J + K + L - M - P

and

TP = A +/- G - H + J - M - P

where:

TP = the Termination for Convenience Payment;

A = the Project Debt as at the Expiry Date;

B = means, where the Expiry Date occurs prior to Commercial Acceptance:

(i) the Total Equity Contributed (if any); plus

(ii) for each Contributed Equity Portion (if any), the Contributed Equity Portion multiplied by the Contribution Period and multiplied by the Equity IRR; plus

(iii) the Equity Committed multiplied by the Equity IRR; and

where the Expiry Date occurs on or after Commercial Acceptance, means the value of the equity as assessed by the Independent Expert as set out below.

The value assessed by the Independent Expert must be determined through a discounted cash flow valuation for the period from the Expiry Date to the Final Expiry Date. The valuation must apply paragraphs (iv) – (vi) below, and apply generally-accepted principles and practices for cash flow valuations of assets. The Independent Expert must take into account:

(iv) the projected revenue to an incoming Project Co reasonably expected assuming:

A. the provisions of the Payment Schedule and those relating to payment of the Floating Rate Component continue to apply; and

B. the arrangements for those commercial opportunities not retained by the Equity Investors following termination (including any revenue-sharing with the State) continue to apply;

(v) the projected capital and operating costs reasonably expected to be incurred by an incoming Project Co in connection with delivering the Project Activities, and assuming the Services are delivered in accordance with, and to the standards set out in, the PSDR and otherwise in accordance with this Deed; and

(vi) the financing costs of Project Co or Finance Co under the Finance Documents as calculated in the Financial Model but adjusted where those costs are reasonably expected to change because the Finance Documents require refinancing after the Expiry Date,

and in each case on the basis that the Project Documents, as amended in accordance with this Deed, continue in full force and effect from the Expiry Date to the Final Expiry Date. To prepare the projections referred to in paragraphs (iv) and (v) above, the Independent Expert is not constrained by values in the Financial Model, and should apply reasonable contingency to cash flows to account for Project risks. The Independent Expert must discount cash flows using a rate per annum equivalent to market rates of return to equity for projects with a similar risk profile to this Project;

D = any Liability of Project Co to the State under the State Project Documents, including all amounts in respect of which the State is entitled to exercise a right of set-off under this Deed (but subject to clauses 43.11(c) and (d) (other than clause 43.11(d)(viii)(H)));

G = the sum of the amount of costs incurred or gains realised by Project Co or Finance Co (acting reasonably) as a direct result of terminating the Finance Documents, including as a result of terminating or reversing any derivative position, arising from prepayment of debt or interest and the aggregate amount of any 'Modified Make-Whole Amount' under and as defined in the Note and Guarantee Agreement dated on or about the date of this Deed entered into by, among others, the Project Entities, in each case arising from the State's election to terminate for convenience under clause 46.2 of this Deed. If the net amount is a gain, it should be a deduction from, and if it is a cost, it should be an addition to, this Termination for Convenience Payment;

H = the aggregate of:

(i) any Insurance proceeds:

A. that would have been received before the Expiry Date but for an Insurance Failure Event and which if so received would have been, or would have been required to be, applied towards any component of the Termination for Convenience Payment otherwise payable under this section 5; and

B. received or receivable by Project Co at any time during the period between the Expiry Date and the Compensation Date, except for Insurance proceeds:

1) that are required under the Project Document to be (and are) applied to repairing or reinstating the Works or the Project Assets; or

2) representing Insurance indemnification of Project Co against Liabilities to third parties;

(ii) any other amounts owing to Project Co; and

(iii) any credit balances standing in accounts held by or for the benefit of Project Co on the Expiry Date (other than those amounts which Project Co holds on trust for a Subcontractor in those accounts in accordance with the Finance Documents),

in each case only to the extent it has not otherwise been taken into account in calculating the Termination for Convenience Payment;

J = any amounts owing by the State to Project Co under the State Project Documents as at the Expiry Date (including the amount of any Service Payments or Floating Rate Component which has accrued but not been paid as at the Expiry Date);

K = redundancy payments for employees of Project Co that have been or will be reasonably and properly incurred by Project Co as a direct result of the termination of this Deed and which would not have been otherwise incurred if this Deed was not terminated under clause 46.2;

L = the State's Liability to Project Co for any Subcontractor Termination Amounts, but only to the extent specified in clause 9.3(g)(iii) to (vi) of this Deed;

M = any third party amounts paid to Project Co at any time during the period between the Expiry Date and the Compensation Date; and

P = the Receivables Refund Payment.

In calculating items A to P, there will be no double counting of amounts.

6. Termination for Force Majeure Termination Event

6.1 Termination - No Default Termination Event subsisting

Subject to section 6.2, if the State or Project Co terminates this Deed due to a Force Majeure Termination Event and a Default Termination Event is not then subsisting, the Force Majeure Termination Payment will be the greater of:

(a) an amount calculated as though a Default Termination Payment was due and the Termination Payment was calculated in accordance with the provisions of section 4; and

(b) an amount calculated in accordance with section 6.3.

6.2 Termination - Default Termination Event subsisting

If the State or Project Co terminates this Deed due to a Force Majeure Termination Event and a Default Termination Event is then subsisting, this section 6 will not apply and the Termination Payment will be an amount calculated in accordance with the provisions of section 3 or (if required by section 3) the provisions of section 4.

6.3 Force Majeure Termination Payment

Subject to sections 6.1 and 6.2, the Force Majeure Termination Payment where this Deed is terminated as a consequence of the occurrence of a Force Majeure Termination Event will be calculated as follows:

TP = A - D +/- G - H + J - M - O - P

where:

TP = the Force Majeure Termination Payment;

A = the Project Debt as at the Expiry Date;

D = any Liability of Project Co to the State under the State Project Documents, including all amounts in respect of which the State is entitled to exercise a right of set-off under this Deed (but subject to clauses 43.11(c) and (d) (other than clause 43.11(d)(viii)(H)));

G = the amount of costs incurred or gains realised by Project Co or Finance Co (acting reasonably) as a direct result of terminating the Finance Documents, including as a result of terminating or reversing any derivative position or arising from prepayment of debt or interest, in each case arising from the State's or Project Co's election to terminate this Deed as a consequence of the occurrence of a Force Majeure Termination Event. If the net amount is a gain it should be a deduction from, and if it is a cost it should be an addition to, the Force Majeure Termination Payment;

H = the aggregate of:

(i) any Insurance proceeds:

A. that would have been received before the Expiry Date but for an Insurance Failure Event and which if so received would have been, or would have been required to be, applied towards any component of the Force Majeure Termination Payment otherwise payable under this section 6; and

B. received or receivable by Project Co at any time during the period between the Expiry Date and the Compensation Date, except for Insurance proceeds:

1) that are required under the Project Documents to be (and are) applied to repairing or reinstating the Works or the Project Assets; or

2) representing Insurance indemnification of Project Co against liabilities to third parties;

(ii) any other amounts owing to Project Co; and

(iii) any credit balances standing in accounts held by or for the benefit of Project Co on the Expiry Date (other than those amounts which Project Co holds on trust for a Subcontractor in those accounts in accordance with the Finance Documents),

in each case only to the extent that it has not otherwise been taken into account in calculating the Force Majeure Termination Payment;

J = any amounts owing by the State to Project Co under the State Project Documents as at the Expiry Date (including the amount of any Service Payments or Floating Rate Component which has accrued but not been paid as at the Expiry Date);

M = any third party amounts paid to Project Co at any time during the period between the Expiry Date and the Compensation Date; and

O = to the extent such amounts are outstanding at the Expiry Date, any amounts included in item A that are intended (as described in the Financial Model) to be refinanced in the form of equity or subordinated debt treated as equity, such amount including any accrued, deferred or rolled up interest; and

P = the Receivables Refund Payment

In calculating items A to P, there will be no double counting of amounts.

7. Interest

In respect of Termination Payments calculated under this Schedule 6 only, interest accrues:

(a) in respect of a Termination Payment calculated under section 3 or section 4, from the 21st Business Day after the Compensation Date to (and excluding) the date on which the Termination Payment is paid in full. Interest accrues on that Termination Payment at the default rate provided in the relevant Finance Document. Interest is payable on the date on which the Termination Payment is paid; and

(b) in respect of any Termination Payment calculated under section 5 or section 6, from and including the Expiry Date to (and excluding) the date on which the Termination Payment is paid in full. Interest on the Actual Debt portion of that Termination Payment accrues at the rate provided in the relevant Finance Document from and including the day after the Expiry Date to and including the 20th Business Day after the Expiry Date and thereafter on the whole of that Termination Payment at the default rate provided in the relevant Finance Document. Interest is payable on the date on which the Termination Payment is paid.

8. Insurance

If any proceeds of Insurance are received by Project Co after this Deed is terminated (other than those Insurance proceeds representing Insurance indemnification of Project Co against Liabilities to third parties) and those proceeds:

(a) were not taken into account in calculating the Termination Payment that has already been made on the basis that the amounts were not "owing to Project Co", "received" or "received or receivable" by Project Co at the relevant time;

(b) would have been so taken into account had they been owing, received or receivable at the time of calculating the Termination Payment; and

(c) apply to the period up to and including the date of payment of the Termination Payment,

then those proceeds are held on trust by Project Co for the State, and Project Co must pay those proceeds, or cause those proceeds to be paid, to the State for the State's retention promptly on receipt. If the proceeds are not yet received then, to the maximum extent legally possible, the State will be subrogated to the rights of Project Co in respect of those proceeds, and entitled to recover and retain the proceeds accordingly. The rights and obligations in this section 8 survive the expiry or early termination of this Deed.

9. Mitigation

Each party must use all reasonable endeavours to mitigate and minimise losses or costs to be included in the calculation of the relevant Termination Payment. Project Co must use all reasonable endeavours to maximise receipts and gains which are to be calculated within any Termination Payment.

Schedule 7 – Form of Subcontractor Direct Deed

Subcontractor Direct Deed

Outer Suburban Arterial Roads Program – Western Package

Minister for Roads and Road Safety on behalf of the Crown in right of the State of Victoria

(**State**)

Netflow OSARS (Western) Pty Ltd as trustee for Netflow OSARS (Western) Unit Trust for and on behalf of the Netflow OSARS (Western) Partnership and Cintra OSARS (Western) Pty Ltd as trustee for Cintra OSARS (Western) Unit Trust for and on behalf of the Netflow OSARS (Western) Partnership

(**Project Co**)

[ ]

(**Subcontractor**)

[***State Note: This document has been prepared without a Parent Guarantor. To the extent that a Parent Guarantor is required, amendments will be made to include the Parent Guarantor as illustrated in the D&C Contractor Direct Deed.***]

Contents

1. Defined terms and interpretation 1

1.1 Project Deed definitions 1
1.2 Definitions 1
1.3 Interpretation 3
1.4 Priority of documents 4
1.5 State Project Documents 4
1.6 Prior approval or consent 5
1.7 Action without delay 5
1.8 Provisions limiting or excluding Liability, rights or obligations 5
1.9 Relationship of the parties 5
1.10 State's executive rights, duties and functions 5
1.11 Reasonable endeavours of State 6
1.12 Final and Binding 6
1.13 Proportionate liability 6

2. Conditions precedent 6

3. Acknowledgments 7

3.1 By the Subcontractor concerning the State Security 7
3.2 By the Subcontractor concerning the State's rights 7
3.3 By Project Co 8
3.4 Information 8
3.5 Subcontract not to affect State rights 9

4. Representations and warranties by the Subcontractor 9

5. Undertakings of the Subcontractor 11

6. Right to cure before termination of the Subcontract 12

6.1 State's cure rights 12
6.2 Termination or suspension with cause 12
6.3 Early suspension of Subcontractor's obligations 13
6.4 Subcontractor Statements 13
6.5 Warranty of accuracy and waiver 14
6.6 Verification of Subcontractor Statements 14
6.7 Subcontractor Statements to be conclusive evidence 14

7. Step-In by the State 15

7.1 Step-In Right 15
7.2 Step-In by the State 16
7.3 Step-In using Additional Obligor 16
7.4 Indemnity 17

8. State's option to novate to the State or third party 17

8.1 Option 17
8.2 Novation to Substitute Party 18
8.3 Novation to a Substitute Party other than the State 19
8.4 Accrued obligations and liabilities 20

9. Dispute Resolution procedure 21

9.1 Procedure 21
9.2 [Not used] 21
9.3 Senior negotiations 21

10. Expert determination 22

10.1 Referral and election of expert 22
10.2 Rules of expert determination 23
10.3 Expert finding 23

10.4 Proportionate liability 24
10.5 Liability of expert 24
10.6 Costs 24

11. Arbitration 24

11.1 Reference to Arbitration 24
11.2 Arbitration 25
11.3 Appointment of arbitrator 25
11.4 General Principles for conduct of arbitration 25
11.5 Proportional liability 27
11.6 Extension of ambit of arbitration proceedings 27
11.7 Award final and binding 27
11.8 Continue to perform 27
11.9 Governing law of arbitration agreement 27
11.10 Interlocutory relief 27
11.11 Consolidation 27

12. Termination of this Deed 27

13. Insurances 28

14. Goods and Services Tax (GST) 28

15. Notices 30

15.1 Notices 30
15.2 Notice to Financiers 32

16. Confidential Information and disclosure 32

16.1 Confidential Information and disclosure by the State 32
16.2 Confidential Information and disclosure by Project Co and the Subcontractor 33
16.3 Disclosure by the Subcontractor 33

17. Return of documents 34

18. Miscellaneous 34

18.1 Governing Law and jurisdiction 34
18.2 Entire agreement 34
18.3 Further acts and documents 34
18.4 Survival of certain provisions 34
18.5 Waiver 35
18.6 Consents, approvals and directions 35
18.7 Amendments 35
18.8 Expenses 35
18.9 Severance 36
18.10 Counterparts 36
18.11 Moratorium legislation 36
18.12 [Not used] 36
18.13 Indemnity held on trust 36
18.14 Assignment 36
18.15 Set off 37

19. Aggregate Liability 37

Subcontractor Direct Deed dated

Parties

Minister for Roads and Road Safety on behalf of the Crown in right of the State of Victoria (**State**)

Netflow OSARS (Western) Pty Ltd as trustee for Netflow OSARS (Western) Unit Trust for and on behalf of the Netflow OSARS (Western) Partnership and Cintra OSARS (Western) Pty Ltd as trustee for Cintra OSARS (Western) Unit Trust for and on behalf of the Netflow OSARS (Western) Partnership (**Project Co**)

[ ] (**Subcontractor**)

Background

A. The background to the Project is set out in the Project Deed.

B. Project Co and the Subcontractor are or will become parties to the Subcontract.

C. The Subcontractor has agreed to grant to the State certain rights in relation to the Subcontract.

Operative provisions

1. Defined terms and interpretation

1.1 Project Deed definitions

Unless otherwise expressly defined, expressions used in this Deed have the meanings given to them in or for the purposes of the Project Deed.

1.2 Definitions

In this Deed, unless the context otherwise requires:

Additional Obligor means a company or other entity which is wholly owned by the State.

Additional Obligor Step-In Notice has the meaning given in clause 7.1(a)(iv).

Additional Obligor Step-Out Date has the meaning given in clause 7.3(d).

Agreed Amount has the meaning given in clause 14(c)(i).

Assumption Date has the meaning given in clause 7.3(a).

Cost has the meaning given in clause 14(h).

Deed means this deed and includes all schedules, attachments and annexures to it.

Default Event means:

(a) any breach by Project Co of any of its obligations under the Subcontract; or

(b) any other event or circumstance,

which alone or with the giving of notice or passage of time or both, would entitle the Subcontractor to terminate, rescind, accept the repudiation of, or suspend any or all of the Subcontractor's obligations under, the Subcontract.

Default Event Notice has the meaning given in clause 6.2(a).

Dispute has the meaning given in clause 9.1.

Disputing Parties has the meaning given in clause 9.1.

Material Adverse Effect means a material adverse effect on:

(a) the ability of each of Project Co or the Subcontractor to perform and observe their respective obligations under any Project Document to which it is a party; or

(b) the rights of the State under any State Project Document, or the ability or capacity of the State to exercise its rights or perform its obligations under a State Project Document.

Novation Notice has the meaning given in clause 8.1(a).

Novation Notice Date means:

(a) in relation to clause 8.3, the later of the date of the Novation Notice and the date the Subcontractor consents or is deemed (in accordance with clause 8.3(d)) to have consented to the novation and assignment; and

(b) otherwise, the date of the Novation Notice.

Project Deed means the document entitled "OSAR Western Package – Project Deed" between the State and Project Co dated [*#insert date*].

Project Co's Rights has the meaning given in clause 7.3(b)(i)A.

Receiver means a receiver or receiver and manager appointed by the State under the State Security, and, if more than one, then each of them, and also any servant, agent or delegate of any of them.

Recipient has the meaning given in clause 14(c).

Representative has the meaning given in clause 9.3(a).

Revenue has the meaning given in clause 14(g).

State Cure Notice has the meaning given in clause 6.2(b).

Statement Beneficiary means the State, an Additional Obligor or Receiver appointed under clause 7.

Step-In Period has the meaning given in clause 7.1(b).

Step-In Right has the meaning given in clause 7.1(a).

Subcontract means [*insert description of relevant subcontract*].

Subcontractor Associate means any:

(a) Relevant Person in respect of the Subcontractor only (excluding the Project Co Representative); and

(b) Subcontractor, officer, agent, adviser, consultant, contractor or employee of the Subcontractor.

Subcontractor Statement has the meaning given in clause 6.4.

Substitute Party has the meaning given in clause 8.1(a).

Supplier has the meaning given in clause 14(c).

1.3 Interpretation

In this Deed:

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

and unless the context otherwise requires:

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

(c) (**Deed and Schedule references**): a reference to:

(i) a party, clause, Schedule, Annexure, Appendix or Attachment is a reference to a party, clause, Schedule, Annexure, Appendix or Attachment of or to this Deed; and

(ii) a section is a reference to a section of the Schedule in which it is located,

unless expressly provided otherwise;

(d) (**Part**): a reference to a Part is a reference to a Part of the PSDR;

(e) (**Document as amended**): a reference to a Project Document or to any other deed, agreement, document or instrument includes a reference to such Project Document or other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;

(f) (**party**): a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;

(g) (**person**): a reference to a person includes an individual, the estate of an individual, a corporation, a body corporate, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust (including a trustee);

(h) (**replacement person**): a reference to a person appointed under this Deed or any other Project Document includes that person's replacement or delegate appointed in accordance with this Deed or other Project Document (as applicable);

(i) (**legislation**): a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes:

(i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the legislation or delegated legislation; and

(ii) consolidations, amendments, re-enactments and replacements;

(j) (**Standards**): unless otherwise expressly stated, a reference to a Standard includes that Standard as amended or updated from time to time;

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

(l) (**"includes"**): "includes", "include" and "including" will be read as if followed by the phrase "(without limitation)";

(m) (**"or"**): the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;

(n) (**information**): a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;

(o) (**"$"**): a reference to "$", AUD or dollar is to Australian currency;

(p) (**Business Day**): if the day on or by which anything is to be done under this Deed is not a Business Day, that thing must be done no later than the next Business Day;

(q) (**time**): a reference to time is a reference to time in Melbourne, Victoria, Australia;

(r) (**rights**): a reference to a right includes any benefit, remedy, function, discretion, authority or power;

(s) (**obligations and liabilities**): a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;

(t) (**absolute discretion**): unless the State is expressly required under a State Project Document to act reasonably in exercising a power, right or remedy, the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;

(u) (**"may"**): without limiting clause 1.3(t), unless the State is expressly required under a State Project Document to act reasonably in exercising a power, right or remedy, the term "may", when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;

(v) (**Authorities**): where there is a reference to an Authority, institute or association or other body referred to in a State Project Document which:

(i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, that State Project Document is deemed to refer to that other entity; or

(ii) ceases to exist, that State Project Document is deemed to refer to that new entity (if any) which serves substantially the same purpose or object as the former entity; and

(w) (**contra proferentem rule not to apply**): each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

1.4 Priority of documents

To the extent of any inconsistency, ambiguity or discrepancy between this Deed and the Subcontract, this Deed prevails.

1.5 State Project Documents

The Subcontractor acknowledges that it has received (or is deemed to have received) a copy of the Project Deed, the State Security and the Finance Direct Deed.

1.6 Prior approval or consent

If Project Co or the Subcontractor (as applicable) is required by a State Project Document to obtain the State's or the State Representative's consent or approval to an action, document or thing, unless otherwise expressly stated, that consent or approval must be obtained as a condition precedent to the action, document or thing occurring or coming into effect.

1.7 Action without delay

Unless there is a provision in this Deed which specifies a period of time in which something must be done by Project Co or the Subcontractor, all things must be done by Project Co or the Subcontractor (as applicable) without undue delay.

1.8 Provisions limiting or excluding Liability, rights or obligations

(a) (**No limitation**): A right or obligation of a party under this Deed will not limit or exclude any other right or obligation of a party under this Deed unless otherwise expressly stated.

(b) (**Limitation permitted by Law**): Any provision of this Deed which seeks, either expressly or by implication, to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.

1.9 Relationship of the parties

Nothing in any Project Document:

(a) (**no additional relationship**): creates a partnership, joint venture, fiduciary, employment or agency relationship between the parties; or

(b) (**no good faith**): imposes any duty of good faith on the State,

(unless otherwise expressly stated).

1.10 State's executive rights, duties and functions

(a) (**State's own interests**): Unless otherwise expressly stated in the State Project Documents, nothing in the State Project Documents gives rise to any duty on the part of the State to consider interests other than its own interests when exercising any of its rights or carrying out any of its obligations under the State Project Documents.

(b) (**State's rights**): Notwithstanding anything expressly stated or implied in the State Project Documents to the contrary:

(i) the State is not obliged to exercise any executive or statutory right or duty, or to influence, over-ride, interfere with or direct any other Government Party in the proper exercise and performance of any of its executive or statutory rights or duties; and

(ii) nothing expressly stated or implied in the State Project Documents has the effect of constraining the State or placing any fetter on the State's discretion to exercise or not to exercise any of its executive or statutory rights or duties.

(c) (**No Claim**): Subject to clause 1.10(d), Project Co and the Subcontractor will not be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its executive or statutory rights or duties.

(d) (**Liability for breach**): Clauses 1.10(a) and 1.10(b) do not limit any Liability which the State would have had to Project Co or the Subcontractor under any State Project Document as a result of:

(i) a breach by the State of a term of any State Project Document; or

(ii) an express entitlement of Project Co under any State Project Document,

but for these clauses.

1.11 Reasonable endeavours of State

Any statement in a State Project Document providing that the State or any officer, employee or agent of the State will or must use or exercise "reasonable endeavours", "act reasonably" or "act in good faith" in relation to an outcome, means that the State must take steps to bring about the relevant outcome so far as it is reasonably able to do so, having regard to its resources and other responsibilities but does not mean that the State or any officer, employee or agent of the State:

(a) (**no guarantee**): guarantees the relevant outcome will be brought about; or

(b) (**no obligation**): is not required to:

(i) exercise a right of any Government Party, or to influence, over-ride, interfere with or direct any other Government Party in the proper exercise and performance of its legal, statutory or executive duties and functions;

(ii) exercise a power or discretion in a manner that the State regards as not in the public interest;

(iii) develop or implement new policy or a change in policy;

(iv) procure any new legislation or a change in legislation; or

(v) act in any way that the State regards as not in the public interest.

1.12 Final and Binding

If a determination, decision, opinion or direction is said in this Deed to be "final and binding", neither party is entitled to challenge that determination, decision, opinion or direction on any basis other than that it is an indisputable error in complete disregard of the facts of the case, the applicable law or credible evidence.

1.13 Proportionate liability

The operation of Chapter Part IVAA of the *Wrongs Act 1958* (Vic) is excluded in relation to all and any rights of either party under this Deed, whether such rights are sought to be enforced in contract, tort or otherwise.

2. Conditions precedent

The satisfaction or waiver of the Conditions Precedent in accordance with clause 3 of the Project Deed, is a condition precedent to the coming into operation of this Deed (other than this clause 2 and clauses 1.1 to 1.3, 1.6, 1.10, 1.11, 4, 9, 10, 11, 13, 15, 16 and 18).

3. Acknowledgments

3.1 By the Subcontractor concerning the State Security

The Subcontractor acknowledges and agrees:

(a) (**grant of security by Project Co**): that Project Co may give a security interest in the form of the State Security, in favour of the State over all assets and undertakings of Project Co including Project Co's right, title and interest under the Subcontract or assign Project Co's right, title and interest under the Subcontract to the State by way of security, and the Subcontractor consents to the State Security and any such assignment;

(b) (**exercise of rights**): to the State's rights under the State Security including the appointment by Project Co of the State as attorney of Project Co to do, perform and exercise all things, acts and rights under the Subcontract on behalf of and for the account of Project Co;

(c) (**no Default Event**): that the grant of, or exercise by the State of its rights under, the State Security will not itself contravene, or constitute a Default Event under, the Subcontract or entitle the Subcontractor to exercise any right (including termination) under it;

(d) (**Liabilities and obligations**): that nothing in the State Security will cause the State or any State Associate to assume any Liabilities or obligations under the Subcontract except as may result from its own acts or omissions in exercising rights or in performing or failing to perform obligations under the Subcontract as envisaged by this Deed;

(e) (**notice of any other assignment**): that with the exception of the security interests under the Finance Documents, it has not received notice of any other assignment or charge by Project Co of any right, title, interest in or benefit of Project Co under the Subcontract; and

(f) (**set off**): that as of the date of this Deed, it has no knowledge of any right of set off or counterclaim which it may have against Project Co so as to diminish any money payable by it to Project Co under the Subcontract, except only where the right of set off or counterclaim is contained within the Subcontract.

3.2 By the Subcontractor concerning the State's rights

(a) (**State's rights**): The Subcontractor acknowledges the State's rights under clauses 27.1(i)(iv), 38.2, 39.1, 45 and 46 of the Project Deed and the other relevant clauses listed in clause 9.3(e) of the Project Deed.

(b) (**Facilitation of rights**): The Subcontractor must exercise its rights under the Subcontract in a way that facilitates the effective exercise by the State of the rights referred to in clause 3.2(a) and will on reasonable notice permit the State or any State Associate to have access to, and take copies of, the records, reports, documents and other papers to which the State is entitled to have access in accordance with the State's rights referred to in clause 3.2(a).

(c) (**Continued performance**): During the period in which the State is exercising a right referred to in clause 3.2(a), the State may, in accordance with the Project Deed and the Subcontract, require the suspension or the continuation of performance by the Subcontractor of its obligations under the Subcontract, and if it does so, the Subcontractor will comply with this requirement and with all reasonable directions of the State in relation to the performance of the Subcontract by the Subcontractor during such period.

(d) (**State not liable**): The requirement of the State that the Subcontractor suspend or continue to perform its obligations under the Subcontract and the giving of any direction under clause 3.2(c) by the State will not be construed as an assumption by the State of any obligations of the Subcontractor under the Subcontract.

(e) (**Subcontracting**): The Subcontractor will not subcontract any of its obligations under the Subcontract without the prior consent of the State, where so required in accordance with clause 9 of the Project Deed.

(f) (**Probity Investigations**): Without limiting clauses 3.2(a) to (e), the Subcontractor acknowledges and agrees that:

(i) in accordance with clauses 9 and 39.2 of the Project Deed, the State may from time to time or may require Project Co to conduct Probity Investigations of the Subcontractor and Relevant Persons, or other persons in relation to any further subcontracting by the Subcontractor of any of its obligations under the Subcontract;

(ii) it will procure the consent to any Probity Investigation and, to the extent that the State is entitled to do so under the Project Deed, such other probity and security investigations that the State may require of each Relevant Person in relation to the Subcontractor in respect of whom the State advises the Subcontractor that it requires a Probity Investigation; and

(iii) it will not appoint, or retain the appointment of, and will ensure that no other person appoints, or retains the appointment of, a person to the position of a Relevant Person in relation to the management or performance of the Subcontract by the Subcontractor unless the State has given approval, including following a Probity Investigation and other such investigations that the State may require under clauses 9 and 39.2 of the Project Deed.

3.3 By Project Co

Project Co is bound by, and must cooperate in the implementation of, this Deed. It acknowledges that this Deed is intended to benefit only the Subcontractor and the State and does not in any way affect any obligation of Project Co under the Subcontract or under any Project Document except as expressly set out herein.

3.4 Information

Project Co and the Subcontractor each acknowledge and agree that:

(a) (**information purpose**): any information, data and documents provided by the State:

(i) are provided for information purposes only and all of the State and the State Associates' Intellectual Property Rights therein remain the property of the State or those State Associates (as the case may be); and

(ii) do not form part of this Deed or constitute an invitation, offer or recommendation by or on behalf of the State or any State Associate; and

(b) (**no Liability**): to the extent permitted by Law, neither the State nor any of its Associates will have any Liability to the Subcontractor or any Subcontractor Associate, nor will the Subcontractor or any Subcontractor Associate be entitled to make any Claim against the State, or seek, pursue or obtain an indemnity against or contribution to Liability from the State or any State Associate arising in connection with:

(i) the provision of, or purported reliance upon, or use of, any information, data and documents referred to in clause 3.4(a) by the Subcontractor or any other person to whom such information is disclosed by the Subcontractor, the Subcontractor Associates, or any person on the Subcontractor or any Subcontractor's behalf;

(ii) any reference to the State in the Subcontract; or

(iii) any review of, comments upon, acceptance, approval or certification of the form or substance of the Subcontract by the State.

3.5 Subcontract not to affect State rights

Project Co and the Subcontractor each acknowledge and agree that:

(a) (**rights not affected**): where the Subcontractor is expressed in the Subcontract to have a right (or possible right) to compensation or relief which is dependent on or determined by reference to the Project Deed or an equivalent or similar right of Project Co:

(i) this does not of itself expand Project Co's rights, or the State's Liability, under the Project Deed to include the compensation or relief to which the Subcontractor is or may become entitled under the Subcontract; and

(ii) Project Co's rights, and the State's Liability, under the Project Deed will be determined solely in accordance with the terms of the Project Deed;

(b) (**risk of discrepancy**): as between the State (on the one hand) and Project Co and the Subcontractor (on the other hand), Project Co and the Subcontractor accept and will bear the risk of any inconsistency, ambiguity or discrepancy between the terms of the Subcontract and the Project Deed; and

(c) (**dealing directly with State**): notwithstanding anything to the contrary in the Subcontract, the Subcontractor has no right to deal directly with the State or participate in any meeting, consultation or process (including negotiation or dispute resolution) unless:

(i) expressly provided to the contrary in the Project Deed or this Deed; or

(ii) the State consents.

4. Representations and warranties by the Subcontractor

The Subcontractor represents and warrants for the benefit of the State that:

(a) (**power to execute**): it has the power to execute, deliver and carry out its obligations under this Deed, the Subcontract and each other Project Document to which it is a party and all necessary action has been taken to authorise that execution, delivery and performance;

(b) (**legality**): the execution, delivery and performance of this Deed, the Subcontract and each other Project Document to which it is a party does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;

(c) (**validity**): this Deed, the Subcontract and each other Project Document to which it is a party constitutes a valid and legally binding obligation on it in accordance with its terms;

(d) (**registration**): it is duly registered, properly constituted and remains in existence;

(e) (**no trust relationship**): except as stated in this Deed, it is not the trustee or Responsible Entity of any trust nor does it hold any property subject to or impressed by any trust;

(f) (**information true and correct**): all information provided by it to the State is true and correct and the Subcontractor is not aware of any material facts or circumstances that have not been disclosed to the State and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this Deed or to consent to the entry into the Subcontract;

(g) (**litigation**): no Claim against it is current or pending or (to its knowledge) is threatened, which will or is likely to have a material adverse effect upon it or its ability to perform its financial and other obligations under this Deed, the Subcontract or any other Project Document to which it is a party;

(h) (**Insolvency Event**): no Insolvency Event has occurred in respect of it;

(i) (**accounts**):

(i) its most recent consolidated audited (if the requirement for auditing is applicable) accounts give a true and fair view of its and its subsidiaries' state of affairs as at the date to which they relate and the results of its and its subsidiaries' operations for the accounting period ended on such date;

(ii) there has been no material adverse change in its or its subsidiaries' state of affairs since such date; and

(iii) such accounts have been prepared in accordance with the Corporations Act and accounting principles and practices generally accepted in Australia consistently applied, except to the extent of departures from such principles and practices disclosed in such accounts;

(j) (**no default**):

(i) it is not in default under any document or agreement binding on it or its assets which relates to financial indebtedness; and

(ii) nothing has occurred which would, with the giving of notice and/or lapse of time, constitute an event of default, cancellation, prepayment event (pursuant to a bona fide right to exercise prepayment) or similar event (whatever called) under any such document or agreement,

and which would have a Material Adverse Effect;

(k) (**no immunity**): neither it nor any of its assets enjoys any immunity from set off, suit or execution; and

(l) (**own investigations**): in entering into this Deed, the Subcontract and any other Project Document to which it is a party it relied upon its own investigations and has not relied upon any representation or warranty about its subject matter by the State, Project Co or any other person unless in respect of Project Co or any other person, other than the State or any State Associate, it is expressly permitted to do so in accordance with a Project Document to which it is a party.

5. Undertakings of the Subcontractor

The Subcontractor undertakes to the State as follows:

(a) (**notification of Default Event**): it will notify the State of any Default Event promptly after it gives notice of that Default Event in accordance with clause [*#insert*] ([**Notice of Project Co Event of Default**]) of the Subcontract;

(b) (**documents in relation to Default Event**): it will promptly give the State a copy of all documents issued by the Subcontractor to Project Co in relation to a Default Event;

(c) (**no amendment without consent**): it will not, without first obtaining the consent of the State:

(i) make or permit any amendment or replacement of or addition to;

(ii) subject to clause 6.2, terminate, surrender, rescind or accept repudiation of;

(iii) permit the novation, assignment or substitution of any party's rights, obligations or interest in; or

(iv) allow any express waiver of its material rights and obligations under,

the Subcontract, provided that the State will not withhold its consent to an amendment which is an amendment to which it has consented in accordance with the Project Deed;

(d) (**deed of accession**): it will not novate, assign or substitute any of its rights, obligations or interest in the Subcontract without first procuring that the proposed novatee, assignee or substitute executes a deed in favour of the State (in form and substance approved by the State) pursuant to which the novatee, assignee or substitute agrees to accept and be bound by this Deed as if it were the Subcontractor (as the case may be);

(e) (**attend meetings and inspections**): it will (when reasonably requested by the State):

(i) attend, where reasonable and appropriate, meetings with the State or any State Associate;

(ii) provide the State, any State Associate and authorised personnel with:

A. full access to the Site to the extent provided in the Project Deed and to the extent that the Subcontractor is granted access under the Subcontract; and

B. any other information, records or documents that the State or any State Associate (acting reasonably) requires in relation to the carrying out of the [*Transition Activities / Development Phase Activities / Services*] [***State Note: Delete whichever is not applicable.***] or compliance with the Subcontract or any information required by the State to comply with requests from the Victorian Auditor-General; and

(iii) to the extent provided in the Project Deed, permit the State or any State Associate to attend all tests and inspections to be carried out in connection with the Project in accordance with the terms of the Subcontract; and

(f) (**access to records**): at the request of the State, the Subcontractor will:

(i) permit the State or any State Associate to inspect all records, reports, plans, programs, specifications and design documents prepared or kept by the Subcontractor in relation to the [*Transition Activities / Development Phase Activities / Services*] [***State Note: Delete whichever is not applicable.***] and the Project; and

(ii) supply the State or any State Associate with a copy of any such report or document which they may require from time to time.

6. Right to cure before termination of the Subcontract

6.1 State's cure rights

(a) (**Provide State with notices**): The Subcontractor must give the State:

(i) Default Event Notices; and

(ii) State Cure Notices,

as required by clause 6.2.

(b) (**State Cure Notice**): On receiving a State Cure Notice, and subject to the Finance Direct Deed, the State may (but is not obliged to) take steps to:

(i) remedy, or procure the remedy of, that Default Event; or

(ii) if the Default Event is not capable of remedy, commence and continue to perform the obligations of Project Co under the Subcontract.

6.2 Termination or suspension with cause

The Subcontractor may only exercise a right to terminate, rescind, accept the repudiation of, or (subject to clause 6.3) suspend the performance of any or all of its obligations under the Subcontract if:

(a) (**prior notice**): the Subcontractor has given to the State prior notice setting out details of the Default Event giving rise to that proposed exercise in accordance with clause 6.4 (**Default Event Notice**);

(b) (**expiration of remedy period**): the Subcontractor has given notice to the State (**State Cure Notice**) confirming that any remedy period available to the Financiers in respect of the Default Event under any direct agreement between the Subcontractor, Project Co and the Financiers has expired without a remedy being achieved; and

(c) (**Default Event remedy**): where:

(i) the Default Event is capable of remedy within 20 Business Days after the date on which the State received the State Cure Notice, the Default Event has not been remedied within that 20 Business Day period;

(ii) the Default Event is not capable of remedy within 20 Business Days after the date on which the State received the State Cure Notice but is nevertheless capable of remedy, the State (or an Additional Obligor or Receiver appointed under clause 7) has not commenced remedying the Default Event within that 20 Business Day period and has not continued to diligently pursue that remedy;

(iii) the Default Event is not capable of remedy and the Default Event Notice contains a claim for reasonable compensation for the Default Event, Project Co or the State (or another person on behalf of either of them) has not paid or otherwise provided that compensation to the Subcontractor:

A. to the extent that the relevant amount of compensation has been referred to expert determination under clauses 9 or 10, within 20 Business Days after that Dispute is resolved; or

B. otherwise within 20 Business Days after the date on which the State received the State Cure Notice;

(iv) the Default Event is not capable of remedy and the Default Event Notice does not contain a claim for reasonable compensation for the Default Event, the State (or an Additional Obligor or Receiver appointed under clause 7) does not commence and continue to perform Project Co's obligations under the Subcontract within 20 Business Days after the date on which the State received the State Cure Notice; or

(v) the State notifies the Subcontractor that it elects not to remedy, or procure the remedy of, the Default Event.

6.3 Early suspension of Subcontractor's obligations

If:

(a) (**right to suspend**): the Subcontractor, but for the operation of clause 6.2, would have a right to suspend performance of its obligations under the Subcontract;

(b) (**State Cure Notice**): the Subcontractor has issued a State Cure Notice to the State with respect to that Default Event;

(c) (**Dispute, non-payment or expired period**): either:

(i) the State has not undertaken to pay to the Subcontractor the amounts payable under the Subcontract within 20 Business Days from the date of receipt of the State Cure Notice or, if the State refers the amounts in the Default Event Notice to Dispute, within 20 Business Days after the Dispute being determined; or

(ii) the State has undertaken to pay the Subcontractor such amounts for a stated period and that period has expired without being extended by the State (acting reasonably); and

(d) (**not remedied**): the Default Event has not otherwise been remedied,

then the Subcontractor may suspend performance of its obligations under the Subcontract.

6.4 Subcontractor Statements

As part of any Default Event Notice, the Subcontractor must include a statement of:

(a) (**all amounts due and payable**): all amounts due and payable to the Subcontractor under the Subcontract on or before the date of the Default Event Notice but remaining unpaid at such date;

(b) (**monetary claim**): the nature and, to the best of the Subcontractor's knowledge and belief, the amount of any monetary claim asserted by the Subcontractor arising in connection with the Subcontract against Project Co; and

(c) (**Intention to terminate**): where the Subcontractor intends to terminate the Subcontract due to a default or breach of condition of a non-financial nature or intends to claim damages or to seek some other form of relief:

(i) the provisions of the Subcontract alleged to have been breached or not fulfilled;

(ii) sufficient information to enable the State to identify the material facts;

(iii) the steps reasonably required to remedy the Default Event (if reasonably capable of remedy);

(iv) the time within which the specified steps can reasonably be expected to be taken;

(v) if applicable, the amount of damages claimed and the manner in which they have been calculated; and

(vi) if applicable, the other relief to be sought,

(being the Subcontractor Statement).

6.5 Warranty of accuracy and waiver

The Subcontractor:

(a) (**warranty**): warrants to the State that each Subcontractor Statement will, subject to unintended error which the Subcontractor agrees to rectify, be a true, complete and accurate statement of the amounts or other relief to which the Subcontractor considers itself entitled; and

(b) (**waiver**): waives and abandons all Claims then known or which ought reasonably to have been known to the Subcontractor arising in connection with the Subcontract prior to the date of the Default Event Notice other than the claims disclosed in the Subcontractor Statement.

6.6 Verification of Subcontractor Statements

The State may appoint one or more independent chartered accountants, technical advisers or other appropriately qualified persons to verify (at the cost of Project Co) a Subcontractor Statement, and the Subcontractor must, subject to such persons executing an appropriate confidentiality agreement as the Subcontractor may reasonably request, permit such persons to have access to and to make copies of all records, documents, data and accounting and other information not subject to legal (including, without limitation, solicitor and own client) and other professional privilege which is reasonably required with a view to confirming the accuracy and completeness of such Subcontractor Statement.

6.7 Subcontractor Statements to be conclusive evidence

(a) (**Reliance**): Each Statement Beneficiary is entitled to rely on a Subcontractor Statement for the purpose of determining the extent of the matters occurring prior to a Default Event which are required to be remedied and the requirements to effect the remedy of that Default Event by a Statement Beneficiary.

(b) (**Conclusive evidence**): A Subcontractor Statement will be conclusive evidence in favour of any Statement Beneficiary that the Subcontractor has waived and abandoned all Claims then known or which ought reasonably to have been known to the Subcontractor arising in connection with the Subcontract prior to the date of the Default Event Notice other than the Claims disclosed in the Subcontractor Statement.

(c) (**Claims against Project Co**): Clauses 6.7(a) and 6.7(b) are without prejudice to the rights of the Subcontractor to pursue any Claims against Project Co following the end of the Step-In Period or termination of the Subcontract.

(d) (**Disputes**): For the avoidance of doubt, a Subcontractor Statement will not prevent any Statement Beneficiary from disputing the amount of any Claim or other relief sought by the Subcontractor or the existence of any default by Project Co under the Subcontract. In the case of any such Dispute:

(i) the relevant Statement Beneficiary must pay the amount or perform the obligations (if any) not in Dispute in accordance with this Deed and the Subcontract;

(ii) the Dispute must be referred to dispute resolution under clauses 9 to 11; and

(iii) during the period of dispute resolution, all parties must continue to perform their obligations under this Deed and the Project Documents.

7. Step-In by the State

7.1 Step-In Right

(a) (**Exercise**): Following receipt of a State Cure Notice or if the State is entitled to exercise any of the rights referred to in clause 3.2 or otherwise as permitted under any Project Document, the State may:

(i) if permitted under the State Security and the Finance Direct Deed, appoint a Receiver over Project Co or any or all of its assets (including the Subcontract);

(ii) itself enter into possession of any or all of the assets of Project Co;

(iii) take such other action as it is permitted under the terms of the Project Documents; or

(iv) by notice to the Subcontractor (**Additional Obligor Step-In Notice**), procure that an Additional Obligor assumes jointly and severally with Project Co all of Project Co's rights and obligations under the Subcontract,

(each a **Step-In Right**).

(b) (**Step-In Period**): The period from the date on which the Subcontractor receives notice of the exercise of any Step-In Right to the earliest of:

(i) the Additional Obligor Step-Out Date;

(ii) the date on which the Subcontractor terminates the Subcontract;

(iii) the date of any transfer under clause 8;

(iv) the date which the State has notified the Subcontractor that the State will cease to exercise its Step-In Rights; and

(v) any other date on which the State ceases to continue to exercise its Step-In Rights,

is the Step-In Period.

(c) (**Acknowledgment**): The Subcontractor acknowledges that the exercise by the State of a Step-In Right will not of itself contravene the Subcontract, or constitute a Default Event under the Subcontract or entitle the Subcontractor to exercise any right (including termination) under the Subcontract.

7.2 Step-In by the State

(a) (**Rights**): Subject to the Finance Direct Deed, the State may at any time after it has become entitled to exercise a Step-In Right, exercise all or any of its rights and carry out all or any of the obligations of Project Co in connection with the Subcontract, as if it were Project Co to the exclusion of Project Co.

(b) (**No Liability**): Project Co and the Subcontractor each agree that, subject to clause 7.3(b), neither the State nor any State Associate will have any Liability, and neither Project Co nor the Subcontractor will be entitled to make, continue or enforce any Claim against the State or any State Associate arising in connection with the Subcontract or this Deed by reason only of the State or any State Associate exercising any of Project Co's rights, or performing any of Project Co's obligations under the Subcontract other than, and then only to the extent of, Liability for reckless, unlawful, malicious acts or omissions of the State or any State Associate.

7.3 Step-In using Additional Obligor

(a) (**Assumption Date**): The Additional Obligor will become a party to the Subcontract on the date on which the Additional Obligor Step-In Notice is given to the Subcontractor or such later date as the Subcontractor and the State may agree (**Assumption Date**).

(b) (**Rights of Additional Obligor**): During a Step-In Period in respect of which the State has exercised a Step-In Right under clause 7.1(a)(iv):

(i) subject to clause 7.3(b)(ii), the Additional Obligor will be jointly and severally:

A. entitled with Project Co to exercise the rights of Project Co under the Subcontract (excluding any accrued rights of Project Co in respect of any damage, loss, cost, charge, expense, outgoing or payment to the extent that the rights arose prior to the Assumption Date) (**Project Co's Rights**); and

B. liable with Project Co for the performance or non-performance of all Project Co's obligations under the Subcontract arising on or after the Assumption Date except as released in accordance with clause 7.3(e);

(ii) as between Project Co, the Subcontractor and the Additional Obligor, only the Additional Obligor is authorised to deal with the Subcontractor and to exercise Project Co's Rights;

(iii) Project Co acknowledges that it will be legally bound by all the acts and omissions of the Additional Obligor in so dealing with the Subcontractor and in exercising Project Co's Rights;

(iv) the Additional Obligor will be bound by any earlier decision, directions, approvals, notices or consents given or made prior to the Assumption Date;

(v) clause 15 will apply to the Subcontractor and the Additional Obligor as if the address and email address of the Additional Obligor were set out in addition to those of Project Co; and

(vi) the Subcontractor will owe its obligations under the Subcontract to Project Co and the Additional Obligor jointly but the performance by the Subcontractor in favour of either Project Co or the Additional Obligor will be a good discharge of the relevant obligations under the Subcontract.

(c) (**No Liability**): Without prejudice to the Subcontractor's rights under clauses 6.2 and 6.3, the Additional Obligor will have no obligation to, and no Liability in respect of, remedying any default or breach of Project Co under the Subcontract arising prior to the Assumption Date.

(d) (**Additional Obligor Step-Out Date**): The Additional Obligor may at any time give the Subcontractor not less than 30 days' notice terminating the Additional Obligor's rights or obligations under Subcontract (without affecting the continuation of Project Co's obligations or liabilities towards the Subcontractor under the Subcontract). Such notice must specify the date on which it takes effect, which must be:

(i) at least 30 days after the date of the notice; or

(ii) if a Novation Notice has been given, the Novation Notice Date,

(**Additional Obligor Step-Out Date**).

(e) (**Release**): On and from the Additional Obligor Step-Out Date, between the Subcontractor and the Additional Obligor, each of the Subcontractor and the Additional Obligor will be released from all obligations under the Subcontract (except for those obligations which have arisen during the relevant Step-In Period), whether or not a Claim has been made in respect of those obligations or they have not fallen due to be performed or have not been performed.

7.4 Indemnity

Project Co must indemnify the State, each State Associate and any Additional Obligor against any Claim or Liability (including any Claim made by, or Liability to, a third party) the State, any State Associate or any Additional Obligor suffers or incurs arising in connection with taking any action under clause 7.2 or clause 7.3, except to the extent that such Claim or Liability is caused or contributed to by any of the events set out in clause 43.6 of the Project Deed or (subject to clause 43.11(d) of the Project Deed) is Indirect or Consequential Loss.

8. State's option to novate to the State or third party

8.1 Option

(a) (**Novation Notice**): The State may require a novation of the Subcontract upon the termination of the Project Deed, by giving a notice (**Novation Notice**) to the Subcontractor. The Novation Notice must specify the person to whom the State intends to novate the Subcontract whether this be the State or another person (**Substitute Party**).

(b) (**Effect of Novation Notice**): If the State issues a Novation Notice then, until the Novation Notice Date, the Subcontractor must continue to perform their respective obligations under the Subcontract.

(c) (**Acknowledgement**): The Subcontractor acknowledges that the giving of a Novation Notice by the State will not of itself contravene, or constitute a Default

Event under, the Subcontract or entitle the Subcontractor to exercise any Power (including termination) under it.

8.2 Novation to Substitute Party

(a) (**Novation to State**): Subject to clause 8.3, with effect from the Novation Notice Date:

(i) the Substitute Party will (and if the Substitute Party is not the State, the State will procure that the Substitute Party does) assume:

A. any obligation of Project Co under the Subcontract arising before the Novation Notice Date insofar as it relates to the payment of an amount of money that:

1) is due and payable under the terms of the Subcontract;

2) is not the subject of a dispute under the Subcontract (or is the subject of a dispute under the Subcontract in which case the Substitute Party will, on the determination of such dispute, assume such obligations in accordance with that determination); and

3) does not relate to the performance of [*Transition Activities / Development Phase Activities / Services*] [***State Note: Delete whichever is not applicable.***] for which the State has paid Project Co under the Project Deed; and

B. the obligations of Project Co under the Subcontract arising on and from the Novation Notice Date (including in relation to payment of amounts for any part of the [*Transition Activities / Development Phase Activities / Services*] [***State Note: Delete whichever is not applicable.]*** performed before the Novation Notice Date that become due and payable on or after the Novation Date notwithstanding that such amounts relate to work performed before the Novation Notice Date) subject to any amendments agreed to the Subcontract in accordance with clause 8.2(a)(vi);

(ii) without prejudice to any then accrued rights against Project Co (other than termination), any Subcontractor's right that has been suspended by virtue of clause 6 will be of no further effect;

(iii) the Substitute Party will have all the rights of Project Co under the Subcontract (excluding any accrued rights of Project Co in respect of any damage, loss, cost, charge, expense, outgoing or payment to the extent that those rights arose prior to the Novation Notice Date and are the subject of any dispute referred to in clause 8.2(a)(i)A.2));

(iv) subject to clause 8.2(a)(iii) and any amendments agreed to the Subcontract in accordance with clause 8.2(a)(vi), the Subcontractor will be:

A. bound by and must comply with the provisions of the Subcontract binding on it for the benefit of the Substitute Party as if the Substitute Party were Project Co; and

B. entitled to any extensions of time which accrued to the Subcontractor prior to the Novation Notice Date;

(v) Project Co is released from all of its obligations and Liabilities under the Subcontract, excluding any accrued obligations or Liabilities of Project Co to the extent that those accrued obligations or Liabilities:

A. arose in connection with events occurring prior to the Novation Notice Date; and

B. are not obligations and liabilities assumed by the Substitute Party under clause 8.2(a)(i); and

(vi) the Subcontractor and the Substitute Party will promptly negotiate in good faith, any amendments to the Subcontract that are necessary to reflect the termination of the Project Deed.

For the avoidance of doubt, any caps on Liability in the Subcontract will continue to apply, but so that any Liability of the Subcontractor incurred to Project Co prior to the Novation Notice Date is taken into account in respect of any ongoing Liability of the Subcontractor to the Substitute Party.

(b) (**No set off**): The Subcontractor is not entitled to exercise any right of set off, deduction, abatement or counterclaim against the Substitute Party if, and to the extent that, such right arose prior to the Novation Notice Date.

(c) (**Novation Deed**): Subject to clause 8.3(c), Project Co, the Subcontractor and the Substitute Party must enter into an agreement in form and substance reasonably requested by the Substitute Party reflecting the novation of the Subcontract as contemplated in clause 8.2(a) and take such other action as is required to vest in the Substitute Party full legal and equitable title to any retention account, bank guarantee, performance bond, letter of credit or other security held by Project Co to secure the obligations of the Subcontractor under the Subcontract.

(d) (**Attorney**): For valuable consideration, Project Co and the Subcontractor each irrevocably appoint the State, on its behalf and in its name or otherwise, as its attorney to do anything which Project Co or the Subcontractor is obliged to do (but has not done within 5 Business Days after request) under clause 8.2(c). Each of Project Co and the Subcontractor ratifies and confirms and agrees to ratify and confirm whatever any such attorney lawfully does in the exercise of the power of attorney in this clause 8.2(d).

8.3 Novation to a Substitute Party other than the State

(a) (**Information to be provided by the State**): If the Novation Notice specifies that the Substitute Party is a person other than the State, the State must, at the time it gives a Novation Notice, provide to the Subcontractor the following particulars of the Substitute Party:

(i) its name, place of incorporation and identity of shareholder(s);

(ii) if available, its most recent published audited accounts; and

(iii) sufficient particulars of the finance available to the Substitute Party to enable the Subcontractor to decide whether to grant its consent to the Substitute Party.

(b) (**Consent by the Subcontractor**): A novation to a Substitute Party other than the State under this clause 8 will only be effective, and the Subcontractor will only be required to enter into a novation agreement under clause 8.2(c), if the

Subcontractor consents to that novation (such consent not to be unreasonably withheld or delayed) or is deemed to have consented in accordance with clause 8.3(d).

(c) (**Additional information**): The State must as soon as practicable supply the Subcontractor with such additional information to that provided under clause 8.3(a) as the Subcontractor reasonably requires to enable it to decide whether to grant consent under clause 8.3(b), and the Subcontractor must consider such information expeditiously and inform the State promptly if it requires further information.

(d) (**Deemed consent**): Unless the Subcontractor notifies the State of its earlier consent or refusal to a novation, the Subcontractor will be deemed to have consented to a novation to a Substitute Party other than the State if it has not notified the State under clause 8.3(e)(ii) within 10 Business Days after the later of the receipt of the Novation Notice and the information required under clause 8.3(a) and clause 8.3(c).

(e) (**Unreasonably withholding consent**): The Subcontractor will be deemed to unreasonably withhold consent unless:

(i) the grounds for refusal are reasonable and are based on:

A. the proposed novation deed referred to in clause 8.2(c) for the Substitute Party to assume the rights and obligations of Project Co under the Subcontract not being effective to substitute the Substitute Party for Project Co;

B. the Substitute Party not having the legal capacity, power and authorisation to become a party to and perform the obligations of Project Co under the Subcontract including any necessary authorisations and consents;

C. the financial standing of the Substitute Party being insufficient for it to meet the obligations of Project Co under the Subcontract; or

D. the Subcontractor being placed in breach of any Laws by the proposed novation and assignment; and

(ii) it has notified the State of such reason.

(f) (**If the Subcontractor withholds consent**): If the Subcontractor withholds its consent to a Novation Notice under this clause 8.3, this will not prejudice the ability of the State to give one or more subsequent Novation Notices, and information under clause 8.3(a), containing changed particulars relating to the same Substitute Party or particulars relating to another Substitute Party.

8.4 Accrued obligations and liabilities

Clause 8.2 does not operate to:

(a) (**State to assume obligations or Liabilities**): require the State to assume any obligations or Liabilities arising from, or which are required to be performed in connection with, the Subcontract prior to the Novation Notice Date unless expressly required to do so in clause 8.2; or

(b) (**release Project Co**): release Project Co from such obligations or Liabilities unless expressly required to do so in clause 8.2.

9. Dispute Resolution procedure

9.1 Procedure

Unless a State Project Document provides otherwise or the parties otherwise agree, the parties acknowledge and agree that any dispute between the parties to that dispute (**Disputing Parties**) arising in connection with:

(a) the Project (including questions concerning a State Project Document's existence, meaning or validity); or

(b) [Not used],

(**Dispute**) must only be resolved in accordance with the following procedure:

(c) first, the Dispute must be the subject of negotiation as required by clause 9.3;

(d) second, if the Dispute remains unresolved (in whole or in part) after the expiration of the period for resolution referred to in clause 9.3 and either Disputing Party wishes to pursue the Dispute:

(i) if the Dispute is expressly referred to in a State Project Document to be a Dispute which may be referred to expert determination, the Dispute must be referred to expert determination and then only in accordance with clause 10; or

(ii) if clause 9.1(d)(i) does not apply:

A. the Disputing Parties may either agree that the Dispute will be referred to expert determination in accordance with clause 10; or

B. if the Disputing Parties do not agree in accordance with clause 9.1(d)(ii)A to refer the Dispute to expert determination, either party may refer the Dispute to arbitration in accordance with clause 11; and

(e) third, if the Dispute has been referred to expert determination in accordance with clause 9.1(d)(i) or clause 9.1(d)(ii)A, any Disputing Party may subsequently refer the Dispute to arbitration in the circumstances stated in clause 11.

9.2 [Not used]

9.3 Senior negotiations

(a) (**Notification**): If a Dispute arises then a Disputing Party must, if it wants to pursue the Dispute, give notice to each other party requesting that the Dispute be referred for resolution by negotiation between the Chief Executive Officers (or equivalent) of the Disputing Parties (**Representatives**).

(b) (**Contents of Notice**): A notice under clause 9.3(a) must:

(i) state that it is a notice under this clause 9.3; and

(ii) include or be accompanied by particulars of the matters the subject of the Dispute.

(c) (**Attempt to resolve Dispute**): If a Dispute is referred for resolution by negotiation under clause 9.3(a), then:

(i) the Representatives must meet and attempt in good faith to resolve the Dispute (in whole or in part) within 10 Business Days after the date on which the notice under clause 9.3(a) is received or such later date as the Disputing Parties may agree; and

(ii) any agreement reached between the Representatives will be reduced to writing, signed by or on behalf of each Disputing Party and will be contractually binding on the Disputing Parties.

10. Expert determination

10.1 Referral and election of expert

(a) If a Dispute:

(i) remains unresolved within 10 Business Days after the date on which the notice under clause 9.3(a) is received or such later date as the Disputing Parties may agree; and

(ii) either clause 9.1(d)(i) applies or the Disputing Parties agree to refer the Dispute to expert determination under clause 9.1(d)(ii)A,

if it wants to pursue the Dispute, that Disputing Party must refer the Dispute to expert determination within 20 Business Days after the date on which the notice under clause 9.3(a) is received or such later date as the Disputing Parties may agree.

(b) (**Agreement**): Within 5 Business Days after the date on which a Dispute is referred to expert determination under clause 10.1(a), the Disputing Parties must endeavour to agree on the expert to be appointed to determine the Dispute.

(c) (**Exchange of lists of 3 preferred experts**): If the Disputing Parties are unable to agree on an expert to determine the Dispute, within the 5 Business Day period referred to in clause 10.1(b), the Disputing Parties must exchange lists of 3 persons (in order of preference) who, if appointed, would satisfy the requirements of clause 10.1(f) on or before the date which is 10 Business Days after the date on which the Dispute is referred to expert determination under clause 10.1(a) .

(d) (**Appointment of person who appears on both lists**): If:

(i) any person appears on the lists of all of the Disputing Parties under clause 10.1(c), that person will be deemed to be the expert to determine a Dispute; or

(ii) if more than one person appears on the lists of all of the Disputing Parties, the person given the highest order of priority by the party who gave the notice under clause 9.3(a) will be deemed to be the expert to determine the Dispute.

(e) (**Appointment if no person appears on both lists**): If no person appears on the list of all of the Disputing Parties, the party which gave the notice under clause 9.3(a) must procure:

(i) the president (or the senior non-executive officer, howsoever described) of the institute or governing body for the technical or professional discipline that is the subject of the relevant Dispute to nominate the expert, having regard to, but not being bound by, those persons proposed by the Disputing Parties under clause 10.1(c); or

(ii) if:

A. there is no governing body for the technical or professional discipline that is the subject of the relevant Dispute;

B. such governing body advises that it will not nominate an expert; or

C. there are multiple technical or professional disciplines that are the subject of the Dispute,

the President of the Australian Centre for International Commercial Arbitration to nominate a person to act as the expert, having regard to, but not being bound by, those persons proposed by the Disputing Parties under clause 10.1(c),

within 7 Business Days after the exchange of the lists under clause 10.1(c).

(f) (**Appropriate skills**): It is the intention of the parties that the expert appointed to determine a Dispute will be an independent person with appropriate skills having regard to the nature of the matters in Dispute.

(g) (**No entitlement to challenge appointment**): No Disputing Party will be entitled to challenge the appointment of an expert under this clause 10.1 on the basis that the expert does not satisfy the requirements of clause 10.1(f).

(h) (**Not an arbitration agreement**): Any agreement for expert determination under this Deed will not constitute an arbitration agreement including for the purposes of the *Commercial Arbitration Act 2011* (Vic).

(i) (**Agreement**): Within 7 Business Days after the identity of the expert being agreed or determined under this clause 10, the Disputing Parties must enter into an agreement with the expert on the terms of the Expert Determination Agreement or such other terms as the expert may require.

10.2 Rules of expert determination

The expert determination process will be administered in accordance with, and the expert will be required to act, under the terms of the Expert Determination Agreement.

10.3 Expert finding

(a) (**Notification**): Subject to clause 1.12, the determination of the expert must be in writing and will be final and binding on the Disputing Parties unless:

(i) the expert determination includes:

A. payment of compensation and the amount claimed, or subsequently determined by the expert to be payable, is equal to or greater than $[not disclosed] (CPI Indexed); and

B. an extension of the Date for Acceptance or rejection of an extension to the Date for Acceptance, where the period of the extension that was claimed is more than 5 Business Days; and

(ii) within 10 Business Days after receipt of the determination, a Disputing Party gives notice to each other Disputing Party of its dissatisfaction with the expert's determination.

(b) (**Amendment to determination**): Upon submission by any Disputing Party, the expert may amend the determination to correct:

(i) a clerical mistake;

(ii) an error from an accidental slip or omission;

(iii) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or

(iv) a defect in form.

(c) (**Binding on an interim basis**): Notwithstanding any challenge made under clause 10.3(a) to the determination of an expert, the determination of the expert will be binding on the Disputing Parties until it is overturned, reversed, varied or otherwise changed by the determination of an arbitrator or a court (to the extent that it can be overturned, reversed, varied or otherwise changed in accordance with this Deed).

10.4 Proportionate liability

The expert will have no power to apply or to have regard to the provisions of any proportionate liability legislation which might, in the absence of this clause 10.4, have applied to any Dispute referred to expert determination under this clause 10.

10.5 Liability of expert

(a) (**Liability of expert**): The Disputing Parties agree:

(i) that the expert will not be liable in connection with the expert determination, except in the case of fraud on the part of the expert; and

(ii) to indemnify the expert against any Claim or Liability in connection with the determination, except in the case of fraud on the part of the expert, in which case a Claim may be made against him or her by any Disputing Party.

(b) (**Engagement**): The Disputing Parties will jointly engage the expert services in connection with the expert determination proceedings and each Disputing Party will seek a separate Tax Invoice equal to its share of the costs of the expert.

10.6 Costs

The Disputing Parties must:

(a) bear their own costs in connection with the expert determination proceedings; and

(b) pay an equal portion of the costs of the expert.

11. Arbitration

11.1 Reference to Arbitration

If:

(a) a Dispute:

(i) which has been referred to the Representatives for negotiation in accordance with clause 9.3(a) remains unresolved (in whole or in part)

after the expiration of the period for negotiation referred to in clause 9.3(c)(i); and

(ii) is not a Dispute which the Disputing Parties:

A. must refer to expert determination under clause 9.1(d)(i); or

B. have agreed to refer to expert determination under clause 9.1(d)(ii)A,

any Disputing Party may refer the Dispute to arbitration by notice to that effect to the other party within 30 Business Days after the date on which the notice under clause 9.3(a) is received or such later date as the Disputing Parties may agree; or

(b) a Dispute has been referred to expert determination under clause 10.1(a) and:

(i) a determination is not made by the expert within 22 Business Days after the expert's acceptance of the appointment to determine the Dispute, either party may refer the Dispute to arbitration within 30 days after the expert's acceptance of the appointment;

(ii) no expert enters into the Expert Determination Agreement with the Disputing Parties in accordance with clause 10.1(i) within 20 Business Days after the date on which the Dispute is referred to expert determination under clause 10.1(a), a Disputing Party may refer the Dispute to arbitration within 25 Business Days after the date on which the Dispute was referred to expert determination; or

(iii) a notice of dissatisfaction in respect of the Expert's determination is given under clause 10.3, a Disputing Party may refer the Dispute to arbitration within 5 Business Days after a party gives notice to the other Disputing Parties of its dissatisfaction with the expert's determination in accordance with clause 10.3(a)(ii).

11.2 Arbitration

(a) (**ACICA Rules**): Arbitration in accordance with this clause 11 will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Rules) and as otherwise set out in this clause 11.

(b) (**Seat**): The seat of the arbitration will be Melbourne, Victoria.

(c) (**Language**): The language of the arbitration will be English.

11.3 Appointment of arbitrator

The Disputing Parties will endeavour to agree on the person to be appointed as arbitrator, but if no such agreement is reached within 14 Business Days after the Dispute being referred to arbitration in accordance with clause 11.1, the arbitrator will be appointed by the Australian Centre for International Commercial Arbitration.

11.4 General Principles for conduct of arbitration

(a) (**Conduct of arbitration**): The Disputing Parties agree that:

(i) they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;

(ii) any arbitration conducted in accordance with this clause 11 will not necessarily mimic court proceedings of the seat of the arbitration or the place where hearings take place (if different), and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and

(iii) in conducting the arbitration, the arbitrator must take into account the parties' intention as set out in clauses 11.4(a)(i) and 11.4(a)(ii).

(b) (**Evidence in writing**): All evidence in chief must be in writing unless otherwise ordered by the arbitrator.

(c) (**Evidence and discovery**): The rules for evidence and discovery will be the IBA Rules on the Taking of Evidence in International Arbitration current at the date of arbitration.

(d) (**Oral hearing**): The oral hearing must be conducted as follows:

(i) any oral hearing must take place in Melbourne, Victoria and all outstanding issues must be addressed at the oral hearing;

(ii) the date and duration of the oral hearing must be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in clause 11.4(a) when determining the duration of the oral hearing;

(iii) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;

(iv) the oral hearing must be conducted on a stop clock basis with the effect that the time available to the Disputing Parties must be split equally between the Disputing Parties so that each Disputing Party has the same time to conduct its case unless, in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the Disputing Parties;

(v) not less than 28 days prior to the date fixed for oral hearing, each of the Disputing Parties must give notice of those witnesses (both factual and expert) of each other Disputing Party that it wishes to attend the hearing for cross examination;

(vi) in exceptional circumstances the arbitrator may amend the date of hearing and extend the time for the oral hearing set in accordance with clause 11.4(d)(ii);

(vii) a Disputing Party will not be bound to accept the written evidence of a witness submitted on behalf of the opposing party which is not challenged in cross examination; and

(viii) each Disputing Party is expected to put its case on significant issues in cross examination of a relevant witness called by the other Disputing Party or, if it seeks to challenge the evidence of a witness not called for cross-examination by reference to other evidence, to identify that evidence in its written opening submissions so that the other Disputing Party may know the nature of and basis for the challenge to the written evidence of a witness.

(e) (**Experts**): Unless otherwise ordered each Disputing Party may only rely upon one expert witness in connection with any recognised area of specialisation.

11.5 Proportional liability

The arbitrator will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this clause 11.5, have applied to any Dispute referred to arbitration in accordance with this clause 11.

11.6 Extension of ambit of arbitration proceedings

(a) (**Extending Disputes**): If:

(i) a Dispute between the Disputing Parties is referred to arbitration under this clause 11; and

(ii) there is some other Dispute also between the Disputing Parties to and in accordance with this Deed (whenever occurring),

the arbitrator may, upon application being made to the arbitrator by one or more of the Disputing Parties at any time before a final award is made in relation to the first-mentioned Dispute, make an order directing that the arbitration be extended so as to include the other Dispute.

(b) (**Arbitrator's order**): An arbitrator may make an order in accordance with clause 11.6(a) on such terms and conditions (if any) as the arbitrator thinks fit.

11.7 Award final and binding

(a) (**Final and binding**): Subject to clause 1.12 and clause 11.7(b), any award will be final and binding on the Disputing Parties.

(b) (**Appeal**): Each Disputing Party consents to any appeal to a court where that appeal is made under the *Commercial Arbitration Act 2011* (Vic) on a question of law arising in connection with an arbitral award made in accordance with this clause 11.

11.8 Continue to perform

Notwithstanding the existence of a Dispute, each Disputing Party must continue to carry out its obligations in accordance with this Deed.

11.9 Governing law of arbitration agreement

The Law governing this arbitration agreement is the law of Victoria, Australia.

11.10 Interlocutory relief

This clause 11 does not prevent a Disputing Party from seeking urgent interlocutory relief from a court of competent jurisdiction where, in that Disputing Party's reasonable opinion, that action is necessary to protect that Disputing Party's rights.

11.11 Consolidation

The parties agree that section 27C of the *Commercial Arbitration Act 2011* (Vic) will apply.

12. Termination of this Deed

(a) (**Satisfaction of obligations under Subcontract**): This Deed will terminate upon the performance and satisfaction of all of the obligations under the Subcontract.

(b) (**Does not affect rights of parties**): The termination of this Deed does not affect the rights of any party which have accrued to that party before the date of termination.

13. Insurances

(a) (**Insurances**): Notwithstanding anything else, the Subcontractor will:

(i) take out all insurances as are required to be taken out by it under the Subcontract; and

(ii) otherwise comply with all of its obligations in relation to insurance in the Subcontract.

(b) (**Not to prejudice**): Project Co and the Subcontractor must each ensure that it does not do or omit to do anything or does not permit anything to be done or omitted to be done whereby any Insurance policy required under the Subcontract may be prejudiced.

(c) (**Void or Voidable**): If any default is made by the Subcontractor in effecting or maintaining such Insurance policy or if any such Insurance policy becomes void or voidable, the State may (but is not obliged to) effect or maintain that Insurance policy at the cost of the Subcontractor or, failing it, Project Co.

(d) (**State to be covered**): If required by the Project Deed, on any Insurance contract entered into by the Subcontractor in accordance with clause 13(a), the Subcontractor must ensure that the State and the State Associates are specified as a person to whom the insurance cover provided by that contract extends.

(e) (**All documents, evidence and information**): Project Co and the Subcontractor must do all things necessary and provide all documents, evidence and information necessary to enable the State to collect or recover any moneys due or to become due to the State in respect of any Insurance policy required under the Subcontract at the cost of the Subcontractor or, failing it, Project Co.

(f) (**Cancellation, lapse or material change**): Without prejudice to the above requirements, neither Project Co nor the Subcontractor will cause or take any steps to bring about the cancellation, lapse, material change, reduction or any rescinding of any such Insurance policy unless it has first obtained the consent of the State.

(g) (**Notify the State**): Project Co and the Subcontractor will immediately notify the State of any cancellation, lapse, material change, reduction, or any rescission of any such Insurance policy, and of the occurrence of any event giving rise to any claim under any such Insurance policy in respect of the Project unless Project Co or the Subcontractor's right of indemnity under the relevant Insurance policy would be prejudiced by the giving of such notices.

(h) (**Several obligations**): Notwithstanding clause 1.3(s), but subject to the obligations of Project Co under the terms of the Project Deed, the obligations of Project Co and the Subcontractor in this clause 13 are several.

14. Goods and Services Tax (GST)

(a) (**Revenue**): For the purposes of this clause 14, "Revenue" has the meaning given in clause 14(g).

(b) (**GST exclusive amounts**): Unless otherwise expressly stated all amounts referred to in this Deed are exclusive of GST.

(c) (**GST payable by Supplier**): If GST becomes payable on any Taxable Supply made by a party (**Supplier**) under or in connection with this Deed:

(i) any amount payable or consideration to be provided in accordance with any other provision of this Deed for that supply (**Agreed Amount**) is exclusive of GST;

(ii) an additional amount will be payable by the party which is the recipient of the Taxable Supply (**Recipient**), equal to the amount of GST payable on that Taxable Supply as calculated by the Supplier in accordance with the GST Law, which will be payable at the same time and in the same manner as for the Agreed Amount; and

(iii) the Supplier will provide a Tax Invoice to the Recipient in connection with that supply, either at the time expressly set out in any other provision of this Deed or no later than the time at which the Agreed Amount for that Taxable Supply is to be provided under this Deed. The Recipient is not obliged to pay any amount in accordance with this clause 14(c) unless and until a Tax Invoice is received by the Recipient in connection with the Taxable Supply unless the Recipient is required to issue the Tax Invoice.

(d) (**Variation in GST payable**): If for any reason, the GST payable by the Supplier in connection with a supply it makes under or in connection with this Deed (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it received from the Recipient under clause 14(c) in connection with that supply, the Supplier will provide a refund or credit to, or will be entitled to receive from, the Recipient (as applicable) the amount of this variation. If an adjustment event occurs in relation to a supply and unless the Recipient is required to issue the Adjustment Note:

(i) the Supplier will issue an Adjustment Note to the Recipient in connection with that supply within 14 days after becoming aware of that adjustment event occurring; and

(ii) no additional amount will be payable by the Recipient unless and until an Adjustment Note is received by the Recipient.

(e) (**GST ceasing to be payable**): No amount is payable by a party in accordance with clause 14(c) or clause 14(d) to the extent that the GST to which the amount relates has ceased to be payable by or refundable to the Supplier by the Commissioner of Taxation under the GST Law.

(f) (**Expert Determination**): If the Recipient is dissatisfied with any calculation to be made by the Supplier in accordance with this clause 14 the Recipient may, at its own expense and after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the President of the Institute of Chartered Accountants for expert determination, which will be final and binding. The expert will act as an expert and not as an arbitrator and must take into account the terms of this Deed, the matters required to be taken into account by the Supplier in accordance with this clause 14 and any other matter considered by the expert to be relevant to the determination. The parties release the expert from any liability in acting as an expert, except in the case of fraud on the part of the expert.

(g) (**Revenue net of GST**): Any reference in this Deed to price, value, sales, revenue, profit or a similar amount (**Revenue**), is a reference to the GST exclusive component of that Revenue, unless the contrary intention is expressed.

(h) (**Cost net of GST**): Any reference in this Deed to cost, expense, liability or other similar amount (**Cost**) of a party, is a reference to that Cost reduced by the Input

Tax Credits to which the party is entitled in respect of such Cost, unless the contrary intention is expressed.

(i) [Not used]

(j) (**General obligation**): Each party agrees to do all things, including providing Tax Invoices and other documentation, that may be necessary or desirable to enable or assist the other party in determining its GST payable on any supply made by that other party in connection with this Deed, or any input tax credits, adjustments or refunds in relation to any amount of GST paid or payable in connection with any supply made in connection with this Deed.

(k) (**GST Groups**): For the purposes of this Deed, a reference to GST payable on a Taxable Supply made by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member and a reference to an input tax credit entitlement of a party includes any corresponding input tax credit entitlement of the representative member of any GST group of which that party is a member, and if a party to this Deed makes a Taxable Supply by virtue of entering into or performing this Deed and the 'recipient' of that Taxable Supply (within the meaning of the GST Act) is an Associate of another party to this Deed that other party to this Deed will be obliged either to pay the amount referred to in clause 14(c)(ii) or procure that the actual recipient pays the relevant amount, and the payer of that amount shall be the 'Recipient' for the purposes of this clause 14 in relation to the relevant Taxable Supply.

(l) (**Project Deed to prevail**): If clause 61 of the Project Deed would apply in respect of a Taxable Supply to which this clause 14 also applies then clause 61 of the Project Deed will apply in respect of that supply and the provisions of this clause 14 (but for this paragraph) will not apply.

(m) (**Definitions**): In this clause 14 unless otherwise defined in this Deed, terms used have the meanings given to them in the GST Law.

15. Notices

15.1 Notices

All approvals, consents, directions, requirements, requests, claims, notices, agreements, demands or other communications in connection with this Deed:

(a) (**in writing**): must be in writing;

(b) (**addressed**): must be addressed as set out as below or to such other addressee as notified by the receiving party to the other parties from time to time;

State:

Attention: [not disclosed]

Address: [not disclosed]

Email: [not disclosed]

Project Co:

Attention: [not disclosed]

Address: [not disclosed]

Email: [not disclosed]

Subcontractor:

Attention: [#]

Address: [#]

Email: [#]

(c) (**signed**): must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;

(d) (**form of delivery**): must be delivered by hand or posted by prepaid express post or emailed to the email address of the addressee as referred to in clause 15.1(b) ; and

(e) (**taken to be received**): are taken to be received by the addressee:

(i) in the case of delivery by hand, on delivery at the address of the addressee as referred to in clause 15.1(b), unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;

(ii) in the case of prepaid express post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and

(iii) in the case of email, the first to occur of:

A. receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;

B. the time that the communication enters an information system which is under the control of the addressee; or

C. the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the

place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day.

15.2 Notice to Financiers

Each of Project Co and the Subcontractor acknowledges that the State may provide to the Financiers a copy of any notice from:

(a) Project Co and/or the Subcontractor to the State; or

(b) the State to Project Co and/or the Subcontractor,

in connection with the Project.

16. Confidential Information and disclosure

16.1 Confidential Information and disclosure by the State

(a) (**Public Disclosure Obligations**): The State or any Authority may disclose any information in connection with the Project (including any Confidential Information) in accordance with its Public Disclosure Obligations and the Subcontractor must use all reasonable endeavours to assist the State or an Authority in meeting its Public Disclosure Obligations.

(b) (**Other purposes**): The State or any Authority may disclose any information in connection with the Project (including any Confidential Information, but excluding the Finance Documents and Equity Documents) in connection with:

(i) the State selling, transferring, assigning or otherwise disposing of its interest in any tolling revenue or tolling collection contractor or procuring any tolling collection contractor in relation to the Project Assets;

(ii) any Interface Works or any future road, transport or infrastructure project or transaction undertaken in Victoria that may be investigated, assessed, constructed, operated or maintained from time to time including any tolling (including tolling revenue), any equipment, computer hardware, computer software and computer or telecommunications systems and any complementary works or services associated with them but excluding this Project; or

(iii) the requirements of the State Project Documents (including any tender process required to be conducted under the Termination Payments Schedule, Change Compensation Principles or Schedule 23).

(c) (**State's rights**): Subject to clause 16.1(d), in meeting its Public Disclosure Obligations or as otherwise considered necessary by the State, the State may publish, disclose or make generally available each Project Document on a Victorian Government website.

(d) (**Commercially sensitive information**): The State will not publish, disclose or otherwise make generally available the information which is specified in Schedule 11 of the Project Deed (including the Financial Model), except if required to do so to comply with the Public Disclosure Obligations, as required under clause 16.1(b) or in the circumstances set out in clause 55.1(d) of the Project Deed.

(e) (**Exercise of licence**): Nothing in this Deed prevents the State and any sublicensees using or disclosing any information to the extent necessary or desirable for, or in connection with, the exercise of any licence granted under this Deed.

16.2 Confidential Information and disclosure by Project Co and the Subcontractor

(a) (**Confidential Information**): Subject to clause 16.2(b), Project Co and the Subcontractor must treat as secret and confidential all Confidential Information in connection with this Deed and any other Project Document.

(b) (**Disclosure of Confidential Information**): Without limiting Project Co's and the Subcontractor's obligations under clause 16.2(a) and subject to clause 16.2(c), Project Co and the Subcontractor may each disclose Confidential Information to a Project Co Associate or the Subcontractor's Associates (as applicable) to the extent necessary for the purpose of undertaking the Project and to any Financier, prospective financier or equity investor of the Project, subject to the State having carried out any Probity Investigation that the State considers necessary.

(c) (**Confidentiality deed**): Before disclosing any Confidential Information, Project Co or the Subcontractor (whichever is disclosing the Confidential Information) must ensure that the person to whom the information is disclosed enters into a confidentiality deed with Project Co or the Subcontractor (whichever is disclosing the Confidential Information) on terms reasonably acceptable to the State.

16.3 Disclosure by the Subcontractor

(a) (**The Subcontractor's disclosure obligations**): Subject to clause 16.3(b), the Subcontractor must:

(i) not make any public disclosures, announcements or statements in relation to the Project or the State's or any State Associate's involvement in the Project without the State's prior consent;

(ii) comply with any terms and conditions the State imposes and must use all reasonable endeavours to agree with the State the wording and timing of all public disclosures, announcements or statements by it or any State Associate relating to the Project or the State's or any State Associate's involvement in the Project before the relevant disclosure, announcement or statement is made; and

(iii) as soon as practicable, give to the State a copy of any public disclosure, announcement or statement agreed to or approved by the State in accordance with this clause 16.3(a) or for which the State's consent or approval was not required in accordance with clause 16.3(b).

(b) (**Permitted disclosure**): For the purposes of clause 16.3(a), the Subcontractor will not be required to obtain the State's consent or approval to the extent that any disclosure, announcement or statement is:

(i) required by Law, provided that it:

A. notifies the State of the requirement to make that disclosure; and

B. takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;

(ii) required to obtain legal or other advice from its advisers;

(iii) required to be made to a court in the course of proceedings to which the Subcontractor is a party;

(iv) in respect of information that is already in the public domain; or

(v) required by a relevant stock exchange, subject to:

A. such disclosure, announcement or statement not referring to the State's or any State Associate's involvement in the Project; and

B. the Subcontractor having used all reasonable endeavours to obtain the State's consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant stock exchange.

17. Return of documents

The Subcontractor must return a copy of all plans, drawings, specifications and other documents which come into its possession for the purpose of the Subcontract or this Deed to the State at the expiration of the Subcontract.

18. Miscellaneous

18.1 Governing Law and jurisdiction

(a) (**Governing Law**): This Deed is governed by, and must be construed according to, the Laws of Victoria, Australia.

(b) (**Jurisdiction**): Without limiting clauses 9 to 11, each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from the courts of Victoria, with respect to any proceedings which may be brought in connection with this Deed.

18.2 Entire agreement

To the extent permitted by Law and in relation to its subject matter, this Deed:

(a) (**entire understanding**): embodies the entire understanding of the parties and constitutes the entire terms agreed by the parties; and

(b) (**prior agreements**): supersedes any prior agreement of the parties.

18.3 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to both parties) required by Law or reasonably requested by another party to give effect to this Deed.

18.4 Survival of certain provisions

(a) (**Surviving clauses**): All provisions of this Deed which, expressly or by implication from their nature, are intended to survive the rescission, termination or expiration of this Deed will survive the rescission, termination or expiration of this Deed, including any provision in connection with:

(i) the State's rights to set-off and recover amounts;

(ii) confidentiality or privacy;

(iii) Intellectual Property Rights;

(iv) any obligation to make any books and accounts and all other records or information available to the State;

(v) any indemnity, release or financial security given in accordance with this Deed;

(vi) any limitation on Liability; and

(vii) any right or obligation arising on termination of this Deed.

(b) (**Interpretation**): No provision of this Deed which is expressed to survive the termination, rescission or expiration of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the termination, rescission or expiration of this Deed.

(c) (**Survival of rights and obligations**): No right or obligation of any party will merge on completion of any transaction under this Deed. All rights and obligations in accordance with this Deed survive the execution and delivery of any transfer or other document which implements any transaction in accordance with this Deed.

18.5 Waiver

(a) (**Writing**): Other than where the waiver is already given expressly in the terms of this Deed, a waiver that may be given by a party under this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.

(b) (**No waiver**): A failure to exercise or enforce, a delay in the exercise or enforcement of or the partial exercise or enforcement of a right provided by Law by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or under this Deed.

(c) (**No waiver of another breach**): No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

18.6 Consents, approvals and directions

A consent or approval required in accordance with this Deed from the State may be given or withheld, or may be given subject to such conditions, as the State thinks fit, unless otherwise expressly provided in this Deed.

18.7 Amendments

Except as otherwise expressly provided in this Deed, this Deed may only be varied by a deed executed by or on behalf of each party.

18.8 Expenses

Except as otherwise provided in this Deed or (as between the State and Project Co) the Project Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

18.9 Severance

If, at any time, a provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

(a) any other provision of this Deed; or

(b) that provision under the Law of any other jurisdiction.

18.10 Counterparts

This deed may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same Deed.

18.11 Moratorium legislation

Each of Project Co and the Subcontractor waives any right or remedy it may have under any Law which comes into effect after the date of this Deed if the exercise of such right or remedy would:

(a) lessen any obligation or Liability of Project Co or the Subcontractor (as applicable); or

(b) prejudicially affect the rights, powers or remedies of the State,

under a State Project Document to which it is a party.

18.12 [Not used]

18.13 Indemnity held on trust

(a) (**Benefit of indemnities**): The State holds on trust for each State Associate the benefit of:

(i) each indemnity, release, limitation of Liability and exclusion of Liability given by Project Co or the Subcontractor under this Deed in favour of the relevant State Associate; and

(ii) each right in this Deed to the extent that such right is expressly provided to be for the benefit of any State Associate.

(b) (**Project Co and Subcontractor acknowledgement**): Project Co and the Subcontractor acknowledge the existence of such trusts and consents to the State exercising rights in relation to, or otherwise enforcing such indemnities, releases, limitations and rights on behalf of the State Associates.

(c) (**Consent not required**): The parties agree that the State does not require the consent of any State Associate to amend or waive any provision of any Project Document.

18.14 Assignment

Except as expressly contemplated by this Deed, neither Project Co nor the Subcontractor may assign or transfer any of its rights or obligations under this Deed or the Subcontract.

18.15 Set off

Without limiting the State's rights under the Project Deed, all moneys which the State may pay or incur and for which Project Co is liable under the terms of the Project Deed or in respect of which it is under this Deed liable to make reimbursement to or indemnify the State, may be deducted by the State from all moneys due, becoming due or to become due from it to Project Co under the Project Deed or may be recovered from Project Co by action at Law or otherwise.

19. Aggregate Liability

(a) Despite any other provision of any Project Document the Subcontractor's aggregate liability to the State and Project Co whether in contract (including under an indemnity), tort (including negligence) or equity, under statute or otherwise, arising out or in connection with the subject matter of the Project Documents, and irrespective of how it arises, will be no greater than the Subcontractor aggregate liability to Project Co under the Subcontract, subject to the same exceptions, exclusions and limitations as are specified in the Project Documents, less the liability incurred (from time to time) by the Subcontractor under the Subcontract.

(b) The Subcontractor must, within 10 Business Days of a request by the State, notify the value of any Claim against the Subcontractor by Project Co or any Project Co Associate, together with any further detail regarding the calculation of such amount as reasonably requested by the State.

(c) For the avoidance of doubt, nothing in this clause 19 limits the liability of Project Co under any Project Document.

Executed as a deed.

State

Executed by the **Honourable Luke Donnellan MP, in his capacity as the Minister for Roads and Road Safety,** on behalf of the Crown in right of the State of Victoria in the presence of

Signature of witness

Signature of Minister

Name of witness (print)

Project Co

Executed by **Netflow OSARS (Western) Pty Ltd as trustee for Netflow OSARS (Western) Unit Trust for and on behalf of the Netflow OSARS (Western) Partnership** by being signed, sealed and delivered by its attorney

……

under power of attorney dated

……

who declares that he or she has no notice of revocation of the power of attorney, in the presence of:

Signature of witness

Signature of attorney

Name of witness (print)

Executed by **Cintra OSARS (Western) Pty Ltd as trustee for Cintra OSARS (Western) Unit Trust for and on behalf of the Netflow OSARS (Western) Partnership** by being signed, sealed and delivered by its attorney

……

under power of attorney dated

……

who declares that he or she has no notice of revocation of the power of attorney, in the presence of:

Signature of witness	Signature of attorney
Name of witness (print)	

Schedule 8 - Expert Determination Agreement

Expert Determination Agreement

Outer Suburban Arterial Roads Program

Minister for Roads and Road Safety on behalf of the Crown in right of the State of Victoria

(**State**)

Netflow OSARS (Western) Pty Ltd as trustee for Netflow OSARS (Western) Unit Trust for and on behalf of the Netflow OSARS (Western) Partnership and Cintra OSARS (Western) Pty Ltd as trustee for Cintra OSARS (Western) Unit Trust for and on behalf of the Netflow OSARS (Western) Partnership

(**Project Co**)

[ ]

(**Expert**)

Expert Determination Agreement made on

Parties [*#insert party name and address*] (*#insert party name*)

[*#insert party name and address*] (*#insert party name*) [*#insert* name and address of Expert agreed between the Parties or appointed pursuant to clause 49.1 of the Project Deed or the equivalent clause in each Relevant Agreement]] (**Expert**)

Recitals

A. The background to the Project is set out in the Project Deed.

B. On [*#insert*], the Parties agreed that the matter described in Schedule 1 be determined by an Expert appointed under clause [*#insert relevant clause reference*] of the Relevant Agreement.

C. In accordance with clause [*#insert relevant clause reference*] of the Relevant Agreement, the Expert has been appointed to determine the Matter in accordance with the process set out in this Agreement.

Operative provisions

1. Definitions

1.1 Project Deed definitions

Unless otherwise expressly defined, expressions used in this Agreement have the meanings given to them in the Project Deed.

1.2 Definitions

Agreement means this agreement and includes all schedules, exhibits, attachments and annexures to it.

Code of Conduct means the code of conduct set out in section 2 of Schedule 2.

Matter means a dispute under, arising out of, or in connection with the Relevant Agreement and referred to expert determination under clause [*#insert relevant clause reference*] of the Relevant Agreement.

Party means [*#insert party names*].

Project Deed means the document entitled "OSAR Western Package - Project Deed" between the State and Project Co dated [# insert date].

Relevant Agreement means [*#insert the relevant Project Document under which the Matter arose.*]

Rules means the "Rules for Expert Determination Process" set out in Schedule 2.

Schedule of Fees and Disbursements is contained in Schedule 3.

1.3 Interpretation

In this Agreement:

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

and unless the context otherwise requires:

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

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

(i) a party, clause, Schedule, Annexure, Appendix or Attachment is a reference to a party, clause, Schedule, Annexure, Appendix or Attachment of or to this Agreement; and

(ii) a section is a reference to a section of the Schedule in which it is located;

(d) (**Part**): a reference to a Part is a reference to a Part of the PSDR;

(e) (**Agreement as amended**): a reference to this Agreement, a Project Document or to any other deed, agreement, document or instrument means a reference to this Agreement, Project Document or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;

(f) (**party**): a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assignees, including any persons taking part by way of novation;

(g) (**person**): a reference to a person includes an individual, the estate of an individual, a corporation, a body corporate, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust (including a trustee);

(h) (**replacement person**): a reference to a person appointed under this Agreement or any other Project Document includes that person's replacement or delegate appointed in accordance with this Agreement or other Project Document (as applicable);

(i) (**legislation**): a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes:

(i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the legislation or delegated legislation; and

(ii) consolidations, amendments, re-enactments and replacements;

(j) (**Standards**): unless otherwise expressly stated, a reference to a Standard includes that Standard as amended or updated from time to time;

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

(l) (**"includes"**): "include", "includes" and "including" will be read as if followed by the phrase "(without limitation)";

(m) (**"or"**): the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;

(n) (**information**): a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;

(o) (**"$"**): a reference to "$", AUD or dollar is to Australian currency;

(p) (**Business Day**): if the day on or by which anything is to be done under this Deed is not a Business Day, that thing must be done no later than the next Business Day;

(q) (**time**): a reference to time is a reference to time in Melbourne, Victoria, Australia;

(r) (**rights**): a reference to a right includes any benefit, remedy, function, discretion, authority or power;

(s) (**obligations and liabilities**): a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;

(t) (**"absolute discretion"**): unless the State is expressly required under this Agreement to act reasonably in exercising a power, right or remedy, the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;

(u) (**"may"**): without limiting clause 1.3(t), unless the State is expressly required under a State Project Document, to act reasonably in exercising a power, right or remedy, the term "may", when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;

(v) (**Authorities**): where there is a reference to an Authority, institute or association or other body referred to in this Agreement which:

(i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Agreement is deemed to refer to that other entity; or

(ii) ceases to exist, this Agreement is deemed to refer to that new entity (if any) which serves substantially the same purpose or object as the former entity; and

(w) (**contra proferentem rule not to apply**): each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

2. Appointment of Expert

(a) (**Parties to appoint Expert**): The Parties appoint the Expert to determine the Matter in the manner and within the times set out in this Agreement and the Expert accepts the appointment on the basis set out in this Agreement.

(b) (**Agreement of Conditions**): The Parties agree that:

(i) the Expert will act as an expert and not as an arbitrator;

(ii) neither the determination of the Matter, nor the process required by this Agreement is an arbitration and any conference conducted during the determination is not a hearing conducted under any legislation or rules relating to any form of arbitration;

(iii) the rules of evidence do not apply to the determination; and

(iv) the Expert must conduct the determination of the Matter in accordance with the Rules including the Code of Conduct.

(c) (**Independence and bias**): If, at any time during the determination, the Expert becomes aware of circumstances that might reasonably be considered to adversely affect the Expert's capacity to act independently or impartially, the Expert must inform the Parties immediately and, unless the Parties agree otherwise, terminate this Agreement.

3. Confidentiality

All proceedings and submissions relating to the determination (including the fact that any step in the determination is occurring), and all documents prepared for the purposes of the determination (including the Expert's determination), must be kept confidential. No such proceedings, submissions or documents, nor any other information relating to or arising out of the determination, may be divulged to any person, except with the prior written consent of both Parties or as may be required by Law, for the purpose of subsequent arbitration or to the extent necessary to give effect to or enforce the Expert's determination.

4. Costs and fees

(a) (**Parties joint and severally liable**): As between the Parties and the Expert, the Parties are jointly and severally liable for the payment of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements.

(b) (**Calculation of costs and fees**): The Parties agree, subject to the terms of the Relevant Agreement, as between themselves that:

(i) they will each pay one half of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements; and

(ii) they will each bear their own costs of and incidental to the preparation of this Agreement and their participation in the determination.

5. Exclusion of liability and indemnity

Except in the case of fraud, the Expert will not be liable to either Party for any act or omission by the Expert in the performance or purported performance of this Agreement. The Parties jointly and severally indemnify the Expert against all Claims or Liability in connection with any act or omission by the Expert (except fraud) in the performance or purported performance by the Expert of the terms of this Agreement.

6. Co-operation of the Parties

Each Party agrees to take part in the determination in good faith and to comply with the reasonable requests and directions of the Expert in relation to the conduct of the determination.

7. Governing Law and jurisdiction

(a) (**Governing Law**): This Agreement is governed by, and must be construed according to, the Laws of Victoria, Australia.

(b) (**Jurisdiction**): Each Party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Agreement.

Schedule 1
The Matter

[State Note: Description of matter to be inserted.]

Schedule 2
Rules for Expert Determination Process

1. Commencement

The expert determination process begins when the Expert accepts an appointment to determine the Matter in accordance with these Rules including the Code of Conduct.

2. Code of Conduct

(a) The function of the Expert is to make a determination of the Matter in accordance with the Relevant Agreement and the Expert Determination Agreement, including these Rules and the Code of Conduct.

(b) The Expert must receive the written submissions and responses of the Parties in accordance with the procedures specified in these Rules and may require further information or documentation from the Parties which is reasonably necessary to determine the Matter.

(c) The Expert must decide whether a conference is necessary to receive further information. The Expert must inform the Parties of the subject matter of any conference and may hear representations only on those matters during any such conference.

(d) The Expert must disclose to both Parties all information and documents received.

(e) If a Party fails to make a written submission, the Expert may continue with the process.

(f) Subject to section 4 of these Rules in relation to conferences, meetings and discussions with the Expert must only take place in the presence of both Parties.

3. Written Submissions

(a) Within 7 days after the date this expert determination process begins, the Party who gave notice under clause [# insert clause] of the Relevant Agreement (**Party A**) must give the other Party and the Expert a written statement of the Matter referred for Expert determination, any agreed statement of facts and a written submission on the Matter in support of Party A's contentions.

(b) Within 7 days after the statement in section 3(a) is served, the other Party must give Party A and the Expert a written response to Party A's submissions.

(c) If the Expert considers it appropriate, Party A may reply in writing to the other Party's response in section 3(b) within the time allowed by the Expert.

(d) If the Expert decides further information or documentation is required for the determination of the Matter, the Expert may direct one or more Parties to provide such further submissions, information or documents as the Expert may require.

(e) The Expert must disclose to both Parties all information and documents received.

(f) If a Party fails to make a written submission, the Expert may continue with the process.

4. Conference

(a) The Expert may, if he or she thinks appropriate, call a conference of the Parties. Unless the Parties agree otherwise, the conference will be held in Melbourne, Australia.

(b) At least 5 days before the conference, the Expert must notify the Parties of the date, venue and agenda for the conference.

(c) The Parties must appear at the conference and may make submissions on the subject matter of the conference. If a Party fails to appear at a conference of which that Party had been notified under section 4(b), the Expert and the other Party may nevertheless proceed with the conference and the absence of that Party will not terminate or discontinue the expert determination process.

(d) The Parties:

(i) may be accompanied at a conference by legal or other advisers; and

(ii) will be bound by any procedural directions given by the Expert in relation to the expert determination process.

(e) The conference must be held in private.

(f) If required by any Party, transcripts of the conference proceedings must be taken and made available to the Expert and the Parties.

5. General

(a) In making a determination or calling or holding a conference, the Expert must proceed in accordance with the Relevant Agreement, this Agreement and these Rules.

(b) Subject to section 4(c), meetings and discussions with the Expert must only take place in the presence of both Parties.

(c) Without limiting section 2(c) of this Agreement, the Expert must:

(i) inform the Parties of:

A. any relationship or interest with the Parties or their respective Associates;

B. any interest the Expert has in the matters in dispute; and

C. any circumstance which might reasonably be considered to adversely affect the Expert's capacity to act independently or impartially,

immediately upon becoming aware of any such circumstances; and

(ii) upon making any disclosure under this section 5(c), unless and until the Parties agree otherwise, terminate the proceedings.

6. The Determination

(a) As soon as possible after receipt of the submissions or after any conference and, in any event not later than 30 days after the Expert's acceptance of appointment, the Expert must:

(i) determine the Matter between the Parties; and

(ii) notify the Parties of that determination.

(b) The determination of the Expert must:

(i) be in writing stating the Expert's determination and giving reasons;

(ii) be made on the basis of the submissions (if any) of the Parties, the conference (if any) and the Expert's own expertise; and

(iii) meet the requirements of the Relevant Agreement.

(c) To the extent permitted by Law, the Expert's determination will be final and binding on the Parties unless a notice of dissatisfaction is given in accordance with clause [*#insert relevant* clause *reference*] of the Relevant Agreement.

7. Costs

Security for costs of the Expert must be deposited by both Parties at the commencement of the Expert determination process in accordance with any direction of the Expert.

8. Modification

These Rules may be modified only by agreement of the Parties and, if the Expert has been appointed, the Expert.

9. Proportionate Liability

Notwithstanding anything else, to the extent permissible by Law, the Expert will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this provision, have applied to any dispute referred to Expert determination pursuant to clause [*#insert relevant clause reference*] of the Relevant Agreement.

Schedule 3 - Schedule of Fees and Disbursements

[not disclosed]

Signed as an agreement.

State

Executed by the **Honourable Luke Donnellan MP, in his capacity as the Minister for Roads and Road Safety,** on behalf of the Crown in right of the State of Victoria in the presence of

Signature of witness

Signature of Minister

Name of witness (print)

Project Co

Executed by **Netflow OSARS (Western) Pty Ltd as trustee for Netflow OSARS (Western) Unit Trust for and on behalf of the Netflow OSARS (Western) Partnership** by being signed, sealed and delivered by its attorney

……

under power of attorney dated

……
who declares that he or she has no notice of revocation of the power of attorney, in the presence of:

Signature of witness

Name of attorney

Name of witness (print)

Executed by **Cintra OSARS (Western) Pty Ltd as trustee for Cintra OSARS (Western) Unit Trust for and on behalf of the Netflow OSARS (Western) Partnership** by being signed, sealed and delivered by its attorney

……

under power of attorney dated

……

who declares that he or she has no notice of revocation of the power of attorney, in the presence of:

Signature of witness	Name of attorney
Name of witness (print)	

Schedule 9 - Schedule of Certificates and Notices

Project Co must provide to the State and the Independent Reviewer (if applicable) certificates and notices in the form set out in Parts 1 to 4, 7, 9, 11 to 13, 18, 19, 23 to 25, 29 to 31 and 36 of this Schedule signed by the person specified in and otherwise in accordance with this Schedule. The State may, at its absolute discretion, provide the notices in Parts 14, 26 and 32 in accordance with clause 24.3(b), 25.1(d) and 19B.2(b) (respectively) of this Deed.

Part of the Schedule containing the form	Title of certificate or notice	Certificate or notice to be signed by	Clause/Section of the State Project Documents
Part 1	Project Co's Certificate – Certified Design Documentation	Project Co	Section 2.3(c)(i) of Part F.5 of the PSDR
Part 2	D&C Contractor's Certificate – Certified Design Documentation	D&C Contractor	Section 2.3(c)(ii) of Part F.5 of the PSDR
Part 3	Proof Engineer's Certificate - Design Documentation	Proof Engineer	Section 2.3(c)(iii) and 2.6(a) of Part F.5 of the PSDR
Part 4	Proof Engineer's Certificate - Erection of Load Bearing Falsework	Proof Engineer	Section 2.3(c)(iii) and 2.6(b) of Part F.5 of the PSDR
Part 5	Independent Reviewer's Notice – Certified Design Documentation	Independent Reviewer	Section 2.3(e)(ii) of Part F.5 of the PSDR
Part 6	Independent Reviewer's Notice - Response to Design Explanation	Independent Reviewer	Section 2.3(g) of Part F.5 of the PSDR
Part 7	Project Co's Notice - Intention to Proceed at Own Risk (Certified Design)	Project Co	Section 2.3(h) of Part F.5 of the PSDR
Part 8	Independent Reviewer's Notice - Non-compliance	Independent Reviewer	Clause 26.4(b)
Part 9	Project Co's Notice - Explanation and/or Remediation Plan	Project Co	Clause 26.4(d)
Part 10	Independent Reviewer's Notice - Response to Explanation and/or	Independent Reviewer	Clause 26.4(e)

	Remediation Plan		
Part 11	Construction Quality Representative's Certificate - As-Built Records	Construction Quality Representative	Section 10.2(c)(v) of Part F.6 of the PSDR
Part 12	Project Co's Notice - Expectation of achieving Commercial Acceptance [and/or Milestone Completion]	Project Co	Clause 24.2(a)
Part 13	Project Co's Notice - Commercial Acceptance [and/or Milestone Completion]	Project Co	Clause 24.3(a)
Part 14	State's Notice - Commercial Acceptance [and/or Milestone Completion]	State	Clause 24.3(b)
Part 15	Independent Reviewer's Certificate of [Commercial Acceptance and/or Milestone Completion]	Independent Reviewer	Clause 24.3(c)(i)
Part 16	Independent Reviewer's Notice - [Commercial Acceptance and/or Milestone Completion] not achieved (List of work remaining to be performed)	Independent Reviewer	Clause 24.3(c)(ii)A
Part 17	Independent Reviewer's Notice - [Commercial Acceptance and/or Milestone Completion] not achieved (No list of work remaining to be performed)	Independent Reviewer	Clause 24.3(c)(ii)B
Part 18	Project Co's Notice - [Commercial Acceptance and/or Milestone Completion] of outstanding work	Project Co	Clause 24.3(d)
Part 19	Notice by Project Co - Returned Assets	Project Co	Clause 24.4(c)(ii)
Part 20	Notice by Independent Reviewer - Returned Assets	Independent Reviewer	Clause 24.4(e)(i)

Part 21	Independent Reviewer's Notice – Returned Asset not complete (List of work remaining to be performed)	Independent Reviewer	Clause 24.4(e)(ii)(A)
Part 22	Independent Reviewer's Notice - [Commercial Acceptance and/or Milestone Completion] not achieved (No list of work remaining to be performed)	Independent Reviewer	Clause 24.4(e)(ii)(B)
Part 23	Project Co's Notice – Returned Asset completion of outstanding work	Project Co	Clause 24.4(g)
Part 24	Notice by Project Co - Handback of Returned Assets	Project Co	Clause 24.4(j)(i)
Part 25	Project Co's Notice - Final Acceptance	Project Co	Clause 25.1(c)
Part 26	State's Notice – Final Acceptance	State	Clause 25.1(d)
Part 27	Independent Reviewer's Certificate - Final Acceptance	Independent Reviewer	Clause 25.1(e)(i)
Part 28	Independent Reviewer's Notice - Final Acceptance (Work remaining to be performed)	Independent Reviewer	Clause 25.1(e)(ii)
Part 29	Project Co's Notice – Final Acceptance completion of outstanding work	Project Co	Clause 25.1(g)
Part 30	Project Co's Notice - Expectation of achieving Maintenance Commencement	Project Co	Clause 19B.1(a)
Part 31	Project Co's Notice - Maintenance Commencement	Project Co	Clause 19B.2(a)
Part 32	State's Notice - Maintenance Commencement	State	Clause 19B.2(b)

Part 33	Independent Reviewer's Certificate of Maintenance Commencement	Independent Reviewer	Clause 19B.2(c)(i)
Part 34	Independent Reviewer's Notice - Maintenance Commencement not achieved (List of Transition Phase Activities remaining to be performed)	Independent Reviewer	Clause 19B.2(c)(ii)A
Part 35	Independent Reviewer's Notice - Maintenance Commencement not achieved (No list of Transition Phase Activities remaining to be performed)	Independent Reviewer	Clause 19B.2(c)(ii)B
Part 36	Project Co's Notice – Maintenance Commencement - Completion of outstanding Transition Activities	Project Co	Clause 19B.2(d)
Part 37	Independent Reviewer's Certification – Local Content and Aboriginal Participation	Independent Reviewer	Clause 58.4(a)
Part 38	Independent Reviewer's Certification - Total labour hours for the Works performed by Apprentices, Trainees and Engineering Cadets	Independent Reviewer	Clause 59.4(a)

Part 1
Project Co's Certificate – Certified Design Documentation

OSAR – Western Package – Initial Phase

To: **[ ]**, on behalf of the Crown in right of the State of Victoria (**State)** and **[ ]** (**Independent Reviewer**)

From: **[ ]** (**Project Co**)

1. In accordance with section 2.3(c)(i) of Part F.5 of the PSDR, Project Co hereby confirms that the attached Certified Design Documentation for the Construction Package(s) specified in paragraph 2 complies with the requirements of the State Project Documents, including the PSDR.

2. The Construction Package(s) to which this certificate applies is/are as follows:

   (a) *[#insert].*

3. Terms defined in the Project Deed entered into between the State and Project Co dated [*#insert date*] have the same meaning in this certificate.

_____
Signed for and on behalf of
[*#insert name and address of Project Co*]

_____
Date

Part 2
D&C Contractor's Certificate – Certified Design Documentation

OSAR – Western Package – Initial Phase

To: **[ ]**, on behalf of the Crown in right of the State of Victoria (**State**) and **[ ]** (**Independent Reviewer**)

From: **[ ]** (**D&C Contractor**)

1. In accordance with section 2.3(c)(ii) of Part F.5 of the PSDR, the D&C Contractor hereby confirms that the attached Design Documentation for the Construction Package(s) specified in paragraph 2 complies with the requirements of the State Project Documents, including the PSDR.

2. The Construction Package(s) to which this certificate applies is/are as follows:

   (a) [*#insert*].

3. Terms defined in the Project Deed entered into between the State and Project Co dated [*#insert date*] have the same meaning in this certificate.

_____
Signed for and on behalf of
[*#insert name and address of D&C Contractor*]

_____
Date

Part 3
Proof Engineer's Certificate - Design Documentation

OSAR – Western Package – Initial Phase

To: **[ ],** on behalf of the Crown in right of the State of Victoria (**State**) and **[ ]** (**Independent Reviewer**)

From: **[ ]** (**Proof Engineer**)

1. In accordance with section 2.3(c)(iii) and 2.6(a) of Part F.5 of the PSDR, in relation to the Certified Design Documentation provided by Project Co and listed in the attached schedule:

   (a) I have undertaken an independent detailed check of the attached Certified Design Documentation; and

   (b) I certify the adequacy of the attached Certified Design Documentation.

2. In performing the functions of the Proof Engineer, I have used due skill, care and diligence. From my review and in my opinion as a professional engineer, I consider that, in relation to the Certified Design Documentation listed in the attached schedule:

   (a) all relevant design actions and design criteria have been addressed by the design included and that these actions and criteria and the overall concept meet the requirements of the State Project Documents, including the PSDR;

   (b) the strength, stability and serviceability requirements and other Project Requirements are met; and

   (c) the drawings and specifications accurately describe the following matters critical to structural integrity:

      (i) the detailing and dimensions;

      (ii) the required material properties; and

      (iii) the construction procedures and any Temporary Works.

3. Terms defined in the Project Deed entered into between the State and Project Co dated [*#insert date*] have the same meaning in this certificate.

_____
Signed for and on behalf of
[*#insert name of Proof Engineer*]

_____
Date

Schedule

[#*Insert details of Certified Design Documentation*]

Part 4
Proof Engineer's Certificate - Erection of Load Bearing Falsework

OSAR – Western Package – Initial Phase

To:	**[**	**],** on behalf of the Crown in right of the State of Victoria (**State**) and
	[	**]** (**Independent Reviewer**)
From:	**[**	**]** (**Proof Engineer**)

In accordance with section 2.3(c)(iii) and 2.6(b) of Part F.5 of the PSDR, I hereby certify that, in relation to the load bearing falsework and/or formwork listed in the attached schedule, I have verified by inspection that the erected falsework and/or formwork is in accordance with the IFC Design Documentation.

Terms defined in the Project Deed entered into between the State and Project Co dated [*#insert date*] Deed have the same meaning in this certificate.

_____
Signed for and on behalf of
[*#insert name of Proof Engineer*]

_____
Date

Schedule

[*#Insert relevant details of load bearing falsework and/or formwork being certified*]

Part 5
Independent Reviewer's Notice – Certified Design Documentation

OSAR – Western Package – Initial Phase

To: **[ ]**, on behalf of the Crown in right of the State of Victoria (**State**) and **[ ]** (**Project Co**)

From: **[ ]** (**Independent Reviewer**)

1. Pursuant to section 2.3(e)(ii) of Part F.5 of the PSDR, I hereby notify the State and Project Co that the proposed Design Documentation for the Construction Package(s) specified in paragraph 2 [*complies/does not comply - delete as inapplicable*] with the State Project Documents for the reasons set out in the attached schedule.

2. The Construction Package(s) to which this certificate applies is/are as follows:

   (a) [*#insert*].

3. Terms defined in the Project Deed entered into between the State and Project Co dated [*#insert date*] have the same meaning in this certificate.

_____
Signed for and on behalf of
[*#insert name of Independent Reviewer*]

_____
Date

Schedule

[*#Insert reasons for Independent Reviewer's opinion*.]

Part 6
Independent Reviewer's Notice - Response to Design Explanation

OSAR – Western Package – Initial Phase

To:	**[**	**]**, on behalf of the Crown in right of the State of Victoria (**State**) and
	[	**]** (**Project Co**)
From:	**[**	**]** (**Independent Reviewer**)

1. Pursuant to section 2.3(g) of Part F.5 of the PSDR, I hereby notify the State and Project Co that the Design Explanation provided by Project Co pursuant to section 2.3(f)(iii) of Part F.5 of the PSDR dated [*#insert*] [*satisfactorily addresses/does not satisfactorily address - delete as inapplicable*] the concerns I raised in the Independent Reviewer's Notice – Certified Design Documentation dated [*#insert*], for the reasons set out in the attached schedule.

2. Terms defined in the Project Deed entered into between the State and Project Co dated [*#insert date*] have the same meaning in this certificate.

_____
Signed for and on behalf of
[*#insert name of Independent Reviewer*]

_____
Date

Schedule

[*#Insert reasons for Independent Reviewer's opinion*.]

Part 7
Project Co's Notice - Intention to Proceed at Own Risk (Certified Design)

OSAR – Western Package – Initial Phase

To: **[ ]**, on behalf of the Crown in right of the State of Victoria (**State**) and **[ ]** (**Independent Reviewer**)

From: **[ ]** (**Project Co**)

1. In accordance with section 2.3(h) of Part F.5 of the PSDR, Project Co hereby notifies the State and the Independent Reviewer that, despite any opinion of the Independent Reviewer in the Independent Reviewer's Notice – Certified Design Documentation dated [*#insert date*] and the Independent Reviewer's Notice - Response to Design Explanation dated [*#insert date*] (together, **IR Notices**), Project Co intends to proceed with construction of the Construction Package(s) specified in paragraph 2, at its own cost and risk (including the risk that a Milestone Certificate, Certificate of Commercial Acceptance may not be issued).

2. The Construction Package(s) to which this notice applies is/are as follows:

   (a) [*#insert*].

3. Details of the reasons why Project Co intends to proceed with construction of the Construction Packages specified in paragraph 2 despite the opinion provided in the IR Notices are set out in the attached schedule.

4. Terms defined in the Project Deed entered into between the State and Project Co dated [*#insert date*] have the same meaning in this certificate.

_____
Signed for and on behalf of
[*#insert name and address of Project Co*]

_____
Date

Schedule

[#*Insert details of the reasons why Project Co intends to proceed at its own risk despite the Independent Reviewer's opinion in the IR Notices*.]

Part 8
Independent Reviewer's Notice - Non-compliance

OSAR – Western Package – Initial Phase

To:	**[**	**]**, on behalf of the Crown in right of the State of Victoria (**State**) and
	[	**]** (**Project Co**)
From:	**[**	**]** (**Independent Reviewer**)

1. Pursuant to clause 26.4(b) of the Project Deed entered into between the State and Project Co dated [*#insert date*] (**Deed**), I hereby notify the State and Project Co of my opinion that:

   (a) Commercial Acceptance will not be achieved by the relevant Date for Commercial Acceptance; or

   (b) the Initial Phase Program does not accurately reflect the actual progress of the Works in all material respects.

   [*delete as appropriate*]

2. The reasons for my opinion are set out in the attached schedule.

3. Terms defined in the Deed have the same meaning in this certificate.

_____
Signed for and on behalf of
[*#insert name of Independent Reviewer*]

_____
Date

Schedule

[*#Insert reasons for the Independent Reviewer's opinion that the obligations of Project Co under the State Project Documents in relation to the construction of the Works are not being met.*]

Part 9
Project Co's Notice - Explanation and/or Remediation Plan

OSAR – Western Package – Initial Phase

To: **[ ]**, on behalf of the Crown in right of the State of Victoria (**State**) and **[ ]** (**Independent Reviewer**)

From: **[ ]** (**Project Co**)

1. Pursuant to clause 26.4(d) of the Project Deed entered into between the State and Project Co dated [*#insert date*] (**Deed**), Project Co hereby:

   (a) *[notifies the State and the Independent Reviewer that it disagrees with the opinion contained within the Independent Reviewer's Notice - Non-compliance dated* [*#insert date*] for the reasons set out in the attached Schedule A (**Explanation**)]; *[and/or]*

   (b) *[to the extent that Project Co does not disagree with the Independent Reviewer's opinion]* provides in the attached Schedule B a plan and program for the rectification of the non-compliance specified in the Independent Reviewer's Notice - Non-compliance dated [*#insert date*] (**Remediation Plan**)].

2. Terms defined in the Deed have the same meaning in this certificate.

_____
Signed for and on behalf of
[*#insert name an address of Project Co*]

_____
Date

[Schedule A]

[*#Insert Project Co's Explanation, if applicable.*]

[Schedule B]

[*#Insert details of Project Co's Remediation Plan, if applicable.*]

Part 10
Independent Reviewer's Notice - Response to Explanation and/or Remediation Plan

OSAR – Western Package – Initial Phase

To: **[ ]**, on behalf of the Crown in right of the State of Victoria (**State**) and **[ ]** (**Project Co**)

From: **[ ]** (**Independent Reviewer**)

1. Pursuant to clause 26.4(e) of the Project Deed entered into between the State and Project Co dated [*#insert date*] (**Deed**), I hereby notify the State and Project Co of my opinion as to whether Project Co's [*Explanation and/or Remediation Plan - delete as inapplicable*] dated [*#insert date*] satisfactorily addresses the concerns raised in the Independent Reviewer's Notice - Non-compliance dated [*#insert date*].

2. The details of and reasons for my opinion are set out in the attached schedule.

3. Terms defined in the Deed have the same meaning in this certificate.

_____
Signed for and on behalf of
[*#insert name of Independent Reviewer*]

_____
Date

Schedule

[*#Insert details of and reasons for Independent Reviewer's opinion as to adequacy of Project Co's Explanation and/or Remediation Plan*.]

Part 11
Construction Quality Representative's Certificate - As-Built Records

OSAR – Western Package – Initial Phase

To: **[ ]**, on behalf of the Crown in right of the State of Victoria (**State**) [and **[ ]** (**Independent Reviewer**) (if applicable)]

From: **[ ]** (**Construction Quality Representative**)

1. In accordance with section 10.2(c)(v) of Part F.6 of the PSDR, I hereby certify that I have inspected the As-Built Records for the Construction Package(s) (or part thereof) specified in paragraph 2 and I have verified that:

   (a) the Work Lots described in Schedule A cover all materials and works required to complete the Construction Package or part thereof;

   (b) the as-built drawings listed in Schedule B are all of the as-built drawings required to completely describe the Construction Package or part thereof;

   (c) all inspections and tests required for all of the Work Lots in Schedule A have been completed and the test results recorded;

   (d) any non-conformances that cannot be corrected promptly have been notified and recorded on the Defects List in accordance with section 12 of Part F.6 of the PSDR, and the non-conformance report marked accordingly;

   (e) the final marked-up copy of every drawing listed in Schedule B, including drawings without change, have been checked for completeness and signed by a person with responsibility for supervision of the work; and

   (f) the complete set of closed As-Built Records for the Construction Package or part thereof has been made available to the State and the Independent Reviewer in accordance with section 10.2(c)(iv) of Part F.6 of the PSDR.

2. The Construction Package(s) (or part thereof) to which this certificate applies is/are as follows:

   (a) [*#insert*].

3. Terms defined in the Project Deed entered into between the State and Project Co dated [*#insert date*] have the same meaning in this certificate.

–

_____
Signed by
[*#insert name of Quality Representative*]

_____
Date

Schedule A

[*Insert details of Work Lots*]

Schedule B

*[#*insert *details of As-built drawings]*

Part 12
Project Co's Notice - Expectation of achieving Commercial Acceptance [and/or Milestone Completion]

OSAR – Western Package – Initial Phase

To: **[ ]**, on behalf of the Crown in right of the State of Victoria (**State**)

Copy: **[ ]** (**Independent Reviewer**)

From: **[ ]** (**Project Co**)

1. Pursuant to clause 24.2(a) of the Project Deed between the State and Project Co dated [*#insert date*] (**Deed**), Project Co notifies the State that it reasonably expects to achieve [Commercial Acceptance / Milestone Completion for Milestone No [insert]] on [*#insert date*].

2. Terms defined in the Deed have the same meaning in this notice.

_____
Signed for and on behalf of
[*#insert name and address of Project Co*]

_____
Date

Part 13
Project Co's Notice - Commercial Acceptance [and/or Milestone Completion]

OSAR – Western Package – Initial Phase

To: **[ ]**, on behalf of the Crown in right of the State of Victoria (**State**) and **[ ]** (**Independent Reviewer**)

From: **[ ]** (**Project Co**)

1. Pursuant to clause 24.3(a) of the Project Deed between the State and Project Co dated [*#insert date*] (**Deed**), Project Co hereby:

   (a) notifies the State and the Independent Reviewer that it considers that it has achieved [Commercial Acceptance /Milestone Completion for Milestone No [insert]];

   (b) requests that the Independent Reviewer issue a Certificate of [Commercial Acceptance /Milestone Completion for Milestone No [insert]];

   (c) [in relation to Commercial Acceptance only] notifies the State and the Independent Reviewer that the detailed list of work in the attached schedule (including Minor Defect correction) remains to be performed, in its opinion, to achieve Final Acceptance; and

   (d) [in relation to Milestone Completion only] notifies the State and the Independent reviewer that the detailed list of work in the attached schedule (including Minor Defect correction) remains to be performed, in its opinion, to achieve Milestone Completion for Milestone No [insert].

2. Terms defined in the Deed have the same meaning in this notice.

_____
Signed for and on behalf of
[*#insert name and address of Project Co*]

_____
Date

Schedule

[#*Insert details of work that remains to be performed to achieve Final Acceptance*.]

Part 14
State's Notice - Commercial Acceptance [and/or Milestone Completion]

OSAR – Western Package – Initial Phase

To: **[ ]** (**Project Co**) and
[ ] (**Independent Reviewer**)

From: **[ ]**, on behalf of the Crown in right of the State of Victoria (**State**)

1. Pursuant to clause 24.3(b) of the Project Deed between the State and Project Co dated [*#insert date*] (**Deed**), the State hereby:

   (a) notifies Project Co and the Independent Reviewer that it considers that Project Co has achieved [Commercial Acceptance / Milestone Completion for Milestone No [insert]]; and

   (b) requests that the Independent Reviewer issues a Certificate of [Commercial Acceptance / Milestone Completion for Milestone No [insert]].

2. Terms defined in the Deed have the same meaning in this notice.

_____
Signed for and on behalf of the State

_____
Date

Part 15
Independent Reviewer's Certificate of [Commercial Acceptance and/or Milestone Completion]

OSAR – Western Package – Initial Phase

To: **[ ]**, on behalf of the Crown in right of the State of Victoria (**State**) and **[ ]** (**Project Co**)

From: **[ ]** (**Independent Reviewer**)

1. Pursuant to clause 24.3(c)(i) of the Project Deed entered into between the State and Project Co dated [*#insert date*] (**Deed**), I certify that [Milestone Completion for Milestone No [insert]/ Commercial Acceptance] has been achieved as at the date of this certificate.

2. In accordance with clauses 24.3(c)(i)C and 24.3(c)(i)D of the Deed, I set out in the attached schedule [in relation to Commercial Acceptance only]:

   (a) a list of Commercial Acceptance Outstanding Items; and

   (b) a list of any Remaining Works.

3. Terms defined in the Deed have the same meaning in this certificate.

_____
Signed for and on behalf of
[*#insert name of Independent Reviewer*]

_____
Date of [Commercial Acceptance and/or Milestone Completion for Milestone No [insert]] and Date of Certificate

Schedule

[*#Insert details of Commercial Acceptance Outstanding Items and any Remaining Works*]

Part 16
Independent Reviewer's Notice - [Commercial Acceptance and/or Milestone Completion] not achieved (List of work remaining to be performed)

OSAR – Western Package – Initial Phase

To: **[ ]**, on behalf of the Crown in right of the State of Victoria (**State**) and **[ ]** (**Project Co**)

From: **[ ]** (**Independent Reviewer**)

1. Pursuant to clause 24.3(c)(ii)A of the Project Deed entered into between the State and Project Co dated [*#insert date*] (**Deed**), I advise that [Commercial Acceptance and/or Milestone Completion for Milestone No [insert]] has not been achieved.

2. The work remaining to be performed in order for Project Co to achieve [Commercial Acceptance / Milestone Completion for Milestone No [insert]] is listed in the attached schedule.

3. Terms defined in the Deed have the same meaning in this certificate.

_____
Signed for and on behalf of [*#insert name of Independent Reviewer*]

_____
Date

Schedule

[*#Insert details of work remaining to be performed*.]

Part 17
Independent Reviewer's Notice - [Commercial Acceptance and/or Milestone Completion] not achieved (No list of work remaining to be performed)

OSAR – Western Package – Initial Phase

To: **[ ]**, on behalf of the Crown in right of the State of Victoria (**State**) and **[ ]** (**Project Co**)

From: **[ ]** (**Independent Reviewer**)

1. Pursuant to clause 24.3(c)(ii)B of the Project Deed entered into between the State and Project Co dated [*#insert date*] (**Deed**), I advise that [Commercial Acceptance / Milestone Completion for Milestone No [insert]] has not been achieved.

2. I advise that [Commercial Acceptance / Milestone Completion for Milestone No [insert]] is so far from being achieved that it is not practicable to provide a list of the type referred to in clause 24.3(c)(ii)A of the Deed.

3. Terms defined in the Deed have the same meaning in this certificate.

_____
Signed for and on behalf of
[*#insert name of Independent Reviewer*]

_____
Date

Part 18
Project Co's Notice - [Commercial Acceptance and/or Milestone Completion] of outstanding work

OSAR – Western Package – Initial Phase

To: **[ ]**, on behalf of the Crown in right of the State of Victoria (**State**) and
[ ] (Independent Reviewer)

From: **[ ]** (**Project Co**)

1. Pursuant to clause 24.3(d) of the Project Deed entered into between the State and Project Co dated [*insert date*] (**Deed**), Project Co hereby notifies the State and the Independent Reviewer that the work listed in the Independent Reviewer's Notice - [Commercial Acceptance / Milestone Completion for Milestone No [insert]] not achieved (List of work remaining to be performed) dated [*insert date*] has been completed in accordance with the State Project Documents.

2. Terms defined in the Deed have the same meaning in this certificate.

_____
Signed for and on behalf of
[#*insert name and address of Project Co*]

_____
Date

Part 19
Notice by Project Co - Returned Assets

OSAR – Western Package – Initial Phase

To: **[ ]**, on behalf of the Crown in right of the State of Victoria (**State**),
[ ] (**Independent Reviewer**) and
[ ] (**Returned Asset Owner**)

From: **[ ]** (**Project Co**)

1. Pursuant to clause 24.4(d)(ii) of the Project Deed between the State and Project Co dated [*#insert date*] (**Deed**), Project Co hereby notifies that, with the exception of the Minor Defects specified in the attached schedule, the Returned Asset described below has been completed in accordance with the State Project Documents.

   Returned Asset: .....

2. Terms defined in the Deed have the same meaning in this notice.

_____
Signed for and on behalf of
[*#insert name and address of Project Co*]

_____
Date

Schedule

[*#Insert details of Minor Defects*]

Part 20
Notice by Independent Reviewer - Returned Assets

OSAR – Western Package – Initial Phase

To: **[ ],** on behalf of the Crown in right of the State of Victoria (**State**),
[ ] (**Project Co**)

From: **[ ]** (**Independent Reviewer**)

1. Pursuant to clause 24.4(f)(i) of the Project Deed between the State and Project Co dated [*#insert date*] (**Deed**), I confirm that with the exception of the Minor Defects specified in the attached schedule the Returned Asset described below has been completed in accordance with the State Project Documents.

   Returned Asset: .....

2. Terms defined in the Deed have the same meaning in this notice.

_____
Signed for and on behalf of
[*#insert name of Independent Reviewer*]

_____
Date

Schedule

[*#Insert details of Defects*]

Part 21
Independent Reviewer's Notice – Returned Asset not complete (List of work remaining to be performed)

OSAR – Western Package – Initial Phase

To: **[ ]**, on behalf of the Crown in right of the State of Victoria (**State**) and **[ ]** (**Project Co**)

From: **[ ]** (**Independent Reviewer**)

1. Pursuant to clause 24.4(f)(ii)(A) of the Project Deed entered into between the State and Project Co dated [#*insert date*] (**Deed**), I advise that the Returned Asset identified below has not been completed.

   Returned Asset: .....

2. The work remaining to be performed in order for Project Co to complete that Returned Asset is listed in the attached schedule.

3. Terms defined in the Deed have the same meaning in this certificate.

_____
Signed for and on behalf of
[#*insert name of Independent Reviewer*]

_____
Date

Schedule

[#*Insert details of work remaining to be performed*.]

Part 22
Independent Reviewer's Notice - [Commercial Acceptance and/or Milestone Completion] not achieved (No list of work remaining to be performed)

OSAR – Western Package – Initial Phase

To: **[ ]**, on behalf of the Crown in right of the State of Victoria (**State**) and **[ ]** (**Project Co**)

From: **[ ]** (**Independent Reviewer**)

1. Pursuant to clause 24.4(f)(ii)(B) of the Project Deed entered into between the State and Project Co dated [*#insert date*] (**Deed**), I advise that the Returned Asset identified below has not been completed.

   Returned Asset: .....

2. I advise that the Returned Asset is so far from being achieved that it is not practicable to provide a list of the type referred to in clause 24.4(e)(ii)(A) of the Deed.

3. Terms defined in the Deed have the same meaning in this certificate.

_____
Signed for and on behalf of
[*#insert name of Independent Reviewer*]

_____
Date

Part 23
Project Co's Notice – Returned Asset completion of outstanding work

OSAR – Western Package

To: **[ ]**, on behalf of the Crown in right of the State of Victoria (**State**) and **[ ] (Independent Reviewer)**

From: **[ ]** (**Project Co**)

1. Pursuant to clause 24.4(g) of the Project Deed entered into between the State and Project Co dated [*insert date*] (**Deed**), Project Co hereby notifies the State and the Independent Reviewer that the work listed in the Independent Reviewer's Notice – Returned Asset not complete (List of work remaining to be performed) dated [*insert date*] has been completed in accordance with the State Project Documents.

2. Terms defined in the Deed have the same meaning in this certificate.

_____
Signed for and on behalf of
[#*insert name and address of Project Co*]

_____
Date

Part 24
Notice by Project Co - Handback of Returned Assets

OSAR – Western Package

To:	**[**	**]** (**Returned Asset Owner**)
Copy:	**[**	**]**, on behalf of the Crown in right of the State of Victoria (**State**) and
	[	**]** (**Independent Reviewer**)
From:	**[**	**]** (**Project Co**)

1. Pursuant to clause 24.4(k)(i) of the Project Deed between the State and Project Co dated [*#insert date*] (**Deed**), Project Co hereby notifies the Returned Asset Owner that the date upon which Returned Asset Acceptance for the Returned Asset described below, will be on [*insert date not fewer than 5 Business Days from the date of this notice*].

   Returned Asset: .....

2. Terms defined in the Deed have the same meaning in this notice.

_____
Signed for and on behalf of
[*#insert name and address of Project Co*]

_____
Date

Part 25
Project Co's Notice - Final Acceptance

OSAR – Western Package

To: **[ ]**, on behalf of the Crown in right of the State of Victoria (**State**) and **[ ]** (**Independent Reviewer**)

From: **[ ]** (**Project Co**)

1. Pursuant to clause 25.1(c) of the Project Deed between the State and Project Co dated [*#insert date*] (**Deed**), Project Co:

   (a) notifies the State and the Independent Reviewer that it considers Final Acceptance has been achieved; and

   (b) requests that the Independent Reviewer issues a Certificate of Final Acceptance.

2. Terms defined in the Deed have the same meaning in this notice.

_____
Signed for and on behalf of
[*#insert name and address of Project Co*]

_____
Date

Part 26
State's Notice – Final Acceptance

OSAR – Western Package

To: **[ ]** (**Project Co**) and
[ ] (**Independent Reviewer**)

From: **[ ]**, on behalf of the Crown in right of the State of Victoria (**State**)

1. Pursuant to clause 25.1(d) of the Project Deed between the State and Project Co dated [*#insert date*] (**Deed**), the State hereby:

   (a) notifies Project Co and the Independent Reviewer that it considers that Project Co has achieved Final Acceptance; and

   (b) requests that the Independent Reviewer issues a Certificate of Final Acceptance.

2. Terms defined in the Deed have the same meaning in this notice.

_____
Signed for and on behalf of the State

_____
Date

Part 27
Independent Reviewer's Certificate - Final Acceptance

OSAR – Western Package

To: **[ ]**, on behalf of the Crown in right of the State of Victoria (**State**) and **[ ]** (**Project Co**)

From: **[ ]** (**Independent Reviewer**)

1. Pursuant to clause 25.1(e)(i) of the Project Deed entered into between the State and Project Co dated [*#insert date*] (**Deed**), I certify that Final Acceptance has been achieved as at the date of this certificate.

2. Terms defined in the Deed have the same meaning in this certificate.

_____
Signed for and on behalf of
[*#insert name of Independent Reviewer*]

_____
Date of Final Acceptance and Date of Certificate

Part 28
Independent Reviewer's Notice - Final Acceptance (Work remaining to be performed)

OSAR – Western Package

To: **[ ]**, on behalf of the Crown in right of the State of Victoria (**State**) and **[ ]** (**Project Co**)

From: **[ ]** (**Independent Reviewer**)

1. Pursuant to clause 25.1(e)(ii) of the Project Deed entered into between the State and Project Co dated [*#insert date*] (**Deed**), I advise that Final Acceptance has not been achieved.

2. The work remaining to be performed in order achieve Final Acceptance is listed in the attached schedule.

3. Terms defined in the Deed have the same meaning in this certificate.

_____
Signed for and on behalf of
[*#insert name of Independent Reviewer*]

_____
Date

Schedule

[*#Insert details of work to be performed.*]

Part 29
Project Co's Notice – Final Acceptance completion of outstanding work

OSAR – Western Package

To: **[ ]**, on behalf of the Crown in right of the State of Victoria (**State)** and **[ ]** (**Independent Reviewer**)

From: **[ ]** (**Project Co**)

1. Pursuant to clause 25.1(g) of the Project Deed between the State and Project Co dated [*#insert date*] (**Deed**), I hereby confirm that the work identified in Independent Reviewer's Notice - Final Acceptance (Work remaining to be performed) dated [insert] has been completed in accordance with the State Project Documents.

2. Terms defined in the Deed have the same meaning in this certificate.

_____
Signed for and on behalf of
[*#insert name and address of Project Co*]

_____
Date

Part 30
Project Co's Notice - Expectation of achieving Maintenance Commencement

OSAR – Western Package – Initial Phase

To: **[ ]**, on behalf of the Crown in right of the State of Victoria (**State**)

Copy: **[ ]** (**Independent Reviewer**)

From: **[ ]** (**Project Co**)

1. Pursuant to clause 19B.1(a) of the Project Deed between the State and Project Co dated [*#insert date*] (**Deed**), Project Co notifies the State that it reasonably expects to achieve Maintenance Commencement on [*#insert date*].

2. Terms defined in the Deed have the same meaning in this notice.

_____
Signed for and on behalf of
[*#insert name and address of Project Co*]

_____
Date

Part 31
Project Co's Notice - Maintenance Commencement

OSAR – Western Package – Initial Phase

To: **[ ]**, on behalf of the Crown in right of the State of Victoria (**State**) and **[ ]** (**Independent Reviewer**)

From: **[ ]** (**Project Co**)

1. Pursuant to clause 19B.2(a) of the Project Deed between the State and Project Co dated [*#insert date*] (**Deed**), Project Co hereby:

   (a) notifies the State and the Independent Reviewer that it considers that it has achieved Maintenance Commencement; and

   (b) requests that the Independent Reviewer issue a Certificate of Maintenance Commencement.

2. Terms defined in the Deed have the same meaning in this notice.

_____
Signed for and on behalf of
[*#insert name and address of Project Co*]

_____
Date

Part 32
State's Notice - Maintenance Commencement

OSAR – Western Package – Initial Phase

To: **[ ]** (**Project Co**) and
[ ] (**Independent Reviewer**)

From: **[ ]**, on behalf of the Crown in right of the State of Victoria (**State**)

1. Pursuant to clause 19B.2(b) of the Project Deed between the State and Project Co dated [*#insert date*] (**Deed**), the State hereby:

   (a) notifies Project Co and the Independent Reviewer that it considers that Project Co has achieved Maintenance Commencement; and

   (b) requests that the Independent Reviewer issues a Certificate of Maintenance Commencement.

2. Terms defined in the Deed have the same meaning in this notice.

_____
Signed for and on behalf of the State

_____
Date

Part 33
Independent Reviewer's Certificate of Maintenance Commencement

OSAR – Western Package – Initial Phase

To: **[ ]**, on behalf of the Crown in right of the State of Victoria (**State**) and **[ ]** (**Project Co**)

From: **[ ]** (**Independent Reviewer**)

1. Pursuant to clause 19B.2(c)(i) of the Project Deed entered into between the State and Project Co dated [*#insert date*] (**Deed**), I certify that Maintenance Commencement has been achieved as at the date of this certificate.

2. Terms defined in the Deed have the same meaning in this certificate.

_____
Signed for and on behalf of
[*#insert name of Independent Reviewer*]

_____
Date of Maintenance Commencement and Date of Certificate

Part 34
Independent Reviewer's Notice - Maintenance Commencement not achieved (List of Transition Phase Activities remaining to be performed)

OSAR – Western Package – Initial Phase

To: **[ ]**, on behalf of the Crown in right of the State of Victoria (**State**) and **[ ]** (**Project Co**)

From: **[ ]** (**Independent Reviewer**)

1. Pursuant to clause 19B.2(c)(ii)A of the Project Deed entered into between the State and Project Co dated [#*insert date*] (**Deed**), I advise that Maintenance Commencement has not been achieved.

2. The Transition Phase Activities remaining to be performed in order for Project Co to achieve Maintenance Commencement are listed in the attached schedule.

3. Terms defined in the Deed have the same meaning in this certificate.

_____
Signed for and on behalf of [#*insert name of Independent Reviewer*]

_____
Date

Schedule

[#*Insert details of work remaining to be performed*.]

Part 35
Independent Reviewer's Notice - Maintenance Commencement not achieved (No list of Transition Phase Activities remaining to be performed)

OSAR – Western Package – Initial Phase

To: **[ ]**, on behalf of the Crown in right of the State of Victoria (**State**) and **[ ]** (**Project Co**)

From: **[ ]** (**Independent Reviewer**)

1. Pursuant to clause 19B.2(c)(ii)B of the Project Deed entered into between the State and Project Co dated [#*insert date*] (**Deed**), I advise that Maintenance Commencement has not been achieved.

2. I advise that Maintenance Commencement is so far from being achieved that it is not practicable to provide a list of the type referred to in clause 19B.2(c)(ii)A of the Deed.

3. Terms defined in the Deed have the same meaning in this certificate.

_____
Signed for and on behalf of
[#*insert name of Independent Reviewer*]

_____
Date

Part 36
Project Co's Notice – Maintenance Commencement - Completion of outstanding Transition Activities

OSAR – Western Package – Initial Phase

To: **[ ]**, on behalf of the Crown in right of the State of Victoria (**State**) and **[ ] (Independent Reviewer)**

From: **[ ]** (**Project Co**)

1. Pursuant to clause 19B.2(d) of the Project Deed entered into between the State and Project Co dated [*insert date*] (**Deed**), Project Co hereby notifies the State and the Independent Reviewer that the outstanding Transition Activities listed in the Independent Reviewer's Notice - Maintenance Commencement not achieved (List of Transition Activities remaining to be performed) dated [*insert date*] have been completed in accordance with the State Project Documents.

2. Terms defined in the Deed have the same meaning in this certificate.

_____
Signed for and on behalf of
[*#insert name and address of Project Co*]

_____
Date

Part 37
Independent Reviewer's Certification – Local Content and Aboriginal Participation

OSAR – Western Package

To: **[ ]**, on behalf of the Crown in right of the State of Victoria (**State**) and **[ ]** (**Project Co**)

From: **[ ]** (**Independent Reviewer**)

1. Pursuant to clause 58.4(a) of the Project Deed entered into between the State and Project Co dated [*#insert date*] (**Deed**), I certify that:

   (a) the percentage of Local Content (ANZ) used by Project Co to the last Date of Commercial Acceptance to occur in undertaking the Development Activities is [#]%; and

   (b) the percentage of the Project Co Development Phase Workforce to the last Date of Commercial Acceptance to occur which was comprised of Aboriginal Persons undertaking Development Activities in Victoria, calculated as an Annualised Employee Equivalent (AEE) against the Project Co Development Phase Workforce is [#].

2. Terms defined in the Deed have the same meaning in this certificate.

_____
Signed for and on behalf of [*#insert name of Independent Reviewer*]

_____
Date

Part 38
Independent Reviewer's Certification - Total labour hours for the Works performed by Apprentices, Trainees and Engineering Cadets

OSAR – Western Package

To: **[ ]**, on behalf of the Crown in right of the State of Victoria (**State**) and **[ ]** (**Project Co**)

From: **[ ]** (**Independent Reviewer**)

1. Pursuant to clause 59.4(a) of the Project Deed entered into between the State and Project Co dated [*#insert date*] (**Deed**), I certify that the percentage of the total labour hours for the Works performed by Apprentices, Trainees and Engineering Cadets to the last Date of Commercial Acceptance to occur is [#]%

2. Terms defined in the Deed have the same meaning in this certificate.

_____
Signed for and on behalf of [*#insert name of Independent Reviewer*]

_____
Date

Schedule 10 - Insurances

Introduction

There are four parts to this Schedule 10:

- Part A — Initial Phase Insurances (Project Co) applicable to the Initial Phase;
- Part B — Initial Phase Insurances (State) applicable to the Initial Phase;
- Part C — Insurances applicable to the Maintenance Phase; and
- Part D — Insurances (State) applicable to the Maintenance Phase.

Meaning of Subcontractor

For the purposes of this Schedule 10 only:

(a) subject to paragraph (b) immediately below, the term 'Subcontractor' means any person who enters into a contract in connection with the Project Activities with Project Co or another Consortium Member;

(b) for the purposes of the minimum requirements for the Contract Works Insurance (Material Damage) policy and the Contract Works Insurance (Public and Projects Liability) the term 'Subcontractor' means any person who enters into a contract in connection with the Project Activities with Project Co or another Consortium Member or whose subcontract is in connection with the Project Activities and is in a chain of contracts where the ultimate contract is with Project Co or another Consortium Member to the extent that the person is carrying out the Development Activities and is otherwise located in Australia; and

(c) the scope of any references to Project Co Associates will be limited in respect of Subcontractors on the same basis as provided for in paragraph (a) and (b) above.

Part A — Initial Phase Insurances (Project Co) applicable to the Initial Phase

Project Co must procure, or cause to be procured, and thereafter maintained, each of the following Insurances with respect to the Project specified in this Part A for the applicable period of that Insurance. Each such Insurance must be procured and maintained upon the minimum terms specified in this Part A and clause 44.

Summary of Initial Phase Insurances (Project Co) required:

(a) Contractors' Pollution Liability;

(b) Plant and Equipment;

(c) Design and Construct Professional Indemnity Insurance;

(d) Workers' Compensation Insurance; and

(e) Motor Vehicle Insurance.

(a) Contractor's Pollution Liability

Insurance Element	Minimum Requirement
Insured	Each of: • Project Co; • Project Co Associates; • the State; • State Associates; • VicRoads; • the Security Trustee; • Finance Co; • the D&C Contractor; and • all Subcontractors and each other party which has an insurable interest or is required to be insured under any Project Document relating to the Works and the Development Activities.
Sum insured	• $ [not disclosed] per pollution condition; and • $ [not disclosed] in the aggregate.
Scope of cover	For legal liability (including to counterparties) to pay compensation for death, personal injury, loss of or damage to third party property and clean-up costs as a result of pollution conditions caused by the Works and Development Activities.
Situation of risk	Anywhere in the Commonwealth of Australia.
Retroactive date	N/A
Maximum Deductibles	$[not disclosed] each and every occurrence
Premium	As tendered.
Additional requirements	• Occurrence wording; • Completed operations extension (for a minimum of 6 years), to cover liability to pay compensation for personal injury or property damage which occurs at any time arising out or in connection with the Works and Development Activities; • Third party property damage for the assets of the State or any State Associate; • The policy must be procured and maintained on a project specific basis; • The policy must specifically cover: (a) sudden, accidental and gradual Pollution; (b) remediation costs; (c) liability connected with asbestos (including, liability for soil and groundwater pollution); (d) legal defence costs; (e) biodiversity and natural resource damages; (f) cross liability clause; (g) severability and non-imputation clauses; and (h) breach of conditions clause.
Period of insurance	At all times during the Initial Phase.

(b) Plant and Equipment Insurance

Insurance Element	Minimum Requirement
Insured	D&C Contractor
Level of cover	Not less than the indemnity value of the plant and equipment insured.
Scope of cover	Damage or destruction for an indemnity value of the respective plant and equipment whether owned or hired by Project Co or the D&C Contractor used for the purposes of undertaking the Works.
Situation of risk	Anywhere in the Commonwealth of Australia.
Maximum deductibles	$[not disclosed] for each and every claim
Additional requirements	The policy must specifically cover: • severability and non-imputation clauses and • breach of conditions clause.
Period of insurance	At all times during the Initial Phase

(c) Design and Construct Professional Indemnity Insurance

Insurance Element	Minimum Requirement
Insured	Each of: • D&C Contractor; • any Significant Subcontractor (including any designer); and • each other party which has an insurable interest and is required to be insured under any Significant Subcontract, relating to the Works and the Development Activities, between the D&C Contractor and that Significant Subcontractor.
Sum insured	Minimum coverage of $[not disclosed] for any one claim and in the aggregate for all claims during the period of insurance.
Scope of cover	Covering legal liability arising from an act, error or omission of the Insured in relation to the performance of each Insured's professional activities and duties in connection with the Works and Development Activities. Including: • loss mitigation and rectification; • proportionate liability; • contractual liability; and • limitation of liability.
Situation of risk	Anywhere in the Commonwealth of Australia.
Retroactive date	From the date of this Deed.
Maximum Deductibles	$[not disclosed] for each and every claim.
Additional Requirements	• Indemnity to Project Co as principal for its vicarious liability arising out of acts, errors and omissions of the D&C Contractor; • Contractual clauses between Project Co and any Subcontractor must not contain provisions which preclude recovery for breach of professional duty up to the limit of the insurance; • Include cover for construction defects as a result of error in design or specification; • The policy shall not include a condition or exclusion which prevents claims from being brought by the D&C Contractor against any other Insured under the policy; and • Severability and non-imputation clauses.
Period of insurance	For a period of 10 years commencing on the date on which Financial Close occurs.

(d) Workers' Compensation Insurance

Insurance Element	Minimum Requirement
Insured	Each party is required to procure its own Workers' Compensation and Employer's Liability policy, in respect of its statutory obligations and otherwise as required by Law and commercial prudence.
Level of cover	As required by Law.
Risks covered	As required by Law.
Deductibles	As required by Law.
Additional requirements	N/A.
Period of cover	At all times during the Initial Phase.

(e) Motor Vehicle Insurance

Insurance Element	Minimum Requirement
Insured	Each party is required to procure and maintain its own insurance for vehicles to be used in connection with the Works or the Development Activities.
Level of cover	Minimum coverage of $[not disclosed] per occurrence and in the aggregate in respect of third party property damage.
Risks covered	Legal liability for third party property damage in respect of all vehicles used in connection with the Works or Development Activities.
Maximum Deductibles	$[not disclosed] each and every claims
Additional requirements	All motor vehicles must be registered currently for compulsory third party insurance as required by Law, if for use on public roads.
Period of cover	At all times during the Initial Phase.

Part B — Initial Phase Insurances (State) applicable to the Initial Phase

State must procure, or cause to be procured, and thereafter maintained, the Initial Phase Insurance (State) with respect to the Project specified in this Part B for the applicable period of that insurance. The Insurance (State) must be procured and maintained upon the minimum terms specified in this Part B and clause 44.

Unless otherwise expressly defined, expressions used in this Part B have the meanings given to them in or for the purposes of the applicable VMIA policy of insurance.

Summary of Initial Phase Insurances (State) required:

(a) Contract Works Insurance (Material Damage);

(b) Contract Works Insurance (Advance Loss of Profits); and

(c) Contract Works Insurance (Public and Products Liability);

(a) Contract Works Insurance (Material Damage)

Insurance Element	Minimum Requirement
Insured	Each of: • Project Co; • Project Co Associates; • the State; • the State's Associates; • VicRoads; • the Security Trustee; • Finance Co; • the D&C Contractor; and • all Subcontractors and each other party which has an insurable interest or is required to be insured under any Project Document relating to the Works and the Development Activities.
Sum insured	The full cost of reinstatement or replacement of the Works.
Covering	The Works and Development Activities
Scope of cover	Physical loss, destruction or damage to the Works. Insurance to include coverage at a minimum for the following: • principal owned materials; • specific tunnelling conditions as applicable where tunnelling works are to be undertaken; • offsite fabrication; • professional fees; • removal of debris; • expediting expenses; • temporary protection and/or loss mitigation expenses; • [not disclosed]% contract price escalation; • inland transit and off-site storage; • subsidence/earth movement; • commissioning and testing of the Works; • specialist tunnelling equipment, including TBMs and road headers where tunnelling works are to be undertaken; • LEG 3; • claims preparation costs; • government costs; • plant hire charge; • any act of terrorism, shall mean any 'eligible terrorism loss' within the meaning of the *Terrorism Insurance Act 2003* (Cth); and • cash settlement option.
Situation of risk	Anywhere in the Commonwealth of Australia, including whilst in transit (other than ocean marine transit) between any places therein.
Maximum Deductibles	$[not disclosed] each and every occurrence except $[not disclosed] each and every occurrence for Defects in LEG 3.
Additional requirements	The policy must be procured and maintained on a project specific basis. The policy must include the following provisions: • severability and non-imputation clauses and • breach of conditions clause.
Period of insurance	At all times from Financial Close until the end of the last defects liability

Insurance Element	Minimum Requirement
	period under the D&C Contract.
Terrorism Limits	Material Damage losses arising from terrorist acts is provided with a maximum limit of $[not disclosed] per event and in the annual aggregate. Specified Perils Limit $[not disclosed] per event and in the annual aggregate. Specified Perils means terrorist acts of a Nuclear, Chemical, Biological and Radiological (NCBR) nature. Within the maximum limit of $[not disclosed], a maximum sub-limit of $[not disclosed] per event and in the annual aggregate with respect to liability claims arising from terrorist acts.

(b) Contract Works Insurance (Advance Loss of Profits)

Insurance Element	Minimum Requirement
Insured	Each of: • Project Co; • Finance Co; and • the Security Trustee.
Level of cover	$[not disclosed]
Scope of cover	Covering loss of Project Co's revenue arising out of the risks of loss or damage insured under Part B(a) of this Schedule (Contract Works Insurance (Material Damage)) plus and amount for claims preparation costs and additional increased cost of working incurred during the period of Delay as defined in the Contract Works Insurance (Advance Consequential Loss) Policy.
Situation of risk	Anywhere in the Commonwealth of Australia.
Maximum Deductibles	[not disclosed]
Additional requirements	• Purchases (Contractual Commitments Claims Preparation Costs); • Suppliers' premises extension; • Public utilities extension; • Prevention of access; • Cover for additional increased costs of working; • Any act of terrorism, shall mean any 'eligible terrorism loss' within the meaning of the *Terrorism Insurance Act 2003* (Cth); and • The policy must be procured and maintained on a project specific basis.
Period of insurance	At all times from Financial Close until the end of the last defects liability period under the D&C Contract.
Terrorism Limits	Loss of QSP arising from terrorist acts is provided with a maximum limit of $[not disclosed] per event and in the annual aggregate. Specified Perils Limit $[not disclosed] per event and in the annual aggregate. Specified Perils means terrorist acts of a Nuclear, Chemical, Biological, Radiological (NCBR) nature. Within the maximum limit of $[not disclosed], a maximum sub-limit of $[not disclosed] per event and in the annual aggregate with respect to liability claims arising from terrorist acts.

(c) Contract Works Insurance (Public and Products Liability)

Insurance Element	Minimum Requirement
Insured	Each of: • Project Co; • Project Co Associates; • the State; • State's Associates; • VicRoads; • each local council with jurisdiction over the Project Area; • the Security Trustee; • Finance Co; • the D&C Contractor; and • all Subcontractors and each other party which has an insurable interest or is required to be insured under any Project Document relating to the Works and the Development Activities.
Sum insured	$[not disclosed], each and every occurrence with regards to Public Liability and in the annual aggregate with regards to Products and Completed Operations Liability.
Scope of cover	Legal liability (including to counterparties) to pay compensation for personal injury and/or property damage caused by an occurrence during the period of insurance, where such occurrence arises out of the Works and Development Activities.
Geographical Limits	Anywhere in Australia
Maximum Deductibles	$[not disclosed] in any one occurrence for Worker to Worker claims and $[not disclosed] any one occurrence all other claims.
Additional requirements	• Cross liability clause; • Severability and non-imputation clauses; • Worker to worker liability; • Pollution liability but only if caused by a sudden, accidental, unexpected and unintended occurrence; • On hook liability; • Bodily injury and /or property damage arising from an error or omission in design or specification or breach of professional duty; • Cover for mobile plant and equipment not required to be registered/used as a tool of trade; and • Any act of terrorism, shall mean any 'eligible terrorism loss' within the meaning of the *Terrorism Insurance Act 2003* (Cth)
Period of insurance	At all times from Financial Close until the end of the last defects liability period under the D&C Contract.
Terrorism Limits	Liability claims arising from terrorist acts is provided with a maximum limit of $[not disclosed] per event and in the annual aggregate. Specified Perils Limit $[not disclosed] per event and in the annual aggregate. Specified Perils means terrorist acts of a Nuclear, Chemical, Biological, Radiological (NCBR) nature. Combined overall limit for all declared Terrorism Acts any one Period of Insurance is an aggregate amount of $[not disclosed]. Where Terrorism Act shall mean any 'eligible terrorism loss' within the meaning of the *Terrorism Insurance Act 2003* (Cth).

Part C — Insurance during the Maintenance Phase

Project Co must procure, or cause to be procured, and thereafter maintained each of the following Insurances with respect to the Project specified in this Part C for the applicable period of that insurance. Each such Insurance must be procured and maintained upon the minimum terms specified in this Part C and clause 44.

All amounts specified below in relation to Motor Vehicle Insurance will be Indexed in accordance with the Indexes Schedule.

In the event that the State reasonably believes that any minimum sum insured or sub-limit under this Deed (as Indexed) (including under Part C or Part D of this Schedule) no longer provides cover to the extent to which is insured against in the commercial insurance market for a similar project then:

(a) the State and Project Co must attempt to agree on a revised minimum sum insured or sub-limit, with the intention that the revised minimum sum insured or sub-limit must provide cover to the extent that it is insured against in the commercial insurance market for a similar project; and

(b) if the State and Project Co are unable to agree on a revised minimum sum insured or sub-limit, the Dispute must be referred by either party for resolution in accordance with the procedures in clauses 48 to 50.

Summary of Maintenance Phase Insurances (Project Co) required:

(a) Maintenance Phase Professional Indemnity Insurance;

(b) Workers' Compensation Insurance; and

(c) Motor Vehicle Insurance.

(a) Maintenance Phase Professional Indemnity Insurance

Insurance Element	Minimum Requirement
Insured	Services Contractor
Sum insured	$[not disclosed] for any claim and in annual aggregate.
Scope of cover	Covering legal liability arising from an act error or omission of the insured in relation to the performance of each Insured's professional activities and duties in connection with the Maintained Assets and the Services.
Situation of risk	Anywhere in the Commonwealth of Australia.
Retroactive date	The date that the professional activities under a contract relating to the Maintenance Phase commences.
Maximum Deductibles	$[not disclosed] each and every claim.
Additional Requirements	Severability and non-imputation clauses. Indemnity to Project Co as Principal for its vicarious liability arising out of acts, errors and omissions of the Services Contractor.
Period of insurance	For a period of 12 months commencing on Financial Close, to be renewed annually until 7 years after the Expiry Date.

(b) Workers' Compensation and Employer's Liability Insurance

Insurance Element	Minimum Requirement
Insured	Each party is required to procure its own Workers' Compensation and Employer's Liability policy, in respect of its statutory obligations and otherwise as required by Law and commercial prudence.
Level of cover	As required by Law.
Risks covered	As required by Law.
Deductibles	As required by Law
Additional requirements	N/A
Period of cover	At all times during the period from Financial Close to the Expiry Date.

(c) Motor Vehicle Insurance

Insurance Element	Minimum Requirement
Insured	Each party is required to procure and maintain its own insurance for vehicles to be used in connection with the Services.
Level of cover	Minimum coverage of $[not disclosed] per occurrence and in the aggregate in respect of third party property damage.
Risks covered	Third party property damage in respect of all vehicles used in connection with the Services.
Maximum Deductibles	$[not disclosed] for any one claim.
Additional requirements	All motor vehicles must be registered currently for compulsory third party insurance as required by Law if for use on public roads.
Period of cover	At all times during the period from Financial Close to the Expiry Date.

Part D — Insurance (State) during the Maintenance Phase

The State must procure, or cause to be procured, and thereafter maintained each of the following Insurances (State) with respect to the Project specified in this Part D for the applicable period of that insurance. Each such Insurance (State) must be procured and maintained upon the minimum terms specified in this Part D and clause 44.

Unless otherwise expressly defined, expressions used in this Part D have the meanings given to them in or for the purposes of the applicable VMIA policies of insurance.

All amounts specified below in relation to Industrial Special Risks/Business Interruption Insurance and Public and Products Liability Insurance (other than each Maximum Deducible identified below) will be reviewed yearly by VMIA and adjusted in accordance with VMIA renewal valuation process for assets and business interruption. VMIA will consult with Project Co and the Valuer General Victoria as part of this review process. .

Summary of Maintenance Phase Insurances (State) required:

(a) Industrial Special Risks/Business Interruption Insurance; and

(b) Public and Products Liability Insurance.

(a) Industrial Special Risks/Business Interruption Insurance

Insurance Element	Minimum Requirement
Insured	Each of: • Project Co; • Project Co Associates • the State; • State Associates; • VicRoads; • the Security Trustee; • Finance Co; • the Services Contractor; and • all Subcontractors and each other party which has an insurable interest or is required to be insured under any Project Document relating to the Services.
Sum insured	Reflecting a combined limit of no less than the aggregation of the following: **Material damage:** • in relation to the Maintained Assets, replacement or reinstatement value plus amounts sufficient to cover costs of demolition and removal of debris, professional fees and an amount to cover additional costs and expenses to expedite the commencement and completion of the repair, replacement or reinstatement of the Maintained Asset; and **Business Interruption:** • Minimum of the time taken in months to repair, replace or reinstate damage insured under the Material damage section of coverage the Maintained Assets plus other additional amounts as specified by this Schedule.
Covering	The Maintained Assets and the Services.
Scope of Cover	**Section 1 Material Loss or Damage** Coverage for physical loss, destruction of or damage to Maintained Assets and other property belonging to the Insured for which any Insured is responsible or has assumed responsibility to insure prior to damage occurring and in which an Insured acquires an insurable interest during the period of insurance, for its reinstatement and/or replacement value. **Sub Limits:** • Removal of debris; • Professional fees; • Accidental damage; • Expediting expenses; • Change in temperature controlled environment; • Property in transit (within Australia); • Machinery breakdown; • Electronic data processing equipment breakdown; and • Fraudulent or dishonest acts. **Property covered:** All property of every kind and description forming part of Maintained Assets or as otherwise agreed between the State and Project Co. **Perils covered to include at a minimum:** • Earthquake; • Flood; • Action of the sea/tidal wave/tsunami; • Storm/tempest/cyclone;

Insurance Element	Minimum Requirement
	• Hail/lightning strike; • Landslip/earth movement; • Fire/explosion; • Impact; • Burglary/theft; • Malicious damage; • Riots/strikes/civil commotion; • Accidental damage: • natural disaster; • landslide; • seismic activity; • mudslide; and • any act of terrorism, shall mean any 'eligible terrorism loss' within the meaning of the *Terrorism Insurance Act 2003* (Cth). **Section 2 Business Interruption** Coverage for Business Interruption in respect of loss of revenue (including loss of revenue resulting from Abatement) and additional expenses, arising out of physical loss, destruction of or damage to the Maintained Assets, including provisions for: **Sub Limits:** • Increased costs of working; • Additional increased cost of working; • Utilities memorandum; • Prevention of access; • Suppliers; • Human infectious disease; and • Professional fees/claims preparation costs. Actual sub limits are to be as agreed with the State at the time of procuring the Industrial Special Risks/Business Interruption Insurance.
Situation of risk	Anywhere in the Commonwealth of Australia (and whilst in transit).
Maximum Deductibles	$[not disclosed] each and every occurrence with regards to Material Loss or Damage and 7 days each and every occurrence with regards to Business Interruption
Additional requirements	• Cover for construction works not covered under the Contract Works Insurance (Material Damage) but only where contract value is $[not disclosed] or less; • Additional extra costs of reinstatement; • An appropriate amendment to the basis of settlement clause to clarify that the policy will cover the Abatement of Project Co's Service Payment as a result of an insured peril; • Co-insurance provisions not to apply; and • Coverage in relation to Maintenance Activities performed by Project Co or its Associates during the Transition Period and that coverage shall be for the duration of that period.
Period of cover	For a period of 12 months commencing on Financial Close, to be renewed annually until the Expiry Date.
Terrorism Limits	Material Damage losses arising from terrorist acts is provided with a maximum limit of $[not disclosed] per event and in the annual aggregate. Specified Perils Limit $[not disclosed]. per event and in the annual aggregate. Specified Perils means terrorist acts of a Nuclear, Chemical, Biological, and Radiological (NCBR) nature. Within the maximum limit of $[not disclosed], a maximum sub-limit of $[not

Insurance Element	Minimum Requirement
	disclosed] per event and in the annual aggregate with respect to liability claims arising from terrorist acts.

(b) Public and Products Liability Insurance

Insurance Element	Minimum Requirement
Insured	Each of: • Project Co; • Project Co Associates; • the State • State Associates; • VicRoads; • each local council with jurisdiction over the Project Area; • the Security Trustee; • Finance Co; • the Services Contractor; and • all Subcontractors and each other party which has an insurable interest or is required to be insured under any Project Document relating to the Services.
Sum insured	• a minimum of $[not disclosed] for any one occurrence with regards to Public Liability; and • $[not disclosed] for any one occurrence and in the annual aggregate for Bushfire and Products Liability.
Scope of cover:	To cover legal liability for: • Third party property damage, including property in the care, custody and control of the Insured, for which the Insured is responsible and which is not otherwise already insured for the Insured's benefit, and including resultant consequential and economic loss; and • Personal injury (including libel and slander), disease or death of any person including resultant consequential and economic loss, arising in connection with its products, the provision of the Services and this Deed during the Maintenance Phase.
Situation of risk	Anywhere in the Commonwealth of Australia (and whilst in transit).
Maximum Deductibles	$[not disclosed] each and every occurrence.
Additional requirements	• Care custody and control; • Worker to worker liability; • Liability arising out of personal injury to contract labour hire persons; • Cover liability arising from construction operations on site where contract value is $[not disclosed] or less; • Sudden and accidental pollution; • Cover for mobile plant and equipment not required to be registered/used as a tool of trade or registered plant whilst used as a tool of trade; • Any act of terrorism, shall mean any 'eligible terrorism loss' within the meaning of the *Terrorism Insurance Act 2003* (Cth); and • Coverage in relation to Maintenance Activities performed by Project Co or its Associates during the Transition Period and that coverage shall be for the duration of that period.
Period of cover	For a period of 12 months commencing on Financial Close, to be renewed annually until the Expiry Date.
Terrorism Limits	Liability claims arising from terrorist acts is provided with a maximum limit of $[not disclosed] per event and in the annual aggregate. Specified Perils Limit $[not disclosed]. per event and in the annual aggregate. Specified Perils means terrorist acts of a Nuclear, Chemical, Biological and, Radiological (NCBR) nature.

Insurance Element	Minimum Requirement
	Combined overall limit for all declared Terrorism Acts any one Period of Insurance is an aggregate amount of $[not disclosed]. Where Terrorism Act shall mean any 'eligible terrorism loss' within the meaning of the *Terrorism Insurance Act 2003* (Cth).

Schedule 11 – Commercially Sensitive Information Schedule

[not disclosed]

Schedule 12 - Finance Documents Schedule

[not disclosed]

Schedule 13 - Equity Documents Schedule

[not disclosed]

Schedule 14 - Ownership Schedule

[not disclosed]

Schedule 15 - Permitted Share Capital Dealing Schedule

[not disclosed]

Schedule 16 - Indexes

1. Definitions

Construction Price Index and **CCI** mean the ABS Cat No. 6427.0 Series ID A2333706A published quarterly by the Australian Bureau of Statistics or, if section 3 applies, the Index determined in accordance with section 3.

Consumer Price Index and **CPI** mean the ABS Cat No. 6401 .0 Series ID A2325846C published quarterly by the Australian Bureau of Statistics or, if section 3 applies, the Index determined in accordance with section 3.

CPI Multiplier Quarterly (C) at any time means:

(a) the most recently published CPI at the end of the relevant Quarter; divided by

(b) the CPI for the Quarter being the Quarter most recently ended prior to Financial Close.

Wage Price Index and **WPI** mean ABS Cat No. 6345.0 Series ID A2603609J published quarterly by the Australian Bureau of Statistics, as long as there is no change in the coverage, periodicity or reference base from those applying at the date of this Deed or, if section 3 applies, the Index determined in accordance with section 3.

WPI Multiplier Quarterly (C) at any time means:

(a) the most recently published WPI at the end of the relevant Quarter; divided by

(b) the published WPI for the Quarter most recently ended prior to Financial Close.

2. Indexes

In accordance with clause 2.17(a) of the Deed, all amounts to be Indexed under this Deed are indexed by multiplying the relevant number by:

(a) the CPI Multiplier Quarterly (C), where no index is specified; or

(b) the WPI Multiplier Quarterly (C), where specified in this Deed.

3. Changes to Indexes

The following rules apply to all terms identified in section 2 as being referrable to an Index published by the Australian Bureau of Statistics:

(a) (**change in linked Index**): if there is a change in the coverage of the Index from that applying at the date of this Deed and the new index is linked to another Index, the defined term is to be referrable to the new Index;

(b) (**change in coverage or periodicity**): if the Index is published and there is a change in its:

(i) coverage and it is not linked to another Index; or

(ii) periodicity,

the State must, within 20 Business Days of becoming aware of the change or being notified by Project Co, reasonably determine:

(iii) whether the Index remains appropriate as a general indicator of the rate of price change for the relevant goods and services; and

(iv) if it is not, what other Index should be used as a substitute Index for the purpose of the defined term's use in this Deed,

and seek Project Co's agreement as to such Index;

(c) (**change in reference base**): if there is a change in the reference base of the Index from that applying at the date of this Deed and the Australian Bureau of Statistics:

(i) provides a conversion factor, that conversion factor must be applied to calculate revised figures for the purpose of the defined term's use in this Deed, in terms of the new reference base; or

(ii) does not provide a conversion factor, the State must, within 20 Business Days of becoming aware of the change or being notified by Project Co, reasonably calculate a revised Index for the purposes of the defined term's use in this Agreement, and seek Project Co's agreement as to such Index;

(d) (**Index ceases to be published**): if the Index ceases to be published and the Australian Bureau of Statistics:

(i) publishes another Index which is:

A. a replacement of that Index; and

B. linked to the Index,

the defined term must be re-calculated to the same reference base as the replacement Index; or

(ii) does not publish another Index which is linked to or replaces the Index, the State must, within 20 Business Days of becoming aware of the change or being notified by Project Co, calculate or determine a revised Index and seek Project Co's agreement as to such Index;

(e) (**change in Mandatory Requirements**): if a Change in Law or Change in Policy causes a material aberration in the Index, the Index must be adjusted to remove the impact of that material aberration in accordance with any such methodology published by a responsible Authority for adoption by business or, in the absence of such publication, within six months of the occurrence of the material aberration as agreed by the parties or, in the absence of agreement; and

(f) (**expert determination**): where the parties cannot reach agreement in accordance with sections 3(b) to 3(d), within 20 Business Days, the parties will, notwithstanding clause 48.3 of this Deed, be deemed to have referred the dispute for determination by an expert in accordance with clause 49 of this Deed and the parties must otherwise comply with the remainder of clause 49 of this Deed.

Schedule 17 - Financial Close Adjustment Protocol

[not disclosed]

Schedule 18 — Intellectual Property Schedule

1. Definitions

In this Schedule:

Asset Information System Configuration Plan means, in respect of the Asset Management System and Information Management System, the configured master data architectural naming and design specifications.

Brand means all branding and goodwill associated with the Project (or any part of the Project) including:

(a) all registered and unregistered trade marks (other than those trademarks of any Project Co Associate which are used in its business generally and are applied by them to devices or equipment they supply, but which do not include, directly or indirectly, any brands which are created or developed in connection with, the Project or any part of the Project);

(b) all names (other than those names of any Project Co Associate which are used in its business generally including any business name, domain name or company name) including business names, domain names and company names; and

(c) all telephone numbers, email addresses and all other addresses used by the general public in relation to the Project to make contact using a telecommunication network.

Core IP Providers means any person nominated by the State (acting reasonably) as a Core IP Provider under section 2.16(g).

COTS means, in respect of Software and Firmware, a commercial off-the-shelf product that is ready-made and available for sale to the general public.

Data means all data and expressions of data contained in, or processed or generated by, the Project Assets or produced as a result of the Project Activities, including:

(a) all data and expressions of data contained in all images contained in or processed or generated by the Project Assets;

(b) all data and expressions of data comprising reports generated by the Project Assets; and

(c) all data and expressions of data about or relating to or generated by Project Co or any Project Co Associate in connection with the Project Assets.

Deed of Assurance means a deed of assurance substantially in the form of Annexure A.

Developed Intellectual Property means all Intellectual Property Rights, trade secrets and know-how comprised in or related to:

(a) all or any part of the Project Assets;

(b) all or any part of the Project Activities including all or any items, software tools or materials or documents used by Project Co in carrying out the Project Activities; or

(c) all or any part of any Project Co Material,

created, developed or produced for the purposes of any State Project Document by or on behalf of Project Co or any Project Co Associate or any other entity, whether before or after the date of this Deed excluding the Licensed Intellectual Property, Third Party Software and State IP.

Domain Names means any domain names used by Project Co in relation to the Project.

Firmware means a set of coded instructions embedded within a device or component of a device that performs functions or provides data to enable the device to operate in a specified manner.

Intellectual Property Rights includes any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future, including rights of any kind in:

(a) inventions, discoveries and novel designs, whether or not registered or registrable as patents, innovation patents or designs, including developments or improvements of equipment, technology, processes, methods or techniques;

(b) literary works, dramatic works, musical works, artistic works, cinematograph films, television broadcasts, sound broadcasts, published editions of works and any other subject matter in which copyright (including future copyright and rights in the nature of or analogous to copyright) may, or may upon creation of the subject matter, subsist anywhere in the world;

(c) registered and unregistered trademarks and service marks, including goodwill in the business concerned in the relevant goods and/or services;

(d) trade, business or company names;

(e) internet domain names; and

(f) proprietary rights under the *Circuit Layouts Act 1989* (Cth),

whether created or in existence before or after the date of this Deed.

Licensed Intellectual Property means all Intellectual Property Rights, trade secrets and know-how comprised in or related to:

(a) all or any part of the Project Assets;

(b) all or any part of the Project Activities including all or any items, software tools or materials or documents used by Project Co in carrying out the Project Activities; or

(c) all or any part of the Project Co Material,

that are the Non-Project Specific IP, but excluding the:

(d) Third Party Software; and

(e) State IP.

List of Intellectual Property means a list of each item comprising Intellectual Property Rights used or to be used by Project Co or any Project Co Associate in performing its obligations

under any State Project Document, which includes, separately identified, the List of Software, and specifies in relation to any Intellectual Property Rights not identified in the List of Software:

(a) the nature and, if applicable, name of the material in which the Intellectual Property Rights is comprised;

(b) the owner of the Intellectual Property Rights and, to the extent applicable, the licensor and the licensee of those Intellectual Property Rights;

(c) the duration of any licence and maintenance agreements; and

(d) the licence and maintenance fees and similar fees,

provided that neither Project Co nor any Project Co Associate will be required to disclose the information specified in paragraph (d) above if such information is subject to any contractual confidentiality obligations imposed on that party as a result of such information comprising confidential information.

List of Software means a list of each item of Software used or to be used by Project Co or any Project Co Associate in performing the Project Activities which specifies in relation to each item of Software:

(a) name and release version of the Software;

(b) owner and distributor of the Software and, if relevant, the licensor and the licensee of that Software;

(c) whether the Software is Third Party Software;

(d) the duration of any licence and maintenance agreements; and

(e) the licence and maintenance fees and similar fees,

provided that neither Project Co nor any Project Co Associate will be required to disclose the information specified in paragraph (e) above if such information is subject to any contractual confidentiality obligations imposed on that party as a result of such information comprising confidential information.

Moral Rights has the meaning given to it in the *Copyright Act 1968* (Cth).

Non-Project Specific IP means:

(a) any and all Material other than Developed Intellectual Property, which is or has been developed outside of the Project by Project Co or any Project Co Associate and brought to the Project by Project Co or any Project Co Associate (**Background IP**); and

(b) any Developed Intellectual Property which is primarily derived or adapted from Background IP.

Project Assets has the meaning given to it in this Deed.

Software means a set of coded instructions that performs functions or provides working data or parameters to enable a device or system to operate in a specified manner, and be loaded into a system or device dynamically by a user and includes all Firmware and operating systems required by a system or subsystem to perform in a specified manner.

State IP means all Intellectual Property Rights and trade secrets and know-how comprised in:

(a) the Data;

(b) the Brand; and

(c) the Trade Marks.

Third Party Software means any COTS Software and Firmware owned by any entity other than Project Co or the Project Co Associates that is:

(a) comprised in all or any part of the Works or the Project Assets;

(b) otherwise used or to be used by, or on behalf of, Project Co or any Project Co Associate in performing the Project Activities; or

(c) Software tools necessary for the State, or that a person in the State's position would otherwise require, to modify, maintain, test, further develop or regenerate the bespoke Software contained in the Project Assets or otherwise exercise any rights of ownership given to the State under section 2.12,

and is identified as such in the List of Software and any information provided under section 2.10(b)(iv).

Trade Marks means any trade marks specified by the State to Project Co in writing and any other trademarks used by or on behalf of Project Co in relation to the Project (other than those trademarks of any Project Co Associate which are used in their business generally and are applied by them to devices or equipment they supply, but which do not include, directly or indirectly, any brands which are created or developed in connection with, the Project or any part of the Project).

2. Intellectual Property

2.1 Warranty by Project Co

Project Co represents and warrants that:

(a) (**no infringement**): no Intellectual Property Rights or Moral Rights or other rights of any person will be infringed or breached:

(i) in delivering the Project;

(ii) the performance of the Project Activities, nor anything arising from the performance of the Project Activities; or

(iii) by:

A. the use or enjoyment of the Project Co Material or the Project Assets; or

B. use or exercise of the Intellectual Property Rights licensed or assigned to the State in accordance with this Intellectual Property Schedule,

by the State, any State Associate or any person nominated or authorised by the State in connection with any State Project Document (excluding in respect of the State IP);

(b) (**ownership**): it owns, or has the authority to grant the rights granted in accordance with this Intellectual Property Schedule in connection with, the Intellectual Property Rights licensed or assigned to the State in accordance with this Intellectual Property Schedule and neither:

(i) the exercise of those rights by the State, any State Associate or any person nominated or authorised by the State in connection with any State Project Document; nor

(ii) the possession or use of any materials in which those rights subsist in connection with any State Project Document,

will give rise to any Liability on the part of the State, any State Associate or any person nominated or authorised by the State in connection with any State Project Document, including to pay any compensation (including any royalty) to any person, or give rise to a right entitling any person to make a Claim against the State, any State Associate or any person nominated or authorised by the State in connection with any State Project Document for any attribution or acknowledgment or rectification in relation to such Intellectual Property Rights or any materials in which they subsist;

(c) (**licenses**): it has all appropriate licences of, or title to, all Intellectual Property Rights that are required by it for the purpose of its obligations under any State Project Document;

(d) (**Project Co's Associates' licences**): each Project Co Associate has all appropriate licences of, or title to, all Intellectual Property Rights that are required for performing their obligations under the Project Documents or performing obligations under the Project Documents on behalf of Project Co;

(e) (**no State licences**): it does not require any licences of, or title to, any Intellectual Property Rights from the State in order to perform its obligations under any State Project Document apart from any licences to Intellectual Property Rights granted under this Deed;

(f) (**required Intellectual Property**): the Developed Intellectual Property, the Licensed Intellectual Property, the Third Party Software and the State IP are all the Intellectual Property Rights that are required for Project Co to carry out its obligations under any State Project Document;

(g) (**authority**): it has authority to assign, license or disclose (as the case may be) all Intellectual Property Rights granted to the State under any State Project Document;

(h) (**List of Software**): every item of the Software (excluding Software comprising the State IP) used or to be used by Project Co or any Project Co Associate in performing the Project Activities or which is part of the Project Assets is contained in the List of Software or will be later identified in accordance with section 2.10(b)(iv);

(i) (**Third Party Software**): it has the authority to undertake the obligations concerning the Third Party Software contained in section 2.12;

(j) (**Third party rights or interests**): no third party rights or interests will affect the enjoyment of the benefit of the licences in section 2.4(a) or prevent the rights in section 2.4(b) or section 2.5;

(k) (**no Permitted Encumbrance**): other than a Permitted Encumbrance, there are no Encumbrances, and it will not allow any Encumbrance to be created, over its rights to any Intellectual Property Rights that are used by it for the purposes of its obligations under any State Project Document, except for any Permitted Encumbrance; and

(l) (**allegations or notices**): it is not aware of any allegations of infringement or notices of misappropriation issued by any person or any Claims that the Project Assets or their use or enjoyment in accordance with or as contemplated by any State Project Document infringe or will infringe any rights, including any Intellectual Property Rights or Moral Rights, of any third party.

Each representation and warranty in this section 2.1 is a continuing representation and warranty and will be repeated on each day while any obligation under any State Project Document remains outstanding, with reference to the facts and circumstances then subsisting.

2.2 Indemnity

Project Co's liability to indemnify the Indemnified IP Persons in respect of Intellectual Property Rights and Moral Rights is set out in clause 43.5 of the Deed.

2.3 Infringements

(a) (**Project Co notice**): If Project Co:

(i) becomes aware of a Claim by a person that the use of any of the Intellectual Property Rights or Moral Rights relating to the Project or the Project Assets infringes or amounts to a misuse of the Intellectual Property Rights, Moral Rights or other rights of a third party; or

(ii) believes that the State may have a Claim against a person for infringement or misuse of any Intellectual Property Rights or Moral Rights in the Project or the Project Assets,

it must promptly provide the State with written notice of the alleged Claim.

(b) (**Prevention from using Intellectual Property Rights**): Notwithstanding clause 43.5 or section 2.1, if as a result of any alleged or threatened violation or infringement of Intellectual Property Rights or Moral Rights, the State, Project Co or any other entity performing work under any Project Documents is prevented (whether by court order or otherwise) from exercising Intellectual Property Rights or Moral Rights it had been exercising or was proposing to exercise to carry out the Project Activities or to use or enjoy the Project Co Material or the Project Assets, Project Co must (at the State's option):

(i) secure for the State the right to continue exercising such Intellectual Property Rights or Moral Rights on terms no more onerous than those in this Deed;

(ii) replace such Intellectual Property Rights or Moral Rights with equivalent non-infringing Intellectual Property Rights or Moral Rights (as applicable); or

(iii) modify any materials, equipment, Software, devices or processes so that they become non-infringing or remove any materials, equipment, Software, devices or processes that are infringing without prejudice to any other rights of the State, and refund to the State all sums paid by the State for them.

(c) If the amount of time necessary to proceed with one of the options set out in section 2.3(b) is deemed excessive by the State, the State may direct Project Co to exercise another option providing for an equivalent outcome and Project Co must comply with that direction.

(d) The steps required for Project Co to comply with its obligations under sections 2.3(b) and 2.3(c) are at Project Co's sole cost and expense unless the alleged infringement or threatened infringement directly arises in respect of the licence granted to Project Co under section 2.7 in which case the costs are to be borne based upon the extent of responsibility of each party for the alleged infringement or threatened infringement, as reasonably determined by the State.

2.4 Licensed Intellectual Property

(a) (**Grant of licence**): Project Co grants to the State and any entity nominated by the State a worldwide, permanent, perpetual, irrevocable, transferable, royalty-free, non-exclusive licence to exercise the Licensed Intellectual Property for the following purposes:

(i) to enable the State to receive the benefit of the Project Assets and the Project Co Materials;

(ii) to carry out the Project or the Project Activities, including for any person other than Project Co to carry out the Project or Project Activities in accordance with the terms of any State Project Document;

(iii) to operate, maintain or modify the Project Assets;

(iv) to disclose the Licensed Intellectual Property on a confidential basis to third parties for the purposes of a tender process for the procurement of the integration of the Project Assets with any Augmentation;

(v) to integrate the Project Assets with any Augmentation or any other project that interfaces with the Project Assets or any Augmentation (including any Interface Works); or

(vi) any other project relating to the Project Assets, including any Modification or any other project that interfaces with the Project Assets.

(b) (**Licence terms and conditions**): The licence granted in section 2.4:

(i) arises in respect of each component of the Licensed Intellectual Property upon the later of the date of this Deed or upon the creation of each component of the Licensed Intellectual Property;

(ii) may be sub-licensed (free of charge); and

(iii) will survive expiry of this Deed or termination of this Deed on any basis.

2.5 Developed Intellectual Property

(a) (**Ownership of Developed Intellectual Property**): All Developed Intellectual Property will be owned by the State (or its nominee) and to the extent necessary to give effect to this, Project Co assigns to the State (or its nominee) all of its rights, title and interest in the Developed Intellectual Property. The ownership of each component of the Developed Intellectual Property vests in the State (or its nominee) on the later of:

(i) the date of this Deed; and

(ii) creation of each component of the Developed Intellectual Property.

(b) (**Assignment**): To the extent that any Developed Intellectual Property is owned by a party other than Project Co, Project Co will procure that party to assign its rights, title and interest in such Developed Intellectual Property to the State.

(c) (**Developed Intellectual Property licence**): The State grants to Project Co a non-exclusive, irrevocable, world-wide, royalty free licence during the Term to exercise the Intellectual Property Rights referred to in sections 2.5(a) and 2.5(b) solely for the purposes of performing its obligations under any State Project Document. This licence may be sublicensed subject to such conditions as the State may reasonably impose.

2.6 Asset Information System Configuration Plan

(a) (**Initial Asset Information System Configuration Plan**): On the Date for Maintenance Commencement, Project Co must provide the State with the Asset Information System Configuration Plan.

(b) (**Updated Asset Information System Configuration Plan**): Project Co must, Quarterly during the Term commencing on the second Quarter of the Maintenance Phase (Initial), provide the State with an updated Asset Information System Configuration Plan.

2.7 State IP

(a) (**State IP licence**): The State grants to Project Co an irrevocable, royalty-free non-exclusive licence during the Term to use the State IP solely for the purposes of carrying out the Project Activities, subject to such conditions as the State may reasonably impose from time to time.

(b) (**Licence terms and conditions**): The licence granted in section 2.7(a) may be sublicensed (free of charge) by Project Co on such conditions as the State may reasonably impose from time to time.

2.8 Access to Intellectual Property

Project Co must promptly, at its own cost if requested by the State:

(a) (**disclosure**): fully disclose to the State all details of the Intellectual Property Rights, trade secrets and know-how comprised in or related to all or any part of the Project Assets, the Project Activities or any Project Co Material; and

(b) (**disclosure to Key Contractors and Significant Subcontractors**): allow the State to discuss such Intellectual Property Rights, trade secrets and know-how with, and obtain information about the Intellectual Property Rights, trade secrets and know-how from, Project Co, any Key Contractor, any Significant Subcontractor, any other Project Co Associate or any of their respective Associates involved in the creation, development or use of the Intellectual Property Rights, trade secrets and know-how,

in each case:

(c) (**disclosure purpose**): to enable the State, the State Associates and any person nominated or authorised by the State in connection with any State Project Document to carry out any of the purposes set out in sections 2.4(a); and

(d) (**confidentiality undertakings**): subject to the State providing such confidentiality undertakings as Project Co may reasonably require where Project Co is subject to any confidentiality obligations to a third party (other than a Key Contractor or Significant Subcontractor).

2.9 Moral Rights

(**Moral Rights**): To the extent permitted by Law, Project Co must not, and must take all reasonable steps to ensure that the Project Co Associates or any other person do not, sue, enforce any Claim, bring any action or exercise any remedy in respect of any breach or alleged breach, infringement or other wrong doing (whether before or after the date of this Deed) in respect of any person's Moral Rights in respect of the Project Activities or the Project Assets by:

(a) the State;

(b) any third party to whom the State sub-licenses (whether that sub-licence is express or implied) or grants any other right to use, possess, vary or amend any Developed Intellectual Property, any Licensed Intellectual Property, the Project Assets or the Project Activities; or

(c) any third party to whom the State assigned any Developed Intellectual Property or any part of the Project Assets.

2.10 Physical material

(a) (**Delivery of physical material**): Project Co must deliver, from time to time or on request of the State during the Term and upon termination or expiry of this Deed, such physical media embodying:

(i) Developed Intellectual Property;

(ii) Licensed Intellectual Property;

(iii) Third Party Software which Project Co or any Project Co Associate owns or has appropriate rights to provide; or

(iv) all Data,

as the State reasonably requests to enable it to fully exercise its ownership and rights under any State Project Document.

(b) (**Project Co obligations**): Without limiting section 2.10(a):

(i) Project Co must create and deliver to the State prior to the Date for Final Acceptance one copy of the object code of any Software comprised in the Licensed Intellectual Property;

(ii) within 10 Business Days after any change to the Software comprised in the Licensed Intellectual Property, Project Co must deliver a copy of it to the State;

(iii) immediately after execution of this Deed, Project Co must deliver the List of Software (current as at the date of this Deed) to the State as part of the List of Intellectual Property delivered under section 2.16(e); and

(iv) within 10 Business Days after the use by Project Co of any Software (excluding Software comprising the State IP) in carrying out the Project Activities which is not specified on the List of Software, Project Co must:

A. provide the State with the following information:

1) name of the Software;

2) owner of the Software; and

3) confirmation that the Software is the subject of the warranty in section 2.1;

B. use commercially reasonable endeavours to provide the State with a copy of the Software licence, if any; and

C. promptly update the List of Software to include that Software and the information above.

2.11 Copyright and Circuit Layout Act

This Deed does not exclude or limit, or have the effect of excluding or limiting, the operation of subsection 47B(3) or sections 47C, 47D, 47E or 47F of the *Copyright Act 1968* (Cth) or Part II, Division 3 of the *Circuit Layout Act 1989* (Cth).

2.12 Third Party Software

(a) Notwithstanding anything to the contrary in this Intellectual Property Schedule, to the extent that any item of Project Co Material is Third Party Software (at the State's option), Project Co must (or must procure any Project Co Associate to):

(i) license that item of Third Party Software to the State and each State Associate, if Project Co is legally able to do so, and on the terms of the licence granted to Project Co or any Project Co Associate by the third party licensor (and Project Co must use all reasonable endeavours to procure the consent of that licensor to grant that licence to the State and each State Associate); or

(ii) procure (at the State's cost) a licence of that item of Third Party Software from the third party licensor to the State and each State Associate on terms approved by the State; or

(iii) on:

A. the Expiry Date; and

B. on request by the State in the event that the State exercises any step-in right in accordance with this Deed due to the act or omissions of Project Co and requires access to the Third Party Software to exercise its step in rights (but only to the extent, and for the period, required for the State to reasonably exercise its step-in rights),

novate the licence of that item of Third Party Software from Project Co to the State and each State Associate.

(b) If, despite using all reasonable endeavours to do so, Project Co is unable to license (or, if applicable, procure a licence of or novate the licence of) any Third Party Software owned by a third party to the State and each State Associate, as required under section 2.12(a), Project Co must consult with the State and do all things reasonably necessary to obtain for the State's benefit such rights or arrangements as the State requires for any purpose under, or contemplated by any State Project Document or for the Project Assets and its use or the Project more generally.

2.13 Perfecting licence and ownership

Without limiting any other provision of any State Project Document, including section 2.16, Project Co must do all things necessary (including executing documents) to perfect the licences and ownership granted to the State in this section 2 and otherwise to give effect to Project Co's obligations and the State's rights under this section 2.

2.14 Ownership of Data

Notwithstanding any other provision of any State Project Document, Project Co agrees and acknowledges that the State owns the Data including all Intellectual Property Rights in the Data. These ownership rights vest in the State upon creation of the Data. To the extent necessary to give effect to this, Project Co assigns to the State all of its rights, title and interest in the Data.

2.15 Patent validity

If any component of any Intellectual Property Rights which is licensed or assigned under any State Project Document expires through the effluxion of time or is or becomes invalid, then, without limiting the State's rights in respect of that expiry or invalidity, that component will, to that extent only, be deemed to be excluded from the Intellectual Property Rights licensed or assigned under any State Project Document and each State Project Document will otherwise continue in full force and effect.

2.16 Assurance

(a) (**Relationship with Intellectual Property Rights owner**): Project Co shall use reasonable endeavours to ensure that it maintains its relationship with the owner of any Licensed Intellectual Property or Third Party Software.

(b) (**Change in relationship**): If any circumstances occur whereby the direct or indirect relationship between Project Co and the owner of any Licensed Intellectual Property (not owned by Project Co) or Third Party Software changes or is likely to change, then Project Co must:

(i) immediately notify the State in writing, which notice must describe, with a reasonable level of detail, the nature of those circumstances and their effect or likely effect on the State;

(ii) notwithstanding those circumstances, use its best endeavours to procure that the owner of the Licensed Intellectual Property or Third Party Software permits the State to continue exercising its rights to the Licensed Intellectual Property as if such circumstances did not occur, or as the case requires, had not occurred; and

(iii) do, and must use best endeavours to procure that the owner of the Licensed Intellectual Property or Third Party Software and Project Co will do, all such acts and things as the State reasonably requests in order to give effect to this section 2.16.

(c) (**Circumstances**): Circumstances referred to in section 2.16(b) include termination of any licensing arrangement or circumstances involving an inability to pay debts.

(d) (**Deeds of assurance**): Project Co must ensure that no arrangements with respect to Intellectual Property Rights owned by, or licensed to, a Core IP Provider are entered into in connection with the Project, the Project Assets, the Project Activities or the Project Co Materials without Project Co and the relevant Core IP Provider having delivered to the State duly executed Deeds of Assurance in relation to any Licensed Intellectual Property and Third Party Software owned by, or licensed to, the Core IP Provider.

(e) (**Delivery of List of Intellectual Property**): Immediately prior to Financial Close, Project Co must deliver the List of Intellectual Property (current at that date) to the State.

(f) (**Notice of Intellectual Property Rights not on List of Intellectual Property**): Prior to entering into any arrangements with respect to any Intellectual Property Rights which are not specified on the List of Intellectual Property, Project Co must provide the State with written notice specifying:

(i) the nature of the Intellectual Property Rights;

(ii) the owner of the Intellectual Property Rights and, if relevant, the licensor and licensee of the Intellectual Property Rights; and

(iii) details of the proposed arrangements to be entered into with respect to the Intellectual Property Rights.

(g) (**Nomination**): The State may nominate any owner of, or holder of rights in, Intellectual Property Rights identified in the List of Intellectual Property or a notice from Project Co under section 2.16(f) as a Core IP Provider, in which case section 2.16(d) will apply.

(h) (**Updated List**): Project Co must deliver an updated List of Intellectual Property to the State within 20 Business Days after the use of any Intellectual Property Rights not listed on the List of Intellectual Property previously delivered to the State.

2.17 Trade Marks and Brand

(a) (**Ownership of Brand and Trade Marks**): Notwithstanding any other provision of any State Project Document, Project Co acknowledges and agrees that the State

owns the legal and beneficial right, title and interest in the Intellectual Property Rights in the Brand and the Trade Marks.

(b) (**Assignment**): To the extent that any rights, title or interest in the Intellectual Property Rights in the Brand or Trade Marks vests in Project Co or any Project Co Associate, Project Co assigns, and will procure the Project Co Associates to assign, such rights, title and interest on its creation to the State.

(c) (**Registration of Trade Marks and Domain Names**): Project Co must do all things necessary (including executing documents) and provide the State with all such assistance as is reasonably required by the State to register the Trade Marks and the Domain Names in the name of the State and to maintain that registration throughout the Term.

(d) (**Identifying Trade Marks**): Project Co must ensure that where the Trade Marks appear in any written material (including any electronic material) published by or on behalf of Project Co, unless otherwise authorised by the State:

(i) the Trade Marks must appear with the ® or the ™ symbol (as appropriate); and

(ii) the Trade Marks must be accompanied by the following footnote:

The [insert trade mark] trade mark is used by Project Co under licence from the State of Victoria.

(e) (**Prejudice the State**): Project Co must not use the Trade Marks in a manner which is prejudicial to the State or likely to prejudice the distinctiveness of the Trade Marks or the validity of any registration for the Trade Marks.

(f) (**Requirements regarding use**): The State may from time to time during the Term impose in writing, reasonable requirements regarding the use of the Trade Marks, and Project Co must comply with those requirements.

(g) (**Standards, directions and specifications**): Project Co must comply with any standards, directions and specifications notified in writing by the State from time to time during the Term as to the appearance, colour, size and positioning of the Trade Marks and the footnote referred to in section 2.17(d)(ii).

(h) (**Juxtaposition**): Project Co must not at any time during the Term use the Trade Marks in juxtaposition to any other trade mark, embellishment or device without the prior written consent of the State.

(i) (**Project Co obligations**): Project Co will:

(i) if requested by the State, take all necessary action and execute and deliver to the State all necessary documents and instruments to record Project Co as a registered user of the Trade Marks;

(ii) if requested by the State, submit to the State, samples of all materials (including all advertisements, promotions and other marketing material) which incorporate the Trade Marks for the State's prior written approval;

(iii) except to the extent expressly permitted by this agreement, not use or apply to register the Trade Marks as part of its corporate, business, trading or domain name;

(iv) not directly or indirectly contest or oppose or assist any other party to contest or oppose the State's ownership of the Trade Marks; and

(v) not register or use any trade mark or trade name which is substantially identical or deceptively similar to the Trade Marks.

(j) (**Goodwill**): Any and all goodwill attaching (now or in the future) to the Trade Marks as a result of use of the Trade Marks by or on behalf of or under licence from the State is and shall remain the property of and ensure to the State, and Project Co will not obtain any rights in or to the Trade Marks.

(k) (**Infringement or unauthorised use**): If, during the Term, Project Co becomes aware of any infringement or unauthorised use of, act inconsistent with, challenge to or Claim against or in relation to any of the Trade Marks, Project Co must promptly notify the State.

(l) (**Legal proceedings**): The State will have the conduct of all proceedings relating to any infringement or unauthorised use of, act inconsistent with, challenge to or Claim against or in relation to any of the Trade Marks and will in its sole discretion decide what action if any to take in respect of that matter. Project Co must, at the State's reasonable cost, take any action which the State reasonably requests to bring the matter to an end.

(m) (**Telecommunication**): Project Co shall upon termination or expiry of this Deed procure that all telephone numbers, email addresses and all other electronic addresses which are designated by Project Co for use by the general public to make contact with Project Co in relation to the Project using a telecommunication network be transferred to the State.

2.18 Survival

This Schedule survives:

(a) any frustration, suspension, termination or expiry of this Deed; or

(b) the exercise by the State of its step-in rights under clause 38 of the Deed.

Annexure A Deed of Assurance

Deed of Assurance

Dated:

Parties ***[Insert details of the owner of the Licensed Intellectual Property]*** (the **"Licensed IP Owner"**)

[#insert] (State)

[#insert] (Project Co)

Recitals

A. The State has entered into, or may in future enter into, the OSAR Western Package –Project Deed (the **Project Deed**) with Project Co.

B. Part of Project Co's obligations under the Project Deed include the licensing under or pursuant to the Project Deed of the Intellectual Property described in Schedule 1 (all and every part of which is referred to as the **Licensed Intellectual Property**) to the State and any third party authorised or licensed by the State, with the right to sublicense (the **IP Licence**).

C. The Licensed IP Owner owns/has appropriate rights to **[delete whichever alternative is not appropriate]** all Intellectual Property in the Licensed Intellectual Property, and has authorised Project Co to grant the IP Licence to the State and any third party authorised or licensed by the State.

D. By this Deed, the Licensed IP Owner assures the State and any entity authorised or licensed by the State that the State and any entity authorised or licensed by the State may continue exercising its rights under the IP Licence, notwithstanding any change affecting the Licensed IP Owner's direct or indirect relationship with Project Co.

Operative Provisions

1. The Licensed IP Owner warrants that it owns/has appropriate rights to **[delete whichever alternative is not appropriate]** all Intellectual Property in the Licensed Intellectual Property and is entitled to enter into this Deed.

2. The Licensed IP Owner warrants that it has authorised Project Co to grant the IP Licence.

3. If any circumstances occur whereby the Licensed IP Owner's direct or indirect relationship with Project Co concerning the Licensed Intellectual Property changes, or is likely to change, then:

   (a) the Licensed IP Owner and Project Co shall immediately notify the State in writing, which notice shall describe, with a reasonable level of detail, the nature of those circumstances and their effect or likely effect on the State;

   (b) notwithstanding those circumstances, the State and any entity authorised or licensed by the State may continue exercising its rights under the IP Licence as if such circumstances do not occur, or as the case requires, had not occurred; and

   (c) the Licensed IP Owner and Project Co will do all such acts and things as the State reasonably requests in order to give effect to this Deed.

Such circumstances include termination of any licensing arrangement or circumstances involving an inability to pay debts.

4. The Licensed IP Owner shall ensure that any entity which succeeds to, is assigned or otherwise becomes the owner of, any of the Intellectual Property in respect of the Licensed Intellectual Property agrees to be bound by the terms of this Deed as if it were named in this Deed as the Licensed IP Owner and the Licensed IP Owner shall notify the State and Project Co in writing immediately after any such entity succeeds to, is assigned or otherwise becomes the owner of any of the Intellectual Property in respect of the Licensed Intellectual Property.

5. The Licensed IP Owner shall at its cost and expense immediately, on demand by the State, perform all acts and execute all agreements, assurances and other documents and instruments as the State reasonably requests to perfect or give effect to the rights and powers of the State created or intended to be created by this Deed.

6. This Deed shall be governed by the laws in force in Victoria, Australia.

7. The Licensed IP Owner irrevocably submits to and accepts, generally and unconditionally, the non-exclusive jurisdiction of the courts and appellate courts of Victoria with respect to any legal action or proceedings which may be brought at any time relating in any way to this Deed.

8. The Licensed IP Owner irrevocably waives any objection it may now or in the future have to the venue of any action or proceeding, and any claim it may now or in the future have that any action or proceeding has been brought in any inconvenient forum.

9. The Licensed IP Owner agrees that, subject to any rights of appeal which the Licensed IP Owner may have in Victoria or to the High Court of Australia, a judgment or order of a Victorian court in connection with this Deed is conclusive and binding on the Licensed IP Owner and may be enforced against the Licensed IP Owner in the courts of any other jurisdiction.

10. The Licensed IP Owner irrevocably appoints Project Co as its agent to receive service of process or other documents in any action in connection with this Deed and irrevocably agrees that service on Project Co as agent will be sufficient service on it. ***[Drafting note: this paragraph may be deleted if the Licensed IP Owner has its registered office in Australia.]***

11. Each warranty in this Deed is a continuing warranty for the benefit of the State.

12. The State may at any time assign, novate, transfer or otherwise deal with all or any part of its rights or obligations under this Deed to any entity to which the State assigns, novates, transfers or otherwise deals with its rights or obligations under the Project Deed, in accordance with clause 52.10 (Assignment by the State) of the Project Deed.

13. For the purposes of this Deed **"Intellectual Property"** includes any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future, including rights of any kind in:

    (a) inventions, discoveries and novel designs, whether or not registered or registrable as patents, innovation patents or designs, including developments or improvements of equipment, technology, processes, methods or techniques;

    (b) literary works, dramatic works, musical works, artistic works, cinematograph films, television broadcasts, sound broadcasts, published editions of works and any other subject matter in which copyright (including future copyright and rights in the nature of or analogous to copyright) may, or may upon creation of the subject matter, subsist anywhere in the world;

(c) registered and unregistered trademarks and service marks, including goodwill in the business concerned in the relevant goods and/or services;

(d) trade, business or company names;

(e) internet domain names; and

(f) proprietary rights under the Circuit Layouts Act 1989 (Cth),

whether created or in existence before or after the date of this Deed.

Executed as a Deed

[Insert appropriate execution blocks]

Schedule 1:

[Insert a description of the component of the Licensed Intellectual Property in which the Licensed IP Owner owns the Intellectual Property]

Schedule 19 – [Not Used]

Schedule 20 – VIPP Schedule

[not disclosed]

Schedule 21 Major Projects Skills Guarantee Compliance Plan

[not disclosed]

Schedule 22 - Site Access and Tenure Schedule

Attached to this Schedule 22 as separate documents are:

1 the Initial Licence; and

2 the Maintenance Phase Licence (Full).

Schedule 22 – Form of Initial Licence

Initial Licence

OSAR Western Package

Minister for Roads and Road Safety on behalf of the Crown in right of the State of Victoria
(**State**)

Netflow OSARS (Western) Pty Ltd as trustee for Netflow OSARS (Western) Unit Trust for and on behalf of the Netflow OSARS (Western) Partnership and Cintra OSARS (Western) Pty Ltd as trustee for Cintra OSARS (Western) Unit Trust for and on behalf of the Netflow OSARS (Western) Partnership
(**Project Co**)

Contents

1. Defined terms and interpretation 1

1.1 Project Deed definitions 1
1.2 Definitions 1
1.3 Interpretation 2
1.4 Inconsistency 4
1.5 Provisions limiting or excluding liability, rights or obligations 4
1.6 Prior approval or consent 4
1.7 Action without delay 4
1.8 Relationship of the parties 4
1.9 State's rights and obligations 4
1.10 Reasonable endeavours of State 5
1.11 Cost of carrying out obligations 5
1.12 Proportionate Liability 5

2. Delegation 5

2.1 Right to delegate 5
2.2 Notice of delegation 5
2.3 Revocation or amendment of delegation 6
2.4 No limitation of obligations 6

3. Negation of representations and warranties 6

4. Grant of Initial Licence 6

4.1 Licence over the Initial Licence Areas 6
4.2 Nature of interest 6

5. Payments 7

5.1 Initial Licence 7
5.2 Utilities 7
5.3 Payment by the State 7

6. Term of Initial Licence 7

7. Approval to demolish structures, etc. 7

8. Harm minimisation 8

9. Removal of materials and make good 8

10. GST General 8

11. Dispute Resolution 9

12. Notices 9

13. Representations and Warranties 10

13.1 State's representations and warranties 10
13.2 Project Co's representations and warranties 10

14. Miscellaneous 11

14.1 Governing Law and jurisdiction 11
14.2 Entire agreement 11
14.3 Further acts and documents 11
14.4 Surviving provisions 11
14.5 Waiver 11
14.6 Consents, approvals and directions 12
14.7 Amendments 12
14.8 Expenses 12
14.9 Severance 12
14.10 Counterparts 12

14.11 Moratorium legislation....12
14.12 No representation or reliance....13

Schedule 1 – Licence Fee Schedule....14

Initial Licence dated

Parties Minister for Roads and Road Safety on behalf of the Crown in right of the State of Victoria (**State**)

Netflow OSARS (Western) Pty Ltd (ACN 618 025 077) as trustee for Netflow OSARS (Western) Unit Trust (ABN 29 194 973 252) for and on behalf of the Netflow OSARS (Western) Partnership and Cintra OSARS (Western) Pty Ltd (ACN 622 593 524) as trustee for Cintra OSARS (Western) Unit Trust (ABN 24 736 096 154) for and on behalf of the Netflow OSARS (Western) Partnership (**Project Co**)

Background

A. The background to the Project is set out in the Project Deed.

B. As part of the development and implementation of the Project, the State has agreed to grant, and Project Co has agreed to accept, a licence in respect of the Initial Licence Areas on the terms and conditions contained in this Initial Licence.

C. The State has the power to grant this Initial Licence.

Operative provisions

1. Defined terms and interpretation

1.1 Project Deed definitions

Unless otherwise expressly defined, expressions used in this Initial Licence have the meanings given to them in or for the purposes of the Project Deed.

1.2 Definitions

In this Initial Licence, unless the context otherwise requires:

Initial Licence Areas means that part of the Project Area (which may be limited in height and depth):

(a) which is owned or controlled by the State or VicRoads; or

(b) in relation to which the State or VicRoads is entitled to grant access to Project Co.

Initial Licence means this licence and includes all Schedules, Exhibits, Attachments and Annexures to it.

Licence Commencement Date means in respect of each part of the Initial Licence Area, the later of:

(a) the date of Financial Close; and

(b) to the extent that the Initial Licence Area is the subject of a Land Availability Plan, the relevant Land Availability Date.

Licence Fee means each licence fee payable by Project Co under clause 5 and identified as an Initial Licence Fee set out in the Licence Fee Schedule for the relevant Licence Fee Date.

Licence Fee Date means the date related to a Licence Fee as set out in the Licence Fee Schedule.

Licence Fee Schedule means Schedule 1.

Permitted Use means:

(a) the performance of the Transition Activities, the Development Activities and, for the Maintenance Phase (Initial), the Services, as relevant in respect of each part of the Initial Licence Areas in accordance with the Project Deed and this Initial Licence; and

(b) any other purpose agreed by the State.

Project Deed means the document entitled "OSAR Western Package - Project Deed" between the State of Victoria and Project Co dated [ ].

State Parties means the State and VicRoads.

Term means the term of this Initial Licence as described in clause 6.

1.3 Interpretation

In this Initial Licence:

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

and unless the context otherwise requires:

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

(c) (**Initial Licence and Schedule references**): a reference to:

(i) a party, clause, Schedule, Exhibit, Attachment or Annexure is a reference to a party, clause, Schedule, Exhibit, Attachment or Annexure of or to this Initial Licence; and

(ii) a section is a reference to a section of a Schedule;

(d) (**Initial Licence as amended**): a reference to this Initial Licence or to any other deed, agreement, document or instrument includes a reference to this Initial Licence or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;

(e) (**party**): a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;

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

(g) (**replacement person**): a reference to a person appointed under this Initial Licence includes that person's replacement or delegate appointed in accordance with this Initial Licence;

(h) (**legislation**): a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes:

(i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the legislation or delegated legislation; and

(ii) consolidations, amendments, re-enactments and replacements;

(i) (**Standards**): unless otherwise expressly stated, a reference to a Standard includes that Standard as amended or updated from time to time;

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

(k) ("**includes**"): "include", "includes" and "including" will be read as if followed by the phrase "(without limitation)";

(l) ("**or**"): the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;

(m) (**information**): a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;

(n) ("**$**"): a reference to "$", AUD or dollar is to Australian currency;

(o) (**Business Day**): if the day on or by which anything is to be done under this Initial Licence is not a Business Day, that thing must be done no later than the next Business Day;

(p) (**time**): a reference to time is a reference to time in Melbourne, Australia;

(q) (**rights**): a reference to a right includes any benefit, remedy, function, discretion, authority or power;

(r) (**obligations and liabilities**): a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;

(s) (**absolute discretio**n): unless the State is expressly required under this Initial Licence to act reasonably in exercising a power, right or remedy, the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;

(t) ("**may**"): without limiting clause 1.3(s), unless the State is expressly required under this Initial Licence to act reasonably in exercising a power, right or remedy, the term "may", when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;

(u) (**Authorities**): where there is a reference to an Authority, institute or association or other body referred to in this Initial Licence which:

(i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Initial Licence is deemed to refer to that other entity; or

(ii) ceases to exist, this Initial Licence is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity; and

(v) (**contra proferentem rule not to apply**): each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

1.4 Inconsistency

If there is any conflict or inconsistency between this Initial Licence and the Project Deed, the provisions of the Project Deed will prevail.

1.5 Provisions limiting or excluding liability, rights or obligations

(a) A right or obligation of the State or Project Co under this Initial Licence will not limit or exclude any other right or obligation of the State or Project Co under this Initial Licence unless expressly stated.

(b) Any provision of this Initial Licence which seeks, either expressly or by implication, to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.

1.6 Prior approval or consent

If Project Co is required by this Initial Licence to obtain the State's or the State Representative's consent or approval to an action, document or thing, unless otherwise expressly stated, that consent or approval must be obtained as a condition precedent to the action, document or thing occurring or coming into effect.

1.7 Action without delay

Unless there is a provision in this Initial Licence which specifies a period of time in which something must be done by Project Co, all things must be done by Project Co without undue delay.

1.8 Relationship of the parties

Nothing in this Initial Licence:

(a) (**no additional relationship**): creates a partnership, joint venture, fiduciary, employment or agency relationship with the State; or

(b) (**no good faith**): imposes any duty of good faith on the State (unless otherwise expressly stated).

1.9 State's rights and obligations

(a) (**Acknowledgement**): The parties acknowledge the substance, operation and potential effect and consequences of clause 2.15 of the Project Deed in relation to this Initial Licence.

(b) (**No Claim**): Subject to clause 1.9(c), Project Co will not be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its executive or statutory rights or duties.

(c) (**Liability for breach**): Clauses 1.9(a) and 1.9(b) do not limit any Liability which the State would have to Project Co under any State Project Document as a result of:

(i) a breach by the State of any State Project Document; or

(ii) an express entitlement of Project Co under any State Project Document,

but for these clauses.

1.10 Reasonable endeavours of State

Any statement in this Initial Licence providing that the State or any officer, employee or agent of the State will or must use or exercise "reasonable endeavours", "act reasonably" or "act in good faith" in relation to an outcome, means that the State must take steps to bring about the relevant outcome so far as it is reasonably able to do so, having regard to its resources and other responsibilities but does not mean that the State or any officer, employee or agent of the State:

(a) (**no guarantee**): guarantees the relevant outcome will be brought about; or

(b) (**no obligation**): is required to:

(i) exercise a right of any Government Party, or to influence, over-ride, interfere with or direct any other Government Party in the proper exercise and performance of its legal, statutory or executive duties and functions;

(ii) exercise a power or discretion in a manner that the State regards as not in the public interest;

(iii) develop or implement new policy or a change in policy;

(iv) procure any new legislation or a change in legislation; or

(v) act in any way that the State regards as not in the public interest.

1.11 Cost of carrying out obligations

Each party must carry out its obligations under this Initial Licence at its own cost, unless expressly provided otherwise.

1.12 Proportionate Liability

The operation of Chapter Part IVAA of the *Wrongs Act 1958* (Vic) is excluded in relation to all and any rights of either party under this Initial Licence, whether such rights are sought to be enforced in contract, tort or otherwise.

2. Delegation

2.1 Right to delegate

Project Co acknowledges that the State may exercise any right, statutory or otherwise, it has to appoint a person as a delegate to perform any of its rights under this Initial Licence.

2.2 Notice of delegation

The State will give Project Co notice of:

(a) (**delegate**): any delegate so appointed, setting out the delegated rights and including a copy of the relevant instrument of appointment; and

(b) (**revocation or change**): any revocation or change of any delegation contemplated by clause 2.3.

2.3 Revocation or amendment of delegation

Any such delegation may be revoked, changed, delegated, limited or made subject to such conditions as the State determines from time to time.

2.4 No limitation of obligations

The appointment of a delegate to perform some or all of the rights of the State under this Initial Licence does not limit the rights or obligations of the State under this Initial Licence.

3. Negation of representations and warranties

The State makes no representations (express or implied) and gives no warranties (express or implied):

(a) (**suitability of purposes**): that the Initial Licence Areas or any other land is now or will remain suitable or adequate for all or any of the purposes contemplated by this Initial Licence or in the Project Deed; and

(b) (**Project Deed representations**): as to the matters specified in clause 10.1 of the Project Deed,

and all warranties (if any) and representations (if any) implied by Law, are to the extent permitted by Law, expressly negated.

4. Grant of Initial Licence

4.1 Licence over the Initial Licence Areas

(a) (**Grant of Initial Licence by the State**): the State grants to Project Co for the Term a non-exclusive licence to use the Initial Licence Areas for the Permitted Use on the terms of this Initial Licence and the Project Deed.

(b) (**Project Co only to remain on Initial Licence Areas for minimum period**): Project Co must only remain on the Initial Licence Areas for the minimum period(s) as is reasonably necessary for the Permitted Use.

(c) **(Sub Licence)**: Project Co may sub-licence all or part of the Initial Licence Area to Project Co Associates.

4.2 Nature of interest

(a) (**Contractual Licence**): The rights conferred on Project Co by this Initial Licence rest in contract only and do not confer a proprietary interest on Project Co.

(b) (**Restrictions on Initial Licence**): Without limiting the generality of clause 4.2(a):

(i) ownership and control of the Initial Licence Areas remains vested in the relevant owner of the land at all times;

(ii) the Initial Licence does not grant Project Co ownership, control or legal entitlement to exclusive possession of the Initial Licence Areas nor does it extend to Project Co an entitlement to rents or profits in respect of the Initial Licence Areas; and

(iii) Project Co and any Project Co Associate may only access the Initial Licence Areas for the Permitted Use.

5. Payments

5.1 Initial Licence

(a) (**Licence Fee**): In consideration of the rights to enter on, occupy and access (as applicable) the Initial Licence Areas pursuant to this Initial Licence, Project Co agrees to pay to the State each Licence Fee (and that Licence Fee will become due and payable) immediately prior to the date on which the relevant Service Payment (for the Quarter ending on the Licence Fee Date related to that Licence Fee) becomes due and payable and such payments will be made by Project Co until the date that this Initial Licence is terminated under clause 6 without any abatement, deduction or right of set off.

(b) (**Adjustments**): The parties will adjust the Licence Fees to reflect any adjustment to the Receivables Purchase Price under clause 41.1(c) of the Project Deed.

(c) (**Termination**): If this Initial Licence is terminated Project Co will not be obliged to pay any Licence Fee after the date that this Initial Licence is terminated under clause 6.

5.2 Utilities

The parties acknowledge and agree that the rights and obligations of Project Co in relation to Utilities (including obligations to pay for those costs and charges of all Utilities supplied, consumed or used in connection with the Project Activities and metering those Utilities) are set out in the Project Deed, including clause 12 (**Utilities**) of the Project Deed.

5.3 Payment by the State

If Project Co defaults in the payment of any of the costs or charges referred to in clause 5.2, the State may (without limiting any other rights and remedies of the State) pay the costs or charges, and any amount paid by the State will be a debt due and payable from Project Co to the State.

6. Term of Initial Licence

(a) (**Effective**): Subject to clause 6(b), this Initial Licence takes effect on the Licence Commencement Date and continues until the earlier of:

(i) the termination of the Project Deed;

(ii) the Date of Commercial Acceptance; and

(iii) any other date as is agreed by the parties.

(b) To the extent that this Initial Licence applies to the area required for each Returned Asset, the Initial Licence expires in respect of such area on the handback of the relevant Returned Asset except to the extent any Defect rectification work is required to be carried out to or on a Returned Asset, in which case the Initial License will continue to apply in respect of those parts of the Initial License Area Project Co requires access to carry out that Defect rectification work until the expiry of the Defects Liability Period for the relevant Returned Asset under clause 27.2(a) of the Project Deed.

7. Approval to demolish structures, etc.

Except where specified or required under the PSDR, Project Co must submit to the State for approval (with such approval not to be unreasonably withheld by the State), prior to submitting

to the responsible authority under any relevant planning scheme (if required), any proposal to demolish any structure or building in, on, under or over the Initial Licence Areas.

8. Harm minimisation

Project Co must:

(a) (**use of Initial Licence Areas**): in using or occupying the Initial Licence Areas; and

(b) (**necessary for Permitted Use**): except to the extent necessary to undertake the Permitted Use and otherwise to comply with its obligations under the Project Deed (including where specified or required under the PSDR),

cause as little harm and inconvenience and do as little damage as reasonably possible to the Initial Licence Areas (and any adjacent area) and any improvement or foliage on the Initial Licence Areas or any adjacent area (including any Utility Infrastructure or non-road infrastructure (as defined in the Road Management Act)).

9. Removal of materials and make good

Without limiting its obligations under clause 13.7 of the Project Deed:

(a) (**during Term**): during the Term, as soon as practicable after completion of any Project Activities on any part of the Initial Licence Areas; and

(b) (**before end of Term**): prior to the end of the Term, Project Co must:

(i) (**removal**): remove all plant, equipment, machinery, facilities and vehicles (except to the extent they form part of the Project Assets);

(ii) (**clean and safe condition**): ensure that the relevant part of the Initial Licence Areas is left in a clean and safe condition;

(iii) (**removal of waste**): ensure that all waste, rubbish, debris and redundant materials are removed promptly from the relevant part of the Initial Licence Areas in accordance with Best Industry Practices;

(iv) (**public use**): without limiting clause 9(b)(ii), ensure that any relevant part of the Initial Licence Areas which will become open to the public is safe for public use and occupation; and

(v) (**damage**): except to the extent necessary to comply with its obligations under the Project Deed (including where specified or required under the PSDR), make good all damage caused by Project Co's use and occupation of the Initial Licence Areas.

10. GST General

(a) (**Supply**): If GST is or will be or is purported to be payable on the supply of any good, service or thing (a **Supply**) by either party under this Initial Licence, to the extent the consideration otherwise provided for that Supply is not stated to include an amount in respect of GST on that Supply, the party receiving the Supply must pay to the party making the Supply on demand a sum equal to any GST payable by the supplier in respect of that Supply.

(b) (**Reimbursement**): To the extent that one party is required to reimburse the other party for costs incurred by the other party, those costs do not include any amount in respect of GST for which the other party is entitled to claim an input tax credit.

(c) (**Valid tax invoice**): A party's obligation to pay an amount under clause 10(a) is subject to a valid tax invoice being delivered to that party.

(d) (**Licence Fee**): The Licence Fees under this Initial Licence are exclusive of GST.

(e) (**Project Deed to prevail**): If clause 61.1 of the Project Deed would apply in connection with a Taxable Supply to which this clause 10 also applies then clause 61.1 of the Project Deed will apply in connection with that supply and the provisions of this clause 10 (but for this paragraph) will not apply.

(f) (**Definitions**): In this clause 10, unless otherwise defined in this Initial Licence, terms used have the meanings given to them in the GST Law.

11. Dispute Resolution

(**Disputes to be resolved**): Any Dispute between the parties arising in connection with this Initial Licence must be resolved in accordance with this clause 11 and the Dispute must be resolved in the same manner that Disputes under the Project Deed are resolved. Accordingly, the provisions of clauses 48 (Dispute Resolution procedure), 49 (Expert determination) and 50 (Arbitration) of the Project Deed are incorporated into this Initial Licence but as if:

(a) the only persons party to the Project Deed, and the only persons party to the relevant Dispute, are the parties to the relevant Dispute; and

(b) the only matters for expert determination under those provisions are the matters referred for expert determination under this Initial Licence.

12. Notices

All approvals, consents, directions, requirements, requests, claims, notices, agreements, demands or other communications in connection with this Initial Licence:

(a) (**in writing**): must be in writing;

(b) (**addressees**): must be addressed as set out below (or to such other addressee as notified by the receiving party to the other party from time to time);

State

Attention: [not disclosed]

Address: [not disclosed]

Email: [not disclosed]

Project Co

Attention: [not disclosed]

Address: [not disclosed]

Email: [not disclosed]

(c) **(signed):** must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;

(d) **(form of delivery):** must be delivered by hand or posted by prepaid express post or emailed to the email address of the addressee as referred to in clause 12(b); and

(e) **(taken to be received):** are taken to be received by the addressee:

(i) in the case of delivery by hand, on delivery at the address of the addressee as referred to in clause 12(b), unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;

(ii) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and

(iii) in the case of email, the first to occur of:

A. receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;

B. the time that the communication enters an information system which is under the control of the addressee; or

C. the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day.

13. Representations and Warranties

13.1 State's representations and warranties

The State represents and warrants for the benefit of Project Co that:

(a) (**power to execute**): it has the power to execute, deliver and carry out its obligations under this Initial Licence and all necessary action has been taken to authorise that execution, delivery and performance;

(b) (**validity**): each of its obligations under this Initial Licence is valid and legally binding in accordance with its terms; and

(c) (**legality**): the execution, delivery and carrying out of its obligations under this Initial Licence does not violate any Law to which the State is subject.

13.2 Project Co's representations and warranties

Project Co represents and warrants for the benefit of the State that:

(a) (**power to execute**): it has the power to execute, deliver and carry out its obligations under this Initial Licence and all necessary action has been taken to authorise that execution, delivery and performance;

(b) (**legality**): the execution, delivery and carrying out of its obligations under this Initial Licence does not and will not violate any Law or any document or agreement to which it is a party or which is binding on it or any of its assets;

(c) (**validity**): each of its obligations under this Initial Licence is valid and legally binding in accordance with its terms; and

(d) (**duly registered**): it is duly registered, properly constituted and remains in existence.

14. Miscellaneous

14.1 Governing Law and jurisdiction

(a) (**Governing Law**): This Initial Licence is governed by, and must be construed according to, the Laws of Victoria, Australia.

(b) (**Jurisdiction**): Without limiting clause 11, each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from the courts of Victoria, with respect to any proceedings which may be brought in connection with this Initial Licence.

14.2 Entire agreement

To the extent permitted by Law, in relation to its subject matter, this Initial Licence and the other State Project Documents:

(a) (**entire understanding**): embody the entire terms agreed between the parties in connection with the Project; and

(b) (**prior agreements**): supersede any prior agreement of the parties in connection with the Project.

14.3 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to both parties) required by Law or reasonably requested by the other party to give effect to this Initial Licence.

14.4 Surviving provisions

(a) (**Surviving clauses**): All provisions of this Initial Licence which, expressly or by implication from their nature, are intended to survive the rescission, termination or expiration of this Initial Licence.

(b) (**Interpretation**): No provision of this Initial Licence which is expressed to survive the termination, rescission or expiration of this Initial Licence will prevent any other provision of this Initial Licence, as a matter of interpretation, also surviving the termination, rescission or expiration of this Initial Licence.

(c) (**Survival of rights and obligations**): No right or obligation of any party will merge on completion of any transaction under this Initial Licence. All rights and obligations under this Initial Licence survive the execution and delivery of any transfer or other document which implements any transaction under this Initial Licence.

14.5 Waiver

(a) (**Writing**): Other than where the waiver is already given expressly in the terms of this Initial Licence, a waiver that may be given by a party under this Initial Licence is only effective and binding on that party if it is given or confirmed in writing by that party.

(b) (**No waiver**): A failure to exercise or enforce, a delay in the exercise or enforcement of, or the partial exercise or enforcement of a right provided by Law by a party does not preclude or operate as a waiver of the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or under this Initial Licence.

(c) (**No waiver of another breach**): No waiver of a breach of a term of this Initial Licence operates as a waiver of another breach of that term or of a breach of any other term of this Initial Licence.

14.6 Consents, approvals and directions

A consent or approval required under this Initial Licence from the State may be given or withheld, or may be given subject to any conditions, as the State (in its absolute discretion) think fit, unless otherwise expressly provided in this Initial Licence.

14.7 Amendments

Except as otherwise expressly provided in this Initial Licence, this Initial Licence may only be varied by a deed executed by or on behalf of each party.

14.8 Expenses

Unless otherwise expressly provided in this Initial Licence or the Project Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Initial Licence.

14.9 Severance

If, at any time, a provision of this Initial Licence or any other State Project Document is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

(a) any other provision of this Initial Licence or any other relevant State Project Document; or

(b) that provision under the Law of any other jurisdiction.

14.10 Counterparts

This Initial Licence may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same agreement.

14.11 Moratorium legislation

Project Co waives any right or remedy it may have under any Law which comes into effect after the date of this Initial Licence if the exercise of such right or remedy would:

(a) lessen any obligation or Liability of Project Co; or

(b) prejudicially affect the rights, powers or remedies of the State,

under this Initial Licence.

14.12 No representation or reliance

(a) (**No representation**): Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Initial Licence, except for representations or inducements expressly set out in this Initial Licence.

(b) (**No reliance**): Each party acknowledges and confirms that it does not enter into this Initial Licence in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Initial Licence.

Schedule 1 – Licence Fee Schedule

[not disclosed]

Executed as an agreement.

State

Executed by the **Honourable Luke Donnellan MP, in his capacity as Minister for Roads and Road Safety,** on behalf of the Crown in right of the State of Victoria in the presence of:

Signature of witness	Signature of Minister

Name of witness (print)

Project Co

Executed by **Netflow OSARS (Western) Pty Ltd as trustee for Netflow OSARS (Western) Unit Trust for and on behalf of the Netflow OSARS (Western) Partnership** by being signed, sealed and delivered by its attorney

……

under power of attorney dated

……

who declares that he or she has no notice of revocation of the power of attorney, in the presence of:

Signature of witness	Signature of attorney

Name of witness (print)

Executed by **Cintra OSARS (Western) Pty Ltd as trustee for Cintra OSARS (Western) Unit Trust for and on behalf of the Netflow OSARS (Western) Partnership** by being signed, sealed and delivered by its attorney

……

under power of attorney dated

……

who declares that he or she has no notice of revocation of the power of attorney, in the presence of:

Signature of witness	Signature of attorney
Name of witness (print)	

Schedule 22 – Form of Maintenance Phase Licence (Full)

Maintenance Phase Licence (Full)

OSAR Western Package

Minister for Roads and Road Safety on behalf of the Crown in right of the State of Victoria
(**State**)

Netflow OSARS (Western) Pty Ltd as trustee for Netflow OSARS (Western) Unit Trust for and on behalf of the Netflow OSARS (Western) Partnership and Cintra OSARS (Western) Pty Ltd as trustee for Cintra OSARS (Western) Unit Trust for and on behalf of the Netflow OSARS (Western) Partnership
(**Project Co**)

Contents

1. Defined terms and interpretation 1

1.1 Project Deed definitions 1
1.2 Definitions 1
1.3 Interpretation 2
1.4 Inconsistency 4
1.5 Provisions limiting or excluding liability, rights or obligations 4
1.6 Prior approval or consent 4
1.7 Action without delay 4
1.8 Relationship of the parties 4
1.9 State's rights and obligations 4
1.10 Reasonable endeavours of State 5
1.11 Cost of carrying out obligations 5
1.12 Proportionate Liability 5

2. Delegation 5

2.1 Right to delegate 5
2.2 Notice of delegation 5
2.3 Revocation or amendment of delegation 6
2.4 No limitation of obligations 6

3. Negation of representations and warranties 6

4. Grant of Maintenance Phase Licence (Full) 6

4.1 Licence over the Maintenance Phase Licence Areas 6
4.2 Nature of interest 6

5. Payments 7

5.1 Maintenance Phase Licence (Full) 7
5.2 Utilities 7
5.3 Payment by the State 7

6. Term of Maintenance Phase Licence (Full) 7

7. Approval to demolish structures, etc. 8

8. Harm minimisation 8

9. Removal of materials and make good 8

10. GST General 8

11. Dispute Resolution 9

12. Notices 9

13. Representations and Warranties 10

13.1 State's representations and warranties 10
13.2 Project Co's representations and warranties 10

14. Miscellaneous 11

14.1 Governing Law and jurisdiction 11
14.2 Entire agreement 11
14.3 Further acts and documents 11
14.4 Survival of certain provisions 11
14.5 Waiver 12
14.6 Consents, approvals and directions 12
14.7 Amendments 12
14.8 Expenses 12
14.9 Severance 12

14.10 Counterparts 12
14.11 Moratorium legislation 13
14.12 No representation or reliance 13

Schedule 1 – Licence Fee Schedule 14

Maintenance Phase Licence (Full) dated

Parties Minister for Roads and Road Safety on behalf of the Crown in right of the State of Victoria (**State**)

Netflow OSARS (Western) Pty Ltd (ACN 618 025 077) as trustee for Netflow OSARS (Western) Unit Trust (ABN 29 194 973 252) for and on behalf of the Netflow OSARS (Western) Partnership and Cintra OSARS (Western) Pty Ltd (ACN 622 593 524) as trustee for Cintra OSARS (Western) Unit Trust (ABN 24 736 096 154) for and on behalf of the Netflow OSARS (Western) Partnership (**Project Co**)

Background

A. The background to the Project is set out in the Project Deed.

B. As part of the development and implementation of the Project, the State has agreed to grant, and Project Co has agreed to accept, a licence in respect of the Maintenance Phase Licence Areas on the terms and conditions contained in this Maintenance Phase Licence (Full).

C. The State has the power to grant this Maintenance Phase Licence (Full).

Operative provisions

1. Defined terms and interpretation

1.1 Project Deed definitions

Unless otherwise expressly defined, expressions used in this Maintenance Phase Licence (Full) have the meanings given to them in or for the purposes of the Project Deed.

1.2 Definitions

In this Maintenance Phase Licence (Full), unless the context otherwise requires:

Licence Commencement Date means in respect of each part of the Maintenance Phase Licence Area, from the Date of Commercial Acceptance.

Licence Fee means each licence fee payable by Project Co under clause 5 and identified as a Maintenance Phase (Full) Licence Fee set out in the Licence Fee Schedule for the relevant Licence Fee Date.

Licence Fee Date means the date related to a Licence Fee as set out in the Licence Fee Schedule.

Licence Fee Schedule means Schedule 1.

Maintenance Phase Licence Areas means that part of the Project Area (which may be limited in height and depth):

(a) which is owned or controlled by the State or VicRoads; or

(b) in relation to which the State or VicRoads is entitled to grant access to Project Co.

Maintenance Phase Licence (Full) means this licence and includes all Schedules, Exhibits, Attachments and Annexures to it.

Permitted Use means:

(a) the performance of the Services;

(b) Defect rectification; and

(c) any other purpose agreed by the State.

Project Deed means the document entitled "OSAR Western Package - Project Deed" between the State of Victoria and Project Co dated [ ]

Term means the term of this Maintenance Phase Licence (Full) as described in clause 6.

1.3 Interpretation

In this Maintenance Phase Licence (Full):

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

and unless the context otherwise requires:

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

(c) (**Maintenance Phase Licence (Full) and Schedule references**): a reference to:

(i) a party, clause, Schedule, Exhibit, Attachment or Annexure is a reference to a party, clause, Schedule, Exhibit, Attachment or Annexure of or to this Maintenance Phase Licence (Full); and

(ii) a section is a reference to a section of a Schedule;

(d) [Not used];

(e) (**Maintenance Phase Licence (Full) as amended**): a reference to this Maintenance Phase Licence (Full) or to any other deed, agreement, document or instrument includes a reference to this Maintenance Phase Licence (Full) or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;

(f) (**party**): a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;

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

(h) (**replacement person**): a reference to a person appointed under this Maintenance Phase Licence (Full) includes that person's replacement or delegate appointed in accordance with this Maintenance Phase Licence (Full);

(i) (**legislation**): a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes:

(i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the legislation or delegated legislation; and

(ii) consolidations, amendments, re-enactments and replacements;

(j) (**Standards**): unless otherwise expressly stated, a reference to a Standard includes that Standard as amended or updated from time to time;

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

(l) ("**includes**"): "include", "includes" and "including" will be read as if followed by the phrase "(without limitation)";

(m) ("**or**"): the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;

(n) (**information**): a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;

(o) ("**$**"): a reference to "$", AUD or dollar is to Australian currency;

(p) (**Business Day**): if the day on or by which anything is to be done under this Maintenance Phase Licence (Full) is not a Business Day, that thing must be done no later than the next Business Day;

(q) (**time**): a reference to time is a reference to time in Melbourne, Australia;

(r) (**rights**): a reference to a right includes any benefit, remedy, function, discretion, authority or power;

(s) (**obligations and liabilities**): a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;

(t) (**absolute discretio**n): unless the State is expressly required under this Maintenance Phase Licence (Full) to act reasonably in exercising a power, right or remedy, the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;

(u) ("**may**"): without limiting clause 1.3(t), unless the State is expressly required under this Maintenance Phase Licence (Full) to act reasonably in exercising a power, right or remedy, the term "may", when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;

(v) (**Authorities**): where there is a reference to an Authority, institute or association or other body referred to in this Maintenance Phase Licence (Full) which:

(i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Maintenance Phase Licence (Full) is deemed to refer to that other entity; or

(ii) ceases to exist, this Maintenance Phase Licence (Full) is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity; and

(w) (**contra proferentem rule not to apply**): each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

1.4 Inconsistency

If there is any conflict or inconsistency between this Maintenance Phase Licence (Full) and the Project Deed, the provisions of the Project Deed will prevail.

1.5 Provisions limiting or excluding liability, rights or obligations

(a) A right or obligation of the State or Project Co under this Maintenance Phase Licence (Full) will not limit or exclude any other right or obligation of the State or Project Co under this Maintenance Phase Licence (Full) unless expressly stated.

(b) Any provision of this Maintenance Phase Licence (Full) which seeks, either expressly or by implication, to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.

1.6 Prior approval or consent

If Project Co is required by this Maintenance Phase Licence (Full) to obtain the State's or the State Representative's consent or approval to an action, document or thing, unless otherwise expressly stated, that consent or approval must be obtained as a condition precedent to the action, document or thing occurring or coming into effect.

1.7 Action without delay

Unless there is a provision in this Maintenance Phase Licence (Full) which specifies a period of time in which something must be done by Project Co, all things must be done by Project Co without undue delay.

1.8 Relationship of the parties

Nothing in this Maintenance Phase Licence (Full):

(a) (**no additional relationship**): creates a partnership, joint venture, fiduciary, employment or agency relationship with the State; or

(b) (**no good faith**): imposes any duty of good faith on the State (unless otherwise expressly stated).

1.9 State's rights and obligations

(a) (**Acknowledgement**): The parties acknowledge the substance, operation and potential effect and consequences of clause 2.15 of the Project Deed in relation to this Maintenance Phase Licence (Full).

(b) (**No Claim**): Subject to clause 1.9(c), Project Co will not be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its executive or statutory rights or duties.

(c) (**Liability for breach**): Clauses 1.9(a) and 1.9(b) do not limit any Liability which the State would have to Project Co under any State Project Document as a result of:

(i) a breach by the State of a term of any State Project Document; or

(ii) an express entitlement of Project Co under any State Project Document,

but for these clauses.

1.10 Reasonable endeavours of State

Any statement in this Maintenance Phase Licence (Full) providing that the State or any officer, employee or agent of the State will or must use or exercise "reasonable endeavours", "act reasonably" or "act in good faith" in relation to an outcome, means that the State must take steps to bring about the relevant outcome so far as it is reasonably able to do so, having regard to its resources and other responsibilities but does not mean that the State or any officer, employee or agent of the State:

(a) (**no guarantee**): guarantees the relevant outcome will be brought about; or

(b) (**no obligation**): is required to:

(i) exercise a right of any Government Party, or to influence, over-ride, interfere with or direct any other Government Party in the proper exercise and performance of its legal, statutory or executive duties and functions;

(ii) exercise a power or discretion in a manner that the State regards as not in the public interest;

(iii) develop or implement new policy or a change in policy;

(iv) procure any new legislation or a change in legislation; or

(v) act in any way that the State regards as not in the public interest.

1.11 Cost of carrying out obligations

Each party must carry out its obligations under this Maintenance Phase Licence (Full) at its own cost, unless expressly provided otherwise.

1.12 Proportionate Liability

The operation of Chapter Part IVAA of the *Wrongs Act 1958* (Vic) is excluded in relation to all and any rights of either party under this Maintenance Phase Licence (Full), whether such rights are sought to be enforced in contract, tort or otherwise.

2. Delegation

2.1 Right to delegate

Project Co acknowledges that the State may exercise any right, statutory or otherwise, it has to appoint a person as a delegate to perform any of its rights under this Maintenance Phase Licence (Full).

2.2 Notice of delegation

The State will give Project Co notice of:

(a) (**delegate**): any delegate so appointed, setting out the delegated rights and including a copy of the relevant instrument of appointment; and

(b) (**revocation or change**): any revocation or change of any delegation contemplated by clause 2.3.

2.3 Revocation or amendment of delegation

Any such delegation may be revoked, changed, delegated, limited or made subject to such conditions as the State determines from time to time.

2.4 No limitation of obligations

The appointment of a delegate to perform some or all of the rights of the State under this Maintenance Phase Licence (Full) does not limit the rights or obligations of the State under this Maintenance Phase Licence (Full).

3. Negation of representations and warranties

The State makes no representations (express or implied) and gives no warranties (express or implied):

(a) (**suitability of purposes**): that the Maintenance Phase Licence Areas or any other land is now or will remain suitable or adequate for all or any of the purposes contemplated by this Maintenance Phase Licence (Full) or in the Project Deed; and

(b) (**Project Deed representations**): as to the matters specified in clause 10.1 of the Project Deed,

and all warranties (if any) and representations (if any) implied by Law, are to the extent permitted by Law, expressly negated.

4. Grant of Maintenance Phase Licence (Full)

4.1 Licence over the Maintenance Phase Licence Areas

(a) (**Grant of Maintenance Phase Licence (Full) by the State**): the State grants to Project Co for the Term a non-exclusive licence to use the Maintenance Phase Licence Areas for the Permitted Use on the terms of this Maintenance Phase Licence (Full) and the Project Deed.

(b) (**Project Co only to remain on Maintenance Phase Licence Areas for minimum period**): Project Co must only remain on the Maintenance Phase Licence Areas for the minimum period(s) as is reasonably necessary for the Permitted Use.

(c) **(Sub Licence)**: Project Co may sub-licence all or part of the Maintenance Phase Licence Areas to Project Co Associates.

4.2 Nature of interest

(a) (**Contractual Licence**): The rights conferred on Project Co by this Maintenance Phase Licence (Full) rest in contract only and do not confer a proprietary interest on Project Co.

(b) (**Restrictions on Maintenance Phase Licence (Full)**): Without limiting the generality of clause 4.2(a):

(i) ownership and control of the Maintenance Phase Licence Areas remains vested in the relevant owner of the land at all times;

(ii) the Maintenance Phase Licence (Full) does not grant Project Co ownership, control or legal entitlement to exclusive possession of the Maintenance Phase Licence Areas nor does it extend to Project Co an entitlement to rents or profits in respect of the Maintenance Phase Licence Areas; and

(iii) Project Co and any Project Co Associate may only access the Maintenance Phase Licence Areas for the Permitted Use.

5. Payments

5.1 Maintenance Phase Licence (Full)

(a) (**Licence Fee**): In consideration of the rights to enter on, occupy and access (as applicable) the Maintenance Phase Licence Areas pursuant to this Maintenance Phase Licence (Full), Project Co agrees to pay to the State each Licence Fee (and that Licence Fee will become due and payable) immediately prior to the date on which the relevant Service Payment (for the Quarter ending on the Licence Fee Date related to that Licence Fee) becomes due and payable and such payments will be made by Project Co until the date that this Maintenance Phase Licence (Full) is terminated under clause 6 without any abatement, deduction or right of set off.

(b) (**Adjustments**): The parties will adjust the Licence Fees to reflect any adjustment to the Receivable Purchase Payment under clause 41.1(c) of the Project Deed.

(c) (**Maintenance Phase (Full) Modification Payment**): If the State agrees to pay a Maintenance Phase (Full) Modification Payment under the Project Deed, the Licence Fees will be increased in order to ensure that the relevant Receivables Purchase Price for the Additional Receivables is equal to that Maintenance Phase (Full) Modification Payment.

(d) (**Termination**): If this Maintenance Phase Licence (Full) is terminated Project Co will not be obliged to pay any Licence Fee after the date that this Maintenance Phase Licence (Full) is terminated under clause 6.

5.2 Utilities

The parties acknowledge and agree that the rights and obligations of Project Co in relation to Utilities (including obligations to pay for those costs and charges of all Utilities supplied, consumed or used in connection with the Project Activities and metering those Utilities) are set out in the Project Deed, including clause 12 (**Utilities**) of the Project Deed.

5.3 Payment by the State

If Project Co defaults in the payment of any of the costs or charges referred to in clause 5.2, the State may (without limiting any other rights and remedies of the State) pay the costs or charges, and any amount paid by the State will be a debt due and payable from Project Co to the State.

6. Term of Maintenance Phase Licence (Full)

(a) (**Effective**): Subject to clause 6(b), this Maintenance Phase Licence (Full) takes effect on the Licence Commencement Date and continues until the earlier of:

(i) the Expiry Date; and

(ii) any other date as is agreed by the parties.

(b) To the extent that this Maintenance Phase Licence (Full) applies to the area required for each Returned Asset, the Maintenance Phase Licence (Full) expires in respect of such area on the handback of the relevant Returned Asset.

7. Approval to demolish structures, etc.

Except where specified or required under the PSDR, Project Co must submit to the State for approval (with such approval not to be unreasonably withheld by the State), prior to submitting to the responsible authority under any relevant planning scheme (if required), any proposal to demolish any structure or building in, on, under or over the Maintenance Phase Licence Areas.

8. Harm minimisation

Project Co must:

(a) (**use of Maintenance Phase Licence Areas**): in using or occupying the Maintenance Phase Licence Areas; and

(b) (**necessary for Permitted Use**): except to the extent necessary to undertake the Permitted Use and otherwise to comply with its obligations under the Project Deed (including where specified or required under the PSDR),

cause as little harm and inconvenience and do as little damage as reasonably possible to the Maintenance Phase Licence Areas (and any adjacent area) and any improvement or foliage on the Maintenance Phase Licence Areas or any adjacent area (including any Utility Infrastructure or non-road infrastructure (as defined in the Road Management Act)).

9. Removal of materials and make good

Without limiting its obligations under clause 13.7 of the Project Deed:

(a) (**during Term**): during the Term, as soon as practicable after completion of any Project Activities on any part of the Maintenance Phase Licence Areas; and

(b) (**before end of Term**): prior to the end of the Term,

Project Co must:

(c) (**removal**): remove all plant, equipment, machinery, facilities and vehicles (except to the extent they form part of the Project Assets);

(d) (**clean and safe condition**): ensure that the relevant part of the Maintenance Phase Licence Area is left in a clean and safe condition;

(e) (**removal of waste**): ensure that all waste, rubbish, debris and redundant materials are removed promptly from the relevant part of the Maintenance Phase Licence Areas in accordance with Best Industry Practices;

(f) (**public use**): without limiting clause 9(d), ensure that any relevant part of the Maintenance Phase Licence Areas which will become open to the public is safe for public use and occupation; and

(g) (**damage**): except to the extent necessary to comply with its obligations under the Project Deed (including where specified or required under the PSDR), make good all damage caused by Project Co's use and occupation of the Maintenance Phase Licence Areas.

10. GST General

(a) (**Supply**): If GST is or will be or is purported to be payable on the supply of any good, service or thing (a **Supply**) by either party under this Maintenance Phase Licence (Full), to the extent the consideration otherwise provided for that Supply is not stated to include an amount in respect of GST on that Supply, the party

receiving the Supply must pay to the party making the Supply on demand a sum equal to any GST payable by the supplier in respect of that Supply.

(b) (**Reimbursement**): To the extent that one party is required to reimburse the other party for costs incurred by the other party, those costs do not include any amount in respect of GST for which the other party is entitled to claim an input tax credit.

(c) (**Valid tax invoice**): A party's obligation to pay an amount under clause 10 is subject to a valid tax invoice being delivered to that party.

(d) (**Licence Fee**): The Licence Fees under this Licence are exclusive of GST.

(e) (**Project Deed to prevail**): If clause 61.1 of the Project Deed would apply in connection with a Taxable Supply to which this clause 10 also applies then clause 61.1 of the Project Deed will apply in connection with that supply and the provisions of this clause 10 (but for this paragraph) will not apply.

(f) (**Definitions**): In this clause 10, unless otherwise defined in this Maintenance Phase Licence (Full), terms used have the meanings given to them in the GST Law.

11. Dispute Resolution

(**Disputes to be resolved**): Any Dispute between the parties arising in connection with this Maintenance Phase Licence (Full) must be resolved in accordance with this clause 11 and the Dispute must be resolved in the same manner that Disputes under the Project Deed are resolved. Accordingly, the provisions of clauses 48 (**Dispute Resolution procedure**), 49 (**Expert determination**) and 50 (**Arbitration**) of the Project Deed are incorporated into this Maintenance Phase Licence (Full) but as if:

(a) the only persons party to the Project Deed, and the only persons party to the relevant Dispute, are the parties to the relevant Dispute; and

(b) the only matters for expert determination under those provisions are the matters referred for expert determination under this Maintenance Phase Licence (Full).

12. Notices

All approvals, consents, directions, requirements, requests, claims, notices, agreements, demands or other communications in connection with this Maintenance Phase Licence (Full):

(a) (**in writing**): must be in writing;

(b) (**addressees**): must be addressed as set out below (or to such other addressee as notified by the receiving party to the other party from time to time);

State

Attention: [not disclosed]

Address: [not disclosed]

Email: [not disclosed]

Project Co

Attention: [not disclosed]

Address: [not disclosed]

Email: [not disclosed]

(c) **(signed):** must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;

(d) **(form of delivery):** must be delivered by hand or posted by prepaid express post or emailed to the email address of the addressee as referred to in clause 12(b); and

(e) **(taken to be received):** are taken to be received by the addressee:

(i) in the case of delivery by hand, on delivery at the address of the addressee as referred to in clause 12(b), unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;

(ii) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and

(iii) in the case of email, the first to occur of:

A. receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;

B. the time that the communication enters an information system which is under the control of the addressee; or

C. the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day.

13. Representations and Warranties

13.1 State's representations and warranties

The State represents and warrants for the benefit of Project Co that:

(a) (**power to execute**): it has the power to execute, deliver and carry out its obligations under this Maintenance Phase Licence (Full) and all necessary action has been taken to authorise that execution, delivery and performance;

(b) (**validity**): each of its obligations under this Maintenance Phase Licence (Full) is valid and legally binding in accordance with its terms; and

(c) (**legality**): the execution, delivery and carrying out of its obligations under this Maintenance Phase Licence (Full) does not violate any Law to which the State is subject.

13.2 Project Co's representations and warranties

Project Co represents and warrants for the benefit of the State that:

(a) (**power to execute**): it has the power to execute, deliver and carry out its obligations under this Maintenance Phase Licence (Full) and all necessary action has been taken to authorise that execution, delivery and performance;

(b) (**legality**): the execution, delivery and carrying out of its obligations under this Maintenance Phase Licence (Full) does not and will not violate any Law or any document or agreement to which it is a party or which is binding on it or any of its assets;

(c) (**validity**): each of its obligations under this Maintenance Phase Licence (Full) is valid and legally binding in accordance with its terms; and

(d) (**duly registered**): it is duly registered, properly constituted and remains in existence.

14. Miscellaneous

14.1 Governing Law and jurisdiction

(a) (**Governing Law**): This Maintenance Phase Licence (Full) is governed by, and must be construed according to, the Laws of Victoria, Australia.

(b) (**Jurisdiction**): Without limiting clause 11, each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from the courts of Victoria, with respect to any proceedings which may be brought in connection with this Maintenance Phase Licence (Full).

14.2 Entire agreement

To the extent permitted by Law, in relation to its subject matter, this Maintenance Phase Licence (Full) and the other State Project Documents:

(a) (**entire understanding**): embody the entire terms agreed between the parties in connection with the Project; and

(b) (**prior agreements**): supersede any prior agreement of the parties in connection with the Project.

14.3 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to both parties) required by Law or reasonably requested by the other party to give effect to this Maintenance Phase Licence (Full).

14.4 Survival of certain provisions

(a) (**Surviving clauses**): All provisions of this Maintenance Phase Licence (Full) which, expressly or by implication from their nature, are intended to survive the rescission, termination or expiration of this Maintenance Phase Licence (Full).

(b) (**Interpretation**): No provision of this Maintenance Phase Licence (Full) which is expressed to survive the termination, rescission or expiration of this Maintenance Phase Licence (Full) will prevent any other provision of this Maintenance Phase Licence (Full), as a matter of interpretation, also surviving the termination, rescission or expiration of this Maintenance Phase Licence (Full).

(c) (**Survival of rights and obligations**): No right or obligation of any party will merge on completion of any transaction under this Maintenance Phase Licence (Full). All rights and obligations under this Maintenance Phase Licence (Full) survive the

execution and delivery of any transfer or other document which implements any transaction under this Maintenance Phase Licence (Full).

14.5 Waiver

(a) (**Writing**): Other than where the waiver is already given expressly in the terms of this Maintenance Phase Licence (Full), a waiver that may be given by a party under this Maintenance Phase Licence (Full) is only effective and binding on that party if it is given or confirmed in writing by that party.

(b) (**No waiver**): A failure to exercise or enforce, a delay in the exercise or enforcement of or the partial exercise or enforcement of a right provided by Law by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or under this Maintenance Phase Licence (Full).

(c) (**No waiver of another breach**): No waiver of a breach of a term of this Maintenance Phase Licence (Full) operates as a waiver of another breach of that term or of a breach of any other term of this Maintenance Phase Licence (Full).

14.6 Consents, approvals and directions

A consent or approval required under this Maintenance Phase Licence (Full) from the State may be given or withheld, or may be given subject to any conditions, as the State (in its absolute discretion) think fit, unless expressly provided otherwise in this Maintenance Phase Licence (Full).

14.7 Amendments

Except as otherwise expressly provided in this Maintenance Phase Licence (Full), this Maintenance Phase Licence (Full) may only be varied by a deed executed by or on behalf of each party.

14.8 Expenses

Unless otherwise expressly provided in this Maintenance Phase Licence (Full) or the Project Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Maintenance Phase Licence (Full).

14.9 Severance

If, at any time, a provision of this Maintenance Phase Licence (Full) or any other State Project Document is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

(a) any other provision of this Maintenance Phase Licence (Full) or any other relevant State Project Document; or

(b) that provision under the Law of any other jurisdiction.

14.10 Counterparts

This Maintenance Phase Licence (Full) may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same agreement.

14.11 Moratorium legislation

Project Co waives any right or remedy it may have under any Law which comes into effect after the date of this Maintenance Phase Licence (Full) if the exercise of such right or remedy would:

(a) lessen any obligation or Liability of Project Co; or

(b) prejudicially affect the rights, powers or remedies of the State,

under this Maintenance Phase Licence (Full).

14.12 No representation or reliance

(a) (**No representation**): Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Maintenance Phase Licence (Full), except for representations or inducements expressly set out in this Maintenance Phase Licence (Full).

(b) (**No reliance**): Each party acknowledges and confirms that it does not enter into this Maintenance Phase Licence (Full) in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Maintenance Phase Licence (Full).

Schedule 1 – Licence Fee Schedule

[not disclosed]

Executed as an agreement.

State

Executed by the **Honourable Luke Donnellan MP, in his capacity as Minister for Roads and Road Safety,** on behalf of the Crown in right of the State of Victoria in the presence of:

Signature of witness	Signature of Minister
Name of witness (print)	

Project Co

Executed by **Netflow OSARS (Western) Pty Ltd as trustee for Netflow OSARS (Western) Unit Trust for and on behalf of the Netflow OSARS (Western) Partnership** by being signed, sealed and delivered by its attorney

……

under power of attorney dated

……

who declares that he or she has no notice of revocation of the power of attorney, in the presence of:

Signature of witness	Signature of attorney
Name of witness (print)	

Executed by **Cintra OSARS (Western) Pty Ltd as trustee for Cintra OSARS (Western) Unit Trust for and on behalf of the Netflow OSARS (Western) Partnership** by being signed, sealed and delivered by its attorney

……

under power of attorney dated

……

who declares that he or she has no notice of revocation of the power of attorney, in the presence of:

Signature of witness	Signature of attorney
Name of witness (print)	

Schedule 23 - Augmentation Process Schedule

Schedule 23 - Augmentation Process Schedule i

Part 1 – General. 1

1. Definitions and Interpretation 1

1.1 Definitions 1
1.2 Interpretation 4
1.3 Resolution of inconsistency, ambiguity or discrepancy 4
1.4 References to Proponent, Proponent Associate, Project Co Associate 4

2. Initiation of an Augmentation Process 4

2.1 Augmentation proposed by the State 4
2.2 Augmentation proposed by Project Co 5
2.3 Augmentation Process Deed 7

3. Administration, meetings and provision of information 8

4. State's rights and discretions 8

5. Payment of Project Co 9

5.1 No payment prior to Augmentation Process Deed 9
5.2 Indemnity 9

Part 2 – Augmentation Process Deed Principles 10

6. General 10

7. Summary of content of Augmentation Process Deed 10

7.1 Content 10
7.2 Terms of the Project Deed 11

8. Augmentation timetable and administration 11

8.1 Timetable 11
8.2 Milestones 11
8.3 Working groups 12
8.4 Proponent Augmentation Material 12
8.5 Audit 12

9. Augmentation Process payments 12

9.1 General principles 12
9.2 Timing and reimbursement of the Augmentation Process Fee 13
9.3 Timing and reimbursement of the Third Party Costs 14
9.4 Open book 15
9.5 Set off 15

10. State Brief 15

11. Contractual model 15

12. Existing Financiers 16

13. Augmentation Price and Funding 16

13.1 Funding for the Augmentation 16
13.2 Augmentation Equity IRR 16
13.3 Augmentation Management Fee 16
13.4 Margin 17

14. Key principles for Tender Processes 17

14.1 General principles 17
14.2 Tender Process principles 18

15. Augmentation Proposal 19

15.1 Phases 19
15.2 Key inclusions in the Augmentation Proposal 19
15.3 Commercial Development 20

16. Evaluation and negotiation of Final Augmentation Proposals 20

17. Privileges and discretions of the State 21

18. Termination of the Augmentation Process Deed 21

18.1 Termination of the Augmentation Process Deed 21
18.2 Termination by State for failure to pass Milestone or for Proponent default 21
18.3 Termination for convenience 22
18.4 Termination for unforeseeable neutral event 22
18.5 Payment on termination for failure to pass Milestone or for Proponent default 22
18.6 Payment on termination for convenience 23
18.7 Payment on termination for unforeseeable neutral event 23
18.8 State's rights after termination 23

19. Intellectual Property 24

19.1 State Augmentation Information licence 24
19.2 Proponent Augmentation Material 24
19.3 State's further Intellectual Property Rights 25

20. Liability and Indemnity 26

Part 1 – General.

1. Definitions and Interpretation

1.1 Definitions

Unless otherwise expressly defined in this Schedule, expressions used in this Schedule have the meanings given to them in this Deed.

In this Schedule:

Advisor Fees has the meaning given in section 9.1(d)(ii).

Alternative Process has the meaning given in section 14.1(c)

Augmentation means a change (including any addition, decrease, omission, deletion, demolition or removal) to the Project Assets, the Design Requirements, the Maintenance Phase Requirements or the Project Activities:

(a) the total cost (nominal) of which the State considers is likely to be in excess of $[not disclosed] (CPI Indexed); and

(b) which the State determines in accordance with this Schedule should be delivered pursuant to an Augmentation Process.

Augmentation Documents means all documents to be entered into by one or more of the State, the Proponents and Project Co (amongst others) for the undertaking of the relevant Augmentation, including any such documentation contemplated by the Augmentation Process Deed.

Augmentation Equity IRR means [not disclosed]%, being the nominal pre-tax equity internal rate of return for the relevant Augmentation.

Augmentation Equity IRR Cap has the meaning given in section 13.2(a).

Augmentation Management Fee means in respect of an Augmentation, the relevant fixed sum or fixed percentage to be charged by the Delivery Proponent as its fee for carrying out the Augmentation pursuant to the Augmentation Documents.

Augmentation Process means the process set out in this Schedule, any Probity and Process Deed and the Augmentation Process Deed for the relevant Augmentation.

Augmentation Process Deed means the document(s) of that name to be entered into by the State and the Proponents and, if required by the State, Project Co (if Project Co is not a Proponent), to progress the Augmentation Process.

Augmentation Process Fee has the meaning given in section 9.1(b).

Augmentation Process Fee Cap has the meaning given in section 9.2(c).

Augmentation Proposal means in respect of an Augmentation, any proposal for that Augmentation that Project Co or a Proponent submits to the State in accordance with the Augmentation Process, including the Initial Augmentation Proposal (if any) and the Final Augmentation Proposal.

Background IP means Intellectual Property Rights in:

(a) subject matter in existence at the date of the Augmentation Process Deed (other than where such subject matter has been developed for the Augmentation or the Project); or

(b) subject matter developed independently of the development of the Augmentation Proposal, the Augmentation and the Project.

Commercial Development has the meaning given in section 15.3(a).

Construction Margin means [not disclosed]%.

Contract Close means, in respect of an Augmentation, the date on which the State Augmentation Documents are executed by all parties to them and all conditions precedent for those State Augmentation Documents to come into full force and effect have been satisfied or waived.

Date for Contract Close means, in respect of an Augmentation, the date by which Contract Close must be achieved, as set out in the Augmentation Process Deed.

Delivery Proponent has the meaning given in section 2.3(a)(iv).

Design Fees has the meaning given in section 9.1(d)(i).

Design Fees Cap has the meaning given in section 9.3(d)(i).

Excluded IP means Intellectual Property Rights subsisting in:

(a) subject matter produced by third parties engaged by a Proponent or any Proponent Associate to primarily provide printing, general administration, project management, communications support, advertising, marketing or financial model auditing services or legal or communications advice, and not forming part of the Augmentation Proposal or incorporated into the Augmentation Proposal; and

(b) any off the shelf computer software used by or on behalf of a Proponent or any Proponent Associates to develop the Proposal.

Final Augmentation Proposal has the meaning given in section 15.2(a).

Initial Augmentation Proposal has the meaning given in section 2.2(b).

Lead Proponent has the meaning given in section 2.3(a)(iii).

Maintenance Margin means [not disclosed]%.

Margin means the amount that a party charges for its off-site overheads and administrative, corporate and other like costs and profit, that are directly attributable to the relevant Augmentation.

Milestone has the meaning given in section 8.2(a).

Permitted Purpose means, in respect of an Augmentation, the sole purpose of carrying out that Augmentation and the Augmentation Process for that Augmentation.

Phase has the meaning given to that term in section 15.1(b).

Probity and Process Deed means the short form deed in the form set out in Appendix 1 to this Schedule.

Project Co Margin means [not disclosed]%.

Project Objectives means the objectives of the State for the Project being to:

(a) meet the growing vehicle travel demand by reducing congestion on arterial roads in Melbourne's fast growing outer suburbs;

(b) improve the reliability and performance of arterial roads and reduce vehicle operating costs through enhanced maintenance outcomes;

(c) promote investment and employment creation by improving the access to key economic centres and employment clusters;

(d) contribute to the creation of a safe, efficient and accessible road network that supports the health and wellbeing of all users and the liveability of communities; and

(e) seek a value for money solution for road users through innovative design, optimum risk allocation between the Project parties and a whole of life approach to the design and maintenance of the arterial road network in scope.

Proponent has the meaning given in section 2.3(a).

Proponent Associate means each of the following persons:

(a) any Associate of a Proponent; and

(b) any Tenderer and its Associates.

Proponent Augmentation Material means, in respect of an Augmentation:

(a) all Material disclosed or otherwise provided by or on behalf of a Proponent, any Proponent Associate, Project Co or any Project Co Associate, to the State or any State Associate, whether before or after execution of the Augmentation Process Deed which is connected with the Augmentation Process or the Augmentation (or any related development) or the involvement of a person with the Augmentation Process or the Augmentation;

(b) all Material prepared or created by or on behalf of a Proponent any Proponent Associate, Project Co or any Project Co Associate in connection with the Augmentation Process or the relevant Augmentation (or any related development) in the possession or control of Project Co, a Proponent, any Proponent Associate or any Project Co Associate;

(c) all notes, data and other records based on, referring to or incorporating any information referred to in paragraph (a) or (b); and

(d) all copies of the information and those notes, data and other records referred to in paragraphs (a), (b) or (c),

whether or not in tangible, oral or electronic form (however disclosed).

PV Requirements means the Partnerships Victoria requirements and associated guidance as published on the Partnerships Victoria website at the relevant time.

Standard Form Project Deed means the Partnerships Victoria Standard PPP Project Deed applicable to the Augmentation as published on the Partnerships Victoria website at the relevant time.

State Augmentation Documents means those Augmentation Documents to which the State is a party.

State Augmentation Information means, in respect of an Augmentation, all Material disclosed or otherwise provided by or on behalf of the State or any State Associate to Project Co, any Project Co Associate, any Proponent or any Proponent Associate whether before or after execution of the Augmentation Process Deed, in connection with the Augmentation Process or the Augmentation, whether or not in tangible oral or electronic form (however disclosed).

State Brief means any brief or request for proposal for an Augmentation issued by the State under the Augmentation Process Deed.

Statement of Proposed Augmentation means, in respect of an Augmentation, a notice issued by the State in accordance with section 2.1(a).

Tenderer means each entity or group of entities bidding in a Tender Process to carry out the whole or any part of the relevant Augmentation, including any debt or equity funding, works or services in respect of the relevant Augmentation.

Tenderer Information means any Proponent Augmentation Material disclosed, provided, prepared or created by or on behalf of a Tenderer or its Associates.

Tender Process has the meaning given in section 14.1(a).

Tender Process Principles has the meaning given in section 14.2.

Third Party Costs has the meaning given in section 9.1(d).

Third Party Cost Cap has the meaning given in section 9.3(d).

VicRoads means the Roads Corporation established under the *Transport Act 1983 (Vic)* and continued under the *Transport Integration Act 2010* (Vic).

1.2 Interpretation

(a) The State acknowledges that Augmentations will vary in size and nature and that not all aspects of the Augmentation Process or all principles for the Augmentation Process Deed will necessarily be applicable to every Augmentation.

(b) Nevertheless, Project Co must, and must procure that the Proponents:

(i) comply with the Augmentation Process; and

(ii) adopt the principles set out in this Schedule for the Augmentation Process Deed,

unless otherwise agreed by the State.

1.3 Resolution of inconsistency, ambiguity or discrepancy

If, in respect of an Augmentation, there is an inconsistency, ambiguity or discrepancy between this Schedule and the Augmentation Process Deed, then the following order of precedence applies:

(a) the Augmentation Process Deed; and

(b) this Schedule.

1.4 References to Proponent, Proponent Associate, Project Co Associate

(a) Where:

(i) this Schedule includes:

A. an obligation imposed on; or

B. a release or promise not to sue or bring a Claim by,

a Proponent, Proponent Associate or Project Co Associate; and

(ii) the Proponent, Proponent Associate or Project Co Associate (as applicable) breaches that obligation or promise not to sue or bring a Claim, or fails to so release,

this will be deemed to be a breach of this Schedule by Project Co, including for the purposes of section 5.2.

(b) Whether or not it is a Proponent, Project Co is not relieved from any or all of its obligations or Liabilities (whether under this Schedule or otherwise) as a result of a Proponent participating in the relevant Augmentation Process.

2. Initiation of an Augmentation Process

2.1 Augmentation proposed by the State

(a) The State may at any time, issue to Project Co a notice entitled "Statement of Proposed Augmentation" which must set out high level details of the proposed Augmentation, and may include (to the extent developed at that time):

(i) a description of the proposed Augmentation (including its unique characteristics and reasons for the proposed Augmentation);

(ii) desired timeframes for the delivery of the proposed Augmentation; and

(iii) any other information considered relevant by the State,

(together the **Statement of Proposed Augmentation**).

(b) Following the issue of a Statement of Proposed Augmentation, the State may require Project Co to:

(i) submit an initial response to the Statement of Proposed Augmentation which sets out any key issues or risks that Project Co considers may arise in respect of the proposed Augmentation, within the period reasonably specified by the State in the Statement of Proposed Augmentation; and

(ii) enter into, and procure that:

A. the Proponents; and

B. those Project Co Associates and Proponent Associates (as reasonably nominated by the State),

enter into a deed substantially in the form of the Probity and Process Deed within 10 Business Days of any such request by the State.

2.2 Augmentation proposed by Project Co

(a) Project Co may only submit Initial Augmentation Proposals in accordance with this section 2.2, which are not invited by the State, only during each 60 Business Day period which commences on the fifth, tenth and fifteenth anniversary (as applicable) of the Date of Commercial Acceptance and Project Co must meet with the State Representative to explain the proposed Augmentation and must not issue an Initial Augmentation Proposal without first advising the State of its intention to do so at least 20 Business Days prior to issuing the Initial Augmentation Proposal.

(b) Subject to section 2.2(a), Project Co may submit to the State a notice entitled "Initial Augmentation Proposal" which must consist of a business case for the proposed Augmentation which must include:

(i) a description of the proposed Augmentation including any unique characteristics of the proposed Augmentation;

(ii) the proposed Proponents, including the Lead Proponent and the Delivery Proponent;

(iii) how the proposed Proponent proposes to run the Augmentation Process and demonstrated ability and team capacity to do so (including a team organisation diagram and details of expertise);

(iv) an assessment of the anticipated benefits to users of the Project Assets, users of the arterial road network and the State that the Augmentation is expected to generate, including any supporting evidence (including traffic analysis, travel time savings and safety analysis), and how the proposed Augmentation is in the public interest and will deliver value for money to the State;

(v) why the State should undertake the proposed Augmentation as:

A. an Augmentation and not as a Modification (including a Modification proposed by Project Co under clause 35.11 of this Deed);

B. a standard competitive tendering or procurement process; or

C. another procurement process whether or not contemplated in the Project Documents;

(vi) a high level summary of the scope and requirements (including functional, technical, performance, and maintenance requirements and standards) for the Augmentation;

(vii) Project Co's desired timeframe and key milestones for delivery of the proposed Augmentation;

(viii) an assessment of the anticipated impact that the proposed Augmentation is likely to have (both during construction and after completion) on the Project Assets, the Project Activities, users of the Project Assets and users of the arterial road network;

(ix) a breakdown between capital expenses and operational expenses of the estimated net costs (net of any cost savings or avoided costs) of the proposed Augmentation;

(x) how the proposed Augmentation meets a State project or service need, including alignment with policy and budget priorities;

(xi) any market sounding;

(xii) how the proposed Augmentation will be funded (private or public funds) including, if Project Co proposes to procure equity or debt finance and how Project Co proposes to service any such debt or equity;

(xiii) the commercial aspects of the proposed Augmentation, including a high level description of key risks and their allocation;

(xiv) the proposed Augmentation Process Fee;

(xv) the proposed Augmentation Equity IRR;

(xvi) where any debt finance for the Augmentation will not be sourced from traditional debt markets, the proposed cost of the debt;

(xvii) the proposed Augmentation Management Fee;

(xviii) a supporting financial model for the proposed Augmentation which identifies the Project Co Margin, Construction Margin, Maintenance Margin, proposed Augmentation Management Fee, Augmentation Process Fee and Augmentation Equity IRR;

(xix) the required level of State support for the proposed Augmentation (financial and otherwise and whether direct and indirect);

(xx) details of any consultation undertaken with key State stakeholders in respect of the proposed Augmentation and any State stakeholder support;

(xxi) any proposed contractual strategy for the proposed Augmentation;

(xxii) how competition will be incorporated into the Augmentation Process to the maximum extent practicable and where not possible, the reasons why and other methods that will be used to demonstrate value for money to the State in respect of the proposed Augmentation and to what aspects of the proposed Augmentation they will apply, including any applicable Margin of a Subcontractor;

(xxiii) whether the proposed Augmentation has been considered by the State previously;

(xxiv) aspects of the proposed Augmentation considered to be the subject of, or to contain Intellectual Property Rights;

(xxv) a declaration of any potential or actual conflicts of interest, including all contact between:

A. Project Co, the proposed Proponents, any Project Co Associates or any proposed Proponent Associates; and

B. the State, State Associates or other officials in respect of the proposed Augmentation;

(xxvi) how the proposed Augmentation meets the Project Objectives; and

(xxvii) any other information necessary or reasonably required by the State to allow the State to conduct an initial assessment of the merits of the proposed Augmentation,

(together, the **Initial Augmentation Proposal**).

(c) Following receipt of an Initial Augmentation Proposal, in addition to its rights under section 4(a), the State may do one or more of the following:

(i) require Project Co to enter into and procure that the Proponents, any relevant Project Co Associates, and any relevant Proponent Associates (as reasonably nominated by the State) enter a deed substantially in the form of the Probity and Process Deed within 10 Business Days after receipt of any such request from the State;

(ii) seek further information or clarification from Project Co to determine whether to proceed with the proposed Augmentation and Project Co must provide, or procure that the relevant Proponent, Project Co Associate or Proponent Associate provides, any such information or clarification as reasonably required by the State within 10 Business Days after receipt of any such request from the State; and

(iii) require Project Co to prepare or assist the State to prepare a business case for the Augmentation to the level of detail typically required by the State for *Partnerships Victoria* projects and Project Co must prepare, or assist the State to prepare, that business case and submit it to the State within a reasonable period after receipt of any such request from the State.

2.3 Augmentation Process Deed

(a) If following:

(i) the issue of a Statement of Proposed Augmentation by the State to Project Co; or

(ii) the submission of an Initial Augmentation Proposal by Project Co to the State,

the State decides to proceed with an Augmentation Process in respect of the proposed Augmentation, the State and Project Co must agree:

(iii) the entity who will lead the development of the Augmentation, and be the State's primary point of contact for the Augmentation Process (whether Project Co or another entity) (**Lead Proponent**);

(iv) the entity who will deliver the Augmentation (whether Project Co or another entity) (**Delivery Proponent**); and

(v) the entity that will enter into the Augmentation Process Deed with the State,

(each a **Proponent** and together the **Proponents**).

(b) The Lead Proponent must have sufficient assets to support the Lead Proponent's obligations and liabilities under the Augmentation Process Deed.

(c) If Project Co is not a Proponent, the State may also require Project Co to enter into the Augmentation Process Deed for certain specified purposes including:

(i) to commit to enter into Augmentation Documents relevant to it;

(ii) to release the State from liabilities in respect of the Augmentation;

(iii) to licence Intellectual Property Rights to the State; and

(iv) to meet the other "Project Co" obligations as specified in this Schedule and included in the Augmentation Process Deed.

(d) Project Co must negotiate, and procure that the Proponents negotiate, in good faith with the State to agree and execute an Augmentation Process Deed.

(e) The parties acknowledge and agree that subject to section 1.2, the principles set out in Part 2 will be adopted for the purpose of agreeing an Augmentation Process Deed.

(f) Where the Proponent comprises more than one entity or is a consortium, the obligations and liabilities of the Proponent under the Augmentation Process Deed must apply to each Proponent jointly and severally unless otherwise agreed by the State.

3. Administration, meetings and provision of information

(a) The parties acknowledge and agree that the Augmentation Process is intended to be an interactive process including regular meetings and exchanges of information between the State and the Proponents (and any other party nominated by the State) to progress an Augmentation.

(b) The parties acknowledge and agree that the State may, acting reasonably, determine and notify Project Co and the Lead Proponent of the protocols which will govern the Augmentation Process and Project Co must comply and procure that the Proponents, Project Co Associates and the Proponent Associates comply with such protocols.

(c) Without limiting section 3(a) or section 3(b), Project Co acknowledges and agrees that at any time during an Augmentation Process, the State may (acting reasonably) request Project Co:

(i) to attend all meetings in respect of the Augmentation, including making available appropriately qualified personnel of any relevant Project Co Associate, Proponent, or Proponent Associate, to attend such meetings; and

(ii) to provide to the State and State Associates, any information, data and documents,

and Project Co must, and must procure that the relevant Project Co Associates, Proponents and Proponent Associates, attend those meetings at the time requested and provide that requested information, data and documents to the State within 10 Business Days after receipt of the request to do so from the State (or such longer period agreed between the parties acting reasonably taking into account the nature of such request).

(d) Where there are multiple Proponents, the Lead Proponent or another Proponent nominated by the Proponents must act on behalf of all Proponents in communications with the State so that the State has a single point of contact in respect of the Augmentation.

4. State's rights and discretions

(a) Notwithstanding any other term of this Deed, the State may elect:

(i) not to proceed with the Augmentation Process in respect of the proposed Augmentation; or

(ii) not to consider any proposed Augmentation the subject of an Initial Augmentation Proposal,

and will advise Project Co and the Lead Proponent (if not Project Co) accordingly.

(b) If the State notifies Project Co under section 4(a) that it does not intend to proceed with, the Augmentation Process in respect of a proposed Augmentation, then Project Co acknowledges and agrees that:

(i) the Augmentation Process will come to an end in respect of that proposed Augmentation;

(ii) other than to the extent expressly provided in any Augmentation Process Deed, any Probity and Process Deed or this Deed, Project Co will have no Claim against the State in respect of that proposed Augmentation, and Project Co will procure that no Project Co Associate, Proponent or Proponent's Associate makes any Claim against the State in respect of that proposed Augmentation; and

(iii) the State may elect at any time:

A. to perform all or any part of the proposed Augmentation itself;

B. to engage a State Associate to perform all or any part of the proposed Augmentation;

C. to engage any Project Co Associate, Proponent, or Proponent Associate directly to perform all or any part of the proposed Augmentation;

D. to issue a Modification Order or a Modification Request in relation to the proposed Augmentation; or

E. to take any other action it deems fit in respect of the proposed Augmentation.

5. Payment of Project Co

5.1 No payment prior to Augmentation Process Deed

Project Co acknowledges and agrees that it will not make and will procure that no Project Co Associate, Proponent or Proponent Associate makes any Claim against the State or any State Associate in connection with a proposed Augmentation or Augmentation Process including for payment of any costs or expenses incurred by Project Co, any Project Co Associate, any Proponent or any Proponent Associate in connection with the proposed Augmentation or Augmentation Process where such costs and expenses are incurred prior to the execution of an Augmentation Process Deed.

5.2 Indemnity

(a) Without limiting clauses 43.1, 43.2 and 43.5 of this Deed, and subject to clause 43.6 and clause 43.11 of this Deed, Project Co indemnifies the State, VicRoads and each State Associate from and against any Claim or Liability suffered or incurred by the State, VicRoads or relevant State Associates arising in connection with:

(i) any breach of this Schedule by Project Co;

(ii) any breach by Project Co, a Project Co Associate, Proponent or a Proponent Associate of a Probity and Process Deed; or

(iii) any Wilful Misconduct by Project Co, a Project Co Associate, a Proponent or a Proponent Associate in respect of an Augmentation or an Augmentation Process,

prior to execution of an Augmentation Process Deed in respect of the relevant Augmentation or Augmentation Process.

Part 2 – Augmentation Process Deed Principles

6. General

This Part 2 sets out the principles that, subject to section 1.2 are required to be included in the Augmentation Process Deed for an Augmentation.

7. Summary of content of Augmentation Process Deed

7.1 Content

The Augmentation Process Deed must address the following in respect of a proposed Augmentation:

(a) the State's objectives for the proposed Augmentation;

(b) the protocols and principles for ongoing interaction between Project Co, the Project Co Associates, the Proponents and the Proponent Associates on the one hand and the State and relevant State Associates on the other hand for the purposes of the Augmentation Process;

(c) the process and timetable for the procurement of the proposed Augmentation, in accordance with the principles set out in section 8;

(d) the Phases (if any) for procurement of the Augmentation, in accordance with the principles set out in section 15.1;

(e) the Milestones that are to be achieved in order to achieve Contract Close by the Date for Contract Close, in accordance with the principles set out in section 8.2;

(f) the form, content and timing of any State Brief in accordance with the principles set out in section 10;

(g) the contractual model for delivery of the proposed Augmentation in accordance with the principles set out in section 11;

(h) the commercial principles that apply to the funding and financing solution for the Augmentation, including the process and protocols for conducting a competitive Tender Process for any financial accommodation to be procured for the proposed Augmentation, in accordance with the principles set out in sections 13 and 14;

(i) the strategy for engaging with the Financiers to procure consents in accordance with the principles set out in section 12;

(j) the budget for the Augmentation Process Fee and Third Party Costs and the Augmentation Process Fee Cap and any Third Party Costs Cap in accordance with the principles set out in section 9;

(k) the required content and process for preparing the Augmentation Proposal in accordance with the principles in section 15;

(l) any Augmentation Equity IRR is required to be included in the Augmentation Process Deed if not otherwise determined by a Tender Process in accordance with the principles in sections 13 and 14;

(m) any Augmentation Management Fee in accordance with the principles set out in section 13.3;

(n) any Margin payable to any Key Subcontractor for the Augmentation, determined in accordance with section 13.4 where the work to be undertaken by the Key Subcontractor has not been the subject of a Tender Process;

(o) the circumstances in which the Augmentation Process Deed may be terminated by the State, in accordance with the principles set out in section 18;

(p) the consequences if the Augmentation Process Deed is terminated prior to Contract Close as set out in sections 18.2 to 18.8;

(q) the Intellectual Property Rights of the parties if the Augmentation Process Deed is terminated without achieving Contract Close as set out in section 19; and

(r) indemnities and releases that Project Co and the Proponents must provide in favour of the State and the State Associates in respect of the Augmentation Process and proposed Augmentation, in accordance with the principles set out in section 20.

7.2 Terms of the Project Deed

(a) The following clauses of this Deed must be incorporated into the Augmentation Process Deed, mutatis mutandis, unless otherwise agreed (which may include where the subject matter of the clause is already dealt with in a Probity and Process Deed):

(i) clause 2 (General rules of interpretation);

(ii) clause 7.2 (State Representative);

(iii) clause 7.3 (Project Co Representative);

(iv) clause 10 (Project and Site Information);

(v) clause 15.1 (State's right to enter, inspect and test);

(vi) clause 15.3 (State audits);

(vii) clause 16 (Workplace Health and Safety and Quality Assurance);

(viii) clause 55 (Confidential Information and privacy); and

(ix) clause 62 (Notices and bar to Claims).

(b) The parties may agree that other provisions of this Deed will be incorporated into any Augmentation Process Deed.

8. Augmentation timetable and administration

8.1 Timetable

(a) The Augmentation Process Deed must include the agreed process and timetable for the Augmentation Process.

(b) The Augmentation Process Deed must provide that the Proponents will carry out the activities to be undertaken by them in respect of the Augmentation Process in accordance with Best Industry Practices.

8.2 Milestones

(a) The Augmentation Process Deed will specify agreed milestones in order to achieve Contract Close by the Date for Contract Close (each a **Milestone** and together the **Milestones**).

(b) The Proponents and the State may agree that, on the achievement of certain Milestones, the Proponent will be entitled to payment of Third Party Costs in accordance with the principles set out in section 9.

(c) The Proponents' achievement of Milestones by a specified date may have a best endeavours or a hard obligation depending on the nature of the Milestone and the importance of timing in the context of the Augmentation.

(d) The Augmentation Process Deed should include a Date for Contract Close as a Milestone.

8.3 Working groups

(a) The Proponents and the State may agree to use working groups to progress matters relating to the relevant Augmentation and the Augmentation Process

(b) The Proponents and the State must agree on the requirements for any such working groups and set out such requirements in the relevant Augmentation Process Deed.

8.4 Proponent Augmentation Material

Project Co must, and must procure that the Proponents, Project Co Associates, and the Proponent Associates:

(a) provide to the State all Proponent Augmentation Material as required by the State; and

(b) if required by the State, make available the appropriate personnel to explain the content of the Proponent Augmentation Material.

8.5 Audit

The Proponents and Project Co must allow, and must procure that the Proponent Associates and Project Co Associates (as applicable) allow, the State and the State Associates to review and undertake audits to enable the State to verify compliance with the Augmentation Process Deed and any amounts payable under the Augmentation Process Deed.

9. Augmentation Process payments

9.1 General principles

(a) Except as otherwise expressly provided in an Augmentation Process Deed, none of the Proponents, the Proponent Associates, Project Co or the Project Co Associates are entitled to make any Claim against the State or any State Associate in connection with the Augmentation Process or any Augmentation including for payment for any costs or expenses incurred in connection with the Augmentation Process or any Augmentation.

(b) The State may agree to pay one of Project Co, a Proponent, or a management company used by the Proponents for its internal costs properly and reasonably incurred in managing the Augmentation Process (the **Augmentation Process Fee**), provided that if Project Co or the Management Services Contractor is managing the Augmentation Process, the Augmentation Process Fee may only be an amount that represents the material additional resources to those identified in the relevant Bid Project Plans that are required by Project Co or the Management Services Contractor (as applicable) to manage the Augmentation Process .

(c) Any Augmentation Process Fee payable by the State must be set out in the Augmentation Process Deed.

(d) The State may agree to reimburse:

(i) design fees and other third party fees as agreed by the State on the basis that the service provided by the relevant third party will result in the State obtaining valuable Material which may be used by the State (**Design Fees**); and

(ii) professional advisor fees and any other third party fees not contemplated in section 9.1(d)(i) (**Advisor Fees**), that are properly and reasonably incurred, payable by any of the Proponents and are directly attributable to the Augmentation Process including preparation of the Augmentation Proposal,

(together, **Third Party Costs**).

(e) Any Third Party Costs payable to any of the Proponents must be set out in the Augmentation Process Deed.

(f) Subject to sections 18.5, 18.6 and 18.7, the Proponents, the Proponent Associates, Project Co and the Project Co Associates will not be entitled to any fees, margins, contingencies, costs, expenses or returns in connection with the Augmentation Process or an Augmentation for the period prior to Contract Close other than:

(i) any Augmentation Process Fee; and

(ii) any Third Party Costs,

except to the extent otherwise expressly agreed by the State.

(g) The Augmentation Process Fee and Third Party Costs will only be payable

(i) to one Proponent (on behalf of all Proponents) rather than multiple Proponents; and

(ii) where the Proponents have:

A. diligently pursued the development of the Augmentation;

B. acted in good faith in the development of the Augmentation; and

C. taken reasonable and proper steps to develop the Augmentation.

For the avoidance of doubt, neither the Augmentation Process Fee nor any Third Party Costs will be payable by the State where a Proponent abandons the development of, or decides not to proceed with, an Augmentation.

(h) The Augmentation Process Fee and Third Party Costs must be calculated on an open book basis.

9.2 Timing and reimbursement of the Augmentation Process Fee

(a) The Augmentation Process Fee must not include costs that are already included or allowed for in the Service Payment or for any resources which are already required to be committed to the Project.

(b) The Proponents must prepare a detailed budget for the Augmentation Process Fee to be included in the Augmentation Process Deed including details of the budget allocated to the relevant Proponent.

(c) The Augmentation Process Deed must include a separate cap on the amount payable by the State for the Augmentation Process Fee that must not be exceeded (**Augmentation Process Fee Cap**).

(d) The Augmentation Process Fee Cap can only be adjusted for material changes to the proposed Augmentation made by the State after the execution of the Augmentation Process Deed that are the equivalent to Modifications under the Deed and require material additional resourcing by the relevant Proponent, and then only by an amount agreed by the State, acting reasonably.

(e) None of the Proponents, Proponent Associates, Project Co or Project Co Associates will be entitled to make any Claim against the State or any State Associates for any costs or expenses incurred by any of them in connection with the Augmentation (including Augmentation Process Fees) for the period prior to Contract Close in excess of the relevant Augmentation Process Fee Cap.

(f) The Augmentation Process Fee will only be payable on termination of the Augmentation Process Deed prior to Contract Close in accordance with sections 18.3 and 18.4, or upon the achievement of Contract Close.

9.3 Timing and reimbursement of the Third Party Costs

(a) The Third Party Costs must not include any amounts payable as an Augmentation Process Fee or that would be payable by Project Co or a Project Co Associate during the Term notwithstanding the Augmentation.

(b) Third Party Costs will typically include consultant costs and must not include any Key Subcontractor costs or Tenderer costs except where agreed by the State and where:

(i) the Augmentation requires significant investment by Key Subcontractors or Tenderers; and

(ii) payment of such Third Party Costs will deliver demonstrable value for money to the State.

(c) The Proponents must prepare a detailed budget for the Third Party Costs to be included in the Augmentation Process Deed including details of the budget allocated to the relevant third party.

(d) The Augmentation Process Deed must include separate caps on the amount payable by the State for:

(i) Design Fees (**Design Fees Cap**); and

(ii) Advisor Fees,

that must not be exceeded (each a **Third Party Cost Cap**).

(e) Each Third Party Cost Cap can only be adjusted for material changes to the proposed Augmentation made by the State after the execution of the Augmentation Process Deed that are the equivalent of Modifications under the Deed and require material additional resourcing by the relevant third party and then only by an amount agreed by the State acting reasonably.

(f) The Proponents and Project Co must not make, and must procure that no Proponent Associate or Project Co Associate makes, any Claim against the State or any State Associate for any Design Fees or Advisor Fees incurred by any of them;

(i) in connection with the Augmentation for the period prior to Contract Close in excess of the relevant Third Party Cost Cap; or

(ii) other than in accordance with section 9.3(g).

(g) If the State agrees to pay the Proponents for Third Party Costs, unless otherwise expressly provided in the Augmentation Process Deed, the State will only pay Third Party Costs:

(i) upon achievement of certain agreed Milestones to incentivise the achievement of those Milestones, provided that:

A. any agreed Milestone payment in respect of Third Party Costs must be subject to an agreed maximum or capped amount; and

B. the State has received value for money for any such payment, including the licence granted to the State respect of any Intellectual Property Rights in the Proponent Augmentation Material in accordance with section 19; or

(h) on termination of the Augmentation Process Deed prior to Contract Close in accordance with section 18.5, 18.6 or 18.7 (as applicable).

(i) Third Party Costs must not include any amounts that should be included in the Augmentation Management Fee or Augmentation Process Fee.

(j) Third Party Costs will not be payable on Contract Close as it is the State's expectation that any such costs will be included as part of the Final Augmentation Proposal provided by the Proponent. Any Third Party Costs included as part of the Final Augmentation Proposal provided by the Proponent must not exceed the relevant Third Party Cost Cap.

9.4 Open book

Where this Schedule or the Augmentation Process Deed refers to calculations or payments being made on an "open book basis" this means:

(a) providing a reasonable breakdown of the calculation of all relevant preliminaries, labour, consultant fees, equipment, materials, subcontract, finance and other costs, Margins and receipts of Project Co, any Proponent, any Project Co Associate and any Proponent Associate (as applicable) in a clear and transparent manner;

(b) using best endeavours to provide a breakdown of any amounts payable under any relevant subcontracts; and

(c) providing other information reasonably requested by the State including reasonably available source documents including invoices and timesheets required to verify such calculation.

9.5 Set off

The State may deduct from any amount due and payable by the State to a Proponent under the Augmentation Process Deed:

(a) any amount due and payable by the Proponent or any Proponent Associate to the State; and

(b) the amount of any Claim that the State may have against the Proponent or any Proponent Associate.

10. State Brief

The parties must agree and set out in the Augmentation Process Deed:

(a) the Milestone upon which the State Brief may be issued by the State; and

(b) the form and content of any such State Brief which, unless otherwise agreed by the parties (acting reasonably having regard to the nature and the extent of the Augmentation), should be consistent with the then current Partnerships Victoria Request for Proposal template as published on the Partnerships Victoria website.

11. Contractual model

(a) The form of contract for the delivery of an Augmentation will be:

(i) as specified in the State Brief; or

(ii) otherwise agreed between the parties.

(b) Any contract proposed for the delivery of the Augmentation must have terms that are consistent with the risk allocation in this Deed or the Standard Form Project Deed save that as between the State on the one hand and the Proponents and Project Co on the other hand, the Proponents and Project Co will bear all interface risk between the Project and the Augmentation.

12. Existing Financiers

(a) Project Co must use reasonable endeavours to procure any consents required from the Financiers in connection with the relevant Augmentation (including in relation to entry into the Augmentation Documents).

(b) The Proponents must develop a strategy for engaging with the Financiers, or to refinance debt if applicable, which must be approved by the State and included in the Augmentation Process Deed.

13. Augmentation Price and Funding

13.1 Funding for the Augmentation

(a) Project Co acknowledges and agrees that value for money is a key consideration for the State in evaluating and agreeing to an appropriate funding and financing solution for an Augmentation.

(b) The commercial principles that will apply to the funding and financing solution for an Augmentation, which are to be reflected in the Augmentation Documents, must be agreed by the parties and must be consistent with those required by the PV Requirements.

(c) Any funding or financing required for a proposed Augmentation must be procured in accordance with section 14 and included in the Final Augmentation Proposal.

13.2 Augmentation Equity IRR

(a) If the Augmentation will include the contribution of equity and, in accordance with the principles set out in section 14.1, the parties determine not to undertake a Tender Process to procure the equity for the Augmentation, the pre-tax equity IRR for the Augmentation must be included in the Augmentation Process Deed and must not exceed the maximum Augmentation Equity IRR (**Augmentation Equity IRR Cap**).

(b) Unless the State materially changes the scope or risk allocation of the Augmentation from that identified in this Deed or the Standard Form Project Deed or the State otherwise agrees, any Augmentation Equity IRR included in the Augmentation Process Deed must be included in the Final Augmentation Proposal, unadjusted, and must not exceed the Augmentation Equity IRR Cap.

13.3 Augmentation Management Fee

(a) The Augmentation Process Deed must set out any agreed Augmentation Management Fee which will be determined on an open book basis using methods that will be able to demonstrate value for money to the State in respect of the proposed Augmentation Management Fee, including benchmarking in respect of comparable reference projects.

(b) Unless the State materially changes the scope of the Augmentation or otherwise agrees, any Augmentation Management Fee included in the Augmentation Process Deed must be included in the Final Augmentation Proposal, unadjusted.

(c) The Augmentation Management Fee must not include any Third Party Cost or any part of the Augmentation Process Fee.

(d) Neither Project Co nor the Proponents will be entitled to be paid any amount in respect of the Augmentation Management Fee if the Augmentation Process Deed is terminated prior to Contract Close.

(e) The Augmentation Management Fee must be calculated on an open book basis.

(f) The Augmentation Management Fee will only be payable to one Proponent (on behalf of all Proponents) rather than multiple Proponents.

13.4 Margin

(a) Subject to section 13.3:

(i) if, in accordance with the principles set out in section 14.1, the parties determine to procure a Key Subcontractor to undertake any part of the Augmentation without a Tender Process, the Margin of that Key Subcontractor for the work it will undertake as part of the Augmentation must be included in the Augmentation Process Deed and must not exceed the Construction Margin and the Maintenance Margin (as applicable); and

(ii) the Margin of Project Co for the work it will undertake as part of the Augmentation must be included in the Augmentation Process Deed and must not exceed the Project Co Margin.

(b) Unless the State materially changes the scope of the Augmentation Process Deed, or otherwise agrees, any Key Subcontractor Margin or Project Co Margin for the Augmentation included in the Augmentation Process Deed must be included in the Final Augmentation Proposal, unadjusted and must not exceed the Construction Margin, Maintenance Margin or Project Co Margin (as applicable).

14. Key principles for Tender Processes

14.1 General principles

(a) Subject to section 14.1(b), the Proponents must undertake a competitive tender process for all parts of the relevant Augmentation other than the management of the delivery of the Augmentation in respect of which the Augmentation Management Fee is payable (**Tender Process**).

(b) In only exceptional circumstances and if the Proponents are able to demonstrate to the satisfaction of the State that it is not possible or will not deliver the State value for money to run a competitive Tender Process for any part of an Augmentation, the Proponents must propose another process, and demonstrate that the outcome of this alternative process will deliver at least the same value for money to the State as a competitive Tender Process.

(c) If the State agrees to an alternative process to a Tender Process for the procurement of any part of the Augmentation (**Alternative Process**):

(i) any such Alternative Process must be set out in the Augmentation Process Deed and must be undertaken on a transparent and open book basis;

(ii) subject to clause 14.1(c)(iii), the price outcome of the Alternative Process will not be subject to further adjustment, other than to the extent of a change in scope of the Augmentation agreed to by the State; and

(iii) if the State notifies the Proponents that it is dissatisfied with the Alternative Process (including the progress of the Alternative Progress) or the outcome of the Alternative Process, the Proponents must cease the Alternative Process (if not already concluded) and instead undertake a Tender Process for the relevant part of the Augmentation.

(d) Without limiting sections 9.2and 9.3, none of Project Co, the Proponents, the Project Co Associates or the Proponent Associates are entitled to make any Claim against the State or any State Associate in connection with a Tender Process or any Alternative Process for an Augmentation.

14.2 Tender Process principles

A clear structure and process must be set out in the Augmentation Process Deed for each Tender Process in accordance with the following principles:

(a) the Proponents will be responsible for conducting the Tender Process, including preparing the tender strategy, timetable, evaluation plan and assessment criteria;

(b) the Tender Process must be completed on a competitive, arm's length, transparent and open book basis;

(c) tender submissions must meet the State Brief requirements for the relevant Augmentation;

(d) Tenderers must demonstrate value for money;

(e) selection of a preferred Tenderer must be based on competent and fully detailed analysis of the respective tender submissions;

(f) there must be no bias and no perception of bias;

(g) the Tender Process must be fair and be seen to be fair to all participants;

(h) the State may appoint a probity auditor (which may be the State Probity Auditor as defined in the Probity and Process Deed) or require the Proponents to appoint a probity advisor to oversee the Tender Process;

(i) confidentiality must be upheld at all stages of the Tender Process and effective security measures must be maintained to safeguard the Tenderer Information from unauthorised access or use;

(j) key decisions must be well documented such that the results are transparent and auditable in accordance with any applicable Laws and Standards;

(k) the State must approve each Tender Process before it is commenced by the Proponents;

(l) the State must have full visibility of each Tender Process, including:

  (i) any Tenderer Information and any material or communications produced by Project Co, any Proponent, any Project Co Associate or any Proponent Associate in relation to the Tender Process; and

  (ii) a right to attend and actively participate in all negotiations and meetings with Tenderers;

(m) all tender documentation must be approved by the State prior to release and incorporate any State requirements, including with respect to probity requirements and maintaining the integrity of the Tender Process;

(n) the Proponents must ensure that there are no conflicts of interest or perceived conflicts of interest associated with the Tender Process, or if there is a potential or perceived conflict of interest, that appropriate and customary safeguards acceptable to the State (acting reasonably) are in place to manage that potential or perceived conflict of interest;

(o) Related Bodies Corporate or shareholders of Project Co, any Proponent, Proponent Associate, any Key Subcontractor or any Significant Subcontractor can only tender for packages the subject of a Tender Process if approved by the State;

(p) following receipt of tenders, the Proponents must provide the State with a detailed explanation of the reasons for its recommendation or proposal (including a comparative analysis of the tender received from a preferred Tenderer and each other tender received);

(q) the Proponents must not select a preferred Tenderer without State approval;

(r) the State may reject the Proponents' preferred Tenderer;

(s) at the request of the State from time to time, the Proponents must provide any documents, records and other information that the State reasonably requires to evidence compliance by the Proponents with the requirements of the Augmentation Process Deed, including providing any tender submitted by a Tenderer, communications with the Tenderers and final contracts (including downstream tenders and contracts);

(t) the Proponents must notify the State immediately if they become aware of any suspected or actual breach of any Tender Process arrangements and take all reasonable steps to prevent or stop any such suspected or actual breach of the Tender Process arrangements; and

(u) Project Co must maintain, or must procure that the Proponents maintain, records of the Tender Process and all decisions made by Project Co, the Proponents, any Project Co Associates or any Proponent Associates during the Tender Process to allow for independent auditing of the Tender Process and review and consideration by the State, including:

(i) minutes of meetings;

(ii) the Tenderer Information;

(iii) correspondence sent by or to Project Co, any Proponent, any Project Co Associate or any Proponent Associate in relation to the Tender Process or the Augmentation;

(iv) papers presented to any working group referred to in this Schedule; and

(v) assessment reports,

(**Tender Process Principles**).

15. Augmentation Proposal

15.1 Phases

(a) The Augmentation Proposal may be submitted in stages or updated as set out in the Augmentation Process Deed, however a Final Augmentation Proposal must be submitted by the Proponents in accordance with the Augmentation Process Deed and the State Brief (or any other process agreed by the parties) which will be evaluated by the State for the purposes of determining whether to implement the relevant Augmentation.

(b) The parties must agree on the phases for the procurement of the Augmentation, which may include the preparation and submission by Project Co or the Proponents (as the case may be) of Augmentation Proposal(s) and evaluation of Augmentation Proposals by the State, negotiation of the Augmentation Documents and the achievement of Contract Close, (each a **Phase** and together the **Phases**).

15.2 Key inclusions in the Augmentation Proposal

(a) The Proponents must submit a Final Augmentation Proposal in a form and with sufficient information to enable the State to determine whether or not to proceed with the Augmentation, including:

(i) being in the form, and containing the information and documents, required by the Augmentation Process Deed and the State Brief (or any other process as agreed by the parties);

(ii) being of a quality and level of detail similar to that which would be submitted as part of a proposal in response to a request for proposal for a Partnerships Victoria PPP project as set out in the Partnerships

Victoria Request for Proposal template as published on the Partnerships Victoria website at the relevant time;

(iii) any offers received from a Tender Process for the relevant Augmentation;

(iv) a financial model for the Augmentation in a form and containing a level of detail similar to that required by the Partnerships Victoria Request for Proposal template as published on the Partnerships Victoria website at the relevant time;

(v) drafts of all Augmentation Documents proposed to be entered into in connection with the relevant Augmentation;

(vi) being a binding offer that is capable of acceptance by the State on its terms; and

(vii) being submitted by the Proponents to the State in accordance with the timetable set out in the State Brief (or any other process as agreed by the parties),

(together the **Final Augmentation Proposal**).

(b) The State may ask clarification questions in respect of any Augmentation Proposal and the Proponents must, and must procure that the relevant Proponent Associates, promptly consider and respond to any such clarification question.

15.3 Commercial Development

(a) The Proponents must, in their Augmentation Proposal, include full details of any commercial development they propose to deliver under, or in conjunction with, the relevant Augmentation (**Commercial Development**).

(b) The State will take no risk on delivery of the Commercial Development or on any interface risk between such Commercial Development and the relevant Augmentation or the Project.

16. Evaluation and negotiation of Final Augmentation Proposals

(a) Provided all Milestones which are required to have been achieved prior to the State evaluating the Final Augmentation Proposal have been achieved (or waived by the State in accordance with the Augmentation Process Deed), the State will undertake its evaluation and value for money assessment of the Final Augmentation Proposal.

(b) The State will determine how, or the principles for how, the Final Augmentation Proposal will be evaluated by the State subject to any express provisions in relation to such evaluation set out in the relevant Augmentation Process Deed or State Brief.

(c) Evaluation criteria for the Final Augmentation Proposal will be of a quality and level of detail similar to the evaluation criteria contained in the request for proposal for a Partnerships Victoria PPP Project as set out the Partnerships Victoria Request for Proposal template as published on the Partnerships Victoria website at the relevant time.

(d) Subject to section 17, if the State evaluates the Final Augmentation Proposal as acceptable, the Proponents must negotiate in good faith to finalise the Augmentation Documents, in order to achieve Contract Close by the Date for Contract Close.

17. Privileges and discretions of the State

(a) In addition to its rights set out elsewhere in the Augmentation Process Deed, including its right to terminate the Augmentation Process Deed at any time, the State will have the right to:

(i) accept or reject all or part of an Augmentation Proposal (whether or not an Augmentation Proposal meets the evaluation criteria);

(ii) change the Augmentation (substantially or otherwise);

(iii) suspend the Augmentation Process at any time or the further participation of Project Co, any Proponent, any Project Co Associate or any Proponent Associate in the Augmentation Process;

(iv) request additional information from the Proponents in connection with the Augmentation, whether it has been submitted to the State or not and the Proponents must provide and must procure that Project Co, any relevant Proponent Associate or any relevant Project Co Associate provides, that information requested within 10 Business Days after receipt of request from the State;

(v) adopt different procedures for, or methods of, evaluation, negotiation, discussion or engagement with the Proponents and may alter these procedures and methods at any time;

(vi) impose additional obligations on Project Co, any Proponent, any Proponent Associate or any Project Co Associate if the State reasonably determines that those additional obligations are necessary or desirable to ensure (or to ensure the perception of) confidentiality, competitiveness or probity with respect to the Augmentation Process or the Augmentation and Project Co, the Proponents, the Project Co Associates and Proponent Associates (as applicable) must comply with those obligations; and

(vii) take such other action as it deems fit in relation to the Augmentation Process.

(b) Notwithstanding the terms of any Augmentation Process Deed and this Deed, the State Augmentation Documents are not binding on the State until they are executed by all parties to them and then only to the extent stated in the State Augmentation Documents.

18. Termination of the Augmentation Process Deed

18.1 Termination of the Augmentation Process Deed

Unless otherwise expressly provided, an Augmentation Process Deed must terminate on the earlier of:

(a) Contract Close; or

(b) the termination of the Augmentation Process Deed in accordance with section 18.2, section 18.3 or section 18.4.

18.2 Termination by State for failure to pass Milestone or for Proponent default

Unless otherwise expressly provided in an Augmentation Process Deed, the State may terminate any Augmentation Process Deed if:

(a) a Milestone is not achieved by the date such Milestone is required to be achieved as set out in the relevant Augmentation Process Deed (where the Proponents have a hard obligation to achieve that Milestone) subject to any cure period or extension of time regime agreed by the parties and set out in the relevant Augmentation Process Deed;

(b) any Proponent does not otherwise comply with the terms of the Augmentation Process Deed and the Proponents do not Cure such non-compliance (or, where the non-compliance is not capable of Cure, comply with any reasonable requirements of the State (if any) to overcome the consequences of, or compensate the State for, the non-compliance) within the time period set out in the Augmentation Process Deed, or where no time period is set out in the Augmentation Process Deed such reasonable period determined by the State and notified to the Proponents in a notice from the State alleging the non-compliance; or

(c) an Augmentation Proposal submitted by the Proponents to the State is not substantially in accordance with the terms of the Augmentation Process Deed or State Brief.

18.3 Termination for convenience

The State may terminate the Augmentation Process Deed:

(a) if the Final Augmentation Proposal is not accepted by the State in accordance with the terms of the Augmentation Process Deed or State Brief; or

(b) at any time for its convenience.

18.4 Termination for unforeseeable neutral event

Either party may terminate the Augmentation Process Deed on notice to the other where the activities of the parties under the Augmentation Process Deed are suspended for an extended period of time which will be specified in the Augmentation Process Deed but must not be less than 180 continuous days due to an unforeseeable event that was beyond the reasonable control of the Proponents, the Proponent Associates, Project Co, the Project Co Associates, the State and the State Associates.

18.5 Payment on termination for failure to pass Milestone or for Proponent default

If an Augmentation Process Deed is terminated under section 18.2:

(a) the State will pay the Proponents, subject to its rights of set-off set out in the Augmentation Process Deed:

(i) to the extent not already paid, any Third Party Costs that are due and payable in accordance with the Augmentation Process Deed in respect of any Milestones that were achieved prior to the termination under the Augmentation Process Deed which, together with all other Third Party Costs that have been paid by the State to the date of termination, must not exceed the relevant Third Party Cost Cap; and

(ii) to the extent not already paid, all other Design Fees properly and reasonably incurred in accordance with the Augmentation Process Deed up to the date of termination which, together with the amount payable under section 18.5(a)(i) in respect of Design Fees and all other Design Fees that have been paid by the State to the date of termination, must not exceed the Design Fees Cap; and

(b) the State will not pay the Proponents any other amount, including any amount in respect of the Augmentation Process Fee.

18.6 Payment on termination for convenience

If an Augmentation Process Deed is terminated under section 18.3, the State will pay the Proponents, subject to its rights of set-off set out in the Augmentation Process Deed:

(a) to the extent not already paid, all Third Party Costs properly and reasonably incurred in accordance with the Augmentation Process Deed up to the date of termination which, together with all other Third Party Costs that have been paid by the State to the date of termination, must not exceed the Third Party Cost Cap;

(b) the amount of the Augmentation Process Fee properly and reasonably incurred in accordance with the Augmentation Process Deed up to the date of termination which must not exceed the Augmentation Process Fee Cap; and

(c) an additional amount on account of loss of profit but only to the extent specified in the Augmentation Process Deed.

18.7 Payment on termination for unforeseeable neutral event

If an Augmentation Process Deed is terminated under section 18.4, the State will pay the Proponents, subject to its rights of set-off set out in the Augmentation Process Deed:

(a) to the extent not already paid, Third Party Costs that are due and payable in accordance with the Augmentation Process Deed in respect of any Milestones that were achieved prior to termination which, together with all other Third Party Costs that have been paid by the State to the date of termination, must not exceed the relevant Third Party Cost Cap;

(b) to the extent not already paid, all other Design Fees properly and reasonably incurred in accordance with the Augmentation Process Deed up to the date of termination which, together with the amount payable under section 18.7(a) in respect of Design Fees and all other Design Fees that have been paid by the State to the date of termination, must not exceed the Design Fees Cap; and

(c) the amount of the Augmentation Process Fee properly and reasonably incurred in accordance with the Augmentation Process Deed up to the date of termination which must not exceed the Augmentation Process Fee Cap.

18.8 State's rights after termination

If an Augmentation Process Deed is terminated (other than due to Contract Close occurring):

(a) the Proponents and Project Co will have no Claim against the State in respect of that proposed Augmentation, and will procure that no Project Co Associate or Proponent Associate makes a Claim against the State in respect of that proposed Augmentation, other than to the extent expressly provided in the Augmentation Process Deed, any Probity and Process Deed or this Deed;

(b) the State may elect, other than to the extent expressly provided in the Augmentation Process Deed:

(i) not to proceed with the proposed Augmentation;

(ii) to perform all or any part of the proposed Augmentation itself;

(iii) to take over any Tender Process or any part of a Tender Process from that point, and conduct the Tender Process on its own;

(iv) to engage a State Associate to perform all or any part of the proposed Augmentation;

(v) to engage a Proponent, a Proponent Associate or a Project Co Associate directly to perform all or any part of the proposed Augmentation;

(vi) issue a Modification Order or a Modification Request in relation to the relevant proposed Augmentation; or

(vii) to take any other action it deems fit;

(c) the Proponents and Project Co must, and must ensure that the Proponent Associates and Project Co Associates, provide the State and any State Associate with all reasonable assistance required by the State in exercising its rights under section 18.8(b);

(d) the Proponents and Project Co must procure the novation of any agreements entered into by Project Co, the Proponents, any Project Co Associate or any Proponent Associate in relation to the relevant Augmentation as the State may nominate, to the State or any nominee of the State and the terms of the Augmentation Process Deed and any such agreement must be drafted to facilitate those novations;

(e) any indemnity provided in accordance with section 20 will not apply in respect of a Tender Process or part of a Tender Process that is taken over by the State, for the period of time after which it is taken over by the State, but without limiting any right or entitlement arising in respect of a Tender Process prior to the State taking over such Tender Process;

(f) this Deed will continue to apply (whether or not the State takes over all or any part of a Tender Process); and

(g) the Proponents will be entitled to be paid their reasonable internal and external costs in complying with their obligations under section 18.8(c) to be determined on an open book basis.

19. Intellectual Property

19.1 State Augmentation Information licence

Under the Augmentation Process Deed, the State will grant to the Proponents and Project Co an irrevocable, royalty free, non-exclusive licence to exercise the Intellectual Property Rights in the State Augmentation Information solely for the Permitted Purpose which:

(a) terminates upon termination of the Augmentation Process Deed;

(b) may not be sub-licensed other than to a Proponent Associate or Project Co Associate; and

(c) is subject to such conditions as the State may reasonably impose from time to time.

19.2 Proponent Augmentation Material

(a) Subject to section 19.3(b), under the Augmentation Process Deed the Proponents and Project Co must, and must procure that the Proponent Associates and Project Co Associates, grant to the State a perpetual, irrevocable, non-exclusive, worldwide, royalty free licence (with a right to sublicense) to exercise all Intellectual Property Rights in the Proponent Augmentation Material for any purposes of or in connection with:

(i) reviewing, assessing and deciding whether to proceed with the Augmentation (or any modified version of it which is being pursued by a Proponent);

(ii) to the extent those Intellectual Property Rights are Background IP (other than Excluded IP) subsisting in subject matter forming part of the Augmentation, using, dealing with, maintaining, remedying defects or omissions in, modifying and developing the subject matter in which that Background IP subsists; and

(iii) in respect of all other such Intellectual Property Rights (other than Excluded IP):

A. the procurement, funding, financing, design, supply, construction, installation, production, commissioning, completion, operation, maintenance, repair and alteration of the Augmentation (or any part of the Augmentation), or any other augmentation in Victoria or reviewing, assessing and deciding whether to proceed with the Augmentation (or any modified version of it which is being pursued by the Proponent);

B. the procurement, funding, financing, design, supply, construction, installation, production, commissioning, completion, operation, maintenance, repair and alteration of any thing (including infrastructure, equipment, computer hardware, computer software and computer or telecommunications systems) which interfaces or interoperates with, or which is (in whole or in part) located under, on, above or adjacent to any infrastructure implemented in connection with the Augmentation (or any modified version of it which is being pursued by the Proponent); or

C. any other project, infrastructure, augmentation, initiative or thing undertaken by or on behalf of the State within Victoria.

(b) Under the Augmentation Process Deed, the Proponents and Project Co will warrant to the State that:

(i) no rights (including Intellectual Property Rights) of any person will be infringed or breached by:

A. the use of the Proponent Augmentation Material; or

B. the use or exercise of any Intellectual Property Rights licensed to the State pursuant to this section 19,

by the State, its Associates or any or any person nominated or authorised by the State; and

(ii) it owns, or has the authority to grant the rights granted in accordance with this section 19 in connection with the Intellectual Property Rights licensed under this section 19 and neither:

A. the exercise of those rights by the State, its Associates or any person nominated or authorised by the State; nor

B. the possession or use of any materials in which those rights subsist in connection with the Augmentation Process Deed,

in accordance with the Augmentation Process Deed will give rise to any Liability on the part of the State, its Associates or any person nominated or authorised by the State, including to pay any compensation (including any royalty) to any person, or will give rise to a right entitling any person to make a Claim against the State, its Associates or any person nominated or authorised by the State for any attribution or acknowledgment or rectification in relation to the Intellectual Property Rights or any materials in which they subsist.

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19.3 State's further Intellectual Property Rights

(a) Nothing in this Deed, any Augmentation Process Deed or any Augmentation Document prevents the State or any State Associate from:

(i) exercising the Intellectual Property Rights in the State Augmentation Information;

(ii) exercising the Intellectual Property Rights created by the State or any State Associate as part of the Augmentation Process (without limiting section 19.3(b), other than to the extent they are Intellectual Property Rights in the Proponent Augmentation Material); and

(iii) using any know-how generated through its participation in the Augmentation Process (without limiting section 19.3(b), other than to the extent they are Intellectual Property Rights in the Proponent Augmentation Material).

(b) Subject to section 19.3(c), if an Augmentation Process Deed is terminated other than due to Contract Close occurring, the Proponents and Project Co must, and must procure that the Proponent Associates and Project Co Associates, grant a worldwide, permanent, perpetual, irrevocable, transferable, royalty-free, sub licensable licence to the State to exercise:

(i) the Intellectual Property Rights in all of the Proponent Augmentation Material, other than Excluded IP, for any lawful purpose required by the State; and

(ii) to the extent that the Intellectual Property Rights referred to in section 19.3(b)(i) cannot reasonably be exercised without Material in which Background IP subsists, the Intellectual Property Rights in that Background IP.

(c) The licence granted under section 19.3(b) in respect of an Augmentation will arise on the date of termination of the Augmentation Process Deed.

(d) In order to ensure the State has the full benefit of the licence granted under section 19.3(b), the Proponents and Project Co must, and must procure that the relevant Project Co Associates and Proponent Associates for a period of 6 months after the termination of the Augmentation Process Deed:

(i) provide all reasonable access required by the State to the Proponents', Project Co's, Project Co Associates' and the Proponent Associates' databases, programmes and other software pursuant to which the Intellectual Property Rights in the Proponent Augmentation Material (other than Excluded IP) were created, including in native application, well ordered and in a manner that is able to be readily used; and

(ii) make available, and continue to make available, to the State an appropriate number of resources, having sufficient skills, qualifications and experience for the purposes of the State being able to understand and fully utilise the Intellectual Property Rights in the Proponent Augmentation Material (other than Excluded IP).

(e) Project Co, the Proponents, the Project Co Associates and the Proponent Associates (as applicable) will be entitled to be paid their reasonable internal and external costs properly and reasonably in complying with their obligations under section 19.3(d) to be determined on an open book basis.

20. Liability and Indemnity

(a) Unless otherwise agreed by the State, the Augmentation Process Deed must require the Proponents to indemnify the State and each State Associate from and against any Claim or Liability suffered or incurred by the State or any State Associate arising in connection with:

(i) any breach of the Augmentation Process Deed by the Proponents;

(ii) any Wilful Misconduct by Project Co, any Project Co Associate, any Proponent or any Proponent Associate in relation to an Augmentation or an Augmentation Process;

(iii) any Tender Process undertaken in connection with an Augmentation, except to the extent the State takes over a Tender Process pursuant to section 18.8(b)(iii) (and without limiting the Proponents' liability for acts or omissions occurring prior to the State taking over the Tender Process); or

(iv) any Commercial Development proposed to be undertaken in connection with an Augmentation.

(b) Unless otherwise agreed by the State, the Proponents' liability to the State under section 20(a) should not be limited by any exclusion of the Proponents' liability for Indirect or Consequential Loss.

Appendix 1 - Probity and Process Deed

Augmentation
Probity and Process Deed

Outer Suburban Arterial Roads Program – Western Package

Contents

1. Definitions and interpretation 4
1.1 Definitions 4
1.2 Interpretation 8
2. Process Matters 10
2.1 Single point of contact 10
2.2 Contact with the State and Government Stakeholders 10
2.3 Clarifications and other information 11
2.4 Meetings between State and the Proponent 11
3. Stakeholder and community engagement 12
4. Probity 13
4.1 State Probity Advisor 13
4.2 Co-operate 13
4.3 Proponent probity checks 13
4.4 Responsibility for probity 14
5. Management of Associates 14
6. Conflicts 14
6.1 Conflicts 14
6.2 Proponent must make enquiries 15
7. Security and control of State Confidential Information 15
7.1 Security 15
7.2 Assistance in proceedings 15
7.3 State's right to terminate holding of State Confidential information 15
7.4 Consequences of right to terminate holding of State Confidential Information 15
7.5 Effect of such termination on accrued rights 16
7.6 Additional obligations unaffected 16
7.7 Confidentiality obligations continue after assignment or termination 16
8. Use and disclosure of State Confidential Information by the Proponent 16
8.1 Use of State Confidential Information 16
8.2 Disclosure of State Confidential Information 17
8.3 Recipient obligations 17
8.4 Exclusion from obligation of confidentiality 17
8.5 Disclosure required by Law 18
8.6 Indemnity 18
9. Disclaimer and exclusion of Liability - State Confidential Information 18
9.1 State Confidential Information 18
9.2 State not liable 20
9.3 Liability unaffected 20
10. Disclaimer and exclusion of Liability - Proponent Information 21
11. Augmentation Proposal 21
11.1 Cost of Augmentation Proposal 21
11.2 Proprietary information 21
11.3 Discretion of the State 22
11.4 No warranty as to feasibility 23
11.5 Intellectual Property Rights 23
11.6 Next steps 24
12. Termination 25
13. Notices 25

13.1 General 25
13.2 Time of receipt 25
13.3 Address for Notices....26

14. Delegation....26

14.1 Right to delegate....26
14.2 Notice of delegation 26
14.3 Revocation or amendment of delegation 26
14.4 No limitation of State obligations....26
14.5 Unfettered discretion....27

15. Publicity 27

16. Survival of deed 27

17. General Provisions 27

17.1 No partnership or joint venture....27
17.2 Waiver 28
17.3 Indemnity held on trust....28
17.4 Damages not an adequate remedy....28
17.5 Cost of performing obligations 28
17.6 Entire Agreement 28
17.7 Successors....28
17.8 Further assurance 28
17.9 Benefit of deed 29
17.10 Counterparts 29
17.11 Governing Law and jurisdiction....29

Probity and Process Deed

Date

Parties

Department of Treasury and Finance (**DTF**) for and on behalf of the Crown in right of the State of Victoria (**State**)

and

Proponent

[Note: Proponent may not be Project Co. Where not Project Co, consider whether Project Co should also be a party to this Deed or an Associate to the Proponent on a Project specific basis]

Background

A. The State has required the Proponent to enter into this deed in accordance with the Augmentation Process Schedule.

B. This deed sets out terms and conditions in relation to probity, confidentiality, stakeholder engagement and other process matters applicable to the Proponent in relation to the Augmentation Proposal and the Augmentation.

[Note: To be completed on a project specific basis]

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this deed:

Associate:

(a) in the case of the State, means any Government Agency and any officer, employee, agent, contractor, consultant, nominee, licensee or adviser of any Government Agency (other than the Proponent or any of its Associates) or the State;

(b) in the case of the Proponent, means any Related Body Corporate, and any officer, employee, agent, contractor, consultant, nominee, financier, insurer, licensee or adviser of the Proponent or a Related Body Corporate that is involved in the Augmentation Process or the Augmentation or the Project; and

(c) in respect of any other entity, means any Related Body Corporate, and any officer, employee, agent, contractor, consultant, nominee, financier, insurer, licensee or adviser of that entity or a Related Body Corporate that is involved in the Augmentation Process or the Augmentation or the Project.

Associate Obligations has the meaning given in clause 5.

Augmentation has the meaning given in the Particulars.

Augmentation Process has the meaning given in the Augmentation Process Schedule.

Augmentation Process Deed has the meaning given in the Augmentation Process Schedule.

Augmentation Process Schedule has the meaning given in the Project Deed.

Augmentation Proposal has the meaning given in the Augmentation Process Schedule. ***[Note: This deed assumes that the Proponent has already submitted a Proposal at the time this deed is entered into in accordance with clause 2.2 of the Augmentation Process Schedule. Where this is not the case, and the State has proposed the Augmentation in accordance with clause 2.1 of the Augmentation Process Schedule, this deed should be amended to reflect the fact that the initial Proposal will be submitted at a later stage.]***

Authority means:

(a) any government; and

(b) any governmental, semi-governmental or local government authority, local council, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality, or any other person of a like nature.

Background IP means Intellectual Property Rights in:

(a) subject matter in existence at the date of this deed (other than where such subject matter has been developed for the Project); or

(b) subject matter developed independently of the development of the Augmentation Proposal, the Augmentation and the Project.

Business Day has the meaning given in the Project Deed.

Claim means any claim, action, demand, suit or proceeding (including by way of contribution or indemnity) made under this deed, at Law or for specific performance, restitution, payment of amounts (including damages), an extension of time or any other form of relief.

Disclosure Requirements means the requirement to disclose information under or in accordance with any one or more of the following:

(a) the *Freedom of Information Act 1982* (Vic);

(b) the *Ombudsman Act 1973* (Vic):

(c) the requirements of Parliamentary accountability;

(d) the disclosure requirements of the Victorian Auditor General;

(e) in the case of any Minister of the Crown, to fulfil his or her duties of office;

(f) the requirement to satisfy public accountability or transparency obligations of a Government Agency or the requirements of Government policy (including concerning Partnerships Victoria projects);

(g) the requirement to satisfy any conditions of a funding agreement with the Commonwealth Government or any other disclosure requirements of the Commonwealth Government or Infrastructure Australia;

(h) in accordance with policies of the State or any Authority; or

(i) to satisfy any other recognised public requirement.

Excluded IP means Intellectual Property Rights subsisting in:

(a) subject matter produced by third parties engaged by a Proponent or any Proponent Associate to primarily provide printing, general administration, project management, communications support, advertising, marketing or financial model auditing services or legal or communications advice, and not forming part of the Augmentation Proposal or incorporated into the Augmentation Proposal; and

(b) any off the shelf computer software used by or on behalf of a Proponent or any Proponent Associates to develop the Augmentation Proposal.

Government Agency means a government (including State, Commonwealth or municipal) or any governmental, semi-governmental, judicial, municipal, statutory, public or administrative entity, agency or authority and includes a Minister of the Crown (in any right), a statutory corporation, a self-regulatory authority established under statute or a stock exchange (wherever created or located).

Government Stakeholder has the meaning given in clause 2.2(a).

GST has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property Rights includes any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future, including rights of any kind in:

(a) inventions, discoveries and novel designs, whether or not registered or registrable as patents, innovation patents or designs, including developments or improvements of equipment, technology, processes, methods or techniques;

(b) literary works, dramatic works, musical works, artistic works, cinematograph films, television broadcasts, sound broadcasts, published editions of works and any other subject matter in which copyright (including future copyright and rights in the nature of or analogous to copyright) may, or may upon creation of the subject matter, subsist anywhere in the world;

(c) registered and unregistered trademarks and service marks, including goodwill in the business concerned in the relevant goods and/or services;

(d) trade, business or company names;

(e) internet domain names; and

(f) proprietary rights under the *Circuit Layouts Act 1989 (Cth)*,

whether created or in existence before or after the date of this deed.

Law has the meaning given in the Project Deed.

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

(a) actual, prospective or contingent; or

(b) currently ascertainable or not,

and whether under or in any way in connection with this deed or arising at Law.

Notice has the meaning given in clause 13.1.

Particulars means Schedule 1.

Party means:

(a) the State; and

(b) the Proponent,

and **Parties** will mean all of such entities.

Project Deed has the meaning given in the Particulars**.**

Proponent means the proponent identified in the Particulars.

Proponent Information means the following, whether or not in tangible or electronic form (however disclosed):

(a) all information directly or indirectly disclosed by or on behalf of the Proponent or its Associates to the State or any of its Associates, whether before or after execution of this deed which is connected directly or indirectly with the Augmentation, the Augmentation Proposal or the involvement of a person with the Augmentation;

(b) all notes, data and other records based on, referring to or incorporating any information referred to in paragraph (a); and

(c) all copies of the information and those notes, data and other records referred to in paragraphs (a) or (b),

but excludes:

(d) information which was in the public domain before the date of this deed;

(e) information which comes into the public domain after the date of this deed, except through disclosure by the State or any of its Associates in contravention of this deed or any other obligations of confidence.

Proponent's Representative means each of the persons identified in the Particulars or such other person which the Proponent notifies the State from time to time is the Proponent's representative in relation to the Augmentation.

Recipient means the Proponent, each Associate of a Proponent and any person to whom the Proponent or an Associate of the Proponent discloses State Confidential Information.

Related Body Corporate has the meaning given to it in the *Corporations Act 2001* (Cth).

State Confidential Information means the following, whether or not in tangible or electronic form (however disclosed):

(a) all information directly or indirectly disclosed by or on behalf of the State or its Associates to the Proponent or its Associates, whether before or after execution of this deed which is connected directly or indirectly with the Augmentation Proposal or the Augmentation or the involvement of a person with the Augmentation Proposal or the Augmentation;

(b) all other information in relation to or connected with the State or its Associates in relation to the Augmentation Proposal or the Augmentation in the possession or control of the Proponent or its Associates;

(c) the fact that the Proponent has had, will have, or are having discussions with the State or its Associates in connection with the Augmentation;

(d) the fact, details or terms of any discussions, negotiations or agreements (including in relation to timing or process) between the State or any of its Associates and the Proponent or any of its Associates in relation to the Augmentation Proposal or the Augmentation;

(e) all material disclosed in presentations by or on behalf of the State or any of its Associates in connection with the Augmentation Proposal or the Augmentation;

(f) all notes, data and other records based on, referring to or incorporating any information referred to in paragraphs (a) to (e); and

(g) all copies of the information and those notes, data and other records referred to in any of paragraphs (a) to (e),

but excludes:

(h) information which was in the public domain before the date of this deed; or

(i) information which comes into the public domain after the date of this deed, except through disclosure by the Proponent or any of its Associates in contravention of this deed or any other obligations of confidence.

State's Representative means each of the persons identified in the Particulars or such other person whom the State notifies the Proponent from time to time is the State's representative in relation to the Augmentation.

State Probity Advisor means the probity advisor of the State designated as such and as advised to the Proponent from time to time.

1.2 Interpretation

In this deed:

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

and unless the context otherwise requires:

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

(c) (**deed and Schedule references**): a reference to:

(i) a clause, Schedule, Annexure or Attachment is a reference to a clause, Schedule, Annexure or Attachment of or to this deed; and

(ii) a section or part is a reference to a section or part of the Schedule in which they are located,

unless expressly provided otherwise;

(d) (**Document as amended**): a reference to the Project Deed, or to any other deed, agreement, document or instrument means a reference to the Project Deed, or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;

(e) (**Party**): a reference to a Party includes that Party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;

(f) (**person**): a reference to a person includes an individual, the estate of an individual, a corporation, a body corporate, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust (including a trustee);

(g) (**replacement person**): a reference to a person appointed under this deed includes that person's replacement or delegate appointed in accordance with this deed or the Project Deed (as applicable);

(h) (**legislation**): a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes:

(i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the legislation or delegated legislation; and

(ii) consolidations, amendments, re-enactments and replacements;

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

(j) (**"includes"**): "include", "includes" and "including" will be read as if followed by the phrase "(without limitation)";

(k) (**"or"**): the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;

(l) (**information**): a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;

(m) (**"$"**): a reference to "$", AUD or dollar is to Australian currency;

(n) (**Business Day**): if the day on or by which anything is to be done under this deed is not a Business Day, that thing must be done no later than the next Business Day;

(o) (**time**): a reference to time is a reference to time in Melbourne, Victoria, Australia;

(p) (**rights**): a reference to a right includes any benefit, remedy, function, discretion, authority or power;

(q) (**obligations and liabilities**): a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;

(r) (**absolute discretion**): unless the State is expressly required under this deed to act reasonably in exercising a power, right or remedy, the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so;

(s) (**"may"**): unless the State is expressly required under this deed to act reasonably in exercising a power, right or remedy, the term "may", when used in the context of a power, right or remedy exercisable by the State, means that the State can exercise that power, right or remedy in its absolute and unfettered discretion and the State has no obligation to do so; and

(t) (**contra proferentem rule not to apply**): each provision will be interpreted without disadvantage to the Party who (or whose representative) drafted or proffered that provision.

(u) ("**in writing**") where a Party has to give consent or agreement in accordance with this deed, that consent or agreement will be deemed not to be given unless it is given in writing

2. Process Matters

2.1 Single point of contact

Except to the extent that the State's Representative otherwise agrees, if the Proponent or any of its Associates wishes to communicate with the State or any of its Associates concerning the Augmentation, it must communicate by or through the Proponent's Representative to the State's Representative.

2.2 Contact with the State and Government Stakeholders

(a) The Proponent acknowledges and agrees that it will not, and will ensure that its Associates do not, make contact with:

(i) any Government Agency or officer or member thereof;

(ii) the State or any of its Associates; or

(iii) Members of Parliament or their staff,

(each a **Government Stakeholder**) to discuss any aspect of the Augmentation except with the prior written consent of the State's Representative, which may be given or withheld at the State's Representative's discretion and on such terms and conditions as the State's Representative determines.

(b) Without limiting the State Representative's discretion under clause 2.2(a), the Parties acknowledge and agree that the State's Representative may impose the following conditions on its consent under clause 2.2(a):

(i) the State may require the Proponent to give the State prior notice of the topic of the proposed meeting with a Government Stakeholder, including to enable the appropriate key personnel to be present;

(ii) the State may determine the location of any meeting; and

(iii) the State or its nominated representative may elect to be present at any meeting that relates to the Augmentation Proposal or the Augmentation between the Proponent (or any of its Associates) and a Government Stakeholder.

(c) The meeting procedures set out in clause 2.4 apply to any meeting between the Proponent (or any of its Associates) and a Government Stakeholder as if the meeting was between the State and the Proponent, and the State's Representative may attend any such meeting.

2.3 Clarifications and other information

(a) At any time, the State may, through the State's Representative, request:

(i) clarification in respect of any part of the Proponent Information or the Augmentation;

(ii) additional information concerning any of the Proponent Information, the Augmentation Proposal or the Augmentation;

(iii) information in relation to the preparation of any part of the Proponent Information; or

(iv) information as to the basis on which the Proponent may be prepared to undertake any part of the Augmentation.

(b) If a request referred to in clause 2.3(a) is made by the State, the Proponent must use reasonable endeavours to provide such clarification or other information within such reasonable time period as may be specified by the State.

2.4 Meetings between State and the Proponent

(a) The State may, through the State's Representative, invite the Proponent or any of its Associates to attend meetings with the State or its Associates to discuss issues arising in relation to the Augmentation Proposal or the Augmentation. The Proponent may, through the State's Representative, request meetings with the State or its Associates for the same reasons.

(b) If the State requests a meeting or consents to a request for a meeting:

(i) the State will chair the meeting;

(ii) the Party that requested the meeting will prepare an agenda of items to be discussed;

(iii) the meetings will be conducted in accordance with all probity and other procedures and protocols advised by the State from time to time in writing;

(iv) the State may decline to discuss any or all issues raised by the Proponent or any of its Associates; and

(v) questions and responses at any meeting may be recorded in writing or by any other means on behalf of the State, copies of which may, at the State's discretion, be provided to the Proponent.

(c) The State Probity Advisor may, at the request of the State, attend any meetings between the State or its Associates and the Proponent or its Associates in relation to the Augmentation Proposal or the Augmentation.

(d) Nothing which occurs at a meeting between the State or its Associates and the Proponent or its Associates may be relied on by the Proponent or its Associates unless subsequently confirmed in writing by the State.

3. Stakeholder and community engagement

(a) If required by the State, promptly after the date of this deed the Parties will agree a strategic communications and stakeholder engagement plan in respect of the further development of the Augmentation, which plan will:

(i) set out the principles, objectives, protocols and roles of the Parties in relation to communications and stakeholder and community engagement;

(ii) include a requirement for the Proponent to prepare a two week forward looking stakeholder and community engagement schedule (**Engagement Schedule**) for the State's review and approval, and a requirement for the Proponent to submit an updated Engagement Schedule to the State on a weekly basis for the State's review and approval; and

(iii) include requirements for meeting record keeping and regular weekly written reports of meeting outcomes,

(**Communications and Stakeholder Engagement Plan**).

(b) The Proponent may engage with local councils, the community or any other stakeholder in relation to the Augmentation Proposal and the Augmentation:

(i) to the extent that the engagement, the content of the discussion or forum and the meeting procedure:

A. is in accordance with the latest Engagement Schedule which has been approved by the State in accordance with the Communications and Stakeholder Engagement Plan; and

B. otherwise complies with the Communications and Stakeholder Engagement Plan; or

(ii) to respond to a direct enquiry from a local council, the community or other stakeholder following, and in respect of, an engagement described in clause 3(b)(i), provided that the content of the communication is consistent with the requirements of the Communications and Stakeholder Engagement Plan,

and in any such engagement may discuss information which is in the public domain (except through disclosure by the Proponent or any of its Associates in breach of this deed or any other obligations of confidence).

(c) The State may, in its discretion, direct the Proponent to cancel any meeting, or to not discuss certain content at any meeting, with any local council, stakeholder or the community.

(d) The State may, in its discretion, direct the Proponent to not have any contact with a tenderer or potential tenderer for another State project which has an interface with the Augmentation, in respect of the Augmentation Proposal or the Augmentation.

(e) The Proponent must comply with any direction given by the State (including under clauses 3(c) and 3(d) in respect of the Proponent's engagement with any local council, the community or any other stakeholder in respect of the further development of the Augmentation Proposal or the Augmentation.

(f) The State may attend any meeting or forum between the Proponent and any local council, the community or any other stakeholder in respect of the Augmentation Proposal or the Augmentation.

(g) For the avoidance of doubt, the requirements of this clause 3 do not apply to communications between the Proponent and an Associate of the Proponent or where clause 8.5 or 15 applies.

4. Probity

4.1 State Probity Advisor

(a) The State may appoint a State Probity Advisor who will, among other matters, be responsible for oversight of the process and procedures of the Proponent's conduct in relation to the Augmentation and who may, at the request of the State, be present at any meeting between the State or its Associates and any member of the Proponent or its Associates in relation to the Augmentation.

(b) Each Proponent will provide (or procure) access for the State Probity Advisor to the records, books, accounts and personnel of the Proponent and its Associates, for the purpose of verifying any matters connected with probity.

4.2 Co-operate

The Proponent must, and must procure that its Associates, fully co-operate with and do all things reasonably necessary or desirable to enable the State Probity Advisor to effectively and expeditiously carry out the State Probity Advisor's functions and duties.

4.3 Proponent probity checks

The Proponent consents to probity checks being conducted at any time. Such probity checks may include:

(a) investigations into commercial structure, business and credit history;

(b) prior contract compliance;

(c) compliance with this deed and any plans and protocols required by this deed;

(d) any criminal records or pending charges;

(e) interviews with any referees nominated; and

(f) research into any relevant activity that is or might reasonably be expected to be the subject of regulatory investigation.

4.4 Responsibility for probity

Nothing in this clause 4 detracts from or limits the Proponent's obligations or responsibilities for complying with and ensuring its Associates comply with all probity requirements which relate to the Augmentation.

5. Management of Associates

(a) The Proponent must ensure that each of its Associates complies with the requirements of clauses 2, 3(b) to 3(e), 4, 6, 7, 8, 9, 15, 16 and 17 as though it were the Proponent (**Associate Obligations**).

(b) Other than in respect of agents, contractors, advisors or consultants engaged by the Proponent prior to the date of this deed, as set out in the Particulars, the Proponent must not engage an agent, contractor, advisor or consultant in relation to the Augmentation without notifying the State of:

(i) the identity of the agent, contractor, advisor or consultant; and

(ii) the reasons for the engagement,

prior to the proposed engagement.

(c) Without limiting clause 5(a), the Proponent must provide to the State a draft of the form of deed poll or other contractual arrangements it proposes that its Associates will enter into for the purposes of ensuring that the Proponent is able to comply with the Proponent's confidentiality obligations under this deed, for the State's approval (not to be unreasonably withheld).

6. Conflicts

6.1 Conflicts

The Proponent:

(a) must immediately notify the State upon becoming aware of any actual or potential conflict of interest in respect of the Proponent or an Associate of the Proponent in relation to the Augmentation Proposal or the Augmentation; and

(b) must comply, and must ensure that any such Associate complies, with the State's reasonable requirements in relation to the actual or potential conflict of interest.

6.2 Proponent must make enquiries

The Proponent must require its Associates to inform the Proponent of any actual or potential conflict of interest as described in clause 6.1(a).

7. Security and control of State Confidential Information

7.1 Security

The Proponent must procure that each Recipient, at its own or the Proponent's cost:

(a) establishes and maintains effective security measures to safeguard State Confidential Information from access or use not authorised by this deed;

(b) subject to the terms of this deed, keeps State Confidential Information under each Recipient's control; and

(c) establishes and maintains effective and auditable procedures for ensuring compliance with this deed.

7.2 Assistance in proceedings

The Proponent must procure that each Recipient, at its own or the Proponent's cost, provides all reasonable assistance requested by the State in relation to any proceedings the State may take against any person for unauthorised use, copying or disclosure of State Confidential Information, or failure to comply with the provisions of this deed.

7.3 State's right to terminate holding of State Confidential information

The State may terminate the entitlement of any Recipient to hold State Confidential Information at any time with immediate effect, by giving written notice to that effect to the Proponent.

7.4 Consequences of right to terminate holding of State Confidential Information

(a) On termination of the entitlement of a Recipient to hold State Confidential Information under clause 7.3, without limitation to the other rights of the State, the right of that Recipient to use State Confidential Information ceases and the Proponent must immediately procure that, except to the extent prohibited by Law from doing so, and subject to clause 7.4(b), such State Confidential Information is, at the State's option:

(i) returned to the State;

(ii) destroyed and that destruction certified to the State;

(iii) destroyed and a representative of the State is permitted to witness that destruction; or

(iv) dealt with in some other manner nominated by the State.

(b) The Proponent may request the State's consent to an exception to the Proponent's obligations under clause 7.4(a) where the State Confidential Information is

incorporated into board papers and associated documents, is proposed to be retained for corporate governance purposes or as part of the professional duties of advisors or forms part of information technology backup. The State will not unreasonably withhold or delay its consent to such a request from the Proponent. Any such consent will not limit the obligations of the Proponent, or the rights of the State, under this clause 7 (other than clause 7.3), in relation to that State Confidential Information.

7.5 Effect of such termination on accrued rights

Termination of the entitlement to hold State Confidential Information pursuant to clause 7.3 does not affect any accrued rights or remedies the State may have.

7.6 Additional obligations unaffected

The obligations under this deed are in addition (and without prejudice) to any other obligations of confidence or with respect to probity which the Recipient may have whether at Law, in equity, by statute or otherwise.

7.7 Confidentiality obligations continue after assignment or termination

The obligations of confidentiality under this deed continue to apply after assignment, transfer or termination of any right to hold State Confidential Information under this deed.

8. Use and disclosure of State Confidential Information by the Proponent

8.1 Use of State Confidential Information

(a) The Proponent must, and must procure that any person who has access to State Confidential Information, will:

(i) not use the State Confidential Information for any purpose whatsoever except the permitted purpose of further developing the Augmentation (**Permitted Purpose**);

(ii) keep confidential all State Confidential Information (subject to disclosure permitted under clause 8.2 or 8.3); and

(iii) not copy or duplicate (or allow the copying or duplication of) any State Confidential Information except for the purposes of the use or disclosure of State Confidential Information provided for in clause 8.2.

(b) The State acknowledges and agrees that the Proponent will not have breached clause 8.1(a)(ii) by:

(i) communicating with the State's Representative concerning the Augmentation;

(ii) providing clarifications and other information to the State in accordance with clause 2.3;

(iii) submitting the Augmentation Proposal to the State or the State's Representative; or

(iv) making contact with a Government Stakeholder to discuss any aspect of the Augmentation in circumstances permitted by clause 2.2.

(c) The Proponent must establish appropriately robust internal policies regarding restrictions on access to and the transfer, storage and use of information (including State Confidential Information) in order to ensure compliance with clause 8.1(a).

8.2 Disclosure of State Confidential Information

The Proponent may only disclose, and the Proponent must procure that each of its Associates will only disclose, State Confidential Information to:

(a) Recipients specifically nominated by the State; or

(b) any Recipient who:

(i) has a need to know (and only to the extent that each has a need to know) the State Confidential Information for the Permitted Purpose; and

(ii) is aware that the State Confidential Information must be kept confidential and may only be used for the Permitted Purpose.

8.3 Recipient obligations

The Proponent must, at its own expense:

(a) ensure, at all times, that each Recipient complies with the Associate Obligations;

(b) notify the State immediately if it becomes aware of a suspected or actual breach of this deed or the Associate Obligations or any unauthorised disclosure, copying or use of State Confidential Information;

(c) immediately take all reasonable steps to prevent or stop any such suspected or actual breach or unauthorised disclosure or use; and

(d) provide all reasonable assistance requested by the State from time to time regarding enforcement of the Associate Obligations (including assisting the State in commencing, conducting and settling enforcement proceedings, at the Proponent's cost payable on demand).

8.4 Exclusion from obligation of confidentiality

The obligations of confidentiality under this deed do not apply to a Recipient to the extent that the obligations apply to information that:

(a) prior to the date of this deed was rightfully known to and in the possession or control of that Recipient and not subject to an obligation of confidentiality on that Recipient;

(b) the State has consented in writing to being disclosed, provided that any such disclosure may only be made in accordance with the terms and conditions (if any) of that consent; or

(c) subject to clause 8.5, that Recipient is required by Law or a binding requirement of a recognised stock exchange to disclose.

8.5 Disclosure required by Law

(a) If a Recipient is required by Law or a binding requirement of a recognised stock exchange to disclose any of the State Confidential Information, that Recipient must immediately give notice to the State setting out full details of the circumstances of the proposed use or disclosure and the relevant information proposed to be used or disclosed.

(b) The Recipient must give the State a reasonable opportunity to challenge in a court of law or other appropriate forum whether the proposed use or disclosure is in accordance with clause 8.5(a).

(c) In addition, if the Recipient is or anticipates being legally compelled to disclose State Confidential Information, the Recipient must, at the direction of the State:

(i) assist and take such steps as will permit the State to oppose or restrict that disclosure;

(ii) take all lawful measures available to oppose or restrict that disclosure; and

(iii) if that disclosure is legally required, make disclosure on terms which preserve the confidentiality of the State Confidential Information to the maximum extent possible.

8.6 Indemnity

(a) The Proponent:

(i) acknowledges and agrees that any breach by the Proponent of its obligations under clause 8 may cause the State or its Associates to suffer or incur a Liability, and any such breach will entitle the State to make a Claim against the Proponent; and

(ii) indemnifies the State for any Liability suffered or incurred by the State or its Associates and against any Liability to any person by way of indemnity against, or contribution to, the Liability of that person, arising out of, or in respect of, or in connection with any Claim referred to in clause 8.6(a)(i).

(b) The Proponent's liability under the indemnity in clause 8.6(a) will be reduced proportionally to the extent that the relevant Liability was caused by the act or omission of the State or its Associates.

9. Disclaimer and exclusion of Liability - State Confidential Information

9.1 State Confidential Information

The Proponent acknowledges and agrees that:

(a) the State Confidential Information, and all Intellectual Property Rights in the State Confidential Information (to the extent the State owns, or its Associates own, the

Intellectual Property Rights in the State Confidential Information), will remain the property of the State or any of its Associates (as the case may be);

(b) none of the State, its Associates or any other person acting on behalf of or associated with any of them has verified, or has any obligation to verify the accuracy, reliability or completeness of the State Confidential Information;

(c) none of the State, its Associates or any other person acting on behalf of or associated with any of them has made any representation or warranty either express or implied as to the accuracy, reliability or completeness of the State Confidential Information;

(d) the Proponent must, and must ensure that its Associates will, rely absolutely on their own opinion and professional advice based upon their own independent analysis, assessment, investigation and appraisal in deciding to further develop the Augmentation;

(e) the Proponent must, and must ensure that its Associates will, not in any way rely upon:

(i) the State Confidential Information; or

(ii) a failure by the State or any of its Associates to provide any information to the Proponent or its Associates;

(f) the Proponent must, and must ensure that its Associates will, carry out all relevant investigations, make their own review and evaluation, and examine and acquaint themselves in respect of:

(i) all aspects of the Augmentation;

(ii) the contents, correctness, sufficiency and suitability of the State Confidential Information; and

(iii) all information which is relevant to the risks, contingencies and other circumstances related to the Augmentation which could affect their decision to further develop the Augmentation Proposal,

without reliance on the State or any of its Associates;

(g) no statement, representation, term, warranty, condition, promise or undertaking made, given or agreed to by the State, its Associates or any person acting on behalf of or associated with any of them in any prior negotiation, arrangement, understanding or agreement is of any effect except to the extent expressly set out or incorporated in this deed;

(h) none of the State, its Associates or any other person acting on behalf of or associated with any of them is under any obligation to:

(i) notify the Proponent or any of its Associates or provide any further information to the Proponent or any of its Associates if it becomes aware of any inaccuracy, incompleteness or change in the whole or any part of the State Confidential Information; or

(ii) update the whole or any part of the State Confidential Information, although, the State or any of its Associates may do so at their sole discretion; and

(i) the acknowledgements under this clause 9.1 are in addition to and, to the extent not inconsistent, do not replace the terms and conditions already agreed to or accepted by the Proponent or its Associates when receiving the State Confidential Information.

9.2 State not liable

(a) None of the State, its Associates, or any person acting on behalf of, or associated with any of them, will have any Liability arising out of or in respect of or in connection with:

(i) any right which the Proponent, any of its Associates, or any person acting on behalf of, or associated with any of them, has (whether at the date of this deed or otherwise) in respect of any alleged misrepresentation or misleading or deceptive conduct on the part of the State, any of its Associates, or any person acting on behalf of, or associated with any of them in providing the State Confidential Information; or

(ii) the Augmentation or the Augmentation Proposal.

(b) The Proponent will not be entitled to make, continue or enforce any Claim, and must ensure that its Associates do not make, continue or enforce any Claim, against, or seek, pursue or obtain an indemnity against Liability from the State, any of its Associates, or any person acting on behalf of, or associated with any of them, arising out of or in respect of or in connection with:

(i) any right which the Proponent, any of its Associates, or any person acting on behalf of, or associated with any of them, has (whether at the date of this deed or otherwise) in respect of any alleged misrepresentation or misleading or deceptive conduct on the part of the State, any of its Associates, or any person acting on behalf of, or associated with any of them, in providing the State Confidential Information; or

(ii) the Augmentation or the Augmentation Proposal.

(c) The Proponent releases the State and its Associates from, and indemnifies the State in respect of, any Claim or Liability referred to in clauses 9.2(a) or 9.2(b).

9.3 Liability unaffected

The matters referred to in this clause 9 will not affect:

(a) the Liability and responsibility of the Proponent under this deed or otherwise according to Law; or

(b) the State's rights against the Proponent under this deed or otherwise according to Law.

10. Disclaimer and exclusion of Liability - Proponent Information

(a) The Proponent warrants that, as far as it is aware, or ought reasonably to have been aware, as at the date of the submission of the Augmentation Proposal and any revised or replacement Augmentation Proposal, the information provided by it to the State in that Augmentation Proposal (including all Proponent Information submitted as part of that Augmentation Proposal) is accurate in all material respects, and not misleading or deceptive.

(b) The Proponent acknowledges that the State is entering into this deed in reliance on the warranties set out in clause 10(a).

(c) The Proponent must, from the date of submission of the Augmentation Proposal until the earlier of the date the Parties enter binding documentation for the Augmentation or this deed is suspended or terminated, notify the State of any inaccuracy or change in the whole or any part of the Augmentation Proposal (including all Proponent Information submitted as part of the Augmentation Proposal) of which it is or becomes aware and which it has not already informed the State or its Associates.

11. Augmentation Proposal

11.1 Cost of Augmentation Proposal

The Proponent agrees that all costs incurred by the Proponent or any of its Associates in connection with the Augmentation Proposal will be borne by the Proponent or its Associates, including any such costs that arise as a result of cancellations, supplements, variations, amendments, clarifications, negotiations, waivers, addenda, suspensions, termination or exclusion made or issued by the State in connection with the Augmentation Proposal, except to the extent otherwise agreed by the State (including in any Augmentation Process Deed).

11.2 Proprietary information

(a) The State:

(i) acknowledges and agrees that the Proponent Information, and all Intellectual Property Rights in the Augmentation, the Augmentation Proposal or Proponent Information (to the extent the Proponent owns, or its Associates own, those Intellectual Property Rights), will remain the property of the Proponent or its Associates (as the case may be); and

(ii) will hold the Proponent Information in confidence except to the extent it:

A. elects to disclose the whole or any part of the Proponent Information to its Associates for the purpose of reviewing, considering and responding to the Augmentation Proposal or the Augmentation; or

B. is otherwise required to disclose the whole or any part of the Proponent Information in accordance with the Law or the Disclosure Requirements.

(b) If the State elects to disclose the whole or any part of the Proponent Information as permitted under clause 11.2(a)(ii)A, it will ensure that any such recipients are made

aware that the Proponent Information is disclosed to them for the purpose of reviewing, considering and responding to the Proponent Information, must be kept confidential and must not be copied, duplicated or disclosed except as required in accordance with the Law or the Disclosure Requirements.

11.3 Discretion of the State

(a) In addition to its rights set out elsewhere in this deed, including its right to terminate this deed, the State will have the right to:

(i) require the Proponent to enter into an Augmentation Process Deed in accordance with the Augmentation Process Schedule should it wish to proceed with the Augmentation;

(ii) accept or reject the whole or part of the Augmentation Proposal to the extent, in the case of part acceptance, that part of the Augmentation Proposal is capable of such partial acceptance (whether it is an option included in the Augmentation Proposal or otherwise);

(iii) change the Augmentation (substantially or otherwise);

(iv) reject or refuse to consider or to accept the Augmentation or the Augmentation Proposal;

(v) suspend or terminate at any time any further participation by the State in its consideration of the Augmentation or the Augmentation Proposal;

(vi) require additional information from the Proponent in connection with the Augmentation or the Augmentation Proposal whether it has been submitted to the State or not, and the Proponent must provide, and must procure that its Associates provide, the information requested within 10 Business Days after receipt of request from the State;

(vii) adopt different procedures for, or methods of, evaluation, negotiation, discussion or engagement for the Proponent, and may alter these procedures and methods at any time;

(viii) withdraw, cancel or modify (substantially or otherwise) the Augmentation;

(ix) commence public sector delivery of the Augmentation; and

(x) not attribute any reasons for any actions or decisions taken including in respect of the exercise of any or all of the above mentioned rights.

(b) The Parties agree that the State is not bound to accept the whole or any part of the Augmentation Proposal.

(c) The Proponent and its Associates are not entitled to enquire into the basis of the State's decisions under clauses 11.3(a) or (b) and the Proponent and its Associates represent and warrant that they will have no Claim, and will not bring any Claim and will procure no Associate brings any Claim, against the State or any of its Associates arising from or in connection with the exercise or the failure to exercise the rights of the State under clauses 11.3(a) or (b).

11.4 No warranty as to feasibility

The State's acceptance of the whole or any part of the Augmentation Proposal does not mean that the State or any of its Associates in any way:

(a) warrants or makes any representations as to the feasibility of; or

(b) assumes responsibility for, or has any obligations in relation to the implementation of,

the Augmentation Proposal or the Augmentation, other than as specified in the final contract documentation (if any) to which the State or its Associate, as applicable, may be a party in respect of the Augmentation.

11.5 Intellectual Property Rights

(a) The Proponent grants (or must procure the grant) to the State a perpetual, irrevocable, non-exclusive, worldwide, royalty free licence (with a right to sublicense) to exercise all Intellectual Property Rights in the Augmentation Proposal and the Proponent Information (to the extent those Intellectual Property Rights were or are developed or made available in connection with, or subsist in aspects of the Augmentation Proposal or Proponent Information relating to, or otherwise arise in connection with, the Augmentation), with effect from the date of this Deed, for any purposes of or in connection with:

(i) reviewing, assessing and deciding whether to proceed with the Augmentation (or any modified version of it which is being pursued by the Proponent);

(ii) to the extent those Intellectual Property Rights are Background IP (other than Excluded IP) subsisting in subject matter forming part of the Augmentation, using, dealing with, maintaining, remedying defects or omissions in, modifying and developing the subject matter in which that Background IP subsists; and

(iii) in respect of all other such Intellectual Property Rights (other than Excluded IP):

A. the procurement, funding, financing, design, supply, construction, installation, production, commissioning, completion, operation, maintenance, repair and alteration of the Augmentation (or any part of the Augmentation), or any other augmentation in Victoria or reviewing, assessing and deciding whether to proceed with the Augmentation (or any modified version of it which is being pursued by the Proponent);

B. the procurement, funding, financing, design, supply, construction, installation, production, commissioning, completion, operation, maintenance, repair and alteration of any thing (including infrastructure, equipment, computer hardware, computer software and computer or telecommunications systems) which interfaces or interoperates with, or which is (in whole or in part) located under, on, above or adjacent to any infrastructure

implemented in connection with the Augmentation (or any modified version of it which is being pursued by the Proponent); or

C. any other project, infrastructure, augmentation, initiative or thing undertaken by or on behalf of the State within Victoria.

(b) The Proponent warrants to the State that:

(i) no rights (including Intellectual Property Rights) of any person will be infringed or breached by:

A. the use of the Proponent Information; or

B. the use or exercise of any Intellectual Property Rights licensed to the State by the Proponent pursuant to this deed,

by the State, its Associates or any or any person nominated or authorised by the State, in accordance with this deed; and

(ii) it owns, or has the authority to grant the rights granted in accordance with this deed in connection with the Intellectual Property Rights licensed under this deed and neither:

A. the exercise of those rights by the State, its Associates or any person nominated or authorised by the State; nor

B. the possession or use of any materials in which those rights subsist in connection with this deed,

in accordance with this deed will give rise to any Liability on the part of the State, its Associates or any person nominated or authorised by the State, including to pay any compensation (including any royalty) to any person, or will give rise to a right entitling any person to make a Claim against the State, its Associates or any person nominated or authorised by the State for any attribution or acknowledgment or rectification in relation to the Intellectual Property Rights or any materials in which they subsist.

(c) The Proponent indemnifies the State, its Associates and any person nominated or authorised by the State (**Indemnified Persons**) against any Claim or Liability brought against, suffered or incurred by the Indemnified Persons arising in connection with:

(i) any infringement, violation, alleged infringement or alleged violation by the Proponent or its Associates or any Indemnified Person of any rights (including Intellectual Property Rights) of any person; or

(ii) any breach of the warranties set out in clause 11.5(b).

11.6 Next steps

If the State elects to progress the whole or part of the Augmentation or the Augmentation Proposal (including by requiring the Proponent to enter into an Augmentation Process Deed in

accordance with the Augmentation Process Schedule), the Proponent must diligently progress the further development of the Augmentation Proposal and:

(a) negotiate in good faith;

(b) allocate sufficient resources and time for negotiation; and

(c) cooperate with the State,

in the further development of the Augmentation Proposal.

12. Termination

If the State notifies the Proponent that it has decided not to proceed with the Augmentation Proposal or the Augmentation, this deed will terminate.

13. Notices

13.1 General

Any notice, demand, consent or other communication (**Notice**) must be, if in writing, signed by or on behalf of the sender, addressed to the intended recipient and:

(a) delivered;

(b) sent by prepaid mail (or if posted to another country, by registered airmail); or

(c) transmitted by facsimile; or

(d) sent by email,

to that recipient's address, facsimile number or email address specified in clause 13.3 or the last address, facsimile number or email address notified by that recipient to the sender.

13.2 Time of receipt

A Notice given to a person in accordance with this clause is treated as having been given and received:

(a) in the case of delivery in person, when delivered to the intended recipient or their premises;

(b) in the case of delivery by post, two Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country);

(c) in the case of delivery by facsimile, on receipt by the sender of a transmission control report from the dispatching machine showing the relevant number of pages and the correct destination facsimile number or name of the intended recipient and indicating that the transmission has been made without error; and

(d) in the case of delivery by email, the first to occur of:

(i) receipt by the sender of any email acknowledgment from the intended recipient's information system showing that the Notice has been delivered to the email address of that recipient;

(ii) the time that the Notice enters an information system which is under the control of the intended recipient; and

(iii) the time that the Notice is first opened or read by an employee or officer of the intended recipient,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent or at later than 4.00pm (local time) on a Business Day, the Notice will be taken to have been duly given or made at the start of business on the next Business Day in that place.

13.3 Address for Notices

The address, facsimile number and email address of each Party is:

(a) the address, facsimile number and email address set out in the Particulars; or

(b) where the intended recipient notifies the sender of another address, facsimile number or email address, the last address or number so notified by that recipient to the sender.

14. Delegation

14.1 Right to delegate

The Proponent acknowledges that the State may exercise any right, statutory or otherwise, it has to appoint a person as a delegate to perform any of its functions, rights and powers under this deed.

14.2 Notice of delegation

The State will give the Proponent written notice of any delegate so appointed, setting out the delegated functions, rights and powers and including a copy of the relevant instrument of appointment.

14.3 Revocation or amendment of delegation

Any such delegation may be revoked, changed, delegated, limited or made subject to such conditions as the State determines from time to time. The State will give the Proponent written notice of any such revocation, amendment or other action.

14.4 No limitation of State obligations

The appointment of a delegate to perform some or all of the functions, rights and powers of the State under this deed will not limit or affect the State's obligations or Liability under this deed.

14.5 Unfettered discretion

The Proponent acknowledges and agrees that:

(a) nothing in this deed will in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the State to exercise any of its functions and powers pursuant to any Law;

(b) without limiting clause 14.5(a), anything which the State does, fails to do or purports to do pursuant to its functions and powers under any Law or otherwise will not be deemed to be an act or omission by the State under this deed; and

(c) each reference to "the State" in this clause 14.5 will be taken to include a "Government Agency".

15. Publicity

(a) Without limiting clause 8, the Proponent must not make, and the Proponent must procure that no Associate makes, a media release or other public announcement or statement in relation to the Augmentation without the prior consent of the State, except to the extent it is not possible to comply with this clause 15 while complying with the Law or a binding requirement of a recognised stock exchange, in which case the Proponent must advise the State of the release or announcement as soon as practicable after they (or any one of them) become aware that the release or announcement will be made.

(b) If seeking the State's consent under clause 15(a), the Proponent must provide a draft of the proposed media release or public announcement or statement to the State.

(c) The State will use its best endeavours to advise the Proponent before making any media release or other public announcement or statement in relation to the Augmentation.

16. Survival of deed

(a) Subject to clause 16(b), the Parties acknowledge and agree that their obligations under this deed (other than clauses 2, 3, 5(b), 5(c), 11.6 and 12) will survive the termination of this deed or completion of the Augmentation.

(b) Clause 5(a) will survive the termination of this deed or completion of the Augmentation, however in such circumstances the clauses referenced in clause 5(a) will be read so as to exclude any clauses which do not survive the termination of this deed or completion of the Augmentation.

17. General Provisions

17.1 No partnership or joint venture

Except as expressly provided in this deed, nothing contained or implied in this deed will:

(a) constitute or be deemed to constitute a Party as a partner, joint venture, agent or legal representative of any other Party for any purpose; or

(b) create or be deemed to create any partnership, joint venture, agency or trust between the Parties or any of them.

17.2 Waiver

Subject to the express provisions of this deed, if the State or one of its Associates fails or delays in exercising or enforcing any right or remedy under this deed, it will not preclude or amount to a waiver of any further exercise or enforcement of that right or remedy or of any other right or remedy under this deed or provided by Law.

17.3 Indemnity held on trust

The Proponent declares and acknowledges that:

(a) each indemnity and right referred to in this deed in favour of any of the State's Associates is held on trust by the State for the benefit of any of the State's Associates from the date of this deed; and

(b) the consent of the State's Associates referred to in clause 17.3(a) will not be required for any amendment to, or waiver of rights under, this deed.

17.4 Damages not an adequate remedy

Each Proponent acknowledges that damages may not be an adequate remedy for the State for any failure by a Proponent or its Associate to comply with clauses 2, 3, 4, 5(a), 7, 8, 9 and 15 and if there is a breach or suspected breach of those clauses by a Proponent or its Associate, the State may seek and is entitled to injunctive or declaratory relief or orders for specific performance.

17.5 Cost of performing obligations

A Party who has an obligation to do anything under this deed must perform that obligation at its own cost, unless a provision of this deed expressly provides otherwise.

17.6 Entire Agreement

This deed contains the entire agreement of the Parties with respect to the matters contemplated in this deed. There are no understandings, agreements, warranties or representations (express or implied), with respect to the matters contemplated by this deed except for those referred to in them.

17.7 Successors

This deed shall be binding upon the Proponent and its successors and assigns and shall enure to the benefit of the State, its successors and assigns.

17.8 Further assurance

Each Party must sign, execute, deliver and do all such acts and things as may reasonably be required of it to carry out and give full effect to this deed and the rights and obligations of the parties to them.

17.9 Benefit of deed

The State is entitled to enforce this deed on its own behalf, and as trustee on behalf of any Associate of the State even though that Associate is not a party to this deed.

17.10 Counterparts

This deed may be executed in any number of counterparts and all counterparts taken together will constitute one and the same instrument.

17.11 Governing Law and jurisdiction

(a) This deed will be governed by and construed in accordance with the laws of Victoria.

(b) The Parties submit to the non-exclusive jurisdiction of the courts of Victoria.

Executed as a deed.

[Execution clauses to be inserted.]

Schedule 1 - Particulars

Clause	Description	Details
1.1	"Augmentation"	
1.1	"Project Deed"	
1.1	"Proponent"	
1.1	"Proponent's Representative"	
5(b)	Agents, contractors, advisors or consultants engaged by the Proponent prior to the date of this deed	
13.3	Address for Notices	**PROPONENT** Attention: [#] Address: [#] Facsimile: [#] Email: [#] **STATE** Attention: [DTF to insert] Address: [DTF to insert] Facsimile: [DTF to insert] Email: [DTF to insert] **STATE PROBITY ADVISOR** As advised in writing by the State's Representative.

Schedule 24 - Project Scope and Delivery Requirements

[not disclosed]

Schedule 25 — Additional Assets

1. Definitions

(a) In this Schedule:

Additional Assets has the meaning given in section 2(a)(ii).

Additional Maintenance Proposal means a proposal in respect of the maintenance of Additional Assets in the form required by section 2(i) (in respect of an indicative, initial and final proposal).

Approved Modification means a State Initiated Modification in relation to a Category C Asset made under clause 35.1 of this Deed in respect of which a Modification Order has been issued by the State under clause 35.5(c)(i) of this Deed.

Category A Asset has the meaning given in section 3.1.

Category B Asset has the meaning given in section 3.1.

Category C Asset has the meaning given in section 3.1.

Payment Adjustment has the meaning given in section 2(m)(iv).

Proposed Works Application has the meaning given in section 2(c).

Road Management Regulations means all regulations issued under the Road Management Act.

Road Safety Act means the *Road Safety Act 1986* (Vic).

Road Safety Regulations means all regulations issued under the Road Safety Act.

Third Party Works has the meaning given in section 2(a)(i).

Third Party Works Report means a report in relation to any Third Party Works which identifies to the extent practicable:

(a) the location and extent of the relevant Third Party Work;

(b) the likely timescale for the Third Party Works and anticipated completion date;

(c) a list of Additional Assets likely to be created as a result of the Third Party Works;

(d) any consents, permissions or conditions in relation to the Third Party Works given or imposed by VicRoads under the Road Management Act, Road Management Regulations, Road Safety Act or Road Safety Regulations; and

(e) any relevant additional technical or contractual documentation relating to the Third Party Works.

WGT Project Works means any works performed by WGT Project Co which are intended to become Additional Assets under section 2(a)(ii).

2. Adjustments to Maintained Assets resulting from Third Party Works

(a) Project Co acknowledges and agrees that:

(i) third parties, including Authorities, Utility providers, transport operators and private sector developers, may undertake works in the Project Area (**Third Party Works**);

(ii) such Third Party Works may result in the creation of new assets that fall within the definition of Maintained Assets (**Additional Assets**);

(iii) the State is under no obligation to have such works performed by Project Co nor to have Project Co maintain those works; and

(iv) the State will determine in accordance with this section 2 whether any Additional Assets will become Maintained Assets for the purposes of this Deed.

(b) The State must procure that VicRoads, to the extent that it is lawfully able to do so, makes available to Project Co during the Term, copies of all notices received by VicRoads under section 48EC and 48F of the Road Management Act in relation to the Project Area or the Project Assets.

(c) The State must procure that VicRoads, to the extent that it is lawfully able to do so, makes available to Project Co during the Term, copies of all applications made to VicRoads in respect of proposed works under section 63 or clause 16 of Schedule 7 of the Road Management Act relating to or affecting the Project Area or the Project Assets (**Proposed Works Applications**).

(d) Project Co must within five Business Days (or such other time period agreed with the State and VicRoads) after receipt of a Proposed Works Application from VicRoads:

(i) review the Proposed Works Application;

(ii) notify the State and VicRoads of any matters in the Proposed Works Application that Project Co considers in good faith are inconsistent with any consents, permissions or conditions given or imposed by VicRoads in relation to the Proposed Works Application (where such information has been made available to Project Co);

(iii) notify the State and VicRoads of any matters in the Proposed Works Application that Project Co considers in good faith do not comply with Law (including the Road Management Act, Road Management Regulations, Road Safety Act or Road Safety Regulations);

(iv) notify the State and VicRoads of any Additional Assets that may be created as a result of the works the subject of that Proposed Works Application;

(v) provide the State and VicRoads with an indicative Additional Maintenance Proposal that complies with the requirements of section 2(i); and

(vi) notify the State and VicRoads of any other information or matter which Project Co considers in good faith is relevant to the Proposed Works Application.

(e) Where the State anticipates that any Third Party Works may result in the creation of Additional Assets and those Third Party Works are the subject of a Proposed Works Application, the State must procure that VicRoads provides Project Co with a Third Party Works Report prior to the completion of the Third Party Works.

(f) Within 5 Business Days after receipt of a Third Party Works Report, Project Co may request that VicRoads provides any information that Project Co requires (acting reasonably) in order to prepare an Additional Maintenance Proposal.

(g) The State must procure VicRoads to use reasonable endeavours to provide information requested by Project Co under section 2(f).

(h) Within 10 Business Days after the later of:

(i) receipt of a Third Party Works Report from VicRoads; or

(ii) the date on which VicRoads either provides the information requested by Project Co under section 2(f) or advises Project Co that no further information will be provided,

Project Co must provide an initial Additional Maintenance Proposal to the State and VicRoads.

(i) An Additional Maintenance Proposal must:

(i) identify all Additional Assets that are Category A Assets;

(ii) identify all Additional Assets that are Category B Assets;

(iii) identify all Additional Assets that are Category C Assets; and

(iv) provide a detailed breakdown of the adjustment to the Service Payment, calculated in accordance with the section 3 assuming all of the Additional Assets become Maintained Assets (which for the avoidance of doubt will not include the amount payable in respect of an Approved Modification for Category C Assets).

(j) The State must procure that VicRoads, to the extent that it is lawfully able to do so (including subject to any obligations of confidentiality), makes available to Project Co during the Term, copies of all:

(i) notices received by VicRoads under clauses 7 and 13 of Schedule 7 of the Road Management Act;

(ii) consents given under clause 16 of Schedule 7 of the Road Management Act; and

(iii) agreements entered into under clause 18 of Schedule 7 of the Road Management Act,

in relation to the Project Area or the Project Assets (in each case, as soon as reasonably practicable).

(k) Where any Third Party Works result in the creation of Additional Assets (regardless of whether those Third Party Works are or were the subject of a Proposed Works Application or Third Party Works Report), Project Co must undertake an inspection of the Third Party Works within 10 Business Days after a notice of completion in relation to the Third Party Works is made available to it under section 2(j).

(l) Within 20 Business Days after completing any inspection under section 2(k), Project Co must:

(i) notify the State and VicRoads that an inspection of the Third Party Works has been carried out;

(ii) provide the State and VicRoads with a report setting out the results of the inspection which:

A. includes a detailed list of the nature and location of any Additional Assets;

B. identifies the extent to which Project Co considers in good faith that:

1) the relevant work does not comply with relevant Laws (including the Road Management Act, Road Management Regulations, Road Safety Act or Road Safety Regulations);

2) the relevant work does not comply with any consent, permission or condition given or imposed by VicRoads in relation to relevant work (where such information has been made available to Project Co); or

3) rectification work has not been undertaken in accordance with the requirements of any relevant Law (including the Road Management Act, Road Management Regulations, Road Safety Act or Road Safety Regulations);

(iii) advise the State and VicRoads whether there are any matters relating to the condition of the Third Party Works or Additional Assets in respect of which Project Co intends to, or anticipates that it may, take further action utilising the Required Road Management Powers (including the Required Road Management Powers under clauses 12 or 19 of Schedule 7 of the Road Management Act); and

(iv) provide the State and VicRoads with a final Additional Maintenance Proposal. The final Additional Maintenance Proposal must clearly identify any amendments to the most recent indicative or initial Additional Maintenance Proposal submitted by Project Co in relation to the relevant Third Party Works in accordance with this section.

(m) The State must, within a reasonable period after receipt of that final Additional Maintenance Proposal (including any other materials required to be provided by Project Co under section 2(l)), issue a notice to Project Co:

(i) advising whether the State:

A. accepts Project Co's assessment of whether Additional Assets are Category A Assets, Category B Assets or Category C Assets as set out in the final Additional Maintenance Proposal provided under section 2(l)(iv); or

B. does not accept Project Co's assessment,

and in each case setting out the State's determination regarding whether the Additional Assets are Category A Assets, Category B Assets or Category C Assets including reasons for the State's determination;

(ii) nominating those Additional Assets that will be deemed to be Maintained Assets for the purpose of this Deed (**Nominated Additional Assets**);

(iii) nominating those Additional Assets that will be deemed not to be Maintained Assets for the purpose of this Deed (**Excluded Assets (Additional)**); and

(iv) setting out the adjustment to the Service Payment calculated in accordance with section 3 having regarding to the acceptance or determination made under section 2(m)(i) and the nominations made under sections 2(m)(ii) and 2(m)(iii) (which for the avoidance of doubt will not include the amount payable in respect of an Approved Modification for Category C Assets) (**Payment Adjustment**).

(n) With effect from the date of the State's notice issued under section 2(m):

(i) the Nominated Additional Assets that are Category A Assets or Category B Assets will be Maintained Assets;

(ii) the Excluded Assets (Additional) will not be Maintained Assets; and

(iii) the Service Payment will be adjusted in accordance with the Payment Adjustment.

(o) A Nominated Additional Asset that is a Category C Asset will become a Maintained Asset on and from the date that the State accepts a Modification Proposal in relation to that asset under clause 35.5(c)(i) of this Deed.

(p) Despite any provision to the contrary in this Deed, Project Co's entitlements in relation to any Additional Assets are limited to the Payment Adjustment (or in the case of Category C Assets an Approved Modification) and Project Co has no other Claim against the State or VicRoads in relation to the addition of any Nominated Additional Assets to the Maintained Assets, the exclusion of any Excluded Assets (Additional) from the Maintained Assets or the design, construction or operation of those Nominated Additional Assets or Excluded Assets (Additional).

(q) Except in relation to Category C Assets, a change or variation to the Maintained Assets as a result of any Third Party Works is not a Modification.

(r) The State must use reasonable endeavours to procure that VicRoads transfers or assigns to Project Co the benefit of any warranty or guarantee received by VicRoads in respect of any Additional Assets that become Maintained Assets under this section if requested to do so by Project Co provided that VicRoads will not be required to transfer or assign any warranty or guarantee where it is not permitted to assign or transfer the warranty or guarantee pursuant to its terms and conditions or where assignment or transfer would require VicRoads to incur material expenditure. Project Co must assign or transfer any warranty or guarantee assigned to Project Co under this section back to VicRoads on the expiry or termination of this Deed to the extent it is still operative.

3. Service Payment adjustment determination

3.1 Definitions

In this Schedule:

(a) **Asset Type** means each type of Additional Asset identified in the second column from the left in Table 1 below;

(b) **Asset Type Threshold** means, for each Asset Type in each Financial Year, the threshold amount of Asset Type Units identified in the fourth column from the left in Table 1 below;

(c) **Asset Type Unit** means the unit of measurement for each Asset Type identified in the third column from the left in Table 1 below;

(d) **Asset Type Unit Rate** means the rate payable (reflecting incremental maintenance costs per annum) in respect of each Asset Type Unit identified in the fifth column from the left in Table 1 below;

(e) **Category A Asset** means an Additional Asset of the Asset Types listed in Table 1:

Table 1 – Category A Asset Types

	Asset Type	**Asset Type Unit**	**Asset Type Threshold (per annum)**	**Asset Type Unit Rate (maintenance cost per annum – Real December Quarter 2017)**
1	New wire rope / safety barriers	km	1	$[not disclosed] per annum
2.1	New traffic lane - asphalt pavement - RMC 2	km	1	$[not disclosed] per annum
2.2	New traffic lane - asphalt pavement - RMC 3			$[not disclosed] per annum
2.3	New traffic lane - asphalt pavement - RMC 4			$[not disclosed] per annum
3.1	New traffic lane - granular pavement – RMC 2	km	1	$[not disclosed] per annum
3.2	New traffic lane – granular pavement - RMC 3			$[not disclosed] per annum

	Asset Type	Asset Type Unit	Asset Type Threshold (per annum)	Asset Type Unit Rate (maintenance cost per annum – Real December Quarter 2017)
3.3	New traffic lane - granular pavement - RMC 4			$[not disclosed] per annum

(f) **Category B Asset** means an Additional Asset of the following types:

(i) additional traffic signs (regulatory, advisory and directional);

(ii) additional drainage pits;

(iii) additional culverts;

(iv) additional bus stops (additional pavement and / or line marking);

(v) modified / additional pavement marking;

(vi) additional signalised intersections;

(vii) new roundabout intersection;

(viii) conversion of a roundabout to a signalised intersection;

(ix) new pedestrian operated signal crossings;

(x) additional intersection turn lanes;

(xi) new shared use path;

(xii) additional landscaped area or garden bed area including plantings (such as trees and shrubs);

(xiii) new tactile edge line marking;

(xiv) WGT Project Works; and

(xv) any other Additional Asset that is not a Category A Asset or a Category C Asset; and

(g) **Category C Asset** means an Additional Asset of the following types:

(i) a newly constructed bridge, culvert or retaining wall (each as defined in the VicRoads 'Structures Inspection Manual');

(ii) an existing bridge, culvert or retaining wall (each as defined in the VicRoads 'Structures Inspection Manual') that is not part of the Maintained Assets at the time the Third Party Work commences; and

(iii) existing road sections (for example, a local road that is declared in the future as an arterial road) that are not part of the Maintained Assets at the time the Third Party Work commences.

3.2 Service Payment adjustment – Category A Assets

The State and Project Co agree that, for each Additional Asset that is a Category A Asset, the base maintenance cost component (**BMT**) of the Service Payment will be adjusted on an annual basis commencing in the Quarter beginning from 1 July each year during the Term in accordance with the following calculation:

[not disclosed]

3.3 Service Payment adjustment – Category B Assets

[not disclosed]

3.4 Service Payment adjustment – Category C Assets

[not disclosed]

Schedule 26 — Occupations

1. Background

(a) The access to the Project Area (including during any Defects Liability Period), and the Other Roads in the vicinity of the Project Area by Project Co is a critical element of the Project.

(b) Without limitation, the land access and management arrangements are detailed in clauses 13, 14, 19A of this Deed, Schedule 3, Schedule 22, Schedule 24, this Schedule 26, the Initial Licence, the Maintenance Phase Licence (Full) and the Law.

2. Extension Events and Intervening Events

(a) In addition to Project Co's other rights under this Deed, if Project Co:

(i) is or will be delayed in achieving Commercial Acceptance by the Date for Commercial Acceptance by an Extension Event; or

(ii) is or will be prevented from performing the Services or its other obligations under this Deed which are not Development Activities by an Intervening Event,

Project Co may, as part of its claim for an extension of time to the Date for Commercial Acceptance in accordance with clause 26 or relief in accordance with clause 32 of this Deed, provide notice of the nature, duration and extent of the additional Lane Access required solely as a result of that Extension Event or Intervening Event to which Project Co is entitled under this Deed.

(b) If Project Co is granted:

(i) an extension to the Date for Commercial Acceptance pursuant to clause 26 of this Deed as a result of an Extension Event; or

(ii) relief pursuant to clause 32 of this Deed as a result of an Intervening Event,

the Independent Reviewer (in the case of an extension to the Date for Commercial Acceptance) and the State (in the case of a grant of relief) must also adjust the Permitted Lane Access Points in the Approved Lane Access Schedule for Development Activities and Approved Lane Access Schedule for Maintenance Activities by a reasonable amount to reflect the impact of that extension or grant of relief (as applicable).

(c) Project Co must apply for an adjustment to any WTMP and MTMP (each as defined in the PSDR) affected by that Extension Event or Intervening Event immediately after notifying the State of that Extension Event under clause 26.5 of this Deed or Intervening Event under clause 32.1 of this Deed.

3. Interference

Project Co must not, and must ensure that each Project Co Associate does not, interfere with the flow of traffic on roadways on or in the vicinity of the Project Area, unless it is reasonably necessary to do so for the purposes of the Project Activities and:

(a) Project Co has notified the State, VicRoads and any Responsible Road Authority of the:

(i) nature and approximate duration of any proposed interference;

(ii) arrangements proposed for traffic movements (including minimising interference); and

(iii) proposed arrangements for notifying the public; and

(b) the State, VicRoads or any relevant Responsible Road Authority has approved those arrangements, which approval may be subject to reasonable conditions.

4. Failure to Access

(a) Project Co must bear all costs associated with traffic management for the Project Activities and rectification of Defects, including any necessary advertising, consultation or notifications to the locally affected areas.

(b) If Project Co:

(i) fails to provide notice of its intention not to proceed with any Lane Access that has been included in the bookings in the Approved Lane Booking Register prior to the following time periods related to that Lane Access:

A. Lane Closure – 7 days prior to the time that the Lane Closure was due to have commenced;

B. Lane Speed Reduction - 72 hours prior to the time that the Lane Speed Reduction was due to have commenced; and

C. closure of the full carriageway, in either or both directions – 4 weeks prior to the time that the closure was due to have commenced; and

(ii) does not proceed with that Lane Access,

then:

(iii) where the duration of the relevant Lane Access provided for in the Approved Lane Booking Register is less than one week, Project Co:

A. will, for the purposes of determining the Lane Access undertaken, be deemed to have undertaken that Lane Access for the full duration provided for in the Approved Lane Booking Register;

B. will be deemed to have incurred Permitted Lane Access Points for the full duration of that Lane Access provided for in the Approved Lane Booking Register, in accordance with this Deed; and

C. will be required to submit a new booking in the Approved Lane Booking Register (and obtain new or amended approvals including WTPMs, MTMPs and other Approvals) if

it wishes to implement a similar Lane Access to replace that Lane Access; and

(iv) where the duration of the relevant Lane Access provided for in the Approved Lane Booking Register is equal to or greater than one week, Project Co:

A. will, for the purposes of determining the Lane Access undertaken, be deemed to have undertaken the first week of that Lane Access;

B. will be deemed to have incurred Permitted Lane Access Points for the first week of that Lane Access in accordance with this Deed; and

C. will be required to submit a new booking in the Approved Lane Booking Register (and obtain new or amended approvals including WTPMs, MTMPs and other Approvals) if it wishes to implement a similar Lane Access to replace that Lane Access.

(c) Without limiting section 4(a), where Project Co elects not to proceed with a Lane Access that has been provided for in the Approved Lane Booking Register, then:

(i) where Project Co has not yet publically advertised that Lane Access or otherwise notified the public of that Lane Access, Project Co must ensure that no public advertisement or notification is published in respect of that Lane Access; and

(ii) where Project Co has already publically advertised that Lane Access or otherwise notified the public of that Lane Access, Project Co must publish further sufficient and appropriate advertisements or notices advising the public that the Lane Access will no longer proceed.

Schedule 27 — Required Road Management Powers

1. Required Road Management Powers (Clause 6.1(g))

The following table sets out the legislative powers and functions under the Road Management Act to be delegated to Project Co and Project Co must comply with any conditions imposed on the delegation of the Required Road Management Powers set out below:

Road Management Act Section/Schedule/Clause	Description and conditions
section 40(5)	Discretionary power to inspect, maintain and repair a road which is not a public road Project Co must consult with VicRoads prior to performing a road management function under this clause
section 112	Right to recover for damage to a road resulting from the passage of extraordinary traffic or excessive mass along the road
section 119	Power to perform road management functions on any road for the purposes of facilitating road safety and traffic management in relation to access to or from an arterial road Project Co must consult with VicRoads prior to performing a road management function under this clause
Schedule 6	
clause 1	Exercise of powers in relation to private roads Project Co must consult with VicRoads prior to exercising the power under this clause
clause 2	Power concerning holes and other dangers
clause 3	Power in respect of neighbouring land
clause 4(1)	Power to take remedial action
clause 5	Power to take actions to secure structural integrity of a road
Schedule 7	
clauses 12(2), (3), (4) and (5)	Duty to reinstate
clause 19	Power to rectify works on a road

Schedule 28 – Third Party Agreements

Schedule 28 – Third Party Agreements ..... **i**

1. Definitions and Interpretation **1**

1.1 Definitions 1

2. Third Party Agreements **2**

2.1 Project Co to comply with Third Party Agreements 2
2.2 Common Disputes 4

3. Rail Interface Obligations **7**

3.1 Programming, assistance and approvals 7
3.2 Rail Interface Works documentation 8
3.3 As-built records 8

4. VIVA Works **8**

4.1 Relocation of Viva Energy pipeline 8

1. Definitions and Interpretation

1.1 Definitions

Unless otherwise expressly defined in this Schedule, expressions used in this Schedule have the meanings given to them in this Deed.

In this Schedule:

Common Dispute has the meaning given in section 2.2(a) of this Schedule.

Counterparty means in the case of:

(a) the Rail Interface Deed, the Franchisee (Metro);

(b) the VIVA Recoverable Works Agreements, Viva Energy; and

(c) the V/Line Project Agreement, V-Line.

Rail Interface Deed means the Rail Interface Deed – Third Party – OSAR Project between the Franchisee (Metro) and VicRoads.

Third Party Authority means VicRoads.

Third Party Agreement means:

(a) the Rail Interface Deed;

(b) the VIVA Recoverable Works Agreements; or

(c) the V/Line Project Agreement,

as the case may be.

V/Line means V/Line Pty Limited ACN 087 425 269.

V/Line Project Agreement means the VicRoads Project Agreement between V/Line and VicRoads.

Viva Energy means Viva Energy Australia Pty Ltd ABN 46 004 610 459.

VIVA Recoverable Works Agreements means:

(a) the VIVA Recoverable Works Agreement (Westernport); and

(b) the VIVA Recoverable Works Agreement (White Oil and Black Oil).

VIVA Recoverable Works Agreement (Westernport) means the Recoverable Works Agreement between Viva Energy and VicRoads in relation to the Westernport to Altona to Geelong pipeline.

VIVA Recoverable Works Agreement (White Oil and Black Oil) means the Recoverable Works Agreement between Viva Energy and VicRoads with respect to the White Oil Pipeline and the Black Oil Pipeline.

Work Readiness Procedure means the document entitled 'Work Readiness Procedure' version 7 dated 14 June 2016 prepared by the Franchisee (Metro), as amended from time to time.

2. Third Party Agreements

2.1 Project Co to comply with Third Party Agreements

(a) Project Co:

(i) acknowledges that the Third Party Authorities have entered into the Third Party Agreements;

(ii) must, in performing, the Project Activities:

A. comply with, satisfy, carry out and fulfil all of the obligations, conditions and requirements of each of the Third Party Agreements, as set out in the Appendices below (as applicable) except to the extent that they expressly:

1) provide that Project Co does not need to comply with, satisfy, carry out and fulfil the obligation, condition or requirement; or

2) limit Project Co's obligation in respect of that obligation, condition or requirement; and

B. comply with and fulfil any conditions, obligations or requirements allocated to Project Co in this Deed that are additional to, or more stringent or onerous than, the conditions and requirements described in the Appendices;

(iii) may not exercise any of the State's or a Third Party Authority's discretions or rights under a Third Party Agreement unless it has obtained the State's or the relevant Third Party Authority's prior written consent (which must not be unreasonably withheld or delayed); and

(iv) must assist the State and the Third Party Authorities, in any way that the State and the Third Party Authorities reasonably require, to enable the Third Party Authorities to perform any obligations not allocated to Project Co in the Appendices.

(b) Where any of the Third Party Agreements provide that Project Co must do something or comply with an obligation, subject to the content of the Appendices, Project Co must in performing the Project Activities, do that thing or comply with that obligation as if it were named as the Third Party Authority in the Third Party Agreement so as to ensure that the Third Party Authority is able to fully meet its obligations under the Third Party Agreement, or otherwise at law.

(c) Project Co must, in carrying out the Project Activities:

(i) comply with any directions of the Counterparty given pursuant to the Third Party Agreements;

(ii) comply with any reasonable directions of the State Representative in relation to compliance with the conditions and requirements of the Third Party Agreements;

(iii) ensure that no act or omission of Project Co constitutes, causes or contributes to any breach by a Third Party Authority of its obligations under a Third Party Agreement or otherwise at law; and

(iv) otherwise act consistently with the terms of the Third Party Agreements.

(d) Whenever, pursuant to the terms of a Third Party Agreement, a Third Party Authority makes an acknowledgment or gives a release, warranty, indemnity, promise, covenant under any clause of the applicable Third Party Agreement (each a **Third Party Promise**) then, subject to the terms set out in this Schedule and the other terms of this Deed, Project Co is deemed to make the same Third Party Promise to the applicable Third Party Authority on the same terms and conditions as given by that Third Party Authority under the applicable Third Party Agreement (and, in addition, in the case of the Rail Interface Deed, to VicRoads, the State and each State Associate) in the same way as if the relevant terms of the Third Party Promise were set out in full in this Deed, but limited to the extent that the Third Party Promise relates to the Project Activities.

(e) Project Co's liability in connection with section 2(d) will be reduced so as to benefit from any exclusions or limitations of liability that a Third Party Authority actually receives the benefit of under a Third Party Agreement.

(f) Nothing in a Third Party Agreement or this Schedule limits the State's rights or Project Co's obligations in relation to Final Acceptance or the rectification of Defects under this Deed.

(g) Where requested by Project Co, the State must procure that a Third Party Authority diligently pursues the defence of any Claim made against the Third Party Authority (as applicable) brought by a Counterparty and must not settle or compromise such Claim without Project Co's prior written consent (not to be unreasonably withheld). Project Co must reimburse the State for any cost, liability or expense reasonably incurred by the State and/or a Third Party Authority in complying with this section 2(g).

(h) Except as otherwise expressly set out in this Deed, Project Co:

(i) bears the full risk of:

A. Project Co complying with its obligations under this Schedule; and

B. any acts or omissions of the Counterparties, the State and the Third Party Authorities or their employees, agents, contractors or officers in connection with the Third Party Agreements;

(ii) indemnifies the State and the relevant Third Party Authority under a Third Party Agreement from and against any Claim by a Counterparty or any Liability of the State or a Third Party Authority to a Counterparty arising out of, or in any way in connection with, the Third Party Agreements, to the extent that the Liability or Claim is caused by, or arises out of, or in any way in connection with, the Project Activities, provided that Project Co's liability to indemnify the State and each Third Party Authority under a Third Party Agreement will be limited as set out in clause 43.6 of this Deed; and

(iii) will not be entitled to make, and neither the State nor VicRoads will be liable upon, any Claim arising out of or in any way in connection with:

A. the risks referred to in section 2(h)(i); or

B. any acts or omissions of the Counterparty, the State or the Third Party Authorities or their employees, agents, contractors or officers in connection with a Third Party Agreement.

2.2 Common Disputes

(a) A dispute under this Deed may be concerned with matters that also arise in respect of the respective rights and obligations of the State or a relevant Third Party Authority and a Counterparty to the V/Line Project Agreement or a VIVA Recoverable Works Agreement referred to in this Schedule, including where:

(i) the State is in breach of a provision of this Deed, to the extent such a breach is caused by a Counterparty under the V/Line Project Agreement or a VIVA Recoverable Works Agreement;

(ii) the State or the Third Party Authority is entitled to obtain remedies or benefits under the V/Line Project Agreement or a VIVA Recoverable Works Agreement which are similar to remedies or benefits claimed by Project Co in a Claim by Project Co under this Deed;

(iii) Project Co has rights against the State under this Deed, including under a warranty or indemnity or specific right of reimbursement or recovery under this Deed, and the State or the relevant Third Party Authority has similar rights against a Counterparty under the V/Line Project Agreement or a VIVA Recoverable Works Agreement including under a corresponding warranty or indemnity, or a specific right of reimbursement or recovery under the V/Line Project Agreement or a VIVA Recoverable Works Agreement; or

(iv) Project Co has a Claim against the State and the State or the Third Party Authority has a claim against a Counterparty based on the same or similar events or circumstances,

collectively, **Common Disputes**.

(b) Where a Counterparty is in breach of:

(i) the V/Line Project Agreement; or

(ii) a VIVA Recoverable Works Agreement,

Project Co and the State agree that Project Co may bring a claim against the State under this section 2.2, and such claim will be deemed to be a Common Dispute for the purposes of, and determined in accordance with, this Schedule.

(c) Project Co must give the State written notice of a Common Dispute it proposes to resolve under this section 2.2.

(d) In the event of a Common Dispute, the State may, in its absolute discretion:

(i) determine that the Common Dispute be resolved in accordance with either section 2.2(g) to 2.2(m) or, instead section 2.2(n) of this Schedule; and

(ii) notify Project Co in writing of its decision within [not disclosed] of the Common Dispute arising,

in which case either sections 2.2(g) to 2.2(m) or section 2.2(n) of this Schedule will apply in respect of that Common Dispute.

(e) If the State has not notified Project Co of its decision under section 2.2(d) within the time specified in section 2.2(d)(ii), Project Co may give the State a written notice to that effect requiring the State to advise Project Co of its decision.

(f) If the State has not notified Project Co in writing of its decision under section 2.2(d) within a further period of [not disclosed] following receipt of a written notice from Project Co under section 2.2(e), the State is deemed to have determined to pursue the Common Dispute.

(g) Without limiting section 2.2(b), Project Co acknowledges and agrees that the State is not required to determine to resolve a Common Dispute in accordance with section 2.2 of this Schedule unless Project Co has taken all reasonable steps to ensure that the relevant Claim is bona fide, including that the Claim:

(i) is made in good faith;

(ii) has a genuine legal, technical or factual basis; and

(iii) the amount of compensation claimed (if any) is not grossly in excess of the amount that Project Co can reasonably expect to recover,

prior to making a Claim against the State in relation to the Common Dispute.

(h) In the event of a Common Dispute:

(i) Project Co acknowledges and agrees that the purpose of section 2.2 of this Schedule is:

A. to provide Project Co with comparable remedies and entitlements in respect of Common Disputes, and to limit Project Co's rights against the State in respect of Common Disputes by reference to the State's and the relevant Third Party's rights and entitlements under or in connection with the V/Line Project Agreement or a VIVA Recoverable Works Agreement; and

B. not to reduce, disentitle or otherwise affect the validity of any Claim by the State or a relevant Third Party Authority against a Counterparty under, arising out of, or in any way in connection with, the V/Line Project Agreement or a VIVA Recoverable Works Agreement (as applicable);

(ii) to which sections 2.2(g) to 2.2(n) apply, Project Co's entitlement to receive compensation from the State, and the State's liability to pay compensation to Project Co, will only arise at the time the relevant Common Dispute is resolved or determined;

(iii) if any compensation is payable by the State to Project Co under this Deed in respect of a Common Dispute, Project Co will have the same entitlement to recover compensation under this Deed as the State or the relevant Third Party Authority has to recover that compensation from a Counterparty under the V/Line Project Agreement or a VIVA Recoverable Works Agreement (as applicable) in respect of the subject matter of the Common Dispute;

(iv) any rights Project Co has against the State will not exceed the equivalent rights to which the State or the relevant Third Party Authority is entitled under the V/Line Project Agreement or a VIVA Recoverable Works Agreement (as applicable); and

(v) the State will pass through to Project Co the proportion of any compensation (including damages or other form of relief) to which the State or relevant Third Party Authority is entitled under the V/Line

Project Agreement or a VIVA Recoverable Works Agreement (as applicable) in respect of the subject matter of the Common Dispute:

A. to the extent that this is referrable to Project Co, including any liability, Claim or loss of Project Co; and

B. determined by reference to what is actually compensated or allowed by a Counterparty under the V/Line Project Agreement or a VIVA Recoverable Works Agreement (as applicable).

(i) The State agrees to, and will procure the relevant Third Party Authority to:

(i) request that the relevant Counterparty permit Project Co to directly make representations in respect of the Common Dispute;

(ii) if it is unable to obtain the Counterparty's consent as contemplated under section 2.2(i)(i) of this Schedule, make on behalf of Project Co whatever representations in respect of the Common Dispute that Project Co reasonably requests; and

(iii) provide:

A. regular updates to Project Co; and

B. whatever information and documents Project Co reasonably requests,

as to the progress of the Common Dispute.

(j) The State's liability to Project Co in respect of the subject matter of a Common Dispute to which sections 2.2(g) to 2.2(n) apply:

(i) is satisfied by payment to Project Co in accordance with section 2.2 of this Schedule; or

(ii) if the Counterparty is not liable to the State or relevant Third Party Authority, is deemed to be satisfied on the determination of that matter (whether by dispute resolution under the V/Line Project Agreement or a VIVA Recoverable Works Agreement (as applicable) or otherwise), provided that:

A. the State has complied with its obligations under section 2.2 of this Schedule with respect to the recovery of the State's and the relevant Third Party Authority's and Project Co's entitlements from the Counterparty; and

B. all appeals from such determination have been exhausted.

(k) Project Co agrees:

(i) to provide all documents, assistance, and cooperation reasonably requested by the State and the relevant Third Party Authority (and in the time requested by the State) in connection with the Common Dispute;

(ii) that where the V/Line Project Agreement or a VIVA Recoverable Works Agreement contemplate:

A. alternative dispute resolution (including arbitration and expert determination):

1) a like process will apply to the Common Dispute between the parties; and

2) Project Co consents to the Common Dispute being heard together with (or consolidated with) that alternative dispute resolution process; and

B. litigation, Project Co consents to the Common Dispute being consolidated with (or heard together with) that litigation; and

(iii) to be bound by the outcome of the Common Dispute resolution process to the extent it affects Project Co's rights and obligations under this Deed.

(l) Project Co's entitlement to a remedy in respect of a Common Dispute will not be reduced to the extent to which the State's or the relevant Third Party Authority's entitlements under the V/Line Project Agreement or a VIVA Recoverable Works Agreement are reduced or extinguished due to the State's or the relevant Third Party's breach or failure to comply with the V/Line Project Agreement or a VIVA Recoverable Works Agreement (as applicable) or other act or omission (in each case to the extent not caused by Project Co).

(m) To the extent Project Co has recovered compensation in respect of the Common Dispute under another provision of this Deed, Project Co is not entitled to the same compensation under section 2.2 of this Schedule.

(n) If the State, in its absolute discretion, elects that a Common Dispute will not be pursued against the relevant Counterparty, then to the extent that the remedies, benefits or entitlements to which Project Co is entitled in respect of the V/Line Project Agreement or a VIVA Recoverable Works Agreement are less than the remedies, benefits or entitlements to which Project Co would otherwise have been entitled under this Schedule if the State had agreed that the Common Dispute be resolved in accordance with section 2.2(g) to 2.2(n), Project Co will be entitled to pursue the State and the State will be liable for providing such remedy, benefit or entitlement to the same extent that the Counterparty would have been liable pursuant to the V/Line Project Agreement or a VIVA Recoverable Works Agreement (as applicable).

(o) Any payment to which Project Co is entitled under section 2.2 of this Schedule in respect of a Common Dispute shall be paid by the State to Project Co within [not disclosed] from the date of the settlement or final determination (with all rights of appeal having been exhausted) of the Common Dispute under or in connection with the V/Line Project Agreement or a VIVA Recoverable Works Agreement.

(p) The parties agree that Project Co's sole remedy in respect of Claims in connection with the V/Line Project Agreement and the VIVA Recoverable Works Agreements is as set out in section 2.2 of this Schedule.

3. Rail Interface Obligations

3.1 Programming, assistance and approvals

Project Co must:

(a) (**programming**): advise the State of its program for the delivery of the Rail Interface Works; and

(b) (**provide assistance**): provide all necessary assistance to VicRoads to facilitate VicRoads entering into a Rail Interface Deed:

(i) in accordance with the Work Readiness Procedure; and

(ii) to avoid delay to the progress of the Rail Interface Works.

(c) **(approvals)**: obtain all necessary approvals required for the Rail Works from relevant Rail Operators, including liaising directly with the Franchisee (Metro) to lodge documentation in accordance with the Work Readiness Procedure and the Rail Interface Deed.

3.2 Rail Interface Works documentation

Project Co must ensure that any Design Documentation, Construction Documentation, plans or other documents produced in connection with the Rail Interface Works are prepared in a manner which will enable the relevant component of the document relating to Rail Interface Works to be readily extracted.

3.3 As-built records

Project Co must provide the State with a copy of all as-built records relating to the Rail Works at the same time as it is required to provide those records to the Franchisee (Metro) under clause 10.11 of the Rail Interface Deed.

4. VIVA Works

4.1 Relocation of Viva Energy pipeline

(a) (**Acknowledgemen**t): Project Co and the State acknowledge that:

(i) the Works may necessitate works to [not disclosed] (**VIVA Pipeline Relocation**); and

(ii) as at the date of this Deed, the State and VIVA Energy are actively seeking to identify a solution to enable the Works to be carried out without requiring the VIVA Pipeline Relocation.

(b) (**Notification**): Notwithstanding section 4.1(a)(ii), if:

(i) the parties are unable to identify a solution to enable the Works to be carried out without requiring the VIVA Pipeline Relocation; and

(ii) the State and Project Co are unable to agree on an alternative solution to avoid works to relocate the Viva Energy pipeline,

Project Co must immediately notify the State in writing to that effect.

(c) (**State determination**): Upon receipt of notification from Project Co in accordance with section 4.1(b), the State may, by notice in writing to Project Co, elect to do one of the following:

(i) treat the works associated with the VIVA Pipeline Relocation as a proposed Modification in respect of which Project Co must submit a Modification Proposal in accordance with clause 35.2(a);

(ii) direct Project Co not to proceed with any part of the Works which necessitates the VIVA Pipeline Relocation; or

(iii) propose an alternative solution.

(d) (**Project Co's rights preserved**): The rights of Project Co under this section 4 apply notwithstanding anything to the contrary in clause 12(e)(ii), clause 12(f) and clause 12(g) of this Deed.

Appendix 1 – Rail Interface Deed

[not disclosed]

Appendix 2 – V/Line Project Agreement

[not disclosed]

Appendix 3 – VIVA Recoverable Works Agreement (Westernport)

[not disclosed]

Appendix 4 – VIVA Recoverable Works Agreement (White Oil and Black Oil)

[not disclosed]

Schedule 29 – WGT-OSAR Interface Site

[not disclosed]

Schedule 30 – Option Amount Financial Model Protocol

[not disclosed]

Schedule 31 – WGT Direct Interface Agreement

[not disclosed]

Annexure A – Concept Design

For ease of reference, the Concept Design is contained in Part K of the PSDR. This does not affect the operation of clause 2.3(a)(v).

Attachment 1 – [Not used]

Attachment 2 – State Approvals

The following table sets out the **State Approvals** and the date by which the State must obtain those approvals:

	State Approval	Date
1	Amendments to the Wyndham, Hobsons Bay, Melton and Brimbank Planning Schemes under the Planning and Environment Act 1987 authorising the use and development of the Project	Financial Close
2	Any cultural heritage management plans required under the *Aboriginal Heritage Act 2006* for the Project	Financial Close
3	Any approvals required under Part 3 *Environment Protection and Biodiversity Conservation Act 1999* (Cth) for the Project	Financial Close
4	Any approvals required for securing Native Vegetation Offsets associated with the Biodiversity Conservation Strategy within the boundary of the Project Area	Financial Close